



# FIXING AFGHANISTAN'S ELECTORAL SYSTEM

## Arguments and Options for Reform

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### Summary

The election system used to select Afghanistan's *Wolesi Jirga* (lower house of parliament) has radically shaped the realms of democratic stability and political legitimacy since its introduction for the elections of 2005. Afghanistan uses the Single Non-Transferable Vote (SNTV) in 34 provincial-level, multi-member constituencies with a special affirmative action (quota) mechanism for women. The election system (largely unchanged between 2005 and 2010) has impeded the development of political parties, directed the type of campaigning conducted by candidates, and shaped voting behaviour. The system also limits the efficacy of the *Wolesi Jirga* as a decision-making chamber situated within the framework of the Afghan state alongside the executive office of the presidency. This paper examines the relationship between the election system and representation, democracy, electoral corruption, and the broad quality of the electoral process.

Beginning by exploring the strategic complexity inherent in SNTV, it goes on to analyse the system's impact in Afghanistan, and explore new proposals for electoral reform. Its broad recommendations are that:

- 1) Any reform should build on the current system and avoid radical change.
- 2) The complexity of the existing system can be reduced by having fewer MPs elected within each provincial constituency, leading to fewer candidates, the lower likelihood of a fragmented vote, and more manageable ballot papers.
- 3) Significant space needs to be created to encourage and facilitate the development of political parties and the groupings and alliances that are emerging within the current parliament. Political blocs will, over time, become more formalised and the system should allow voters to take them into consideration during elections.
- 4) Any new system needs to protect the space for the election of popular and legitimate independent candidates.
- 5) It is crucial to avoid complexity within the system and to educate the electorate on not merely how to vote but how their vote will affect the government that forms.

# 1. Introduction

In September 2005, nearly 6.5 million votes were counted in what was, despite significant flaws, perhaps the freest and most competitive legislative election Afghans had ever experienced. Five years later, 2.5 million fewer votes were recorded for the second *Wolesi Jirga* (lower house of parliament) elections, the results of which were contested in the parliament, in the electoral commissions, and by the judiciary for months. Meanwhile, Afghan legislative politics have been characterised by an anaemic party system, intense personalisation, and a parliament that struggles to establish its role in the policymaking process. This paper argues that the method by which Afghans currently elect their members of parliament (MPs) presents a serious obstacle to the development of effective legislative representation, which in turn is essential to the quality of democracy. The method in question is the Single Non-Transferable Vote (SNTV). While this system is by no means the biggest problem besetting democratisation in Afghanistan, this paper argues that it exacerbates many existing problems, most prominently by undermining the development of viable political parties or broad alliances that could articulate coherent policy platforms to address the country's considerable challenges.

Its argument is founded on two main premises consistent with established political science literature. First, that strong legislatures are essential elements of functioning democracies.<sup>1</sup> In this instance, “strong” legislatures are those that can advance policy proposals and marshal support to ratify them, often through a process of bargaining with the executive branch, and that can provide effective oversight over the executive and other agencies of the national government. Second, that effective political parties or other stable coalitions of representatives<sup>2</sup>—are

essential elements of strong legislatures.<sup>3</sup> Again, “strong” parties are characterised by an alliance of politicians that can articulate a shared set of policy principles and mobilise voters to support them, and legislators who cooperate once in office to pursue policies consistent with those principles. In an assembly of hundreds of representatives, no one individual can plausibly advance a national platform, making the role of organised alliances essential. This is demonstrated by the fact that no modern, longstanding democracy has operated at the national level in the absence of viable parties. Without parties, it is also exceedingly difficult for voters to envision how their votes in parliamentary elections might translate into national policy or effective representation. In short, strong legislatures are necessary to democracy, and viable parties are necessary for strong legislatures. This paper argues that SNTV is an obstacle to Afghan democracy by undermining the development of viable parties in the *Wolesi Jirga*.

The paper also identifies other, related, problems with SNTV. The system, particularly as put into practice in the Afghan context, encourages an often bewildering number of candidacies on the ballot, which in turn can impose severe cognitive demands on voters, and produces an unusually high proportion of votes for candidates who win no representation. The fragmented nature of electoral competition generated by SNTV in Afghanistan's

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countries. Specific historical legacies in some environments (often in countries that endured some period of communist rule, and certainly in Afghanistan) have a tainted view of partisanship and parties. Even in such environments, however, legislators may seek to contest elections under the umbrella of a common set of principles, and to act in concert in pursuit of those principles once elected. For the purposes of this paper, such cooperation or collective action is seen as evidence of effective legislative partisanship, regardless of whether or not the alliance chooses to call itself a “party.”

<sup>1</sup> See, for example, Matthew S. Shugart and John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge: Cambridge University Press, 1992); M. Steven Fish, “Stronger Legislatures, Stronger Democracy,” *Journal of Democracy* 17, no. 1 (2006): 5-20; and M. Steven Fish and Matthew Kroenig, *The Handbook of National Legislatures: A Global Survey* (New York: Cambridge University Press, 2009).

<sup>2</sup> The legal requirements and cultural implications of groups' status as a formal political party vary across

<sup>3</sup> See, for example, John H. Aldrich, *Why Parties? The Origin and Transformation of Party Politics in America* (Chicago: University of Chicago Press, 1995); Scott Mainwaring and Timothy R. Scully, *Building Democratic Institutions: Party Systems in Latin America* (Stanford: Stanford University Press, 1995); John M. Carey, *Legislative Voting and Accountability* (New York: Cambridge University Press, 2009); and John M. Carey and Andrew S. Reynolds, “Electoral System Design and the Arab Spring,” *Journal of Democracy* 22, no. 4 (2011): 36-47.

large, provincial-level constituencies also means that relatively small margins separate winners and losers. This presents incentives for the kinds of corruption and vote-buying that have plagued Afghan elections to date. It also leaves results highly sensitive to variations in turnout across regions, which can be quite pronounced given the country's precarious security environment. Finally, the dynamics of SNTV's interaction with Afghanistan's reserved seats system for women in parliament leaves many female MPs particularly vulnerable to challenges of illegitimacy. This is due to the potential it creates for female candidates to win seats with far fewer votes than their male competitors.

The remainder of the paper is organised as follows. Section 2 spells out the strategic complexities of SNTV in comparison with other, more widely used electoral systems. Section 3 goes on to explore Afghanistan's experience with SNTV, starting with a comparative look at other countries in which SNTV

is used, moving on to examine how the system was adopted in Afghanistan, and then examining the specific consequences of SNTV in the *Wolesi Jirga* elections of 2005 and 2010. This includes discussion on the translation of votes into representation, the challenges facing voters in casting effective ballots, the development of political parties and alliances in the *Wolesi Jirga*, the representation of women, the troubling case of the election in Ghazni Province in 2010, and an overall assessment of the quality of Afghan parliamentary elections in a comparative perspective. Finally, the paper considers options for electoral reform in light of the constraints inherent in the Afghan political context. In doing so, it analyses the Independent Election Commission (IEC)'s June 2012 proposals for modifying the Electoral Law, as well as discussing two related alternatives that could also mitigate many of the shortcomings of the pure SNTV format. It concludes with a consideration of some of the implementation issues any reform agenda would confront.

## 2. The Strategic Complexity of SNTV

SNTV is mechanically quite simple. Each voter gets a single vote to cast for a single candidate, and the top vote-getters win up to the number of seats in a given constituency.<sup>4</sup> Strategically, however, SNTV is highly complex. No other electoral system used to select national parliaments presents such great obstacles to the development of parties, or to their ability to turn support among voters into representation.

Except for SNTV, almost every other method of electing representatives from multi-member constituencies allows groups of candidates to pool their votes together so that support for one helps the group as a whole. This is true for list proportional representation (list PR) systems<sup>5</sup> (used in most democratic countries),

<sup>4</sup> This element is rendered somewhat more complex by the inclusion of reserved seats or quotas under SNTV, as in Afghanistan for women and Kuchi, as highlighted below. For now, the discussion focuses on the strategic complexity associated with the simplest version of SNTV.

<sup>5</sup> Under list PR, parties present lists of candidates to voters on a national or regional basis, voters vote for parties, and seats are awarded to parties in proportion to their vote share.

for transferable vote systems<sup>6</sup> (for example, Australia and Ireland), and for bloc vote systems that allow voters to cast votes for multiple candidates (as in many Arab nations).<sup>7</sup> Vote-pooling means that an alliance can expect to win a level of representation that is in line with the amount of support it has among the electorate, and that collective strength benefits all of its members. Because there is no vote-pooling under SNTV, any inclinations toward collective action among candidates must swim against an overwhelming tide.

Under SNTV, a party or alliance can only win representation in line with its overall support if it manages to satisfy three conditions:

- 1) Anticipate accurately what its support level will be
- 2) Nominate the correct number of candidates, given that level

<sup>6</sup> Under transferable vote, voters rank candidates by preference in single-member or multi-member districts.

<sup>7</sup> In bloc vote systems, voters can vote for as many candidates as there are seats to be filled. The top polling candidates fill those seats.

3) Persuade voters to distribute their individual preference votes precisely equally across its members

“Errors” in one or more of the above fields will likely translate into the alliance squandering votes. If an alliance overestimates support or faces pressure to field too many candidates, its votes will be spread too thinly, rendering each of its individual candidates uncompetitive; if its voters gravitate too heavily toward one of its candidates, others on its slate are likely to lose out; and if it under-nominates, it will end up winning few seats despite attracting high numbers of votes (see Box 1 for more details).

Estimating voter support ahead of time is difficult even in long-established democracies with stable parties that command strong voter allegiances. In the Afghan context, even the first requirement for electoral teamwork among politicians is largely absent insofar as there is relatively little historical basis—in terms of previous elections or voting data—on which to form expectations about any party or alliance’s support in a given province.<sup>8</sup>

SNTV also contains strong disincentives for attempting to distribute votes among allies. Individual candidates under SNTV always have strong incentives to maximise their own vote totals because securing election depends only on one’s individual vote tally. Votes are votes, whether won by taking support from adversaries or from alliance partners. Indeed, SNTV sets up strong incentives for zero-sum competition among would-be allies, since they all end up essentially competing for support from the same kinds of voter. SNTV thus punishes any cooperation among politicians that would foster the development of meaningful parties and stable coalitions, and instead rewards political individualism and “everyone for themselves” strategies.

