



A Guide to Parliamentary Elections in Afghanistan

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On September 18, the people of Afghanistan will once again head to the polls to choose the next round of leaders tasked with moving their country forward. This set of elections will be one more step in meeting the objectives of the 2001 Bonn Agreement—the country's post-Taliban “road map” for peace—which called for “the establishment of a broad-based, gender sensitive, multi-ethnic and fully representative government” through national elections.

The first round of elections, those for the Presidency, took place in October 2004 and, while not without flaws, were widely considered to have been a success, given the large numbers of Afghans who participated in the process. The next phase – often referred to as the parliamentary elections, although in fact they are for the lower house of the National Assembly (the Wolesi Jirga) and Provincial Councils – is scheduled for 18 September 2005. This leaves several further elections before the set-up of the numerous bodies called for in the 2004 Constitution is complete.

The make-up of these new institutions and the processes by which each will be elected can be confusing. This guide is intended as a simple reference document that provides an explanation of the election process, the key issues that affect electoral procedures and the different actors involved. The main focus of this paper is the upcoming Wolesi Jirga (House of the People) and Provincial Council elections, but it also looks briefly at District Councils, the Meshrano Jirga (House of the Elders), and some of the lessons learned from the Presidential vote.

Afghanistan: Edging Toward Democracy

Afghan democracy is a work in progress. Accepting all the strides that the country has made, culminating in the October 2004 Presidential election, the nation's democratic architecture is still far from complete. According to the Constitution, a full-fledged government will not take shape until two houses of the legislature are constituted and provincial and district government councils are elected. It is hoped, too, that these elections may be a step forward towards the establishment of a competitive electoral culture and a more developed party system.

In many respects the forthcoming *Wolesi Jirga* and Provincial Council elections are more consequential to democratic consolidation than were the momentous Presidential elections. This September Afghans choose their representatives, from cities and villages, with local issues being promoted by local candidates. Formally the National Assembly will have only limited legislative powers to curtail the president, but an inclusive parliament – reflecting the ethnic, linguistic and sectarian differences of the nation – may have the ability to provide the psychological underpinnings of democratic legitimacy. Dynamic government rests upon the ties that bind the governed and the governors, and the new parliament is one important means for the people to have an active voice in government.

However, while these elections are a golden opportunity to make manifest the hopes of millions of Afghans, they also pose a serious threat to the prospects for democracy if they fail. And the chances of failure – of deeply flawed elections which betray the trust of the voting public – are much greater than the Presidential elections. These elections will be logistically more challenging; require enhanced voting, ballot, and count security; and are far more susceptible to

fraud, vote buying and intimidation which may alter the final results. In the presidential election 400,000 ballots could have been excluded for reasons of fraud and the race still would have ended on the first round; three million votes could have been removed and President Karzai would still have come in first. But in the *Wolesi Jirga* elections quite small swings in vote share can have a significant effect on the final results. Under the adopted electoral system, a few votes stolen here and there may dramatically alter the delegation that each province sends to parliament. For this reason the elections need to be better organised and better insulated against manipulation than were the October 2004 elections.

The parliamentary elections signal the end point of a transition period but also a new phase for Afghanistan, which has a chance of not repeating the catastrophic breakdowns of state and society that have characterised the nation's history in recent decades. But for democratic consolidation and enhanced stability to occur, two crucial questions must be considered. What is the nature of the embryonic party system, how might it look after these elections; and how does one encourage and facilitate a healthy, representative, and responsive party system in a place where historically parties have been widely, and not unreasonably, derided as agents of conflict, greed and corruption? And once candidates and parties have been elected to the legislature, what is their capacity to fulfil the constitutional functions they have been given?

Elections and Afghan Government Structures

The 2004 Constitution declares Afghanistan to be a democratic Islamic state with a President, a National Assembly and various layers of local government. The Electoral Law of May 2004, revised in April 2005, elaborates

on the Constitution and stipulates the way in which these bodies are to be elected (see page 25 for text of the Electoral Law). Other relevant legislation includes the Political Parties Law, the Media Law, the Citizenship Law, and various Presidential decrees on issues such as the formation of the Independent Electoral Commission and campaign financing.¹

Afghanistan's Constitution provides for the election of:

- A President (along with two Vice Presidents);
- A National Assembly consisting of the *Wolesi Jirga* (WJ) and the *Meshrano Jirga* (MJ);
- Provincial Councils (PCs);
- District Councils (DCs);
- Village Councils; and
- Municipal Councils and Mayors.

Presidency

The President of the Islamic State of Afghanistan is elected by direct, secret ballot for a five-year period and can serve a maximum of two terms. Candidates for the presidency name their two vice presidential candidates at the time of nominations. The President is elected by absolute majority. If no candidate receives over 50% of the votes, a run-off election is held between the top two candidates.

The President is the head of state, the chair of the cabinet and the commander in chief of the armed forces. He appoints the ministers, the Attorney General, the governor of the central bank, members of the Supreme Court and various other posts with the approval of the WJ.

In October 2004, Hamid Karzai was elected President with 55.4% of the vote

in the first round. His two vice Presidents are Ahmed Zia Masood and Mohammad Karim Khalili. The President was inaugurated on 7 December 2004. Until Afghanistan has a fully elected and appointed legislature, he continues to act as chair of the Interim Cabinet, which serves as Afghanistan's legislative body until the National Assembly is convened.

National Assembly

The National Assembly consists of two houses, the upper house, or *Meshrano Jirga* (House of the Elders), and the lower house, the *Wolesi Jirga* (House of the People).

Members of the WJ will be directly elected in provincial constituencies. The Constitution states that there will no more than 250 seats in the WJ. The revised election law grants 10 seats to the *kuchi* (nomad) population; three of these seats are reserved for women. The remaining seats are distributed among the provinces according to the size of the population.

WJ members are elected for five years by free, direct and secret ballot. The Constitution states that there should be on average two female members of the WJ from each province. Candidates must be at least 25 years old at the date of candidacy. Elections for the 249 seats of the *Wolesi Jirga* will be held on 18 September 2005.

Members of the *Meshrano Jirga* will be selected by a mixture of appointments and indirect elections as follows:

- From among the members of each Provincial Council, the respective council elects one person for a period of four years.
- From among the District Councils of each province, the respective councils elect one person for a period of three years.

¹ See the JEMB website (www.jemb.org) for links to these documents.

- The President from among experts and experienced personalities – including two representatives of the disabled and impaired and two representatives from the *kuchis* – appoints the remaining one-third of the members for a period of five years. The President appoints 50% of these people from among women.²

Members of MJ should be at least 35 years of age at the date of candidacy. Members of both the WJ and MJ must be Afghan citizens, or have obtained citizenship 10 years prior to their candidacy or appointment.

It is not possible to be a member of both the MJ and WJ at the same time. The National Assembly convenes two ordinary sessions a year. Its term is nine months in the year. Sessions are open except if the Chairman of the National Assembly or at least ten members request secrecy and it is granted by the assembly. National Assembly members are not immune from prosecution for crimes.

According to the Electoral Law, the newly elected PCs will each elect one individual to the *Meshrano Jirga* within 15 days of their installation. The delay in District Council elections means that DCs won't be able to elect their one-third of the MJ seats for some time. A temporary solution has been devised whereby the President will only appoint 17 MJ members, rather than 34, thereby maintaining the two to one ratio of elected to appointed seats, until such time as the DCs can be elected and in turn elect their MJ representatives. The Supreme Court has indicated that this arrangement would be in keeping with the spirit of the Constitution.

² Article 84, 2004 Constitution.

Provincial Councils

Provincial Councils will have between nine and 29 members depending on the size of the population and will be elected in a single provincial constituency. Candidates must reside in the province in which they stand. Candidates cannot stand for both WJ and PC elections. The revised election law states that a quarter of the seats on a PC should be reserved for women.

Voting for PCs is also scheduled to take place on 18 September 2005. Within 15 days of their installation, each PC will elect one of their number to a seat at the *Meshrano Jirga*. There remains some confusion about what the exact role of PCs will be, but a recent fact sheet published by the Joint Electoral Management Body (JEMB) states that each PC will:

- Participate in the development of the provinces and the improvement of administrative affairs;
- Advise and cooperate with the provincial administrations;
- Elect by majority, from amongst its own elected members, one person to represent the province in the *Meshrano Jirga* for a term of four years; and
- Hold more responsibilities as defined by upcoming legislation.

There is also some discussion as to whether it is desirable to adopt a "minimalist" approach to legislation on the PCs prior to the formation of the National Assembly, with subsequent decisions about the role of PCs to be taken by the National Assembly.

There were fears that this lack of clarity around the role of PC members would prevent potential candidates from standing, although by the end of the candidate nomination period an adequate number of candidates had nominated themselves in most areas.

District Councils

District Councils will have between 5–15 members depending on the size of the population. Candidates must reside in the district they are standing in. Elections for DCs were originally planned to run alongside WJ and PC elections. In March 2005, the JEMB announced that district elections will be postponed until the ongoing disputes around district boundaries can be resolved by the *Wolesi Jirga*. Within 15 days of their installation, the DCs within each province will collectively elect one member of the *Meshrano Jirga*. Presumably the President will then appoint a further 17 members to complete the makeup of the MJ.

Village Councils, Municipal Councils and Mayors

The Constitution also calls for the election of Village Councils, Municipal Councils and mayors through free, general, secret and direct elections. Village councils are to be elected for three years. The terms of Municipal Councils and Mayors are not specified. The mandates of Village and Municipal Councils are not elaborated on in the Constitution or the Electoral Law. Elections for these bodies will probably not be held for some time, if at all.

Separate from the Constitutionally mandated electoral process, a number of new bodies have been established at the community level as part of national development programmes. For example, thousands of Community Development Councils (CDCs) have been elected as part of the National Solidarity Programme and numerous community-level bodies have been set up by development agencies. Provincial or district-level bodies (such as Provincial Development Committees, and District Development *Shuras*) are also envisaged by some as part of ongoing development programmes,

reconstruction or reform efforts. These structures are in addition to the various “traditional” *shuras* and *jirgas* that play differing roles around the country. It is not clear how the elected Village, Municipal, District and Provincial Councils would link in with these institutions.³

Schedule of Elections

The Constitution allows for the following elections schedule:

Table 1: Schedule of Elections

Election	Frequency
Presidential	Every 5 years
<i>Meshrano Jirga</i>	Every 5 years
Presidential Appointees	
<i>Meshrano Jirga</i>	Every 4 years
Provincial Council Representatives	
<i>Meshrano Jirga</i>	Every 3 years
District Council Representatives	
<i>Wolesi Jirga</i>	Every 5 years
Provincial Councils	Every 4 years
District Councils	Every 3 years
Village Councils	Every 3 years
Municipal Councils	Unspecified
Mayors	Unspecified

³ See Lister, S., March 2005, *Caught in Confusion: Local Governance Structures in Afghanistan*, Kabul: AREU, for more details.

