

1. What is the ECB's stand on accusations made by the NA members that the ECB and Judiciary are responsible for the trouble created in the LG elections, especially pertaining to the Trongsa MPs letter from the people that they were tossed from one office to another?

Answer: Let us first set the overall context with facts and figures: the Local Government elections, with polls in June 2011, were called for a total of **1,470 seats** where a total of **2,185 candidates** contested elections.

During the Election Period for these many elections, a total of **38 cases** were registered with 15 cases being decided by the Central Dispute Settlement Body and 3 being appealed to the Election Commission. **Fourteen cases** filed were in connection to the candidate nomination *zomdu* wherein three cases related to new boundaries of *Chiwogs* as a result of the delimitation exercise while others were complaints on the conduct of the *zomdu*. However, only in one case, it was found necessary to require the *zomdu* to be re-conducted as the difference in votes secured by two candidates was a single vote and six persons had voted although they were not on the Voters' List. **Nine cases** raised issue on the candidates meeting the eligibility criteria including questions of fulfilling the *mitsi* registration, non-partisan status, being a religious personality, termination from office as well as allegations of corruption and other charges. Two candidates were disqualified on grounds of being removed from service but others did not have grounds to disqualify or there was evidence to prove that they actually fulfilled the required criteria. A total of **nine cases** were dismissed for anonymity of complainant while **one** had been withdrawn subsequently and **one** had not filed a formal complaint. There were **four** allegations of bribery of which in one case the candidate had to be disqualified while in the other three there was no clear and consistent evidence for a similar decision.

After the declaration of the election results, a total of **28 cases** were petitioned to the Dzongkhag Courts while 6 were appealed to the High Court. Most of the cases were dismissed by the Courts for lack of sufficient evidence and/or in line with the Supreme Court Order of July 2011 while in a couple of cases, fines were imposed on the witnesses for giving false statements or on the petitioners for harassment.

We appreciate that the Hon'ble Speaker put the situation in context by informing the House of the details of the actual number of disputes that had been registered during the Local Government Elections.

We do not have a copy of the letter that you say the Trongsa MP read out or referred to in Parliament. A case had been lodged in the Dzongkhag Court by a non-elected candidate against the elected candidate of Draagtang Gewog after the declaration of the election results, that the elected candidate had not resigned from the post of *Geydrung* at the time of nomination *zomdu* and that he had conducted illegal campaigning during 48 hours no-campaign period before the start of polls and provided inducements to voters besides transport on Poll Day. The case had been subsequently dismissed for lack of sufficient evidence and as per the Supreme Court Order. It may be unfortunate if the august body of Parliament has been trivialized by submissions based on a flimsy case.

Wherever it has been sought to lodge complaints with the Election Commission after the lapse of the Election Period, we had pointed out that under sections 466 and 468 of the

Election Act 2008, the election dispute settlement system is established only for the Election Period, which ends with the declaration of the results, and an election petition related to Local Government elections may be presented to the respective Dzongkhag Court. For those who came personally to ECB we also advised such persons that while they have the right to legal recourse, they should also consider consulting legal persons or people whom they can trust for advice as there should be sound legal grounds to petition successfully and avoid the unnecessary and avoidable hardship and inconveniences for themselves.

2. What are actually the real procedures of settling disputes?

Answer: For every election under the laws, the election dispute settlement system is put in place for the Election Period which starts with the issue of notification calling the elections and ends with the declaration of the election results as provided for in the Election Act.

The election dispute settlement system includes three tiers - the Dzongkhag Dispute Settlement Body, the Central Dispute Body and the Election Commission. The due process includes review or summary hearing of the case by the Body, follow-up investigations if necessary, hearings at which both parties have the right to be heard and to view or produce evidence and issuance of a reasoned decision thereby upholding the principles of natural justice. The time frame for each step is also fixed to ensure expediency. Depending on the gravity of the allegation and the degree of the penalty, the matter is resolved at the Dzongkhag and Central levels. Opportunity to appeal is available from the decision of the lower level to the next higher level. To offer maximum opportunity for appeal to and decision by the highest tier, the Dzongkhag and Central Dispute Settlement Body dissolve ten days and seven days, respectively, prior to the Poll Day and cases are settled directly by the Election Commission thereafter.

The Election Act 2008 provides that no elections may be questioned except through an election petition filed to the Dzongkhag Courts in case of Local Government Elections and the High Court in case of Parliamentary Elections. The Supreme Court, vide its Order No. Ngentho (41) – 2011/150 dated 19th of July 2011 to the Judges of the Royal Dzongkhag Courts, clarified further that a complaint or a case related to an election during the Election Period shall be dealt only by an Election Dispute Settlement Body established at the Dzongkhag and Central levels or the Election Commission. A court of law in the Kingdom shall admit only appeal against a case settled by the Election Dispute Settlement Body or the Election Commission or complaint on an issue of electoral fraud or malpractice committed on Poll Day lodged during the election petition period that is 10 days after the declaration of the Election Results. No case or complaint lodged thereafter is to be admitted either by the Election Commission or a Court of Law. This was notified to the general public by the Election Commission during the recent elections in the vacant local government constituencies.