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<sup>8</sup> While many of Afghanistan’s mujahidin parties or *tanzims* do have historic local and regional bases of support, shifting alliances within or across these groups (for example the formation in late-2011 of the National Front of Afghanistan and National Coalition of Afghanistan, both by political figures affiliated with Jamiat-i Islami) still results in a high degree of uncertainty in this respect. This is compounded by the fact that under SNTV, alliances need to be able to estimate their vote shares much more accurately than in other systems to be successful (see Box 1).

The pathologies of SNTV also become more pronounced as the size of electoral constituencies grows. In other countries where SNTV has been used, the number of seats in a given constituency has generally been limited to well under ten. While in Afghanistan the number of seats at stake per province ranges sometimes dips as low as two (in Nimroz, Nuristan and Panjshir), they can range much higher, up to 33 in Kabul.

The first problem this creates is to do with the proliferation of candidates. In high-magnitude<sup>9</sup> constituencies, candidates can win with low shares of overall votes cast. This triggers a reinforcing cycle of multiplying candidacies, which heightens expectations for fragmentation of the vote, reducing the vote share necessary to win, encouraging yet more candidates to throw their hats in the ring. For candidates, this can result in elections proving something of a lottery, with narrow margins between winners and losers and the potential for wild swings in the composition of legislatures across different elections. Meanwhile, voters may well face a ballot with hundreds of different candidates, making the cognitive task of identifying, locating, and indicating one’s first choice daunting. As an extreme example, the Kabul ballot for the 2005 election had over 400 candidates, and over 660 in 2010.

Beyond proliferation, the obstacles to cooperation are substantially greater when dozens (or hundreds) of candidates compete, and ironically, these obstacles are more pronounced the more widespread the support for a given alliance is. Whereas voters might be reliably divided between two would-be allies, the logistical challenge of dividing votes equally among three, four, or more allies within a constituency are overwhelming, as is the temptation to poach from one’s partners.

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<sup>9</sup> A technical term used to describe the number of seats available in a given constituency. For the purposes of this paper, it is magnitude, and not geographical size, that is important.

### Box 1: The pitfalls of SNTV

In a district with six MPs to be elected there are three different political alliances: one large, one medium, one small. Under most list PR systems, support would translate to votes as follows:

Alliance	Support	Seats
A	51%	3
B	34%	2
C	15%	1

The same distribution could ensue under SNTV if each alliance correctly anticipated its voter support, nominated a number of candidates in line with that support, and distributed support across them evenly:

Candidate	Support	Elected?
Alliance A 1	17%	Y
Alliance A 2	17%	Y
Alliance A 3	17%	Y
Alliance B 1	16%	Y
Alliance B 2	15%	Y
Alliance C 1	15%	Y

However, if Alliance A it nominates five candidates rather than three, it could spread its votes too thin, now winning only two seats to Alliance B's three, despite having twice the amount of support:

Candidate	Support	Elected?
Alliance A 1	11%	Y
Alliance A 2	10%	Y
Alliance A 3	10%	N
Alliance A 4	10%	N
Alliance A 5	10%	N
Alliance B 1	12%	Y
Alliance B 2	11%	Y
Alliance B 3	11%	Y
Alliance C 1	15%	Y

Alliance A could also suffer this same fate even if it nominates correctly, but distributes incorrectly:

Candidate	Support	Elected?
Alliance A 1	30%	Y
Alliance A 2	15%	Y
Alliance A 3	6%	N
Alliance B 1	12%	Y
Alliance B 2	12%	Y
Alliance B 3	11%	Y
Alliance C 1	15%	Y

And if Alliance A nominates *and* distributes poorly, the results could be catastrophic:

Candidate	Support	Elected?
Alliance A 1	30%	Y
Alliance A 2	6%	N
Alliance A 3	5%	N
Alliance A 4	5%	N
Alliance A 5	5%	N
Alliance B 1	12%	Y
Alliance B 2	12%	Y
Alliance B 3	11%	Y
Alliance C 1	15%	Y



## 3. Afghanistan's Experience of SNTV

### Comparative context

Given its many liabilities, it is not surprising that SNTV is an exceptionally rare method for electing legislators among other democracies. The system was part of the institutions “gifted” to the Japanese under US occupation in 1948 and was used there until 1993. During this period, SNTV was widely criticised within Japan, and it was eventually jettisoned in favour of a mixed single member district (SMD)/PR system. Yet even the relative success of Japanese democracy under SNTV is unlikely to prove transferrable to the Afghan context. For one thing, Japanese electoral designers recognised that the complexities of SNTV grow geometrically with magnitude, and the magnitude of each electoral district was thus limited to between three and five candidates. Even in these circumscribed districts, Japanese parties developed elaborate, and increasingly expensive, systems of organised factions within the major parties (particularly within the dominant Liberal Democratic Party) that distributed campaign finance among candidates, and cash and other gifts to citizens, in order to encourage equal vote distributions across candidates. By the 1980s, elections had grown so expensive that, on a per voter basis, the cost was estimated at up to ten times that of US congressional contests. A series of campaign finance scandals, driven by the high costs of Japanese campaigns, took down many top Japanese party and factional leaders during the late 1980s and early 1990s, ultimately serving as the trigger for the reform that replaced SNTV.<sup>10</sup>

SNTV was also used to elect some seats in the Taiwanese Legislative Yuan in partially democratic elections held from the 1960s through the 1990s, but as in Japan, the system was jettisoned in Taiwan in favour of a mixed SMD/PR system. In Jordan, King Hussein's manipulation of the former block vote system in 1993 yielded SNTV as a means of limiting voters to a single vote in a multi-member constituency, and so constraining the capacity of the Muslim Brotherhood to mobilise voters behind

a slate of candidates.<sup>11</sup> In subsequent elections, further alterations to the electoral code left Jordan with a unique system that was neither SNTV nor anything else recognisable by electoral engineers, and was unsatisfactory to virtually all the major political actors in that country. The country is currently in the middle of an electoral reform process, the outcome of which is as yet indeterminate.

The received wisdom of the consequences of SNTV based on 40 years of evidence from Japan and elsewhere is that the system is manageable in specific circumstances, but is not desirable as a means of translating votes into seats in a democracy. While SNTV is used in countries such as Vanuatu and the Pitcairn Islands, Afghanistan is currently the only large state using SNTV to elect its parliament.

### Adoption of SNTV in Afghanistan

In Afghanistan, the birth of SNTV was initially something of an accident, engendered by a widespread distrust of political parties associated with the Communist and civil war eras, a misunderstanding of the implications of having a single vote for individual candidates in large multi-member constituencies, and a possible strategy on the part of the executive to limit the emergence of organised opposition. In 2004, a provincially-based list PR system was promoted by the UN as the most appropriate for elections to the Afghan *Wolesi Jirga*, but there was reportedly a misstep in the adoption of the rules when they came before the cabinet. After the UN-crafted proportional electoral system was poorly explained by an Afghan cabinet minister, President Karzai changed the proposed provincially-based list PR system to SNTV by simply pronouncing that voters would select a candidate rather than a party, list or block, and that candidates could not show party affiliation on the ballot.<sup>12</sup> The electoral law decreed in 2004

<sup>10</sup> Margaret McKean and Ethan Scheiner, “Japan's New Electoral System: La Plus ca Change,” *Electoral Studies* 19, no. 4 (2000): 447-477.

<sup>11</sup> Andrew Reynolds and Jorgen Elklit, “Jordan: Electoral System Design in the Arab World,” *The International IDEA Handbook of Electoral System Design* (Stockholm: International IDEA, 1997), 53-54.

<sup>12</sup> Author's 2004 conversations in Kabul with stakeholders

thus announced that voters would choose between individual candidates rather than parties, but still in the multi-member provincial constituencies originally intended for use in the list-PR system. There has also been significant speculation that, while Karzai's distaste for parties may have been genuine, the administration's adoption of SNTV (or at least its support of its continued use into 2005 and beyond) was also a strategic calculation aimed at weakening parties' potential as sources of political opposition.<sup>13</sup>

### Consequences of SNTV in Afghanistan

Based on previous experiences of SNTV in other countries, Reynolds and Wilder speculated in 2004 about how such a system might work if applied to the Afghan context,<sup>14</sup> highlighting a number of potential negative consequences that SNTV could have. Using a similar framework, the following section analyses how SNTV has played out in practice over the course of the first two rounds of legislative elections in Afghanistan in 2005 and 2010 in the areas of: effective translation of votes into representation; the ability of the electorate to cast clear and effective votes; the establishment of a stable party system, and promoting dynamic women in parliament.

#### *Translation of votes into representation*

Critically, members of both the 2005 and 2010 *Wolesi Jirga* were not supported by anywhere near a majority of Afghan voters. In 2005, just over two million of all the votes cast were for winning candidates (32 percent), and thus over two-thirds of all votes were cast for candidates who lost. This was broadly repeated in 2010, when 37 percent of votes were cast for winning candidates, with 63 percent "wasted." These "wasted vote" levels are remarkably high when compared to other new and old democracies—indeed, they are among the largest in the world.

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involved in the drafting of the Electoral Law. For more detail, see Andrew Reynolds, "The Curious Case of Afghanistan," *Journal of Democracy*, 17, no. 2 (2006): 104-117.

<sup>13</sup> See "Political Parties in Afghanistan" (Kabul/Brussels: International Crisis Group, 2005), 6; Andrew Wilder, "Analysing the 2005 Afghan Elections" (Kabul: AREU, 2006), 44.

<sup>14</sup> Andrew Reynolds and Andrew Wilder, "Free, Fair or Flawed? Challenges for Legitimate Elections in Afghanistan" (Kabul: AREU, 2004).

