

FINAL REPORT

OF THE

GENERAL ELECTIONS-2013 INQUIRY COMMISSION 2015

Comprised of:

Mr. Justice Nasir-ul-Mulk, Chairman
Mr. Justice Amir Hani Muslim, Member
Mr. Justice Ejaz Afzal Khan, Member

Assisted by:

Barrister K. K. Agha, ASC.

GENERAL ELECTIONS-2013 INQUIRY COMMISSION, 2015

FINAL REPORT

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ABBREVIATIONS AND ELECTORAL FORMS

During the Course of this Report some abbreviations/acronyms have been used some of which for ease of reference are set out below along with a brief description of some of the Forms which are referred to.

Adl.	Additional
AFIS	Automatic Finger Identification System
ARO	Assistant Returning Officer
APO	Assistant Presiding Officer
Adl.CS	Additional Chief Secretary
Ast.	Assistant
CS	Chief Secretary
CM	Either Caretaker Chief Minister or Chief Minister according to context.
CMA	A written legal filing by one of the parties
CEC	Chief Election Commissioner
CJP	Chief Justice of Pakistan
Cross	Cross Examination
CPC	Code of Civil Procedure 1908
CW	Commission Witness
DEC	District Election Commissioner
DFID	Department for International Development (UK based)
DG	Director General
DRO	District Returning Officer
ECP	Election Commission of Pakistan
EC	Election Commission
EP	Election Petition
ET	Election Tribunal
EU	European Union
EX	Exhibited Document
FATA	Federally Administrated Tribal Area
FC/levies	Local Force under the control of the Federal Government
FIR	First Information Report i.e. registration of a criminal case.
Foundation	Pakistan Postal Foundation Press
FAFEN	Free and Fair Elections Network
GE 13	General Elections 2013
IDP	Internally Displaced Person
IGP	Inspector General of Police
IMF	International Monetary Fund
KM	Kilometers.
KPK or KP	Khyber Pakhtunkhwa
KMC	Karachi Municipal Corporation
KWSB	Karachi Water and Sewerage Board
MD	Managing Director
MOU	Memorandum of Understanding
NAB	National Accountability Bureau
No, no	Number
NA	National Assembly

NADRA	National Database and Registration Authority
NIC	National Identification Card
NJPMC	National Judicial Policy Making Commission
NGO	Non Governmental Organization
OED	Oxford English Dictionary
PA	Provincial Assembly
PAT	Pakistan Awami Tehreek
PB	Provincial Assembly Balochsitan
PP	Provincial Assembly Punjab
PCB	Pakistan Cricket Board
PCP	Printing Corporation of Pakistan
PILDAT	Pakistan Institute of Legislative Development of Transparency
PM	Prime Minister
PO	Presiding Officer
PS	Polling Station or polling staff or personal secretary or PA Sindh depending on the context
PSPC	Pakistan Security Printing Corporation.
PEC	Provincial Election Commissioner (P)(B)(C)(S)(KPK) based on Province
PCSIR	Pakistan Council of Industrial and Scientific Research
PVT	Parallel Vote Tabulation System
Rangers	Para military Force under control of the Federal Government
REC	Regional Election Commissioner
RMS	Results management System
RO	Returning Officer
ROPA	Representation of the Peoples Act 1976 and 1977 Rules made thereunder
Sec	Secretary
SOP	Standard Operating Procedure
SC/SCP	Supreme Court of Pakistan
SSP	Senior Superintendent of Police
TDEA	Trust for Democratic Education and Accountability
TOR	Terms of Reference
TTP	Tehreek E Taliban Pakistan
UNDP	United Nations Development Program.

Important Election Forms.

A number of Forms which need to be completed during the election process are referred to in this Report. Set out below for the sake of convenience is a brief explanation of the most relevant forms;

Form I is the nomination form for each candidate which includes an asset declaration form

Forms II and III deal with the financial deposit which must be placed by a candidate who intends to contest an election

Form IV lists the validly nominated candidates after scrutiny of nomination papers by the RO (subject to appeal)

Form V lists the contesting candidates (the final list of candidates after all appeals have been disposed of)-----on the basis of this Form the final no. of ballots required to be printed can be determined.

Form VI is the actual ballot paper which is used for voting which consists of a counterfoil which is retained for checking purposes and a ballot paper which is placed in the ballot box

Forms VII to XI deal with postal ballots

Form XII is the tendered voters list

Form XIII is the Challenged voters List

Form XIV is the Statement of Count which is filled out at each polling station indicating the no. of votes received by each candidate. This form is placed in the polling bag and then forwarded to the RO who will add up (consolidate) all statements of Count from each polling station to determine which candidate received the most votes in the Constituency

Form XV is the Ballot Paper Count which sets out the no. of ballot papers by serial no. sent to each polling station, the No. of ballots issued and the no. of ballots which were unused. This document is then sent to the RO in the polling bag although as instructed by the ECP an extra copy was also handed over to the RO by the PO. This document is of particular importance in the context of this inquiry vis a vis the question of excess ballots as it accounts for all the ballots that were issued to a particular Constituency

Form XVI is the consolidated statement of the results of the count as furnished by the Presiding officers of each polling station which is completed by the RO and is referred to under Form XIV

Form XVII is the Result of the Count which sets out the no of votes for each candidate from which the winner can be ascertained. This form is returned to the ECP who will then notify the winner

Form XVIII and XIX is the return of election expenses to be filed by each candidate after the election setting out the

amount of expenses he/she incurred during their election
campaign together with supporting affidavit.

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BEFORE THE
GENERAL ELECTIONS-2013 INQUIRY COMMISSION

PRESENT:

Mr. Justice Nasir-ul-Mulk, Chairman
Mr. Justice Amir Hani Muslim, Member
Mr. Justice Ejaz Afzal Khan, Member

GEICD NOs.6 TO 12,14, 18, 22, 25-26 & 29 TO 32 OF 2015

Afaq Ahmed,
Chairman Mohajir Qaumi Movement (GEICD 6/15)

Mian Iftikhar Hussain,
Secretary General Awami National Party (GEICD 7/15)

Abdul Khaliq Hazara, Hazara Democratic Party,
Candidate for PA PB-2 Quetta (GEICD 8/15)

Pakistan People Party through
Sardar Muhammad Latif Khan Khosa (GEICD 9/15)

Arbab Togachi Fawad Razzak,
People Muslim League Pakistan (GEICD 10/15)

Pakistan Muslim League (Q) Ch. Shujat Hussain
through Sr. Vice President (GEICD 11/15)

Pakistan Tehreek-e-Insaf (PTI), through
Muhammad Sohaib Siddiqui (GEICD 12/15)

Balochistan National Party (AWAMI), PB-48 through
Syed Ehsan Shah, Central Vice President (GEICD 14/15)

Pakistan Muslim League (J) through
Mr. Muhammad Ahmed Chettha (GEICD 18/15)

Balochistan National Party, PB-35 through
Mr. Jehanzeb Jamal Din, Sr. Vice President (GEICD 22/15)

Jamiat Ulma-e-Islam, Nazriati Pakistan through
Moulana Asmatullah, Marqazi Aamir (GEICD 25/15)

Jamat-e-Islami Pakistan through
Liaqat Baloch, Secretary General (GEICD 26/15)

Sheikh Rashid Ahmed, Awami Muslim League (GEICD 29/15)

Dr. Muhammad Farooq Sattar,
Muttahida Qaumi Movement Pakistan (MQM) (GEICD 30/15)

N/A

Raja Zafar-ul-Haq, Pakistan Muslim League (N),
through M. Rafique Rajwana (GEICD 31/15)

Mutahida Deeni Mahaz, Pakistan (MDM),
through Arsahd Zaman Kayani, ASC (GEICD 32/15)

GEICD No.	Political Party	Counsel
06/15	Mohajir Qaumi Movement (Afaq Ahmed), MQM(H)	Mr. Hashmat Ali Habib ASC
07/15	Awami National Party (ANP)	Mr. Abdul Latif Afridi, Sr. ASC.
08/15	Hazara Democratic Party	Nemo
09/15	Pakistan People Party	Mr. Aitzaz Ahsan Sr, ASC Sardar Muhammad Latif Khan Khosa, Sr. ASC Assisted by: Br. Gohar Khan & Mr. Babras Kaira. Advocates
10/15	Pakistan Muslim League (Arbab Togachi)	Kh. Azhar Rasheed, ASC
11/15	Pakistan Muslim League (Quaid-e-Azam) (PML-Q)	Dr. Khalid Ranjah, Sr. ASC Mr. Mubeen-Ud-Din Qazi, ASC
12/15	Pakistan Tehreek -e-Insaf (PTI)	Mr. Abdul Hafeez Pirzada Sr, ASC Mr. Sikandar Bashir Mohmand, ASC Assisted by: Mr. Hamid Ahmad, Advocate Mr. Mustafa Sherpao, Advocate Pir Noor Hussain Jillani, Advocate Mashal Hassan, Research Associate Mr. Mehboob Alam, Research Assistant
14/15	Balochistan National Party (Awami) (BNP-A)	Mr. Shah Khawar ASC
18/15	Pakistan Muslim League (Junejo)	Nemo
22/15	Balochistan National Party (Mengal) (BNP-M)	Mr. Muhammad Munir Paracha ASC Mr. Sajid Tareen Advocate
25/15	Jamiat Ulma-e-Islam (Nazriati)	Maulana Asmatullah (Markazi Aamir), In Person

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26/15	Jamat-e-Islami Pakistan (JIP)	Mr.Abdul Rehman Siddiqui ASC Assisted by: Mr.Saifullah Gondal Advocate
29/15	Awami Muslim League	Nemo
30/15	Muttahida Qaumi Movement (MQM)	Dr. Farogh Nasim, ASC.
31/15	Pakistan Muslim League (Nawaz) (PML-N)	Mr.Shahid Hamid, Sr.ASC Assisted by: Ms.Ayesha Hamid Advocate Mr.Zaafir Khan, Advocate Mr.Ahmed Junaid Advocate
32/15	Mutahida Deeni Mahaz Pakistan (MDM)	Arshad Zaman Kayani ASC
	Election Commission of Pakistan. (ECP)	Mr.Salman Akram Raja ASC Assisted by: Malik Ghulam Sabir, Advocate Mr.Babur Sohail, Advocate Syed Uzair Raza, Advocate Mr.Hammad Mustafa, Advocate Mr.Ali Javed, Advocate Mr.Muhammad Shakeel Mughal, Advocate

Dates of meetings
of the Commission :

9th, 16th, 23rd, 27th, 29th April, &
5-8th, 11-15th, 18th, 21st, 22nd, 25-29th May &
1-3rd, 8-10th, 15-19th, 22nd, 29th, 30th June &
1st to 3rd July, 2015.

REPORT

Introduction

On 11th May 2013 general elections were held in Pakistan to the National Assembly (NA) and the Provincial Assemblies (PAs) of each province. Following the result of the general elections the Pakistan Muslim League (Nawaz) [PML (N)] emerged victorious at the National level and was able to form a Federal Government. The PML (N) also formed Governments at the Provincial level both in Punjab and in Balochistan by way of a coalition whilst the Pakistan Peoples Party (PPP) formed the provincial Government in

N/A

Sindh and the Pakistan Tehreek-e-Insaff (PTI) in the Khyber Pakhtunkhwa

2. Soon after the results of the elections a number of political parties expressed reservations about the fairness of the elections and the result which they produced. However it was the Pakistan Tehreek-e-Insaff (PTI) which was insistent that the elections were unfair and had been manipulated/rigged in favour of the PML (N). There was a standoff between these two parties (PML(N) and PTI) which eventually resulted into a Memorandum of Understanding and Accord on 1st April 2015 (in short 'Accord') which memorialized the political agreements and understandings reached between the parties (PTI and PML (N)). In addition to the PTI and PML (N) the National Party (Balochistan) also signed an affirmation to the Accord.

3. The Preamble/recitals to the Accord sets out the background to the formation of this Commission through an Ordinance. The relevant part of the Preamble/recitals to the Accord read as under:

"Whereas the PTI has alleged that in the General Elections 2013 to the National and Provincial Assembly (ies) (hereinafter "GE 2013") violations of the requirements of Article 218(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter the "Constitution") were widespread and that the overall results of the 2013 General Elections were affected to such an extent that the same do not reflect the true will of the electorate;"

Whereas the PML(N) does not accept PTI's allegations.; and

Whereas both Parties have agreed in the national interest to resolve this issue through formation of a Judicial Commission".

Sections 3 (a) (b) and (c) in the above mentioned Accord largely reflected the terms of reference which were given to the

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Commission to answer on its formation by way of Ordinance No. VII of 2015 an agreed draft of which had already been attached to the Accord for promulgation

4. In this background Ordinance No. VII of 2015 dated 3-4-2015 was promulgated with a view to establishing a Commission to inquire into the Conduct of the General Elections 2013 and vesting such Commission with certain powers (the Ordinance). Section 2 of the Ordinance provided as under:

"2. Constitution of Commission (1) *There shall be constituted a Commission to be called the General Elections-2013 Inquiry Commission hereinafter referred to as the Commission for carrying out the purposes of this Ordinance.*

- (2) *The Commission shall comprise three Judges of the Supreme Court of Pakistan which shall be constituted by the Chief Justice of Pakistan on the request of the federal government.*
- (3) *The federal government shall submit such request under sub section (2) not later than three days after the commencement of this Ordinance.*
- (4) *There shall be a Chairman of the Commission to be nominated by the Chief Justice of Pakistan from amongst the three members of the Commission.*

Provided that the Chief Justice of Pakistan is a member of the Commission, he shall act as the chairman."

5. In accordance with Section 2 (3) of the Ordinance the Federal Government through the Ministry of Law, Justice and Human Rights requested the Chief Justice of Pakistan to Constitute the Commission.

6. Pursuant to the request of the Federal Government through the Ministry of Law Justice and Human Rights the Chief Justice of Pakistan by notification dated 8-4-2015 constituted the General



Elections 2013 Inquiry Commission which comprised of the following members.

1. Mr. Justice Nasir-ul-Mulk, Chairman
Chief Justice of Pakistan.
2. Mr. Justice Amir Hani Muslim Member
3. Mr. Justice Ejaz Afzal Khan Member.

What is a Commission of Inquiry?

7. At the outset it will be of assistance to explain what actually is the legal status of a Commission of Inquiry.

8. Commissions of inquiry are usually established to inquire into matters of public importance and concern such as in this instance which concerned a perception in some parts of the public and some of the political parties, in particular the PTI, which contested the 2013 general elections that the general elections 2013 may not have been organized and conducted fairly and in accordance with law and may even have been subject to manipulation.

9. A Commission of Inquiry is not a Court of law. As such it is not bound by the usual rules of procedure and evidence which are used and applied in such Courts whether adjudicating on civil or criminal matters. Likewise its findings have no legally binding effect. Its findings are not enforceable in the Courts of law although they may have moral or other implications.

10. The main purpose of a Commission of Inquiry is answering its TOR's by uncovering the relevant facts. In that respect it is primarily an inquisitorial fact finding body the main function of which is to uncover the truth by all means at its disposal as provided in the Ordinance.

11. This is one of the reasons why a Commission is not put in a straight jacket and made to be subject to the usual rules of procedure and evidence which apply to legal proceedings where there are usually two opposing parties who pursue their case against each other in an adversarial manner the decision of which will be legally binding and enforceable on or by them.

12. The ground reality was that there were essentially 2 opposing points of view. On the one hand most of the political parties which appeared before the Commission did not consider that the elections were either fair or in accordance with law and in some cases had been systematically rigged by the PML (N). On the other hand both the PML (N) and the ECP were of the view that the elections were fair and had been carried out in accordance with the law and that no rigging had taken place by anyone or body.

13. The PTI was of the view that the proceedings were of a quasi adversarial nature whilst the PML (N) and ECP considered them to be largely inquisitorial as opposed to adversarial. Faced with this position, despite being aware of its primary role to uncover the facts, the Commission proceeded in part on a quasi adversarial basis, whilst remaining conscious of its inquisitorial nature throughout the proceedings, which reflected the reality of the situation

14. To proceed in this manner also ensured that S.9 (2) of the Ordinance was catered for and no prejudice was caused to pending election petitions/appeals before the various Tribunals/Courts.

15. Furthermore, the Commission was conscious that its TOR's did not require/expect it to decide on the legality of individual election disputes concerning individual candidates and

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constituencies. Instead its role was to look at the general election 2013 in a holistic manner to see if it could detect any particular patterns of illegalities and design which would indicate rigging which may have effected the overall result of the election and thereby failed to reflect the true will of the people. As such the Commission did not focus on any particular Constituency nor ruled on the legality of the election in any particular Constituency since this did not form a part of its TOR's

Initial Hearings of the Commission

16. Bearing in mind the time frame for completing the Inquiry as laid down in S.7 (1) of the Ordinance in that the Commission was required to submit its Final Report to the Federal Government as expeditiously as possible and preferably within 45 days of its first meeting the Commission held its first meeting the day after its notification on 9-4-2015.

17. Mr. Muhammad Hamid Ali, Secretary to the Chief Justice of Pakistan, was appointed as Secretary to the Commission. The Commission appointed Barrister K.K. Agha, ASC, to provide it with legal assistance during the proceedings.

18. The Commission remained throughout its proceedings conscious of strictly following its mandate/terms of reference (TOR's) which were provided in S.3 of the Ordinance which is set out below

"3.Scope of Inquiry. The Commission shall inquire into and determine whether or not:

- (a) The General Elections-2013 were organized and conducted impartially, honestly, fairly, justly and in accordance with law.*
- (b) The General Elections-2013 were manipulated or influenced pursuant to a systematic effort by design by anyone and*

(c) *The results of the General Elections-2013 on an overall basis are a true and fair reflection of the mandate given by the electorate."*

19. Keeping its TOR's in mind and the provisions of S.5 (3) of the Ordinance which provides as under:

"(3) For the purposes of section 3, any political party which participated in the General Election-2013 shall and such other persons as the Commission may permit in the interest of justice may have the right and opportunity to submit evidence or material and make submissions thereon for consideration by the Commission."

The Commission at its first meeting decided to invite proposals from political parties who participated in general elections 2013 which shall be in the form of a brief statement accompanied by supporting evidence or material to be submitted to the Secretary to the Commission by 15-4-2015.

20. Since the TOR's were of great public interest/importance and had been part of a larger public debate spanning many months the Commission by way of transparency and keeping the public informed held nearly all of its hearings in public at Court Room 1 of the Hon'ble Supreme Court Building in Islamabad which was readily accessible to both the public and the media.

21. That on 16-4-2015 at the first public hearing the Commission observed that it had received a large number of applications from both political parties and individuals but by and large these were vague and not sufficiently focused on the TOR's. The parties were therefore asked to refile their applications in a more focused manner. At the same time the Election Commission of Pakistan (ECP) was directed to file its comments on some of the

Nag

applications and the National Database and Registration Authority (NADRA) was directed to furnish to the Commission within 3 days its analysis report regarding 37 Constituencies.

Applications by the Parties and Focus on TOR's

22. By the next date of hearing on 23-4-2015 the Commission had received 102 applications from individuals wishing to join the proceedings and 16 applications from political parties.

23. At that stage since it appeared that some of the applications raised serious allegations against both the MQM and PML(N) in terms of rigging the elections the Commission deemed it appropriate to issue notices them so that they could join the proceedings and present their point of view if they so desired. In the meantime the individuals and parties were asked to file witness lists and any further documents/material which they intended to rely on by 25-4-2015.

24. At it's next hearing on 27-4-2015 the Commission having reviewed all the individual applications decided that these would form a part of the record and would be considered at the appropriate time with the movers of the applications being called as witnesses if deemed necessary by the Commission.

25. Prior to the close of the Commission's recording of evidence these applications were reviewed again to see if they may assist the Commission further in answering its TOR's. On a close analysis it was found that 34 of the applications were of no direct relevance to the Commission's TOR's or would not otherwise assist the Commission, 16 had already been covered during the

proceedings and 5 were requests to be called as witnesses one of which request the Commission had allowed.

26. The remaining 47 applications concerned individual Constituencies. Election Petitions had been filed in a number of these applications and many others provided scant evidence. Consistent with its ruling on 9-6-15 in the case of the political party NDM whose case was restricted to one Constituency only the Commission found that these individual cases did not fall within the scope of the Commission's TOR's and as such closed these 47 applications.

27. The Commission was of the view that the applications filed by the political parties despite being supplemented in some cases by additional documents/material etc still remained insufficiently focused in assisting it to decide its TOR's. As such in order to bring a greater focus to the TOR's the Commission issued a questionnaire to the parties which read as under:

Questionnaire

28. In order to assist the Commission of Inquiry as per its Terms of Reference in S.3 of the Ordinance and to enable the Commission to adhere to the time set out in S.7 of the Ordinance each Political Party which has filed an application before the Commission shall file a concise written response to the questionnaire below:-

Questionnaire

1. (a) Do you allege that the General Election 2013 (GE 13) were not organized and conducted impartially, honestly, fairly and justly in accordance with law.

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- (b) If so, specify why?
 - (c) Please indicate the material and witnesses which you will rely on in order to support your allegation.
2. (a) Do you allege that the GE 13 were manipulated or influenced pursuant to a systematic effort by design by anyone?
- (b) If so, please provide the following details:-
- A (i) Who made the plan/design?
 - (ii) The material and witnesses which you will rely on in order to support your allegation.
 - B (i) What was the plan/design?
 - (ii) The material and witnesses which you will rely on in order to support your allegation.
 - C (i) Who implemented the plan/design?
 - (ii) The material and witnesses which you will rely on in order to support your allegation.
 - D (i) How was the plan/design implemented?
 - (ii) The material and witnesses which you will rely on in order to support your allegation.
3. (a) Does "systematic effort" as mentioned in S.3 (b) include just National Assembly (NA) seats or Provisional Assembly (PA) seats as well?
- (b) If NA only does it include all 4 provinces or just confined to certain provinces.

29. The effect of the replies to the Questionnaire, though in many cases not particularly specific, enabled the Commission to some extent to narrow down the issues and start from a focal point, namely what precisely was being alleged by who against who and on what material these allegations were based.

Modalities

30. With the additional documents and witness lists filed by the political parties on 29-4-15 the Commission met with the

N/A

lead counsels of the respective political parties who had filed applications to settle modalities. It was agreed by all the parties that parties could examine their own witnesses on oath to bring on record relevant documents on which they may place reliance. That although the parties may proposed witnesses the final decision of which of the witnesses would be called would be made by the Commission and these would be witnesses of the Commission who may be examined by all the parties. It was stressed by the Commission that in order to assist the Commission in deciding which witnesses to call each party must set out fully the reasons why it was necessary to call them in support of its position. It was decided that formal proceedings of hearing witnesses would commence in open court on 5 May 2015. The witnesses would have a chance to exhibit relevant documents during their testimony. After the recording of evidence each party would be entitled, if it so desired, to submit a written brief, arguments, synopsis of its case, its reply to the questionnaire and each TOR based on the evidence adduced. Thereafter each party, if it so desired, would have the opportunity to address oral arguments.

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THE POSITIONS OF THE POLITICAL PARTIES AS SET OUT IN THEIR APPLICATIONS.

Introduction

31. Before turning to the proceedings themselves it will be of assistance to briefly set out the position of the respective political parties as garnered from their applications, materials submitted, witness lists and preliminary submissions made before the Commission.

32. At the outset it should be noted that all the parties except the PML (N) were of the view that all 3 limbs of S.3 of the TOR's should be answered in the following terms:

- (a) The General Elections-2013 were **NOT** organized and conducted impartially, honestly, fairly, justly and in accordance with law.
- (b) The General Election-2013 **WERE** manipulated or influenced pursuant to a systematic effort by design by anyone and
- (c) The results of the General Election-2013 on an overall basis are **NOT** a true and fair reflection of the mandate given by the electorate.

33. Like wise all the political parties except for the PML (N) were of the view that the ECP had failed in its obligation/duty under A.218 (3) of the Constitution in its organizing and conducting of the general elections 2013.

34. This was mainly because according to most of the political parties insufficient/inadequate arrangements had been put in place by the ECP to ensure that the elections were conducted honestly, justly, fairly and in accordance with law and that corrupt practices were guarded against.

35. In this respect most of the political parties alleged large scale violations of Representatives of the People's Act 1976

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and Rules 1977 made there under (ROPA) which were committed under the watch of the officials of the ECP or those appointed by it to organize and conduct the elections especially the returning officers (RO's) and Presiding Officers (PO's).

36. Some political parties also pointed to the fact that the guidelines and directions issued by the Hon'ble Supreme Court of Pakistan for the organization and conduct of elections in the case of **Workers' Party of Pakistan v. Federation of Pakistan** (PLD 2012 SC 681) decided on 8th June 2012 had either not been fully adhered to, fully implemented or fully enforced by the ECP.

37. Under these circumstances although it is not a political party in fairness to the ECP and in order to assist the Commission in reaching an informed decision as was possible under its TOR's the ECP was allowed by the Commission to be a party to these proceedings and present its point of view. In essence the ECP was responding to the applications made by other political parties and in particular the PTI. The position of the ECP is briefly set out after that of the political parties.

38. The position of the political parties is set out in no particular order below save that the PML (N) is dealt with at the end since it took a different view of the election than the rest.

39. In essence, like the ECP, the PML (N) was responding to the allegations made in the applications by the other political parties and in particular the PTI.

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The Pakistan Tehreek-e-Insaf (PTI).

40. In a nutshell it was the position of the PTI that the general elections of 2013 were not organized and conducted impartially, honestly, fairly, justly and in accordance with the law largely on account of large-scale violations of ROPA.

41. That the general elections of 2013 had been manipulated/rigged throughout Pakistan and in particular in the Punjab by a systematic design by the PML(N) which had in essence stolen the people's mandate and the result of general elections 2013 on an overall basis were not a true and fair reflection of the mandate given by the electorate.

42. The PTI produced 1,000's of documents, numerous video clippings in support of its position including a Report from FAFEN (this is a local NGO known as the Free and Fair Election Network which monitored through its observers the general elections and produced a detailed report on the conduct and organization of those elections), the ECP's own post election review report, its own white paper and documents in respect of 75 specific Constituencies.

43. The PTI concentrated on approx 75 Constituencies (mainly in the Punjab) throughout Pakistan which were mostly won by the PML (N). Suspicion/doubt was also placed on the ECP for failing to use the computerized RMS system at the time of polling which would have greatly reduced human involvement in the elections and thereby minimized the opportunities of manipulation/rigging results.

44. In particular in support of its position the PTI pointed to:

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- (a) the large scale violations of ROPA and
- (b) the large number of extra ballots which were printed and distributed to polling stations in given constituencies in a surreptitious manner at the 11th hour in breach of the relevant law along with the fact that many constituencies had been issued with huge numbers of ballot papers in excess of the number of registered voters. This was illogical and was a strong indication of a design/plan to manipulate/rig certain targeted constituencies

45. It can be inferred from the PTI's application and reply to questionnaire that this systematic design included the Caretaker Government of the Punjab and its administration, the ECP, Punjab Election Commissioner and many RO's and PO's at polling stations throughout the Punjab

46. Para's 2.5 and 3.11.3 of the PTI's preliminary submission and Reply to the questionnaire at 2.(b) (A) (i), and 2 (b) (B) (i) are pertinent in this regard and are set out below.

Preliminary Submission

2.5 As aforesaid, the PTI has consistently raised its grievances against massive fraud in the 2013 Elections and remained committed to working towards a political solution to the initial reluctance of the PML-N to form a commission to enquire into the 2013 Elections through dialogue and consensus **even though it considers PML-N to have usurped the popular mandate through unfair means**

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3.11.3 It is submitted that the failure of the ECP to take action against the concerned polling officials is another manifestation of the overall design **and intent to facilitate rigging and manipulation on part of the ECP and other institutions** rather than to check and punish such corrupt and illegal practices.(bold added)

Reply to Questionnaire

2(b)A(i) The PTI has from inception alleged and maintained that it considers PML-N to have usurped mandate through unfair means. This allegation has been reiterated in section 2.5 of the PTI Submission. The PTI has also stated in the same document that the true mandate it received from the electorate was illegally manipulated and stolen and that the true results are materially at variance from the officially notified (and disputed) results. Whilst reserving all of its rights and on a without prejudice basis, **it is submitted that the architects of the plan were obviously the beneficiaries thereof - which is the PML-N, its supporters, accomplices, associates and cohorts. Although other political parties and persons may also have been part of this "plan and or design" as there appears to also be an element of quid pro quo on a Provincial basis between certain political parties.** [bold added]

2(b)B(i) The details of the plan will come to light as the enquiry and investigation and the Commission progresses.

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However, broadly, **the PTI perceives, believes and alleges that, inter alia, the plan involved various elements the underlying object of which was to procure (through various unlawful means, corrupt and illegal practices, through co-opting and in collusion with, inter alia, Returning Officers and Presiding Officers and the manipulation and maneuvering of the bureaucracy and election machinery) as many votes and seats as possible in the Punjab so as to enable a majority in the National Assembly.** The "plan and or design" also has elements which focused on obtaining through similar or analogous illegal and unlawful means seats in the Provincial Assemblies.(bold added)

47. According to the PTI the plan was implemented by those mentioned above and the objective of the PML (N) plan is distinctly set out in the closing lines of Para 2 (b) (B) (II) of the PTI's Reply to questionnaire:

"..... As to what the objective of PML-N was, it is obvious that it wanted to win the elections at any cost. The heavy concentration of the plan was to illegally "sweep" the Punjab and Balochistan to secure its rule for the next five years. The events following the 2013 Elections are also relevant in this context". (bold added)

48. The PTI called 15 Witnesses in support of its case and exhibited numerous documents and cross examined a No. of witnesses called by other parties and the Commission

Pakistan Muslim League (Quid -e-Azam) (PML (Q))

49. It was the position of the PML (Q) that it had strong reasons to believe that the general elections of 2013 were not organized and conducted impartially, honestly, fairly, justly and in accordance with the law.

50. It was of the view that elections were unfair on account of, amongst other things, public statements made by political leaders, candidates, former officers of the EC, DRO's, RO's etc. That the ECP was interfered with by other institutions in particular some members of the Superior judiciary bearing in mind the nexus the RO's (who came from the subordinate judiciary) had with the judiciary, that the RO's and PO's made fake results in order to benefit the PML (N) candidates, that transfers were made in the lower judiciary prior to elections who were RO's and PO's which took part in the elections. The former Chief Justice of Pakistan Mr. Iftikhar Chaudhry (CJP's) address to RO's amounted to Pre Poll rigging, Candidates were not joined in consolidation proceedings. The FAFEN Rpt showed serious omissions and generally there were large scale violations of the ROPA especially in the Punjab.

51. According to the PML (Q) the suspicion falls on PML (N) for planning the rigging which was a systematic plan especially in the Punjab which was implemented through the RO's and PO's. In particular they target approx 24 Constituencies in the Punjab a majority of which were won by the PML(N)

52. The PML (Q) attached documents and other material in support of its position. During the recording of evidence however the case of the PML(Q) was narrowed to the extent of accusing the RO's in a number of Constituencies in the Punjab of not giving

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notice of consolidation of results to a number of PML(Q) candidates. The PML (Q) called 14 Witnesses in support of its case

Pakistan Peoples Party (PPP)

53. The PPP immediately after the general election 2013 had reservations about its fairness and transparency and contends that there was evidence of rigging.

54. The PPP largely placed reliance on its white paper entitled, "Robbing an Election" which focused on NA 124 Lahore and which by a thorough inspection of the record relating to that Constituency i.e. an inspection and examination of all the polling bags, showed that the election had been rigged by the RO's by destroying certain key documents and thereafter tabulating fake results.

55. Such an examination would indicate whether or not a certain pattern existed. In the view of PPP the plan/design could be revealed if it was found on examination of the polling bags that certain key documents were mainly missing i.e. Forms XIV and XV. If this was the case the RO's would be responsible and the question would then be whether they were acting under any body's instructions.

56. The PPP initially proposed that 68 NA Constituencies be inspected. Of these all 68 were in the Punjab and all won by the PML (N). The inference seemed to be that if there was rigging in the Punjab it had been done at the instigation of the PML (N)

57. The PPP did not directly blame any one particular party or person for this rigging. It was of the view that a systematic design on the part of any one would only come to light if all the polling bags in all constituencies were inspected and examined. Later it

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submitted through an application that the plan was to make the PPP lose in the Punjab and KPK the implication being that the PML (N) had been involved in rigging in the Punjab and the PTI in KPK

58. The PPP apart from its whitepaper attached a few other documents but generally placed reliance on the documents and material placed on record by the PTI. The PPP called no witnesses in support of its case

Pakistan Muslim League (J) (PML (J))

59. The PML (J)'s position was that general elections 2013 were rigged in favor of PML(N) through Police, RO's, PO's, the ECP and the Government machinery who the PML (N) connived with to ensure that they won.

60. In essence the PML (N) plan was to manipulate the election by ballot paper stuffing, incorporating illegal entries in form XIV and ensure false and incorrect consolidation of results through excluding polling agents at the time of consolidation.

61. The PML (J) mainly focused on 2 constituencies in the Punjab on which it filed documents in support of its position. The PML (J) called no witnesses in support of its case.

Mohajir Quami Movement (MQM (H)) Afaq Ahmed.

62. MQM (H)'s position was by and large restricted to unfair elections in 11 NA and 16 PA seats from Karachi. Its allegation was therefore confined only to Karachi.

63. MQM (H) was of the view that the election was unfair due to the influence of MQM and in particular its leader Altaf Hussain in collusion with law enforcement agencies, the administration and election staff who made it almost impossible for MQM (H)

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candidates to even launch an effective election campaign let alone participate fairly in the election.

64. It stressed that its leader Mr. Afaq Ahmed was confined to his house and was prevented from even entering Landhi which was his birthplace, that 2 MQM (H) workers which included a candidate for a PA seat were killed, their offices were ransacked and firearms were freely used to threaten its supporters.

65. In essence the MQM (H) accused the MQM of rigging the elections against it in a planned and systematic manner primarily through the use of terror to scare away its voters. MQM (H) filed documents in support of its position. It called 2 witnesses in support of its case

Jamaat-e-Islami (JI)

66. The Jamaat-e-Islami's allegation of unfair elections was confined to the NA and PA seats in Karachi, one NA and one PA seat in Hyderabad and 3 NA seats in FATA.

67. The position of the JI was that the MQM had made a plan /design to win all constituencies with maximum votes by fraud, forgery and rigging.

68. In Karachi and Hyderabad JI was of the view that rigging was done by MQM in collaboration with the staff of the ECP. That in essence the MQM implemented the plan in Karachi by getting all MQM sympathizers appointed as election staff to rig the election e.g. polling officers.

69. At the same time the MQM activists through threat of force took over polling stations and intimidated the JI voters through threat of force to rig the elections in favour of MQM. The JI

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also contended in support of their position that no action was taken by ECP on JI complaints against such actions by the MQM.

70. That in FATA Ex-Governor of the KPK Engineer Shaukatullah Khan with the help and collaboration of the political agents was behind the election rigging. The JI filed a large number of documents in support of its position. The JI called 3 witnesses in support of its case.

Mutahida Deni Mahaz Pakistan (NDM)

71. The position of the NDM was that the general election 2013 was not organized and conducted impartially, fairly and in accordance with the law in respect of most of the NA and PA constituencies.

72. According to the NDM this was on account of the incompetency of ECP and Caretaker Government. It seemed that the Caretaker Government was a puppet and the ECP was acting under the influence of major political parties

73. The NDM however provided material in respect of the rigging of only one Constituency in Karachi (NA 128 Malir) which it alleged was rigged by inference by the MQM whose candidate won.

74. Since the NDM's case was restricted to only one Constituency the Commission by Order dated 9-6-15 held that the case of the NDM did not fall within the scope of the Commission's TOR's and as such closed its case.

Pakistan Muslim League Pakistan (PML(P))

75. According to the PML (P) a plan was made between the PPP and the PML (N) to manipulate the elections so that the PPP won most of the seats in Sindh and the PML (N) won most of the

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seats in the Punjab. This rigging was done by the Federal Care taker Government chosen by PPP and PML (N).

76. That in Sindh a specific plan was made between the PPP and MQM whereby both parties entered into an arrangement where by the MQM would give rural Sindh to PPP and the PPP would give urban Sindh to the MQM.

77. That the PML (P) provided specific evidence only in respect of NA 229 Tharparkar I and PS Tharparkar. In Sindh the Caretaker Chief Minister was instrumental in carrying out the plan through RO's and PO's whilst in Punjab the caretaker Chief Minister performed the same role.

78. The PML (P) provided material in support of its position only in respect of Tharparkar in Sindh. The PML (P) called no witnesses in support of its case.

Balochistan National Party (Mengal) (BNP (M))

79. BNP (M)'s position related only to Balochistan. The BNP (M) was of the view that the Inquiry should be divided into 5 parts. Firstly at NA level and secondly at PA level which would mean that in effect there would be 5 distinct and separate inquiries which when read together would show whether the results of the general elections 2013 on an overall basis were a true and fair reflection of the mandate given by the electorate.

80. At a minimum a separate inquiry into Balochistan would show whether the elections conducted in that province were fair and truly reflected the will of the people.

81. According to the BNP (M) the elections in Balochistan was altogether a different phenomena compared to other parts of the Country due in particular to the very poor law and order

situation which was generally prevailing in the Province at the time of the election.

82. The BNP (M) was of the view that the unfairness of the elections in Balochistan could be determined by analyzing (i) the number of registered voters in each Constituency (ii) the number of votes cast in each Constituency and (iii) total number of votes received by the winning candidate in each Constituency.

