

AFGHANISTAN'S ELECTION CHALLENGES

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AFGHANISTAN'S ELECTION CHALLENGES

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Afghanistan's forthcoming elections, with presidential and provincial council polls on 20 August 2009, and National Assembly and district elections scheduled for 2010, present a formidable challenge if they are to produce widely accepted and credible results. The weakness of state institutions, the deteriorating security situation and the fractured political scene are all highlighted by – and will likely have a dramatic effect on – the electoral process. The years since the last poll saw the Afghan government and international community fail to embed a robust electoral framework and drive democratisation at all levels. This has made holding truly meaningful elections much more difficult. Rather than once again running the polls merely as distinct events, the enormous resources and attention focused on the elections should be channelled into strengthening political and electoral institutions, as a key part of the state-building efforts required to produce a stable country.

The first round of post-Taliban elections in 2004 and 2005 were joint United Nations-Afghan efforts. This time they will be conducted under the sole stewardship of the Afghan Independent Election Commission (IEC) with the UN acting only in support. Preparations face a series of intertwined challenges:

- **Technical.** The momentum of the last elections was lost in 2006-2007. The Afghan government, UN and donors failed to use the interim period to build the capacity and resources of the IEC; strengthen the legal framework including replacing the inappropriate Single Non-Transferable Vote (SNTV) system; and produce a sustainable voter registry. Further, failure and delays in wider institutional processes such as disarmament programs and judicial and police reform have increased popular disillusionment and thus reduced buy-in for the state-building agenda, including potentially election participation.
- **Political.** The presidential elections in particular expose a highly centralised political patronage system in which the head of state wields enormous powers, bringing personalities rather than

policies to the fore. The poor relationship between the branches of the state sees the new legislature ignored or overruled and its effectiveness greatly reduced by the absence of a formal role for political parties. The lack of an accepted constitutional arbiter in case of dispute means that even simple technical electoral processes have become highly charged political contests.

- **Security.** The insurgency, centred in the south and east of the country, may affect the ability of people in such areas to freely exercise their franchise and makes scrutiny of the process much more difficult, increasing opportunities for fraud. This may have wider implications for overall legitimacy given that the violence is centred in areas dominated by one ethnic group, the Pashtuns. The failings of disarmament programs due to lack of political will also increases the chances of intimidation across the country. The continued low quality of police makes providing security for elections challenging.

Proceeding with the polls is however widely recognised to be the least bad option. There are 41 candidates running in the presidential poll – most prominent in challenging Hamid Karzai are former foreign minister and leading Northern Alliance personality Abdullah Abdullah and former World Bank official and finance minister Ashraf Ghani Ahmadzai. The large number of candidates – about 3,300 (10 per cent of them women) – for the provincial councils provides ample evidence of continued interest in the process. The challenge now is to ensure credible and widely accepted results that promote stability.

Participation is likely to be uneven with a drop in candidates in areas of the insurgency-hit south in particular, a stark reminder of the effect of violence. Expectations must not be inflated, but on the other hand the bar must not simply be lowered if there is to be faith in the result. The voter registration update, while adding some momentum to the process, failed to address striking flaws in the voter registry which could lay the groundwork for fraud and which the international

community has not spoken up about. Much greater political will than in 2005 is needed in tackling powerful players who flout the rules. Ultimately what will matter in judging the success of the elections is the perception of the Afghan public.

In the short time remaining before the 2009 polls, the focus must be on strengthening security provision and the impartiality, integrity and professionalism of electoral staff – the front line against fraud. The lessons learned must be used to ensure a much strengthened process in 2010. The expense of the current exercise is unsustainable and highlights the failure after the 2005 polls to build Afghan institutions and create a more realistic electoral framework. There must also be well-sequenced post-election planning including ongoing training and oversight and sufficient funds to retain the thousands of new police recruited to help secure the polls.