Afghanistan's Electoral System

The Single Non-Transferable Vote System

The Electoral Law states that the WJ will be elected through the Single Non-Transferable Vote (SNTV) system. In short this means that each eligible Afghan voter casts one vote for one individual in his province for the WJ. At first glance, this system appears fair, straightforward and easy to explain. Its simplicity is one of the reasons that this system was chosen for Afghanistan. However, SNTV can have surprising results that can end up being less fair and straightforward than other systems, even though other systems may initially sound more complicated.⁴

The SNTV system's principal selling point is that it is easy to explain to voters and simple to count. It also ensures representation of independent candidates, which in a country like Afghanistan, with its suspicion of political parties, is seen by some as an advantage. This sounds simple enough, but a closer examination of SNTV reveals some serious drawbacks.

Under SNTV, the likelihood of a candidate winning a seat depends on the number of candidates that each party stands in a province and how their supporters distribute their votes between those candidates. A party could win the majority of the votes in their province, but not win a majority of the seats. If the supporters of a particular party do not understand the system and all vote for the leader of the party in that area, the party could potentially only win one seat, even if they stand five candidates. All the votes go to the individual and not the party. A party with less support but more

control over its voters could win more seats by disciplining their supporters to vote for several different candidates, spreading the vote out evenly and therefore winning more seats than the first party that has more public support.

The assumption that SNTV benefits independent candidates can be misleading, given that well-organised parties who can control the way their supporters vote (or coerce people to support them) are able to work the system most effectively. In Afghanistan, this could end up advancing the interests of parties with militias, even though Afghanistan's new Constitution attempts to rein these in through its prohibition of political parties having military wings.

SNTV can also have a negative impact on the development of effective parliamentary politics by encouraging candidates to push local, ethnic or tribal issues, rather than promoting a national agenda and encouraging coalition building and cooperation between ethnic or regional groupings.

There has been considerable debate about other electoral models that might be more appropriate for Afghanistan (see Box 1). Many electoral experts have presented strong arguments why a type of List Proportional Representation (PR) would be a better system, due to its more transparent translation of votes into seats, its encouragement of national based multi-ethnic parties and more constructive promotion of female representation. List PR is also considered to be a system that produces more effective parliaments, given its encouragement of alliances and coalition building.

The choice of voting system will continue to have a significant impact on the path of politics in Afghanistan, post-elections, which is highlighted later in this guide. As discussed above, SNTV encourages personality-driven rather than party

⁴ For a full discussion of SNTV and other voting systems, please see Reynolds, A and A. Wilder, September 2004, *Free, Fair or Flawed: Challenges to Legitimate Elections in Afghanistan*, Kabul: AREU.

Box 1: Potential future alternatives to the electoral system

While Afghanistan has selected the SNTV system for its current elections, there exist several alternatives should the SNTV system prove too complicated or unwieldy to continue using in the future. Chief among these are forms of List Proportional Representation and the old Afghan system of First Past the Post.

List Proportional Representation (PR)

The rationale underpinning all PR systems is to consciously reduce the disparity between a party's share of the national vote and its share of the parliamentary seats. If a major party wins 40% of the votes, it should win approximately 40% of the seats, and a minor party with 10% of the votes should also gain 10% of the legislative seats. Proportionality is often seen as being best achieved by the use of party lists, where political parties present lists of candidates to the voters on a national or regional basis. Under such a system each party or grouping presents a list of candidates for a multi-member electoral district, the voters vote for a party, and parties receive seats in proportion to their overall share of the vote. In some (closed list) systems the winning candidates are taken in order of their position on the lists. If the lists are "open" or "free" the voters can influence the order of the candidates by marking individual preferences.

As distinct from results under SNTV, the proportional allocation of seats to parties and independents under PR would probably make the *Wolesi Jirga* more representative of popular opinion, the various ethnic groups within society and the diversity of opinion within given provinces. List PR also enables non-regionally dominant parties to compete for places in the *Wolesi Jirga*. Small and new movements, not based on commander structures, could win seats in provinces even if they are substantially smaller than the existing dominant groups. In this way they can gain a foothold in parliament from which they can grow.

Evidence from elsewhere suggests that List PR encourages the emergence of nationally based multi-ethnic parties that cut across regions and communal groups. The system rewards maximising every vote (even if they are cast in areas where a party is less strong) and thus at the margins can encourage broader campaigns than those that appeal primarily to kinship ties. Last, List PR also would work against the most extreme forms of party fragmentation in the legislature. An overly fragmented *Wolesi Jirga* would make effective government particularly challenging. List PR would preclude anti-presidential blocks from controlling parliament without winning an absolute majority of national votes.

One of the chief *disadvantages* of List PR in Afghanistan is the way in which the system can take a very confused and incoherent political system and impose a rigid party structure where political parties are generally weak and unpopular. Afghans are understandably distrustful of organised political forces and a system that presumes developed, credible, and national political parties may not be appropriate at this time in Afghanistan's democratisation. Furthermore, large districts (as are to be used under SNTV) may marginalise remote villages. It is likely under any system which used provinces as constituencies that the vast bulk of elected members will live in the provincial capitals and not the outlying rural areas.

First Past the Post (FPTP)

FPTP systems use single member districts and voting for candidates. The winning candidate is simply the person who wins most votes, in theory simply one more vote than the second placed candidate. This is the British system as used in India, Pakistan, and elsewhere and was used in Afghanistan in the 1950s and 1960s.

Clearly, there would be some benefit in using a tried and tested system which is simple and has some familiarity in the nation. It is also true that small single member districts would reflect the tribal and village basis of traditional Afghan politics. When there are not solid party structures, many independents, and the need to represent distinct localities, FPTP seems to be the system most often used. Creating smaller/single member districts before the census would also be difficult and unwise.

But there are critical and perhaps overwhelming disadvantages of returning to a FPTP electoral system in Afghanistan. The history of electoral politics in the 1950s and 1960s was of highly fragmented legislatures which lacked the coherence needed for stable governance. The current political scene suggests that any legislature elected today under single member districts would be just as fragmented and beholden to parochial local interests. The system would also discriminate against regionally dispersed minorities and allow for great disproportionality between the votes cast and seats won. It would be likely that a minority party-alliance would take a majority of the *Wolesi Jirga* seats.

politics, something that many election experts have warned is not conducive to the advancement of effective democracy in post-conflict countries such as Afghanistan.

Political Parties

Political parties have a serious credibility problem in Afghanistan. They are associated on the one hand with the Communist Party and the Soviet invasion, and on the other with the Islamist military groupings who formed to fight them and whose infighting produced much of the instability and bloodshed of the 1990s. Many Afghans, including senior members of government, do not trust parties and see them as pursuing self-interested policies for their particular ethnic group, clan or tribe. One of the reasons that SNTV was chosen is reportedly due to its focus on individuals rather than political parties.

However, most experts agree that political parties are necessary for effective representation of citizens' interests and for effective policy creation and governability. While it is true that most of the major parties in Afghanistan used to or continue to have close ties to military groupings, there are fledgling parties emerging who have civilian roots and apparent democratic intentions. Organisations such as NDI are working with nascent parties to build capacity, promote party development and encourage coalition building. Parties have begun working together, for example lobbying for a delay in the WJ and PC elections, and calling for a change in the electoral system.

In an attempt to make a break with the past, where political parties came to be associated with militias who acted with impunity, the Constitution prohibits political parties from having military wings. A political party registration department was set up in the Ministry of Justice with the intention that only parties

who met the criteria set out in the Constitution would be approved. There are, however, some questions about the capacity of the Ministry of Justice to enforce this provision consistently.

As of late June 2005, 72 parties had been approved and registered by the Ministry of Justice.⁵ However, only 12% of candidates have indicated party affiliation in their nomination papers and a decision has also been made that political party affiliation will not be shown on the ballot. On the one hand this will make the ballot papers simpler, but on the other it could lead to a lack of transparency with voters being potentially unaware of the alliances of those they are voting for.

Allocation of Seats

The Electoral Law specifies that ten of the 249 WJ seats are to be reserved for *kuchi* candidates (of which three seats should be given to women). The rest of the seats are distributed between the provinces according to the size of the population as determined by the Central Statistics Office (CSO).

Many district and provincial boundaries in Afghanistan are disputed, and several new provinces and districts have been named over the past few years without official maps or other documentation to define where the new boundaries fall. When combined with the fact that there are no authoritative population data available on Afghanistan, and a planned census is unlikely to be completed until 2007, the allocation of seats to provinces presented a major challenge to election administrators.

The last census in Afghanistan was conducted in 1979 and was never completed. In preparation for the new

⁵ For a detailed description of major parties and alliances, see the recent International Crisis Group report, *Political Parties in Afghanistan*, June 2005, available from www.crisisgroup.org.

census, a pre-census household listing survey (that gathers much less data than a census proper) has been conducted by the CSO, but not all provinces have been completed due to security and weather conditions.

Population statistics, and subsequently seat allocation, are very sensitive issues, with many claims of under- or over-representation of different ethnic groups. As a result, there were lengthy discussions about which figures should be used for seat allocation – the 1979 figures extrapolated to account for population growth, the household listing figures where available, some combination of the two, or even registration figures from the Presidential elections.

In the end, according to UNAMA, the seat allocations were calculated using a mixture of the 1979 census figures (adjusted to 2005 by using an annual population growth rate) and the household listing. Various additional calculations were then done to distribute seats between provinces and ensure that the correct number of seats were reserved for female candidates, as specified in the Constitution.

The announcement of seat allocations did provoke some complaints, particularly about the number of seats allocated to *kuchis*, but no major unrest appears to have resulted. However, seat allocation may have to be carefully revisited if the 2007 census produces a set of population data that differs widely from the estimates used in 2005.

See Table 2 for a list of seats per province.

Reserved Seats

Sixty-eight of the 249 (or 27%) *Wolesi Jirga* seats will be reserved for women (although that does not preclude more than 68 women being elected if the votes warrant it). That 27% would place the Afghan legislature in the top twenty when it comes to the worldwide comparison of countries with women in parliament – just below New Zealand and just above Vietnam – a total considerably higher than either the United States (15%) or United Kingdom (18%). Most of the provinces will reserve one, two or three seats for women except Herat (5 of 17), Nangarhar (4 of 14), and Kabul (9 of 33). The lowest number of women candidates to seats is in Uruzgan (only 2 candidates for the one reserved seat) and the highest in Logar (11 candidates for the single seat). In total there are 342 female candidates running for office (12%).