83. The BNP (M) provided particular examples of constituencies where either unfair elections or no elections at all took place i.e. NA 271 Kharan cum Washuk cum Panjgur and the 2 PA seats in this Constituency i.e. PB 42 Panjgur I and PB 43 Panjgur II (where allegedly no election took place) and PB 41 Awaran, PB 50 Kech III, PB 49 Kech II, PB 48 Kech 1, PB 35 Wadd III, NA 269 Khuzdar, PB 40 Noshki

84. The BNP (M) did not seem to suggest that there was a concerted plan to rig by any particular party however it did contend that the elections in Balochistan were unfair and not in accordance with the law and do not reflect the will of the people in that province.

85. BNP (M) filed material in support of their position in respect of certain named constituencies. The BNP (M) called 4 witnesses in support of its case and crossed examined some other witnesses

Balochistan National Party (Awami) [BNP (A)]

86. Like the BNP (M) the BNP (A)'s position related only to Balochistan. The BNP (A) was of the view that the elections in Balochistan were not organized and conducted fairly in accordance with law. This was because under A.218 (3) it was the duty of the

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ECP to organize and conduct free and fair elections however in Balochistan the ECP was by passed by the civil administration which in effect controlled the organization and conduct of the elections rather than the ECP.

87. According to the BNP (A) the then Chief Secretary was instrumental in the rigging that took place in Balochistan and the Care taker Chief Minister was only symbolic. However it was not clearly mentioned by the BNP(A) at whose behest the rigging was done by i.e. who ordered it however its implementation was allegedly by the Civil administration, DC's and Ast. Commissioners in collaboration with PEC, RO's, DRO's and PO's.

88. The BNP (A) in particular alleged that the following constituencies in Balochistan had been rigged i.e. PB 16, PB 41, 42 and 43 and NA 272 and filed material in support of their position. The BNP (A) called 5 witnesses in support of its case and crossed examined some other witnesses

Jamiat Ulama-e-Islam (JUI) Nazriati

89. As with BNP (M) and BNP (A) the JUI Nazriati position is Balochistan specific. The JUI Nazriati's position is that general election 2013 was not organized and conducted impartially, fairly and in accordance with the law especially in connection with Constituencies PB 20 Killa Saifullah and NA 264. According to JUI Nazriati the plan to rig these two Constituencies in favour of JUI (F) was made by the winning JUI (F) candidate with the ECP, RO's, District Administration, PO's all of whom acted to ensure that the JUI (F) candidate won the seats in question.

90. JUI Nazriati in particular alleged that general election 2013 was unfair because in PB 20 Killa Saifullah there were 117

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Polling stations out of which in 80 Polling stations 100 Ballot papers were missing totaling 8,000. These 8,000 ballot papers were used by the winner from JUI (F), 2 polling stations 20 KM apart had the same unnotified PO and these 2 Polling stations votes ensured the JUI (F) candidate won. Numerous provisions of ROPA were also allegedly violated.

91. JUI Nazriati filed material in support of their position in respect of PB 20. The JUI Nazriati called no witnesses in support of its case.

Hazara Democratic Party (HDP)

92. As with BNP (M), BNP (A), and the JUI Nazriati the position of HDP is Balochistan specific. The position of the HDP is that the elections in Balochistan and in particular PB 2 Quetta II were not organized and conducted fairly in accordance with law.

93. The HDP in particular point to the election being carried out in complete violation of the provisions of ROPA, massive rigging being carried out in favour of the winning candidate with the assistance of election officials including polling staff who cast bogus votes and tore and burnt ballot papers cast in favour of HDP.

94. The HDP did not seem to suggest that there was any plan of systematic rigging throughout the Country rather that PB 2 Quetta II was rigged by its opponent. HDP filed material in support of their position in respect of PB 2 Quetta II. The HDP called no witness in support of its case

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Awami National Party (ANP)

95. The position of the ANP is that the general elections in so far as the ANP candidates were concerned in both KPK and Karachi were rigged against ANP and other secular parties by the Tehreek -e-Taliban Pakistan (TTP).

96. The plan of the TPP was to bring anti secular forces into power in the Country especially KPK by targeting the KPK candidates through threats of violence and by carrying out acts of terror against them and their supporters.

97. According to the ANP the ECP failed to ensure a level playing field to ANP candidates in the KPK by failing to provide sufficient security for them and their supporters. The ANP also referred to violations of ROPA, the recovery of 90,000 fake ballot papers from JI in lower Dir and some polling stations having more than 100% turn out.

98. As such the ANP did not blame any particular political party for rigging but rather blamed the environment of terror created by the TTP towards the ANP as leading to unfair elections.

99. The ANP filed numerous documents supporting their position of the TTP threat to ANP candidates and supporters. The ANP called no witness in support of its case

Muttahida Quami Movement (MQM) (Altaf Hussain)

100. MQM was of the view that it was not able to fully and freely participate in general election 2013 due to threats from Taliban and Jehadi outfits. In this respect it pointed out that a number of its election offices had been attacked which led to the death and serious injury of a number of its party workers.

101. It was also of the view that it was prejudiced in PS 114 (Karachi) after a late delimitation notification which was made concerning that Constituency which had also witnessed massive rigging on election day by PML (N)'s candidate. That the PTI winning candidate had been involved in rigging NA 250 (Karachi) in his favour by amongst other things violating various sections of ROPA.

102. It also noted that other major political parties like PTI, PML (N) and PPP by far exceeded the lawful amount allowable to them on campaign expenses e.g. through media, adverts, T.V etc and this should be examined by the Commission.

103. With regard to supporting evidence the MQM suggested that this be garnered from media, internet etc, the relevant record could also be summoned concerning expenses of political parties and crossed checked with their disclosures.

104. The MQM however did not seem to allege that there had been a plan to manipulate the elections by way of a systematic design and denied the allegations leveled against it by MQM (H) and JI that it had been involved in rigging in Karachi largely due to intimidation. The MQM called one witness to deny the adverse allegations which the MQM (H) and JI had made against it.

Awami Muslim League (AML) (Sheikh Rashid Ahmed)

105. Put forward proposals which could be used in an attempt to iron out some of the flaws in the electoral process

Pakistan Muslim League (Nawaz) [PML (N)]

106. As noted earlier the PML (N) considered that the general elections 2013 were organized and conducted impartially,

honestly, fairly, justly and in accordance with law, were not manipulated or influenced pursuant to a systematic effort by design by anyone and the result on an overall basis were a true and fair reflection of the mandate given by the electorate.

107. It was of the view that since the PTI had not explicitly blamed the PML (N) for rigging in its preliminary submissions and to do so in its reply to the Commission's questionnaire was an after thought. It contended that the PTI's allegations especially in respect of planning/conspiracy were vague in the extreme likewise its other allegations against RO's and PO's which the PTI did not name.

108. The PML (N) stressed that their large margin of victory in each winning constituency made it clear that there was no rigging which could be seen in juxtaposition with the votes received by the PTI which in 41 NA seats had forfeited its deposit. It also stressed that a majority of election petitions which had been filed by losing candidates had already been decided by the appropriate forum

109. The PML (N) placed material on record in order to support its contention and also had the opportunity of cross examining witnesses

110. The PML (N) was also of the view that the ECP had fully complied with its obligations/duty under A.218 (3) in organizing and conducting the general elections of 2013.

111. The PML (N) called no witnesses in support of its case however it did cross examine most witnesses who were called by other parties or the Commission to support its case

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Election Commission of Pakistan (ECP)

112. The position of the ECP was that the general elections 2013 were organized and conducted by it impartially, honestly, fairly, justly and in accordance with the law. That the general elections 2013 were not manipulated or influenced in general pursuant to a systematic effort by design by anyone. That while there may have been some irregularities and malpractices in individual constituencies, on an overall basis the results of the general election 2013 at the national as well as the provincial levels are a true and fair reflection of the mandate given by the electorate.

113. That even if some irregularities/malpractices had taken place they would not have made any difference to the overall results.

114. The ECP placed material on record in order to support its contention. The ECP called 15 witnesses and exhibited numerous documents in support of its case

Summary of the positions of the Political Parties

- i. Of the 16 political parties the following position emerged
- ii. One Party namely the PTI alleged rigging by PML (N) throughout Pakistan with a particular emphasis on the Punjab.
- iii. Three Parties namely, the PML (Q), PPP, PML (J) are Punjab specific and allege rigging in Punjab only by PML(N) either directly or by implication although later the PPP also alleged rigging in KPK

- iv. Three parties namely, MQM (H), JI, MDH are largely Karachi specific and allege rigging in Karachi by the MQM.
- v. One Party namely PMLP alleges rigging in Sindh by PPP (Tharparkar) and in Punjab by PML (N)
- vi. Four parties are Balochistan specific, namely BNP (M), BNP (A), HDP and Jamat Nazriati. Of these parties largely the BNP (A) blames the poor law and order situation for the unfair elections, the BNP (A) suggests rigging by the Chief Secretary of Balochistan but does not mention at whose behest and HDP (relates to one Constituency) and Jamat Nazriati (relates to 2 Constituencies) allege rigging by their respective opponents.
- vii. One Party, namely ANP in essence blames the TTP for causing unfair elections especially in KPK for the ANP due to its violent targeting of that Party whilst another party (PPP) alleges rigging in KPK although it does not specifically name the party the implication would appear to be against the party which won most seats i.e. PTI
- viii. One Party, namely the MQM does not suggest that there has been widespread planned rigging
- ix. One Party, namely AML only offers proposals for improving the flawed electoral process
- x. One Party, namely PML (N) is of the view that the elections were free and fair and that the result on an overall basis reflected the will of the people and that there was no widespread systematic rigging by anyone
- xi. Although not a political party the ECP is of the view that it fulfilled its Constitutional duty in organizing and conducting

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the General Elections under A.218 (3) of the Constitution the results of which on an overall basis represent a true and fair reflection of the mandate given by the people.

Brief Overview of the Summary of the political parties bearing in mind the mandate of the Commission to inquire into the organization and conduct of General Election 2013 and its TOR's.

- i. A majority of political parties, even if there material only related to specific areas, were of the view that the Inquiry should encompass both the NA and all 4 PAs.
- ii. Under A.51 there are a total of 272 NA seats which break down as follows (Balochistan 14, KPK 35, Punjab 148, Sindh 61, FATA 12, Federal capital 2)
- iii. Under A.106 there are a total of 577 PA seats which break down as follows (Balochistan 51, KPK 99, Punjab 297, Sindh 130)
- iv. As such there are a combined total of 849 NA and PA seats throughout Pakistan which were the subject of general elections 2013.
- v. The break down of the summaries of the political parties in terms of specific challenges tended to show that the main allegations related to (a) rigging in the Punjab by PML (N) (b) rigging in Karachi by the MQM and (c) some individualized instances of rigging in Balochistan.

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RULES OF PROCEDURE AND EVIDENCE FOLLOWED BY THE COMMISSION.

115. With regard to the procedure to be adopted no party seemed to have any particularly strong views, although during oral arguments the PTI argued that the Commission should be guided by common sense, perhaps realizing that S.5 of the Ordinance left this matter to the Commission to decide upon

116. In determining the procedure to be followed the Commission was guided in particular by S.5, 4 (1) (2) and 6 of the Ordinance which provided as under:

"5. Procedure to be followed by the Commission and rights of political parties to representation before the Commission.

(1) The Commission shall have the power to regulate its own procedure including the fixing of place and time of its sittings.

(2) Subject to the Constitution in the exercise of its functions under this Ordinance, the Commission shall follow such procedure including summary procedure where necessary as it deems fit and proper in the interest of justice so as to enable the Commission to complete its inquiry and give its determination pursuant to sub section (1) of section 7.

(3) For the purposes of section 3, any political party which participated in the General Elections-2013 shall and such other persons as the Commission may permit in the interest of justice may have the right and opportunity to submit evidence or material and make submissions thereon for consideration by the Commission.

4. Powers of Commission. (1) The Commission shall have all the powers of a criminal court under the Code of Criminal Procedure 1898 and that of a civil court under the Code of Civil Procedure 1908 (VI of 1908) for carrying out the purposes of this Ordinance.



(2) Without prejudice to the generality of sub section (1) the Commission shall have power to require any person or authority to furnish information or documents on such points or matters as in the opinion of the Commission may be useful for or relevant to the subject of the inquiry.

(3).....

(4) Subject to the Constitution in the performance of its functions, the Commission may if it considers appropriate examine and consider any documents, material or evidence relating to the General Election-2013.

6. Federation and Provinces to assist the Commission and the Special Investigation Team (1) It shall be the duty of all executive authorities in the federation and in the provinces to assist the Commission in the discharge of its functions and to comply with any of its directions and the federal government shall provide all necessary funds and facilities to enable the Commission to perform its functions under this Ordinance."

117. Generally the Commission adopted the procedure as laid down in the Code of Civil Procedure 1908 (CPC) with such modifications as it deemed necessary but remained mindful of S.9 (1) and (2) of the Ordinance which provided as under:

"9. Ordinance to override other laws: (1) Subject to sub section (2) the provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

(2) The conduct of the inquiry submission of its report and the exercise of its functions under this Ordinance by the Commission shall not prejudice in any manner whatsoever any pending election petition relating to the General Elections-2013 or appeal arising there from or any orders passed in such petition or appeal or any proceedings thereof before any election tribunal or court which shall all continue and be decided in accordance with the applicable law."

118. With regard to evidence the PTI did not consider that the Qanun-E-Shahadat Order 1984 should apply to the proceedings and that the Commission should proceed on the basis of common sense. The PML (N) were of the view that it was fully applicable whilst the MQM brought to the Commission's attention Arbitration proceedings whereby the strict and technical rules of evidence and procedure may not be applicable to its proceedings.

119. The Commission was of the view that although it would be guided by some of the principles contained in Qanun-E-Shahadat Order 1984 the Commission decided not to slavishly follow the Qanun-E-Shahadat Order 1984 when it was in the interests of justice not to do so especially where its strict application may hinder the uncovering of the true facts on which it was to answer its TOR's.

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LIST OF THE WITNESSES.

120. As noted earlier all political parties were given the opportunity to suggest to the Commission relevant witnesses and the Commission would make a final decision on their call.

121. Witnesses whether called by one party or another were treated as witnesses of the Commission and every political party was able to question such witnesses with the permission of the Commission. The Commission was also able to question such witnesses if it deemed it appropriate.

122. All witnesses were examined on oath. Following the maxim/principle of Dominus Litus, which in effect means the person who is most interested in the proceedings, it was agreed between the parties and the Commission that the witnesses initially called would be from the witness list provided by the PTI. In total 69 Witnesses gave evidence before the Commission on behalf of political parties or when called by the Commission on its own motion where it considered that such witnesses were necessary in order to assist it in answering its TOR's. The Commission commenced recording of witness evidence on 5th May 2015 and completed the same on 20th June 2015. In total the Commission held 39 hearings.

123. The following witnesses along with their designation gave evidence before the Commission:

S.No.	Party/Witness Name	Designation
	PTI Witnesses	
1.	PTI-P.W-1 Ishaq Khaqwani	Coordinator of Judicial Commission Task Force of PTI
2.	PTI-C.W-1 Javed Iqbal	Former Chief Secretary to Care taker Govt of the Punjab
3.	PTI-C.W-2 Iftikhar Ahmed Rao	Former Addl. Chief Secretary to Care taker Govt of the Punjab

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S.No.	Party/Witness Name	Designation
4.	PTI-C.W-3 Mehboob Anwar	Former Provincial Election Commissioner Punjab
5.	PTI-C.W-4 Moosa Raza Effendi	Former Managing Director Printing Corporation of Pakistan at Islamabad
6.	PTI-C.W-5 Ejaz Ahmed Minhas	Former Managing Director Pakistan Post Foundation at Islamabad
7.	PTI-C.W-6 Muhammad Rafiq	Former Manager Printing Corporation of Pakistan at Lahore
8.	PTI-C.W-7 Rizwan Ahmed	Former Managing Director Pakistan Security Printing Corporation (PSPC) Karachi
9.	PTI-C.W-8 Usman Yousaf Mobin	Chairman NADRA
10.	PTI-C.W-9 Mudassar Rizvi	Head of Programs FAFEN
11.	PTI-C.W-10 BabarYaqoob Fateh Muhammad	Former Chief Secretary of Balochistan
12.	PTI-C.W-11 Syed Sultan Bayazeed	Former Provincial Election Commissioner Balochistan
13.	PTI-C.W-12 Muhammad Naeem Akhtar	Former Secretary Printing Corporation of Pakistan and author of the probe report
14.	PTI-C.W-13 Ishtiaq Ahmed Khan	Former Secretary, ECP
15.	PTI-C.W-14 Hamid Mir	Anchorperson GEO TV network
16.	PTI-C.W-15 Najam Aziz Sethi	Former Caretaker Chief Minister of Punjab.
	ECP Witnesses/CWs	
17.	ECP-CW-1 Abdul Waheed	Deputy Director Provincial Election Commission, Punjab
18.	ECP-CW-2 Ashfaq Ahmed Sarwar	DG (Budget) ECP (Retd.)
19.	ECP-CW-3 Shabbir Ahmed Mughal	Deputy Director ECP
20.	ECP-CW-4 Raja Ghias-ud-Din Bulban	DG (Budget) ECP
21.	ECP-CW-5 Fazal-ur-Rehman	Manager Pakistan Printing Corporation, Islamabad
22.	ECP-CW-6 Khaleeq-ur-Rehman	Joint Provincial Election Commissioner Punjab
23.	ECP-CW-7 Muhammad Suleman	Deputy Manager, Printing Corporation of Pakistan,
24.	ECP-CW-8 Liaqat Ali	Deputy Manager, Printing Corporation of Pakistan
25.	ECP-CW-9 Mujahid Hussain	Former Regional Election Commissioner, (Presently Additional DG, ECP)
26.	ECP-CW-10 Muhammad Irfan	Former Election Officer Rawalpindi. (Presently Assistant Director ADMN at ECP Secretariat)
27.	ECP-CW-11 Muhammad	Deputy Director (G-S) ECP,

S.No.	Party/Witness Name	Designation
	Saeed Khan	Islamabad
28.	ECP-CW-12 Naveed Ahmed Khawaja	Former Deputy General Manager, (Sales) Pakistan Security Printing Press, Karachi
29.	ECP-CW-13 Syed Sher Afghan	Director General (Elections) ECP Islamabad.
30.	ECP-CW-14 Syed Shabbar Abbas Bukhari	District Election Commissioner Lahore
31.	ECP-CW-15 Muhammad Shabbir	Deputy Manager Printing PSPC, Karachi
	PML (Q) Witnesses	
32.	PML(Q) P.W-1 Muhammad Shah Khagga.	Candidate for NA-164
33.	PML(Q) P.W-2 Khurram Munawar Manj	Candidate for NA-134 Sheikhpura
34.	PML(Q) P.W-3 Sardar Ahmed Yar Haraj	Candidate for PP-215, Khanewal
35.	PML(Q) P.W-4 Sardar Talib Hassan Nakai	Candidate for NA-142 Qasur IV
36.	PML(Q) P.W-5 Ch. Khalid Pervez Gill	Candidate for PP-61 Faisalabad
37.	PML(Q) P.W-6 Ch. Shafaat Hussain	Candidate for PP-109
38.	PML(Q) P.W-7 Dr. Azeem-ud-Din Lakhvi	Candidate for NA-140
39.	PML(Q) C.W-1 Ijaz Hassan Awan.	Addl. District & Sessions Judge Patoki / R.O NA-142 during General Elections 2013
40.	PML(Q) C.W-2 Arshad Hussain	Addl. District & Sessions Judge Pak Patan / R.O NA-164 during General Elections 2013
41.	PML(Q) C.W-3 Razaqat Ali Qamar	Senior Civil Judge Qasur/ R.O NA-140 during General Elections 2013
42.	PML(Q) C.W-4 Muhammad Aamir Habib	Addl. District & Sessions Judge Sheikhpura / R.O NA-134 during General Elections 2013
43.	PML(Q) C.W-5 Muhammad Qasim	Addl. District & Sessions Judge Gujrat / R.O PP-108, 109 & NA-104 Gujrat during General Elections 2013
44.	PML(Q) C.W-6 Imtiaz Hussain	Addl. District & Sessions Judge Faisalabad / R.O PP-61 during General Elections 2013
45.	PML(Q) C.W-7 Qamar Ijaz	Addl. District & Sessions Judge Khanewal / R.O PP-214, 215 & NA 157 during General Elections 2013
	BNP (A & M)	
46.	BNP-(A&M) CW-1 Ghous Bakhsh Barozai	Former Caretaker Chief Minister, Balochistan
47.	BNP-(A&M) CW-2 Murad Ali Baloch	District & Sessions Judge Panjgur / Former District Returning Officer PB-42&43, Panjgur-I & II

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S.No.	Party/Witness Name	Designation
48.	BNP (A)-CW-3 Ikramullah	Additional Deputy Commissioner Punjgur / Former Returning Officer PB-43 Panjgur-II, Balochistan
49.	BNP (A)-CW-4 Muhammad Noor	Science Teacher / Former Assistant Presiding Officer, Polling Station, Boys Primary School, Sarai Kalot (combined) PB-43 Panjgur-II
50.	BNP (A)-CW-5 Murad Ali	Lab Assistant / Polling Officer Boys High School Khudabadan, Sarawan, PB-42 Panjgur-I
51.	BNP (M) CW-3 Shakeel Ahmed Palal.	Civil Judge-I Quetta / R.O for PB-4, Quetta-IV
52.	BNP (M) CW-4 Naseer Ahmed Mirwani	Assistant Commissioner Wath District Khuzdar / R.O. PB-35 Khuzdar-III
	JIP Witnesses	
53.	JIP-PW-1 Raja Arif Sultan Minhas.	Naib Ameer Jamat-i-Islami Pakistan and Incharge of the Election Cell of the Party
54.	JIP-PW-2 Muhammad Hussain Mehanti	Ameer of Jamat-i-Islami, Karachi / Supervisor for entire election campaign.
55.	JIP-PW-3 Sahibzada Haoorn-ur-Rashid	Candidate from NA-43 Bajaur
	MQM (H)	
56.	MQM(H)-PW-1 Aftab Hassan.	Security Coordinator and member of Central Committee of Mohajir Qaumi Movement (Haqueeqi)
57.	MQM(H)-CW-1 Syed Muhammad Tariq Qadri	Former Provincial Election Commissioner Sindh
	Commission's Witnesses	
58.	CW-1 Ms. Moeen Bano Sodher	Returning Officer, NA-222 Tando Muhammad Khan-cum-Hyderabad-cum Badin (Old Hyderad-V) at the time of General Elections 2013 Presently posted at Addl. District & Sessions Judge <u>Tando Muhammad Khan,</u>
59.	CW-2 Munawar Khan	Returning Officer, NA-21 Mansehra cum Torghar at the time of General Elections 2013 Presently posted as Addl. District & Session Judge <u>Bannu,</u>
60.	CW-3 Pir Bakhsh Shah	Returning Officer, NA-34 Lower Dir at the time of General Elections 2013 Presently posted at Peshawar Service Tribunal,
61.	CW-4 Sohail Ahmad Khan	Returning Officer, NA-43 TA VIII Bajor Agency at the time of

S.No.	Party/Witness Name	Designation
		General Elections 2013 Presently posted as Assistant Political Agent Khaar, <u>Bajor</u> ,
62.	CW-5 Muhammad Saeed Awan	Returning Officer, NA-53 Rawalpindi IV at the time of General Elections 2013 Presently posted as Addl. District & Sessions Judge, <u>Sadiqabad</u> ,
63.	CW-6 Nisar Ahmed	Returning Officer, NA-118 Lahore at the time of General Elections 2013 Presently posted as District & Sessions Judge, <u>Bahawalnagar</u> ,
64.	CW-7 Sajjad Hussain Sindhar	Returning Officer, NA-119 Lahore II at the time of General Elections 2013 Presently posted as District & Sessions Judge, <u>Khushab</u> ,
65.	CW-8 Khalid Mehmood Bhatti	Returning Officer, NA-125 Lahore VIII at the time of General Elections 2013 Presently posted as Addl. District & Sessions Judge, <u>Gujranwala</u> ,
66.	CW-9 Anjum Raza Sayed	Returning Officer, NA-130 Lahore XIII at the time of General Elections 2013 Presently posted as Addl. District & Sessions Judge, <u>Lahore</u>
67.	CW-10 Qamar Ijaz	Returning Officer, NA-157 Khanewal II at the time of General Elections 2013 Presently posted as District & Sessions Judge / Judge Banking Court No.1, <u>Lahore</u> ,
68.	CW-11 Khalid Iqbal Khan	Returning Officer, NA-171 D.G. Khan at the time of General Elections 2013 Presently posted as Civil Judge, 1 st Class <u>Chicha Watni</u>
	MQM	
69.	MQM-PW-1 Farooq Sattar	Party Leader MQM

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PTI WITNESSES**PTI PW 1 Muhammad Ishaq Khan Khakwani. (PTI Co-Ordinator for the Inquiry Commission)**

124. Through his affidavit in evidence dated 5-5-2015 deposed that he was appointed by the PTI as the Co-coordinator of the Judicial Commission task force to deal with all matters related to the General Elections 2013 Inquiry Commission and that he had collected, compiled and or received certain evidence which he wanted to place on record.

125. Before the Commission he affirmed the contents of his affidavit in evidence and its accompanying list of documents which were tendered before the Commission and marked as PTI-PW 1/1 to PTI PW 1/552

126. Counsel for PML (N) and ECP recorded objections to these documents based largely on the basis that the witness was not the author, nor a witness or even the recipient of any of the documents which mostly had not been certified in accordance with the law. The admissibility of the documents was further questioned in light of S.9 (2) and 10 of the Ordinance and it was pointed out that the affidavit in evidence was deliberately vague and non specific.

COMMISSION WITNESSES AS SUGGESTED BY THE PTI**PTI CW 1. Mr.Javed Iqbal (Chief Secretary Punjab during the elections)**

127. He was the Chief Secretary (CS) of the Punjab at the time of the general elections 2013 and his evidence mainly related to the alleged printing of excess ballot papers on the eve of the election.



128. According to him he did not receive any direct request from the Provincial Election Commissioner (PEC) on 9-5-13 to provide 200 extra persons for printing purposes from Urdu bazar.

129. However he was informed about such a request made by the PEC Mr. Mehboob Anwar a few days later, probably on Polling day i.e. 11-5-2013, by his Adl.Chief Secretary Mr.Rao Iftikhar who was the focal person for the Government of Punjab with the ECP and also his staff officer.

130. Rao Iftikhar told him that the Chief Minister of the Punjab had approved the request and he had ordered the provision of the men as it was his role to support the ECP in carrying out the elections. Rao Iftikhar also informed him that this request had been conveyed to the Commissioners of Lahore and Rawalpindi who had complied with the request. He did not recall whether or not Urdu bazaar had been mentioned

131. He confirmed that he had appeared on capital T.V in a program which also included Rao Iftikhar and Hamid Mir where the printing of extra election material came under discussion. He did not know whether extra material had been printed and referred the issue to Rao Iftikhar who was also on the program.

132. He kept himself informed about the movement of election material by the ECP. He was aware that until 6 a.m. on election day i.e. 11-5-13 some ballots were still being delivered to some constituencies and in this connection he mentioned PS Kotli Sattian in Rawalpindi where the material reached 10 or 15 minutes before polling started and a constituency in Kasur at 6am, Gujrat and Hafizabad.

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133. He explained that 4 officers were retained from the old Government of Punjab in the Caretaker set up since their continuity in office was deemed important due to the portfolio's they held. These 4 officers were Home Secretary Shahid Khan due to his knowledge of terrorism related issues, the finance secretary Tariq Bajwa due to the need to prepare the Budget, the Secretary Health Arif Nadeem who was dealing with on going health issues and the Secretary education Mr. Aslam Kamboh who DFID had particularly requested his retention due to the large financial investment which DFID had made in the Punjab education sector.

134. He explained that in the Punjab the Education Department was split into 2 parts. Elementary and higher and that Mr. Kamboh who was retained as Secretary Education was assigned to the elementary part. The person who dealt with higher education had been changed prior to the elections. Polling staff were provided by the education department

PTI CW.2. Mr.Rao Iftikhar (Adl.Chief Secretary of the Punjab and focal person with the ECP during the elections)

135. Served as the Addl. Chief Secretary Punjab during general elections 2013.He was the Government of Punjab's liaison officer with the ECP and was in contact with the PEC during the election period. He saw his role as providing support to the ECP as envisaged under the law.

136. When a request was made to him by the PEC for which there was a laid down procedures e.g. for providing vehicles which usually concerned operational matters, he followed that procedure. However when there was no laid down procedure he took clearance from the CS or CM before he took a decision depending on who



was available. He used to receive verbal instructions but usually did not reduce them to writing.

137. On 9-5-13 he received a call from the PEC Mr. Anwar Mehboob to provide 200 persons who were conversant with printing matters and that he could get them from Urdu bazaar in Lahore. He did not make a written note of the call. He contacted the Commissioners of Rawalpindi and Lahore to contact the PEC and do the needful which was done on the same day i.e. 9-5-13.

138. He did not inquire from the PEC why he needed the persons and whether they were provided or not. He obtained approval from the CM via his Principle Secretary before contacting Commissioners of Rawalpindi and Lahore as he was not able to get hold of the CS whom he informed a day later. He did not know whether the request was normal or not.

139. He appeared on the capital T.V show along with CS Javed Iqbal and Hamid Mir in August 2013. The discussion was about elections and the request for 200 men was discussed. He did not recall being asked about Urdu bazaar and although the discussion was about elections according to him the main thrust of the discussion was not about the additional printing material.

140. When confronted with a video clip of the T.V show he admitted that what he said in the show was correct. Namely that he had procured 200 printers from Urdu bazaar. He had acted as an RO in 1988 and according to him the schedule for receiving the election material was 2 or 3 days before the polling date

141. During cross examination he was not aware of how many persons were provided by the Commissioners of Lahore and Rawalpindi and did not know that the printing was for Islamabad.

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PTI CW 3 Mr. Mahboob Anwar. (Provincial Election Commissioner Punjab during the elections)

142. He was Provincial Election Commissioner (PEC) for the Punjab and was regarded by the PTI as a principle witness.

143. He was subordinate to the Chief Election Commissioner (CEC) whose directions he complied with. He had no direct contact with the CEC and directions used to be issued in writing from the ECP secretariat in Islamabad.

144. He met once, during the election period, with member of the ECP for Punjab Mr. Justice (Rtd) Riaz Kiyani for a formal meeting on 26th March 2013 at the office of the PEC in Lahore with no particular agenda.

145. He was not consulted when the ECP replied to PTI's application and did not recognize the signature of the person who had signed on behalf of the ECP. The polling day was 11-5-13 but he could not recall the various dates of the election schedule or the last date for withdrawing nomination papers.

146. He was aware that Form V contained the names of contesting candidates and it was on the basis of this form that ballot papers are prepared. This information is sent by the RO to the PEC and the forms are sent for printing ballots by the PEC on the date of their receipt from the RO.

147. It is the RO who decided the number of ballot papers which are needed for each constituency and informs the PEC accordingly. RO's usually request the number of ballots to be printed in line with the total number of registered voters in the given Constituency.

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148. He confirmed that in some Constituencies RO's had requested the printing of ballot papers in excess of the registered voters but he could not remember in how many Constituencies such requests had been made. He did not recall that in NA 154 Lodhran-I that the RO had requested in excess of 15,000 ballot papers.

149. The printing of ballot papers started on 19-4-13 and stated that it was incorrect that the printing of all ballot papers and election material had to be completed and transported to RO's by 5 May 2013.

150. According to him printing was not completed by 5th May and that printing continued after that date and that the election materials were provided from the printing press to the RO's. He did not know what remained to be done after 5th May regarding the printing of ballots

151. It was correct that ECP was not able to deliver the ballot papers 3 days prior to the polling date but no one had sought his explanation for such failure. With regard to the printing of excess ballot papers he had not sought anyone's permission but had intimated the same to the ECP in writing.

152. The functionaries of the ECP in Punjab were working under his directions. Under the law he was entitled to get the support of the Provincial Government in carrying out his functions. In this connection his liaison officer was Adl. Chief Secretary Mr.Rao Iftikhar.

153. He did not call Mr.Rao Iftikhar on 9-5-13.He called Mr.Rao Iftikhar on 7th May 2013 for the purpose of the provision of some persons who were conversant with the printing and binding

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of ballot papers in book form. He did not ask for persons conversant with printing. He requested for between 100 and 200 persons but did not say where they were to be procured from and in particular did not say that they could be found at Urdu bazaar. About 78 people were found and were collected from Lahore on the night of 7th May although the printing was to be done in Islamabad. The persons worked up to 9th May 2013 and the printing Corporation of Pakistan paid them.

154. The Adl.CS had requested the commissioners from Lahore and Islamabad for providing the people. He did not know when the Ballot papers prepared at Islamabad were provided to the RO's and although the ballot papers related to different constituencies he could not name those constituencies.

155. The request for additional manpower first came from the manager PCP Islamabad Mr.Fazal ur Rehman over the phone and then Adl.CS also informed him that his help was required in this regard.

156. He was referred to a document in ECP's CMA 9/15 (EX PTI CW 3/21) which referred to the hiring of 34 workers for numbering and binding. He was unaware of this document. After selection 78 persons were sent by his office to Islamabad. The skilled workers arrived in Islamabad on 8th May but he did not know how long they worked there for. He denied that he had only sent 38 officers.

157. He did not receive any complaints about any missing Form XIV's or XV's. He confirmed that all the election material was provided to the RO's of the Constituencies under seal who in turn

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distributed them to the respective PO's. The RO only retains the reserved material which includes the excess ballot papers.

158. He confirmed that in one case an RO had requested for only 3 extra ballot papers whereas in another case a different RO had requested for extra ballot papers amounting to 30% in excess of the registered voters. He did not question the RO why he needed so many extra ballot papers.

159. The ECP had sent a formula to him regarding the need to request excess ballot papers which he in turn had forwarded to the RO's. This formula can be found in the offices of the PEC and was actually the concept of rounding up as was contained in the ECP Action Plan. The formula also prescribed uniformity regarding requests for excess ballot papers

160. With regard to NA 124 he acknowledged various communications which indicated that there had been a delay in complying with the ECP's order dated 25-7-13 to inspect the polling bags of that Constituency. He was present and supervising the inspection when the polling bags were inspected and acknowledged a report which he had made as a result of the inspection. He was aware that an inspection of polling bags in NA 139 Kasur was allowed by ECP.

161. On cross examination by ECP he explained why he had been sent to Sindh from the Punjab and why he had returned and stated that he had refuted all PTI allegations against him in writing. He confirmed that the polling scheme contained the list of polling stations in a constituency & that the RO's set up polling stations on the basis of the polling scheme with the number of

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registered voters for each polling station also being recorded in the polling scheme.

162. He did not know how many people were working at the printing press in Islamabad but the ballot papers used to be collected from the printing press by the representatives of the RO's in person. Ballot papers were printed according to the demand made by the RO's and no further ballot papers were demanded/provided after 7th May 2013

163. On cross examination by PML(N) he stated that he had not received any complaints about his conduct of the elections and nor had he received any complaints relating to any RO, PO or staff working under them.

164. Staff of ECP was deputed to all five printing presses (2 at Lahore, one at Karachi and 2 at Islamabad). All RO's of the 36 districts in the Punjab were district and sessions Judges. He did not attend any meeting where the RO's were addressed by the former CJP.

165. That all election material was received by RO's in Punjab by 10-5-13. No RO complained about the non delivery of election material before the start of polls

166. The printing and delivery process of election material was done under the security of the Pakistan Army. It was also correct that the ECP letter stating that the deadline for printing the material was 5th May was not a part of the election schedule.

167. Following allegations which had been leveled against him by the Chairman of PTI concerning his conduct of the elections he sent a rebuttal Report which was EX PTI CW3/14 P.19 to 31. He had prepared this Report whilst on Ex Pakistan leave. He denied

that similar allegations had been made against him before and could not recall whether the same subject had been discussed on a T.V show.

168. With regard to his Report in which he had incorporated certain tables from the ECP he believed that whatever was stated in his Report was correct. When his attention was drawn in the report to the Action Plan for printing ballot papers which was provided by the ECP he agreed that such Action Plan did not deal with the printing of excess ballots. The ECP had instructed that the number of ballot papers at each polling station be rounded up to 100

169. He acknowledged that as per the ECP table there appeared to be some discrepancy regarding the printing of ballot papers in Punjab which amounted to approx 2 million extra ballots. He denied adding to the number of ballot papers which had been requested by RO's. He acknowledged that the printing of ballot papers was carried out under his control and supervision.

170. In particular in respect of NA 154 where the RO had requested an additional 15,000 ballots he did not provide a further additional 15,000 ballots in effect making the total of additional ballots for Lodran 30,000. He knew Mr. Jahanghir Tareen (Sec Gen of PTI) was contesting this seat but did not know that it was one of the 4 disputed seats which PTI had demanded an audit on. He did not know who the other 3 disputed seats belonged to.

171. He was then shown various election commission documents in respect of various Constituencies mostly in Lahore which showed that ballots far in excess of their registered voters had been printed. This was compared with another Constituency

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in the Punjab (Multan II) where virtually no excess ballots had been printed and rounding up had been carried out as per ECP instructions.

172. During cross examination by PML (N) he confirmed that in a number of constituencies where excess ballot papers over and above the number of registered voters had been supplied these constituencies had been won by the PTI and in one case the JI.

173. He stated that the figures regarding the quantity of ballot papers at P.20 of CMA 65/2015 with reference to ECP letter dated 9th April were estimates and that the final figures were reached when the DRO's submitted their final requirements after 19th April 2013.

174. The delay in delivery of ballots up to 10th May in a few cases was on account of stay orders issued by the Courts. On cross by ECP he confirmed the annexures to his Report in response to the PTI's allegations against him.