More broadly there needs to be a focus on building consensus on how the Afghan political system can be made more functional and representative, ending the current over-reliance on a largely unaccountable executive that has encouraged an ever-growing culture of impunity. Weakness in institutional development has only fuelled wider instability through exclusion and a lack of government services. There must be broad agreement, even within the bounds of the current constitution, on a balance of power among the branches of the state and between the central and local government; on identifying which body is the ultimate constitutional arbiter; and ensuring a more appropriate role for political parties. Embedding democratic norms and building institutions will better ensure that the Afghan state is representative, sustainable and ultimately stable.

RECOMMENDATIONS

To the Independent Election Commission (IEC):

1. Ensure a robust, credible process by:
 - (a) rigorous training of election day staff particularly on new counting procedures;
 - (b) enforcing multi-layered checks on the results during their transport including the provision for observers to travel with the results forms and ballots;
 - (c) extra auditing of results from random polling booths in areas of reported high female turnout as a check on fraud given unusual registration numbers, as well as on returns from areas

where little observation is possible because of insecurity;

- (d) scrutinising campaign finance reports of all presidential candidates and random successful provincial council candidates; and
 - (e) requiring all candidates in 2010 to submit their tax returns.
2. Combat allegations of partisanship by:
 - (a) the chairman and other electoral staff refraining from public statements except on technical issues; and
 - (b) early and robust action in case of wrongdoing or partisanship by members of staff.
 3. Ensure preparations for the 2010 elections are strengthened and community understanding of the process enhanced by holding public workshops in partnership with local civil society organisations on lessons from the 2009 polls.

To the Elections Complaints Commission (ECC):

4. Create a more open complaints process by conducting a high-profile public awareness campaign and carrying out training for civil society organisations to aid understanding of the grounds for submissions and the required standards of proof.

To the Government of Afghanistan:

5. Foster the confidence of voters and candidates through:
 - (a) ensuring firm, immediate action against government and security officials seen to be interfering with the process or intimidating electoral workers, candidates or voters;
 - (b) demonstrating compliance with accountable and transparent appointments mechanisms; and
 - (c) guaranteeing the independence of Radio Television Afghanistan and fostering its role as a public service broadcaster.
6. Strengthen the 2010 election process by:
 - (a) building trust in the IEC by putting all commissioners to a vote in the Wolesi Jirga;
 - (b) strengthening the quality of data on illegal armed groups to ensure robust but fair vetting;
 - (c) driving district delineation required for planned district elections; and

- (d) building in specific budgetary allocations for this and future election cycles.
- 7. Ensure a more sustainable subnational government framework by tasking the Independent Directorate of Local Governance (IDLG) with supporting constitutionally mandated representative institutions, rather than parallel projects or bodies.
- 8. Create a post-election strategy group including all relevant ministries, the National Assembly, civil society and major donors to lead strategic planning for the 2010 election and beyond including agreement on:
 - (a) the date of the 2010 poll and a sustainable electoral timetable;
 - (b) the creation of a robust voter registry and population data collection (census and/or civil registry); and
 - (c) an appropriate legal framework for elections.

To the National Assembly:

- 9. Help ensure a solid and comprehensive legal framework for future elections, opening the issue to public hearings, including but not limited to:
 - (a) selecting an appropriate party-based or mixed electoral system to replace SNTV in the Electoral Law;
 - (b) clarifying Article 6 of the Political Parties Law relating to ethnic, racial and sectarian "bias" and removing unnecessary curbs on party formation and functioning, as well as setting out clear procedures regarding the bar on links to armed groups; and
 - (c) considering the future shape and scope of the ECC to ensure a credible and sustainable mechanism to impartially enforce electoral standards and arbitrate disputes.
- 10. Issue clear guidelines to members on use of official resources in their campaigns in 2010, to be monitored by the standing committee for members' immunities, salaries and privileges.