For the PC vote, in provinces where the registration of women has been particularly challenging (especially in the southeast), and in provinces where finding an adequate number of women candidates proved difficult – Zabul, Uruzgan, and Nangarhar – the likelihood that women will win the reserved seats with dramatically fewer votes than male candidates who lose is very high. In Zabul, for example, the highest placed woman candidate will no doubt win a tiny share of the provincial vote, while the third placed male candidate will win many times that vote but still lose. Such disparities have consequences for the perceived legitimacy and effectiveness of women legislators. Evidence from women in politics in both established and developing democracies shows that the less voters feel that the rules have been unfairly manipulated to ensure the election of women the stronger and more

Table 2: Available Seats in the WJ and PCs

Province	Wolesi Jirga Seats			Provincial Council Seats		
	Total Seats (number in brackets indicates reserved seats for women)	Male Candidates	Female Candidates	Total Seats (number in brackets indicates reserved seats for women)	Male candidates	Female Candidates
TOTAL	249 (68)	2381	328	420 (124)	2779	248
Badakhshan	9 (2)	80	9	15 (4)	67	11
Badghis	4 (1)	31	5	9 (3)	40	3
Baghlan	8 (2)	97	14	15 (4)	104	6
Balkh	11 (3)	100	16	19 (5)	103	15
Bamyan	4 (1)	47	7	9 (3)	59	9
Daikundi	4 (1)	48	5	9 (3)	87	6
Farah	5 (1)	44	3	9 (3)	52	4
Faryab	9 (3)	72	10	15 (4)	62	7
Ghazni	11 (3)	119	12	19 (5)	114	9
Ghor	6 (2)	50	8	15 (4)	41	6
Helmand	8 (2)	78	6	15 (4)	110	7
Herat	17 (5)	144	18	19 (5)	163	31
Jawzjan	5 (1)	31	8	9 (3)	49	11
Kabul	33 (9)	340	50	29 (8)	185	32
Kandahar	11 (3)	94	11	15 (4)	114	6
Kapisa	4 (1)	37	6	9 (3)	46	6
Khost	5 (1)	81	10	9 (3)	117	4
Kunar	4 (1)	57	8	9 (3)	120	3
Kunduz	9 (2)	77	15	15 (4)	79	10
Laghman	4 (1)	57	8	9 (3)	93	6
Logar	4 (1)	49	11	9 (3)	50	3
Nangarhar	14 (4)	161	18	19 (5)	285	4
Nimroz	2 (1)	16	4	9 (3)	28	3
Nuristan	2 (1)	18	6	9 (3)	25	3
Paktia	5 (1)	81	5	9 (3)	89	5
Paktika	4 (1)	58	4	9 (3)	94	4
Panjshir	2 (1)	17	4	9 (3)	34	4
Parwan	6 (2)	48	8	15 (4)	64	5
Samangan	4 (1)	34	5	9 (3)	53	5
Sari Pul	5 (1)	35	7	9 (3)	39	4
Takhar	9 (2)	84	13	15 (4)	91	7
Uruzgan	3 (1)	17	2	9 (3)	31	0
Wardak	5 (2)	60	9	9 (3)	58	7
Zabul	3 (1)	19	3	9 (3)	33	2
<i>Reserved for kuchis</i>	<i>10 (3)</i>	<i>62</i>	<i>7</i>	<i>NA</i>	<i>NA</i>	<i>NA</i>

productive those women politicians will be.

The reserved seats for *kuchis* echo the reserved seats for the Bedouin in Jordan, Roma in Eastern Europe or Sami in Scandinavia. These ten special seats may not be fully in line with the Constitution (which specifies seats are to be awarded by province based on population), and controversial in terms of ethnic balance in the National Assembly, but, combined with the reserved seats for women, they nevertheless represent a positive step toward addressing perceived inequities regarding traditionally underrepresented populations.

Who are the Key Actors?

JEMB

The Presidential elections were planned and executed by the Joint Electoral Management Body (JEMB) and its Secretariat (JEMBS). The JEMB was initially comprised of six Afghans and five international elections experts who provided guidance and policy input to the process. The Afghan component of the JEMB was known as the Interim Afghan Electoral Commission (IAEC) and was a temporary body established by Presidential decree in 2003.

A permanent Independent Electoral Commission (IEC) as mandated by the Constitution has now been convened. Its nine Afghan members were appointed by President Karzai in January 2005 for a three-year period and can be re-appointed for a second term. The JEMB now consists of the IEC plus four international experts appointed by the United Nations Assistance Mission in Afghanistan (UNAMA). The election administration is headed by the Chief Electoral Officer, who is a non-voting member of the JEMB.

The JEMB is responsible for writing and implementing rules, regulations and procedures that govern specific election activities. The JEMB is not a legislative body, and while it can submit drafts of legal documents and provide expert advice to the government, it is ultimately the President and the cabinet that make the final decisions on legislation.

The JEMB Secretariat will continue to act as the executive arm of the JEMB for the *Wolesi Jirga* and Provincial Council elections. The JEMBS is supported logistically by the UN Office of Project Services (UNOPS), which is responsible for the bulk of the logistical work throughout the provinces. In the days and weeks leading up to the election an enormous logistical operation will be rolled out to enable more than 10 million Afghans to vote at 30,000 polling stations/booths in 5,000 polling centres around the country. The JEMBS will employ around 4500 regular staff in the run up to September, and plan to have up to 200,000 staff working on election day itself.

PECs

Provincial Election Commissions (PECs) have been set up in each province, and play a variety of roles, including receiving and processing complaints and monitoring the free and fair conduct of polling. The PECs were “appointed by the JEMB based on nominations submitted to it by a panel composed of the UNAMA Regional Head of Office, the provincial governor, and a member of a civil society organisation recommended by the Afghan Independent Human Rights Commission (AIHRC)”.⁶ The PECs have three members, including at least one woman. The PECs, whose activities are guided by a code of

⁶ JEMB Decision 2005 -19, Article 1(2).

conduct, have received training from the International Foundation for Election Systems.

ECC

The Electoral Complaints Commission (ECC), mandated by Article 52 of the revised Electoral Law, is tasked with adjudicating complaints about electoral offences, and challenges to candidate eligibility. The ECC has five members, one Afghan nominated by the Supreme Court, one Afghan nominated by the AIHRC and three internationals nominated by the Special Representative to the Secretary-General. They elected one of their members as chair. The ECC, supported by a small team of investigators, can impose sanctions that include warnings, fines, or referral to the public prosecution office if there is evidence of criminal activity. They can also order recounts and even a repeat of voting if they determine that an electoral offence has been committed.

UN

The United Nations Assistance Mission in Afghanistan (UNAMA) is tasked with supporting the Bonn process, which culminates in the upcoming elections. UNAMA has been working with the Afghan government and the JEMB on many aspects of the election project. The United Nations Office for Project Services (UNOPS) is providing logistical and organisational support to the process.

Coalition/ISAF

The international military forces in Afghanistan – both the Coalition (the US-led forces fighting remnants of the Taliban and Al Qaeda) and ISAF (the UN-authorized multinational force maintaining security in specific areas around the country) – will provide backstopping security support to the

elections process (see below). They are also assisting in some cases with heavy lifting and the distribution of materials.

Kroll Security International

Kroll Security International has been contracted through The Asia Foundation to provide operational and logistical support to the JEMB for the *Wolesi Jirga* and Provincial Council elections. In addition, at the provincial level, they provide security advice to the JEMBS staff and help train national staff in a number of areas, including security of compounds, guard routines, convoy drills and radio procedures. Kroll has operations officers in all JEMBS regional and provincial offices. These officers are involved in numerous activities, such as voter registration/polling centre identification, route reconnaissance, security reporting and coordination. Kroll is not restricted by the UN minimum operating security standards (MOSS).

Other Key Actors

In addition to the oversight and security bodies listed above, several other organisations are providing a range of civic education and logistical services during the election period. They include:

- **The Asia Foundation (TAF)** is involved in several election-related projects, including operational and logistics support to the JEMBS (through Kroll); civic education through radio, travelling theatre, and other media; observation through a planned partnership with the Asian Network for Free Elections (ANFREL); media training for journalists and candidates; and longer term capacity building for elections administrators.
- **The International Republican Institute (IRI)** is supporting several civil society organisations, conducting voter education work,

and providing training to independent election candidates. IRI's voter training projects are particularly focused on remote areas of the country and aim to educate Afghans on the nature of the parliament, the role of political parties, the Electoral Law, and how to stand as a candidate. IRI will also provide training to potential independent candidates, both male and female, in cities and in rural areas.

- **The National Democratic Institute (NDI)** provides technical advice and training to political parties and election candidates, promotes political participation among Afghan citizens, and supports domestic monitoring activities through the Free and Fair Elections Foundation of Afghanistan. They have established eight Election Training and Information Centres around the country where candidates can access computers, and receive advice on campaigning, dealing with the media and other relevant skills. NDI also provides support to the political party registration department at the Ministry of Justice, and is planning outreach work on the Code of Conduct for candidates to ensure that all the relevant people understand their obligations in relation to the Code.
- **The International Foundation for Election Systems (IFES)** provided technical support to the 2004 voter registration project and the Presidential election process. They also ran civic education projects in the run up to the Presidential elections and through the winter afterwards, beginning to educate Afghans in the central region about the National Assembly. Since January 2003, IFES has been contracted with USAID to provide assistance to the electoral component of UNAMA to establish

civic education activities in the central region of Afghanistan. They also have been running a training programme for the new PECs and will set up a Media Results Centre.

- **Afghan Civil Society Forum (ACSF):** ACSF is an informal network of approximately 70 civil society groups who provide a platform for dialogue and aim to develop a role for civil society in political decision-making. ACSF carried out public education work on the Constitution-making process and the Presidential elections. They have been tasked by the JEMB to implement the official voter education programme (including community mobilisation and briefings) for the WJ and PC elections in 28 of Afghanistan's 34 provinces.

Candidacy & Ballot Concerns

Candidate Nominations

The candidate nomination process for the WJ and PCs ran from 30 April to 26 May 2005, during which time a total of 6,102 candidates filed applications at provincial nomination offices.

A total of 2,835 candidates registered to run for the 249 *Wolesi Jirga* seats, including 344 women and 66 *kuchis* (7 of whom were females). On average there are 12 candidates for each WJ seat.