In comparison, in the first Iraqi general elections of January 2005, only five percent of votes were wasted; this figure was under one percent during the first democratic elections in South Africa in 1994. In some respects, the two-thirds wasted figure substantially understates the total proportion of wasted votes, since under SNTV, support for any winning candidates over and above what is necessary to secure a seat is also effectively wasted.<sup>15</sup> By contrast, in a list PR or transferable vote system, such support could also benefit the allies of the most popular candidates. With this factor taken into account, as many as three-quarters of valid ballots cast in Afghan elections do not contribute to the election of any representative.

The central problem with SNTV that elections in Afghanistan have therefore illuminated is that the system throws up enormous obstacles to the rational translation of support among voters into representation. In addition, the Afghan system's combination of province-sized constituencies with a lack of strong parties and an absence of cross-cutting ideologies has contributed to often highly localised understandings of what "representation" actually constitutes. While there is recognition among some voters of MPs' formal role in passing legislation and supervising the executive, MPs are also widely viewed—and often view themselves—as much more direct advocates for the specific constituencies (whether in the form of tribes, solidarity groups, or even individual communities) from which they draw support. In practice, this often takes the form of attempts to divert resources or aid to a given area, or advocating on behalf of its inhabitants on anything from dispute resolution to the allocation of university places. This set of circumstances has fed back into the fragmentation and individualism inherent in the country's current electoral politics as communities compete to elect "familiar"—and hence accountable—candidates. Conversely, it has also led to a sense of disenfranchisement

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<sup>15</sup> Although it could be argued that a certain number of votes above the minimum required to win does have a level of value in insulating candidates from falling the wrong side of a razor-thin margin, and from exposure to apparently arbitrary or negotiated decisions over disqualifications of votes or adjustments of preliminary results (see Martine van Bijlert, "Untangling Afghanistan's 2010 Vote: Analysing the Electoral Data" (Kabul: Afghanistan Analysts Network, 2011)).

among communities without “their own” representative.<sup>16</sup>

Both sets of elections also demonstrated that, as expected, SNTV could turn elections into something of a lottery. In 2005, the first seat in each province was won with an average of 11.5 percent of the vote, but the last seat was taken on average with only 5.7 percent (the lowest being just 0.5 per cent in Kabul). In 2010 the vote was even more fragmented, with the first seat in each province won with an average of less than ten percent. Similarly, in 2005 there were an average of only 864 votes separating the lowest-polling elected candidate and the highest-polling runner-up (excluding women on lower vote tallies elected with the help of the quota), dropping to an even tighter 622 in 2010. Such tiny margins not only bring into dispute the results in areas tainted by vote fraud and campaign manipulation, but they make wild swings of legislative power likely from election to election. One result of these razor-thin margins is that results from one election to the next can be regarded as largely capricious, and indeed, most of the MPs elected in 2005 were ousted in 2010 (out of the 194 candidates who ran for re-election in 2010, only between 80 and 93 held their seats).<sup>17</sup> The resulting surprises and uncertainty this generated have led to distrust and suspicion of the fairness of the vote, the count, and indeed the process as a whole.<sup>18</sup>

<sup>16</sup> For more analysis of the nature of representation in Afghanistan, see Noah Coburn, “Connecting with Kabul: The Importance of the Wolesi Jirga Elections and Local Political Networks in Afghanistan” (Kabul: AREU, 2010); Noah Coburn and Anna Larson, “Voting Together? Why Afghanistan’s 2009 Elections were (and were not) A Disaster” (Kabul: AREU, 2009); and Noah Coburn, “Political Economy of the Wolesi Jirga: Sources of Finance and their Impact on Representation in Afghanistan” (Kabul: AREU, 2011).

<sup>17</sup> This discrepancy highlights the significant variations in data on many aspects of Afghanistan’s elections referenced in reports produced by different organisations and individuals. Counts for re-elected MPs include 80 (Noah Coburn and Larson, “Undermining Representative Governance: Afghanistan’s 2010 Parliamentary Election and its Alienating Impact” (Kabul: AREU, 2011)); 88 (Ben Smith, “Political Developments in Afghanistan” (London: UK House of Commons Library, 2011)); 87 (“Democracy International Election Observation Mission Afghanistan Parliamentary Election 2010: Final Report” (Bethesda, MD: Democracy International, 2011)); or 93 (“The 2010 Wolesi Jirga Election in Afghanistan” (Kabul/Washington, DC: National Democratic Institute for International Affairs, 2011)).

<sup>18</sup> Coburn and Larson, “Undermining Representative

## Effective votes

There is evidence to suggest that—despite efforts by the IEC to make ballots accessible to illiterate voters through the use of images and symbols—many Afghans have struggled with the proliferation of candidates and poster-sized ballot forms produced as a result of SNTV.<sup>19</sup> Due to higher illiteracy rates among women, this problem has also had a disproportionately high impact on female voters.<sup>20</sup> Similarly, many candidates, especially new entrants to the political scene, have struggled to effectively communicate to voters on how to recognise them in the ballot. These problems have likely contributed to the high levels of invalid or “spoilt” ballots in both rounds of *Wolesi Jirga* elections. In 2005, five per cent of all ballots were rejected—2.9 per cent because they were marked in error, or for disqualified candidates, plus 2.1 per cent that were just blank. While invalid ballots (excluding those thrown out due to fraud) dropped to 3.2 percent in 2010, both of these figures remain high when compared to other elections worldwide. Invalid votes constituted less than one percent of ballots in the 1994 South African elections, 1.1 per cent in the January 2005 Iraqi elections, and 2.4 per cent in the Liberian election of November 2005.

## Establishing a party system

Since candidates were not allowed to display any party affiliation on the ballot during the first parliamentary elections, SNTV was expected to retard the development of a stable party system, accentuate the fragmentation of politics in Afghanistan, and leave national legislation dependent on a parliament characterised by unstable, unaccountable factions and personality politics. The results of both 2005 and 2010 have given credence to each of these concerns. This is particularly worrying since, as mentioned above, parties are integral to democratisation, and the current system is choking them of the oxygen they need to flourish and grow. In 2005, only 16 percent

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Governance.”

<sup>19</sup> See, for example, “The September 2005 Parliamentary and Provincial Council Elections in Afghanistan” (Washington, DC: National Democratic Institute for International Affairs, 2006), 6; “The 2010 Wolesi Jirga Elections in Afghanistan,” 110.

<sup>20</sup> “One Step Forward, Two Steps Back? Lessons Learnt on Women’s Participation in the 2009 Afghanistan Elections” (Kabul: IEC Gender Unit, 2010), 9.



of the over 2,800 candidates were from registered political parties, and “party” candidates won less than a third of the seats in the lower house. In 2010 around one in ten of the 2,600 candidates were formally linked to parties. While a new law introduced in 2009 allowed approved party candidates to have their party’s symbol on the ballot, it also required parties to re-register with the Ministry of Justice before they were eligible to do so. Due to the complexities of the registration process, only five parties managed to achieve this before polling day. Ultimately, a mere 34 candidates had the name of a party formally added to their ballot in 2010, with remaining “party” candidates left to run as independents.

In the 2005 *Wolesi Jirga*, Andrew Wilder identified 33 various slates, alliances and factions, of which the very largest group were the 25 members of Yunus Qanooni’s New Afghanistan party (only ten percent of the total). The new and liberal democratic alliance of 14 parties—the National Democratic Front—won only seven seats, with the old leftist parties winning just six. The bloc supporting President Karzai was a motley collection of small bands led by powerful individuals, including many former Northern Alliance figures and leaders of the communist and civil war era mujahiddin *tanzims*.<sup>21</sup> In 2010 the parliament was if anything even more chaotic with only approximately one-third of winners “party members” or affiliates. In 2005, 93 (37 percent) of MPs were either independent (or from shell parties, while in 2010 this rose to an estimated 155 (62 percent). Sum totals suggest that explicitly pro-Karzai forces remained at the same levels (or fewer) in the *Wolesi Jirga* between 2005 and 2010, while organised movements in opposition to the president’s agenda lost over half their seats. However, the “wild card” MPs either non-aligned or unclear in allegiance increased by approximately 50 percent. Table 1 (see following page) presents the numbers of MPs affiliated with different groups in the 2005 and 2010 parliaments.

<sup>21</sup> These included: former president and prominent Jamiat-i-Islami figure Burhanuddin Rabbani, former Jamiat commander and mujahiddin governor of Herat Ismail Khan, Northern Alliance figure Wali Massoud, brother of the late Ahmad Shah Massoud, leader of the Mahaz-i Milli mujahiddin party Sayed Ahmad Gailani, head of the long-standing Pashtun nationalist party Afghan Millat Anwar ul-Haq Ahadi, leader of the Dahwat-i Islami mujahiddin party Abdul al-Rasul Sayyaf, and current vice-president and leader of one of the four Hizb-i Wahdat factions Karim Khalili.

In a series of papers for AREU, Coburn and Larson have shown how parties in Afghanistan have suffered under the current system, both at the ballot box and within the legislature itself. They have demonstrated how weak party discipline and organisation has led in some cases to a lack of proper procedures for coordinating and supporting candidates in the run-up to election, ultimately limiting their ability to campaign in a strategically optimal manner under SNTV.<sup>22</sup> In addition, they have highlighted how candidates have tended to remain ambiguous about their affiliations to allow for better bargaining for votes among different constituencies of voters and hence increase their individual chances of winning.<sup>23</sup> This ambiguity has also restricted the development of consolidated groups within the *Wolesi Jirga*, with many MPs reluctant to limit their options by adopting a consistent political position. In the event, this lack of consistency has proved to be highly beneficial to the president, who has been able to mobilise resources to secure the support of MPs during important votes.<sup>24</sup> Finally, the high turnover of seats in the *Wolesi Jirga* mentioned above has further weakened the party system in that incumbents are, given time, more likely to form and solidify blocs or hone legislative strategies.

But what if, despite the incentives of the election system, parties did begin to make progress in Afghanistan? In that case, SNTV would still make life difficult, even for those parties that had established a foothold of public support. Should a more robust party system develop, the anomalies, unfairness and idiosyncrasies of SNTV would become even more obvious and destabilising.