To the U.S., European Union and its Member States and other Donor Nations:

- 11. Increase election security by:
 - (a) ensuring ISAF's additional troops provided for the election remain in the areas where they are required, if necessary beyond the August polls, and are sufficient for the 2010 polls;

- (b) pressing Pakistan to end cross-border movement of insurgents; and
- (c) ensuring ongoing training and oversight and sufficient funds to retain the thousands of additional police recruited to help secure the polls.
- 12. Support robust, ongoing democratisation by:
 - (a) refraining from any words or actions that might be seen as endorsing individual candidates;
 - (b) providing firm funding commitments for several more election cycles subject to specific goals for capacity building and sustainability, developed as part of the proposed post-election strategy group; and
 - (c) in the remaining time before the 2010 polls, contributing information on illegal armed groups to ensure a strengthened vetting process and demanding action on disarmament.
- 13. Balance support to the branches of state by providing far greater resources and attention to representative bodies by:
 - (a) meeting regularly with the heads of political parties and parliamentary groupings;
 - (b) providing technical assistance for the Wolesi Jirga and provincial council commissions;
 - (c) funding women in local government initiatives; and
 - (d) information-sharing and feedback sessions on development proposals with the relevant provincial councils and Wolesi Jirga commissions.

To the United Nations:

- 14. Build confidence in the electoral process by:
 - (a) the Special Representative of the Secretary General (SRSG) robustly using his good offices to help mediate between parties on contentious issues on the electoral framework;
 - (b) maintaining pressure on government and electoral institutions to uphold standards and speaking out against violations;
 - (c) instructing local UN offices on appropriate forms of assistance to the process including monitoring the recruitment of district electoral staff; and
 - (d) encouraging the international community to help provide information on illegal armed groups to strengthen future vetting processes.

15. Drive forward-planning, as part of the proposed post-election strategy group, for the UN's role in future elections to retain momentum and ensure a smooth transition – including funding mechanisms – at the end of the current Enhancing Legal

and Electoral Capacity for Tomorrow (ELECT) project in 2010.

Kabul/Brussels, 24 June 2009

AFGHANISTAN'S ELECTION CHALLENGES

I. INTRODUCTION

Afghanistan's second round of elections following the Taliban's ouster begins with the presidential and provincial council polls on 20 August 2009. Provincial representatives will then be chosen for the National Assembly's upper house (the Meshrano Jirga or House of Elders), followed by elections planned in summer/autumn 2010 for the lower house (Wolesi Jirga or House of the People) and district councils. These will be the first polls conducted under the sole Afghan stewardship of the Independent Election Commission (IEC).¹ Given the failure to steadily tackle legal and organisational flaws and a deteriorating security environment, these elections face grave challenges.²

The insurgency, now affecting a large swathe of the countryside, across the south and east and increasingly in the west as well as pockets in the north,³ potentially restricts the ability of people to vote freely. It

also greatly reduces the likely scrutiny of the poll's conduct in these areas, increasing opportunities for fraud. This may have wider implications for overall legitimacy since it largely affects Pashtun-majority areas. There are political difficulties too: whatever the rhetoric of President Karzai and his international backers, since 2001 they have been reluctant to emphasise institution-building. Many of the basic norms of a robust and sustainable democracy are still weak.

Because the August 2009 elections are being held at a time of deteriorating security, some had suggested alternatives such as a Loya Jirga (Grand Council),⁴ a state of emergency and/or a transitional administration. These are neither viable nor desirable alternatives, and hold many of the same disadvantages without the potential legitimacy of direct political expression. The imposition of a state of emergency and/or the creation of a transitional administration would have only fuelled political discord and further undermined a fragile democratic process. As for convening a Loya Jirga, in the absence of elected heads of over 350 district councils,⁵ who form a large part of its membership, the gathering would have prompted a highly politicised contest over representation. Proceeding with the presidential and provincial polls is thus widely accepted as the least bad option. As a provincial councillor in the insurgency-racked province of Ghazni noted: "If I say a [fully free and fair] election is possible at this time it is merely a lie. If I say it is impossible, then I block the only possibility for moving forward".⁶

This report will look at steps to strengthen electoral systems, protect voters and level the playing field so as to

¹ For past Crisis Group work on Afghan elections see Asia Briefing N°31, *Elections and Security in Afghanistan*, 30 March 2004; Asia Report N°88, *Afghanistan: From Presidential to Parliamentary Elections*, 23 November 2004; and Asia Report N°101, *Afghanistan Elections: Endgame or New Beginning?*, 21 July 2005.