After a slow start, due in part to the lack of information available on the role of the PCs, 3,201 individuals, including 285 women, nominated themselves for a total of 420 seats in these new regional bodies. In only three provinces – Nangarhar (5 seats, 4 candidates), Uruzgan (3 seats, 0 candidates), and Zabul (3 seats, 2 candidates) – were there more female seats than candidates. According to the Electoral Law, these seats will remain open until the next elections.

Ballot Issues

In each of the 34 provinces voters will cast a single vote for a single candidate but multiple WJ members will be elected – ranging between two in Panjshir, Nimroz, and Nuristan to 33 in Kabul. The mean number of members elected in a province is five, but there are six provinces with over ten members. Unfortunately the electoral system encourages a high number of candidates, without party affiliation, leaving a highly confusing ballot. There will be over 100 candidates on the ballot in Baghlan, Balkh, Ghazni, Herat, Kandahar, and Nangarhar, and nearly 400 in Kabul.

In provinces with a large number of candidates, the ballot papers will resemble a tabloid newspaper, with several pages of candidates. To make identification easier in a predominantly illiterate society, the commission has included photos of the candidates and allocated “neutral” symbols. These range from the obvious – a kite, trees, horses; to the less recognisable – elephants, petrol pumps, and a round of cheese; to those perhaps encumbered with less positive connotations such as lightning, three pairs of glasses, and many cell phones.

In most democratic elections (especially with many candidates) voters are given the additional cue of party affiliation (name, symbol) on the ballot and thus finding individual candidates is much easier. Under the SNTV system in Afghanistan, however, there will be nothing on the ballot to distinguish party affiliation (although parties will be listed at voting stations).

Vetting and Complaints

Afghanistan’s Constitution states that members of the National Assembly “should not have been convicted by a court for committing a crime against

humanity, a crime, or sentenced to deprivation of his/her civil rights”. However, as no one has been (or is likely to be in the near future) prosecuted for war crimes, and the justice system is perceived to be heavily biased in favour of those with money and power, this constitutional safeguard is unlikely to have much effect.

Debate about transitional justice in Afghanistan has intensified since the publication of a survey conducted by the AIHRC of Afghan opinions on possible retribution for past abuses. The international community has been reluctant to take action on this issue due to fears that doing so could destabilise the fragile status quo. The AIHRC survey concludes that the Afghan public have a different view, and strongly support the establishment of a transitional justice mechanism, though few Afghans have an idea of what such a system would look like and how to implement it.

The Electoral Law also specifies that candidates to the WJ, PCs and DCs shall not:

- Pursue objectives that are opposed to the principles of the holy religion of Islam and the word and spirit of the Constitution;
- Use force, or threaten with, or propagate the use of force;
- Incite ethnic, linguistic, regional or religious tension and discrimination;
- Create a real danger to the rights or freedoms or individuals or intentionally disrupt public order and security;
- Have non-official military forces;
- Receive funds from foreign sources; or
- Receive funds from internal illegal sources.

The JEMB has introduced a Code of Conduct that candidates were required to sign when filing their nomination papers during the candidacy period. By signing

the Code of Conduct, candidates swear an oath that they have not been involved in any criminal activities that would disqualify them from standing.

The first task of the ECC was to conduct and adjudicate a vetting process of the candidates who nominated themselves for the WJ and PC elections. The ECC had a four-week window in which to screen more than six thousand applications to ensure that nominees met the requirements for candidacy. The ECC also received a total of 1,144 challenges against 557 candidates from around the country, which they had until 1 July to rule on. Candidates whose names were excluded from the Provisional Candidate List had until 7 July to respond. A final list of confirmed candidates was displayed on 12 July.

Given the current rule of law situation in Afghanistan, where the police and courts are perceived as highly corrupt and cases take months or even years to come to trial, a thorough vetting process within this timeframe was virtually impossible. Observers have voiced fears that as a result, the entire process could be dominated by powerful players with links to criminal networks and/or armed groups.

In an attempt to target the latter group, the ECC compared the provisional list of candidates to a list of individuals with remaining ties to militias produced by the Joint Disarmament Commission. The Joint Commission includes the Ministry of Defence, the Ministry of the Interior, UNAMA, the National Security Council, the National Security Directorate, the Afghanistan New Beginnings Program, the Coalition and ISAF. Those candidates found to be on the Joint Commission's list were given until 1st July to surrender their weapons and renounce their ties to armed groups.

The Electoral Law also states that officials in certain government positions

must resign in order to stand as candidates in the elections. A list of candidates holding official positions was also checked by the ECC and UNAMA to ensure that those in the relevant positions had tendered their resignations. In some cases officials have resigned, but continued to hold de facto power given their position in the local community, something that it is hard to counteract given the nature of Afghan politics.

Initially 233 candidates were said to be excluded from the Provisional Candidate List. Notification was given to those who had not met the criteria for candidacy, and some subsequently handed in weapons. There were reportedly some problems with informing the correct candidates, and in some locations disarmament, demobilisation and reintegration (DDR) facilities were not available for candidates to disarm. (In these cases, some candidates have been allowed to stay on the final list with the provision that they will disarm prior to September.) In the end, however, only 17 candidates were excluded from the final list—11 for reasons of being linked with armed groups, five for failing to provide a complete list of supporters' signatures with their candidacy applications, and one for failing to resign a senior government post.⁷

However, in addition to the 17 disqualifications, there were more than 250 withdrawals from the candidacy process. While the reasons for these withdrawals is largely unknown, some reportedly were the result of intimidation of candidates by local power-holders in their regions.

⁷ Reportedly, however, there is a list of 81 candidates who have "half complied" with candidacy requirements and must certify full compliance prior to the election date. It is not known how election staff will handle incidents if these people, whose names will appear on the final ballot, are in fact disqualified.

The final list of candidates includes 2,709 for WJ, 3,027 for Provincial Councils, and 69 *kuchis*. While some would argue that the vetting process has encouraged several powerful individuals to DDR their armed forces who would not otherwise have done so, others counter that the vetting process has only been successful in weeding out "small fish". Excluding those believed to be involved in criminality was less viable, given that the ECC would need to have a criminal conviction in order to exclude a candidate. It is hoped that voters will in effect carry out a further vetting process by not voting for candidates who they believe to be responsible for crimes or abuses. That is, if they do not feel pressured into voting for these very candidates due to the power they still exert in many parts of the country.

The ECC will continue to receive and adjudicate complaints of electoral offences. PECs will accept complaints and deal with those they can at a local level. Any complaints that cannot be resolved by the PEC will be forwarded to the ECC.

Preparing for the Polls

Voter Registration

As part of the Presidential election process, an enormous voter registration exercise was carried out throughout Afghanistan. Between 1 December 2003 and 20 August 2004, a massive 10,567,834 registration cards were issued. An impressive 41.3% of registered voters were female. There was considered to be a significant amount of multiple registrations, but even so, the numbers involved are remarkable given the enormous logistical and security difficulties involved.

Since the last round of registration, many Afghans will have turned 18 and now are eligible to vote, some will have returned from Iran, Pakistan or other countries in

the ongoing repatriation effort, and others who have already registered may have moved provinces. In the Presidential elections, there was only one constituency and no need for voters to be tied to a particular location. In the next round, voters are voting for provincial representatives and therefore need to be tied to a particular province. Afghans will only be permitted to vote in the province that is stated on their registration card. Anecdotal evidence suggests that this restriction is not widely understood by Afghans and needs to be stressed in civic education efforts. Serious problems could occur on election day if large numbers of Afghans are turned away from polling stations because they have the wrong province written on their registration card.

A further four-week period of registration took place to reach an estimated one to two million Afghans who needed to register for the first time or correct their details. In late June, the JEMB opened registration/re-registration centres in district capitals around the country. These stayed open until 21st July. There are some concerns that Afghans whose movement is restricted (women, disabled, elderly) or who live in remote areas may have had problems accessing registration sites. In addition, several sites, for example in Zabul, were unable to open at the start of the registration process due to security problems.

Regardless of these concerns, nearly 800,000 Afghans registered or re-registered during the first three weeks of the process. It is quite likely that further multiple registrations will occur, as it was widely reported to have been during the registration period for the Presidential vote. One major lesson learned from October 2004 was the failure in many polling centres of indelible ink to guard against multiple voting. During the registration process there were no safeguards to prevent multiple registration. As a result, the only way

multiple voting could be prevented was through marking voters' fingers with indelible ink. In some cases the wrong ink was applied, in others the right ink was applied in the wrong way, and in others the ink just did not work. This time a more tried and tested version of ink will be used and polling centre staff will receive further training on applying the ink correctly.

Given that there will be no out of country voting by Afghan refugees in Pakistan and Iran, special registration sites will be available for returning refugees up until close to polling day. There will be five registration centres for returnees located in refugee encashment centres and UNHCR will be informing Afghans in Pakistan and Iran about these facilities.

Civic Education

Afghanistan has very high rates of illiteracy. Explaining the new democratic institutions, the election process and educating the population about their voting rights is a very complex and challenging exercise, particularly in a country with extremely limited infrastructure and with many remote villages.

Anecdotal evidence suggests that many Afghans are confused about this next stage of elections and have a limited understanding of what they are for. A huge civic education effort is needed if Afghans are to properly understand what they are voting for this time, how they can vote most effectively for their interests and what they should expect of their representatives in the WJ and PCs.

The WJ and PC election will be considerably more complex than the Presidential vote, with two separate ballot papers and dozens (or in some cases hundreds) of candidates on many of the ballots. The lack of information available on the role and activities of PCs

has presented an additional challenge to civic educators.

IFES and ACSF are conducting a massive civic education programme that will run until September. IFES is covering the central region (Kabul, Kapisa, Logar, Panjshir, Parwan and Wardak) and ACSF is working on the remaining 28 provinces. IFES and ACSF work with JEMB materials that highlight key election messages. These currently include information of the role of the WJ and PCs, the fact that the elections are considered part of a path to peace, informing Afghans that they must have a registration card and must have the correct province on their card. Civic educators also explain to voters that they will cast two votes, one for the WJ and one for the PC, that their vote is secret, and that they can only vote once.

The JEMB is also running a Small Grants Programme that gives grants of US\$50–\$1000 to community groups or civil society organisations for civic education activities. In addition, thousands of posters and brochures have been produced, and radio, TV and travelling theatre are bringing election messages to the Afghan public.

The SNTV system presents a particular challenge from a civic education perspective given its often surprising results. Organisations such as IRI and NDI have been working with political parties and independent candidates to explain the workings of this system, but many Afghan voters are unlikely to receive instruction on the intricacies of the SNTV system and may therefore be surprised and confused by the results.

