



FAFEN CALLS FOR INCLUSION OF BROADER GOVERNANCE REFORMS IN CONSTITUTIONAL AMENDMENT

■ Urges Wider Consultation on Reforms Package

ISLAMABAD, October 13, 2024: The Free and Fair Election Network (FAFEN) calls for transparent and inclusive political dialogue on the proposed constitutional reforms to strengthen parliamentary supremacy as a prerequisite for democratic consolidation in Pakistan.

While acknowledging the government and its coalition partners' expressed intent to introduce judicial reforms via a constitutional amendment, FAFEN proposes an expanded scope to include other critical reforms that are required to strengthen legislative, electoral, and local governance in the country. With agreement in principle on the rationale for segregating appellate and constitutional courts, FAFEN stresses a holistic approach to these reforms to build broader political consensus, even if the ruling parties can get the required support of a two-thirds majority in both Houses of Parliament for the proposed amendments.

FAFEN believes that the ongoing political instability in the country stems from constitutional weaknesses that have allowed institutional power imbalances to obscure the separation of powers envisioned by the framers of the 1973 Constitution. These weaknesses must be urgently addressed to clearly define the powers of state institutions without compromising their independence and infringing upon fundamental rights. The focus of these reforms should primarily be on enhancing parliamentary authority to ensure its role as the ultimate custodian of the people's interests and priorities. A stronger Parliament is crucial to promoting and protecting the fundamental rights and freedoms of citizens, which have increasingly come under threat, eroding citizen-state trust. FAFEN urges political parties to engage for parliamentary supremacy and put aside personal and parochial differences that are leading to yet another political deadlock.

FAFEN proposes that the ongoing political negotiations on constitutional reforms be expanded to cover the following key areas:

1. Pronounced Parliamentary Control over International Agreements

FAFEN is of the considered view that the future generation of constitutional reforms should include formal parliamentary approval for any agreements with foreign governments or multilateral organizations before their official signing, establishing much-needed parliamentary oversight of foreign and fiscal policies. Currently, the executive independently decides to enter into or exit from international and bilateral agreements such as those with the International Monetary Fund (IMF), which have far-reaching impacts on fiscal policy and measures.



2. Refining Appointment Processes for Constitutional Offices

The appointment process for constitutional offices such as heads of the judiciary, armed forces, and the Election Commission currently lacks public scrutiny that can be provided through parliamentary hearings. Additionally, as a matter of principle, the parliamentary impeachment procedures should be established for offices that are filled through parliamentary consultations such as Chief Election Commissioner and Members of the Election Commission, Chairpersons of the National Commission on the Status of Women (NCSW), and National Commission for Human Rights (NCHR).

3. Non-Partisan Administration of Election to Constitutional Offices

In order to avoid controversies such as the one involving discounting of votes of a candidate in the election of the Senate Chairman in 2021, FAFEN proposes empowering the Election Commission to oversee elections for all constitutional offices including that of Prime Minister, Chief Ministers, Speakers, Deputy Speakers, Senate Chairperson and Deputy Chairperson. This would ensure transparency and impartiality, and provide for legal remedy to disputes and grievances in such elections that is otherwise unavailable due to indemnity to parliamentary proceedings under Article 69.

4. Addressing Representativeness Issues in the Legislative Bodies

Any forthcoming constitutional amendment should address the significant issues of representativeness within the election system. Currently, the Constitution allows independent candidates to join any political party after winning an election, disregarding the voters' choice to elect a candidate from outside parties. In the spirit of true representation, FAFEN recommends that if an independent candidate decides to join a political party after winning a constituency, s/he should seek a fresh mandate from the voters in the constituency through a bye-election.

Additionally, the election process for seats reserved for women and minorities also suffers from representativeness challenges. FAFEN's analysis of the geographical distribution of women's reserved seats in the 2018-2023 term of elected assemblies showed that around 57 percent of women representatives came from six metropolitan cities. Since a province is the basis of the allocation of seats reserved for women in National and Provincial Assemblies, many districts and even administrative divisions remain unrepresented in these seats. FAFEN recommends allocating women seats based on administrative divisions, ensuring fair geographical representation in National and Provincial Assemblies.