² See for instance "Post-Election Strategy Group Progress Report", Joint Election Management Body (JEMB), 27 September 2005; "Final Report: National Assembly and Provincial Council Elections 2005", JEMB, December 2005; "Democracy Building in Afghanistan: An Integrated Dimension For the Way Forward", European Union Election Observation Mission, 2005; and Margie Cook and Dr Dan Finn, "Afghanistan Voter Registration 2003 and Elections Projects 2004/2005", Electoral Evaluation Mission, 14 May 2006. For an early briefing on the 2009/2010 election cycle see former Electoral Complaints Commissioner Grant Kippen, "Elections in 2009 and 2010: Technical and Contextual Challenges to Building Democracy in Afghanistan", Afghanistan Research and Evaluation Unit (AREU), November 2008.

³ For previous Crisis Group work on the insurgency see Asia Report N°62, *Afghanistan: The Problem of Pashtun Alienation*, 5 August 2003; Asia Report N°123, *Countering Afghanistan's Insurgency: No Quick Fixes*, 2 November 2006; and Asia Report N°158, *Taliban Propaganda: Winning the War of Words?*, 24 July 2008.

⁴ Article 110 of the constitution of Afghanistan. A Loya Jirga is "the highest manifestation of the will of the people of Afghanistan" called to take decisions on "issues related to independence, national sovereignty, territorial integrity and supreme national interests". It consists of National Assembly members, the chairpersons of the provincial councils and chairpersons of the district councils. Translation by Sayed Shafi Rahel for the Secretariat of the Constitutional Commission.

⁵ The exact number and boundaries of Afghanistan's districts are still not officially agreed.

⁶ Crisis Group interview, Ghazni provincial councillor, Ghazni city, 26 February 2009.

obtain the most credible result possible in the presidential and provincial assembly polls. It will also identify steps to create better electoral institutions and frameworks for the 2010 polls and beyond. Field research for the report was conducted in Kabul, Mazar-e Sharif, Bamian, Ghazni, Gardez, Jalalabad and Kandahar.

II. SECURITY AND INSTITUTIONAL DEVELOPMENT 2005-2009

Those who claim that Afghanistan is not ready for participatory democracy have forgotten the excitement with which eight million cast their votes in 2004 to elect their president for the first time.⁷ A year later, turnout for National Assembly⁸ and provincial council elections was down to 6.4 million voters⁹ with popular dissatisfaction growing amid a lack of visible progress and growing corruption. Weak vetting and perceived fraud also prompted creeping cynicism about the electoral process and with good reason. The elections, as with benchmarks throughout the Bonn process,¹⁰ saw tight timetables often override democratic imperatives.

With the legislature's inauguration in late 2005,¹¹ the Bonn roadmap for political transition towards "a

⁷ There are no exact figures for Afghanistan's population; estimates vary widely. Afghanistan's Central Statistics Office (CSO) puts the total population at around 25 million (Estimated population of Afghanistan 2008-2009, CSO) while the CIA Factbook puts it at 33.5 million (July 2009 estimate).

⁸ The National Assembly has two houses, the lower house Wolesi Jirga with 249 directly elected members and the upper house Meshrano Jirga of 102 members: one third appointed by the president, one representative from each of the 34 provincial councils, and one representative from each province, meant to be elected by the heads of all the provinces' district councils for which elections are yet to take place. In the absence of elected representatives from the heads of district councils, a second "transitional" member was elected from each provincial council to the Meshrano Jirga in 2005.