Timelines

Originally, the Presidential, WJ and PC elections were scheduled to be held at the same time. According to the timetable laid out in the Bonn Agreement, elections for president and the National

Assembly should have been held within two years of the peace agreement being signed. Security problems, limited government control outside Kabul, numerous political challenges and funding issues led to several delays, first from June 2004 to September, and then to October. In July 2004, it was announced that WJ and PC elections would not happen at the same time as the Presidential vote due to the many

technical issues that still needed to be resolved.

WJ and PC elections are now scheduled to be held on 18 September 2005. The timeline is extremely tight, given the immense political, logistical, financial and security challenges presented by this next round of voting.

Security problems forced a three-day extension in the candidate nomination period. In Jalalabad there was a six-day extension after the local registration office was closed due to violent demonstrations and evacuation of UN staff. However, as of early July, most activities were broadly on track and the JEMB remained confident that deadlines would be met. Contingency planning is ongoing to deal with future security problems or other unexpected events.

Table 3: Timeline for Parliamentary Elections

Event	Dates
Candidate nomination period	30 April–19 May 2005 (extended by 3 days)
Preliminary candidate list production	20 May–3 June
Candidate display period	4 June–9 June
Adjudication of challenges	10 June–1 July
Candidate appeals period	2 July–7 July
Final candidate list certified by JEMB	12 July
Ballot printing, packing and distribution	23 July–10 September
Public outreach on registration	11 May–24 June
Registration, additions and corrections	25 June–21 July
Campaign period	17 August–16 September
Election day	18 September
Ballot count	19 September–9 October
Provisional results, complaints period	10 October–21 October
Announcement of results	22 October

Security

In addition to the logistical challenges that accompany a strict timetable for elections, one overriding concern underlining the elections process is security. During preparations for the Presidential elections there were several targeted attacks on election workers that resulted in 12 deaths and 33 injuries. There was much concern that polling stations, voters, or election workers would be attacked on election day itself, but in fact the day passed without major incident.

Optimism about improved security after a quiet winter has been dashed by a number of violent incidents since the spring. According to Associated Press figures, more than 700 people, including suspected insurgents, US troops, Afghan police and soldiers, and civilians, are reported to have been killed since April. In May, violent demonstrations in several cities led to the deaths of at least 15 Afghans, a suicide bomb in an Internet café in Kabul killed one international UN staff member and two Afghans, and an

Italian aid worker was kidnapped and held in captivity for 24 days. In June, a huge explosion inside a mosque in Kandahar caused at least 20 deaths and 40 injuries among those attending the funeral of an assassinated religious leader.

Some of the recent violence appears to be directly targeted at the elections process. For example, an NGO worker involved in civic education on the elections process was killed in Uruzgan in June, and a JEMB convoy was attacked in Kandahar Province, leading to the death of one man. Two candidates have been killed (in Uruzgan and Ghazni Provinces), and a member of the Kandahar PEC was killed in early July. It is impossible to say if these killings were directly election related, but security analysts and election officials are expecting more violence aimed at election workers in the coming weeks.

Separate from the security threat presented by the Taliban or other anti-government groups, there is more chance of factional and community unrest during this next phase of elections than there was in the October 2004 vote. Whereas the Presidential elections were to some extent a one man race, voting for the WJ and PCs has the potential to make real changes to power structures at the local level, and as a result may threaten the power of local commanders or community leaders. Some of these players may resort to intimidation and/or violence if they feel their positions of influence are under threat.

In March 2005, the Afghanistan New Beginnings Programme announced that the disarmament, demobilisation and reintegration (DDR) process was moving into its final phase. Over 61,000 troops have been disarmed and thousands of weapons have been destroyed or handed over to the new Afghan National Army (ANA). There are many questions around the effectiveness of the DDR

process to date, with many soldiers reportedly handing in antique guns and keeping hold of their AK47s. The DDR process only targeted “regular” military units who were registered with the Ministry of Defence. There remain a large number of “illegal” militias who have not been touched by DDR and continue to act with impunity under the control of local commanders. A new phase of DDR aimed at neutralising these militias – the Disarmament of Illegal Armed Groups (DIAG) process – was launched in June.

In 2004, the opium economy accounted for roughly half of Afghanistan’s gross domestic product. The stepping up of eradication operations and the perceived tension around opium issues among the Afghan public has already had an adverse effect on the security situation in some areas. For example on 16th March, two people were killed and several injured in a fire-fight between locals and police who were conducting an eradication operation in Nangarhar Province. In mid-May 11 Afghans were killed in two separate attacks on a private development company working on counter-narcotics programmes in Helmand Province.

Other than the implications counter-narcotics operations may have on the general security situation, it is also anticipated that powerful figures in the drug trade will want to influence the outcome of the elections in order to protect their interests. Powerful drug traders could use their networks of armed groups to intimidate voters, election staff and local security actors. Key players in the drugs trade are alleged to have connections to the Afghan National Police and, given the estimated millions of dollars they are making, the cash to buy votes and pay bribes to law enforcement officials and election staff. Moreover, some of these individuals may even be WJ or PC candidates.

On election day itself, it is understood that similar arrangements to the Presidential elections will be made – i.e. ANA and ANP will be the front line of election security, with NATO/ISAF and the Coalition on call as back up. While military observers seem genuinely impressed with the newly trained ANA, there are ongoing concerns about the allegiances of the ANP and their capacity to act as protection for Afghan voters rather than muscle for local power holders. NATO/ISAF plans to bring in extra troops (from Romania, Holland, Australia and Spain) before the election to be deployed in Kabul, Mazar-i-Sharif and Herat respectively. The US-led Coalition will have an additional 500–700 troops on standby outside of Afghanistan in case of major unrest.

Observation

In the months before the Presidential elections in 2004, the tense security situation led many international bodies to severely limit their plans for observation and monitoring missions. The month before the polls, the Organization for Security and Cooperation in Europe (OSCE) stated that “current and anticipated conditions in Afghanistan are significantly below those regarded by the OSCE as the minimal necessary for any meaningful election observation”.

As a result, the OSCE only sent a limited support mission of around 40 international staff. The European Commission sent a “Democracy and Election Support Mission” with 25 election and field experts. The Asian Network for Free Elections (ANFREL), a partner of The Asia Foundation, sent 42 delegates. A limited number of additional international observers were deployed from among the staff of diplomatic missions in Kabul, international NGOs and other organisations based in Afghanistan. The total number of observers paled in comparison to the

large numbers of international monitors that have been deployed in other post-conflict elections such as Kosovo and East Timor.

It is hoped that a larger international and domestic monitoring effort will be mounted for the WJ and PC elections. This is particularly important because more intimidation and vote buying is anticipated this time around, and because any irregularities are likely to have a far greater impact.

Although there were problems with the Presidential vote, including multiple voting, underage voting, and alleged intimidation of voters, the fact that President Karzai beat his closest rival by nearly 40% means that these flaws are not believed to have materially affected the outcome. The effect of vote stealing, ballot box stuffing, multiple voting and other types of fraud would have a far more significant impact on the outcome of this next election than the Presidential vote. Moreover, perceptions of fraud or lack of transparency in these elections may result in strong distrust of the government on the part of Afghan citizens.

The European Union is planning to send a full observer mission, security permitting, with a mixture of long- and short-term observers. If this goes ahead the long-term contingent would likely include 10–12 in Kabul and two per province. The OSCE have done an assessment and will send a support mission. ANFREL are planning to send a delegation, although the size and scope will depend on security.

Afghanistan now has its own domestic monitoring body, the Free and Fair Election Foundation of Afghanistan (FEFA). FEFA was set up in March 2004 by a group of Afghan NGOs with support from NDI. The organisation aims to increase the integrity of the election process through advocacy, civic

education and monitoring. For the WJ and PC elections, FEFA plans to have monitors (one male and one female) in 219 districts, i.e. 65% of polling centres. FEFA now consists of more than 20 partner organisations. Their current plans are to train observers and monitor the voting on September 18. FEFA would like to monitor the entire process, including the registration phase and the counting of ballots.

There are therefore likely to be more observers on election day than there were for the Presidential elections, unless the security situation forces a change of plan. However, intimidation does not only happen on the day of voting, and there are concerns that a lot of intimidation may already have happened both prior to and during the candidate nomination process, and during the campaign period.

Media

A media commission was set up just before the Presidential vote. Due to the haste with which it was established, there was little time to inform the public about the commission's existence and role. The media commission for the WJ and PC elections is now operational and is tasked with media monitoring and ensuring fair and balanced reporting of the election process. The media commission will attempt to ensure that all candidates get fair access to media coverage, a mammoth task given that there are nearly 6,000 candidates and a plethora of newspapers, magazines and radio stations operating around the country. Campaigning on the television and radio was banned until the start of the official campaign period on August 16th. During the official campaign period each Wolesi Jirga and Provincial Council candidate will be given short spots on the TV or radio. Campaign advertisements in the print media are prohibited throughout the election process.

After the Elections

The Emerging Political Party System

Because of the youthfulness of competitive electoral politics in Afghanistan it is very difficult to predict with accuracy what any future political party system may look like. Yet there are already trends of alliances and groupings which may dominate the first legislature.

The President will need substantial allies in the legislature for governing but, perhaps surprisingly, Karzai's strategy has not been to build a political party to capitalise on his own personal popularity. Rather, he seeks to remain "above the fray" and hopes to rely on a loose network of tribal kin and Pashtun nationalists to repeat the majority he received in the Presidential vote. His advisors urged him to offer an "agenda" which individuals and parties could sign on to rather than a formal political party which it was believed might alienate some Afghans. However, the confused picture emerging from the nomination period suggests that this strategy may be flawed in a number of respects.

First, it is far from certain that representatives elected from predominantly Pashtun provinces will line up shoulder to shoulder behind President Karzai when it comes to passing legislation, at least not without extracting severe concessions. The Pashtun vote and caucus may well split along tribal lines as was the case in the Emergency Loya Jirga. There are significant groups opposed to Karzai in the south and east who will also be less inclined to offer blanket support for the President's agenda.

Combined with the difficulty of cobbling together a majority of independents is the fact that the only organisations with electoral experience and local networks are those almost uniformly controlled by

the President's rivals. Mohaqiq, Dostum, and Qanooni all have machines – built on regional ethnic dominance which in the case of the first two are less vulnerable to internal challenges in their heartlands. Dostum's *Junbesh* has engineered dominance within the Uzbek community and will make it very difficult for challenges to make inroads in the WJ elections. Similarly there are few credible challenges to Mohaqiq's dominance in Hazarajat. Qanooni's New Afghanistan party perhaps will feel less secure in monopolising the votes of Tajiks (it is unclear where Ismail Khan's nod will go) and urbanised Tajiks seem more inclined to support Karzai than the remnants of the Northern Alliance. But without a "Karzai party" even WJ members not allied to Dostum, Mohaqiq or Qanooni may still not necessarily support the president's agenda.