175. On re-examination by PTI he confirmed that the ballot papers were delivered in accordance with the Action Plan although certain mistakes were made

PTI CW 4. Mr.Moosa Raza Effendi. (MD of Printing Corporation of Pakistan during the elections)

176. He was former MD of the Printing Corporation of Pakistan (PCP) at the time of the general elections. He was based in Islamabad and the other PCP offices were in Lahore and Karachi. PCP has 3 presses in total (one at each of its offices at Islamabad, Lahore and Karachi) each managed by its own manager who used to report to him.

177. According to him it is normal for ECP to ask PCP to print the ballot papers for general elections.PCP was asked by ECP

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to print the ballot papers for the 2013 general elections under an Action Plan which came to him by 18-4-13. The Action Plan is at EX PTI 4/1 and 2 and Ex PTI CW 3/32 and 33.

178. Originally PCP was asked to print approx 103 M ballot papers but this was increased to approx 109 M on account of reprinting which had to be done in respect of 12 Constituencies (7 NA and 5 PA) on account of stay orders which had been issued by the Courts.

179. On receipt of the Action Plan on 18-4-13 he did not immediately start printing the ballots. He started printing a day or two later when the final list was received. He was aware of the letters dated 21-4-13 from the ECP which contained the revised requirement for printing of ballots. Attached to each letter was a Constituency wise requirement for ballot papers. The new requirement was for 109 M ballots to be printed.

180. On 26-4-13 he again received letters containing a revised schedule. This superseded the 21-4-13 letter and again contained a Constituency list which had more than 12 Constituencies on it.

181. A part of PCP's printing responsibilities was sublet to Pakistan Post Foundation Press after 26-4-13. The Foundation was assigned the task of printing approx 20 M ballot papers however they only managed to print approx 17 M. He did not know that an inquiry had been held into this subletting as his services had been terminated on 4-7-13 and the letter he was referred to concerning the inquiry was after his termination.

182. Mr. Fazal ur Rehman was manager of PCP Islamabad during the election period. On 7-5-13 PCP sought extra personnel

for manual numbering of ballot papers as they did not have an automated system. About 70 to 80 people were sent to him from Lahore for this task however only 34 of them were retained as the others were not found to be up to the task. He does not know any of the 34 as they were not recruited by him but were recruited at the managerial level.

183. When he was shown the list of 34 persons who were recruited CMA 9/15 P.31 his attention was drawn to Pappo at serial no 121 and the fact that the serial numbers started at 103 and ended at P.136. He confirmed that the PCP was a very high security facility and that the Army was deployed both inside and outside during the election period. Binders were already working in the Press at Islamabad by 8-5-2013. He denied that 112 persons were employed for numbering and binding and that he only employed 34 persons for this purpose. The last ballot papers were dispatched by 10-5-2013.

184. On cross by PML (N) he confirmed that a contract was signed with the Post Foundation for their work and that the PCP provided them with the paper and paid them for their work. Prior to the subletting a monitoring team was established to ensure that the Foundation's premises and press were fit for the purpose of doing the job. The PCP Islamabad also had to print ballot papers for KPK and FATA as well as for some parts of the Punjab. PCP press in Lahore was to supply Lahore and Gujranwala whilst PCP press in Karachi was to supply Faisalabad, D.G.Khan and Saragodha.

185. ECP determined who the ballots would be sent to. At the time of handing over the ballots representatives of the ECP, the

Pak army and himself were present. Islamabad press started delivery from 2-5-2013 and completed delivery by 9-5-2013 except for a few constituencies. The paper used for printing was of a special kind which was only used for printing ballot papers which was not available else where in Pakistan.

186. On cross by ECP he confirmed that it was not unusual for PCP to hire people on a short term basis for the purpose of numbering and binding. Prior to 7-5-2013 he had also hired persons from the local market for numbering and binding by way of open tender.

187. By 7-5-2013 it became apparent that PCP had not hired sufficient persons for numbering and binding hence they approached the ECP for further help. Originally certain presses were assigned certain Constituencies however in the case of over load some presses had to transfer some of their Constituencies to other presses.

188. The Lahore press could not cope and hence some constituencies had to be transferred from Lahore to Islamabad which lead to manpower shortages in Islamabad. He sought permission for the ECP to make such transfers. The data concerning the transfers can be found at EX PTI CW 4/9 P.47 to P.55.

PTI CW 5. Ejaz Mohammed Minhas. (MD of Pakistan Postal Foundation Press during the elections)

189. He was MD of the Pakistan Postal Foundation at the time of the elections. He confirmed that the Foundation was assigned the task of printing ballots by the PCP. On 26-4-2013 officials of ECP and PCP visited his press. His facility was used by the PCP for printing ballot papers. It became a kind of an extension

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of the PCP because the production manager of PCP was posted at the Foundation to oversee the printing.

190. Approx 21M ballot papers were printed by the Foundation and given to the ECP. The ECP team who the ballot papers were handed over to comprised ECP, PCP and military. He was not aware whether there was a probe into the outsourcing issue. GM of the Foundation at that time was Maroof Abbassi.

191. On cross by PML (N) he saw EX PTI CW 5/1 which was letter dated 6-5-2013 from PCP and he confirmed that the Foundation was paid for printing ballots in accordance with that letter. He stated that the Foundation had numbered and bound approx 17M ballots whilst it had not numbered and bound approx 4 million ballots. When crossed by the ECP he confirmed that 21 M ballots whether or not they were numbered and bound were printed by the Foundation and 17 M of these which were numbered and bound were handed over to ECP, PCP and Army.

PTI CW 6. Mohammed Rafique, (Manager of Printing Corporation of Pakistan based at Lahore during the elections)

192. He was posted as PCP Manager Lahore during the elections of 2013. That due to overload at Lahore some of the Constituencies which he was meant to print had to be transferred to any printing presses. On 28-4-2013, 25 NA and 55 PA seats were transferred from Lahore to other presses.

193. On cross by PML(N) he confirmed that all ballot papers assigned to the Lahore press were delivered between 6th and 10th May 2013. On ECP Cross he stated that it was correct that they had to hire persons from the open market to do numbering and binding. That during printing Army and ECP were present. He saw

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EX PTI CW 6/2 and confirmed that P.186 to 188 were the Constituencies which Lahore could not cope with and were transferred to Islamabad.

PTI CW 7 Rizwan Ahmed (MD of Pakistan Security Printing Corporation Karachi during the elections)

194. At the time of general elections 2013 he was MD of Pakistan Security Printing Corpn Karachi. Having assumed charge on 11th April 2013. When he joined the printing of ballots had not started but the process leading to the printing of ballots was under way e.g. the acquisition of paper etc.

195. He did not remember seeing the ECP letter of 9th April showing the printing requirements as this letter was dated before he joined. He was briefed by management of ECP about the printing of ballots. The preparatory work was carried out on the basis of the requirements of the 2008 elections e.g. same amount of paper was purchased with some excess. At the time they had no solid information as to the number of ballots that would be required.

196. The 18th April letter from the ECP showed that his press was required to print approx 68 M ballots however a lot of corrections needed to be made to this figure as cases kept on being decided by the Courts. His press was assigned Sindh, Balochistan and 3 divisions of the Punjab.

197. In the end his press printed approx 73 M ballots on the directions of the ECP. He could not remember when his press started printing the additional ballots that were required, although he realized that more paper was required for this purpose which

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was purchased on about 25 April, but at any rate it was definitely before 9th May when all the ballots were handed over.

198. He explained the main reasons why printing of additional ballot papers was required which was mainly on account of increased number of constituencies he had to print from 2008 elections (from 257 to 371), 8 reprints and Court decisions which came in on a regular basis.

199. His press had to do reprints in respect of 8 different constituencies. He did not know how many reprinted ballots were destroyed as he was not personally present at the time of destruction and came to know through office memo's. The procedure was that such destruction took place in the presence of security agencies. Additional paper was purchased whilst he was MD but he was not aware of any audit objections in respect of the purchase as he had left the press by 10-7-2013. The MD of PSPC is in overall charge of security of ballots.

200. In order to cope with the assignment the whole press was devoted to the sole task of printing ballots. Some new machines also had to be hired and some additional specialized staff engaged for 5-6 days for numbering so that the task could be completed in a timely manner. No work was outsourced.

201. In order of priority he had to first complete the supply of ballots for Balochistan, then Punjab, Upper Sindh and Southern Sindh. The ballots were supplied to Balochistan by 2nd /3rd May but he cannot remember when the ballots were supplied to other provinces however it was no later than 9th May.

202. Ballots were handed over in sealed boxes to representatives of ECP, RO's and Army except for Balochistan

which was handed over to ECP in Karachi as the RO's could not come from Balochistan.

203. On cross by PML (N) he confirmed that he was given Constituency wise breakdown for printing by ECP for the first time on 21st April 2013 and that on 26th April he got another constituency wise requirement from the ECP. During printing the Army was deployed both inside and outside the press.

PTI CW 8.Mr.Usman Yousaf Mobin (MD of NADRA from Feb 2015 i.e. after the 2013 elections)

204. He has a Bachelors and Masters degree in computer science from MIT USA and first started working for NADRA in 2002 which was around the time of its inception. From Chief Technology Officer he was appointed MD NADRA in Feb.2015.He was treated as an expert witness which enabled him to give opinion evidence before the Commission.

205. He confirmed that NADRA issued NIC cards to Pakistani citizens and that NADRA has the necessary expertise to give opinions on the veracity of finger prints. Initially NADRA used to take finger prints on paper forms by using ink however these could not be verified. Later on NADRA transited to using finger prints being stored electronically on computers. NADRA uses optical scanners which are fingerprint scanners which electronically capture the fingerprint on computer.

206. If a thumbprint on the counterfoil during elections is referred to NADRA for verification it is compared with the thumbprint which NADRA has stored on its database based on the CNIC number on the counterfoil and if the thumb print on the

counterfoil is of sufficient quality it can be matched with the thumb print on the data base.

207. NADRA assists the ECP if requested during elections and he was aware that NADRA had submitted a number of Reports to the Courts pursuant to Court orders. To the best of his knowledge the Reports which are before the Commission were the Reports which were produced before the Courts. To the best of his knowledge these Reports are authentic.

208. He was not MD at the time but having checked the records the issue regarding magnetic ink and voter verification was first raised by ECP. The ECP on 4 occasions sent samples of ink to be checked by NADRA. NADRA after testing the ink returned the same to the ECP with their comments. After that to the best of his knowledge nothing was formally agreed between NADRA and ECP on the ink issue.

209. NADRA has its own SOP for verifying election finger prints and he is familiar with the analysis process. To the best of his knowledge this process was followed in verifying election fingerprints in the elections. NADRA does not have the expertise/equipment to check whether an ink is magnetic or not. According to him whether ink is magnetic or not has no bearing on the verification process and he was not aware whether the question of magnetic ink had been considered in other elections. He also did not know what the views of the then MD during the election were on magnetic ink.

210. NADRA did its finger print verification in an automated manner however this only worked if the print was of sufficiently high quality which in a number of cases it was not and thus it



could not be checked automatedly. Instead, in these cases where the print was not of sufficiently high quality, NIC no's on the counterfoil could be checked against the voters name and NIC no. on the NADRA data base.

211. The fact that the votes could not be automatedly checked through thumb impressions did not mean that they were invalid votes as the Counterfoils according to NADRA records bore NIC no's and were from the same constituency as those of the NADRA data base.

212. According to him there was a statistical expectation that such votes were 97% valid. This was largely because where the verification was automated it was 97% accurate and thus the same matching rate could be expected for non automated votes. Furthermore these unverified thumb print votes all had matching NIC's and were from the same constituency.

213. He was aware of the various categories that were placed in the Reports and had not given any personal opinion on any of these reports. The last prepared Report related to Imran Khan. He had no reservations about that Report and agreed to provide a copy to the Commission. Voters put there thumb impressions on the counterfoil and electoral voters list however NADRA only checked the prints according to the orders of the Court.

214. On cross by PML (N) he confirmed that the fingerprint verification was done through the Automatic Fingerprint Identification system (AFIS) He confirmed that some of the reasons why a thumb print may not be readable were on account of a dirty thumb, cut to the thumb, an ink line on the thumb, if henna was

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on the thumb impression and old age. NADRA does not have finger print experts. AFIS does not enlarge the thumb impression and he was unaware that finger print experts enlarged the thumb impression.

215. AFIS system was introduced in around 2005 and it could only read electronic prints not the earlier paper ones. NADRA had nothing to do with the procurement of ink or ink pads for the elections and he did not know where the samples provided by the ECP came from. He was aware that recently when updating their SIMS approx 861,000 people had to get new electronic thumb prints with NADRA because their old NIC's were based on paper prints which were not readable.

PTI CW 9 Muddassir Rizvi (Head of Programs TDEA-FAFEN during the elections)

216. He is head of Programs at FAFEN and was formerly its CEO for 7 years. He supervised the observation of free and fair elections in 2008. FAFEN is a program of TDEA (Trust for Democratic Education and Accountability) which is a registered trust and manages FAFEN. FAFEN is an NGO which consists of 42 other NGO's which are spread throughout Pakistan.

217. One of the objectives of FAFEN is to improve the quality of elections through non partisan election observation and educating the public on election matters. FAFEN does not receive any Government funding.

218. He confirmed that FAFEN's Report in respect of the 2013 elections had been submitted before the Commission consisting of 29 volumes and 6,000 pages and that he was aware of the contents of the documents as he had read summary of the

Muddassir Rizvi

same. He also confirmed that he was involved in the compiling of the Report.

219. FAFEN monitored 3 phases of the election (a) pre election (b) election day and (c) post election. On election day FAFEN used approx 38,000 trained observers who were accredited by the ECP. Most of these observers remained posted at one particular Polling station. They were allowed access to the polling station to witness the voting and counting. The other observers acted as roving observers who would go from polling station to polling station for observation purposes.

220. FAFEN prepared Reports throughout the election process and in Oct 2014 based on its observing the electoral process in 2013 gave recommendations to the ECP on electoral reforms.

221. Shortly after the elections FAFEN wrote to the ECP requesting certain forms (XIV, XV, XVI and XVII). The ECP issued a direction to all RO's to provide the relevant election forms to those who applied for them. Based on this notification FAFEN contacted the RO's of 267 NA Constituencies and was able to obtain forms in respect of 161 NA seats. The other RO's did not reply.

222. FAFEN requested the ECP to provide the balance of the forms and when these were not provided by the ECP FAFEN approached the Ombudsman in October 2014 under the Freedom of Information Act who on 15-4-15 ordered the ECP to provide the forms to FAFEN. However the forms till date have still not been provided. The forms mentioned in the FAFEN documents filed with the commission were with FAFEN which could produce them if required.



223. He was not threatened by any Government agency but the current Speaker of the NA called him to complain about a report in connection with his Constituency. With regard to Balochistan only a draft polling scheme remained on the ECP website up to the election day.

224. He was aware that about 10 criminal cases had been registered against him in Lahore and about 2 in Rahim Yar Khan by passers by and that all the allegations were the same. These cases were registered from 16 May onwards. On cross by PML (N) he confirmed that the caretaker Governments were in place when these FIR's were registered.

225. He confirmed that TDEA's funding came from USA, UK and EU and that FAFEN was not a registered body in Pakistan. With regard to TDEA it had not as yet paid tax for 2014 as it had requested for an extension.

226. He explained the Parallel Vote Tabulation System (PVT) which is referred to in some of FAFEN's Reports which was essentially a sampling of polling stations which are randomly selected in all Constituencies and on that basis it is seen whether the consolidation done by the RO is in line with the way the results are counted at the Polling station.

227. On basis of PVT system the result tallied with that of 218 Constituencies announced by the ECP for winner and 1st and 2nd runner up whilst out of the remaining 46 Constituencies 18 of these tallied with the ECP result for the winner and 1st Runner up. However in 118 Constituencies because it was very close margin of victory the winner and loser may change. With regard to the

quality of electoral roles this had improved in the 2013 elections when compared with the 2008 elections.

228. On cross by the ECP he admitted that FAFEN had made a press release which had some mistakes and that FAFEN had made a clarification in this regard.

PTI CW 10 Babar Yaqoob Fateh Muhammad (Chief Secretary Balochistan during the 2013 elections and Secretary ECP from April 2015)

229. He has been Secretary ECP since 2 April 2015. During the elections of 2013 he served as Chief Secretary (CS) Balochistan. He confirmed that CMA 9/15 filed by the ECP bore his signature. He had read the CMA He consulted an ECP team during its preparation which included Adl. Sec, Director Legal, Adl. DG elections ECP and ECP's legal counsel. The filing represented the position of the ECP and was not his personal view. He had no consulted any member of the ECP or PEC.

230. During the elections of 2013 whilst he was CS of Balochistan there was interaction between the ECP and caretaker Government. The interaction was at PEC and CEC level. He attended all the meetings with the CEC and the meetings with the PEC were attended by the Home Secretary. Although he attempted to attend as well if he was available.

231. This was his second posting in Balochistan. He had started his career there as Asst. Commissioner. He believed that there was a duly notified polling scheme in Balochistan in the elections of 2013. The PEC had notified the polling scheme through gazette notification.

232. He acknowledged that NA 271 was one of the largest constituencies in Balochistan but was sparsely populated. He was

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not consulted in connection with the number of ballot papers which needed to be printed.

233. The Government of Balochistan was involved in taking delivery of the ballot papers from the printing press some of which were flown in by army helicopter by Pakistan Army due to threats to disrupt the elections. He did not know whether RO's were present when the ballot papers were handed over.

234. He was not aware that ballots in excess of 100% registered votes were provided for Balochistan constituencies and nor did he know the total number of ballots printed for Balochistan.

235. Balochistan however had the lowest turn out from amongst all the 4 provinces with approx 42%. He could not compare turn out with 2008 elections as both had different dynamics i.e. in 2008 many parties who had boycotted the elections participated in 2013.

236. There were numerous complaints during the elections but he could not remember any particular complaint about an election result being announced without there being any polling.

237. He had read the decision of the Information Ombudsman regarding the provision of forms XIV and XV but he could not remember the context in which the order was made. He did not know that the order had been made on FAFEN's request and if the law obliged the ECP to provide the concerned documents it would do so.

238. On Cross from BNP (A) he confirmed that he did not have any administrative authority over the FC which was under the control of the Ministry of Interior. He attended a seminar held

by NAB on corruption but did not recall making any allegations against any Minister of Balochistan relating to corruption.

239. He confirmed that shortly after the seminar he attended a cabinet meeting where the CM and some of the other ministers walked out on account of his presence but the CM later came to his house and expressed his regrets over the walk out.

240. He denied that the CM had asked him at that meeting to surrender his services to the Federal Government. About 14 days later about 100 people were tragically killed. He received the PM who had come to condole with relatives of the deceased. His only proposal was to change the IGP in order to improve the law and order situation.

241. After Governors Rule ended and the Provincial Government was restored he went on leave which he had applied for. He denied that he went on forced leave, He then returned as CS by which time the PA had been dissolved as elections were due.

242. The caretaker CM Mr. Nawab Ghous Bakhsh Barozai did not appoint a cabinet. The CM had a number of meetings with him concerning the holding of elections and on the CM's directives a number of transfers took place.

243. With regard to PB 42 and 43 Panjgur he could not remember any particular complaint that the election could not be held due to the law and order situation but he did receive general complaints throughout Balochistan.

244. The RO (Badal Dashti) of PB 48 Kech 1 was removed or transferred after he had sent the result of the election to the ECP. Neither the DRO nor PEC had directed him to remove the RO who

was an Commissioner. The removal recommendation came from the Commissioner Makran.

245. On cross by PML (N) he confirmed that he had been CS for Balochistan for approx 2 years and 4 months. During that period he had appeared before the Supreme Court in the missing persons case over 50 times and the Supreme Court had personally praised him in one of its orders. He was also CS when local Government elections were held and pointed out some areas like Panjgur, Turbat, Awaran, Kharan and Khuzdar where the law and order situation was particularly bad.

246. He confirmed that despite the poor law and order situation election material was provided to all the polling stations and that the brother of the caretaker CM lost the election. There are 14 NA seats in Balochistan

PTI CW 11. Syed Sultan Bayazeed (Provincial Election Commissioner Balochistan during 2013 elections)

247. He was PEC of Balochistan during the 2013 elections. During the election period he used to meet with officials of the provincial government including the Chief Secretary (CS) and Home Minister. The Polling scheme for Balochistan was duly notified in the official gazette. PEC requisitioned the Ballot papers according to the polling scheme and the RO's did not intervene.

248. PEC (B) had requested ballot papers in excess of about 8% of the total registered voters for each Constituency as they had to round up the figures. However when he saw the amount of ballots supplied he could not say that these did not exceed 4% of the registered vote. The excess ballots were not uniform for all

Constituencies but varied from Constituency to Constituency according to the census block.

249. He received the ballots on 2-5-13 from the printers in Karachi with whom he had directly placed orders which were transported from Karachi by helicopter by the Army due to the security concerns. The ballots were then provided to the RO's in Balochistan at there Constituencies. Elections were held in all Constituencies in Balochistan.

250. On cross by BNP (A) he confirmed that the RO Badal Dashti of PB 48 Kech I had been suspended by the CS after consolidation of the election results. Badal Dashti had received a wireless result from polling station and a written result and he advised Badal Dashti to accept the written result. The person under whom the RO serves can remove him.

251. He acknowledged that the DRO for PB 42 and 43 Panjgur 1 and II had written that due to poor law and order situation it may not be possible to hold the election and a new election schedule should be announced. The elections however took place according to the schedule. At NA 272 no voters came to the polling station although it was there and manned by staff. In Balochistan the overall turnout was 42%.

252. On cross by BNP (M) he could not recall receiving any letter after the elections requesting a re poll of PB 42 and 43. NA 271 consisted of 4 PA seats. The result of election of Akhter Jan Mengal was declared on 29-5-2013. It was correct that RO of PB 35 Khuzdar II was changed as during the recount the winner asked for the RO to be changed.

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253. On cross from PML (N) he confirmed that all political parties in Balochistan participated in the election and that all EP's in Balochistan now stand disposed of. On cross from ECP he confirmed that there can be several census blocks attached to a polling station.

PTI CW 12. Mohammed Naeem Akthar. (Prepared Probe Report into out sourcing of Printing to Pakistan Postal Foundation)

254. Prior to being sent on deputation to PCP on 31-8-13 he was serving as Deputy Secretary in the Cabinet Division. He was tasked with preparing the probe report into outsourcing of printing by PCP to the Postal Foundation. He acknowledged his probe Report dated 10-10-14.

255. He did not examine the MD or then GM of the Foundation. Nor did he examine any person who was a part of the Committee who inspected the Foundation, found it fit for purpose and were responsible for the outsourcing to the Foundation.

256. When asked whether the increased ballots of approx 109 M was on account of 12 Constituencies he was unable to answer the question which could be explained by the Manager Production. He had not verified the 109 M figure but had relied on the statement of the production manager PCP in respect of the increase in ballots to 109 M.

PTI CW 13. Ishtiaq Ahmed Khan (Secretary of ECP during 2013 elections)

257. He explained that the ECP was a Constitutional body which derived its powers from the Constitution. Such powers could not be delegated. However in order to assist the ECP in carrying out its functions a secretariat had been created and PEC's



appointed which were administrative bodies/officers whose role was to implement the decisions of the ECP. As Sec ECP he was administrative head of the ECP and the PEC's worked under him.

258. He did not remember whether an election plan was made for the 2013 elections. He recalled that in about September 2012 the ECP had met in order to discuss the printing of ballots for the 2013 elections. Although this was prior to the announcement of the elections this was done because organizing an election was a massive task.

259. He confirmed that no amendment could be made in the electoral rolls after the election schedule had been issued which so far as he could recall was on 23-3-13. He could not remember when the 18th April letter was sent which contained only a tentative assessment of the number of ballots which would be required.

260. He confirmed that it was a decision of the ECP that the number of required ballots should be rounded off. So far as he was aware the ballot papers had to be printed within 21 days after finalization of the candidates and not 14 days.

261. The number of required ballots were worked out by RO's and although he could not recall whether this was in the Action Plan the RO's had been instructed to do so by the ECP which gave its instructions in writing. The RO's forwarded there requirements to the PEC's who forwarded the same for printing.

262. So far as he could recall no criteria had been laid down for RO's when determining the extra ballots which they may need. He was unaware if the law gave any powers to the RO to call for extra ballots. Sec ECP had no role in determining the No. of ballots



to be printed. He did not recall whether any specific body had been established by the ECP to monitor the performance of the RO's. Feedback on whether the RO's implemented the ECP's decisions could be received from the relevant monitoring wing. He was not aware of any action being taken against any RO for any breach of his duties.

263. With regard to ink he confirmed that the ECP took a decision along with NADRA to develop a system whereby based on thumb impressions votes could be verified on the electoral rolls but not on the counterfoils of ballot papers.

264. Magnetic ink for this purpose was developed by Ali Arshad Hakeem the then NADRA Chairman and his deputy Tariq Malik working with the ECP and PCSIR Laboratory in Karachi which finalized magnetic ink to be used and PCSIR manufactured the required no. of pads.

265. After the elections the Form XV's under the instructions of the ECP were deposited by RO's in the local treasuries as the ECP did not have sufficient space. He could not recall if any candidate had made a complaint against an RO for non issue of a consolidation notice.

266. As per normal practice RO's receive ballots from the printing press. He was not aware that the PEC of Balochistan had determined the number of ballots that were required as opposed to the RO's.

267. On cross from PML (N) he acknowledged an ECP meeting of 27-9-2012 which he attended along with representatives of 16 different political parties. Pursuant to this meeting the ECP made a request to the NJPMC that District and

sessions judges be appointed as RO's which request was approved by NJPMC.

268. He confirmed that the ECP had issued a handbook written by the former CEC to RO's informing them of their functions and responsibilities which instructed them to deposit the used election material in the treasury as the ECP did not have the required space.

269. The ECP had allowed international observers to observe the election which included the EU, Japan, NDI, Canada, Malaysia and common wealth countries. Local observers included FAFEN, National Commission on Status of women and he was aware that PILDAT published a post election Report.

270. With regard to the ECP post election Report this was not a report of the ECP's observations and is not the official view of the ECP but was instead a compilation of the reports of the various observers. The ECP Report was placed before the Parliamentary Commission on electoral reforms.

271. All Provincial governments provided assistance to the ECP as it was there constitutional requirement. Since 1970 in all elections excess ballots had been printed.

272. On Cross from ECP he confirmed that tamper evident bags had been used for the 1st time in Pakistan for elections and that these bags had been provided by the UNDP and PO's kept their own sets of Forms XIV and XV in addition to those which went into the polling bags.

Vgk

PTI CW 14 Hamid Mir (Senior Anchor at Geo during 2013 elections)

273. He is a senior anchor with Geo T.V network who was involved in the observation of the 2013 elections through T.V. transmissions He hosted a no. of talk shows on the conduct and rigging of elections from 11th May to the end of May and in particular Capital talk. He had no political affiliations.

274. He stated in the talk shows that there had been rigging in the 2013 elections in all the 4 Provinces and the Tribal Areas. He came in possession of election materials some of which he showed during his talk shows e.g. ballot papers, whole ballot books, stamps, statements of different persons explaining how the election was rigged. He also highlighted cases where more than 100% of registered voters voted based on FAFEN Report. Some material he had collected himself.

275. In one case the losing candidate of the NDM Mr. Shah Abdul Aziz who had lost from KPK to a PTI candidate brought him a bag of ballot papers.

276. He then authenticated 3 video clips from shows which he was involved in which showed various aspects of rigging in various polling stations along with interviews from EU observers who talked about rigging in Karachi and Lahore. The following NA's were named as being a part of the rigging 64, 40, 156, 49, 52, 54, 55, 72, 193, 256, 259, 262.

277. There was rigging in Sindh against PML (N) candidate in NA 223 in which he produced a ballot book containing original ballot papers. In Balochistan he had mentioned rigging against

BNP (M) in NA 260, 269, 271 and PB 46 where the PO was an official of the FC.

PTI CW 15 Najam Sethi (Caretaker Chief Minister of Punjab during 2013 elections)

278. He was caretaker CM of the Punjab during the general elections leaving office on 6th June. The leader of the Opposition in the NA was a part of the consultation for him becoming CM .He confirmed that he hosted a T.V talk show on 5th July 2013 concerning his stint as CM of the Punjab.

279. He made 2 statements in the show. Firstly that 7-10 days before polling his powers were beginning to fall away and then later about 15 days before 6th June, after the elections, but prior to the end of his term as CM that many or some of the secretaries were reporting to model town.

280. The last cabinet meeting was held on 25th or 26th April 2013 and his main role then was to oversee the transition of power. After 26th April the administration remained in place which rendered assistance to the ECP. The focal person for ECP was additional Chief Secretary Rao Iftikhar who was reporting to the CS.

281. It was incorrect that he was informed on 7th or 9th May that the ECP required assistance of about 200 persons for printing matters. His PS was Mr. Shahid Mahmood who is now serving as Pakistan's representative to the IMF in Washington D.C .He took over as Chairman of PCB on 20th or 21st June 2013 having been appointed by PCB patron who was the Prime Minister. He confirmed that one of his nieces had been given a reserve seat to the NA on a PML (N) ticket.



282. On cross he explained that his preferred choice for CS was Javed Iqbal however the ECP were going to appoint Mr. Qammar Zaman. However on Imran Khan's complaint he persuaded the ECP to appoint Javed Iqbal. Imran Khan had no objection to the appointment of Javed Iqbal.

283. He changed all but 4 Secretaries in the Punjab Admin after taking over as CM as he wanted to ensure free and transparent elections in the Punjab. He paid courtesy calls on all political party leaders in the Punjab. He conveyed security concerns to both Nawaz Sharif and Imran Khan during the election campaign and even addressed a problem which Imran Khan was having in holding a rally where the administration were creating hurdles in the middle of a town.

COMMISSION WITNESSES AS SUGGESTED BY ECP.

ECP CW 1. Abdul Waheed (ECP employee based at Lahore during 2013 elections)

1. He works for ECP and during the 2013 elections he was based at Lahore in the office of PEC (P). He prepared the Constituency wise statement attached to 20th April letter which was sent to the printers. He explained how he had made the calculations and that he had sent the statement to the PEC for approval. The PEC however did not approve it and gave him a different formula to calculate the number of ballots to be issued.
2. After making the calculations according to the formula provided by the PEC the constituency wise break down was sent attached to the 21st April letters to the printers. There



was not that much difference in overall figures in the 2 calculations.

3. The 20 and 21st April figures were prepared by the PEC and the RO's had no role to play in preparing these figures. The statement of the requirements of ballot papers contained in the 26th April letter was prepared by PEC and based on more than the requirements of the DRO's and RO's and DEC's.
4. Ballot papers were printed in accordance with the lists provided on 21st and 26th April and not based on 20th April letter. Some presses started work on the 21st April lists which may have lead to re prints when they received the revised 26th April list.
5. On cross by PTI he confirmed that he was not associated with the printing of ballot papers, was not the designated officer to deal with the printing presses, not associated with the delivery of ballot papers and that some RO's may have changed their requisitions for ballot twice.

ECP CW 2. Ashfaq Ahmed Sawar. (Regional Election Commissioner during 2013 elections)

1. He works for the ECP. During 2013 elections he was regional election Commissioner of Multan. He confirmed the No. of ballot papers which had been printed and sent for Lahore.

ECP CW.3 Shabbir Ahmed Mughal (ECP employee during 2013 elections)

1. He works for the ECP. During 2013 elections he was deputy director Co-ordination. He confirmed that he had prepared the ECP document concerning the changed polling stations



which was a collation of information which he had received from the PEC based on resolved complaints provided by DRO's and RO's. These changes were notified.

ECP CW 4. Raja Ghias-Ud-Din (ECP employee during elections)

1. He works for the ECP. During the 2013 elections he was DG Budget. He authenticated letters sent by him to the IB and ISI requesting them to check out the Foundation premises and its workers for security clearance. Both organizations gave such clearance.

ECP CW 5. Fazal Ur Rehman (Manager of the Printing Corporation of Pakistan based at Islamabad during the elections)

1. During the 2013 elections he was manager of the PCP at Islamabad. He confirmed that the Foundation had delivered to the PCP approx 4M unbound and unnumbered ballot papers by 5-6 May and that for the purpose of numbering and binding the PCP had to hire extra persons from the local market by way of tender.
2. He confirmed that on 7th May he had made the request to the ECP Punjab for additional manpower which was required to deal with the unbound and unnumbered ballots which they had received from the Foundation.
3. He also stated that during the process of printing there is a possibility of wastage due to misprint, excessive ink which smudges and mis numbering. Such wasted ballots are destroyed under the supervision of a Committee.
4. On cross by PTI he confirmed that he had received approx 60 persons for binding from Lahore but only retained 34 as the

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others were unfit. Prior to this a further 80 workers had been brought from different parts of the Country to assist. The binding and numbering work was completed by 10-5-13 but he does not remember the time.

5. On cross by PML (N) he confirmed that all ballots which came to his press whether unnumbered or unbound were distributed to RO's

ECP CW 6. Khaliq-Ur-Rehman (Joint Provincial Election Commissioner for the Punjab during the 2013 elections)

1. During the 2013 elections he was the Joint PEC for Punjab. He confirmed that the 20th April letter and the Constituency wise list attached was prepared by the PEC based on the number of registered voters. That the 21st April letter and the list attached contained a revised list as there were some discrepancies in the 20th April list.
2. The list prepared on 26th April was the final list which had been prepared after the ballot requirements had been received by the RO's. The RO's list mainly tallied with the 21st April list except in a few constituencies. In some Polling stations there were combined polling booths for men and women whilst in other polling stations there were separate booths for women. He confirmed a number of letters which he had sent to RO's on delivery schedules of ballots.
3. On cross by PTI he acknowledged that the 20th April letter had been marked as dispatched on 20-4-13 and that the 21st April also was bore a dispatched stamp marked 20 April 2013. He confirmed that R and I section affixes the dispatch

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stamp and he could not say how the 20th April letter was retrieved.

4. The RO's were asked to send their ballot paper requisition but he could not say when and whether the RO's had been informed in writing. The requisition of the RO's was received in the office of the PEC. The election branch situated in the election office were checking the RO's requisitions. It did not come to his attention that in one NA in the Punjab the RO had requested ballots in excess of 120,000 of the registered vote.
5. He received instructions from the ECP about the No. of ballots to be printed but he had no knowledge whether these instructions were sent to the RO's. He was not involved with the delivery of ballots to RO's. He was posted in Lahore and had interaction with the PCP Lahore. The PCP representative at Lahore used to send him daily Report on the progress of the printing which he used to forward to ECP HQ's at Islamabad.

ECP CW. 7. Muhammed Suleman. (Deputy Manager of Printing Corporation of Pakistan based at Islamabad during the 2013 elections)

1. During general elections 2013 he was Deputy Manager of PCP Islamabad. He acknowledged the list of ballot papers dispatched by Postal Foundation to PCP Islamabad on 5-5-13 by way of delivery challan signed by him (EX ECP 7/1).
2. He also acknowledged on P.25 of ECP CMA 82 the statement of ballot papers sent to PCP after printing by the Foundation for packing numbering and binding by the PCP EX ECP 7/2

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and the record of waste which had been destroyed from 24th April onwards in the presence of the Army Ex ECP 7/3.

3. On cross by PTI he confirmed that the document which recorded the destruction of ballot papers did not record the No. of ballots which had been destroyed and which Constituency they were in respect of.
4. Ballots became waste and were destroyed due to printing errors. At the time of printing 2 to 2.5 % excess ballots were also printed in order to make provision for any wastage. After the printing is complete the required ballots are collected and any excess are destroyed
5. With regard to CMA 9 ECP P.31 which listed the workers provided by ECP and is signed by him and started with serial No.103 he confirmed that the earlier serial numbers pertained to those persons who were provided by the contractor and Allama Iqbal University. He could not recall when the persons mentioned reached the press but they worked till the late afternoon on 10th May.

ECP CW.8 Liaqat Ali (Deputy Manager ECP Islamabad during the 2013 elections)

1. He was Deputy Manager ECP Islamabad during the 2013 elections. He acknowledged documents which were proof of destruction of ballots Ex ECP 8/1. This waste was destroyed in front of him, a representative of the PCP security and the Army at the PCP premises.
2. On cross by PTI he confirmed that ballot papers were destroyed on a daily basis and some waste was destroyed on 11-5-13 as they had been working up to 10-5-13 and as

such the waste accumulated on 10-5-13 had to be destroyed.

ECP CW 9. Mujahid Hussain (Regional Election Commissioner Saragodha during the 2013 elections)

1. He was Regional Election Commissioner Saragodha during the 2013 elections. CMA 82 P.26 to 67 were delivery receipts for ballots most of which had been received by him in his capacity as REC Sargodha which he had received from PCP in the presence of the representative of the RO. He counted the ballot books but not all the individual ballots.
2. CMA 9/15 P.16 and 17 showed 93 Constituencies which listed the no of registered voters as well as the number of voters as mentioned in Form XV. This document was based on information which the ECP had received from RO's.

ECP CW 10. Mohammed Irfan (election officer for Rawalpindi during 2013 elections)

During the 2013 elections he was election officer for Rawalpindi. The few delivery documents which not been signed by Mujahid Hussain he confirmed he had signed for on behalf of the ECP

ECP CW.11 Mohammed Saeed (ECP employee during 2013 elections)

He works for the ECP. During 2013 elections he was Deputy GS based at Islamabad. He confirmed that he had written to the Army requesting deployment at the Postal Foundation Press and also that he wrote to all PEC's on 27 May 2013 requesting them to confirm the No. of ballot papers used

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during the 2013 elections so that payment could be made to the concerned press.