### *Women in the Wolesi Jirga*

The Election Law reserves an average of two seats per province (a total of 68 seats, including three of the ten reserved seats for Kuchi) exclusively for women candidates. In practice, as with open seats, these are distributed across provinces according to population estimates, ranging from

<sup>22</sup> Anna Larson, “The Wolesi Jirga in Flux: Elections and Instability I” (Kabul: AREU, 2010), 14-15.

<sup>23</sup> Coburn and Larson, “Undermining Representative Governance.”

<sup>24</sup> Coburn and Larson, “Undermining Representative Governance,” 10. See also Coburn, “Political Economy of the Wolesi Jirga,” 10.

**Table 1: MPs by party/faction in the Wolesi Jirga**

<i>Political Party or Faction</i>	<i>Leader(s)</i>	<i>Seats 2005</i>	<i>Seats 2010</i>
Jamiat-i Islami, Nahzat-i Milli Factions	Burhanuddin Rabbani, Ismael Khan, Mohammed Atta Noor, Ahmad Wali Masood	22	18
Mahaz-i Milli (National Islamic Front of Afghanistan)	Pir Sayed Ahmed Gailani	10	6
Afghan Millat Party	Anwar ul-Haq Ahadi	7	4
Tanzim Dawat-i Islami-i Afghanistan	Abdul al-Rasoul Sayyaf	7	4
Hazara/Shia factions (Hizb-i Wahdat, Harakat-i Islami, others)	Karim Khalili, Ali Anwari	5	11
Najat-i Milli (National Liberation Front)	Sebghatullah Mujededi	4	0
National Solidarity Movement	Sayed Ishaq Gailani	3	1
Afghan Youth National Solidarity Movement	Jamil Karzai	1	0
Hizb-i Afghanistan Naween	Yunus Qanooni	25	1
Hizb-i Junbesh-i Milli Afghanistan	Abdul Rashid Dostum, Sayed Noorullah	20	12
Hizb-i Wahdat (Mardom)	Mohammad Mohaqqiq	18	12
Hizb-i Islami factions	Khalid Farooqi, Wahidullah Sabawun	12	1
Other Shia Factions (Hizb-i Wahdat, Harakat, Eqtedar)	Muhammad Akbari, Mohammed Ali Jawed, Sayed Mustafa Kazemi	7	7
National Democratic Front (14 party alliance)	Asef Baktash, Feda Mohammed Ehsas, Javid Kohistani, Mohammed Zarif Naseri, Mohammed Zubair Piroz	7	4
Leftist parties	Noor ul-Haq Ulomi, Abdul Rashid Aryan, Abdul Kabir Ranjbar, Shah Nawaz Tanai	6	0
Hizb-i Paiwand-i Milli (Ismaili Party)	Sayed Mansur Nadiri	2	4
Hizb-i Jumhori (Republican)		0	9
Parties		156	94
Independent/others		93	155

one seat in smaller provinces to nine in Kabul. Each province's quota of reserved seats is filled first by the highest number of female vote-getters, regardless of how high they have placed relative to successful male candidates (meaning that even if a woman were to win the highest number of votes in a given province, she would still be awarded a "quota" seat).<sup>25</sup>

Over the last seven years, the quota mechanism has seen significant successes. The 68 women members in 2005 represented the highest female percentage in Asia at the time. Despite fears that awarding seats to women who had secured fewer votes than their male counterparts would breed resentment given conservative antipathy toward women's participation in public life, the system has remained largely unchallenged by all sides during both sets of elections. The progress of women in Afghan politics is especially remarkable when considering the suppression that women endured under the Taliban, the mujahiddin, and indeed before the 1990s under other regimes. In both elections women have shown themselves to be able to go head to head with male candidates, and in some case be successful in the face of substantial disadvantages. Nineteen women (or just under ten percent of all parliamentarians) won enough votes to be elected without the help of the quota in 2005, and 18 in 2010.<sup>26</sup> In 2005, Fauzia Gailani topped the poll in the large western province of Herat against strong local and warlord-backed male candidates, and in 2010 women came first in the ballot in Nuristan, Farah and Nimroz (in the latter case a woman also came second in the poll, claiming the province's remaining, "open" seat and boosting the number of women in parliament to 69).

But while the 2005 election did see dramatic strides in the involvement of women—largely sustained through the 2010 polls—adequate women's

<sup>25</sup> This choice of methodology—not specifically outlined in the Electoral Law—has been criticised since, by allowing only those women who have not won enough votes to be included in the quota to compete with men for "open" seats, it effectively turns the quota into a cap on women's presence in parliament. See Oliver Lough, with Farkhloqa Amini, Farid Ahmad Bayat, Zia Hussein, Reyhaneh Gulsun Husseini, Massouda Kohistani and Chona R. Echavez, "Equal Rights, Unequal Opportunities: Women's Participation in Afghanistan's Parliamentary and Provincial Council Elections" (Kabul: AREU, 2012) for a fuller explanation and discussion.

<sup>26</sup> Although all were still awarded "quota" seats.

representation goes beyond women merely being included in the legislature. As Wordsworth has highlighted, a variety of factors have meant that women's presence in parliament has not translated into significant mobilisation around their gender interests. One major reason for this is the absence in parliament—disincentivised under SNTV—of issues-based blocs as a way to articulate collective positions, coupled with the unstable, personality-driven politics that flourishes in their absence.<sup>27</sup> Lough et al have also suggested that SNTV has created (or at least added to) disincentives for female candidates to campaign on gendered platforms. This is because in the current environment of localised politics where "familiarity" is key (see above), attempting to build a base of support among women over a broad area is a less effective use of resources than securing the support of local (male) leaders able to mobilise large blocs of votes based on community solidarity.<sup>28</sup>

As it currently operates under SNTV, the women's quota also opens many female MPs to the charge of lacking democratic legitimacy, since they have often leap-frogged male candidates who have secured many more votes on their way into parliament. While this may currently be a less significant challenge to female MPs when compared to other factors, such as the ongoing backlash against women's rights discourses and women in the public sphere in general, it remains a systemic problem that could become more significant as the country's democracy matures.<sup>29</sup> Ultimately, successful gender inclusion in the *Wolesi Jirga* would in the long run be advanced more successfully by a broader overhaul of the electoral system than by tinkering within the SNTV framework.

### ***Case study: Ghazni's 2010 electoral debacle—how far was SNTV to blame?***

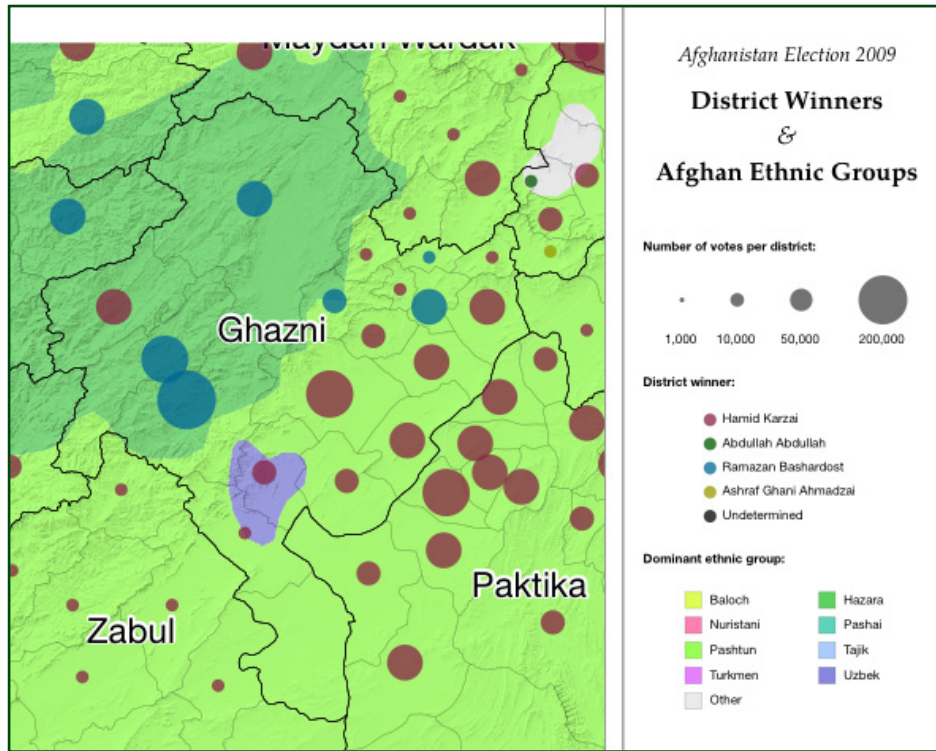
The highly contentious results in Ghazni Province highlight some of the most problematic

<sup>27</sup> Anna Wordsworth, "A Matter of Interest: Gender and the Politics of Presence in Afghanistan's Wolesi Jirga" (Kabul: AREU, 2007). See page 3 of the report for a definition and discussion of gender interests.

<sup>28</sup> Lough et al., "Equal Rights, Unequal Opportunities," 41-42.

<sup>29</sup> Lough et al. found little evidence of awareness of the existence of a women's quota among Afghan voters, but this is likely to change with greater civic education. See "Equal Rights, Unequal Opportunities," 57.