A highly fragmented legislature, dominated by independents strung together by loose alliances, can make executive–legislative relations highly complex and problematic. The President's first task will be to build a majority of WJ members who can stand behind his agenda and vision for the future. Without that each vote in the WJ will be an exercise in "buying off" individuals and groups with favours for their home districts and sectional interests.

Parties and more formal alliances are likely to coalesce over time but they will be based on the regional interests that dominate the elections. Most observers expect to see groupings based on ethnic group and region as dominant over and above parties based on ideology and cross-national support.

Support to the National Assembly

Even if elections are successful the question remains as to whether the new parliament can actually have the capacity

and coherence to fulfil their functions and take a substantive role in governance. A dynamic and effective legislature is driven partly by the legitimacy derived from its election and its coherence in dealing with the executive. But it also hinges upon the capacity of members to legislate and to properly review legislation and oversee ministers. This will depend on resources for the legislature – staff, technology, and the means to keep in touch with constituents – and training for the members of parliament in the nature and function of being a legislator. The female members of the WJ will be in particular need of resources and training.

Work is underway to build the capacity of the National Assembly. This includes physical work on the NA premises, the set-up of administrative structures and the training of support staff. The two year SEAL (Support to the Establishment of the Afghan Legislature) project will provide technical and financial assistance to the Afghan parliament in numerous areas such as legal support, information and communication technologies, parliamentary outreach and public awareness programmes, project management and specialised training. Key actors in the \$15m project are France (the lead nation for parliamentary support), UNDP, UNAMA and the Afghan government.

Local Governance

While local government provides the "face" of government for most Afghans, the mandates and roles of Provincial, District and Village Councils still need to be clarified. Aside from their role in helping to appoint members of the *Meshrano Jirga*, there remain significant question marks on how these councils will function, be funded, and moreover, maintain linkages with existing local bodies such as structures of public administration, NSP community development councils and traditional

shuras. An open and broad-based consultative process must be initiated quickly in order to define the roles of Provincial, District and Village Councils, and donors must commit to a coordinated approach to their development. Likewise, an appropriate legal framework should be established to encourage accountable local government and citizen participation.

The cost of future elections

Afghanistan's current electoral system is a very expensive one. Based on the

current model, there could be Constitutionally required elections in 13 or more out of the next 20 years (see page 6 for schedule of elections). While international donors have played a significant role in funding the Presidential and current parliamentary elections, it is extremely unlikely that donors will agree to fund such an expensive system in the longer term. Moreover, Afghanistan will not be able to foot the bill itself for many years, given the many other pressing demands on its slim revenues. Thus it is difficult to tell what the implications of funding concerns will have on future elections, and the functioning of elected bodies.

Useful Links

Further information about the upcoming elections can be found at the following websites:

The Joint Electoral Management Body (JEMB)
www.jemb.org

The Electoral Complaint Commission (ECC)
www.ecc.org.af

United Nations Assistance Mission in Afghanistan (UNAMA)
www.unama-afg.org

The International Foundation for Election Systems (IFES)
www.ifes.org

The Afghan Civil Society Forum (ACSF)
www.swisspeace.org/acsf/default.htm

The Asia Foundation (TAF)
www.asiafoundation.org/Locations/afghanistan.html

The International Republican Institute (IRI)
www.iri.org

The National Democratic Institute (NDI)
www.ndi.org

International Security Assistance Force (ISAF)
www.hrf.tu.nato.int/isaf/public/isaf.php

Combined Forces Command – Afghanistan (Coalition)
www.centcom.mil/Operations/CJTF_180/cjtf180.asp

In the Name of Allah, the Most Gracious, the Most Merciful

Electoral Law

Chapter I General Provisions

Article 1

Basis

This Law has been codified pursuant to the provisions of Article 33 of the Constitution of Afghanistan for the purpose of regulating electoral affairs in the country.

Article 2

Election Method

Elections shall be through free, universal, secret, and direct ballot.

Article 3

Principle of Equality in Elections

Voters shall have equal rights of participation in the elections.

Article 4

Voting System

Each voter shall have one vote in the elections and shall vote only on his or her own behalf.

Article 5

Respect for the Principle of Free Will

Voters and candidates shall take part in the elections on the basis of their free will. Imposition of any kind of direct or indirect restriction on voters or candidates on the basis of language, religious, ethnic, gender, tribal, geographical, or social status is prohibited.

Article 6

Cooperation from Relevant Institutions and Individuals

Government and non-government institutions, political parties, social organizations, and relevant individuals shall cooperate with the Independent Electoral Commission (IEC) and other commissions established by the IEC, and also with the Electoral Complaints Commission, and shall implement the decisions made by these bodies within the scope of their respective jurisdictions.

Chapter II Electoral Administration

Article 7

Independent Electoral Commission

(1) The electoral process shall be administered by the Independent Electoral Commission. The Independent Electoral Commission shall hereinafter be referred to as "the Commission".

(2) The Commission may establish other subordinate commissions in addition to those cited in this Law and delegate tasks to them within its jurisdiction, as necessary for the orderly administration of the electoral process.

Article 8

Electoral Officials

Electoral officials at the central, provincial and district level shall be recruited by the Independent Electoral Commission Secretariat (hereinafter called "the Secretariat") in accordance with procedures established by the Commission.

Article 9**Impartiality and Commitment to Confidentiality**

(1) Electoral officials shall perform the duties assigned to them in an impartial and unbiased manner and may not seek or receive instructions from any government or non-government official or authority, except the Director of the Secretariat.

(2) Prior to taking office, electoral officials shall declare, officially and as specified by the Commission, that throughout the electoral process they will fulfil the duties assigned to them with decency, truthfulness, and confidentiality.

Article 10**Recruitment Restrictions**

(1) The recruitment of officials of political parties and election candidates as electoral officials is disallowed.

(2) Electoral officials while in office cannot stand for elections.

(3) A father, grandfather, descendant up to the third generation, mother, grandmother, brother, sister, spouse, uncle, aunt, father-in-law, and mother-in-law of a candidate shall not have the right to work as an electoral official in the constituency in which the concerned candidate is running.

**Chapter III
Constituencies****Article 11****Definition of Constituencies**

For the purpose of Wolesi Jirga, provincial council and district council elections, constituencies shall be defined as follows:

- a. For Wolesi Jirga elections, each province shall be one constituency. For nomads, the whole of the country shall be deemed to be one single constituency;
- b. For provincial council elections, each province shall be one constituency; and
- c. For district council elections, each district shall be one constituency.

Article 12**Disputes over Constituency Boundaries**

(1) Disputes over dependency of a village to a province or a district, due to delimitation of electoral boundaries of provincial and district constituencies, shall be resolved by the Ministry of Interior (MoI). The MoI shall make its decision on the basis of technical criteria and received information and shall inform the Commission of the decision as soon as possible.

(2) Disputes over constituency boundaries shall be raised no later than (170) days before the election date.

**Chapter IV
Voters and Candidates****Article 13****Voter Eligibility**

A person is eligible to vote in the elections if that person:

- a. is at least 18 years of age on the day of the election;
- b. has Afghan citizenship at the time of registration;
- c. has not been deprived from his or her civil or political rights by a court of competent jurisdiction; and
- d. has been registered as a voter by the Commission.

Article 14**Candidate Eligibility**

Any person meeting the eligibility criteria under Article 62 of the Constitution may candidate himself or herself for presidential elections. Any person who meets the eligibility criteria under Article 85 of the Constitution may candidate himself or herself for national assembly, provincial and district council elections.

Article 15**Candidacy Requirements**

(1) The following individuals shall not be qualified to candidate themselves for presidential, national assembly, provincial, or district council elections, unless they have resigned from their positions at the time of filing their nomination papers:

- a. Chief Justice, Members of the Supreme Court and Judges;
- b. Attorney General and Public Prosecutors;
- c. Ministers and their Deputies, Governors and their Deputies, and District Administrators;
- d. Mayors and Nahia Administrators;
- e. Members of Ministry of Defense, Ministry of Interior, and the General Directorate for National Security;
- f. General Directors and Directors of Ministerial Departments and Government Offices at the Central and Provincial Level; and
- g. Electoral Officials.

(2) If the individuals listed in sub-article (1) are not elected, they shall not have the right to return to their previous positions unless they are reappointed.

(3) Individuals who practically command or are members of unofficial military forces or armed groups shall not be qualified to candidate themselves for the elections.

(4) No person shall candidate himself or herself in more than one constituency at the same time.

Article 16**Voting Location**

(1) Voters shall vote in the constituency indicated on their voter registration card.

(2) The Commission may, on an exceptional basis, provide special facilities for nomads, refugees, internally displaced people, the handicapped and the disabled, members of the armed forces, civil servants and electoral officials.

Article 17**Voter Identification**

(1) Voters shall, prior to receiving the ballot paper, prove their identity by showing their voter registration cards.

(2) The Commission may, on an exceptional basis, provide facilities for the registration of Afghan refugees in Iran and Pakistan.

Chapter V**Candidacy and Election of President****Article 18****Election of President**

(1) The President is elected in accordance with the provisions of Article 61 of the Constitution and the provisions of this Law by a majority of valid votes cast by voters.

(2) If no candidate receives more than 50 percent of the valid votes cast, a runoff election shall be held between the two most voted candidates within two weeks following the announcement

of election results. The candidate who receives more valid votes in the runoff election shall be declared elected.

(3) In accordance with Article 160 of the Constitution, the candidate elected with a majority of votes assumes his or her duties thirty days after the announcement of election results.

(4) If a presidential candidate dies during the first or second round of polling, or after polling and prior to the announcement of election results, the elections shall be held again in accordance with the provisions of this Law.

Chapter VI

National Assembly Elections

Part One

Wolesi Jirga

Article 19

Number of Seats

The Wolesi Jirga shall have 249 seats.

Article 20

Allocation of Provincial Seats

(1) The Central Statistics Office, under the Ministry of Economy, shall provide, at a time specified by the Commission, the latest official population figures or estimated population of each province to the Commission.

(2) Of all the allocated seats, 10 seats shall be allocated to nomads.

(3) The commission shall allocate seats to provinces in the following manner:

- a. The total population of provinces is divided by the total number of seats to be allocated to provinces (239) to determine the seat allocation quota;
- b. The population of each province is divided by the seat allocation quota;
- c. Initially provinces are allocated a number of seats equal to the whole number from the division under (b);
- d. Seats not allocated under (c), are allocated in declining order of the decimal remainder from the division in (b);
- e. If as a result of this calculation one or more provinces receive fewer than two seats, they shall be allocated two seats;
- f. The total number of seats and population figures of provinces allocated additional seats under (e) is excluded from the total number of seats (239) and the total population figures of provinces. For the remaining provinces a new seat allocation quota is calculated and the allocation of seats to these provinces is repeated as in (b) through (f).