ECP CW.12 Naveed Khawaja (Deputy General Manager (DGM) sales PSPC Karachi during 2013 elections)

During the 2013 elections he was DGM sales PSPC. At CMA 84 ECP P.7 he confirmed that he wrote the letter dated 12-12-14 to PEC Balochistan enclosing 2 statements in connection with NA and PA's respectively in Balochistan which had been printed by his press and delivered to PEC Balochistan for the purposes of the 2013 elections in Balochistan (EX ECP CW 12/1)

ECP CW. 13 Syed Sher Afghan (ECP DG Elections during 2013 elections)

1. After the elections FAFEN had reported that in 49 Constituencies over 100% of registered voters had voted. He met with FAFEN and with the assistance of Form XIV clarified that votes in excess of the registered no. of voters had not occurred in the 49 Constituencies.
2. He confirmed that since 2002 onwards the ECP had directed that post election material be stored at the treasury by reference to ECP letters ECP.CW.EX 13/1 .He also referred to the minutes of the ECP meeting held on 6 and 7 September 2012 in relation to the preparations for holding of the 2013 elections ECP.CW.Ex.13/2
1. He also referred to a Report which stated that in each general election since 1970 excess ballots had been printed ECP.CW.EX.13/3. He also referred to the ECP instructions dated 27-4-15 which attached the plan for the

Syed Sher Afghan

communication of preliminary results which was issued to all RO's through the PEC's and the summary of the polling scheme.

2. On cross by PML (N) he exhibited a summary showing the No. of Election Petitions filed in respect of each Province for both the NA and PA and their current status EX ECP CW 13/5 to 13/17. He confirmed that in August 2014 he placed the ECP draft Report on the ECP website and had received no complaints about it. EX PTI CW 10/1
3. The ECP gave comprehensive training to DRO's, RO's and ARO's as well as providing training to 650,000 polling staff. 19,000 training sessions were arranged throughout Pakistan. The first unofficial result came after midnight in Lower Dir.
4. On Cross by PTI he confirmed that as DG elections his main responsibilities were to prepare electoral rolls, re-description of Constituencies, preparation of code of conduct, allocation of symbols to political parties and the appointment of DRO's, RO's and ARO's and issuance of program for elections. None of these functions were written down.
5. That apart from ROPA and its Rules there are no other rules issued by ECP regarding the conduct of elections. PEC's follow instructions issued by ECP. There were several other meetings held after Sept 12 by the ECP in respect of the 2013 elections but he did not know whether the printing of ballots were discussed at these meetings.



6. In the 9th April letter which stated that 172M ballots were needed for printing this figure had been decided by ECP. He was aware of the 18th April letter and the Action Plan which included the rounding up concept for determining ballot requirements. This was an ECP instruction as was the remainder of the Action Plan including 5. (xiii) which concerned tallying the Form XV with the packing invoice.
7. The ballot papers were to be printed after the last date for a candidates withdrawal i.e. 19th April. So far as he was aware the Action Plan was not revised. With regard to the 20th, 21st and 26th April letters and lists these would have been received by DG Budget via Sec. ECP.
8. The ECP Secretariat had no role to play in verifying the No. of ballots required for each Constituency. ECP is only intimated when the requirement is sent to press by the PEC. He did not know whether the requirement for ballots came to the knowledge of the members of the ECP.
9. The ECP does not have a body to check up on activities during polling day. With regard to ink the sample from the PCSIR did have a magnetic element. A sample of the ink was sent by PCSIR to NADRA which approved it and it was then prepared by PCSIR.
10. The no. of ballot papers to be printed for each Constituency was to be determined by PEC and the relevant RO's. Printed ballots are sent by the press directly to the RO's whilst the other election material is provided by the PEC to the RO.

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11. When breaking open the election material the RO fills out a packing invoice which he hands to the PO. He did not know on what basis RO's distributed the ballots to the PO's.
12. On Cross from Balochistan parties he confirmed that training was given 15 days before polling day. Generally PO's are civil servants in grade 17, 18 and 19 whilst APO's are in grade 10-15. He was unaware that FC had been appointed as PO's in Balochistan and that any DRO or RO had requested in writing the postponement of an election in Balochistan due to the poor law and order situation.
15. On cross from JI he confirmed that the Judgment in **Imran Khans Case (PLD 2013 SC 210)** concerning the updating of electoral rolls in Karachi had been complied with. Complaints were received regarding the polling and polling stations which the ECP addressed and instructed the RO's accordingly. On polling day 100's of complaints were received which were sent to the appropriate officials for redressal e.g. Chief Secretary, IGP, RO etc.

ECP CW 14. Syed Shabbar Abbass Bukhari (District Election Commissioner Lahore during 2013 elections.)

1. He prepared a Report based on information received from RO's. The Report was needed as the ballot papers printed for NA 125 Lahore was in excess of the usual amount. In some cases he made modifications to the RO's requisition.
2. On cross by PTI he explained that 2 PA's also fell within NA 125 with the same number of registered voters as for the NA seats. The total no. of registered voters was approx 429,000. The RO had requisitioned 500,000 ballot papers.



3. 550,000 ballot papers were printed on his request as the PA seat request by the RO was for 550,000 (300,000 and 250,000 respectively). In all 30% extra ballot papers were printed in excess of the registered voters. Apart from NA 125 he did not make further verification about any other constituency. He also made modifications in two other Constituencies in Lahore but those were on account of typing errors.

ECP CW 15. Mohammed Shabbir (Employee of Pakistan security Printing Corporation)

1. He produced the original of the hand written note concerning the printing of ballots for NA 154 Lodhran which was kept in the production register. He was on B Shift and worked from 8pm to 8am printing ballots for Lodhran 154. He did not receive any order to revise the ballots and according to the documents the printing was completed on 26-4-13 for that Constituency

COMMISSION WITNESSES AS SUGGESTED BY PML (Q)

1. The PML (Q) called 7 witnesses all of whom had been losing candidates in the 2013 general elections. The witnesses were as follows: 1. Muhammed Shah Khagga losing candidate from NA 164, 2. Khurram Munawar Munj losing candidate from NA 134, 3. Sardar Ahmed Yar Haraj losing candidate from PP 215, 4. Sardar Tariq Hussain Nakai losing candidate from NA 142, 5. Ch. Khalid Gill losing candidate from PP 61, 6. Ch. Shafaat Hussain losing candidate from NA 134 and 7. Dr. Azeem-ud-Din Lakhvi losing candidate from NA 140. All

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the witnesses stated that they were not informed in writing about the consolidation of the results by the respective RO and were not allowed to attend the consolidation proceedings.

2. The 7 RO's in respect of each of the witnesses above mentioned Constituencies all gave evidence that they had given written notice of consolidation to all the above PML (Q) candidates or their agents and other candidates and 3 produced copies of the notices. EX PML (Q) CW 2/1, CW 5/1 and CW 7/1. However 3 out of the 7 RO's did not open the bags containing the ballots which had been rejected by the PO for checking.

COMMISSION WITNESSES AS SUGGESTED BY JAMAAT E ISLAMI.

JIP CW 1. Raja Arif Sultan Minhas (In charge of JI election cell during 2013 elections)

1. He received a no. of complaints on polling day regarding the way in which the polling was taking place. Some of which related to the late commencement of polling in certain polling stations, a number of JI polling agents not being allowed by the MQM to enter polling stations and those who did manage to enter were forcibly removed by the MQM
2. The secrecy of the ballot was not maintained as the workers of the MQM surrounded the voters at the time of them casting their votes. The MQM was rigging the election and were casting bogus votes.
3. He complained about this conduct of the MQM to the ECP and the Rangers. Complaints are at CMA 35 P.13, 181-255. JI also registered FIR's about the conduct of the MQM and



he registered an FIR against MQM for rigging. No one at the ECP responded to his complaints however some complaints were responded to by the rangers.

4. Due to the above developments on polling day the JI decided during polling day to boycott the elections.

JIP CW 2. Mohammed Hussain Mehanti (Former Ameer of JI who Supervised 2013 election campaign in Karachi on behalf of JI)

1. He received complaints prior to the elections that some MQM workers were engaged in the preparation of the electoral rolls in Karachi and he complained about this to the ECP. JI noted that approx 20-25% of persons who were residing in Karachi but had permanent addresses in other provinces were excluded from the electoral rolls.
2. JI voters were not registered in the parts of Karachi where they were residing however the MQM managed to get their voters registered in the areas of Karachi where they were not residing. When the JI brought this to the attention of the Supreme Court it ordered that the electoral rolls in Karachi be scrutinized with the assistance of the Army. This order however was not fully implemented by the ECP and there was only a cosmetic change in the electoral rolls in Karachi.
3. During the election campaign the JI was hindered by the MQM which had burnt down their officers, man handled and persecuted their workers. On account of this conduct by the MQM the JI demanded that the elections be held under the supervision of the Army.
4. In this context the Caretaker CM called an APC where all parties except PPP and MQM supported JI's demand that the



elections were to be held under the supervision of the Army but this never happened.

5. Most of the polling staff was from KMC and KWSB who supported the MQM. JI requested a list of the polling staff but were not provided with a copy. Neutral polling staff were told by the MQM not to turn up on polling day and that their remuneration would be delivered to them at their homes. At lot of confusion and mismanagement took place on polling day e.g. staff and election material did not arrive on time
6. In view of the situation which was prevailing the JI boycotted the election on polling day and held a sit in outside the PEC's office and demanded new elections in Karachi. NA 250 was an example of mismanagement which lead to a repoll under the supervision of the Army which the MQM boycotted and the seat was won by the PTI.

JIP CW 3 Sahibzada Haroon-ur-Rashid (former MNA from NA 44 Bajour)

1. He was a losing candidate for NA 43 Bajour during the 2013 elections. The Governor at that time Mr. Shokat Ullah also hailed from Bajour and was openly supporting his father who was contesting the election against him.
2. In public meetings the Governor used to seek support for his father e.g. at IDP camp in Jalozei on 18th April where a no. of voters from FATA were residing. He complained to the ECP about the Governors campaigning but he did not get any positive response.
3. In FATA there is no caretaker set up. The RO's are political agents under the control of the Governor. Security of the

polling stations in FATA was by Aman Lashkar which was established by political agents. Even on polling day the Governor of FATA traveled by official helicopter to Bajour and stayed in Bajour the whole day.

COMMISSION WITNESSES AS SUGGESTED BY MQM (H).

MQM (H) CW 1. Altaf Hasan (Security Co-ordinator and member of Central Committee of MQM headed by Afaq Ahmed)

1. MQM (H) put up 27 candidates all for Karachi in the 2013 general elections. 11 candidates for NA seats and 16 candidates for PA seats. Their main election office was in DHA Karachi. Their office in Landhi was burnt down.
2. MQM(H) made complaints to caretaker CM that hurdles were being put in their way during the election campaign. On 19-4-13 the caretaker CM called an APC where a no. of political parties were present. He represented the MQM (H). At the meeting he complained about the difficulties in establishing election offices. In the meeting the administration assured him that his Party could freely carry on its election campaign.
3. On 25-4-13 their workers gathered for a rally in order to open their election office. The SSP however debarred them from carrying out the rally and they were told that the high ups could tell them the reason.
4. MQM (H) went to the Sindh High Court to address their grievances and obtained a favorable order allowing them to carry out the rally and the administration was ordered to provide them with security. EX MQM (H) CW 1/2

5. After the Court order a rally was announced on 1-5-13 in Constituency NA 255 to be lead by Afaq Ahmed however this rally was not allowed to proceed by the police. They met the CEC who issued directions to the IGP to provide security to Afaq Ahmed so that he could visit his Constituency. EX MQM (H) CW 1/3
6. While we were preparing our campaign in the house of our chairman our workers were attacked in the streets and a no. of workers lost their lives including Shakil Ahmed who was a candidate for a PA seat. Some of the accused were arrested and are under trial.
7. Despite the orders of the Sindh High Court and the CEC Afaq Ahmed was still not allowed to carry out his election campaign and was kept under house arrest. Another MQM (H) candidate Mushtaq was kidnapped but was later released.
8. On polling day neither their chairman nor their candidates were able to cast their votes. MQM (H) complained to the ECP (EX MQM (H) CW 1/4) but no one addressed their grievances so they decided to boycott the elections.

MQM (H) CW 2. S.M.Tariq Qadri (He was PEC Sindh during the 2013 elections)

1. He did not prepare any Report about the 2013 elections. He confirmed that MQM (H) had submitted complaints to CEC on 9-4-13 and thereafter including on polling day which were forwarded telephonically to the concerned DRO for redressal



2. The MQM (H) boycotted elections on polling day. He did not address any press conference and cannot remember the contents of the complaints which were received.
3. On cross by JI he confirmed that a number of political parties had demanded deployment of the Army in Karachi on polling day which demands were forwarded to the CEC. The Army however was not deployed on polling day however it was deployed during re-polling on NA 250
4. The RO's notify the polling stations and if there were any complaints about the polling station these had to be made to the RO.
5. He confirmed that the DEC monitored the elections whilst the RO conducted the elections. There was a control room set up at the DEC and PEC offices to monitor the election on polling day.
6. About 450 complaints were made on polling day about 30% of which were redressed. Those which related to the location of Polling stations could not be addressed at the last moment. Complaints were addressed to CEC, PEC, RO and DG Rangers

COMMISSION WITNESSES AS SUGGESTED BY BNP (A) AND BNP (M).

BNP (A&M) CW 1. Nawab Ghous Bakhsh Barozai (caretaker CM of Balochistan during 2013 elections)

1. He confirmed that there was no cabinet formed whilst he was CM. The conduct of the elections was the responsibility of the ECP and the Administration.

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2. His brother contested from PB 21 and lost the election due to the interference of the CS. After becoming CM he did not make any recommendations for carrying out extensive postings and transfers.
3. In his press conference after the polls he did not state that there had been rigging but there had been "Ustad". He did not move a summary to convene first PA. CS sent summary directly to Governor. He resented this so the Governor referred the summary to him which he signed.
4. CS told him that the ECP had told him he could order transfer and postings of civil servants and as such he ordered some transfers and postings. At a lower level certain transfers were made without taking him into confidence. He made some transfers and postings on the advice of the CS
4. He made the statement at EX BNP (M&A) CW 1/1 whereby he informed that he would inform the Commission about the security situation in Balochistan and complaints of officers posted there. His role was to create an atmosphere which was conducive to holding elections. He could not recall who was RO for NA 269 and he did not know whether PO's were officials of the Levies as this was a matter between the ECP and local administration

BNP (A&M) CW 2 Murad Ali Baloch (He was DRO Pungjur I and II PB 42 and 43 during 2013 elections)

1. He confirmed that all contesting candidates from PB 42 and 43 visited him at his office on polling day and collectively asked him to postpone the elections due to the poor law and



order situation. He advised them to give a written application to this effect to their respective RO.

2. On the basis of such written applications the RO's of PB 42 and 43 recommended that the election be rescheduled. He forwarded the recommendation to the PEC.
3. The turnout for the election was low. Some voters turned up in the town area but no votes were cast in the outskirts of the town. The RO refunded to him some of the expenses which were not used for the election in PB 42 and 43.
4. In Pangjur 42 and 43 there are 72 polling stations. Out of this 72 no votes were polled in 36 polling stations. The RO had informed him that the polling staff of these 36 polling stations did not turn up. He proposed re polling on the 36 polling stations but he received no orders from the PEC in this respect. The RO's declared the result in PB 42 and 43.

BMP (M) CW 3 Shakeel Ahmed Palal (RO of PB 4 (Quetta IV) during 2013 elections)

1. The total no. of polling stations for PB 4 were 69. All polling bags were sealed. The winner received 5345 votes whilst the loser received 5191 votes from BNP.
2. The result of PB 4 carries a note signed by the runner up stating that he is receiving the result under protest EX BNP (M) CW 3/1. He confirmed that some of the envelopes containing rejected votes were missing. When he asked the PO's about this they informed him that some of the missing votes were mistakenly put in the NA bag.



BNP (M) CW 4 Nasir Ahmed Mirwani (RO of PB 35 Khuzdar III at the time of the 2013 elections)

1. He declared unofficial result of PB 35 but because of threats he could not make an official announcement. Sardar Akhtar Jan Mengal was the returned candidate. After he left because he could not announce the official result the Commissioner Khuzdar was appointed in his place as RO.

BNP (A) CW 3 Ikramullah (RO of PB II Pangjur at the time of the 2013 elections)

1. He could not recall the date on which he received the polling scheme however after receiving it he appointed the polling staff. The polling staff was appointed twice. Many of the officials in the first list did not turn up due to the law and order situation and a teacher and clerks refusal to perform election duties.
2. On 10th May he issued a revised list of polling staff. The candidates contesting for PB 43 requested for a postponement of the election due to the poor law and order situation. He returned some of the election expenses provided by the ECP.
3. He received the result from 21 out of 33 polling stations which had been established. The turn out was about 10%.

BNP (A) CW 4. Mohammed Noor (Assistant Presiding officer of PB 43 Pangjur II during 2013 elections)

He was APO at Boys Primary School Sarai Kalot. At about 8am on polling day he was informed that he was to be APO at the Boys Primary school. There were no voters when he

reached the polling station. The polling material was provided by the FC at 11am. No one came to vote.

BNP (A) CW 5 Murad Ali (Polling officer at PB 42 Pangjur I during 2013 elections)

He was polling officer at the Boys High School Khudabadan, Sarawan .He was informed at about 8am on election day about his election duties. When he reached the polling station the gates were closed. The election material came at 1.30 pm. No one came to cast their vote

REQUEST BY THE PTI FOR REQUISITION OF FORM XV AND PRE-SCANNING REPORT.

284. PTI, with permission of the Commission, filed CMA 80/2015 in GEICD No. 12/2015 for direction to ECP to produce copies of actual requisition for ballot-papers by the Returning Officers for all national and PAs constituencies as well as copies of Form-XV and other evidence showing all extra and unused ballot-papers for all the constituencies on counterfoils. The application was taken up on 26.05.2015. The learned counsel representing ECP sought time for obtaining copies of Form-XV from the Returning Officers. The learned counsel for PTI, however, insisted that the forms be retrieved from the election bags deposited in the treasury. It may be stated that according to Instruction No.4.04 of the Hand Book of Instructions for the Presiding & Assistant Presiding Officers prepared by the ECP, two Forms XV are required to be filled out, one to be put into the White Bag and the other to be produced by the Presiding Officers to the Returning Officers at the time of tendering the post polling election material, who retains the same.



285. The issue of Form XV was again taken up by the Commission on 27.05.2015 when the following order was passed:

“After inviting opinions from the learned counsel representing various political parties, it was decided to obtain copies of Form-XV from the bags retained at the Treasuries on behalf of the Election Commission of Pakistan. All the political parties agree that the task be assigned to the District Judges of the respective Districts. They shall obtain copies of Form-XV, pertaining to the National Assembly and Provincial Assembly constituencies falling within their Districts. In case a constituency spreads over more than one District the senior of the District Judges in the concerned Districts shall perform the task. The said Judicial Officers shall be duly assisted by the respective District Election Commissioners and its staff in the process. For the said purpose ‘white’, ‘khaki’ and ‘blue’ bags containing the election material may be opened and no other bag be touched. Photo-state copies of Form-XV for all polling stations be prepared and duly certified by the District Judges. The Forms for each constituency shall be packed in separate packets and sent to this Commission. In case Form-XV for any polling station is found missing or any seal of the aforementioned bags found broken, it be noted and reported accordingly. For the Tribal Areas, the said task is assigned to the respective Political Agent in whose territorial jurisdiction a constituency falls, who shall be duly assisted by the concerned Agency Election Commissioner. The task be completed by 08.06.2015.”

286. The reports submitted by the District & Sessions Judges show that over one third on average of Form-XV were not found in the polling bags. Detail constituency-wise is given in CMA No.114 of 2015. Following is the province-wise average missing Form-XV.

K.P.K.	42.5%
Tribal Area	12%
I.C.T.	0.0%
Punjab	28.8%
Sindh	45.9%
Balochistan	48%

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Grand average Total 35.5%

287. PTI filed another application CMA No. 99/2015 on 13.06.2015, perhaps after the reports from the District & Sessions Judges regarding Form-XV were being received by the Commission. It was submitted that the inquiry being conducted by the Commission though not purely or exclusively inquisitorial but to certain extent quasi-adversarial, the adversarial component of the proceedings had substantially been concluded and that the inquisitorial component was still continuing. It was added that since considerable relevant material and record is still available, which is not in PTI custody to produce the same, the Commission may make further inquiry into the issues stated in the application. Three such issues were identified. Firstly, in view of printing of ballot-papers in a number of constituencies well above in excess of total number of registered voters, all the Returning Officers be enquired whether they complied with the Action Plan for printing of ballot-papers approved by the ECP. Secondly, that NADRA be directed to produce the Pre-Scanning Report, which is a kind of an inventory of the material received by it regarding 40 constituencies; and thirdly whether the provision of Section 39(1) of the 1976 Act prescribing the mandatory requirement that the Returning Officer shall give notice to the candidates or their agents for consolidation of the results has been complied with. As regards the first issue, the Commission considered it more appropriate to summon some of the Returning Officers of those constituencies where the ballot-papers printed were relatively well above the average of the other constituencies. On the second matter, the Pre-Scanning Reports were requisitioned from NADRA. As regard the third, at the request

of the learned counsel representing PML(Q), the Returning Officers of seven constituencies had already been examined as to whether they had issued notices for the consolidation of results.

WITNESSES CALLED BY THE COMMISSION ON ITS OWN MOTION (in connection with the requisition of very large no. of excess ballots beyond the registered voters in certain Constituencies)

CW 1. Ms Moeen Bano Sodher RO NA 222, PS 53 and 54 Sindh 10% excess won by PPP.

1. The PEC Sindh decided the No. of ballots that were required not her. This was done as per requirements of each polling station. The unused ballots which she retained were returned to the Treasury via the PEC and received a receipt for the same.
2. The ballots which were unused by the relevant polling station must have been placed in the polling bag by the relevant PO which she did not verify. The polling bags were then returned to the treasury.
3. She filled out the packing invoices but could not remember whether the PO had signed on these. Since the PO's were not properly trained they did not put the papers in the right bags and did not properly tabulate the results which she prepared. This was managed by herself and 2 other ARO's and it took a two day period to reorganize everything.



4. She received all the Form XV's from the PO's. Some Forms XV were complete whilst others were not. She complied with para 5 (xiii) of the Action Plan.

A handwritten signature in black ink, appearing to be 'V. J. M.', is located below the text of the list item.

**CW.2 Mr.Munawar Khan RO NA 21 Mansehra cum Torghar KPK
16 % excess won by PML (N)**

1. The PEC KPK determined the No. of ballot papers to be printed and not him. He did not undertake any exercise of determining how many ballots were required for NA 21.He was not aware of the Action Plan but had a copy of the ECP handbook. He retained 48,000 ballot papers in his office.
2. During bulk breaking he signed/stamped the packing invoices (EX. CW 2/1).The PO's brought back the unused ballot papers in sealed bags so he did not count them and did not know the number of unused ballots. All the PO's provided him with Forms XIV and XV and these were EX. CW 2/2.
3. He acknowledged one Form XV for PS 1 where columns No.7 and 8 had not been completed by the PO and another Form XV which showed that that out of the 1800 votes none were polled. Form XIV for that polling station did not match with Form XV as according to Form XIV 373 votes were polled.
4. At the time of consolidation of the results he did not tally Form XV with the packing invoice and he did not open the bag of rejected votes for checking .No Candidate had asked him to do so. He deposited the ballot papers which he had retained with the treasury EX CW 2/3. He acknowledged that 857 polling booths were under him.



CW 3 Pir Bakhsh Shah DRO and RO NA 34 Lower Dir 17% excess won by JI

1. The ECP determined the No. of ballots which needed to be printed for his Constituency not him. The Ballot papers were received on his behalf by a civil Judge who was accompanied by a member of the Army.
2. There were 308 Polling stations in NA 34 for which he had to prepare separate polling bags. He assigned the various functions to different judicial officers as he had judicial work to deal with at the same time and was also dealing with 3 PA's. None of the 300 packing invoices had the signature of the PO EX. CW 3/1
3. He retained 14 unopened cartons of ballot books and 3 other ballot books whilst the remainders of the ballots were distributed to the PO's. He did not open the cartons and deposited them back in the treasury. He could not say how many ballot papers were used and unused by the PO's. This information was given in the Form XV.
4. After the official count he deposited all the election material in the treasury. Only 16 Forms XV were missing and he had brought the balance with him EX CW 3/2.

CW 4 Mr. Sohail Ahmed RO Assistant Political Agent NA 43 TA VIII—13% excess won by Independent.

1. The ECP determined the No. of ballots which were printed for his Constituency and not himself. He received ballot papers a week before the polling day and he was not informed that he would receive any



excess ballots. There were 112 Polling stations for NA 43.

2. He retained 169 ballot books in reserve after distributing the ballot papers to the PO's. He later returned these to the treasury. He received 1906 more books than he needed as by mistake he had also been provided ballot books for NA 44 by the ECP.
3. He made a packing invoice which was signed by the PO when he came to collect the election material. He sent the packing invoices to the treasury. He received 96 Form XV's out of 112 polling stations. He did not compare Form XV with packing invoices and in any event 16 were missing which could not be compared.
4. He consolidated the result based on the Form XIV's which he had received. He retrieved Form XV from the treasury at the request of the ECP which he forwarded to the ECP about 2 weeks ago.

**CW 5 Mr. Muhammad Saeed Awan RO NA 53 Rawalpindi (iv)
19% excess won by PTI**

1. He made a tentative assessment of the No. of ballots which were required which he submitted to the DRO for forwarding to the ECP. He based his assessment on the no. of polling booths as per instructions.
2. There were 323 polling stations and 722 polling booths in NA 53. He rounded up for each of the 722 polling booths. He held meetings with the DRO where the DEC was also present whereby he was instructed to

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- round up on the basis of booths. The DRO finalized the No. of votes that was required for his constituency.
3. He received the ballots one day before polling day at around 5pm. Ch. Nisar lost the election to the PTI candidate Ghulam Sarwar. Each PO gave him a copy of Form XV which he retained in the office of the RO. He prepared a packing invoice which was given to each PO and signed by him and the PO. EX. CW 5/1
 4. He cannot remember how many ballots were retained by him after distributing the ballots to the PO's. However those ballots which were retained by him were deposited in the treasury.
 5. The ballot papers returned to him by PO's were sealed. He did not open the rejected ballots for checking and could not recall whether any candidate had made such a request. 29 Form XV's were missing. He brought original Form XV's EX CW 5/2.

CW 6. Mr. Nisar Ahmed RO NA 118 Lahore 17% excess won by PML (N)

1. He assessed the No. of ballot papers that were required based on the polling scheme and polling booths on which he rounded up. He did not receive a copy of the Action Plan although he did receive a copy of the ECP handbook. There were 261 polling stations and 674 polling booths in NA 118.
2. He made his ballot paper request to the ECP via the DRO. The ballots are given to the PO of the polling station who then splits them up between the polling

Nisar

booths. The ballot books containing 100 ballots each are not further split. None of the packing invoices have been signed by him but have been signed by the PO to whom they were delivered.(EX.CW. 6/1)

3. He retained approx 70,000 excess ballots which he returned to the treasury after the elections against a receipt EX.CW 6/2. The unused ballots of the PO's were packed in the polling bags and returned to the treasury via the DRO's. He was not instructed by the concerned quarter to tally packing invoice with Form XV. At the time of consolidation he had received all the Form XV's and packing invoices. Copies of Form XV are EX.CW 6/3

CW 7. Mr.Sajjad Hussain Sindher RO NA 119 21% excess won by PML (N)

1. He determined the No. of ballots which were required for his Constituency. In addition to being RO for NA 119 he was also RO for PP 141 and 142. He drew up the polling scheme before he requested for the ballots.
2. He did not receive a copy of the ECP Action Plan but had received a copy of the ECP handbook for RO and PO's before he formulated the polling scheme.
3. Shabbar Abbas Bokhari was DEC for Lahore whilst PEC was Anwar Mehboob. He was in contact with Shabbir and some of his colleagues but they did not give him any instructions regarding the no. of ballots to be printed or the conduct of the elections.



4. In determining the No. of ballots which he required he rounded up based on the No. of polling booths EX.CW 7/1 .His requisition of ballots did not mention this rounding up formula which he had applied. He shared his formula for determining ballots with the DEC and his colleague RO's who were involved in the election process
5. He decided upon the PO for each PS. He retained 64,000 excess ballots after distributing the ballots to the PO's. After he had distributed the ballots papers and after polling he returned his excess ballots for depositing in the treasury via the DRO EX.CW 7/2
6. All PO's had signed the packing invoices in his presence however due to inadvertence he did not sign all packing invoices. It was team work. During the poll a ballot paper can only be issued under the signature of the PO or APO.
7. After closing of the poll he received all Form XIV and Form XV's. The Form XIV was in a tamper evident bag whilst the Form XV was given to him separately. Unused ballot papers would have been mentioned in the Form XV and such unused ballots may have been placed in the polling bag.
8. He did not have the packing invoices before him at the time of the consolidation of results. He produced 180 Form XV's EX CW 7/3 and packing invoices Ex.CW 7/4. For NA 119 there were 282 Polling stations and 632 polling booths



CW 8.Mr.Khalid Mahmood Bhatti RO NA 125 28% won by PML (N)

1. He determined the No. of ballot papers which would be required for his Constituency. He was also RO for PP 155 and 156.He received 50,000 ballot papers more than he had requested. He did not know who had increased the No. of ballots
2. On 9th May he received 200,000 ballot papers and the next day he received a further 300,000 from PCP Lahore. EX CW 8/1 He started bulk breaking and preparing the ballots for the 200,000 ballots which he received on 9th May in order to save time. Some Packing invoices carry his signature /stamp whilst others do not. EX. CW 8/2 About 4/5 packing invoices were missing. He could not say whether the signatures of all PO's were on the packing invoice.
3. His requisition was based on the No. of polling booths although this is not mentioned in the requisition. He also kept the polling scheme in mind when determining the No. of ballots which he required. He received ECP handbook for RO's and PO's and was also provided with training. He did not see the Action Plan.
4. He did not meet PEC (P) Mr. Mehboob Anwar but he was present during his training. At his training the question of how to determine the No. of ballots did not come under discussion. Shabbar Abbass Buhkari was DEC Lahore. He acknowledged his signature on



Shabbar's Report concerning the 50,000 ballot increase which may have been prepared by the ARO.

CMA 93 P.23-26 EXCW 8/3

5. The unused ballots he returned to the treasury EX.CW.8/3. This exhibit correctly contains the No. of ballots which were returned to the treasury. He did not know how many ballots were not used at the polling stations on polling day.
6. He received from the PO's separately Forms XIV and XV. All Form XIV's were received in tamper evident bags EX.CW 8/4 however some Form XV's were not produced. Some PO's told him that Form XV was in the polling bag. During consolidation he relied on Form XIV. He did not keep Form XV or the packing invoice in mind. There were 865 polling booths and 265 polling stations for NA 125

CW 9. Mr. Anjum Raza Syed RO NA 130 25% excess won by PML (N)

1. RO for NA 130 and PP 157 and 158. He determined the No. of ballots which were required for his Constituency. There were 238 polling stations and more than 500 polling booths. For the purpose of calculating the No. of required ballots he took an average of 3 polling booths per polling station and multiplied this by the No. of polling stations.
2. He did not apply the same formula for the PA's. This was because some parts of his PA's overlapped into another NA Constituency for whom it was the responsibility of another RO. He gave the requisition for both PA's and received ballot papers in respect of each.

Handwritten signature

3. He did the bulk breaking of the PA's and distributed the ballots to the PO's. The invoices are not with him and since he has now been transferred he does not know where the material is now.
4. Instructions from the ECP were given to the DRO who passed them on to him. He did not meet either the PEC or DEC. He did not receive any written instructions from the ECP on how to determine the No. of ballots or on rounding up based on polling stations. However he had been an RO before and on the basis of his experience he knew that rounding up was necessary as ballot books could not be split into parts. He received the ECP handbooks for RO's and PO's. He retained 64,000 ballot papers and distributed the rest to the PO's
5. He cannot remember whether he signed every packing invoice and whether he got the signature of every PO on every packing invoice. He consolidated the results based on Form XIV which the PO's brought to him along with the election bags.

CW 10. Mr. Qamar Ijaz RO NA 157 Khanewal II 20% excess won by PML (N)

1. He was RO for NA 157 Khanewal II and PP 214 and 215. He determined the No. of votes which he required for his Constituency based on rounding up in accordance with ECP instructions as given in their booklet.
2. He did not receive a copy of the Action Plan and it was not within his knowledge that the ECP had given instructions on rounding up based on polling stations. The criteria / formula

T. V. 2/2

adopted for determining the No. of ballot papers was decided at meetings attended by DRO and other staff.

3. Initially he received 362,800 ballot papers however when he opened these he found that the ECP had misspell a name. The ECP told him to keep these ballots in safe custody and that they would send him fresh ballots. He received the reprinted ballot papers on 9-5-13. He called the PO's to collect the material on 10-5-13. He received signatures of PO's on packing invoices and also signed the same.
4. The PO's brought to him Form XIV based on which he did the consolidation. He was unaware of the fate of the unused ballots at polling stations but these must have been put in polling bags. For NA 157 there were 283 PS and 681 polling booths. He gave notice of consolidation to all candidates EX.CW. 10/3.

CW 11. Mr. Khalid Iqbal RO NA 171 17% excess won by PML (N)

1. RO of NA 171 and PP 240 and 241. He determined the No. of ballot papers which he required for his Constituency based on the polling scheme and rounding up. He did not receive any instructions from the ECP regarding the No. of ballot papers to be printed he contacted the ECP in case of need and contacted the PEC twice.
2. He received ballot papers on 8th May which had been collected on his behalf by ARO. The ballots had come under Army escort. He verified the ballots which he had received and thereafter carried out bulk breaking. He prepared

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packing invoices and took signatures of PO's at the time of distribution of the election material.

3. After distribution of ballots to the PO's he retained 44,000 which he deposited in the treasury. Ex.CW 11/1.Approx 52% of registered voters voted. Unused ballots were packed by PO's in election bags and deposited by him in the treasury. He received all Form XV's

WITNESS BY MQM.

MQM.PW-1, Dr. Farroq Sattar, (Party head duly registered with ECP at time of the 2013 elections)

1. He denied the allegations which had been made against the MQM by JI and MQM (H) through their witnesses which concerned rigging and intimidation of the MQM (H) and JI voters in Karachi.
2. He contended that MQM was a populist party which had been winning about 80-85% of seats in urban Sindh since 1987. When the MQM boycotted elections there was hardly any voter turn out in Karachi e.g. only 5% in 1993 when MQM boycotted NA elections.
3. MQM won elections whether or not they were supervised by the Army e.g. on 23-4-2015 when the election for NA 246 took place which was fully supervised by the rangers the MQM won with an unprecedented turn out.
4. He was not aware of the meeting in the CM's house to discuss deployment of the Army during elections in Karachi. The MQM neither demanded nor opposed the deployment of the Army.



WRITTEN ARGUMENTS ON BEHALF OF THE PARTIES (After conclusion of the witness evidence on 19-6-15 the parties to the proceedings, if they so desired, were directed to file a written synopsis of their arguments The following parties filed a written synopsis of their arguments which is briefly summarized as under):.

PTI.

288. According to the PTI the Commission is not an Election Tribunal and it was notable that the language used in S.3 © differed from S.70 ROPA according to which the result of the election needed to be materially affected whereas S.3 © used the words on an overall basis and these variations in language were significant in determining the Commission's TOR's

289. With regard to Para 3(a) the PTI stressed the ECP's failure to organize, conduct and make arrangements for holding elections under A. 218(3). According to the PTI there was a preponderance of evidence on record which proved that the ECP either willfully or knowingly and or with reckless negligence allowed the organization and conduction of the elections in such a manner that it was materially and substantially flawed and not in accordance with the Constitution and applicable electoral laws. Furthermore, the directions and instructions of the ECP had not been implemented particularly in respect of the ECP's Action Plan which was circulated on 18-4-2013 to all PEC's and concerned Printing Presses.

290. According to the PTI the evidence on record established, amongst other things, that the rounding up requirements in the Action Plan in order to determine the No. of ballots that were required was violated and so was the requirement for uniformity in the Action Plan but the ECP did not move to act on these violations. That the ECP's response to the PTI's

Preliminary submissions in GEICD 9/15 did not in many parts correspond with the evidence that was lead on the issue which lead to the suspicion that the ECP was shifting its ground in order at best to cover up its lapses.

291. That the manner of determining the required No. of ballots especially in the Punjab, where there were large variations in excess ballots and very high excess ballots, was arbitrary and capricious and unlawful and that these huge no. of excess ballots were unlawfully retained as reserve. These excess ballots which were kept in reserve by the RO's were not accounted for at the end of polling by Form XV and the fate of such ballots is a mystery and goes to the root of transparency and the sanctity of the ballot.

292. In particular the PTI pointed to the massive No. of Form XV's which were not found in the polling bags when the Commission ordered the polling bags to be opened and the Form XV's retrieved. The Form XV's which the ECP produced from the RO's, rather than from the polling bags, the PTI regarded their authenticity as doubtful and questionable.

293. Even otherwise despite the ECP's reconciliation with Form XV's retrieved from RO's and those retrieved from the polling bags a large No. of Form XV's still remained missing. The PTI also noted that even out of the Form XV's which had been retrieved a substantial number of them were fatally flawed and defective and as such were non est.

294. The PTI argued that unless 100% duly completed and reconcilable Forms XV's were available for all Constituencies given the massive number of excess ballot papers which had been printed it could not be ruled out that those unaccounted for ballots

had not been used for unlawful purposes and thus it was not possible to hold that the elections have been carried out in accordance with the law especially as the crucial safe guard contained in the Action Plan of tallying the Form XV with the packing invoice was ignored. This failure to tally the Form XV with the packing invoice also rendered the whole consolidation proceedings non est.