It may be noted that out of the 111 cases dealt during the Parliamentary Elections, 38 cases related to the Local Government elections and the 28 cases filed to the Dzongkhag

Courts, not even in a single case has the election results been required to be reversed by a court of law.

3. A member said that the ECB has been given undue authority, above the law and that people make fun of them for being overpowered by the ECB. She also reminded about the ECB's duty and said the ECB is even directing what the government should do. What are Dasho's comments on it?

Answer: Our Constitution clearly lays out the envisioned System for our democracy with clear provisions on roles, responsibilities and institutional arrangements as well as mechanisms for checks and balances. We believe the derivative laws have been enacted to further enhance this Vision and direct the proper functioning of all entities including Parliament and the Election Commission.

Within the overall system, the Election Commission has its specific role and in fact the Laws require the Election Commission to act without fear or favour in fulfilling its mandate of free and fair elections and electoral process. It is perhaps hard reality that an independent election management body is necessary to ensure the integrity of elections and in our case, our Constitution and Laws provide for the ECB to function in an independent manner within the parameters of the legal provisions.

4. The Labor Minister said the ECB's duty, apart from conducting elections is to work with the govt. and improve legislations. Has anything like this happened? Why and why not? Is it necessary for the ECB to sit and discuss with the government?

Answer: There are indeed countries where the election management body are government departments placed within the executive, but these are hardly the shining examples of democracy that we may like to emulate.

In Bhutan, the ECB is mandated to conduct elections for both Parliament and Local Government and ensure elections are free and fair. We also have clear requirements for one House of Parliament and Local Governments to be apolitical institutions. These require that great prudence is exercised by all concerned that no unnecessary reason is given to create doubt about the constitutionality or legality of purported alliances and fairness and integrity of the electoral process which is the midwife at the birth of governments and occupancy to positions of responsibility and authority as representatives of the people.

Nevertheless, believing that ultimately we are moving towards the same goal of a vibrant democracy, the ECB has been forthcoming in bringing all and any issue of relevance to the notice of the government and Parliament through information and reporting to the Hon'ble Prime Minister, Hon'ble Speaker and Hon'ble Chairperson. All significant policy matters have been shared with these authorities and we have in the past consulted and worked out interim measures, such as for the conduct of the Local Government Elections, despite the differences in opinion.

5. The Mongar MP said even returning officers are not aware of how to solve disputes and that ECB “failed to inform people about the dispute settlement committee”. Dasho’s comments on it.

Answer: If this finding and conclusion had been shared earlier with the ECB we could have relieved the person(s) concerned by letting him/them know that Returning Officers and National Observers are not charged with the responsibility of solving disputes and are not members of the dispute settlement bodies. They are authorized to receive the formal complaints, making it as convenient as possible to voters to lodge a complaint, but they have to forward it immediately to the Chief Election Commissioner or the Chief Election Coordinator for due process through the dispute settlement bodies put in place at both the Dzongkhag and Central levels.

For your information, for every election that we have conducted so far the dispute settlement bodies have had the services of lawyers at the central level and wherever possible in the Dzongkhags, too. After the Parliamentary Elections, intensive training courses have been conducted for the members in all Dzongkhags with substantive input from the Judges to brief them on the relevant laws such as the Penal Code, Civil and Criminal Procedure Code, Evidence Act etc.. To further aid the dispute settlement process in the field, the Election Dispute Settlement Rules and Regulations 2010 and the Election Dispute Settlement Manual provide detailed instructions to guide every stage of dispute settlement. At the same time, ECB will be continuing its efforts to inform and educate every voter possible.

6. Any other comments.

Answer: It may be appreciated that in a democracy while minority rights are to be protected, the majority’s choice exercised through secret ballot must also be respected. A fact to be noted is that eventually none of the cases that were petitioned stood up to legal scrutiny.

We would only like to remind all concerned that as provided under law, we do have a dispute settlement system in place, we have made significant improvements having learnt from each election experience, recourse to law and opportunity for grievance redressal have been provided with disputes being settled professionally and expeditiously in accordance with the laws. The Supreme Court directives have further strengthened and clarified the process and we are quietly confident going forward to the 2013 Parliamentary Elections.

The ECB fully appreciates that its core responsibility is free and fair elections and that it has to fulfill this sacred mandate by functioning as per the comprehensive legal framework that has already been put in place as working diligently within one’s own mandate in a responsible manner is the best service an entity, official or citizen can render to the Nation.

*

With regard to your question on ECB views re. news story on new political party – it would be too premature to comment on it at this moment!

Deki Pema, Election Commissioner and Chair of then Central Election Dispute Settlement Body