**Figure 1: Ethnicity and voting patterns in Ghazni during the 2009 presidential election**



shortcomings of the 2010 *Wolesi Jirga* elections. The province is ethnically heterogeneous, with large areas predominantly populated by Hazaras and by Pashtuns, and also with substantial numbers of other groups. Figure 1 shows that in the 2009 presidential election, voting ran largely along ethnic lines, with Ramazan Bashardost dominating in the predominantly Hazara districts to the north and west and Hamid Karzai prevailing in the more heavily Pashtun regions in the south and east. In the 2005 *Wolesi Jirga* elections, five Pashtuns were elected from the province along with four Hazaras.<sup>30</sup>

In light of these demographics and recent electoral experience, the set of winners from Ghazni in the 2010 elections should reasonably have included both Hazara and Pashtun candidates, and perhaps one or two from other groups. Nevertheless, when the 2010 results were announced, all 11 seats in the province were won by Hazaras. The resulting outrage among Pashtuns in Ghazni contributed to

President Karzai’s formation of a Special Court with authorities parallel to those of the existing Electoral Complaints Commission (ECC). This led to a prolonged stand-off with the new parliament, and a constitutional crisis over where the authority to determine electoral disputes in Afghanistan should lie.<sup>31</sup> The specific conflict over Ghazni produced a standoff that threatened the installation of the *Wolesi Jirga* as a whole and was ultimately resolved by a political compromise, but without resolution of the broader constitutional issues at stake. In light of these issues, it is worth asking whether SNTV’s tendency to distort the translation of votes into seats accounted for the surprising Hazara dominance of the 2010 contest in Ghazni.

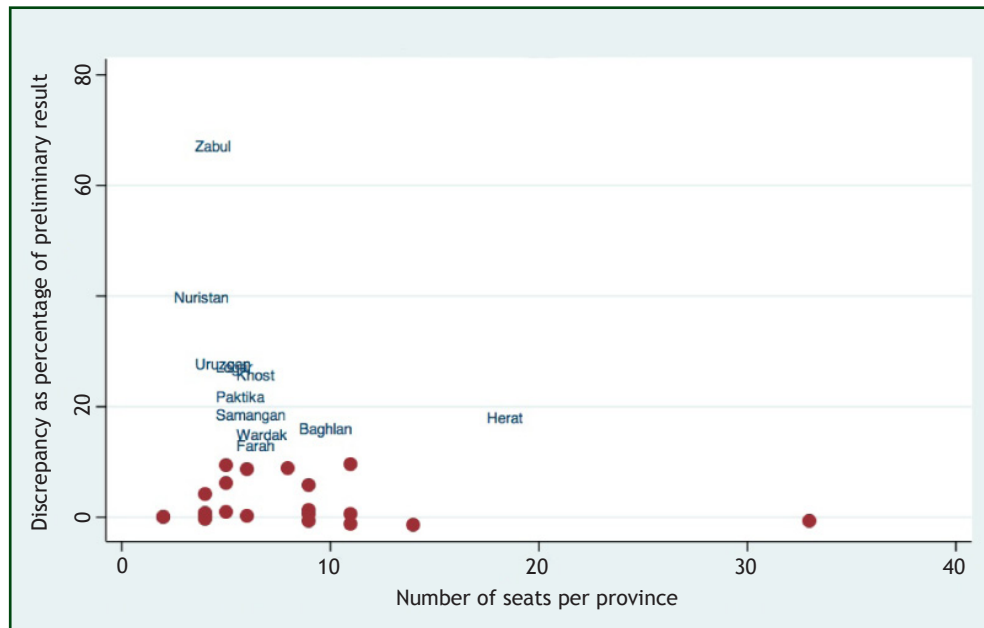
There are three potential factors that could account for the Hazara landslide that occurred in 2010:

- Election irregularities that produced higher shares of Hazara—and lower shares of Pashtun—votes than were actually cast.

<sup>30</sup> As a benchmark for the extent to which voting patterns aligned with demographics, it would be ideal to draw on data from the 2010 *Wolesi Jirga* elections themselves, but in the absence of 2010 data, this mapping of ethnic voting from the 2009 presidential election provides a reasonable metric. See “The 2010 *Wolesi Jirga* Elections in Afghanistan.”

<sup>31</sup> For a summary of the events surrounding the Special Court, see *The A to Z Guide to Afghanistan Assistance 2012* (Kabul: AREU, 2012), 109.



**Figure 2: Provincial shares of preliminary seats disqualified**

Source: van Bijlert, "Untangling Afghanistan's 2010 Vote."

- Nomination and vote distribution "errors" among Pashtuns, of the sort illustrated in the discussion of SNTV above.
- A higher rate of polling station closures or lower turnout due to security threats in Pashtun versus Hazara districts.

The first of these is the most difficult to assess based on the voting returns since successful fraud, by definition, goes undetected. However, given that Afghan electoral authorities did effectively detect and punish some electoral wrongdoing, rates of disqualified ballots may provide a window into prevalence of fraud at the provincial level. Figure 2 shows the proportion of overall votes cast that were ultimately disqualified by either the IEC or ECC in the course of arbitrating electoral disputes and investigating complaints of irregularities. The names of the provinces with the highest proportions of disqualified votes are indicated, and Ghazni is not among them. Indeed, Ghazni had the third lowest net tally of disqualified votes among all Afghan provinces.<sup>32</sup>

<sup>32</sup> Note that, of all the data presented in this report, these figures are perhaps the most dubious. This information is presented in the absence of more reliable data on electoral irregularities, but extreme caution is urged in drawing inferences about rates of electoral irregularities on the basis of disqualified ballots. For more information, see van Bijlert, "Untangling Afghanistan's 2010 Vote."

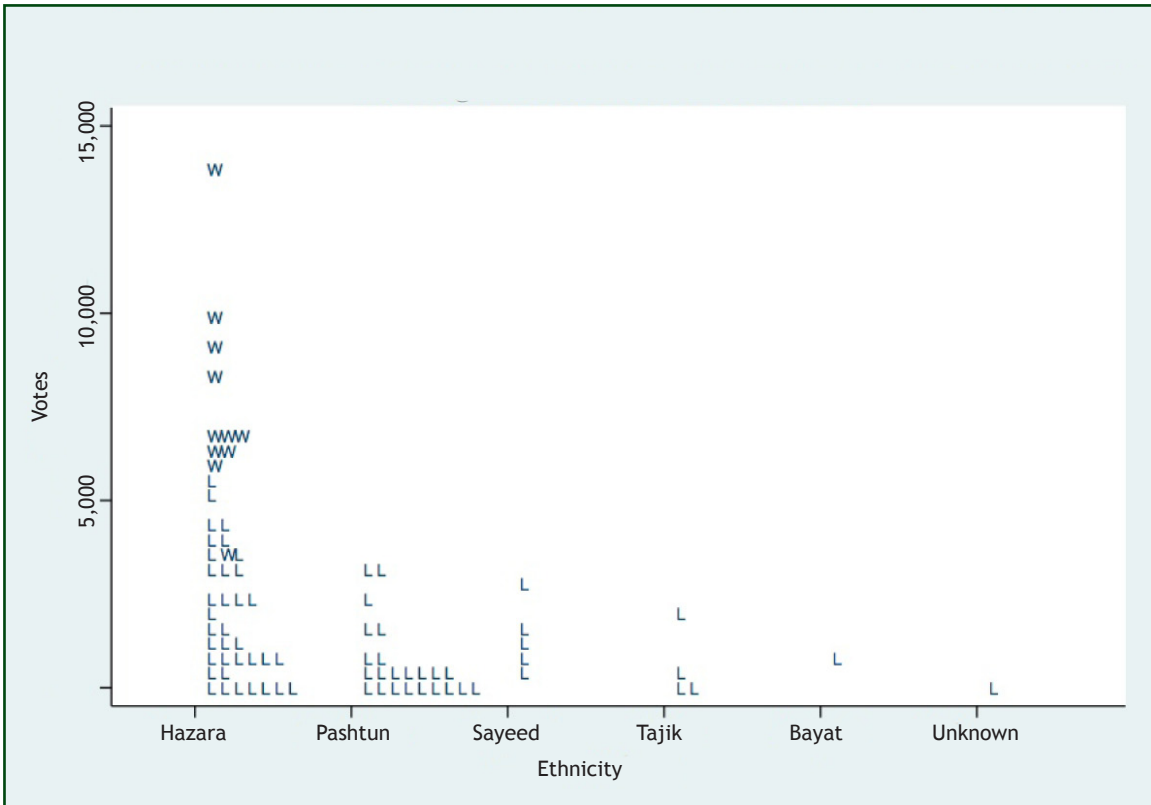
However, available data also allows us to assess the relative contributions of both strategic errors under SNTV, and suppression of the vote due to security issues, to the outcome in Ghazni. Figures 3 and 4 (see following page) illustrate respectively how valid ballots were distributed among individual candidates in the province, and the share of the provincial vote as a whole claimed by candidates of different ethnicity.<sup>33</sup>

Given the distribution of votes displayed in Figure 3, the threshold to win a seat in Ghazni in 2010 was just over 5,000 votes. Given the Hazara distribution, Pashtun candidates could have taken two seats had all Pashtun votes been concentrated on a pair of champions. However, neither the Hazaras nor the Pashtuns nominated "optimally." Both groups fielded far more candidates than there were seats available (47 Hazaras and 22 Pashtuns competed for 11 seats), and spread their votes unequally across them, committing substantial votes to sure losers. This is not surprising, given the incentives generated by SNTV.<sup>34</sup>