295. According to the PTI the NADRA Reports prove the material violations of the mandatory requirement of S.33 ROPA which concerns the voting procedure. The NADRA pre scanning Reports also reveal that important post election material which should have been placed in the polling bags was not so placed in a number of cases.

296. The PTI argued that the evidence on record showed a pre concert, plan, strategy, system, method and design to influence and/or manipulate the 2013 election results particularly in the Punjab by the PML(N) where it won 92% of the seats and obtained 87% of its entire vote and in particular referred to the admissions of Mr. Najam Sethi in support of its contentions which showed that there was no independent Care taker set up Punjab which for what it was worth had collapsed after 25-4-13.

297. With regard to the elections in Balochistan the PTI was of the view that the evidence showed that these were a farce and a fabricated and engineered product of the bureaucracy and provincial administration and in particular pointed to the role of the PEC (B) and that there was no independent Caretaker Government in Balochistan.



PML (N)

298. The PML(N) rejected any role of the Judiciary in the rigging process stressing that it had no motive to be so involved. With regard to printing of excess ballots PML(N) argued that this was based on the rounding up by polling booth formula which had been used in the Punjab. Even if excess ballots had been printed this had no correlation with the election results as parties other than PML (N) also won where excess ballots had been distributed in a Constituency.

299. That the ECP had allowed outsourcing to the Pakistan Postal Foundation as the PCP was struggling to print the ballots on time. That all presses were secured by the Army and that only the No. of requisitioned votes were printed. That no printers were called at the 11th hour. Rather personnel with experience in numbering and binding were called for as this aspect was behind schedule and there was nothing suspicious in this.

300. That a few polling stations were changed with the approval of the ECP after DRO's had decided complaints on their location. The change in location of polling stations only concerned a miniscule no. of voters which would have no bearing on the overall election results.

301. The PML (N) stressed that in most cases where Election Petitions had been filed these had now been decided so there was no need to revisit the matter. There were few if any violations of election laws and those which were violated would have no material effect on the outcome of the elections.

302. That where the No. of rejected votes exceeded the margin of victory there was no discernible pattern and that FAFEN



had admitted that they had incorrectly mentioned that in 49 polling stations more than 100% of the registered voters turned out. As regards the allegations of rigging these were all vague and non specific and had not been proven by any solid evidence.

303. That the Caretaker Governments remained neutral and that the NADRA Reports showed that the votes which could not be verified were valid. The No. of Form XV's which were missing after combining all those which were uncovered in percentage terms were nominal and presented the same pattern across the country and as such did not show any particular design for the Punjab or anywhere else.

304. Even otherwise there was no evidence that any unused ballots were actually unaccounted for as the unused ballots would have been placed in the polling bags where they remained sealed. Although there may have been some procedural lapses in the electoral process there was no malafide on the part of anyone

305. No evidence whatsoever of rigging had been adduced in respect of the PA's of either Sindh or Balochistan.

ECP.

306. The ECP argued that no evidence had come on record to show that, a part from a few lapses, the general elections were not organized and conducted impartially, honestly, fairly, justly and in accordance with the law. There was no evidence of manipulation or influence and that on an overall basis the general elections of 2013 were a true reflection of the mandate given by the electorate.

307. That no extra ballot papers had been surreptitiously printed and if extra ballot papers had been printed there was no

evidence that they had been misused. The determination of the No. of ballots was by the PEC of each Province except in the Punjab where the RO's determined the required No. of ballots based on the formula of rounding the no. of ballots required for each polling booth in each polling station which was entirely lawful.

308. That there was nothing unusual in printing excess ballots for general elections and that the RO's who had given evidence had deposed that all excess ballots which they retained had been deposited back in the treasury. That they had not seen the Action Plan but had received the ECP handbooks which contained instructions concerning their electoral duties. The printing of excess ballots was done throughout Pakistan and the evidence did not reveal any pattern regarding the printing of excess ballots.

309. The initial figure of the No. of ballots to be printed was only a rough and ready estimate in order to give the printing presses an idea of the magnitude of work which they could expect.

310. With regard to Balochistan there may have been some constituency level irregularities but these were subject to election petitions. Low voter turn out did not constitute an election irregularity or an offense and this was largely on account of poor law and order situation which had been proceeding for some time and as such did not justify the postponement of the elections

311. With regard to Karachi the JI had not produced any solid evidence to support its case. The complaints of hindrances put in the way of the MQM(H) during the electoral process were also considered by the ECP which lead to repolling in NA 250 under supervision of the Army.

312. That NADRA's inability to carry out thumb verification did not amount to there being fake votes and this non verification did not show any systematic attempt to impact the out come of the elections.

313. With regard to the completion of the relevant election Forms on polling day such as Form XIV, XV etc there may have been lapses in completing these documents but even if so such violation on its own would not be proof that the election as whole did not constitute the will of the people. That the quality of record keeping on polling day did not establish deliberate wrong doing.

314. That the gap in the availability of Form XV had to be seen in the context that nearly all Form XIV's are available which are generally consistent with the Form XVI's. The gap in Form XV's therefore cannot be said to be of any decisive significance. Form XV's were more likely to be unavailable on account of a lack of understanding of the form filling requirements, lack of care or incompetence as opposed to a deliberate failure to generate them or remove them from the polling bags for which no evidence has been produced.

315. Concerning the consolidation of the result the record established that the result in not a single Constituency was impacted by any deviation between Form XVI and the underlying Form XIV which established beyond a reasonable doubt that the consolidation process did not suffer from any infirmity

316. There was no evidence that the candidates or their agents were not given notice in writing to attend the consolidation of results and in fact 8 RO's gave evidence that they gave such written notice.



317. With regard to the quality, maintenance and preservation of election material this could at best only amount to inconclusive circumstantial evidence of corrupt practices.

318. Missing Form XV's and broken seals of ballot bags for the misuse of ballot papers has not been clearly attributed to any one by the evidence. Was it the PO's or the RO's acting in connivance with whom? Or was it simply a case of incompetence and lack of understanding on the part of PO's. Seals to bags may also have been broken during their transportation from the PO to the RO or by the RO to the treasury. No evidence has come on record of any large scale countrywide wrong doings at polling stations and no challenges were made to any PO's.

319. There is no correlation of the winning candidate with the missing Form XV's and excess ballots since the winning candidates came from different parties in such instances.

MQM.

320. According to the MQM the Commission could not delve into rigging in respect of individual Constituencies as this was the role of the election tribunals under the law however the Commission could consider whether the elections as a whole had been rigged.

321. That the two parties who had raised allegations against the MQM (MQM(H) and JI) were excluded from participating in the proceedings before the Commission under S.5 (3) of the Ordinance in that both parties had not participated in the elections as they had boycotted the same.

322. MQM refuted the main allegations against it that (a) it had tampered with the Karachi voters list and (b) used force



against political opponents. According to the MQM the electoral rolls had been prepared by the ECP with the assistance of the Army and the MQM had nothing to do with preparing the electoral rolls. That the MQM had not resorted to violence against their political opponents and that no solid evidence had been produced in this respect.

323. Furthermore, the allegations made against them were a case of sour grapes as the MQM had displaced the JI from the electoral scene after the 1988 elections. That the MQM had not rigged the elections and it had won its seats fairly

BNP (A)

324. The BNP (A)'s case was Balochistan specific. The BNP(A) had contested 4 NA and 7 PA seats and had won only one. According to it in the 2013 elections in Balochistan illegal practices were carried out by State functionaries under the direct supervision and command of the Balochistan Chief Secretary (CS). In essence the elections were rigged by the CS and the role of the CM in Balochistan was symbolic.

325. In support of its position the BNP (A) relied on the evidence of the witnesses which they had either called or cross examined. In particular they referred to illegalities and misuse of power at a number of Constituencies including PB 42 and 43 Panjgur I and II, PB 28 Kech I.

326. The BNP (A) also pointed to the fact that no Cabinet had been formed in Balochistan in violation of the Constitution and that this had been deliberately done to allow the CS a free hand to influence the elections.



J.I.

327. The JI case was Karachi specific and one FATA seat specific. The JI argued that the elections were rigged in Karachi and in one seat in FATA by the MQM and the former Governor of KPK Eng. Shoukatullah respectively. In essence the case of the JI was that the MQM had rigged the elections in Karachi in connivance with the ECP by interfering in the electoral rolls and using violence in order to intimidate JI supporters which the ECP was not responsive to.

328. According to the JI their case had been proven by the witnesses which they examined who had given evidence about the interference in the electoral rolls by the MQM and the violence used by the MQM and the documents which they filed/exhibited which had gone unrebutted as they had not been cross examined by the MQM and only one witness had been posed one question by the ECP on cross examination.

329. That MQM's Dr. Farooq Sattar had only made a vague statement that the MQM rejected all allegations made by JI. He also admitted that the MQM was not one of the political parties which wanted the holding of elections under deployment of Army personnel which clearly meant that the said deployment of the Army during the elections would not suit the MQM as it could not have manipulated the elections in the presence of Army personnel. This was proven by the fact that when a fresh election was ordered for NA 250 under Army supervision the MQM lost

330. According to the JI the general elections in all seats from Karachi were not organized and conducted impartially, fairly and justly and the same were organized and conducted in utter

violation of the law and the directions given to the ECP in the **Workers Party Case** (supra) which were not implemented by the ECP which paved the way for MQM's success.

PML (Q)

331. The PML (Q) argued that there were strong reasons to bona fide believe that the general elections of 2013 were not conducted impartially, honestly, fairly and justly in accordance with the law primarily because the RO's did not consolidate the results in the presence of the candidates or their agents which was a mandatory requirement of S.39 ROPA. That due to the breach of this mandatory requirement at the time of consolidation the RO's achieved the desired results through the deliberate wrong compilation of results.

332. That although the RO's were the implementing hands behind the rigging as far as the persons responsible for preparing the rigging plan/design the suspicion fell on the PML(N) who were the beneficiaries of the rigging. The focus of the rigging was the Punjab which prior to the elections was under PML (N) rule.

333. In support of their arguments the PML (Q) relied on the 7 witnesses who they had called all of whom had denied receiving a written notice under S.39 and the fact that some parts of their evidence had not been the subject of cross examination and as such it stood admitted. That although the concerned RO's all stated that they had complied with S.39 the PML(Q) argued that such notices were insufficient to fulfill the strict requirements of S.39. PML(Q) also relied on other violations of electoral law by the RO's who in 3 cases had failed to check the ballots which had been

rejected by the PO's. The PML (Q) cited relevant case law in support of their above contentions.

334. Ultimately they argued that since mandatory requirements of the law had not been complied with this had affected the sanctity of the ballot especially in the Punjab and called for further investigation.

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ORAL ARGUMENTS ON BEHALF OF THE PARTIES (between 29th June and 3rd July 2015. A brief overview of each party's arguments are set out below.)

Oral Submissions on behalf of the PTI 29th June to 1st July

335. The learned counsel for PTI stressed that the addition of the word "impartial" was important as this word had not been used in A.218 (3) which TOR 3 (a) largely reflected and in his view the addition of this word widened the scope of TOR 3 (a). He also submitted that organized and conducted were separate words with distinct meaning which had to be decided upon separately.

336. As regards rigging this was rigging done by anyone. According to the Oxford English Dictionary (OED) "system" meant "method" and as such systematic amounted to methodical rigging in terms of S.3 (b). He emphasized that this language did not amount to the need to prove a conspiracy.

337. That although the Commission had to make separate findings on TOR 3 (a), (b) and (c) in effect 3 (c) was in the learned counsel's submission a consequence of 3 (a) and (b). It was stressed that in determining the TOR's the Provinces could be compartmentalized into units e.g. Sindh, Balochistan

338. Learned Counsel also pointed out that TOR 3 (c) had deliberately not used the word, "materially affected" as found in S.70 ROPA which applied to election petitions but instead had used the words, "overall basis" and as such the findings of the Commission will not be relevant to the determination of election petitions. The two issues were distinct.

339. Learned Counsel for PTI in particular noted in ECP's CMA 9/15 that it had stated that all extra and unused ballot

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papers were duly accounted for and were available for verification. This however did not appear to be the case as the ECP did not produce all Form XV's.

340. That in the end the Commission had to order the opening of all polling bags for the retrieval of Form XV's. As for the Form XV's which the ECP had collected from the RO's these were not accepted by the PTI primarily because they had not been kept in any form of safe custody and could not be safely relied on in respect of their authenticity.

341. That even now the learned Counsel for the PTI argued despite efforts to collect all Form XV's there was a material shortfall in the same and that even approx 10% of the Form XV's which had been recovered from the polling bags had not been completed in accordance with the law. As such there was no proper accounting for unused ballots. He considered that the ECP's CMA 98 filed after the ordering of the opening of the polling bags to retrieve Form XV amounted to an admission that the ECP did not have the available Form XV's. This was because the CMA contained Forms XIV and XVI which in the submission of the learned counsel for the PTI were irrelevant in terms of accounting for all issued ballot papers.

342. As for Balochistan learned Counsel for the PTI submitted that in reality there was no election and that the caretaker Government did not exist. He further submitted that in Balochistan evidence had come on record that polling stations were not opened, polling staff were informed about their duties at the last minute, it was the last Province where the polling scheme was announced, the PEC made all the decisions without consulting

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the RO's in respect of the required number of ballots, there were numerous unaccounted for ballots and most of the Forms XV's still remain missing.

343. In support of his contention of ballot stuffing in the Punjab Learned Counsel for the PTI referred to NA 125 Lahore and referred to ECP CW 14 Syed Shabbar Abbas Bukhari's evidence, who was then the District Election Commissioner Lahore, and his Report explaining why he had added 50,000 excess ballots over and above what the RO had requested and noted that there were packing invoices available on which calculations were made and rejected the justification of adding a further 50,000 votes. He submitted that in this Constituency 190,000 excess ballots had been printed which remained unused by PO's. By reference to the treasury receipt and other documents on record according to the learned counsel only approx 128,000 ballots had been returned which left an unaccounted for balance of approx 60,000 which had been misused.

344. Learned Counsel for the PTI also referred to the other RO's who had been called by the Commission to give evidence who he submitted in most of the cases had not properly carried out their obligations as per law. For example, CW 11 Mr. Khalid Iqbal RO of NA 171 did not receive any instructions regarding how to determine the number of ballots and made his own determination which lead to 44,000 excess ballots being printed. He had then returned them to the treasury against a receipt where the no. of ballot books had been totally scored out and a new manuscript figure placed which was not initialed to make it appear as if the returned books tallied to the correct figure of 440. Under the law it

was not even his job to make an account of the ballot papers. This was the job of the PO. That it was one of the biggest failures of the ECP in not giving proper guidance on how to determine the No. of ballots required and how to account for them. This in effect meant that there was no proper audit of the ballot which meant that the ballots could be misused as they had not been properly accounted for.

345. He submitted that with regards to ECP instructions which had to be complied with under A.218 (3) and S.103 ROPA there were only 2 sets of instructions. The first was found in the Action Plan attached to the ECP's letter of 18th April whilst the second was found in the handbooks to RO's and PO's.

346. The Action Plan in particular for determining the no. of ballots at 5. (viii) had directed that this be done by rounding up of polling stations however this had been ignored. The only other direction in the Action Plan at 5.(xiii) was that the RO's should carefully consolidate the result and shall tally the ballot paper account drawn by the PO with the result of the count with that of packing invoice of each polling station which again had been ignored. In his submission the consolidation of Count would be meaningless unless all the ballot papers had been accounted for at the time of consolidation and this was why 5(xiii) was so important. It was a safeguard to ensure the sanctity of the ballot.

347. This was a total failure on the part of the ECP which had failed to put in a mechanism to see that its instructions were being implemented on the ground and rather abrogated all its responsibilities under A.218 (3) illegally to PEC's, RO's and other junior officers. Despite being copied in on most correspondence the

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ECP secretariat did nothing to ensure that its instructions were either implemented or enforced. He submitted that the failure of the ECP to organize and conduct the elections and in particular stop violations of the electoral laws had lead to it being made redundant.

348. With regard to TOR 3(b) and the method of influencing the elections this was achieved by having a very weak and powerless care taker Government which effectively allowed the Administration in the Punjab to run the show and call the shots which was under the influence of the former CM of the Punjab which was assisted by the ECP relinquishing its responsibilities to the PEC and RO's.

349. For example, the Care taker CM had stated that 7-10 days before polling his powers were beginning to slip away and that after the elections the secretaries were reporting to model town. The last meeting of the caretaker set up was on 26th April 2013 and in effect the CM had no authority, no power and no body was listening to him. He's powers were slipping away to Raiwind and the PML (N) leadership who were calling the shots. The former secretary education was deliberately retained because almost 50% of the polling staff came from the education department. The CM had even stated that no one asked him about calling more personnel to help with the printing of ballots prior to the elections which suggested that the administration was in charge in contradiction to the evidence of the Additional Chief Secretary Punjab PTI CW 2 Rao Iftikhar.

350. The learned counsel for the PTI submitted that there had been selective rigging in the Punjab especially in Lahore which



was illustrated by the huge no. of excess ballots which could not be accounted for and in his submission had been misused.

351. Learned counsel for the PTI pointed to the letters issued in April again as circumstantial evidence of the deliberate printing of excess ballots for rigging. For example, the 20th April letter first contained the Constituency wise break down, however this was allegedly not sent and was replaced by a 21st April letter containing new Constituency wise figures. According to him based on the evidence the 20th April letter had been sent. Then apparently another letter dated 26th which for the first time had been based on the requisitions by the RO's on a Constituency wise basis was sent to the printers. However by reference to a Chart which compared the requisitions made by the RO's on 26th April compared with the actual number of ballots printed learned Counsel submitted that in some Constituencies the number of excess ballots had increased and not decreased as alleged by the ECP and it was these ballots aimed at targeted Constituencies which were misused and remained unaccounted for.

352. This is why he submitted once the 26th April requisition was made the PCP Lahore claimed a lack of capacity and transferred on 28th April ballots to be printed to PCP Islamabad which were then transferred to the Postal Foundation for printing. The Foundation printed 17 M ballots but handed over a balance 4M on 8th May which were used for last minute rigging. Thus, the 26th April ballot requisition did not include the ballots which were later printed by the Postal Foundation and used for targeted rigging. Importantly he stressed that it would be a political decision to determine where the extra ballots should be used and

not an administrative decision which showed the plan/design by anyone.

353. With regard to the NADRA Reports and pre scanning reports the learned counsel for the PTI submitted that these showed that a large no. of electoral violations had gone unnoticed on polling day.

354. With regard to the RMS system this had failed and was largely on account of inadequate training being given by the ECP. As regards the question of ink its inadequacy lead to 1,000's of votes in each Constituency not being able to be verified in terms of who actually cast the vote. Even otherwise the ECP did not have the equipment to test it so the question of verification based on the thumb impression could not be relied upon. Learned Counsel for the PTI disagreed with the NADRA expert that these unverified votes on account of the ink were 97% accurate and the best that could be said were that they were doubtful votes.

355. In summing up learned counsel submitted that it was for the Commission to consider the material before it and that if TOR 3 (a) and (b) were made out then 3 (c) may be consequential however he submitted that 3 (c) ought to be treated as distinct as it referred to an "overall Basis". He submitted that if 3 (a) was made out the question would be whether the violations were to such an extent that the 3 (c) standard of overall basis would be met.

Oral Submissions on behalf of the PPP 1st July 2015

356. Learned Counsel for the PPP made it clear that his submission only related to the Punjab and KPK and in particular were focused on Punjab in respect of rigging.

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357. In his submission if it was found that there were irregularities in 30% or more of the polling bags then on an overall basis the elections had been influenced or manipulated as per TOR 3 (b). With regard to Form XV's the electoral law did not even envisage RO's retaining Form XV's.

358. He further submitted that the election results had been fabricated. With reference to NA 124 the evidence of PTI CW 3 the PEC of Punjab clearly showed that the PEC wanted to avoid carrying out an inspection of the polling bags and when the polling bags were finally inspected 127 bags had a broken seal, 31 were unsealed and a large number of electoral forms were missing.

359. The fabrication of the results was evidenced by the fact that when in April 2014 the bags were inspected there were no Form XV's for polling stations 7 and 10. However when the Commission ordered the inspection of these polling bags in May 2015 both the Form XV's for these polling stations were found in the polling bags. This clearly showed that there had been tampering with the evidence and there was no other explanation as the bags had been resealed after their inspection in 2014. He stressed that such wide scale recurrences of missing Form XV's was not a case of negligence but a case of deliberate destruction. He submitted that approx 40% of all Form XV's across the Country were missing and that if another inspection was carried out this would be the same for other Forms.

Oral Submissions on behalf of PML (Q) 2-July 2015.

360. Learned Counsel for PML (Q) emphasized the need to comply with the Constitution and law in electoral matters and implementing that law. He submitted that this had even been



recognized in the post election report of the Election Commission in its recommendations whereby it stressed the importance of consolidation of the count being witnessed by the candidates. This was in consonance with S.39 ROPA and in his view the ECP had not enforced the electoral laws

361. He submitted that in every election a mechanism was used for rigging and in the 2013 elections the mechanism was that at the time of consolidation the candidates were not given notice and the consolidation was not carried out in an open and transparent manner which lead to manipulation of the results. He relied on the candidate witnesses which the PML (Q) had called who had testified to this effect and stressed that parts of their evidence had not been challenged in cross examination and therefore remained unrebutted and as a matter of law should be given more probative value

362. The fact that S.38, 39 and 40 ROPA were all circumvented on so many occasions was not an accident or a coincidence but a deliberate effort. That the Commission when reaching its decision must consider whether the elections were open and transparent and in accordance with the law from the perspective of the common man which in the view of the PML (Q) they were not.

Oral Submissions on behalf of BMP (M) 2 July 2015

363. Learned Counsel for BNP (M) emphasized that the language used in the TOR's by referring to general elections made it clear that it was not only the general election at the national level which the Commission had to inquire into but also all the elections at the Provincial level. Although since Balochistan had only 14 NA

seats and with regard to the elections to the NA it may only have a small bearing but the Commission needed to see the entire situation in the Context of Balochistan as a whole and deal with its elections separately from the other provinces.

364. He submitted therefore that the question was whether the elections in Balochistan could be considered as fair and in accordance with the law. If elections were considered not to be fair and not in accordance with law in Balochistan in his submission this would trigger TOR 3(c) and indicate that the elections were not fair on an overall basis. The answer to TOR 3 (c) was not dependant on the answer to TOR 3 (b) concerning a systematic plan but could be met even if only TOR 3 (a) was satisfied

365. Learned Counsel also submitted that with regard to TOR 3 © the word "electorate" should be applied to all those registered voters who had a right to vote but were prevented from doing so due to the prevailing situation in Balochistan and in effect had been deprived of their right to vote. In his submission even if 10% of the electorate voted this would not be a fair election as many other potential voters had been deprived of their right to vote and had they been given such right the result would have been different. In this respect he pointed to the fact that the Deputy speaker had been elected with approx 300 votes whilst even the CM secured less than 5,000 votes.

Oral Submissions on behalf of JI 2 July 2015.

366. Learned counsel for the JI in his submissions focused on Karachi and one seat in FATA. He relied on the evidence of the witnesses which his parry had called none of whose evidence had

been subject to cross examination apart from one question by the ECP and as such it stood unrebutted.

367. His first submission was that the electoral rolls had not been prepared in accordance with the law despite specific directions to this effect by the Hon'ble Supreme Court in **Imran Khan's Case** (supra) and this had favored the MQM and had not lead to free and fair elections in Karachi.

368. He further submitted that in Karachi there was not a level playing field on account of the MQM which harassed other party workers and which had not favored the deployment of the Army to ensure the fairness of the elections and prevent such harassment. In particular he submitted that when re elections took place in NA 250 under the supervision of the Army the MQM lost the election.

369. He stressed that there were large no go areas in Karachi where the JI and its supporters were prevented from going by the MQM and that the ECP had remained unresponsive to its complaints which lead to JI's withdrawal from the election. On account of the above factors he submitted that there had not been fair elections in Karachi.

Oral Submissions on behalf of BMP (M) 2 July 2015.

370. According to learned Counsel for BNP (M) there were no fair elections held in accordance with the law and that the Chief Secretary was instrumental in rigging the elections in favor of selected candidates.

371. He argued that an enmity had started between the Chief Secretary and BNP (M) before the elections when the Chief Minister and some of his cabinet ministers walked out of a cabinet

meeting on account of the presence of the Chief Secretary who had made adverse allegations against them. That this had lead to the Chief Secretary going on forced leave however the Chief Secretary ensured that he was re appointed before the elections were held.

372. At the time of holding the elections the Chief Secretary was running the administration and was therefore in a position to carry out selective rigging. There was a Care taker Chief Minister but it was submitted that he was only symbolic and had no real authority which vested in the Chief Secretary.

373. With regard to selective rigging learned counsel emphasized the case of Dr. Malik who was now the Chief Minister of the Province. In the case of Dr. Malik on election day the RO (Mr. Dasti) had received a mistaken result in favour of Dr. Malik from a polling station over wireless through the levies and later received a different result in writing from the PO. When the RO, Mr Dasti, had asked the PEC of Balochistan which result to accept, Mr.Dasti was told by the PEC to accept the written result. However before Mr.Dasti could announce the election result based on the written result which would have meant Dr.Malik lost the seat Mr.Dasti at first disappeared and later was removed illegally by the Chief Secretary which lead to the result not being changed and Dr.Malik being elected.

374. He also submitted that PB 42 and 43 Panjgur I and II were other examples of selective rigging where despite requests from the candidates and recommendations from RO and DRO to postpone the election due to the poor law and order situation the PEC allowed the election to continue.



Oral Submissions on the behalf of PML (N) 2 July 2015.

475. Learned Counsel for the PML(N) submitted that the 3 TOR's were independent and that TOR 3 © is not determined by a finding against the PML(N) in respect of TOR (a) and (b).TOR 3 (c) was a separate question. For example, if the Commission found that there had been rigging in Karachi this would not impact TOR 3 (c) as 3 (c) referred to the electorate as a whole not a part of it. That the word, "Overall" was not confined to individual Constituencies and areas. Instead the question was whether the illegalities had been to such an extent so as to effect the overall integrity and result of the election.

476. In his submission the addition of the word, "impartially" in TOR 3 (a) did not make much difference as it was similar to the word fair which had been defined in the workers Party case. Like wise the omission of the words, "and that corrupt practices are guarded against" did not make much difference since if some thing was not done in accordance with law then this aspect would largely be covered. He did however consider that Para 5.1 and 5.2 of the Accord were significant since in these Para's the PTI had accepted the appointment of the Chairman NADRA and Secretary ECP and as such they had shown that they had confidence in them and should not be critical of them now.

477. That the main and initial allegation of the PTI as found in its preliminary submissions was that the electoral mandate had been illegally manipulated and stolen which he would show through his submissions and the evidence was not the case. The fact that the PTI received many votes but less seats was irrelevant



as it was a natural outcome of the first past the post electoral system.

478. Turning to Balochistan the learned counsel submitted that out of an approx 1.3 M votes the PTI only secured 40,000 in the NA and 24,000 in the PA elections. That no candidate from the PTI had been elected in the entire of Balochistan. That with regard to the 14 NA seats the PTI did not put up candidates in many NA seats and when it did only one managed to come second with a large margin of defeat. He noted that overall turnout for Balochistan was approx 42% which was not much lower than KPK and had increased from the 2008 elections where it had been approx 34%. In these circumstances it could not be said that the PTI's mandate had been stolen as it had no mandate to steal. Whilst it was correct that in a few areas it was difficult to hold the elections as some people deliberately wanted to cause them to be postponed it was better to proceed with such elections and not give in to such forces.

479. With regard to the Punjab the PTI did not contest 10 out of the 148 NA seats, they came 3rd or lower in 79 seats, won only 8 out of 148 seats and was runner up in the remaining 51 seats out of which in 36 seats the PML(N)'s winning margin was over 30,000 votes. Only 4 seats where PTI was a runner up could it be said to be by a marginal number of votes. So if there was any theft of the PTI's mandate this could only relate to 49 out of 148 seats at the most for which the PTI had provided no mechanism as to how this theft was achieved, for example, through RO's

480. Learned Counsel submitted that the administration had no leanings in favour of the PML(N). The care taker CM Najam

Sethi had re shuffled the whole bureaucracy in order to ensure fair and transparent elections bar 4 secretaries all of whom the Chief Secretary had given valid explanations for their retention. For example, DFID had wanted the Secretary Education to continue due to the large investment which it had put into the Punjab education sector.

481. The PTI had even approved Mr. Javed Iqbal's appointment as Chief Secretary. No allegation was made that in the Punjab polling agents were forcefully removed from polling stations and there was no evidence of stuffing of ballots.

482. With regard to the Forms XIV and XVI an analysis carried out by the ECP showed that in most cases the Form XIV result matched that of the Form XVI consolidated result apart from a few cases where minor errors had been made. PTI CW 9 Muzzaffar Rizvi of FAFEN in his Report had made reference to a Parallel Vote Tabulation (PVT) System which was carried out by FAFEN which was in effect an exit poll which had shown that in approx 264 out of the 272 NA seats the PVT matched with the results of the ECP in terms of the winner and runner up.

483. Learned Counsel submitted that the attack on the judiciary was scandalous and submitted that it was the political parties themselves who had requested that the judicial officers be used as RO's which the NJPMC had agreed to once it had been assured that the political parties had confidence in their appointment.

484. The PTI in its Dharna's had implicated the former CJP in rigging and the PML (Q) had done the same in its written application before the Commission and had even reproduced the

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CJP's address to the RO's which was apparently used to influence them. However learned counsel submitted that the speech only called upon the RO's to perform their duties in a transparent manner to ensure free and fair elections.

485. He stressed that judicial officers are neutral and do not answer to any Government so they had absolutely no motive to influence the election result. With regard to the 24 RO's who were examined all stated that they had given S.39 notices to the respective candidates, all excess ballots which they had kept in reserve they had returned to the treasury and had received a receipt in respect of such return and that Forms XIV and XV had been received in all cases.

486. As regards the involvement of the PML (N) in any rigging absolutely no evidence had come on record in this respect it was simply based on the assumption that because the PML (N) won in the Punjab there must have been some rigging. As for the ECP it fulfilled all its election duties as per law. In terms of results in both the NA and PA's after disposal of election petitions 91% of all results now stand confirmed.

487. With regard to excess ballots learned counsel submitted that originally in September 27th 2012 meeting the ECP had directed that 180 M ballots be printed. However by the time of the Action Plan which was issued under cover of 18th April 2013 letter this had reduced to 172M but provided a formula by which the votes could be more precisely calculated in terms of rounding up based on the number of polling stations as the ballot books could not be split. Based on rounding up as per the polling stations only 5.34M excess ballots had been printed and on



account of 20 re prints this percentage reduced to 4.1%. That in Punjab when the RO's calculated the ballots this actually lead to fewer ballots being printed than was determined by the PEC when the 21st April PEC requisition is compared with the 26th April RO requisition

488. Learned counsel did however concede that there had been about 21 aberrations in the Punjab in terms of huge no. of excess ballots being ordered however he stressed that this did not necessarily correlate with the results as in such cases the PML (N) had only won 17 out of the 21. With regard to these 21 aberrations 11 RO's had been called all of whom had given evidence that they had returned the excess to the treasury and as such all reserve was accounted for.

489. He submitted that such huge excesses had arisen in these cases because the RO's had got their calculations wrong which was an administrative lapse on their part but there was no mal intent behind it. In particular he referred to the RO of Sindh who had not determined the No. of ballots which had been done by the PEC of Sindh and she had no choice but to keep them and then return them after the election in exchange for a receipt.

490. With respect to Form XV's learned counsel submitted that although these forms were missing from the election bags in many cases and in other cases had not been properly filled out this was on account of a dereliction of duty on the part of the PO's and their lack of awareness of the importance of the document although such dereliction appeared to be less in the Punjab. Although it was a lapse an important aspect was that such

widespread failure did not show any pattern. It was a failure which applied to every province in the Country

491. With regard to Para 5(xiii) of the Action Plan whereby a comparison had to be made with the packing invoice learned counsel submitted that this information was not passed on to the RO's hence they did not do it and even otherwise it was not a requirement under ROPA. He stressed that such lapses did not have a mandatory effect and were rather directory in nature and if substantial compliance had been carried out as in this case there was no illegality which would warrant voiding an election. Learned Counsel cited relevant case law in support of his position.

492. With regard to NADRA reports only 10 cases were still pending in respect of these Reports all of which related to Sindh. In closing learned counsel submitted that as per the reports of the international observers the 2013 elections were the most credible in the history of Pakistan

Oral Submissions on the behalf of ECP 3 July 2015.

493. Learned Counsel for the ECP submitted that the elections had been carried out fairly and in accordance with the law. He submitted that no extra ballots had been surreptitiously printed after 26th April as alleged by the PTI. He submitted that the Joint PEC Punjab had made a calculation of the no. of ballots to be printed on a given formula which was attached to a letter dated 20th April however this formula was not agreed to by the PEC Punjab and the 20th April letter was never sent and no printing was carried out pursuant to it.

494. The PEC ordered for a re calculation based on a different formula which was logical and not arbitrary which was

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sent for printing. However by 26th April the PEC had received the requisitions from the RO's based on rounding up on the basis of polling booths which reduced the no. of ballots which were required.

495. The PEC then sent this new requisition for printing by letter dated 26th April 2013. This meant that there were two separate requisitions at the printers. Some printers had already completed their printing on the basis of the 21st April letter before receiving the 26th April letter whilst other printers printed the ballots based on the 26th April letter if they had not already commenced printing based on the 21st April letter. Thus, variations in No. of ballots occurred depending upon whether the printer had printed the ballots based on the 21st April requisition or 26th April requisition. That no ballots had been surreptitiously printed after the 26th April letter in respect of any Constituency and learned counsel showed an example of this in respect of NA 154 Lodhran.

496. The ECP was aware of the above situation as the secretariat was copied in to the correspondence and did not interfere because as far as it was concerned nothing untoward was taking place. Learned counsel accepted that in NA 123 and 128 errors had occurred which lead to over inflated figures by the RO's but these were corrected by CW 14 Shabbar Abbas Bukhari who was the DEC who had also admitted to increasing the no. of ballots requested by the RO in respect of NA 125 for the reasons explained in his evidence.

497. He explained that RO's as per their evidence had determined the no. of ballots which they required based on rounding up on the basis of the number of polling booths in each

polling station. He submitted that such rounding up did lead to excess ballots but this was a constitutional requirement as the RO's had to ensure that there was a ballot for every potential registered voter which could only be achieved by rounding up on a polling booth basis.

498. Rounding off per booth was necessary because in most polling stations there were separate booths for men and women and thus rounding off was required at the women's booth and at the men's booth. This led to excess ballots because the books could not be split. If rounding up was done on a polling station basis instead of polling booth basis then there may be insufficient ballots. RO's in their wisdom had rounded off per booth to ensure that every person's constitutional right to vote was preserved and that rounding off per booth was the usual practice.

499. Learned counsel then showed the example of how rounding off per booth led to approx 73,000 excess ballots being printed in respect of NA 53 which was not an arbitrary figure but had been based on using the formula of rounding up per booth. The no. of ballot papers required per Constituency also varied on account of the fact that different Constituencies had different no. of polling stations with different no. of booths and therefore a different no. of ballots was required on a case to case basis.

500. With regard to NA 53 learned counsel also went through a packing invoice which showed that on distribution of the ballots to a polling station this was done on a polling station basis as opposed to a booth basis and the excess was kept in reserve by the RO just in case it was required. Although there were no instructions to keep a reserve this practice was adopted by all RO's

throughout the Country as was shown by the evidence of the RO's called from Sindh and KPK. The PEC in Punjab probably requested the RO's to provide the requisitions which they needed because administratively it was a far bigger Province and in any event the RO's calculations reduced the no. of excess ballots that had earlier been worked out by the PEC.

501. With regard to Form XV learned counsel submitted that S.38 ROPA did not provide how Form XV should be transferred from the PO to the RO which was covered in the ECP handbook which had provided for 2 Form XV's being generated one of which was to be placed in the polling bag and the other was to be given to the RO. Learned Counsel conceded that Form XV should not have been retained by an RO and that the ECP should have ensured the recovery of all Form XV's but this was an oversight on the part of the ECP. The ECP was primarily giving importance to the Form XIV and XVI as opposed to the Form XV which it would now rectify.

502. Learned counsel submitted that the absence of a Form XV could be rectified by comparing the packing invoice with the Form XIV since when these two documents were read together they contained virtually the same information as the Form XV except for the information concerning spoiled and challenged votes. He pointed out that with regard to the 2013 elections the ECP had all Form XIV's and some packing invoices so the information contained in the Form XV could be reconstructed.

503. Learned Counsel also referred to the FAFEN Report which had produced a table on election day observations which indicated on the whole most of the relevant forms were present and

filled out on the election day and there was a need to distinguish between documents which were actually present on the day to those which may have subsequently gone missing after a lapse of two years. He also submitted that 9 out of the 11 RO's which the Commission had called had testified that they received Form XV on polling day from the PO.

504. With regard to NA 124 where the PPP had claimed that documents which were originally missing had now been found this was because when NA 124 was originally inspected only the white NA polling bags were inspected however during the Commission's inspection all 3 bags were checked and the forms had probably been placed in the wrong bags by mistake which had not been the subject of the original inspection. With regard to NA 125 he submitted that the RO did not retain 190,000 excess ballots. Instead he retained 133,000 excess ballots 128,000 of which had been accounted for so there was a gap of only 5,000 which meant that probably one carton of ballots containing these 5,000 had been lost when it was being returned to the treasury. As such there were not 60,000 missing ballots as alleged by the PTI. In any event there was no evidence of any deliberate wrong doing.