⁹ These were legislative and local elections, rather than presidential, so lacked the same historical significance; there was no out-of-country voting in 2005, which had accounted for about 800,000 votes in Iran and Pakistan in 2004. Turnout is given in raw numbers, rather than percentages of registrants, as multiple registration exercises with few checks – as discussed later – likely mean highly inflated figures.

¹⁰ "Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions", December 2001, popularly known as the Bonn Agreement. For analysis of the various stages of the process, see Crisis Group Asia Briefings N°17, *The Loya Jirga: One Small Step Forward*, 16 May 2002; N°19, *The Afghan Transitional Administration: Prospects and Perils*, 30 July 2002; N°29, *Afghanistan: The Constitutional Loya Jirga*, 12 December 2003; and Asia Report N°56, *Afghanistan's Flawed Constitutional Process*, 12 June 2003.

¹¹ For more on the initial months of the National Assembly see Crisis Group Asia Report N°116, *Afghanistan's New Legislature: Making Democracy Work*, 15 May 2006. On its makeup see Andrew Wilder, "A House Divided? Analysing the 2005 Afghan Elections", AREU, December 2005.

broad-based, gender-sensitive, multi-ethnic and fully representative government” was widely perceived as complete. In reality these were but the first steps of a transition from decades of conflict both driven and exacerbated by ethnic, sectarian and regional divides. Elections mirror wider societal trends and the challenges that the 2009-2010 elections confront reflect the political, security and institutional developments of the last four years.

A. FRAGILE NEW STATE STRUCTURES

The strong presidential system in post-Taliban Afghanistan has created tensions between the executive and the legislature.¹² President Hamid Karzai's decision to all but exclude political parties from the electoral framework has further undermined organisational and communication links between the executive and the legislature.¹³ Nor has the Supreme Court asserted its independence, with continuing tensions over whether it is the final arbiter of constitutional interpretation given the founding document's lack of clarity.¹⁴

¹² During the 2003-2004 Constitutional Loya Jirga such a political setup was fiercely contested. In what became a largely ethnic divide, President Karzai mobilised Pashtun representatives to ensure that his preferred option of a presidency prevailed; he apparently even threatened not to run for election in a system with a prime minister. The U.S. appeared more than willing to work through one man, the president, and one institution, the executive. See Crisis Group Report, *Afghanistan: The Constitutional Loya Jirga*, op. cit., p. 3.

¹³ For more on Afghan political parties, see Crisis Group Asia Briefing N°39, *Political Parties in Afghanistan*, 2 June 2005; and Thomas Ruttig, “Islamists, Leftists – and a void in the center: Afghanistan's political parties and where they come from”, Konrad Adenauer Stiftung, November 2006.

¹⁴ Article 121 of the constitution provides that the Supreme Court at the request of the government, or courts, “shall review the laws, legislative decrees, international treaties as well as international covenants for their compliance with the Constitution and their interpretation in accordance with the law”. Those opposing its role as arbiter point out that interpretation of the constitution itself is not provided for. The Independent Commission for the Supervision of the Implementation of the Constitution (Article 157 of the constitution of Afghanistan), which others favour, has never been formed, with President Karzai vetoing the law passed by the National Assembly for its creation. The constitution specifies little about this body other than it will be created “in accordance with the provisions of the law” and that the president will appoint the members, with the endorsement of the Wolesi Jirga. Those who favour the supremacy of the Supreme Court point to its title of implementation rather than interpretation. See “Karzai for changes in draft law on

There remains “a fundamental gap in Afghanistan's legal and political system: lack of agreement on what entity has the power to resolve constitutional disputes, and how that power is accessed”.¹⁵

Despite its faults, the National Assembly is the most representative body, factionally, regionally, ethnically and gender-wise, that the country has ever seen.¹⁶ However, since the legislature's delayed 2005 inception¹⁷ both the executive and the international community have overlooked its role.¹⁸ Tensions between the two branches of government have been further exacerbated, on political and personal levels, by the election of leading Northern Alliance personality Mohammad Younus Qanooni¹⁹ to head the bicameral legislature's more powerful lower house, the Wolesi Jirga.