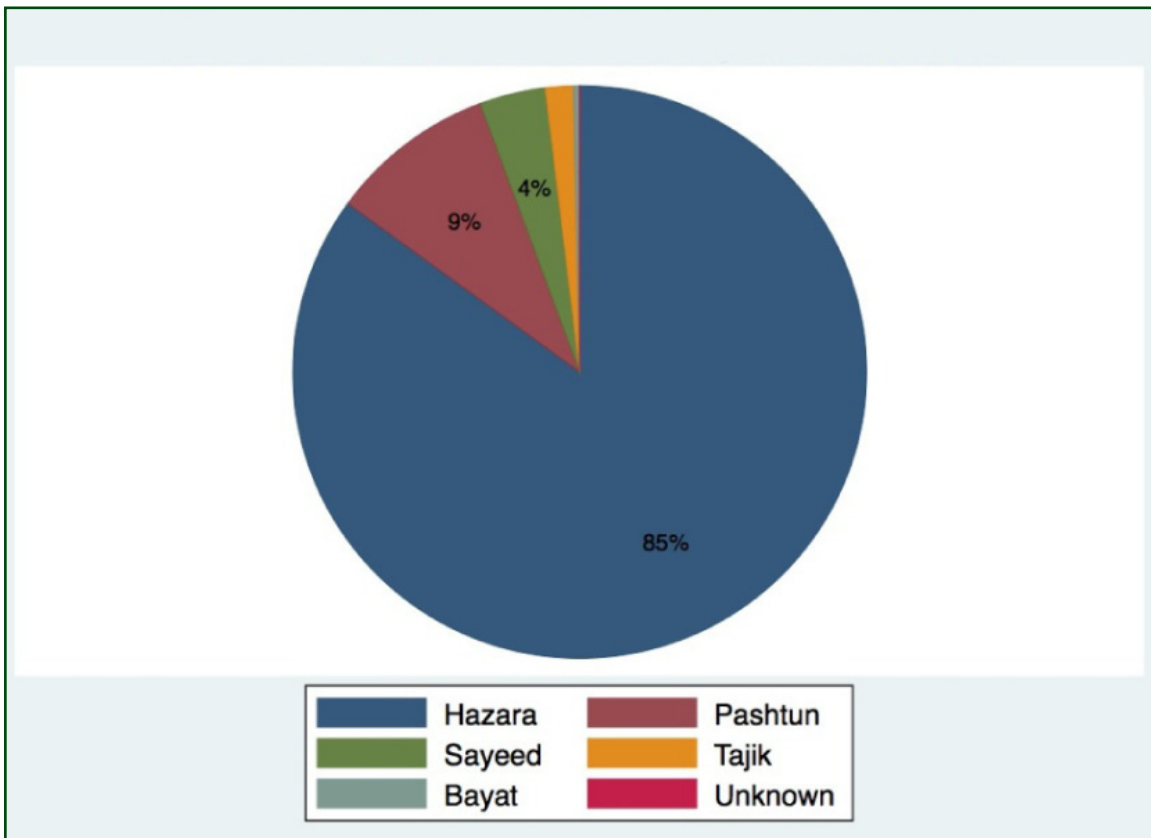
<sup>33</sup> In Figure 3, the W located below some Ls indicates a female candidate elected under the gender quota.

<sup>34</sup> Note that the implication here is not that either Hazaras or Pashtuns are, as ethnic groups, unified political actors. As the fragmentation of votes within each group illustrates, this is clearly not the case. That said, it is indisputably

**Figure 3: Ghazni 2010 vote distributions of candidates by ethnicity**



**Figure 4: Ghazni 2010 vote shares by ethnicity of candidates**



Hypothetically, had elections been conducted by list PR, and had all lists been structured along ethnic lines, we might expect the Hazara list to have taken nine, or even ten, of Ghazni's 11 seats, while a Pashtun list would have picked up one, and (depending on the vote-to-seat formula employed) a list of "others" might have snatched the last seat. SNTV, then, accounted for some portion of the Ghazni outcome, but it cannot be assigned all the blame.

As shown in Figure 4, the number of votes cast for Hazara candidates vastly outweighs those cast for members of other ethnicities, suggesting that the demographics of the vote itself were skewed. In this respect, the provincial security situation and distribution of polling stations closed on election day almost certainly played a role. As analysis from the National Democratic Institute (NDI) demonstrates, more secure, Hazara-dominated districts in the north and east of the province massively outvoted many less secure Pashtun districts in the south and west, which also saw much higher rates of polling station closure or invalidation.<sup>35</sup> Ultimately, it is therefore evident that suppression of votes due to security concerns was likely the critical factor in determining Ghazni's 2010 election outcome. However, it is important to note that—as with so many other aspects of Afghan elections—SNTV did serve to further exacerbate already serious problems.

### How free and fair were the 2005/10 polls?

Although there were deep administrative and political flaws in the elections of 2005, the quality of freeness and fairness reached a low point in Afghanistan in 2010.<sup>36</sup> It is likely that the country's slide back into violence and the ballooning of

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the case that, after the election, many Pashtun politicians complained bitterly about the result explicitly on the grounds that no Pashtuns were elected in the province, and that these complaints had resonance, not only in Ghazni, but in Kabul and throughout the country.

<sup>35</sup> For example, the predominantly Hazara districts of Nawur, Malestan and Jaghuri recorded valid vote counts of 31,958, 37,758 and 56,597. By contrast, many Pashtun-dominated districts reported no, or next to no votes, and were also crippled by polling station closures. See "The 2010 Wolesi Jirga Elections in Afghanistan," 34, 126.

<sup>36</sup> See "Afghanistan's Elections Stalemate" (Kabul/Brussels: International Crisis Group, 2011); and "Democracy International Election Observation Mission."

corruption and patronage politics that took place in the intervening years would have hampered elections held under any electoral system. However, it is also highly likely that the incentives for corruption generated by SNTV and described in Section 2 have, again, made things even worse. Overall, there were over 2,000 complaints of fraud and 1.3 million votes thrown out in 2010—25 percent of the total and more than in the widely-criticised presidential poll of the previous year.

The Elklit-Reynolds measure of election quality, which considers 56 questions within 11 elements of election management and practice, provides a way to consider Afghanistan's elections in context.<sup>37</sup> Of the 19 cases shown in Table 2 below, Afghanistan's 2005 and 2010 polls fall in the bottom third in terms of quality, and there was a sharp decline between 2005 and 2010. Table 3 focuses on the Afghan elections specifically and shows that while there were improvements between 2005 and 2010 in the areas of demarcation, nomination, and post election procedures, there were declines in the legal framework, electoral management, voter education, voter registration, campaign regulation, polling itself, and election complaints.

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<sup>37</sup> For full details of the methodology see "Comparative Democracy Assessment: The Quality of Elections and civil liberties in the 21st century" <http://www.democracy-assessment.dk> (accessed 11 July 2012).

**Table 2: Election quality in Afghanistan's 2005 and 2010 legislative polls compared with other countries**

<i>Country</i>	<i>Year</i>	<i>Score</i>
Denmark	2007	99
Denmark	2001	97
Sweden	2010	95
Australia	2001	94
Lesotho	2002	90
East Timor	2001	90
South Africa	2004	85
South Africa	2009	84
Lesotho	2007	84
Ghana	2008	79
South Africa	1994	76
Denmark	1898	76
Afghanistan	2005	72
Iraq	2005	68
Afghanistan	2010	57
Pakistan	2008	56
Rwanda	2008	52
Kenya	2007	51
Zimbabwe	2002	44

Source: "Comparative Democracy Assessment: The Quality of Elections and civil liberties in the 21st century" <http://www.democracy-assessment.dk/start/page.asp?page=22> (accessed 12 July 2012).

**Table 3: Afghanistan's performance on the Elklit-Reynolds scale in 2005 and 2010**

<i>Step</i>	<i>2005 Score</i>	<i>2010 Score</i>	<i>Improving/worsening</i>
1. Legal framework	22	20	Worsening
2. Electoral management	20	7.5	Worsening
3. Constituency and polling district demarcation	5.6	7.8	Improving
4. Voter education	13.3	11.7	Worsening
5. Voter registration	11.1	0	Worsening
6. Access to and design of ballot paper; Party and candidate nomination/ registration	23.3	30	Improving
7. Campaign regulation	8.3	4.2	Worsening
8. Polling	24	7	Worsening
9. Counting and tabulating the vote	18	24	Improving
10. Resolving election complaints; Verification of final result	25.7	21.4	Worsening
11. Post-election procedures	7.8	10	Improving



## 4. Ways Forward

### Lessons from elections so far

Afghanistan's large-constituency SNTV electoral system was chosen during a moment of transition. At the time, Afghans and internationals raised various concerns about the appropriateness of the electoral system, and even many those who supported its use in 2005 felt that after the first elections the system should be reconsidered and reformed. Afghan SNTV has performed as many sceptics predicted it would. In its first seven years, the *Wolesi Jirga* has shown itself to be a place of wheeling and dealing, of clientelism and shifting alliances, and an arena where individuals with tainted pasts hold significant sway over the future.<sup>38</sup> Liberal democratic and progressive new parties are faced with high hurdles to get their messages across and candidates elected,<sup>39</sup> while women have not been able to mobilise on issues of gender interest as effectively as expected.<sup>40</sup> For their part, the president's team may have hoped that the electoral system would retard the emergence of new parties, fragment the existing opposition blocks and weaken the ability of regionally powerful strongmen to install their followers in parliament. Perhaps in Karzai's ideal scenario, a core, loyal Pashtun majority block would have emerged, which the executive could then rely on for legislative support. But while the system did indeed serve to fragment opposition and retard the emergence of new parties, it also fragmented the president's base in the absence of a unified party or the discipline of a whip system, translating majority popular support in two presidential elections into a weak

<sup>38</sup> On the internal politics and political economy of the *Wolesi Jirga*, see Larson, "The Wolesi Jirga in Flux," and Coburn, "Political Economy of the Wolesi Jirga." On the presence of MPs with ties to illegal armed groups in parliament, see "Afghanistan: Rights body warns of warlords' success in elections," *IRIN*, 18 October 2005 <http://www.irinnews.org/Report/29323/AFGHANISTAN-Rights-body-warns-of-warlords-success-in-elections> (accessed 6 July 2012); and "Afghanistan's Elections Stalemate."

<sup>39</sup> See Anna Larson, "Afghanistan's New Democratic Parties: A Means to Organise Democratisation?" (Kabul: AREU, 2009); and Mohammed Hasan Wafaey and Ana Larson, "The Wolesi Jirga in 2010: Pre-Election Politics and the Emergence of Opposition" (Kabul: AREU, 2010), 9.

<sup>40</sup> Wordsworth, "A Matter of Interests."

"pro-government" bloc that has, while never proving a serious headache, often been fluid in its composition.<sup>41</sup>

The SNTV electoral system came about by a path of missteps and was a disservice to the millions of Afghans who deserved a clear and transparent tool to craft their first truly democratic parliament. If the system is retained for subsequent elections, there is every reason to believe that the fragmentation and parochialism of the legislature will continue, that the parliament as a whole will be ineffective in articulating and representing broad national interests, and that incumbents who strong-arm and bribe their way into office will thrive. No electoral system can ever transform an illiberal polity to representative democracy without a raft of supporting social, economic and institutional transformations. Similarly, it is important to acknowledge that corruption and wrongdoing are likely to prove inherent under any electoral system operated in Afghanistan given the current conditions. But it is also true that an appropriately crafted system of proportional representation would reduce incentives for fraud, more effectively encourage the emergence of new political parties, and avoid the great anomalies that were so apparent in the *Wolesi Jirga* elections of 2005 and 2010.