Similarly, the election process for seats reserved for religious minorities also requires reforms. Their quota in the assemblies has not been reviewed by the parliament in years. Additionally, a significant population belonging to certain faiths within provinces remains unrepresented because the basis of the election on reserved seats for minorities is the entire country for the National Assembly and the respective province for the Provincial Assemblies. This scheme resulted in more than 250,000 population of Hindu and Scheduled Caste in Punjab – nearly 10 percent of the non-Muslim



population in the province – not getting any representation in the Punjab Assembly for two consecutive terms.

5. Refining Caretaker Governments

The delayed elections for the Punjab and Khyber Pakhtunkhwa Assemblies, which extended caretaker governments beyond their ordinary mandate, highlight the need for reform. This situation may partly be attributed to the ambiguous constitutional provisions that in principle allow separate elections for a Provincial Assembly but practically envisage only combined elections by requiring caretaker setups in the federation and federating units during elections. Similarly, the constitutional requirement of delimitation also extended the caretaker government's tenure in the federation. The upcoming constitutional package should address these loopholes to ensure that critical constitutional timelines are not violated again. Furthermore, the Parliament should conduct a thorough review of provisions governing caretaker governments to mitigate concerns about their impartiality.

6. Providing for Broader Consensus on Changes to Election Law

The election law is distinct from other laws as it sets the rules of the game for political contestation and, therefore, must be acceptable to all parties. Pakistan has seen arbitrary and overnight amendments to the election law by the Parliament in the past three years without due consultations among political parties. FAFEN recommends introducing constitutional provisions that mandate broader consensus for any changes to the electoral laws made under Article 222, which provide the foundation for electing the Parliament – the body empowered to amend the Constitution itself. A wider consensus on the election law is critical to preserving the integrity of the electoral process.

7. Protecting Tenure and Periodicity of LGs

Despite guaranteeing the third-tier devolution in the 18th Constitutional Amendment, local government systems introduced by the provinces varyingly lack continuity and the spirit of devolution. Punjab, for instance, has held local government elections only once during the last 15 years, while other provinces have held two elections during this period, albeit with judicial intervention. Provincial statutes are frequently amended to delay elections or prevent meaningful devolution of powers to elected local governments. FAFEN stresses the need for a clearly defined timeline for local government elections to be embedded in the Constitution. To avoid mid-term disruptions to tenures, any changes to provincial local government statutes should take effect only in the subsequent electoral term. The Parliament should also consider defining areas of devolution to the third tier of governance to ensure that local governments are not reduced to mere tokenistic and half-hearted expressions of devolution.



8. Providing a Basic Framework for Labour Rights Legislation

Following the 18th Constitutional Amendment, the subject of labour was devolved to provinces, which led to the enactment of disparate labour laws across regions. These legal inconsistencies have weakened labour protections and exacerbated regional disparities. To address these disparities, the Parliament should establish minimum national standards for labour legislation. These standards should cover areas such as terms of services and conditions, social security, occupational safety and health, and industrial relations ensuring uniform protections for all workers across both the formal and informal sectors of the economy throughout the country. The minimum standards must also account for the issues of marginalized workers especially women ensuring that they benefit equally from these protections.

9. Consultative Process Critical for Reforms: While political parties have the right to fulfil their public commitments through legislation, FAFEN urges the government to uphold its responsibility of engaging all political parties – both within and outside Parliament – as well as civil society organizations, including bar associations and human rights groups, in the process. Given the far-reaching implications of the constitutional amendments under consideration, FAFEN stresses the need for a transparent and consultative process. The government must promote broader deliberations on the proposed amendments and circulate the draft bill for public information and debate, in line with parliamentary rules of procedure and practice.

FAFEN remains committed to supporting efforts that contribute to a more vibrant, democratic, transparent, and accountable governance system in Pakistan. We stand ready to engage with parliamentary committees and other forums to provide recommendations for electoral reforms, which will strengthen the country's democratic institutions and processes.