(4) The Commission shall publish the calculations used in the allocation of seats under this article.

Article 21

Awarding of Provincial Seats to Candidates

(1) Subject to the provision of article 22 of this Law, Provincial seats shall be awarded to candidates on the basis of the number of votes they have received.

(2) In each province, seats shall be awarded to the most voted candidates.

(3) No candidate shall be awarded more than one seat.

(4) If a candidate is not able to take, or abandons, his or her seat during the term of the Wolesi Jirga, the vacant seat shall belong to the next most voted candidate from the same gender.

Article 22**Allocation of Seats to Female Candidates**

- (1) The Commission shall develop procedures and formulae, based on the population of each province, to determine the number of female candidates to represent each province in accordance with the requirements of Article 83 of the Constitution, according to which the number of female representatives shall be at least twice the number of existing provinces of the country.
- (2) The most voted female candidates in each constituency shall be awarded seats in accordance with sub-article (1) of this article. Once the representation requirements are met, the remaining seats shall be awarded according to article 21 of this Law.
- (3) If there are not enough female candidates on the list of candidates to fill the seat(s) allocated to women in a particular constituency, the seat(s) in question shall remain vacant until the next intended Wolesi Jirga elections.

**Part Two
Meshrano Jirga****Article 23****Composition of Meshrano Jirga**

The number of members of the Meshrano Jirga shall be thrice the number of the provinces of the country. One third of these shall be elected by the provincial councils, one third shall be elected by the district councils, and one third shall be appointed by the President.

Article 24**Election of Provincial [Council] Representatives**

- (1) Within 15 days of its establishment, each provincial council shall elect, by secret ballot, one of its members to the Meshrano Jirga for a period of four years.
- (2) Elections to the Meshrano Jirga shall be presided over by the chairperson of the provincial council, provided he or she is not a candidate. If the chairperson is a candidate, the vice chairperson shall preside over the elections. If the vice chairperson is also a candidate, the eldest member of the council who is not a candidate shall preside over the election.
- (3) The elections shall be by majority from among the members of the council present. If no candidate receives more than half of the votes, a second round of elections shall be held between the two most voted candidates, following which the candidate receiving the most votes shall be elected.
- (4) If the elected candidate is not able to take, or abandons, his or her seat prior to the end of the term, the provincial council in question shall elect, in accordance with the provisions of this article, another person to serve for the remaining period.

Article 25**Election of District Council Representatives to Meshrano Jirga**

- (1) Within 5 days of the installation of the District Councils, the Commission shall provide each Provincial Council with a list of the persons elected to the District Councils in its respective province. District Councils in each province shall elect one of their members to a seat in Meshrano Jirga for a three-year period.
- (2) The Chairperson of the Provincial Council is responsible for convening the members of the District Councils in the Province for an election within 15 days of the installation of the respective District Councils. The meeting shall take place at a venue which is as accessible as possible for all members of the District Councils in the province.
- (3) At least two thirds of the members of the District Councils in a province must be present for an election to be valid.
- (4) Election is by absolute majority among the Council members present. If no candidate receives more than half of the votes, a run-off election must be conducted between the two

most voted candidates. The candidate who receives a majority of the votes in this round is elected.

(5) If an elected candidate is not able to take, or abandons, his or her seat prior to the end of the term, another member from among the existing members of the relevant District Councils shall be elected in accordance with the provisions of this article to serve for the remainder of the term.

Article 26

Appointment of Individuals to Meshrano Jirga

(1) Within two weeks after the assumption of presidential post, the President shall invite social organizations, political parties and the general public to nominate, in conformity with Article 84(3) of the Constitution, individuals to be appointed to the Meshrano Jirga. The nomination period for this purpose shall remain open for seven days.

(2) No more than seven days following the close of nomination period as indicated in sub-article (1) of this article, the Office of the President shall forward to the Commission nomination papers for those persons it intends to appoint.

(3) Following receipt of the nomination papers, the Commission shall confirm, within one week, the eligibility of the persons indicated in sub-article (2) of this article, and shall inform the Office of the President of its decision.

(4) Within two weeks of the close of nominations, the President shall announce appointments to the Meshrano Jirga in accordance with Article 84 (3) of the Constitution.

Chapter VII Provincial and District Elections Part One Election of the Provincial Council Members

Article 27

Provincial Councils

Each province shall have a provincial council elected through free, secret, universal and direct elections by the voters of the province.

Article 28

Composition

The number of members of each Provincial Council shall be determined by population in the following manner:

- a. Provinces with less than 500,000 inhabitants: 9 members;
- b. Provinces with 500,000 - 1,000,000 inhabitants: 15 members;
- c. Provinces with 1,000,000 - 2,000,000 inhabitants: 19 members;
- d. Provinces with 2,000,000 - 3,000,000 inhabitants: 23 members; and
- e. Provinces with more than 3,000,000 inhabitants: 29 members.

Article 29

Allocation of Seats for Provincial Councils

(1) For each Provincial Council, seats shall be allocated in the following manner:

- a. The Commission shall determine the number of seats for each Provincial Council on the basis of the population of the province;
- b. The most voted candidates shall be awarded seats in the Provincial Councils;
- c. At least one quarter of seats in each Provincial Council shall be reserved for female candidates;
- d. Subject to the reservation of seats under (c), seats shall be awarded to candidates on the basis of the number of votes they have received; and

- e. The most voted women candidates in each constituency shall be allocated seats until the seats reserved in (c) are filled. After the representation requirements have been met, the remaining seats shall be allocated in accordance with (b).
- (2) If a candidate is not able to take, or abandons for any reason, his or her seat before the end of the term, his or her seat shall belong to the next most voted candidate from the same gender.
- (3) If there are an insufficient number of women on the candidate list to fill the seat or seats allocated to women as per this Article, then the seat or seats shall remain vacant until the next scheduled Provincial Council elections.

Part Two District Councils

Article 30 District Council

Each district shall have a council elected through free, universal, secret, and direct elections by voters of the same district.

Article 31 Composition of District Councils

(1) The number of members of each District Council shall be determined by population in the following manner:

- a. Districts with less than 20,000 inhabitants: 5 members;
- b. Districts with 20,000 - 40,000 inhabitants: 7 members;
- c. Districts with 40,000 - 60,000 inhabitants: 9 members;
- d. Districts with 60,000 - 80,000 inhabitants: 11 members;
- e. Districts with 80,000 - 100,000 inhabitants: 13 members; and
- f. Districts with more than 100,000 inhabitants: 15 members.

Article 32 Allocation of Seats to District Councils

(1) Seats on each District Council are awarded in the following manner:

- a. The IEC shall determine the number of seats for each District Council on the basis of the population of the district;
- b. The Commission shall award seats to the most voted male and female candidates.

(2) If a candidate is not able to take, or abandons for any reason, his or her seat before the end of the term, the vacant seat shall belong to the next most voted candidate.

Chapter VIII Conduct of the Elections

Article 33 Election Date

(1) The Commission shall announce the election date at least 140 days in advance.

(2) The Commission shall prepare and publish, at least 120 days prior to the scheduled election date, an electoral calendar clearly showing all appointed dates of the elections.

Article 34 Voters List

The Commission shall certify voters list or segments of it to be used in the elections and shall make it available for public inspection, at least 15 days prior to election date, in public places determined by the Commission.

Article 35**Candidate Nomination**

(1) Presidential, Wolesi Jirga, Provincial Council and District Council candidates shall notify the Commission in writing, of their intent to stand as a candidate at a time stipulated by the Commission.

(2) Each person in applying to be a candidate shall submit the following items:

- a. Name and clear address;
- b. The candidate's voter registration card or other proof of voter registration;
- c. Names, registration card numbers, and signatures or thumbprints of persons residing in the constituency supporting the candidate's appearance on the ballot as follows:
 - i. 10,000 to nominate for Presidential candidates;
 - ii. 300 to nominate for Wolesi Jirga candidates;
 - iii. 200 to nominate for Provincial Council candidates; and
 - iv. 100 to nominate for District Council candidates;
 - v. In the case of the Nomad Constituency, the candidate must present names, registration card numbers, and signatures or thumbprints of 300 persons registered as nomads supporting the candidate's appearance on the ballot;
- d. Sworn statement attesting to the candidate's Eligibility and Qualifications, committing to uphold the Code of Conduct, confirming their resignation from any of the positions set out in Article 15(1), if applicable, confirming that they do not command, or belong to, unofficial military forces or armed groups, and confirming that they have not been convicted of crimes against humanity, or any other crime, or have been deprived of civil rights by a court;
- e. Presidential candidates shall submit the names of two vice-presidential candidates; and
- f. Candidates shall file a deposit for their candidacy as set out below.

(3) The filing deposit for a Presidential candidate shall be Afghani 50,000, which deposit shall be refunded if the candidate is elected or receives at least 15 % of the valid votes cast in the first round of the election.

(4) The filing deposit for a Wolesi Jirga candidate shall be Afghani 10,000, which deposit shall be refunded if the candidate is elected or receives at least 2 % of the valid votes cast in the respective constituency.

(5) The filing deposit for a Provincial Council candidate shall be Afghani 4,000, which deposit shall be refunded if the candidate is elected or receives at least 2 % of the valid votes cast in the respective constituency.

(6) The filing deposit for a District Council candidate shall be Afghani 2,000, which deposit shall be refunded if the candidate is elected or receives at least 2 % of the valid votes cast in the respective constituency.

(7) The Commission shall establish, by Regulation, procedures for the submission of candidate nominations.

Article 36**Candidate List**

(1) Upon closing of nominations, the Commission shall publish, as soon as possible, a preliminary candidate list.

(2) The Commission shall determine and publicize a period during which challenges and complaints related to the preliminary candidate list may be made. These challenges and complaints shall be adjudicated by the Electoral Complaints Commission (ECC) in accordance with its own procedures.

(3) After all challenges and appeals have been adjudicated by the ECC, the Commission shall publish the final candidates list, taking into account the decisions of the ECC. The Commission shall post the final list of candidates at polling centres on the election date.

Article 37

Death and Withdrawal of Candidates

(1) If a candidate wishes to withdraw his or her candidacy for the purpose of excluding his or her name from the ballot paper, the candidate shall notify the Commission in writing of his or her intent prior to a date specified by the Commission in the electoral calendar.