### Reform alternatives

As of 2012, there is broad dissatisfaction across Afghan political and civil society actors with the SNTV system,<sup>42</sup> while the international community has also advocated for reform. The following section explores three options for potential reform, starting with the new draft Electoral Law submitted by the IEC in June 2012.

Given the shortcomings of SNTV presented in this paper, it would be easy to argue for a system

<sup>41</sup> Larson, "The Wolesi Jirga in Flux," 13.

<sup>42</sup> See, for example, "An Evaluation of the SNTV Electoral System in Afghanistan" (Kabul: Free and Fair Elections Foundation of Afghanistan, 2011); and "Consensus Recommendations for Electoral Reform in Afghanistan" (Kabul: Democracy International, 2010).

that wiped the slate clean and did not include SNTV at all. That said, the slate is not clean. Two elections have now taken place under SNTV, and the familiarity that voters and politicians have developed with the system is a fact that any reform must confront. One of the central tenets of electoral reform is to avoid wholesale overhauls and, as far as possible, to build on existing institutions and experience. With this in mind, this paper proposes the following core principles that should guide reform of the Afghan election system:

- 1) Any reform should build on the current system and avoid radical change.
- 2) The complexity of the existing system can be reduced by having fewer MPs elected within each provincial constituency, leading to fewer candidates, the lower likelihood of a fragmented vote, and more manageable ballot papers.
- 3) Significant space needs to be created to encourage and facilitate the development of political parties and the groupings and alliances that are emerging within the current *Wolesi Jirga*. Political blocs will, over time, become more formalised and the system should allow voters to take them into consideration during elections.
- 4) At the same time, any new system also needs to protect the space for the election of popular and legitimate independent candidates.
- 5) It is crucial to avoid complexity within the system and to educate the electorate on not merely how to vote but how their vote will affect the government that forms.

Most alternatives to the current system can be ruled out because of logistical and political realities. A switch to the old Afghan system of first past the post would be unattractive, since this would involve the highly contentious task of redrawing districts, as well as administering a new voters' roll. Such a reform could also further enhance the ethno-centrism of electoral politics by exacerbating the existing focus on competition between groups at the local level. A switch to a full PR system is also unlikely because of the president and cabinet's opposition to a party-based system, the continuing weakness of parties, and the difficulties of educating the electorate

on an entirely new system. It would also present major barriers to the election of independents. The various views of what the new system should look like and the practicalities of what the IEC can be asked to administer therefore point to the introduction of some form of mixed electoral system. The remainder of this section presents analysis of the June 2012 IEC proposal, going on to offer two further alternative proposals for mixed systems as a way to promote and inform further discussion on the issue.

## 1. The June 2012 IEC Electoral Law proposal

In June 2012, the IEC presented a new draft Electoral Law to the Ministry of Justice as the first step in the legislative process.<sup>43</sup> For elections to the *Wolesi Jirga*, the draft law proposed:

A mixed (parallel) system of:

- 159 “independent” seats elected by SNTV by population within the 34 provinces
- 80 seats elected by list PR through parties in the provinces
- 10 seats allocated to Kuchi
- 68 seats reserved for women (apparently within the independent seat allocation)

This proposed system represents a moderate improvement over the pure SNTV system used in 2005 and 2010. However, it remains unsatisfying in that the improvements are greatly limited by the number and method of PR seats. Such an electoral system would not address some of the most serious flaws of the current system as outlined earlier in this paper. Finally, the draft law is incomplete in important areas, which will likely mean the IEC will be tasked with making politically consequential decisions to fill in procedural details left unclear in the law.

The key reason why the June 2012 IEC draft would do little to rectify the problems of the existing

<sup>43</sup> Once the Ministry of Justice has verified the draft's compatibility with existing laws, it has to be submitted before the Council of Ministers, pass through both houses of parliament, and be signed by the president. See Thomas Ruttig, “The IEC proposal to move to a mixed electoral system” *Afghanistan Analysts Network*, 28 June 2012 <http://www.aan-afghanistan.org/index.asp?id=2835> (accessed 7 July 2012).

**Table 4: Provincial distributions of seats under the June 2012 IEC proposal**

<i>Province</i>	<i>Population</i>	<i>Seats 2010</i>	<i>Women's seats</i>	<i>PR seats (proposed)</i>	<i>SNTV seats (proposed)</i>
Kabul	3,013,200	33	9	11	22
Herat	1,515,400	17	5	6	11
Nangarhar	1,237,800	14	4	5	9
Balkh	1,052,500	11	3	4	7
Ghazni	1,020,400	11	3	4	7
Kandahar	971,400	11	3	4	7
Faryab	824,500	9	3	3	6
Kunduz	817,400	9	2	3	6
Takhar	811,700	9	2	3	6
Badakhshan	790,200	9	2	3	6
Helmand	767,300	8	2	3	5
Baghlan	748,000	8	2	3	5
Ghor	574,800	6	2	2	4
Parwan	550,200	6	2	2	4
Wardak	496,700	5	2	2	3
Khost	478,100	5	1	2	3
Sar-i-Pul	463,700	5	1	2	3
Paktia	458,500	5	1	2	3
Jawzjan	443,300	5	1	2	3
Farah	420,600	5	1	2	3
Badghis	412,400	4	1	1	3
Day Kundi	383,600	4	1	1	3
Kunar	374,700	4	1	1	3
Bamiyan	371,900	4	1	1	3
Laghman	371,000	4	1	1	3
Kapisa	367,400	4	1	1	3
Paktika	362,100	4	1	1	3
Logar	326,100	4	1	1	3
Samangan	321,500	4	1	1	3
Uruzgan	291,500	3	1	1	2
Zabul	252,700	3	1	1	2
Nimroz	135,900	2	1	1	1
Panjshir	127,900	2	1	1	1
Nuristan	123,300	2	1	1	1
Kuchi	n/a	10	3	0	10
<b>Totals</b>	<b>21,677,700</b>	<b>249</b>	<b>68</b>	<b>80</b>	<b>169</b>

Source: "Seat Allocations," Independent Election Commission of Afghanistan <http://www.iec.org.af/eng/content.php?id=4&cnid=47> (accessed 11 July 2011); June 2012 IEC draft Electoral Law.

system is that the number of proportional, party list seats for each province will in most cases be so low as to exclude much actual proportionality. As a consequence, most would-be parties or alliances will be shut out of representation. In 14 of the country's 34 provinces, the list PR contest will be for a single seat, effectively excluding any proportionality. In another eight provinces, only two PR seats will be contested, and in eight more, only three.

The paradox is that the great virtue of PR elections—according to their advocates—are that they are inclusive of minority groups and viewpoints, and foster the development of parties and their platforms. Yet the way the draft law sets up list PR competition does very little to advance either of those goals. Some degree of inter-party competition might develop in larger provinces such as Kabul, Herat or Nangarhar, but for most of the country, the PR contests would merely provide one or two more seats for the most dominant local actors.

There are two other specific areas of the IEC draft law which are problematic in their lack of clarity. The first involves Article 23, concerning the distribution of seats between parties:

*Article 23(8): "If, in the first phase or after allocation of seats, no party achieves the quota for a seat; the seats are allocated in proportion to the votes respectively."*

*Article 23(9): "If several parties receive votes more than the quota of seats, the seats shall be allocated in proportion to the votes, respectively to those who have the most votes."*

Article 23(9) could be interpreted as establishing a "largest remainders" system<sup>44</sup> in cases where

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<sup>44</sup> Proportional representation systems that operate on the basis of a quota generally establish the size of the quota by which each seat can be "purchased" (e.g. total votes in district divided by the number of seats in district, so in a multi-member district of 10 seats with 100,000 votes, 10,000 votes would be the number required to "purchase" a single seat), and first distribute seats according to these full quotas. For each list that wins at least one quota of votes (and therefore purchases at least one seat by quota), those quota votes are subtracted from the list's total, leaving a remainder (for a list winning less than a full quota, no subtraction takes place, so its "remainder" is just its original vote total). It is rare for all seats to be distributed on the

seats have been allocated to more than one list on the basis of full quotas. But Article 23(8) appears to suggest that, when no list has won a full quota, some other method (besides largest remainders) will be deployed. However, it does not spell out what this procedure would be. Technically, the two conditions stipulated in these two sections are not exhaustive—what happens when only one list has won a seat (or seats) by full quota?

The second area of concern involves the distribution of reserved seats for women in smaller provinces:

*Article 23(10): "In those provinces total seats of which are 2 seats, a party shall provide the Commission with a list of four candidates at least 2 of whom shall be females. A candidate shall be the winner who gets the most votes in comparison with the votes recorded for a party and an independent candidate taking into account gender in that constituency."*

In this case, the article is unclear in how the reserved seats for women will be mathematically allocated.

The proposal is also silent on how the ballot would be designed in this new mixed system. In most (but not all) mixed systems, voters effectively cast two ballots—one in the candidate-centred race—and another for a party list. This maximises the flexibility afforded to voters (e.g. German voters can "split tickets" and vote for a Social Democrat in their district but for the Greens on the party list), but it is also much more cognitively demanding than a single ballot (not an obstacle in the German context, but quite possibly one in Afghanistan), and it multiplies the opportunities for strategic behaviour by both voters and politicians. As outlined in the alternative proposals below, avoiding the two-ballot format is ultimately advantageous both in maintaining simplicity and familiarity, and, by allowing candidates who join alliances to pool votes—which in turn encourages the cooperation inherent in list competition to spill over into the candidate-centred portion of the election.

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basis of full quotas. Therefore, a second stage of distribution occurs, in which yet-to-be-filled seats are then awarded to lists in order of the size of their remainders, thus the name, "largest remainders" systems.