505. With regard to the NADRA Reports and the invalid NIC's learned counsel submitted that nothing could be deduced from this because many of these NIC's were knocked out because either an incorrect digit had been put on the counterfoil or a digit had been omitted on account of human error which lead to them not being verifiable.

506. With regard to the discrepancies and differences in the Form XV's and packing invoices this had not been done in a



fraudulent manner nor had any forgery taken place. Instead these discrepancies were on account of a lack of understanding on the part of the PO who filled out the forms but did not realize the importance of filling out the forms accurately and such discrepancies had been made by mistake. Even otherwise the discrepancies were relatively minor. Learned Counsel however conceded that the PO's were generally not capable of filling out the forms properly and that the ECP would take steps to rectify the situation.

507. Learned counsel also conceded that lapses had been made by the ECP in preserving the record by leaving it in storage at treasuries and not caring for the manner in which it was stored despite such material being relevant as evidence before an election tribunal but submitted that the ECP was now moving to rectify this situation by trying to acquire its own storage space. He further submitted that this post election lapse was not sufficient on its own to conclude that the elections were unfair.

508. With regard to Balochistan the learned counsel submitted that in small parts of Balochistan there were problems in holding elections but these problems had been present in elections in the past and would probably be present in elections in the future but this was no reason for not holding the elections. In his submission bearing in mind the law and order situation more that adequate arrangements had been put in place for holding fair elections in Balochistan and fair elections had taken place. With regard to Karachi he submitted that only general allegations had been made which did not prove that the elections had been unfair.



509. In summing up, learned counsel submitted that no election is perfect and that is why the Courts apply the rule of substantial compliance which ought to be applied in this case. He conceded that there may have been some failings on the part of some PO's and some shortcomings in the storage of election material but none of the PTI's original allegations in its preliminary submission had been proven. There was no evidence of any undue influence or manipulation or unfairness in the election process and that on the whole the elections were credible and fair.

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THE BURDEN/STANDARD OF PROOF.**Introduction**

510. At the initial stage of the proceedings the Commission asked the learned counsel representing the political parties to make preliminary submissions and giving briefly the standpoint of the parties they represented. A number of proposals and suggestions were made as to how the Commission shall proceed in its inquiry. One of the points of discussion related to the burden and the standard of proof that the Commission should follow in evaluating the evidence.

511. There is a distinct difference between the burden of proof and the standard of proof. The burden determines who must prove his case whilst the standard dictates to what degree based on the evidence he must prove his case.

512. Since the Commission is not a Court and it is not bound by any general rule on either who bears the burden of proof or to what standard that burden needs to be proved the Commission had to decide which party, if any, bore the burden of proving its case and to what standard in answering its TOR's. For example, would the Commission need to be satisfied that the TOR's had been proven by the party alleging their breach beyond a reasonable doubt or on the basis of a balance of probabilities or some other yardstick deemed appropriate by the Commission.

Burden of Proof.

513. In a Criminal case the burden would lie on the State to prove its case. Whilst under civil law it is a settled principle that he who alleges bears the burden of proving that allegation.



514. According to the learned Counsel for the PTI the use of the words "whether or not" in the TOR's place the burden equally on all parties. Burdens were placed upon institutions to perform their Constitutional duties e.g. the ECP had the burden of discharging A.218 (3) and A.5 of the Constitution. Therefore once the PTI had made out a prima facie case the burden shifted to the ECP to prove that it had discharged its burden under A.218 (3) and A.5 upon which the Commission had to make a decision.

515. Learned Counsel for the PPP drew the Commissions attention to various of its order sheets and a number of provisions in the Ordinance and submitted that they largely placed the burden of proof on the Commission to answer it TOR's by exercising the various powers at its disposal under the Ordinance especially as the words used in the TOR's "whether or not" placed the burden on no particular individual or party.

516. On the other hand according to the PML (N) the burden of proof lay on the PTI which had made the allegations and it was stressed that the Commission especially in relation to the ECP should bear in mind A.129 of the Qanun-e-Shahadat Order 1984 and the presumption that judicial and official acts have been regularly performed.

517. Whilst keeping in view the above submissions in determining where the burden lay the Commission considered the background to its formation as set out in the relevant part of the Preamble/recitals to the Accord which is set out below for ease of reference;

" Whereas the PTI has alleged that in the General Elections 2013 to the National and Provincial Assembly (ies) (hereinafter "GE 2013")

violations of the requirements of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter the "Constitution") were widespread and that the overall results of the 2013 General Elections were affected to such an extent that the same do not reflect the true will of the electorate; (bold added)

Whereas the PML(N) does not accept PTI's allegations; and

Whereas both Parties have agreed in the national interest to resolve this issue through formation of a Judicial Commission".

518. It is apparent from this background that primarily this Inquiry Commission came into existence on account of the PTI's allegations that on account of widespread violations of the Constitution the general elections of 2013 were affected to the extent that they do not reflect the will of the people. Likewise on P.8 of its Preliminary submissions and proposals at Para 2.5 the PTI has emphasized its demand for the formation of an independent high powered Commission to inquire into the 2013 elections. (bold added). It has also been the stand of the PTI throughout that these proceedings are of quasi-adversarial nature.

519. It has been suggested by some parties to the proceedings that the burden to inquire into the TOR's rested with the Commission. The Commission accepts that its mandate is one of inquiry and to uncover the truth in answering its TOR's and that it has been given the necessary powers under the Ordinance to conduct such an inquiry.

520. The Commission however is of the view that bearing in mind the background to the Constitution of the Commission and the settled principle that he who alleges bears the burden it is primarily for the parties who have made allegations to prove them with the Commission providing all necessary assistance in this

regard. For instance by calling for the production of both documents and witnesses where it considered this to be necessary and not within the power of the alleging party. For example, the Commission ordered all polling bags to be searched for Form XV's and called a no. of relevant witnesses on its own motion in order to assist it in its inquiry.

521. Thus the burden to prove the allegations primarily lies with the PTI and the other parties who support these allegations.

The Standard of Proof.

522. As mentioned earlier this is the degree to which the alleging party must prove his allegations based on the evidence adduced before the Commission, depending upon the consequences that flow if the allegations are proved.

523. In a criminal trial the onus is on the State to prove its case beyond a reasonable doubt based upon the evidence before the court which has been subject to strict rules of admissibility and proof and strict rules of procedure. This is a high standard of proof. The rationale being that if an accused is found guilty by the Court trying him it is extremely likely in most cases, depending on the severity of the offense of which he is found guilty, to lead to him losing his liberty for potentially a considerable period of time or even his life.

524. On the other hand in a civil trial or other civil proceedings the person who brings the case has to prove its case on a balance of probabilities/preponderance of evidence; which in effect means it is more likely than not.

525. The Commission was of the view that as it was not a Court of law and since no restrictions or guidance as to the

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standard of proof which it should apply had been provided in the Ordinance which created it, it could determine its own standard of proof.

526. The PTI's initial position was that the TOR's would need to be proved by a lesser standard than even a balance of probabilities as briefly set out in its CMA 23/15, the relevant part of which is as under:

“Threshold of Evidence:

2. With regard to the quality and threshold of evidence and material that is required to enable the body ceased of a matter to determine issues may be stated as follows **in the descending order of the threshold of evidence. (bold added)**

<i>Courts and judicial bodies exercising criminal jurisdiction subject to certain exceptions (as provided in special or general law)</i>	<i>Proof beyond any reasonable doubt</i>
<i>Courts and judicial bodies exercising civil jurisdiction subject to certain exceptions (as provided in special or general law)</i>	<i>On the balance of probabilities (preponderance of evidence)</i>
<i>Bodies exercising quasi-judicial jurisdiction (according to the statute under which the body created)</i>	<i>On the balance of probabilities (preponderance of evidence)</i>
<i>Courts and tribunals exercising administrative jurisdiction</i>	<i>Balance of probabilities (preponderance of evidence)</i>
<i>Tribunals and commissions invested with inquisitorial powers and functions (to report on specified matters)</i>	<i>In any event the threshold has to be lower than the threshold applicable to any of the above (bold added)</i>

It is therefore self evident as you move away from regular courts and tribunal with adjudicatory powers and plenary jurisdiction or special general jurisdiction the threshold of evidence becomes lower and lowers. For instance from courts of law to commissions of enquiry (e.g. a coroners court which determines the cause of death of a person) in such

case the underlying requirement is to adopt the lowest threshold of evidence provided that the basic requirements of 'natural justice' are observed. In the case of commission of enquiry if the relevant statute has not specified the threshold of evidence then the broad general principle of will be followed (sic)."

527. Learned Counsel for the PPP, in his oral submissions at the conclusion of the inquiry was of the view that the standard of proof should be even lower than balance of probability as the Commission was holding an inquiry and not conducting a trial and its short duration limited its opportunities of uncovering evidence.

528. In his view the consequences of the Accord were not relevant in determining the standard of proof as this was a political issue and the standard should be a reasonable degree of probability. In this respect he noted that in the Asghar Khan Case despite the Hon'ble Supreme Court finding that there had only been 34 individual payments in connection with the 1992 elections this was sufficient to hold that the election to a degree had been interfered with.

529. On the other hand the PML (N) and ECP's position was that the TOR's had to be proved beyond a reasonable doubt especially with regard to the PML(N) which observed that the PTI had in effect alleged a criminal conspiracy against the PML (N) and its associates etc which was a criminal offense and the required criminal standard was appropriate with any benefit of the doubt going to the PML(N).

530. In its written submissions, the MQM standpoint was that the standard of proof in deciding election petitions was beyond reasonable doubt but since the Commission was not hearing an

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individual election petition the standard should be in between the two tests of balance of probability and beyond reasonable doubt.

531. As can be seen the parties differed greatly with regard to the appropriate standard of proof to be applied. The PML (N) (requested proof beyond a reasonable doubt), the MQM (requested an in between standard) the BNP (A) (requested proof on the ratio of probabilities) and the PTI and PPP (who requested a standard less than the balances of probabilities) (although the PTI later in its oral arguments leaned towards a balance of probabilities) the Commission considered this issue very carefully as a matter of law.

532. The Commission was of the view that the consequences which may flow from a finding/decision was relevant in determining the standard of proof and noted that the findings of the Commission will have two fold direct effects of serious nature. The first relates to Section 3(b) of the Ordinance, namely, that the general elections 2013 were manipulated or influenced pursuant to systematic efforts by the design by anyone. The PTI has alleged that such manipulation was done by PML (N), its supporters, accomplices, associates and cohorts. In case the allegations against the party or any individual are established, it would of necessity entail serious consequences both politically and legally. The second effect in the event the findings on the TOR goes in favour of PTI as stipulated in the Accord may lead to dissolution of both national and PAs and holding of fresh elections; Paragraph No.4 of the accord reads:

"4.1 In consequence of clause 3 hereinabove, if the Commission determines that the result of the 2013 GE, on an overall basis, are not a true and fair reflection of the mandate given by the electorate with respect to the 2013 GE, the



following steps shall be taken as a consequence: (a) dissolution of the National Assembly by the Prime Minister in terms of Article 58(1) of the Constitution and fresh elections shall be held to the National Assembly; and (b) appointment of a Caretaker Cabinet in accordance with Articles 224 and 224-A of the Constitution. In this event, PML-N will also consult PTI in the formation of the Caretaker Cabinet. Simultaneously, each of the Provincial Assemblies shall also be dissolved by the respective Chief Ministers in terms of Article 112(1) of the Constitution and fresh elections shall also be held to the said Assemblies. For this purpose Pakistan People's Party Parliamentarians (PPPP) and the National Party are being requested to give their respective consent by executing the Affirmation at the foot of this Accord.

4.2 *In case, in consequence of clause 3 hereinabove, if the Commission determines that the results of the 2013 GE, on an overall basis, are a true and fair reflection of the mandate given by the electorate with respect to the 2013 GE, all of PTI's allegations regarding the 2013 GE shall stand withdrawn and the National Assembly and each of the Provincial Assemblies shall continue to function in accordance with the Constitution and PTI shall perform its due role in the Parliament and the democratic process."*

533. The Commission in the end after weighing all the various submissions and considerations came to the view that since the inquiry was not a criminal trial the proof beyond a reasonable doubt standard was deemed not to be the appropriate standard of proof. This standard may be applicable to Election Petitions but the Commission is not considering individual cases.

534. However on account of the potential serious consequences which its findings may have on the Governing of the State and potential criminal consequences for individuals the Commission did not deem it appropriate to adopt a standard of proof lower than the balance of probabilities.

535. The Commission was of the view that since the inquiry was essentially of a civil nature the balance of probabilities

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standard of proof would be the most appropriate, but at the same time taking account of the fact that within that standard there must be the more cogent evidence if the consequences of the findings are likely to be more severe to individuals or the Governance of the State.

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ELECTORAL PROCESS AS LAID DOWN IN THE CONSTITUTION AND THE LAW.

536. Since the Commissions' TOR's in large part deal with and revolve around the organization and conduct of the general elections 2013 it would be of assistance to briefly set out as to how those elections are meant to be conducted as per the Constitution and the law and the responsibilities, functions and roles of those relevant institutions/bodies involved in the process.

537. A.213 to 226 of the Constitution deals with the electoral processes.

538. By way of background it is useful to start from the process when the Assemblies (National and Provincial) terms expire or are dissolved. Under the Constitution as per A.224 neutral caretaker Governments should be formed at both the National and Provincial level. The main object being that these care taker set ups will ensure that during the election process the local administration will remain neutral.

539. Under A.218 the Election Commission of Pakistan (ECP) comprises of the Chairman who is known as the Chief Election Commissioner (CEC) and 4 other members (one from each Province) who are all appointed by the President after consultation between a Parliamentary committee consisting of 50% members from the Government and 50% from the Opposition. The ECP is an Independent Constitutional body.

540. The main object again is to ensure its neutrality during the election process which as per A.218 it is responsible to organize and conduct. In particular A.218 (3) provides as under

"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 the law and that corrupt practices are guarded against”

541. In practice the ECP has established a Secretariat with its own staff headed by a Secretary. The role of the secretariat is to ensure that the decisions made and directives issued by the ECP are implemented. Each Province is headed by a Provincial Election Commissioner (PEC) which is subordinate to the ECP and each district in a Province has a District Election Commissioner (DEC) under the supervision of the PEC. The PEC's are to ensure the implementation of the ECP's decisions and directives.

542. A.222 enables Parliament to make relevant electoral laws under which the elections are to be organized and conducted. For the Commission's purposes probably the most important law is the Representation of the People Act 1976 and the 1977 Rules made there under (ROPA) which sets out a complete regime of how the elections are to be conducted.

543. It is S.11 which in effect starts the election ball rolling once the President after the term of the Assemblies expire makes an announcement of the election date which for the 2013 general elections was 11th May 2013.

544. Under S.11 the ECP notifies the election and starts the process by, amongst other things, setting out an election schedule which will provide time frames and deadlines in the process e.g. for nominating and finalizing candidates, allocating symbols, appointment of RO's etc.

545. Under A.220 it is the duty of all executive authorities in the Federation and the Provinces to assist the ECP in the

discharge of its functions. Thus, if , for example, during the organization and conduct of any aspect of the election process the ECP needs support or assistance in carrying out its functions it may call upon the national and provincial governments to assist via the police, civil service or any other appropriate body. Under A.226 all elections must be by secret ballot.

Practical and other Considerations.

546. The organization and conduct of a general election throughout Pakistan though governed by law is a massive undertaking. On the same day the electorate has to vote for 272 NA seats and 577 PA seats on a Constituency wise basis throughout Pakistan.

547. The ground work to be carried out by the ECP in holding an election includes, amongst many other things, the registration of all persons who are entitled to vote, preparing and printing of the election material, appointment of returning officers, transportation of the electoral material and ensuring an environment which can ensure freedom to vote and the sanctity of the ballot.

548. In practice, the ECP issues the required instructions on all these matters which are implemented by the PEC's and under the PEC the Regional Elections Commissioners (REC) and District Election Commissioners (DEC) for each province with the assistance of the local administration if so needed.

549. An important cog in the electoral machine is the appointment of District Returning Officers (DRO's) and Returning officers (RO's) and Presiding Officers (PO's) who head each a polling station in each Constituency

550. As per law RO's may be appointed from officers of the Federal Government, Provincial Government, Corporations controlled by either such Government or local authorities. In these elections, however, ECP with the agreement of most of the political parties decided to request the National Judicial Policy making Committee (NJPMC) to provide judicial officers as DRO's and RO's which was agreed to by the NJPMC.

551. The logic behind this decision by the ECP, as supported by most of the major political parties, appears to be the desire to appoint a body which had no connection with the Government (Provincial or otherwise) to better ensure neutrality. This is because although the caretaker set up will not remain after the elections those employed by the Government (who played a part in the elections as say polling staff) especially at the provincial level e.g. teachers would most probably remain.

552. One RO is appointed for each Constituency and in each Constituency there is often over 100 separate polling stations at different locations spread throughout the Constituency which the RO is responsible for. Usually the RO will have to manage the election for one NA seat and 2 PA seats within his Constituency

553. RO's are responsible, for amongst other things, scrutinizing the candidates, finding suitable polling stations in the Constituency, appointing Presiding officers (PO) of polling stations and their staff at each polling station, determining the no. of ballots required in some Provinces, distributing the election material including ballots to the polling stations, completing some of the necessary Forms as per law and finally consolidating the Ballot count for each polling station and thus determining the

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winning candidate and returning all the election material to the ECP for safe keeping.

554. The PO's were not from the judiciary but were meant to be grade 17 officers whilst other polling staff were again meant to be government officers but of a more junior level. The PO's reported to the RO's in their Constituency

555. The PO's play a pivotal role in the election process as it was they who amongst other things had to fill out the Form XIV (Statement of Count) which showed the results for their particular polling station and the Form XV which accounted for all the ballots which had been issued. Both these forms were meant to be placed in the polling bag and forwarded to the RO for checking and finalizing the result in his Constituency by way of consolidating all the results received from all the different polling stations in his Constituency through Form XVI

556. Whilst acting as RO's the subordinate judiciary was under the control of the ECP and not their respective High Court which is usually the case.

557. The Army was also requested by the ECP to provide security at all the printing presses and during the transportation of the ballots to the RO's which it agreed to do to ensure that no one interfered with the printed ballot papers.

558. Under the law after the elections the election material is supposed to be stored by the ECP in safe custody.



TREATMENT OF THE EVIDENCE.

559. The Commission considered the case of each party separately in respect of each TOR for which it lead substantial evidence, and shall answer each TOR separately.

560. As only the following parties listed below either produced witnesses, cross examined witnesses, exhibited documents by way of evidence in support of their case and in some cases provided closing briefs and oral submissions only their cases will be considered.

PTI, PML (Q), PPP, BNP (A) and (M), JI, MQM (H), PML (N) MQM and ECP

561. To a degree this is logical because out of the 16 political parties who filed applications the above parties were the only ones to suggest that the elections were manipulated and unfair on a widespread basis or wanted to rebut allegations made against them. For instance, the other political parties such as PML (J), PMLP, HDP and Jamiat Nazriati only suggested rigging in a few Constituencies which as with the case of the MDH may not have reached the threshold of coming within the scope of the TOR's. The ANP primarily blamed the TTP whilst the APML only offered suggestions on how the electoral process could be improved.



COMMISSION'S DETERMINATION ON PARTICULAR ISSUES.**1. Employment of Extra Persons**

562. The PTI has alleged that the Provincial Election Commission Punjab had employed 200 extra persons, picked up from the Urdu Bazar Lahore, just 48 hours before the polling and surreptitiously printed ballot papers to be delivered to unknown constituencies. To prove this allegation PTI examined Mr. Javed Iqbal (PTI.CW-1) the then Chief Secretary Punjab, Mr. Iftikhar Ahmed Rao (PTI.CW-2) the then Additional Chief Secretary Punjab and Mr. Mehboob Anwar (PTI.CW-3) the then Provincial Election Commissioner, Punjab. The first two witnesses were also confronted with a T.V. Programme conducted by Anchor Person, Mr. Hamid Mir.

563. Mr. Iftikhar Ahmed Rao during the 2013 elections, was Government of Punjab's focal person for coordinating with the Election Commission of Pakistan (ECP) to provide assistance for the holding of the elections. He confirmed that Mr. Anwar Mehboob had made a request on 09.05.2013 for procurement of 200 persons, conversant with the printing matters, which he could get from Urdu Bazar, Lahore; that he obtained approval of the Caretaker Chief Minister (Mr. Najam Sethi) through his Principal Secretary before contacting the Commissioners of Rawalpindi and Lahore for providing extra manpower (Mr. Najam Sethi, who appeared as PTI.CW-15 denied that he was informed about the request from the PEC(P); that approval from the Chief Minister was sought because he could not get it from the Chief Secretary on the day he received the request, who however was informed a day



later. The Chief Secretary, Mr. Javaid Iqbal (PTI.CW-1) confirmed that he was informed a few days later about the demand of the PECP. Mr. Mehboob Anwar confirmed that he did make a request for additional manpower of persons conversant with printing and binding of ballot papers in books form, however, not on the 9th but 7th of May, 2013; that this was made upon the request from the Manager Printing Corporation of Pakistan (PCP), Islamabad over telephone. In this regard he referred to Ex.PTI-CW-3/34. He however stated that the request was made for 100/200 persons and that he had not stated that they could be found from Urdu Bazar, Lahore. He disclosed that 78 such persons were collected from Lahore on the night of 7th May and sent to Islamabad. When cross-examined the witness expressed his ignorance that only 34 workers were hired.

564. The need for hiring extra persons was disclosed by Mr. Mousa Raza Effendi (PTI-CW4), the Managing Director of PCP at the time of general elections, posted at Islamabad, who stated that by 7th of May 2013 it had become apparent that PCP had not hired sufficient persons for numbering and binding hence they approached the ECP for further help. He explained that the extra persons for manual numbering of ballot papers were sought as they did not have an automated system; that about 70/80 persons were brought from Lahore for the task, out of whom only 34 were retained as the others were not found up to the mark. Mr. Fazal-ur-Rehman (ECP-C.W.5), who was the Manager of PCP at Islamabad, further explained that PCP had outsourced the printing of 20 million ballot papers to Pakistan Postal Foundation Press, who delivered approximately 4 million unbound and unnumbered

ballot papers by 5/6 May, 2013 and for the purpose of numbering and binding the PCP hired persons from the local market through tender. He confirmed having requested the ECP on 7th May, 2013 for the additional manpower for the said purpose. He also confirmed that out of 60/70 binders brought from Lahore only 34 were retained as the others were found unfit. He further disclosed that prior to these, 80 workers had already been brought from different parts of the country for the same purpose of binding and numbering. Muhammad Suleman (ECP-CW7) Deputy Manager PCP, confirmed the receipt of 4 million unbound and unnumbered ballot papers from the Post Foundation Press. When confronted with the list of 34 workers starting from Sr. No.103, the witness clarified that the names of workers before the said serial number, had been provided by a contractor and Illama Iqbal Open University for binding and numbering.

2. Outsourcing to Pakistan Post Foundation

565. The Printing Corporation of Pakistan (PCP) had transferred the printing of ballot papers for certain constituencies from Lahore to its Press at Islamabad as according to it, it was found that the Lahore Press would not be able to complete its entire task in time for the polling day. After transfer, the PCP outsourced the printing of approximately 20 million ballot papers to the Pakistan Post Foundation Press. The PTI alleges that this outsourcing was a material and grave illegality as the said press was neither secured by the Pakistan Army at the time of printing nor was it notified by the Election Commission of Pakistan for printing of election material. Mr. Muhammad Rafique (PTI-CW6) the then Manager PCP at Lahore, stated that due to overload at

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Lahore the printing of ballot papers for 25 NA and 55 PA constituencies were transferred to other Presses. Mr. Ejaz Ahmed Minhas (PTI-PW5) Managing Director, Pakistan Post Foundation at Islamabad confirmed that the Postal Foundation was assigned the task of printing of ballot papers for the PCP; that approximately 21 million ballot papers were printed by the Postal Foundation and handed over to ECP, PCP and the Military. He stated that the Press became a kind of extension of PCP because the Production Manager of PCP was posted at the Press to oversee the printing. Mr. Muhammad Suleman (ECP-CW7) Deputy Manager, PCP, acknowledged the list of ballot papers dispatched by the Postal Foundation to PCP on 5th May, 2013 through delivery challan signed by him and that the waste ballot papers were destroyed in the presence of the Army Personnel. It may be noted that the Postal Foundation is not privately owned but belongs to Pakistan Post Foundation. Mr. Muhammad Saeed Khan (ECP-CW11) Deputy Director (G.S.) ECP, Islamabad, confirmed that he wrote to the Pakistan Army requesting the deployment at the Press. Mr. Moosa Raza Effendi (PTI-CW4) M.D., PCP at Islamabad, had confirmed that a part of the PCP's responsibility was sublet to the Foundation after 26th April, 2013; that he had sought permission for the said transfer from ECP; that prior to the subletting a monitoring team was established to ensure that the Press was fit for the printing of ballot papers; that a contract for the printing was signed with the Foundation; and that the PCP provided the Foundation with the paper for the printing and paid it for the work.

566. The above discussed documentary and oral evidence does provide reasonable explanation as to why extra manpower



was required at PCP Islamabad, not for printing of ballot papers as alleged but for binding and numbering ballots already printed at the Postal Foundation. The evidence further shows that not 200 but 34 persons were actually employed for the task. Outsourcing to Pakistan Postal Foundation was made at the initiative of PCP with the approval of ECP and the printing was duly supervised at the Press by the representative of PCP and as stated by Mr. Ejaz Ahmed Minhas, Managing Director of the Postal Foundation that their Press had become an extension of PCP. The premises were secured by Army Personnel. Having said that the transfer of printed ballot papers for a number of constituencies from Lahore to Islamabad and there-after outsourcing part of the printing to the Postal Foundation reflects poorly on the ECP planning. Had there been proper planning, keeping in view the capacity of the Printing Press of PCP at Lahore, the printing of ballot papers would have been divided between the Lahore and Islamabad Press of PCP in the first place. Even the Islamabad Press did not have the requisite capacity to print ballot papers for the constituencies transferred from Lahore and thus outsourced part of it. The Foundation too was not properly equipped as it returned 04 million unbound and unnumbered ballot papers to the PCP which then had to hire people from outside to complete the task. Though there is no evidence of misuse of the ballot papers printed at the Foundation, the outsourcing and employment of additional manpower raise suspicion of a sinister design in the minds of those participating in the election.



3. Printing of excess ballot-papers.

567. In its preliminary submissions and proposals (GEICD No.12/2015) the PTI had pointed out that in many constituencies ballot-papers in excess of total number of registered voters had been delivered, raising serious doubts that the same was done for ulterior motive and so as to facilitate rigging and manipulation. It requested that in the first instance, explanation be sought from the Election Commission of Pakistan. In Paragraph No. 3.5.6 of the submissions, the following examples of vast variation in the printing of ballot-papers in certain constituencies have been highlighted:

Khyber Pakhtunkhwa (KP)

In KP the figures of printing of ballot papers for NA range from :

- 1. Minus -1% in NA 6 Nowshera (-3,223 that is less ballot papers were printed as compared to the total number of registered voters) to*
- 2. Extra +17% in NA 34 Lower Dir (where 84,509 excess ballot papers were printed as compared to the total number of registered voters)*

FATA

In FATA the ballot paper distribution also varies from:

- 1. Minus -6% in NA 46 in Bajor Agency (minus 10,640 BPs) to*
- 2. Extra +13% in NA 43 also in Bajor Agency (plus 22,086 BPs)*

Punjab

In Punjab the extra ballot paper distribution varies in NA from:

- 1. +0.005% (only 15 extra BPs) in NA 159 Khanewal to*
- 2. NA 125 in Lahore where +28.1% (120,515 BPs) extra ballot papers were supplied.*

Sindh

In the National Assembly

1. *In NA232 Dadu only 56 extra ballot papers were given while in*

2. *In NA-222 Tando Mohammad Khan extra +10% (26,340) were distributed.*

Balochistan

In Balochistan figures range from +19% in NA 268 Kalat to +18% in NA 271 Kharan."

568. That the percentage of extra ballot-papers supplied in the constituencies ranges from -6% to 37%, which belies any consistent or uniform application of any criteria and indicates an ulterior motive as there was no rational and logical explanation for such variation across the Provinces.

569. The Election Commission of Pakistan responded in Paragraph No.5 of CMA No.9/2015 that it was normal practice for Returning Officers to require ballot-papers in excess of the registered numbers of voters, who had different perceptions of their need. That however all the extra and unused ballot-papers were duly accounted for and are available for verification.

570. Thus, it has not been disputed that excess ballots above the requirements of the total number of registered voters were printed. The evidence has shown that this phenomenon of printing excess ballots was not new to the 2013 elections but had been happening since the 1970 elections (EX ECP CW 13/3) on a similar scale bar the 1993 election where the excess was considerably less. The following table shows the excess percentage of ballots worked out in the previous elections since 1970 elections:

1970	23.60%
1985	21.97%
1988	18.94%

1990	14.83%
1993	3.27%
1997	9.05%
2002	7.78%
2008	6.95%
2013	6.89%

571. The above figures indicate that printing excess ballots in the general elections 2013 was not something out of the ordinary.

572. The issue in essence revolves around (a) whether the excess ballots can all be accounted for and if not (b) whether there is any evidence of misuse of any of the unused ballots.

573. Mr. Mehboob Anwar, PEC Punjab (PTI-CW-3) had acknowledged the covering letter of the Election Commission of Pakistan of 18.04.2013 (Ex.PTI-CW-3/32) addressed to the Provincial Election Commissioners, the Managing Directors PCP and the Director of Pakistan Security Printing Press Karachi, for the "Action Plan for printing of ballot-papers for General Election 2013", Paragraph No.2 whereof states:

"2. It is, therefore, requested that printing of ballot papers may be started in accordance with the guidelines given in the Action Plan soon after receiving Form-V from the quarter concerned. All the Provincial Election Commissioners are requested to provide constituency-wise requirement of ballot paper as well as posters of ballot papers to the concerned presses under intimation to this office immediately. "

574. The instructions for determining the number of ballot-papers for the constituencies and a safeguard to ensure that all ballots were accounted for on polling day, were mentioned in Paragraph No.5(viii), (ix) and (xiii) of the Action Plan (Ex.PTI.CW-3/33), which provided:



- viii) *The PEC will place order for printing of ballot papers and posters for each constituency of National Assembly and Provincial Assemblies with the concerned presses and endorse a copy thereof to this Commission. The quantity of ballot paper will be worked out as follows:-*
- a) ***Number of ballot papers for each polling station will be rounded off to next hundred e.g. if the total strength of voters at a polling station is 1,280 the requirement of ballot papers for that polling station would be 13,00;***
- b) *After doing so, the requirement of ballot papers for a constituency will be rounded off to the next hundred;*
- ix) *Posters of ballot papers for both National and Provincial Assemblies will be got printed @ one per booth. Being secret, these posters will be packed in the wooden/corrugated crates for each polling station along with ballot papers.*
- xiii) *The Returning Officers shall carefully consolidate the result and shall tally the ballot paper account drawn by the presiding officer and the result of count with that of packing invoice of each polling station."*

575. A part of the Action Plan included at Para 6 an additional line of actions decided in the meeting held by the ECP on 9-4-2014 which at para 8(v) dealt with the distribution and printing of ballots which indicated that initially the total required no. of ballots to be printed was approx 172 M. There is evidence to suggest that this printing requirement was provided to the PEC's and PCP and Printing Security Printing Corporation as early as 9th April so that they could start preparations (EX PTI CW4/1) Apparently the ECP had reached this initial figure largely based on the requirements of the last election.

576. The evidence also reveals that this original figure was only a tentative assessment (PTI CW 13. Ishtiaq Ahmed Khan) as more accurate figures had to be provided on a Constituency wise basis as per formula laid down in the Action Plan. This indicates that it was accepted that the no. of required ballot papers could increase or decrease depending on the Constituency wise requirement. This would appear to be logical as only when the Form V's were submitted would it be precisely known the no. of ballot papers that would be required. The PEC's and not ECP was left to determine the required no. of ballots

577. It is the case of the PTI that the said instruction was not followed, particularly in Punjab, which accounted for the vast variation in the printing of ballot-papers for different constituencies. According to Mr. Mehboob Anwar the determination of the number of ballot-papers for each constituency was left to the respective Returning Officer. This statement was confirmed by the ROs from Punjab, who were examined as witnesses of the Commission. On the other hand, the exercise for determination of the printing of ballot-papers for the constituencies in the Provinces of Sindh, KPK, Balochistan and Tribal Areas was undertaken by the respective Provincial Election Commissioners and not the returning officers (see the statement of Ms. Moeen Bano Sodher (CW-1), Mr. Pir Bukhsh Shah (CW-3), Syed Sultan Bayzeed (PTI-CW-11) and Mr. Sohail Ahmed Khan (CW-4).

578. The Action Plan (Ex.PTI.CW-3/33) was an important document laying down general instructions for the printing presses assigned the printing of election material, security arrangements as well as procedure for the Returning Officers to receive the

election material and then further distribution to the Presiding Officers keeping in view that the material was to be received directly from the presses by the Returning Officers or their representatives. The evidence reveals that the document was not given the importance that it deserved and there was disconnect among the ECP Secretariat, PECs and the Returning Officers. The then Secretary ECP, Mr. Ishtiaq Ahmed Khan (PTI-CW-13), stated that he could not *"recall exactly whether the Action Plan was prepared for the Election 2013."* He only remembered that probably a meeting was held in September, 2012 for the purpose of printing of ballot-papers. He stated that the authority for determining the number of ballot-papers to be printed was given to the Returning Officers under the instructions issued by the ECP; but did not remember if the instructions were part of the Action Plan though instructions are always issued by the ECP in writing. Syed Sher Afghan (ECP-CW-13), who was the Director General (Elections) ECP, perhaps the most important official in the ECP who is directly concerned with election matters, when questioned stated that *"the matter of determining of numbers of ballot papers to be printed for each constituency is between the Provincial Election Commissioner and the Returning Officer concerned, each Provincial Election Commissioner may adopt his own method."* On further questioning he disclosed that *"the requirement of number of ballot papers was directly sent by the Provincial Election Commissioner to the Printing Presses and we receive only intimation of the same"*. When confronted that Ex.PTI-13/3 to Ex.PTI-CW13/7, which were letters dated 20.04.2013 by the Provincial Election Commissioner Punjab to the Managers PCP and Pakistan Security Printing Corporation



with respect of printing of ballot papers and posters showing statement of constituency-wise requirement of ballot-papers and posters in the Province of Punjab, the witness responded that they must have been received by the Director General (Budget) ECP and must be in their record. It is incredible that the official directly concerned with the election would not even keep himself abreast of the printing of the election material, which is one of the most important components of the election process. Furthermore it appears from the evidence that the Action Plan may not have been received by all the Returning Officers. Whereas Mr. Mehboob Anwar (PTI-CW-3) stated that the Action Plan was sent to the Returning Officers, the Returning Officers from Punjab, CWs 5 to 11, who were examined as the Commission's witnesses and Mr. Munawar Khan (CW-2), the Returning Officers for NA-21 (KPK), disclosed that they were unaware of any Action Plan and that they were guided by the instructions contained in the Handbook for the Returning and Assistant Returning Officers prepared by the ECP. All this shows lack of supervision and monitoring by the ECP of the conduct of the elections and poor coordination among the ECP, the PECs and the ROs.

579. As earlier mentioned, after the statement of the witnesses summoned at the request of PTI, an application was submitted on its behalf for retrieving from the treasuries Form-XV of all the constituencies. In order to further probe into printing of excess ballots the Commission selected 11 of such constituencies, two from the Province of KPK, one each from Sindh and the Tribal Areas and the remaining from the Punjab. Following are the details of the excessive ballot-papers printed in the said constituencies:

Vergh

KPK

- | | |
|-------------------------------|-------------------|
| 1. NA 21 Mansehra cum Torghar | 16% won by PML(N) |
| 2. NA 34 Lower Dir | 17% won by JI |

Sindh

- | | |
|---------------------|----------------|
| 3. NA 222 Hyderabad | 10% won by PPP |
|---------------------|----------------|

Tribal Area

- | | | | |
|-------------------------------|-----|-----|----|
| 4. NA 43 TA VIII Bajor Agency | 13% | won | by |
| Independent | | | |

Punjab

- | | |
|------------------------|-------------------|
| 5. NA 53 Rawalpindi IV | 19% won by PTI |
| 6. NA 118 Lahore | 17% won by PML(N) |
| 7. NA 119 Lahore II | 21% won by PML(N) |
| 8. NA 125 Lahore VIII | 28% won by PML(N) |
| 9. NA 130 Lahore XIII | 25% won by PML(N) |
| 10. NA 157 Khanewal II | 20% won by PML(N) |
| 11. NA 171 DG Khan | 17% won by PML(N) |

Note: The average votes in excess of the registered number of voters in the country as a whole was 4.12%.