(2) If a candidate withdraws his or her candidacy or dies after the end of the candidate nomination process, or if his or her name is excluded from the list of candidates by the ECC, the votes cast in his or her favour shall not have any effect on the counting process.

(3) If a candidate dies between the close of voting and before the certification of the election results, the votes cast in his or her favour shall be recorded. If it is determined that the deceased candidate had been elected, then his or her seat shall be filled by the next most voted person from the same gender.

Article 38

Campaigning

(1) The Commission shall establish an official electoral campaign period. This period shall end forty eight (48) hours before the commencement of polling.

(2) The Commission shall issue rules to regulate electoral campaign period.

Article 39

Establishing of Polling Centres, Provision of Electoral Materials, and Issuance of Instructions

(1) The Commission shall establish polling centres throughout the country and shall provide the conditions for the presence of voters in these centres so that voters may have easy access to the election process.

(2) The Commission shall furnish ballot papers, ballot boxes, voting compartments, seals and other required materials, and make such other arrangements to facilitate voting as may be deemed advisable for effectively conducting the election.

Article 40

Ballot Papers

(1) The Commission shall undertake the following tasks in relation to the ballot papers:

- a. Produce ballot papers;
- b. Establish provisions for allocation of symbols and drawings to candidates where necessary;
- c. Establish the method by which voters will mark the ballot papers;
- d. Determine the languages to be used on ballot papers; and
- e. Establish a procedure for the counting of ballot papers.

(2) The Commission shall determine the order of candidates on the ballot paper by drawing lots.

Article 41

Ballot Boxes

The Commission shall undertake the following tasks in relation to the ballot boxes:

- a. Specify the design and material of ballot boxes, ensuring that each ballot box can be securely closed and sealed;
- b. Specify the manner in which ballot boxes are to be marked and identified; and
- c. Specify the manner in which ballot boxes are to be closed, secured, opened, sealed, and unsealed.

Article 42**Observers and Agents**

The Commission shall specify the rights and duties of observers, and shall develop procedures for the accreditation of national and international election observers and agents of political parties and of independent candidates.

Article 43**Removal of Campaign Materials**

The Commission shall have the authority to order the removal of campaign materials displayed within 100 meters of polling centres on election date.

Article 44**Prohibition of Carrying Arms at Polling Centres**

No person shall carry any weapon or any instrument capable of use as a weapon, at or within 500 meters of any polling centre. The carrying of weapons by security officials authorized by the Ministry of Interior shall be exempted from this provision.

Article 45**Commencement and Closing of Polling**

- (1) Polling at all polling centres shall commence and shall close at times to be fixed by the Commission.
- (2) Polling shall be conducted in accordance with Procedures issued by the Commission.
- (3) The Chairperson of a polling centre may order a suspension of polling if the polling centre is threatened by riot, violence, storm, flood, or any other sudden occurrence which makes the proper conduct of polling impossible. The Chairperson of the polling centre shall immediately inform the Secretariat of any such decision.
- (4) The Chairperson of a polling centre shall mark the end of the queue of voters at closing time as per sub article (1) and shall permit every voter who is in the queue to cast his or her vote at that time.
- (5) The Commission may provide facilities necessary for the voting of the disabled and the handicapped.

Article 46**Objections Concerning Voting**

- (1) Before a voter has been handed a ballot paper, an accredited agent of a candidate may object to that voter being entitled to vote or to vote at the polling centre concerned.
- (2) The Chairperson of the polling centre shall determine whether to accept such objection and shall note the particulars of the objection and his or her reason for rejecting or accepting the objection in an official record.

Article 47**Sealing of Ballot Boxes and Other Material**

- (1) As soon as the ballot box is full or balloting has ended, the Chairperson of the polling centre, in the presence of accredited agents and election observers, shall seal the box in the prescribed manner and allow any accredited Agent who may wish to do so, to record the number of the seals.
- (2) The Chairperson of the polling centre shall deliver the ballot boxes and packets to the Counting Centre in accordance with the Commission's instructions.

Article 48**Place and Time of Counting of Votes**

Votes shall be counted in counting centres determined by the Commission.

Article 49**Presentation and Certification of Results**

- (1) The Commission is responsible for announcing the certified election results in each constituency once all counting procedures have been completed and after all complaints concerning polling and counting have been adjudicated by the ECC.
- (2) Prior to the certification of results, the Commission or the ECC may order a recount of some or all of the ballots in a counting centre, or a repeat of the voting in any constituency.
- (3) The results of the election are final and binding once they have been certified by the Commission.
- (4) The Commission shall announce and publish the results of the election once they have been certified and all appeals have been adjudicated.

Article 50**Fair and Neutral Publication and Dissemination of Ideas**

- (1) For the purpose of public information during the electoral campaign period, the mass media (radio, television, and the press) shall publish and disseminate the platforms, views and goals of the candidates in a fair and unbiased manner, in accordance with the Code of Conduct established by the Commission.
- (2) Candidates shall have access, to the extent possible, to the media. For the purpose of public information during electoral campaign period, state-run media shall publish and disseminate, as agreed with Commission, the platforms, views, and goals of the candidates in a fair and unbiased manner.
- (3) State-owned media shall institute, as necessary, goals, policies and procedures to ensure fair coverage of the elections and implement the provisions of sub articles (1) and (2).

Article 51**Media Commission**

- (1) The Commission shall establish, at least 60 days prior to the election date, a Media Commission (MC). The MC shall monitor fair reporting and coverage of the electoral campaign period and shall deal with the complaints concerning any breaches of fair reporting or coverage of political campaign, or other violations of the Mass Media Code of Conduct. Appeals, may be lodged with the Commission.
- (2) The composition, responsibilities, and authorities of the MC shall be determined by the Commission.

Chapter IX**Electoral Complaints and Offences****Article 52****Electoral Complaints Commission**

- (1) In order to deal with electoral offences, complaints and challenges, an Electoral Complaints Commission (ECC) shall be established with the following composition:
 - a. One member appointed by the Supreme Court;
 - b. One member appointed by the Afghan Independent Human Rights Commission;
 - and
 - c. Three International members appointed by the Special Representative of the Secretary General in Afghanistan.
- (2) The ECC shall elect one of its members as the Chairperson of the ECC.
- (3) The ECC shall have the jurisdiction to consider and adjudicate the following:
 - a. Complaints relating to electoral offences, including violations of the law in the conduct of the electoral process, provided that the complaint has been received prior to the certification of the results of the election; and

- b. Challenges to the list of candidates or to the eligibility or qualifications of a candidate raised during the electoral process.
- (4) The ECC shall develop and implement its own procedures for considering and adjudicating complaints.
- (5) The ECC may consider matters otherwise within its jurisdiction on its own initiative and in the absence of a formal complaint or challenge.
- (6) Decisions of the ECC shall be final.
- (7) The ECC shall discontinue its work no later than 30 days following the certification of results.
- (8) In order to deal with complaints arising in the provinces, the ECC may delegate its authority to commissions at provincial level, which commissions shall consider complaints within their jurisdiction and in accordance with the procedures established by the ECC.

Article 53

Electoral Offences

The following acts shall constitute Electoral Offences:

- a. Providing false information to the Commission, any commission established by the Commission, or the Electoral Complaints Commission;
- b. Threatening, intimidating or attacking the dignity of a voter or candidate or a journalist covering the election in any way;
- c. Impeding anyone, including accredited observers and agents, from participating in the electoral process;
- d. Committing fraud in voting or vote counting;
- e. Offering or receiving a payment or other benefit for the purpose of influencing the electoral process;
- f. Possessing, or attempting to obtain, more than one voter registration card;
- g. Voting or attempting to vote using a forged or altered card or the card of another person;
- h. Changing, replacing, stealing, or destroying electoral documents without legal authorization;
- i. Manufacturing false voter registration cards, ballots, or official forms;
- j. Obtaining a voter registration card under false pretences;
- k. Attempting to vote more than once in an election;
- l. Interfering with election materials or ballot boxes without due authority;
- m. Interfering with electoral officials in the performance of their duties;
- n. Violating the Code of Conduct for Political Parties, Candidates and Agents, or the Code of Conduct for Electoral Officials;
- o. Making use of funds originating from illegal activities;
- p. Making use of foreign funds for the purpose of influencing the electoral process;
- q. Inciting or provoking other persons to commit an Electoral Offence;
- r. Violating provisions of this Law or other legal instrument governing the electoral process; and
- s. Failing to comply with any order of the Commission, the ECC, or the MC.

Article 54

Sanctions and Penalties

(1) Taking into consideration the circumstances, the ECC may, if it determines that an Electoral Offence has occurred:

- a. Issue a warning to, or order, the offending individual or organization, to take remedial action;
- b. Impose a fine not to exceed 100,000 Afghani;
- c. Prior to the certification of results, order a recount of ballots, or a repeat of the voting;

- d. Remove a candidate from the candidates list, if there are justified reasons;
- e. Invalidate ballot papers not meeting the conditions for validity, or order the count or recount of a ballot paper or a group of ballot papers; and
- f. Prohibit an offending individual from serving in the Commission or its Secretariat for a period not exceeding 10 years.

(2) The ECC may impose sanctions on a political party or candidate for Electoral Offences committed by its members or supporters. In imposing such a sanction the ECC shall take into consideration any evidence demonstrating that the political party or candidate made reasonable efforts to prevent its members and supporters from committing Electoral Offences.

(3) In addition to imposing the above sanctions, the ECC may refer the offender to the Public Prosecution Office if it has evidence that the offender has perpetrated a criminal act.

Chapter X Miscellaneous Provisions

Article 55

Postponement, Suspension, or Re-run of the Elections

(1) If security, financial, or technical conditions or other unpredictable events or situations make the holding of an election impossible, or seriously threaten the legitimacy of an election, the Commission may postpone or suspend polling in the affected constituency until the elimination of the condition.

(2) If the Commission determines that the election in a constituency has been flawed, it may order a re-run of the election in the affected constituency.

Article 56

Preparing Rules and Regulations

The Commission may issue Regulations, Procedures, and separate Guidelines to better implement the provisions of this Law.

Chapter XI Transitional Provisions

Article 57

Joint Electoral Management Body

(1) For the administration and oversight of the electoral processes during the Transitional Period, as defined by Article 159 of the Constitution, the JEMB, as established in Decree 11/1382 of 18 February 2004, shall exercise all the powers of the Independent Electoral Commission as laid down in Article 156 of the Constitution and in this Law.

(2) Upon completion of all duties related to the elections during the Transitional Period, the JEMB shall dissolve and the Independent Electoral Commission shall assume all the powers under Article 156 of the Constitution and this Law.



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