At the time of writing, the law is still a draft and is yet to come before parliament. Since debate on the issue is likely to continue for some time, two alternative models are presented below, both of which go some way to fixing the problematic elements highlighted above.

## 2. A mixed election system: SNTV-PR

- The *Wolesi Jirga* would remain 249 members in size.
- 159 MPs would be elected by the SNTV system across the provinces in a manner largely similar to the 2005/10 polls.

In each province, the number of members to be elected under SNTV would be approximately two thirds of the number in 2005/10 (i.e., seven instead of 11 in Kandahar, six instead of nine in Takhar, and so on). A minimum of two seats per province would be maintained. Kabul Province would be divided into three: Kabul City A, Kabul City B and Kabul Province, each with around seven SNTV seats (thus 21 in total rather than the current 33, with the remaining seats going to the PR pool). Herat Province would also be divided into Herat City and Herat Province. These adjustments would make the size of these constituencies considerably more manageable, likely reducing some of the excessive nomination and fragmentation of the vote seen in previous polls. Only seven of the 34 provinces would have more than six seats, and all SNTV districts would be below ten seats.

- 80 (35 percent) *Wolesi Jirga* members would be elected from national lists on a proportional basis.

These lists would be presented by any grouping of candidates that wished to coalesce. They could be political parties or they could be more informal blocks or alliances. Candidates would run either as independents or affiliated to a list. PR seats would then be awarded on the basis of the total votes received by each list's candidates in the SNTV elections. As in 2005 and 2010, voters would only need to cast a single vote for a candidate in the SNTV district. That vote would determine the SNTV outcome, and, if it were cast for a candidate who participated in a PR alliance, would also be counted to determine the popularity of national lists.

- 10 seats would be reserved for Kuchi as in 2005/10.

- The 68 seats allocated to women remain. Forty-eight would be at the provincial level elected as in 2005/10. The other 20 would be drawn from the national lists.

This system is a tried and tested and democratic way of electing a national parliament. Similar mixed systems are in use in over 30 countries totalling over a billion people, each combining elements of majority constituencies (i.e. the SNTV component) and proportional lists.

There are a number of reasons why the mixed system outlined above suits the needs of an emerging Afghan democracy:

- The smaller provincial constituencies would give rise to a less confusing ballot, with fewer candidates.
- The system would dramatically decrease the numbers of "wasted votes" and increase the feeling among Afghan voters that their votes were making a difference. Under the proposed system, the number of votes cast for losers in each provincial constituency would be smaller and even losing "party" candidates would be contributing to the potential election of their colleagues from the national list.
- The system would provide the space for parties to emerge and give incentives for blocs of like-minded interests to formalise themselves into political organisations.
- Independent candidates would still be able to run and win in the SNTV constituencies. The smaller number of MPs elected from each province would also, at least in theory, limit election to the independents who were truly popular and representative (although at least in the short-term, this may in many cases translate to those with the greatest access to resources or to the means of violence).

## 3. An alternative mixed election system: Limited Vote-PR

The second alternative we suggest is a mixed system of Limited Vote and PR (LV-PR). From the perspective of voters and electoral administrators, this is a subtle variant of the SNTV-PR proposal presented above, maintaining the same advantages while reducing further the obstacles that SNTV presents to the formation

of alliances and parties. The difference is that, rather than a single non-transferable vote, voters would be allowed to indicate preferences for up to two candidates on their ballots.<sup>45</sup> As in the SNTV-PR proposal, candidates would choose whether to join alliances to compete for the national-level PR seats, or alternatively to run as pure independents. As above, votes cast would be counted first in the provincial-level candidate contests, but those votes cast for candidates who were members of national alliances would also enter the pool of votes used to determine the distribution of PR seats.<sup>46</sup> This system produces incentives for voters to favour allied candidates, and thus for candidates to enter alliances.

While both the SNTV-PR and LV-PR formats reward alliances by opening up eligibility to win national PR seats, the LV option has the additional advantage of reducing the “everyone for themselves” character of the provincial-level candidate races. Under SNTV, an alliance of candidates faces the strategic challenge of distributing votes evenly across candidates, and candidates face inexorable pressures to poach votes from nominal allies. LV, by contrast, allows voters to spread their support across more than one member of an alliance. One candidate winning a voter’s support does not automatically mean a loss for their allies. This would substantially reduce the mutual imperative for allies to undercut one another, and open up the possibility that cooperation in campaigns and in governing might actually result in benefits for all members of an alliance.

On the surface at least, both of these proposed alternatives bear a strong resemblance to the June 2012 IEC proposal, in that they all envision a mix of SNTV and list PR with a two-thirds to one-third division of seats between the two tiers. The key difference, however, is that the proposed

alternatives stipulate that the 80 list PR seats should be distributed nationally, not provincially, allowing for full proportionality.

In addition, the alternatives would both maintain ballot simplicity by retaining a single, candidate-centred vote. That is, ballots would look very much as they do now, with lists of candidates for whom voters would indicate a preference. In addition, the candidate (SNTV/LV) seats would be awarded the same way—to the highest vote-getters in each province. Candidates, however, would be allowed (although not required) to join alliances that would also compete for the national-level PR seats. Thus, votes cast for any candidates participating in these alliances would be pooled together when distributing PR seats, generating a strong incentive for greater cooperation.

There are, of course, many alternative systems that could be proposed and in all cases, the devil is in the details. Other variables that could be reviewed include: constituency size, ballot type, and electoral formula for the allocation of seats.

### Feasibility and further consequences of change

Implementation of either of the two alternative proposals presented above would require:

- The redrawing of electoral boundaries within Kabul and Herat.
- Voter and party education as to the consequences of the new system.
- The continued inclusion of party symbols where appropriate on the ballot.
- Political buy-in from the main stakeholders, including those with a vested interest in maintaining the status quo.

Logistically, the changes are relatively manageable as the ballot and count in each case would remain largely unaltered. Once the count is conducted, either system then adds the extra phase of distributing the PR seats. It is recommended that the 80 national-level PR seats be distributed across lists by the D’Hondt divisor method.<sup>47</sup> Once the number of seats for each

<sup>45</sup> Limited vote is a term used to describe systems in which voters may cast more than one vote, but cannot cast as many votes as there are seats available in the constituency (which would be “unlimited vote”). In Afghan provinces with only two candidate seats contested, this would effectively be an unlimited vote system, but this would represent a relatively small minority of cases.

<sup>46</sup> Note that if a ballot cast in the LV-PR system included one preference for an allied candidate and one for a pure independent, the ballot would have half the weight in determining PR outcomes as would one with preferences for two allied candidates.

<sup>47</sup> For more information, see “D’Hondt Method” [http://en.wikipedia.org/wiki/D'Hondt\\_method](http://en.wikipedia.org/wiki/D'Hondt_method) (accessed 8 July 2012).

alliance is determined, seats would be awarded to candidates who competed, but did not win seats, in accordance with their performance in their respective provinces. For example, if an alliance won 15 of the 80 national-level seats, five would go to women in keeping with the quota (i.e. the top five female candidates in the alliance who did not win provincial-level seats under SNTV/LV, but whose vote tallies were highest as proportions of their districts' overall votes); and the next ten would be allocated in the same manner to remaining "best losers" regardless of gender.

An additional advantage of this system is that it would create greater incentives for alliances and parties to recruit strong female candidates and provide them with electoral support.<sup>48</sup> Ideally, this would provide a "multiplier" effect, whereby even a relatively small number of reserved women's seats could produce a larger bump in women elected, as competition among alliances and parties to capture the reserved seats "bonus" should increase the number of female candidates, and hence the number able to win seats outright. Reservations for any other protected groups (e.g. Kuchi) could be implemented by the same method described here.

The initial tasks associated with either of these reforms would be to delimit Kabul and Herat and to educate voters and politicians on the new system. It is acknowledged that delimiting new electoral boundaries could pose significant challenges given its potential to generate struggles for resources or exacerbate local rivalries. However, the large number of seats up for grabs in both Kabul and Herat should limit the political stakes of doing so when compared to shifting the boundaries of lower-magnitude constituencies, as should the likely reduction in razor-thin victory margins as

a result of adopting a mixed voting system. It is also true that successfully educating voters on any new system in time for the next scheduled elections in 2015 would require significant levels of coordination, funding and political will. Nevertheless, familiarising voters with either SNTV/PR or LV/PR—at least at a basic level—should be relatively straightforward since neither of the proposed systems involve substantial alterations to their interaction with the ballot.

Ultimately, a successful revision to the election system could encourage the formation and alliances of parties, reduce fragmentation within the *Wolesi Jirga*, enhance the connection between voters and their representatives, and satisfy most political elites who are outside the president's core circle. The road to reform will likely be rough and any proposed alternative to the current system will confront resistance. Indeed, it is inevitable in the world of electoral reform that incumbents, who are by definition winners under the existing rules, will regard any proposal for reform with scepticism. That said, this paper has made the case that the status quo for *Wolesi Jirga* elections is fundamentally flawed. SNTV blocks cooperation among politicians who might seek to advance a common policy programme, retards the development of viable parties, inflates the number of candidates on the ballot without improving the menu of meaningful options available to voters, and yields contests in which large proportions of ballots are wasted on candidates who do not win representation. Moreover, the characteristic that attracted some Afghan politicians to SNTV in the first place—the ability of voters to express a preference for an individual candidate—can be maintained in the context of reforms that mitigate many of SNTV's flaws, and that reward cooperation and coalition among politicians.

<sup>48</sup> There is evidence to suggest that some political parties have already made efforts to expand their presence in parliament by cultivating links with female candidates, who face lower competition for seats than men. However, it is unclear how effective or widespread this practice currently is. See Wordsworth, "A Matter of Interests," 21; Lough et al., "Equal Rights, Unequal Opportunities," 42; and "Political Parties in Afghanistan: A Review of the State of Political Parties after the 2009 and 2010 Elections" (Kabul/Washington, DC: NDI, 2011), 26.

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