580. As already observed except for the Punjab, in the other Provinces and the Tribal Areas the number of ballot-papers was determined by the respective Provincial Election Commissioner. In the Punjab the task was left to the Returning Officers. The Returning Officers from the Punjab (CW-5 to CW-11) were consistent that they had determined the number of ballot-papers booth-wise and not polling station-wise. Thus they rounded off the number of registered voters assigned to each polling booth to the next hundred and then tabulated the ballot-papers that would be required for the entire constituency. Each polling station generally had two or three polling booths. The statements of ROs show that they were not guided by any policy or instruction. They determined the ballot-papers according to their own individual perception. To quote a few examples, Mr. Muhammad Saeed Awan (CW-5), the

Returning Officer for NA-53, stated that during the meetings with the DRO, it was decided to round off the ballot papers on the basis of polling booths, adding that the representative of the ECP also used to attend such meetings and that there was no decision taken regarding mode of rounding off in writing. Mr. Nisar Ahmed (CW-6) Returning Officer for NA-118, disclosed that for the purpose of rounding off be kept in view the polling booths and polling scheme but that he sent less ballot papers than the registered voters to the polling station as 100% votes are generally not cast. Giving an example, he stated that if in a polling booth, there were 202 registered voters he would send 200 ballot papers rather than 300 keeping in view that the ballot book containing 100 ballots could not be split when the Presiding Officer distributes them to the polling booths. Mr. Sajjad Hussain Sindhar (CW-7), the Returning Officer for NA-119, disclosed that he shared a formula used for determining the ballot papers required for his constituency with the District Election Commissioner as well as with his colleagues involved in the election process. Yet another method was adopted by Mr. Anjum Raza Sayed (CW-9), Returning Officer for NA-130. There were 238 polling stations set up with more than 500 polling booths. He took an average of 3 polling booths per polling station; multiplied 238 by 3 (=714) and calculated the ballot papers on the basis of 714 polling booths and then applied the rounding off rule. For each polling booth he requested for one extra ballot book thus he requested for 74,000 extra ballot papers.

581. On behalf of PTI great emphasis was placed on the statement of Mr. Khalid Mehmood Bhatti (CW-8), Returning Officer for NA-125 and two provincial constituencies PP-155 and PP-156.



He had requested for 500,000 ballot papers for the 429,115 registered voters in the NA constituency. Syed Shabbar Abbas Bukhari (ECP-CW14), who was District Election Commissioner Lahore at that time and to whom requisition for NA-125 and the two Provincial constituencies were sent, had on his own increased the ballot papers for NA constituency by 50,000. He explained that since for the Provincial constituencies the requisition was for 300,000 for one and 250,000 ballots for the other, adding up the two he increased the order of printing of the same number of ballots for the NA constituency. This witness also stated that even the requirement of the Returning Officer was slightly abnormal. The learned counsel for the PTI extensively cross-examined Mr. Khalid Mehmood Bhatti regarding packing invoices and the number of retained ballot papers deposited by him in the treasury. There were some ostensible discrepancies, however, we would refrain from dilating upon the same as it relates to an individual constituency and the Election Tribunal has already annulled the election results for the said constituency and the appeal is pending adjudication before the Supreme Court.

582. As can be seen the RO's mentioned above rounded off as per their own perceptions of need without any guidance or supervision on this point which differed from RO to RO which lead to both a large no. of excess ballots being printed in the Punjab as opposed to any other Province as well as in some cases some quite large variations in such excess percentages between different constituencies in the Punjab.

583. However it cannot be said that there was any malafide or mal intent on the part of the RO's in the manner in which they

made their calculations especially since this non uniform manner of making calculations did not have a particular nexus with the result of an election in Punjab. For example, even according to the PTI's own excess ballot chart CMA 75/15 the PML still won many seats in the Punjab where the excess was only around 5% e.g NA 102 to 117 (16 sets) and NA 131 to NA 147 (18 seats).

584. Significantly according to the evidence of Mr. Mehboob Anwar (PTI-CW-3) who was the PEC for Punjab other parties also defeated the PML(N) in areas where there was a large percentage of excess ballots in the Punjab for example NA 51 and NA 150 which had large No.s of excess ballots were won by the PTI. Hence, there appeared to be no particular nexus between large No's of excess ballots and the PML (N) exclusively winning such seats.

585. By implication the PTI have also suggested that because the PEC (P) was the only PEC who decided to make the requisitions based on the RO's requirements there was some kind of plan in place to ensure excess ballots. However there is no evidence that the PEC (P) had any particular inter action with the RO's in Punjab and the evidence suggests that he was also considering determining the required No. of ballots like the 3 other PEC's.

586. This is evidenced by the series of letters dated 20, 21 and 26th April to the printers all containing revised constituency wise ballot requirements. According to ECP CW 1.Abdul Waheed the formula used to determine the No. of ballots for the 20th April letter (PTI CW 4/13) was not accepted by the PEC and a different formula was used as instructed by the PEC which was sent out in the 21st April letter (PTI CW 3/26). According to him the formula's

made little difference to the No. of ballots requisitioned but in any event the requirement for ballots in these two letters had nothing to do with the RO's. According to ECP CW 6 Khaleeq ur Rehman the 20th April letter (PTI CW 4/13) prepared by the office of the PEC (P) was never dispatched.

587. As per the evidence of ECP CW 1 Abdul Waheed the letter dated 26th April letter (PTI CW 3/27) for the first time was based on the RO requisitions which was less than the requisition determined by the PEC in a number of areas.

588. In any event regardless of the number of excess ballots as mentioned earlier the issue in essence revolves around (a) whether the excess ballots can all be accounted for and if not (b) whether there is any evidence of misuse of the unused ballots.

589. This is because if the excess was 10, 20 or 50% this would not make any difference if all the unused ballots were accounted for. In any event in every Constituency there is going to be some unused ballots even if no excess ballots were printed

590. Turning to the first issue of whether all unused ballots can be accounted for. From the evidence of the RO's (CW 1-11) it appeared that the excess ballots were dealt with in 2 ways:

- (a) A reserve was kept by each RO after he had distributed the required no. of ballots to each polling station which could be used if a particular polling station ran short of ballots and requested more. These reserve ballots according to the RO's who were examined were not used and were all returned to the treasury for which a receipt was given. These unused ballots could therefore in most part be accounted for.

- (b) The RO distributed ballots to each PO of each polling station based on that polling stations requirement. Some of these ballots may have remained unused due to the extra ballots given on account of rounding up and the fact that hardly ever is there a 100% turn out in a general election (in the 2013 elections it was approx 55%). **It was these unused ballots which needed to be accounted for**

591. It is a legal requirement to account for all the ballots and for this purpose a Form XV needs to be completed. This Form is known as the Ballot Paper Account which will essentially indicate the no. of ballots issued to each polling station and how these ballots were used (if at all). Through this form each ballot paper issued to a particular polling station is accounted for and as such there is no chance of any ballot paper being misused.

592. It was a requirement of law (S.38 ROPA) that the Form XV be completed by each Presiding officer at each polling station and provided to the RO. In addition as per ECP's handbook, which are deemed to be instructions/directions given by the ECP and needed to be complied with under 218(3) and S.103 ROPA, the Form XV was supposed to be placed in a tamper proof evident bag by the PO and placed in the sealed polling bag. A copy was also to be handed over to the RO.

593. Realizing the importance of this document for the purposes of accounting for all the unused ballots the Commission through its order dated 27-5-15 ordered that all original polling bags be opened and the Form XV retrieved so that each ballot paper could be accounted for.



594. When all the Form XV's were gathered it was found that approx 35% of them were missing from the bags. The ECP and the RO's were also able to provide some additional Form XV's which they had retained but even then Form XV's remained missing. Even otherwise a number of the Form XV's had not been completed properly and in accordance with law. It was therefore not possible to ascertain whether all the ballots which had not been used had been accounted for through the Form XV's.

595. It was observed however that the missing Form XV's were throughout Pakistan and did not disclose any kind of pattern. In fact in KPK and Sindh which had a less percentage of excess ballots than the Punjab there were a greater number of missing Form XV's than in the Punjab. It shows that the failure to complete or complete properly the Form XV was more likely on account of negligence, poor training etc on the part of the PO's as opposed to any mala fide.

596. The 40 NADRA Pre scanning Reports also pointed to the fact that a number of the required documents including Form XV's had not been placed in the polling bags. The manner in which the polling bags were stored in the treasuries as evidenced by the Report of the Commission's legal assistant which is set out in full in the section dealing with the shortcomings of the ECP also tends to suggest that such Forms may have been misplaced or interfered with whilst in storage.

597. The safeguard of Para 5. (xiii) of the Action Plan whereby, "the Returning Officers shall carefully consolidate the result and shall tally the ballot paper account drawn by presiding officer and the result of count with that of packing invoice of each

polling station" was of little, if any, assistance in accounting for the unused ballots since as per the evidence of nearly all the RO's (CW 1-11) this instruction was not passed on to them so they did not carry out the required exercise.

598. Since all the unused ballots could not be accounted for the next issue was whether any of these unaccounted for unused ballots had been misused in favour of the PML (N) or any other party or body as opposed to misplaced or met any other fate.

599. There was no direct evidence of any unused ballot paper having been misused or in particular of ballot box stuffing at the polling stations.

600. The next question was whether there was any circumstantial or other form of evidence which could lead to the conclusion that any unused ballot had been misused.

Turning to circumstantial evidence.

601. In essence to prove a case through circumstantial evidence when all the established relevant facts are considered together they must lead to the inference that only one possible conclusion can be reached.

602. Although circumstantial evidence is sometimes relied upon to prove the guilt of an accused in a criminal case the Commission is of the view that the consideration of circumstantial evidence in the manner indicated above would be equally applicable to a fact finding inquiry especially as in order to consider circumstantial evidence there must be some yardstick for it to be determined against as conclusions cannot be made in an arbitrary manner or based on mere suspicions.

603. As mentioned earlier the fact that there are unused ballots and all of them have not been accounted for will not automatically lead to the conclusion that the unused ballots have been misused.

604. With regard to the circumstantial evidence there appears to be no particular correlation between the Constituencies where Forms XV's were missing vis a vis which party won the seat for that constituency. Likewise in cases of large no.'s of excess ballots not all these Constituencies were won by the PML (N). Even when the Constituencies with missing Form XV's and excessive ballots are placed side by side there is no particular correlation with the PML (N) wining that seat.

605. Learned Counsel for the PTI on the last day of oral submissions produced a chart showing that excess ballots had been printed over and above the 26 April final ballot requisition and distributed to certain targeted Constituencies. However this was rebutted by the ECP who submitted that because 2 different requisition lists were sent on 21st April and 26th April sometimes the requirement was printed as per the 21st April list and sometimes as per 26th April list and in this respect learned Counsel for the ECP took the Commission through the example of NA 154 Lodhran which had been printed on the basis of the 21st April list and not 26th April list. This explanation would seem to reasonably account for the discrepancy in the figures which learned Counsel for the PTI was referring to.

606. It has also been pointed out by learned Counsel for the PML (N) that the no. of excess ballots and their chance of misuse would have been dramatically reduced on account of 20 re prints

being required and the destruction of the earlier printed ballots in the presence of a committee and the fact that Court orders still remained in place in some cases until 30-4-13 which justified late printing and the destruction of the earlier printed ballots rendered redundant on account of the Court finally settling matters.

607. It may also be that some of the unused ballots had been misplaced during the chaos at the various polling stations on polling day or may even be all in the relevant polling bags in the treasury which were not subject to inspection.

608. As such there seems to be more than one possibility as to what happened to the unused ballots as opposed to the only possibility of them being misused in favour of the PML (N) and thus based on circumstantial evidence the Commission is unable to find that the unused ballots were misused in favour of the PML (N) or any other party or person.

4. The NADRA Reports and indelible ink

609 On the request of the PTI and as directed by the Commission NADRA submitted to the Commission 38 analysis Reports in respect of 15 NA and 23 PA's.(One summary was missing in respect of NA 211 Noushero Feroz 1).These Reports therefore covered around 5% of the total 849 Constituencies which went to the poll on election day. Later NADRA provided 2 further Reports (one in respect of a NA seat in Punjab and one in respect of a PA seat in Punjab) and the Pre Scanned Reports in respect of each of the 40 Constituencies

610. NADRA in its covering letter to the Commission dated 20-4-2015 enclosing its analysis Reports has stated at Para 2 of its letter that,



"Fingerprint verification is a probabilistic (sic) matching exercise which may not always be accurate due to numerous circumstances explained in the reports. Therefore, a fingerprint verification report should only be considered one of the many collaborative pieces of evidence submitted before each respective tribunal"

611. Of the 16 NA Constituencies 2 related to Balochistan, 1 KPK, 2 Punjab and 11 Sindh. Of the 24 PA's 4 related to Balochistan, 2 KPK, 2 Punjab and 16 Sindh. Thus, out of the 40 Reports 27 related to Sindh, 6 Balochistan, 3 KPK and 4 Punjab.

612. Out of the 40 Reports only 7 had been requested by the PTI in the 75 Constituencies which it concentrated on whilst none had been requested by the PPP out of its 68 named Constituencies, none by PML(Q) out of its 24 approx Constituencies as per its proposed witness list, one each by BNP(A) and (M) relating to Quetta, none by JI in Karachi and unclear how many, if any, challenged by MQM(H) in Karachi

613. Most of the Reports in respect of each Constituency also found that more than 50% of the ballots polled could not be verified due to, "fingerprints of bad quality affixed on counterfoils". On cross by the learned counsel for the PML(N) Mr. Usman Yousaf Mobin, the Chairman NADRA (PTI-CW-8) confirmed that the organization uses Automatic Fingerprints Identification System (AFIS); that for a number of reasons the thumb impression cannot be picked up by the system; for example the fingerprint cannot be picked up by AFIS if the thumb was not clean when affixed on the document or if it carries a slight cut or if there is an inked line on the thumb impression or the thumb impression of a woman who had *Henna/Mehndi* on her thumb or if the grooves and ridges on the thumb have wearied out with old age or if the thumb has not

been properly applied. Added that the fingerprint match was done by NADRA in an automated manner and they do not have fingerprint expert to verify the thumb impression.

614. According to Mr. Mobin who was appointed as Chairman NADRA in February 2015 (after the elections) the fact that the thumb impression could not be verified did not mean that it was an invalid vote. In his view there was a 97% expectation that it was a valid vote based on the fact that when thumb prints could be verified automatically 97% were found to be genuine and thus there was the same statistical expectation. Such unverified votes also had valid NIC names and no's and were from the same constituency.

615. Crucially because the genuineness of such votes could not be verified by NADRA it did not mean that such votes had not been legally cast. In nearly all cases the non verified votes belonged to valid NIC's on the voters list in that Constituency. It could not therefore be conclusively determined whether the unverified votes were genuine or not.

616. Mr. Mobin confirmed that from the records it appeared that NADRA had been consulted on 4 occasions by the ECP prior to the elections to test types of ink for voter verification. NADRA had done so and returned the test results to the ECP with their comments but nothing further had been discussed formally with the ECP as per NADRA's records.

617. According to PTI CW 12. Ishtiaq Ahmed Khan who was Secretary of the ECP during the 2013 elections the ECP took a decision along with NADRA to develop a system whereby based on thumb impressions votes could be verified on the electoral rolls but



not on the counterfoils of ballot papers. Magnetic ink for this purpose was developed by Ali Arshad Hakeem the then NADRA Chairman and his deputy Tariq Malik working with the ECP and PCSIR Laboratory in Karachi which finalized magnetic ink to be used and PCSIR manufactured the required no. of pads

618 This to a degree was corroborated by PTI CW. 13 Syed Sher Afghan (ECP DG Elections during 2013 elections) according to whom the sample of Ink from the PCSIR did have a magnetic element. A sample of the ink was sent by PCSIR to NADRA which approved it and it was then prepared by PCSIR.

619. According to PTI CW 7 Mr. Mobin NADRA had nothing to do with the procurement of the ink or pads for the elections which was the job of the ECP. In his opinion it would not have made any difference whether magnetic ink had or had not been used in terms of verification of thumb prints as NADRA did not have the expertise/equipment to distinguish between magnetic and non magnetic ink.

620. It would therefore appear from the evidence that some kind of magnetic ink had been developed by NADRA, PSCIR and the ECP with a view to verifying thumb impressions. Either this ink was ineffective or NADRA lacked the equipment to test it. In any event it would seem that NADRA and the ECP failed to develop an ink which could verify the exact caster of the vote.

621. There is a gap in the testimony of the ECP officials and the NADRA Chairman on the utility of the magnetic ink. The then Secretary ECP stated that the purpose of developing magnetic ink was to enable the verification of thumb impression on the electoral rolls (not on the counterfoils of the ballot papers). Syed Sher

TV

Afghan, DG (Elections) confirmed that the ink developed by the PCSIR contained magnetic element. The Chairman NADRA Mr. Mobin, however, disclosed that it do not make any difference for verification of thumb print whether the ink is magnetic or not and that NADRA does not have the expertise/equipment to distinguish the magnetic from non-magnetic ink. The question that emerges is that if the opinion of Chairman NADRA, who is considered to be an expert, is accepted why did the ECP agree to develop magnetic ink. Though the resolution of this issue may not provide any assistance to the Commission in answering the TOR's but it should be a matter of concern for the ECP that needs to be addressed. Another aspect of the testimony of Mr. Mobin is his opinion regarding the validity of those votes cast by the voters whose thumb prints could not be verified. Whereas the Chairman NADRA may be right in saying that such votes does not necessarily mean that the votes cast were invalid but he cannot declare them to be valid. As a matter of fact the reports sought from NADRA by the Election Tribunals are only on the verification of the thumb impression and not on the validity of the votes cast.

5. Balochistan.

622. As mentioned earlier according to the PTI in its reply to the questionnaire (closing lines of Para 2 (b) (B) (II)) the plan was implemented by those mentioned above (i.e. the PML-N, its supporters, accomplices, associates and cohorts).

“..... As to what the objective of PML-N was, it is obvious that it wanted to win the elections at any cost. **The heavy concentration of the plan was to illegally “sweep” the Punjab and Balochistan to secure its rule for the next five years.** The events

following the 2013 Elections are also relevant in this context". (bold added)

623. During PTI's oral arguments learned Counsel submitted that the elections in Balochistan were a farce and were selective rather than elective. That there was no cabinet in place and that the election was a fabricated and engineered product of the bureaucracy and provincial administration and in particular pointed to the role of the PEC (B)

624. Both the BNP (A) and BNP (M) called 7 witnesses between them 2 of which were joint witnesses in respect of Balochistan and also cross examined 2 witnesses called by the PTI whose evidence related to Balochistan.

625. Both of the above parties were of the view that Balochistan should be considered separately from the other parts of the Country due to the peculiar law and order situation which it faced during the 2013 general elections.

626. The crux of the case of BNP (A) seemed to be that the care taker Chief Minister was marginalized, that there was no cabinet and the Chief Secretary was in effect running the elections and manipulating the elections, in certain Constituencies the electoral laws had been violated and the elections in certain Constituencies should have been postponed by the PEC (B) on account of the poor law and order situation.

627. The crux of the case of BNP(M) was that due to the electoral violations and the poor law and order situation the elections could not be deemed as being fair since in effect the poor law and order situation had lead to a large number of the

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electorate not being able to cast their vote who in effect had been disenfranchised.

628. Before dealing with the arguments of the parties in Balochistan the Commission observes that none of the parties alleged ballot stuffing or particularly relied on the fact that the excessive ballots which had been requisitioned by the PEC (B) had any bearing on the election results or relied on the missing Form XV's to prove rigging. In any event as discussed earlier the missing Form XV's was a country wide phenomena and was not specific to any one Province. Likewise nearly all Constituencies in Balochistan had excess ballots papers over 10%

629. So far as the BNP (A)'s case is concerned the evidence did show that there was no cabinet formed (BNP(A&M) CW 1 Ghaus Bakhsh Barozai former Care taker CM Balochistan)) and that the CM's role was limited who in fact accused the CS of causing his brother to lose PB 21. Even if the CM's role was limited this would not be unusual as the CM admitted it was the ECP and the administration who had the responsibility of conducting the elections rather than himself.

630. Taken as a whole the evidence does reveal that the CS did play an active role in organizing the elections which is apparent from his own evidence (PTI CW 10 Mr. Babur Yaqoob Fateh Muhammed) and that of (BNP(A&M) CW 1 Ghaus Bakhsh Barozai former Care taker CM Balochistan), PTI CW 11 Syed Sultan Bayazeed PEC (B) . However he was not alone in this. For example it was the PEC who determined the number of ballots that were required for each Constituency and ensured their delivery to each RO under security escort. The PEC ordered excess ballots in

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respect of all Constituencies in Balochistan at the rate of 8%. And also made the decision not to postpone the election in PB 42 and 43 (PTI CW 11 Syed Sultan Bayazeed PEC (B), (PTI CW 10 Mr. Babur Yaqoob Fateh Muhammed) (BNP (A&M) CW 2 Mr Mural Ali Baloch RO PB 42 and 43 Panjgur I and II).

631. The fact that the PEC and CS worked closely together in organizing the elections is not unusual bearing in mind the requirements of A.218(3), A.220 and in particular the vast areas covered by Balochistan and the poor law and order situation then prevailing in that Province.

632. Even in other provinces, such as the Punjab, which was not as vast and had far fewer law and order issues the PEC (P) called upon the assistance of the local administration e.g. in providing extra print related persons. The closer involvement of the CS in Balochistan also needed to be seen in the over all context of the situation in Balochistan where certain parties were attempting to thwart the electoral process which necessitated his greater involvement in the electoral process.

633. With regard to the CM's allegation accusing the CS of causing his brother to lose his election at PB 21 no evidence was produced as to how the CS managed his brother to lose the election and it was significant that his brothers Petition up to the Supreme Court level had been dismissed. Perhaps the fact that the then CM's brother could not win his seat indicates that the election in Balochistan was relatively fair.

634. The other evidence produced by BNP (A) and BNP (M) revolved around PB 4 Quetta, PB 35 Khuzdar III and PB's 42 and 43 Panjgur I and II. The evidence indicates that the manner in

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which the elections were conducted in these 4 Constituencies especially PB 42 and 43 does not inspire confidence in terms of their conduct and organization and complete compliance with the relevant election laws and may cast some doubt on their fairness. (BNP (A&M) CW 2 Mr. Mural Ali Baloch RO PB 42 and 43 Panjgure I and II) (BNP (A) CW 3 Ikramullah RO PB 43) (BNP (A) CW 4 Muhammed Noor APO PB 43) (BNP (A) CW 5 Murad Ali PO PB 42) (BNP (M) CW 3 Shakel Ahmed Palal RO PB 4 Quetta IV) and (BNP (M) CW 4 Naser Ahmed Mirwani RO PB 35 Khuzdar III).

635. However it is also note worthy that in PB 4 Quetta and PB 43 Panjur II the Election Petitions were dismissed and all election petitions in respect of Balochistan stand disposed of (PTI CW 11 Syed Sultan Bayazeed PEC (B)).It is also noteworthy that the CS in his evidence stated that the law and order situation was particularly bad in Panjgur and Khuzdar which relate to 3 out of the 4 above Constituencies where it appears in some polling stations there was a very little if any turnout (PTI CW 10 Mr. Babur Yaqoob Fateh Muhammed)

636. Even if the fairness of the elections in the 4 PA Constituencies cited above was questionable largely on account of the poor law and order situation these only represented 4 out of 51 PA seats and none out of 14 NA seats and as such cannot amount to a pattern of either electoral violations or unfairness in the Province of Balochistan.

637. This is more so since in Balochistan few, if any, mainstream parties won any seats and the winning candidates largely came from smaller Balochistan based parties or Independents. It cannot therefore be concluded that the elections

in Balochistan were rigged in favor of a particular political party let alone the PML (N) which only won one seat NA seat in Balochistan and that seat was not challenged particularly by any of the parties.

638. The Commission agrees with the ECP that even in areas where the law and order situation is difficult it is better to hold elections rather than to give in to the miscreants who want to attempt to subvert the democratic process by preventing the election from taking place through force of arms.

639. The Commission is also of the view that the voter turnout has no particular correlation to the fairness of an election in a country like Pakistan where it is not compulsory to vote. A low voter turnout could be for many reasons apart from the law and order situation for example apathy on the part of the voter.

640. In any event the voter turnout for Balochistan in the 2013 elections, despite the poor law and order situation then prevailing, at 43% (PTI CW 1/33 P.385) was higher than the voter turnout in the 2008 elections at 31% (PTI CW 1/33 P.385). It is also significant that the voter turnout for Balochistan was only 2% lower than in KPK (PTI CW 1/33 P.385)

641. In this respect it is also significant to refer to the evidence of PTI CW 10 Mr. Babur Yaqoob Fateh Muhammed who was the CS of Balochistan at the time who stated that,

"2013 elections was a unique election as CS. This is my view because all those parties which boycotted the previous elections did participate in the 2013 elections. I remember that the Pakhtoon Khaw Milli Awami Party, which did not participate in the previous elections had contested with zeal. The National Party was not there in 2008, they were contesting this time. The B.N.P. Akhter Mengal led also contested 2013 elections. Some of the nationalists like Changez Muree were also contesting. Even Nawab Bugti's grandson Ali Bugti had also filed



nomination papers. So this was a comprehensive wholesome democratic exercise."

642. With regard to whether or not a cabinet had been formed in Balochistan for the purposes of the election this was a Constitutional issue which ought to have been raised at the relevant forum at the appropriate time. Even if it was not in accordance with law to not have a cabinet the ultimate question for the Commission to determine is whether this potential violation of the law had any effect on the fairness of the election.

643. The Commission is of the view that to a very large degree it did not have any effect on the fairness of the election since as admitted by the CM it is for the ECP and the administration to organize the elections and not the Provincial Government.

644. The ECP has also produced the gazette notification for the election scheme for Balochistan during its final oral submissions so this issue also falls away

645. On balance therefore based on the evidence brought before the Commission it cannot be found that the elections in Balochistan were as a whole either unfair or manipulated in accordance with a design by anybody although as seen through the evidence there were flaws in the election process on election day in a few isolated cases but these violations cannot lead to the conclusion that the elections in Balochistan as a whole were not fair.



6. Sindh.

646. Out of 272 NA seats 61 are in respect of Sindh and out of a total of 577 PA seats 130 are in respect of Sindh. For Karachi there are 20 NA seats and 35 PA seats.

647. No party produced evidence of either unfair or rigged elections in any part of Sindh except Karachi. The Sindh case was therefore Karachi specific. Only the JI and MQM (H) had produced evidence in Karachi that the elections were unfair, rigged and not in accordance with law. They alleged that the rigging was done by the MQM.

648. Out of the 20 NA seats in Karachi the MQM (H) had fielded 11 candidates and out of the 35 PA seats in Sindh the MQM (H) had fielded 16 candidates. It therefore fielded candidates for roughly 50% of the seats in Karachi.

649. The JI did not give precise figures of the number of constituencies which it proposed to contest in Karachi.

650. Neither the MQM (H) nor JI relied on excess ballots or Form XV's in order to prove their respective cases. Both parties contended that they were hindered in carrying out their election campaigns by the terror tactics used by the MQM against their workers which lead to them boycotting the elections mid way through polling day since their complaints were not adequately addressed by the ECP.

651. In particular the MQM (H) relied on its leader Mr. Afaq Ahmed from being prevented from campaigning and the JI raised the additional ground that the electoral rolls had by implication been interfered with by the MQM to its advantage.



652. Aftab Hasan (MQM) CW 1 who was the security co-ordinator and member of the Central Committee of the MQM (H) gave evidence that the party office in Landhi was burnt down and complained to the CM of Sindh about hurdles being placed in his party's campaigning by the MQM. This led to the CM calling an all parties conference on 19th April 2013 where he was assured by the administration that his party would be able to freely campaign. However despite these assurances the MQM (H) was not permitted to campaign by the police or MQM. This led to his party going to the Sindh High Court and later to the CEC where orders were respectively given whereby the MQM (H) should be provided security for its campaign (MQM(H) CW 1 /2 and CW 1/3).

653. According to him despite the two orders the MQM(H) workers were not able to campaign and were attacked by the MQM workers which led to the death of a number of workers including a candidate for a PA seat. That their chairman Afaq Ahmed was kept under house arrest and that on polling day neither Mr.Afaq Ahmed nor other MQM (H) candidates were able to cast their votes on account of MQM harassment for which an FIR was registered (MQM (H) CW 1/4). As their complaints were not addressed the MQM (H) boycotted the election on election day.

654. Aftab Hasan (MQM) CW 1's evidence concerning the violence used against party workers by the MQM to stop the MQM (H) workers from casting their votes was corroborated by JIP PWI Raja Arif Sultan Minhas who was the Naib Ameer of JI and head of its election Cell who also gave evidence about the violent tactics used by the MQM against the JI workers. Like wise JIP CW 2 Muhammed Hussain Mehanti who was Ameer of JI during 2013



elections and supervising the entire JI campaign in Karachi corroborated the violent tactics used by the MQM and JI supporters including the burning down of their office. He also corroborated the APC at the CM House whereby all the political parties except the PPP and the MQM had demanded that the elections be held under Army supervision due to the difficulties which they were facing.

655. He also complained that the electoral rolls were not properly scrutinized as ordered by the Hon'ble Supreme Court and that the changes were only cosmetic and that there were no neutral polling staff as the staff were drawn from the KMC and KWSB who supported the MQM. On polling day he stated that a lot of confusion and mismanagement took place as both polling staff and materials arrived late. On account of this situation his party boycotted the elections on polling day and led a protest outside office of PEC Sindh demanding fresh elections. He was only cross examined with regard to the electoral rolls

656. MQM (H) CW 1 Syed Muhammed Tariq Qadri who was the PEC Sindh corroborated the fact that the MQM (H) had made a number of written complaints and that a number of political parties had demanded deployment of Army on polling day.

657. The MQM did not submit oral arguments but in its written arguments were of the view that since the MQM(H) and JI had boycotted the elections they were excluded from participating in the proceedings under S.5 (3) of the Ordinance.

658. MQM refuted the main allegations against it that (a) it had tampered with the Karachi voters list and (b) used force against political opponents. According to the MQM the electoral

rolls had been prepared by the ECP with the assistance of the Army and the MQM had nothing to do with preparing the electoral rolls. That they had not resorted to violence against their political opponents and that no solid evidence had been produced in this respect.

659. MQM CW 1 Dr. Farooq Sattar in his evidence rejected all the allegations leveled against the MQM by the witnesses appearing on behalf of the JI and MQM (H) and stressed that the MQM was a popular political party and had been receiving a heavy mandate in Karachi since 1987 and that the election petitions filed against the MQM in the 2013 elections had all been dismissed whereas in PS 140 where the MQM had challenged its defeat it succeeded in its petition. He also stated that even when the elections were held under strict Army supervision as in the recent by election for NA 246 the MQM had won and there had been an unprecedented turn out

660. During cross examination by the JI he stated that he was unaware of the meeting in the CM house where some parties had demanded that the elections be held under the supervision of the Army. That the MQM had neither demanded nor opposed that the election be held under the supervision of the Army. Perhaps if the Army had been deployed during election day there may have been fewer grievances.

661. That due to the prevailing law and order situation in Karachi, unless this dramatically improves by the time of the next election, the ECP should seriously consider holding the elections in Karachi under the supervision of the Army so that such grievances can be avoided in the future.

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662. With regard to the MQM's objection to the inclusion of the MQM(H) and JI as they had boycotted the elections the Commission notes that this is a belated objection and should have been taken up by the MQM when it first filed its application in connection with these proceedings a few months back.

663. Even otherwise the Commission under S.5(3) may permit such other persons in the interest of justice to join the proceedings. Since the MQM(H) and JI are two political parties of Karachi who intended to contest the elections but according to them they were compelled to boycott the same on account of the tactics used by the MQM and the fact that they had participated in these proceedings from the outset and had also called and examined witnesses in support of their respective contentions the MQM's objection to them joining the proceedings at this belated stage is not accepted.

664. On the evidence adduced before the Commission it would seem that there is little evidence to support the JI's contention that the MQM had any part to play in interfering with or influencing the electoral rolls. In fact PTI CW 9 Mr Mudassar Rizvi who was head of the programs for FAFEN submitted in his evidence that according to FAFEN's Reports the quality of electoral rolls significantly improved in the 2013 elections as compared with the 2008 elections. Likewise ECP CW 13 Syed Sher Afghan stated that the verification of the electoral rolls in Karachi had been carried out as per the order of the Supreme Court.

665. As regards the intimidatory tactics used by the MQM against the workers of the MQM(H) and JI prior to the elections in the face of the vague denial by the MQM there appears to be some



evidence to suggest that such tactics may have been employed in a few constituencies which may have discouraged the other parties from campaigning however such evidence is far from overwhelming or by any means decisive.

666. The fact that neither orders from the Sindh High Court nor the CEC in connection with allowing Afaq Ahmed the head of MQM(H) to campaign were implemented are particularly troubling and the ECP and the administration should ensure that no such situation arises in the future by ensuring that its orders are strictly implemented.

667. So although there is evidence to suggest that in certain Constituencies in Karachi the organization and conduct of the election in respect of a few polling stations/areas was not entirely fair or in complete accordance with the law on balance it cannot be found that the elections in Karachi were not in large part fair and in accordance with the law.



COMMISSIONS FINDINGS IN RESPECT OF EACH TOR.

TOR 3(a) whether or not the general elections 2013 were organized and conducted impartially, honestly, fairly, justly and in accordance with the law?

What needs to be determined?

1. Before turning to this TOR it is noted by the Commission that some parties submitted that TOR answers to TOR 3(a) and (b) may lead to TOR 3(c) only being consequential. The Commission is of the view however that this is not the case. If this was so it would tend to suggest that there was no need to include a separate TOR 3 (c) as the answers for 3(a) and (b) would speak for themselves.
2. It is the view of the Commission that each TOR is separate and distinct and each TOR requires an independent answer based on the evidence and that the answer to one TOR will not necessary have any consequential effect on any other TOR.
3. The Commission has also noted the similarity between TOR 3(a) and Article 218 (3) of the Constitution which reads as under:

"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 arrangement 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"

4. The Commission has not been requested to determine whether Article 218(3) has been complied with or not which it could have been but presumably, taking into account the long drafting history of the Accord, the parties did not intend

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- for it to do so. Its findings therefore will not have any relevance to whether A.218 (3) has been violated or not
5. Another difference between A.218 (3) and the TOR's was that if it was found that A.218 (3) had been violated this would not lead to any particular consequences. However if the Commission found that TOR 3(a) and (c) were found to be in the negative and TOR 3 (b) in the positive these findings were extremely likely to lead to serious consequences.
 6. However since there are similarities between the language used in TOR 3 (a) and A.218(3) which both concern the organization and conduct of elections and its fairness the Commission shall seek some guidance, where deemed necessary, from some of the authorities in respect of A. 218 (3) in so far as they are relevant.
 7. In terms of the added or omitted words in TOR 3 (a) and A.218 (3) the Commission observed that only the following words needed some consideration:
 8. The addition of the word "impartially". Although the PTI in its oral submissions was of the view that the addition of this word widened the scope of TOR 3(a) the Commission is not in agreement. As we will come to later the **Workers Party case** (supra) which the Commission shall to some extent use as guidance found that the words, "*honestly, justly and fairly*" had similar meanings. "*impartial*" is defined in Oxford English Dictionary 7th Ed as, "not partial, unprejudiced, fair;" Thus. The Commission is of the view that the addition of the word impartial adds little if anything to the TOR when read in conjunction with the words, "*honestly, fairly and*

justly". In fact in its Skeletal Arguments the PTI had stated that (the addition of the word "*impartiality*" to the language of A.218(3) is noticeable in Section 3 (a) of the Ordinance). In any event "*partiality*" will automatically derogate from *honestly, justly and fairly and therefore the said addition in Section 3(a) is tautological*". However, "*tautology*" according to the OED 7th Ed. means, " a saying of the same thing twice over in different words"(Para II.2 P.4)

9. The omission of the words, "that corrupt practices are guarded against". The Commission finds the deletion of such words as relevant to the extent that (i) the Commission is not looking into corrupt practices which lies more in the domain of individual election petitions which is outside the scope of its TOR's and (ii) since corrupt practices are criminal in nature and even election petitions have to be proved beyond a reasonable doubt its omission only had a bearing on reducing the burden of proof to lower than the criminal standard in determining this TOR.
10. The Commission was therefore of the view that there was little difference in the language used in A.218(3) and TOR 3 (a) apart from the deletion of the words "that corrupt practices are guarded against"
11. At this stage it would be of significance to stress the importance of TOR 3 (a) strictly being complied with.

The importance of Compliance with TOR 3(a)

1. An election held strictly in accordance with TOR 3(a) (which largely reflects A.218 (3) of the Constitution) is of paramount

importance because under the Constitution it is envisaged that the Parliamentary system of democracy shall in essence be in accordance with the will of the people.

- 1(b) That, "will of the people" is reflected in the candidates who are selected by receiving the most No. of votes from the people in their constituency who will represent them in Parliament which amongst other things makes, amends or withdraws the laws that the people will be subject to and even has the ability to amend the Constitution which is the overriding law in Pakistan under which the State functions. Thus, it is imperative that those who are elected to Parliament genuinely are the chosen representatives of the people who have been elected in a fair and transparent manner through a process provided by law.

What parts of an election are encompassed by TOR 3(a)

541. With regard to the obligation to organize and conduct an election guidance can also be sought from Para 40 of the

Workers Party Case (Supra)

*"40. A bare reading of Article 218(3) makes it clear that the Election Commission is charged with the duty to 'organize' and 'conduct the election'. The language of the Article implies that the Election Commission is responsible not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. By conferring such responsibility on the Election Commission, the Constitution ensures that all activities both prior, on and subsequent to Election Day, that are carried out in anticipation thereof, adhere to standards of justness and fairness, are honest, in accordance with law and free from corrupt practices. **This Court in Election Commission of Pakistan v. Javaid Hashmi and others (PLD 1989 SC 396), observed that "(g)enerally speaking election is a process which***

*starts with the issuance of the election programme and consists of the various links and stages in that behalf, as for example, filing of nomination papers, their security, the hearing of objections and the holding of actual polls. If any of these links is challenged it really (is) tantamount to challenging the said process of election". It interpreted that the phrase 'conduct the election' as having "wide import" and including all stages involved in the election, process. These observations subject all election related activities that take place between the commencement and the end of the election process to the jurisdiction conferred on the Election Commission under Article 218(3). **The Election Commission therefore has to test all election related activities that are carried out in the relevant period, both individually and collectively, against the standards enumerated therein**"(bold added)*

668. Thus, the organization and conduct of the election covers 3 periods (a) Pre election (b) polling day and (c) post election all of which need to be carried out as per TOR 3 (a) impartially, honestly, fairly, justly and in accordance with the law.

Whose Responsibility was it to conduct the General elections and thereby comply with TOR 3(a)

669. As per the TOR 3 (a) itself, the Constitution, the other electoral laws, in particular ROPA and the Judgments of the Hon'ble Supreme Court in the **Workers Party Case** (supra) and **Imran Khan's case** (supra) the onus fell squarely on the ECP to ensure that TOR 3 (a) was complied with.

670. It is significant that in both the above mentioned cases the ECP was represented by Counsel and in both cases Mr. Sher Afghan ECP (DG Elections) was present and even in the Handbook for Returning and Assistant Returning Officers dated March 2013 (after the above 2 Supreme Court decisions) the Judgments of the Supreme Court are referred to in the ECP Handbook for RO's.

The importance of Context.

671. The Commission is of the view that when reaching a finding on any matter the events must be placed in the overall context of the matter in dispute. Such context would include, amongst other things, the importance of the matter and the awareness of the responsibilities of those involved of their obligations and responsibilities hence the above narrative.

What did TOR 3(a) Require the ECP to do.

This was essentially to:

1. organize the elections and
2. conduct the elections
3. impartially, honestly, fairly and justly and
4. in accordance with the law.
 - a) The meaning of to organize and conduct are self explanatory.
 - b) Honestly, fairly and justly.

672. These words have already been extensively defined in the **Workers Party Case** (supra) by direct reference to their use in A.218(3) which as discussed earlier largely reflect TOR 3(a) and fall within the same context.

673. Thus the Commission in the interests of uniformity and on the basis that this case was decided shortly before the 2013 elections will be guided by these definitions. For ease of reference the definition of those words as interpreted in the **Workers Party Case** (supra) is set out below in relevant part at Para 39 P.722 of the Judgment:

39. *The phrase "the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against" as used in*

Article 218(3) of the Constitution informs the content and scope of powers conferred by it on the Election Commission. It may be advantageous to refer to the meanings of the terms "honestly", "justly" and "fairly" as given in various legal instruments, which read as under:-

.....

A perusal of the above shows that the words "justly", "fairly" and "honestly" have similar shades of meaning. As has been rightly submitted by Mr. Farogh Naseem, **these words imply that the Election Commission is under a direct constitutional obligation to exercise all powers invested in it in a bona fide manner, meeting the highest of standards and norms.** As a natural corollary, therefore, all discretionary powers is also to be exercised and tested against these standards". (bold added)

674. As already noted the word "impartially" adds little, if anything, to the above words since they all have a similar meaning. As such when dealing with these four words (impartially, honestly, fairly and justly) the Commission will only refer to the word "fairly" which will serve to encompass them all.

675. In accordance with the law. This requirement needs no explanation as the relevant laws can be found in the Constitution and the various applicable electoral laws and in particular ROPA

The approach to be adopted in answering the TOR.

676. A problematic area which the Commission was faced with lay in determining whether the language in TOR 3(a) ought to be determined from an objective or subjective approach. This was because different people would have different views on whether an election was organized fairly or conducted fairly.

677. As has often been said two reasonable people can come to a different conclusion of what is reasonable. The

expression in accordance with the law is less problematic as either the law has been violated or not. It would be more a question of the extent of the violations.

678. In the end the Commission decided that although the word, "fair" is generally subjective as every body has their own view of what is fair or not the Commission decided to take the objective view in that it would look at all the evidence in a holistic manner and then determine whether or not the general elections 2013 were organized and conducted in a fair manner.

SHORTCOMINGS OF ECP DURING THE ELECTORAL PROCESS.

679. During the course of these proceedings, the Commission found that there were a number of short comings in both organizing and conducting the 2013 general elections. Some failings of the ECP and irregularities have remained the subject of election petitions filed by losing candidate before Election Tribunals. However it is for the first time that a Commission has been constituted to holistically examine the manner in which the ECP organized and conducted a particular general election.

680. Some of the Shortcomings of the ECP can briefly be dealt with under the following headings.

1. Lack of Planning by the ECP.

681. The ECP is a body created by the Constitution whose functions are of immense importance; the prime function being to organize and conduct general elections. Organizing and conducting free and fair elections as a matter of law is absolutely crucial as it is the people's representatives (as elected by the people through

general election) who will in effect run the affairs of the State on behalf of the people.

682. The 2013 general election was not a snap election. There was plenty of time for the ECP to organize the elections which during its five year tenure is the single most important task which it must prepare for and undertake. It had ample experience of past elections to draw upon. The evidence however before the Commission has suggested poor planning on the part of the ECP. It appears that as early as 6th and 7th September 2012 (3 months after the Supreme Court had given it specific directions in the **Workers Party Case** (supra) and had clarified its role) the ECP held a two day meeting in order to prepare for the 2013 elections which was attended by all stakeholders including representatives of the PCP (EX ECP CW 13/2). There however seems to be little evidence of regular follow up meetings held by the ECP to appraise itself of the progress in preparing for the elections.

683. Rather directions appear to have been passed down by the ECP to the Secretary ECP for implementation by the PEC's. There did not seem to be any effective feedback from the PEC's to the ECP as to whether or not those instructions had been implemented on the ground. In particular the implementation of the ECP's Action Plan contained in its 18th April 2013 letter to all PEC's and the instructions given in its March 2013 revised handbooks to DRO's, RO's PO's.

684. A few important examples of this lack of planning are as under:

- (a) The Formula for determining excess ballots i.e. rounding up on the basis of polling stations was not adequately

communicated to the RO's , particularly in the Punjab. Even otherwise the method of calculating the No. of excess ballots was not uniform throughout the Country. For example, in 3 out of the 4 Provinces (Sindh, Balochistan and KPK) the PEC's, who had received a copy of the Action Plan, decided on the No. of ballots to be printed against no discernible formula despite the Formula to be followed being set out in the Action Plan. In the Punjab the determination was left to the RO's who seem to have received very little, if any, guidance on this point and as such the number of excess ballots requested per constituency varied greatly.

- (b) Even where the PEC's determined the No. of ballots there was little uniformity and it is unclear whether rounding up on a polling station wise basis as per the instructions contained in the Action Plan were complied with e.g. in Balochistan the PEC (PTI CW 11 Mr. Syed Sultan Bayazeed) ordered the no. of ballots based on the polling scheme and the excess was roughly 8% yet figures reveal that in nearly all Constituencies in Balochistan there was an excess of over 10%.
- (c) The decision to rely on only 4 printing Presses was fraught with danger especially due to the lack of capacity of the Lahore Printing Press. It was also known according to PTI CW 4 Moosa Effendi that the PCP had no automated system for numbering which had to be done manually and therefore extra personnel would most likely be needed for this purpose. An extra Press such as the

Postal Foundation should have been contracted from the start and a sufficient no. of personnel for manual numbering and binding should have been hired by the start of printing.

- (d) The belated shifting of ballot papers from one press (PCP Lahore to PCP Islamabad to the Postal Foundation) to another and even belated outsourcing to the Postal Foundation, printing of a large No. of excess ballots and late hiring of printing related staff due to a lack of capacity and uniformity in large part lead to suspicion on the part of the PTI that there may have been an attempt to rig the elections by printing excess ballots at the 11th hour in a surreptitious manner could have been avoided with proper planning.
- (e) It should be noted that the PCP Manger Punjab reported to the PCP Managing Director at Islamabad (PTI CW 4 Moosa Effendi) and an ECP Representative was based in all the Presses including PCP Punjab to monitor the progress of the printing of ballots who sent daily reports to the office of the PEC Punjab which would forward these Reports to ECP HQ at Islamabad (ECP CW 6 Khaleeq-ur- Rehman).As such the lack of capacity in the Punjab PCP in printing ballots as per schedule i.e. by 5th May ought to have been identified much earlier
- (f) An ink ought to have been developed and the necessary equipment purchased to ensure an accurate forensic analysis of disputed votes could be made. It seemed an exercise in futility to develop an ink which could not

positively identify the person who actually cast each individual vote. The ability to seek NADRA analysis Reports therefore gave disgruntled candidates a false hope that all the votes cast could be accurately verified with the actual person who cast them and when this could not be done this again aroused suspicion

- (g) The failure to establish and use on election day an effective Results Management System (RMS) which was described in P.71 of the ECP's RO's handbook in the following terms. "Efficient Results Management System is considered a hallmark for free, fair and transparent elections" also lead to suspicions of rigging especially as the RMS was meant to deal with the important Form XIV statement of count.
- (h) In some Constituencies polling material reached the concerned Constituency in the early hours before polling was due to commence instead of 3 days in advance (PTI CW 1) which not only caused difficulties for the RO's in distributing the election material but also created suspicion in the minds of some political parties. This situation ought to have been avoided through better planning
- (i) The fact that over a period of 11 years and 2 elections (2002 and 2008) the ECP had still not acquired its own storage space (EX ECP CW 13/1) where as per law (S.44 ROPA) it was required to retain the polling bags under its custody and instead relied on treasuries where the post election material was stored in a very inadequate manner

as can be seen by the Report submitted by the Commission's legal assistant which is set out below for ease of reference

"Report on state of polling bags held in some treasuries.

Islamabad Treasury.

At about 10am on 2-6-15 KKA along with District and Sessions Judge Islamabad Mr. Justice Tanvir Mir made an unofficial visit to the treasury based in the Islamabad Capital Treasury (ICT) where election bags were being held on trust by the ICT on behalf of the ECP. A representative of the ECP, Court staff and members from the treasury were also present.

I was taken to an outer chamber (double bolted door) which contained an inner Chamber (double bolted door) where the bags were retained. The inner Chamber (room) was very small and dusty and there was barely adequate space to store the bags.

In the room the bags of NA 48 and 49 relating to ICT were placed in a disorganized and haphazard manner. There were three different coloured bags (White, Khaki and blue) which at first instance seemed a bit surprising as there were no PA seats in Islamabad and hence no need for Khaki bag

In some cases all the bags were separated, in some cases 2 different colored bags were tied together and in some cases all 3 different colored bags were tied together. On the outside of each bag the name of the polling station was written which enabled the 3 bags to be matched.

Most of the bags either had a rope around them or were sealed however this on occasion may have broken or come loose when the bags had to be pulled out of the pile in which they were stacked for finding out which NA they related to. This was an arduous process. The bags however did not appear to be damaged i.e. split open

When I visited the staff was in the process of sorting out which bags related to NA 48 and 49 bearing in mind that, as I was told, there were over 200 polling stations in respect of each Constituency. Due to the disorganization in the room it had taken 2-3 days to separate and order the bags. Since there appeared to be insufficient space where the bags were held for them to be inspected on the spot I was informed that the bags would be taken to the premises of the District and

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session Court Judge where the process of finding the Form XV's and completing the required paper work would start. Thereafter the bags would be resealed and returned to the treasury.

It was noted that in the small room where all the bags were stored there was a large amount of stamp paper unrelated to the bags. I was informed that on occasion the DCO may enter the room where the bags were kept in order to retrieve or place stamp paper.

The next day (3-3-6) I returned in the morning to the District and Sessions Court where the bags had arrived and the forms XV were being searched for. I was informed that the white and blue bags had been sent to the RO's inside the Khaki bag. Thus, when the bags were returned by the PO's the white bags contained the election forms, the blue bags the stationery and the Khaki bags other miscellaneous election material. It seems that having received the khaki bag it was utilized.

The bags were opened, the form XV searched for, forms completed and thereafter the bags were resealed to be returned for storage in the treasury.

Rawalpindi.

I visited Rawalpindi at approx 5pm on 2-6-13. I was accompanied by the District and Sessions Judge Mr. Justice Badhr Khan to the treasury where the bags were kept where his staff were working along with a representative from the ECP.

This presented a similar picture as in Islamabad except that there were many more bags in the room where the bags were kept as I was informed that these bags came from 7 NA's and 14 PA's.

Once again the room was very small and was filled up with bags in a disorganized and haphazard manner. In most cases the blue bags had been separated from the white and Khaki bags (these Khaki bags were expected this time as PA's were also within Rawalpindi unlike in Islamabad) which bags (white and Khaki) were often not together. Hence the initial task as with Islamabad was the arduous task of organizing the bags in constituency wise manner. The bags appeared to be sealed by rope/string

As with Islamabad the door was double bolted and again stamp paper was in the room along with the bags which from time to time may needed to have been accessed.

Despite the small room and very cramped conditions the staff were checking the bags in the room rather than moving them elsewhere. They opened the bags and fished out the tamper evident bag containing the Form XV if it was visible. If it was not visible the bag was emptied and the staff had to search through the contents to see if they could find the form XV. Thereafter the bag was resealed.

In both cases (Islamabad and Rawalpindi) the diligence and hard work of the staff in performing this most arduous task in difficult working conditions in order to meet the deadline of 8th June was highly commendable.

SD/-
K.K.AGHA
Legal Assistant to the Inquiry Commission
3-6-15"

2. Lack of training, overload of RO's and PO's and failure to comply with the electoral laws

685. According to ECP CW 13 Sher Afghan who was ECP's DG Elections the ECP gave comprehensive training to DRO's, RO's and ARO's as well as providing training to 650,000 polling staff. 19,000 training sessions were arranged throughout Pakistan.

686. This amount of training however was woefully inadequate considering the No. of DRO's, RO's, ARO's, PO's, APO's and other polling staff who would be on duty during election day in thousands of polling stations throughout Pakistan all of whom had a great deal of responsibilities to deal with. It was notable that according to CW 8 Khalid Mehmood Bhatti RO for NA 125 who attended a training session despite the PEC of Punjab being present the issue of how to determine the No. of ballots was not discussed in his training session. CW 1 Ms Moeen Bano RO NA 222, PS 53 and 54 Sindh in effect sated that since the PO's were not properly trained they did not put the papers in the right bags

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and did not properly tabulate the results. This was managed by herself and 2 other ARO's over a two day period.

687. CW 3 Pir Bakhsh Shah DRO and RO NA 34 Lower Dir stated that when the polling bags were returned by the PO after polling It was a chaotic/dooms day scenario on polling day as all the polling material came in from the polling stations and there were 308 Polling stations in NA 34 for which he had to prepare separate polling bags. He assigned the various functions to different judicial officers as he had judicial work to deal with at the same time. None of the 300 packing invoices had the signature of the PO's. In such a scenario one can readily understand why forms were not filled out, or incorrectly filled out or even misplaced. Likewise CW 7 Sajjad Hussain Sindher stated that he had to rely on team work to enable him to fulfill his duties as could not be expected to check everything himself.

688. ROPA has many legal aspects which need to be complied with and it is doubtful whether the PO's had the necessary training or ability to ensure that they were complied with especially during the hectic and stressful situation on polling day. There were instances where RO's who were fairly senior judicial officers did not comply with the mandatory provisions of ROPA; For example, on their own admittance failing to open and consider rejected ballots. (PML (Q) CW 2, 3 and 6) The margin of victory may have been high and no party may have requested the consideration of these ballots but this was still a legal requirement under S.39 (3) ROPA

689. Likewise it appears that there were two Forms XV's (Ballot Paper Account) which were completed by the PO's. This was

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an extremely important document. According to the instructions in the handbook it was made abundantly clear that the original copies of the ballot paper account are to be placed in a tamper evident bag sealed and there after placed in the sealed election bag to be returned to the RO. P.83 and 84 also give a precise example of how the Form XV is to be completed by way of an example document. The fact that a number of Form XV's were not properly completed is a poor reflection on the PO's given the instructions in the handbook (presuming that it was received, read and understood).The PO's should have been given specific training on the completion and retention of Forms especially since completion and retention of such forms was a mandatory requirement under S. 38 and 44 ROPA

690. It was incumbent on the RO to ensure that a sealed packet allegedly containing a Form XV was placed in the polling bag at the time it was sent to the treasury or otherwise at least make a note that it was missing. Even otherwise the Form XV's like the Form XIV's in a number of cases had not been fully completed in accordance with the relevant legal requirements.

691. However in over 35% of all Constituencies Form XV was not placed in a sealed packet inside the election bag at the time when the bag was retrieved from the treasury for inspection on behalf of the Commission and reliance had to be placed on the copy of the Form XV's, where available, which had been kept in a separate record by the RO which could have later been interfered with or even lost. The RO's who gave evidence failed to tally Form XV's of PO's with Packing invoice as they were not informed about

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this ECP instruction as they did not receive a copy of the Action Plan.

692. It would seem that from the 41 NADRA Reports and Pre scanning Reports violations in respect of S.33 ROPA i.e. procedure at the time of voting and S.38 ROPA i.e. proceedings at the close of poll in terms of what the PO was to place in sealed packets in the polling bags after completing the statement of count were also to some extent violated.

693. In Karachi despite the Order of the Hon'ble Sindh High Court dated 29-4-13 (EX MQM (H) CW 1/2) and direction from the CEC dated 9-5-2013 (EX MQM (H) CW 1/3) it seemed that Mr. Afaq Ahmed, the leader of the MQM (H), was not able to effectively carry out his election campaign on behalf of his Party and as per un rebutted evidence he was effectively under house arrest during the electoral process. The CEC should at least have made sure that his direction was implemented or perhaps due to the weak reporting structure as indicated below this was never brought to his attention.

694. The lack of planning by the ECP and non compliance with election laws was also seen in Balochistan where two witnesses who were to play an important part on election day in effect deposed as under;

(a) BNP (A) CW 4. Mohammed Noor (Assistant Presiding officer of PB 43 Pangjur II during 2013 elections) He was APO at Boys Primary School Sarai Kalot. At about 8am on polling day he was informed that he was to be APO at the boys primary school. There was no voters when he reached the polling station. The polling material was provided by the FC at 11am. No one came to vote.

(b) BNP (A) CW 5 Murad Ali (Polling officer at PB 42 Pangjur I during 2013 elections) He was polling officer at the Boys High School Khudabadan, Sarawan .He was informed at about 8am on election day about his election duties. When he reached the polling station the gates were closed. The election material came at 1.30 pm. No one came to cast their vote

695. Under ROPA it was the responsibility of the ECP to keep the post election material in safe custody. However for a number of years it had been using the treasuries for this purpose which was holding the material for the ECP on trust. It is doubtful whether this is strictly in accordance with the law. Even other wise as indicated in the above mentioned Report carried out by the Commission's legal Assistant it is apparent that the storage space was wholly inadequate, the manner in which the bags were organized was in a totally disorganized and haphazard manner and there was even chances of persons entering the sealed rooms where the post election material was stored and interfering with the same as stamp paper was also kept in such storage rooms which may have needed to be accessed. The Secretary of the ECP conceded that he had not even visited the storage spaces i.e. treasuries. The keeping of the election material in such a manner is even more troubling when it is considered that the main purpose of its safe keeping after the election is for it to be used as evidence in potential election petitions. By keeping it in such a manner its evidentiary value becomes greatly reduced if not destroyed.

696. Some of the instructions given by the ECP in its handbooks were themselves inappropriate in the context of this

election. For example, in the Handbooks RO's were expected to retain a copy of the Form XV. However RO's were judicial officers and once their role as RO's ceased they reverted to that position and thus became *functius officio* in respect of the election process. As such they had no right under the law to keep any part of the election record. The ECP should have ensured that this record was forwarded to the ECP for safe keeping as soon as the judicial officers ceased to be RO's or better still it should have been retained by the ECP in the first place.

697. Although it may have been prudent for the RO to retain a reserve since the reserve could not be misused at the polling station, based on past experience the ECP ought to have issued some instructions regarding retention of reserved ballots.

3. Lack of Co-ordination between ECP, PEC's and activities on the ground.

698. There appeared to be a lack of co-ordination between the ECP and PEC and activities on the ground. For example, when the revised schedule for printing ballots was issued on 20th, 21st and 26th April 2013 this was sent to ECP DG Budget rather than ECP DG elections which did not appear to be readily understandable.

699. Despite the ECP Action Plan issuing a formula in terms of rounding up as to how the number of ballots were to be determined for each Constituency it appeared that the instructions were not passed onto the RO's. The ECP therefore failed to ensure that this key instruction was implemented and may not even have been aware that it was being ignored by the PEC's

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700. According to counsel for the ECP during oral submissions rounding up at the polling booth as opposed to polling station level was required to ensure that there were sufficient ballots and everyone's constitutional right to vote was preserved. If this was so why did the ECP order rounding up per polling station in its Action Plan instead of per polling booth. The RO's clearly believed that rounding up at polling booth level was the requirement based on past experience hence they rounded up per polling booth despite not receiving the Action Plan. The fact that despite past elections rounding up per booth seemed to be the practice this seemed to be unknown by the ECP at the time of issuing the Action Plan which shows another disconnect between what the reality was on the ground and the ECP's understanding of the situation.

701. In the Punjab the formula on how to calculate estimated ballot requirements was not agreed upon between Joint PEC Punjab and PEC Punjab which lead to 2 different revised schedules being issued within a day of each other which created confusion and suspicion. The ECP either did not know about this or chose not to comment on it.

702. The ECP did not seem to have any way of knowing how things were progressing on the ground either prior to the election or during election day. There was no monitoring wing in the ECP. There seemed to be no way of the ECP knowing whether or not its directions were being implemented. The PEC did not seem to report matters to the ECP during polling day. The ECP had no effective system to monitor whether or not its directives were being implemented on the ground. Even the no. of ballots requisitioned

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per Constituency were not reviewed by any body to ensure their uniformity as required by the Action Plan. Thus, excessive ballot requisitions went unnoticed

703. The chain of command and organizational structure between PEC, REC and DEC and DRO and RO and PO and their liaison as appeared in the ECP hand outs appeared largely in practice to be ineffective as very little information seemed to filter back to the ECP which in fact was the instructing body and had ultimate responsibility for the organization and conduct of the elections under A.218 (3), whereas the others were only the implementers of those instructions

704. There is a need therefore for the ECP to build its own capacity in terms of human resources and recruit and train more officers who can both act as master trainers and play an active, effective and informed role during the election process.

705. The ECP member for each Province seemed to play little, if any, role in the electoral process and in large part left the elections up to the PEC to deal with. The Role of the members only seemed significant when hearing appeals.

Finding on TOR 3(a).

For the purpose of giving its findings on TOR 3(a) the Commission took into account the specific allegations made by the political parties about the unfairness of the elections, the evidence recorded in that respect, the findings now given by the Commission in paragraphs 562 to 667 above on the particular issues raised by the parties, as well as the shortcomings of the ECP. Having considered all these factors the Commission is of the view that notwithstanding the shortcomings of the ECP, the 2013

general elections were in large part organized and conducted fairly and in accordance with the law.

TOR 3 (b): whether or not the general elections 2013 were manipulated or influenced pursuant to a systematic effort by design by any one?

706. It may be recalled that at the initial stage of these proceedings since the parties had not been specific in their applications in addressing the TOR's a questionnaire was given out to all the political parties for their written response. With reference to Section 3(b) the following questions were formulated:-

"2(a) Do you allege that the GE 13 were manipulated or influenced pursuant to a systematic effort by design by any one?"

(b) If so, please provide the following details:-

A(i) Who made the plan/design?

(ii) the material and witnesses which you will rely on in order to support your allegation.

B(i) What was the plan/design?

(ii) The material and witnesses which you will rely on in order to support your allegation.

C(i) Who implemented the plan/design?

(ii) The material and witnesses which you will rely on in order to support your allegation.

D(i) How was the plan/design implemented?

(ii) The material and witnesses which you will rely on in order to support your allegation."

707. The PTI responded that it "has from inception alleged and maintained that it considers PML-N to have usurped the popular mandate through unfair means" and that "the true mandate it (the PTI) received from the electorate was illegally manipulated and stolen"; that "the architects of the plan were obviously the beneficiaries thereof - which is the PML(N), its

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supporters, accomplices, associates and cohorts.” As to the plan about design the PTI again alleged that the same was implemented by and on behalf of the architects thereof, which are the PML(N), its supporters, accomplices, associates and cohorts; that the Returning Officers, Presiding Officers and other Polling Officials, elements of the election machinery and the bureaucracy all have been part of the design and plan and facilitated the implementation of the plan and design. In the final submissions made at the conclusion of the proceedings (CMA 111/2015) the same allegations were repeated against the PML(N) in para 111.2 with the addition that “PTI perceives, believes and alleges that, *inter alia*, the *plan, method, system or design* involved various elements the underlying object of this was to procure through various unlawful means, corrupt and illegal practices, through co-opting and in collusion with, *inter alia*, the ECP, Provincial Election Commissioners, Regional Election Commissioners, District Election Commissioners, Returning Officers and Presiding Officers and the manipulation and maneuvering of the bureaucracy and election Machinery) as many votes and seats as possible in the Punjab so as to enable a majority in the National Assembly.” The reason set out by the PTI for its belief is the printing of excess ballot papers for selective constituencies, absence of Form XV in the polling bags and the statement of then Caretaker Chief Minister, Mr. Najam Sethi.

708. At the request of PTI all the relevant officials posted in Punjab during 2013 elections were summoned to testify, including the Caretaker Chief Minister. No question was put either to the Chief Secretary, the Additional Chief Secretary, who was the focal

person on behalf of the Government of Punjab for the elections, the Provincial Chief Election Commissioner or any other officer from the office of the Provincial Election Commissioner that they had maintained any contact at any level with the leadership of PML(N). No suggestion was made to them of their being part of any plan or design to manipulate or influence the election in favour of any party or individual candidates. Only the Caretaker Chief Minister was questioned about his appointment as Chairman PCB by the newly elected Prime Minister and that his niece was elected on the PML(N) ticket on a reserve seat for women. He was further confronted with his T.V. Programme "Apas Ki Baat" in which he as a political analyst while referring to his tenure as Caretaker Chief Minister, Punjab, disclosed that 7/10 days before the polling day his powers as Chief Minister had began to slip away and 15 days or so before the 6th June, 2013 (after the election) many or some Secretaries were already reporting to Model Town and Raiwind (residences of the PML(N) leadership). The narration made by Mr. Najam Sethi in the said programme can be split into two; the first relates to the pre-poll and the second to the post-poll period of his tenure. Learned counsel for the PTI had tried to read the second into the first by submitting that the power from the Caretaker Chief Minister was slipping to the PML(N) leadership even before the polling day and who had thus taken control of the administration even before the election. The slipping away of the powers before the elections was used in the sense that towards the end of his tenure as Caretaker Chief Minister the bureaucracy was not taking him seriously. This is not an unusual phenomenon. The second part of his statement regarding reporting of the Secretaries



to the Model Town and Raiwind after the election can in no way be read into the first part. Had that been the case Mr. Najam Sethi would have surely mentioned it as he did in the second part of the statement. By no means can his statement be considered as an admission, implied or expressed that the power was slipping away before the elections into the hands of the PML(N) leadership. There is nothing on the record or even any suggestion made on behalf of the PTI to any of the witnesses about the role of the Caretaker Chief Minister in the conduct of the elections. The only reference to him was made by the Additional Chief Secretary who stated that through his Principal Secretary he had got his approval for the procurement of 200 persons to be sent from Lahore to Islamabad for the printing of ballot papers. This was denied by Mr. Najam Sethi and the Principal Secretary was not produced to confirm the statement of the Additional Chief Secretary. Now that an explanation has been furnished by the witnesses of the ECP for employing extra persons (see paragraphs 562 to 654 above) this part of the cross-examination has lost its relevance. As to the appointment of Mr. Najam Sethi as Chairman, PCB and the election of his niece on the PML(N) ticket no inference, without more, can be drawn therefrom that it was done as a favour by PML(N) for his help in the election.

709. On the other hand the Caretaker Chief Minister had reshuffled the entire bureaucracy of Punjab except for four Provincial Secretaries whose justification for retention has been furnished by the Chief Secretary, Mr. Javed Iqbal (PTI.CW-1).

710. In his response to a question on behalf of PML(N) he disclosed that on objection by Mr. Imran Khan (leader of PTI) to the

appointment of Mr. Qamar-uz-Zaman as Chief Secretary Punjab he took up the matter with the Chief Election Commissioner and persuaded him to withdraw the appointment; that he had sought approval of Mr. Imran Khan for the appointment of Mr. Javed Iqbal as Chief Secretary which he duly approved. That he had met all the leaders of the major political parties including Mian Muhammad Nawaz Sharif, Mian Muhammad Shahbaz Sharif and Mr. Imran Khan regarding some security concerns during the election campaigning. In any event first rigging has to be proved before one proceeds to identify the persons or bodies involved in it.

Finding on TOR 3(b).

i) With reference to the questionnaire reproduced above the plan or design to manipulate or influence the election has not been disclosed by the PTI or any other party with any degree of specification nor as to who and how were the same implemented. The issue of printing of excess ballot papers and missing Form XV's in the polling bags has already been discussed in the context of TOR 3(a), contrary to the suggestion given by the PTI, this could hardly indicate any design or plan to manipulate the elections.

ii) The allegations made against the then caretaker Chief Minister of the Punjab, the Punjab administration, the ECP and others involved in the electoral process in the Punjab in terms of manipulation or influence also lacked any degree of specification and remained unsubstantiated by the evidence on record. Rather the allegation with regard to TOR 3(b) was not seriously pursued in either the written or oral submissions made at the conclusion of the proceedings by the parties.

TOR 3 (c): whether or not the results of the general elections 2013 on an overall basis are a true and fair reflection of the mandate given by the electorate?

711. The PTI in its Skelton arguments submitted as under
“Outline of submissions with reference to the question set out in Section 3(c) of the Ordinance.

IV.1 The PTI submits that on the basis of the submissions made with regards to the matters specified in Section 3(a) and 3(b) of the Ordinance it follows inevitably that the results of the 2013 GE, on an overall basis, are not a true and fair reflection of the mandate given by the electorate.

IV.2 Even independently of the above enough evidence and material is on record which would be pointed out during the hearing”.

712. The Commission has already found earlier that the finding in TOR 3(c) is not necessarily consequential on its findings in TOR 3(a) and (b) as each TOR is distinct and as such the Commission will consider this TOR 3(c) based on all the evidence on record as submitted by the PTI in IV.2 above. During oral arguments nothing of substance was added by the PTI to the statement already made in the written Skelton arguments which it had submitted. Reference to S.3(a) of the Ordinance does not discharge the burden of the PTI to prove the allegation with respect to S.3(c). It has to be shown that the short comings of the ECP did affect the outcome of the 2013 general elections on an overall basis.

713. That although TOR 3© is distinct from TOR 3(a) there is in the view of the Commission a slight overlap between TOR 3(a) and (c).

714. The Commission has already found with respect to TOR 3(a) that the 2013 general elections were in large part organized and conducted fairly and in accordance with the law.

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715. In the view of the Commission however it does not necessarily follow from such finding that the elections on an overall basis were not a true and fair reflection of the mandate given by the electorate. This is because an election could potentially be organized in an unfair manner but may still represent the overall mandate of the electorate and vice versa.

716. Learned counsel for the PTI has drawn the Commission's attention to the word "overall basis" and its distinction from the word "materially effected" as used in S.70 ROPA

717. "Overall" is defined in the Oxford English Dictionary 7th Ed. as

*"(-awl) n., a., & adv. 1. n. {{garment worn over others as protection from wet, dirt, etc. while working; (in pl.) outer trousers or leggings or combination suit as protection from dirt in work or (child's) playing, {{close-fitting cavalry trousers. 2. a. from end to end (overall length); total, inclusive of all; **taking into account all aspects**. 3. adv. (or-aw'l). in all parts (ship dressed - , from end to end); **taken as a whole**. {f. OVER -2 + ALL}'. (bold added)*

718. The words "mandate given by the electorate" are also significant in this respect as we are considering the registered voters only. As noted earlier whether a voter casts his vote or not is not of huge relevance unless there is positive evidence that he was deliberately stopped from doing so of which there appears to be little if any evidence in this case.

719. In essence the Commission has been asked to determine when taken as a whole the election was a true and fair reflection of the mandate given by the people.

720. The PTI along with all the other parties who made the allegation that the general elections 2013 on an overall basis were

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not a true and fair reflection of the mandate given by the electorate all agreed that this applied to both the NA and PA seats throughout the Country.

721. Thus bearing in mind the words "overall basis" this TOR needs to be determined in the context that in the 2013 general elections 849 seats (both NA and PA) throughout Pakistan went to the poll. Thus, it would need to be shown in order to reach the standard of overall basis that when the election was taken as a whole it reflected that a very large no. of the electorate who voted did not agree with the result in respect of which candidate received the most votes for each Constituency.

722. From the evidence brought before the Commission it would appear that evidence was adduced only in respect of the following parts of Pakistan:

- (a) The Punjab and in particular Lahore
- (b) Karachi
- (c) A small part of Balochistan.

723. No Party seriously challenged or adduced any significant evidence in respect of :

- (a) KPK
- (b) Interior of Sindh
- (c) Large parts of Balochistan

724. The Commission will therefore only examine the evidence in respect of the Punjab, Karachi and a part of Balochistan.

725. An important piece of evidence in answering this TOR can be found in the FAFEN Report and evidence of PTI CW 9 Mr Mudassar Rizvi who stated as under on cross examination:

“Question: Can you please describe to the Commission what is the Parallel Vote Tabulation System (PVT) that you used for predicting and establishing the results of

the General Elections for National Assembly held on 11th of May, 2013?

Answer: *It is not prediction. It is a scientific methodology. It is done on a sample of polling stations which are randomly selected in all constituencies and on that basis it is seen whether the consolidation that is done at the office of the Returning Officer is in line with the way the results are counted at the polling station.*

It is correct that we had collected data from 8495 polling stations in 264 constituencies. From the basis of these 8495 randomly collected samples (which are 10% of the total votes) we tallied scientifically result for the General Elections as a whole as announced by the ECP.

It is correct that on the basis of the PVT system we came to the conclusion that the result of 218 constituencies of the winner, runner up and the second runner up was exactly as announced by the ECP.

It is correct that out of the remaining 46 constituencies, in 18 the result was same for the winner and the runner up but different for the second runner up. This was well within the sampling error."

726. The importance of the PVT is that in effect it was an exit poll. i.e. those who left the polling station after casting their vote were asked which party they had voted for and on the basis of their answer the poll was compiled. As such the results of the exit poll should be relatively accurate as the voter after leaving the polling station would have no particular reason to lie about which way he voted. The finding of the exit poll was that out of the 264 NA seats which were subject to the PVT 236 had winners and first runner up which correlated to the ECP's final result which represents approx 89% similarity.

728. It is also significant that in the Punjab which is the main plank of the PTI case that out of the 148 potential NA seats in the Punjab the PTI only filed 18 election petitions 13 of which have been dismissed and 4 are still pending. The relevance of this is that if the PTI had so many grievances in the Punjab that the

election was not a true and fair reflection of the mandate given by the electorate why did it file so few elections petitions. The implication seems to be that after the election the PTI did not so strongly harbor such views. As things stand today approx 91% of the results in the NA and PA have reached finality.

728. In answering this TOR it also needs to be considered that as per PTI's own document PTI PW 1/1 PML (N) received approx 14.8M votes whilst the PTI received approx 7.6 M votes. This is a margin of approx 7 M votes and approx 50% less than the votes received by the PML (N).

729. It is also notable that the overall voter turnout increased from approx 44% in 2008 to approx 55% in 2013 (PTI 1/34 P.385) which shows a much greater awareness on the part of the electorate and a keenness on their part to participate in the democratic process taking account that the electoral rolls were also scrutinized and bogus voters deleted.

730. With regard to the Punjab there was a particular issue regarding the huge no. of excess ballots distributed in some Constituencies and a lack of Form XV's but as mentioned earlier there was no evidence that the unused ballots had been misused even based on the available circumstantial evidence.

731. With regard to Balochistan at best the allegations have only been cast on 4 PA seats out of 51 and none of the 14 NA seats. These allegations therefore only represent a very small number of seats for the entire Province.

732. With regard to Karachi at best the aberrations have only been cast on 27 out of 35 seats (NA and PA combined) whilst Sindh (including Karachi) consists of 191 combined NA and PA

seats. These allegations therefore only represent a very small number of seats for the entire Province.

733. As mentioned earlier no serious challenge has been made to any of the 35 NA and 99 PA seats in KPK or the 12 sets in FATA, 2 seats in Islamabad and the approx 174 combined NA and PA seats in Sindh

Finding on TOR 3(c)

Thus, when the entire context of the elections are considered along with the meaning of overall basis, despite some lapses by the ECP and the fact that a few voters may have been prejudiced, it cannot be said on the evidence before the Commission that on an overall basis the elections were not a true and fair reflection of the mandate given by the electorate.

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CONCLUSION

The Commission is of the view that the PTI was not entirely unjustified in requesting the establishment of a body to inquire into its suspicions and allegations regarding the 2013 general elections. However after the recording of evidence and carefully going through all the material placed on record the Commission finds as under in respect of each TOR.

TOR 3(a).

Taking into account all the evidence on record, notwithstanding the shortcomings of the ECP as mentioned earlier in this Report, the 2013 general elections were in large part organized and conducted fairly and in accordance with the law.

TOR 3(b)

The plan or design to manipulate or influence the election has not been disclosed with any degree of specification by any of the parties to the proceedings nor is it discernible from the material placed before the Commission. Allegations against those allegedly involved in the plan/design also remained unsubstantiated by the evidence on record.

TOR 3(c)

When the entire context of the elections are considered along with the meaning of overall basis, despite some lapses by the ECP it cannot be said on the evidence before the

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Commission that on an overall basis the elections were not a true and fair reflection of the mandate given by the electorate.


Chairman


Member


Member

Supreme Court Building, Islamabad.

22nd July, 2015.

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