The provincial councils, created for the first time in 2005, have very few powers²⁰ although some have

implementing constitution”, Pajhwok Afghan News, 30 September 2008.

¹⁵ J. Alexander Thier and John Dempsey “Resolving the Crisis over Constitutional Interpretation in Afghanistan”, United States Institute of Peace (USIP) Briefing, March 2009, p. 1.

¹⁶ Article 83 of the constitution reserves the equivalent of two seats per province for women, or around one quarter of the body. For an analysis of female representatives' role, which has not always been coherent in terms of supporting gender interests, see Anna Wordsworth, “A Matter of Interests: Gender and the Politics of Presence in Afghanistan's Wolesi Jirga”, AREU, June 2007.

¹⁷ There was a last-minute constitutional provision that efforts would be made to hold the presidential and National Assembly elections simultaneously (Article 160); however, this did not happen.

¹⁸ See Crisis Group Asia Briefing N°89, *Afghanistan: New U.S. Administration, New Directions*, 13 March 2009.

¹⁹ Qanooni was also the runner-up in the 2004 presidential poll, with 16 per cent of the vote to Karzai's 55 per cent.

²⁰ “The provincial council shall participate in the attainment of the developmental objectives of the state and improvement of the affairs of the province in the manner prescribed by laws, and shall advise the provincial administrations on related matters. The provincial assembly council shall perform its duties with the cooperation of the provincial administration”. Article 139 of the constitution. The 2005 Provincial Council Law states: “The Provincial Councils shall function as an elective assembly with the objective of creating a structure for partnership and participation of people and civil society institutions with state administration at the provincial level, and counseling the provincial offices on related affairs” (Article 2). Members' roles are to: “Communicate and exchange views with people for the purpose of knowing their problems. Participate in sessions and contribute to resolve the related issues under discussion [by the] Council. Continuous effort to create a sound administration, and to fight against bribery, administrative corruption and other

worked to highlight local grievances.²¹ They have no budgetary discretion within a highly centralised financial system, and external donors largely bypass government systems through parallel mechanisms. A candidate for the provincial council elections, and current head of the Nangarhar provincial council, complained: "I stand and yet I have nothing to present. The PRT [U.S.-led Provincial Reconstruction Team] has built schools and roads – will they stand as candidates?"²²

Provincial and district governors, the executive's representatives, wield far more power locally although their authority is not specifically set out in the constitution. Often controversial and reviled figures, they are moved about by the president, with little oversight or accountability, on an appointment merry-go-round.²³ Their relationship with provincial councils depends on the individuals involved. In Kandahar, where the president's brother is the council chairman, the council is a seat of power, meeting regularly, perceived as a forum for appeal and consulted by the governor and other officials.²⁴ In contrast, the members of Ghazni provincial council have been on strike since March 2009, saying the governor there has failed to consult them.²⁵

Constitutionally mandated district, municipal and village council polls – with the potential for more grassroots and equitable representation – have yet to be held.²⁶ Instead the Independent Directorate of Local Governance (IDLG), created in 2007, sought to appoint unelected district bodies through its Afghanistan Social Outreach Program (ASOP). Little has been documented

on this project aimed at insurgency-hit "priority" provinces, although it is underway in Wardak and Helmand. It appears to be a continuation of central patronage rather than outreach.

B. DETERIORATING SECURITY

The failure in wider institutional reform includes Afghanistan's security sector – despite receiving by far the largest share of international funding. While the official number of Afghan National Police (ANP) is over 75,000²⁷ against an agreed ceiling of 82,000,²⁸ on-the-ground estimates vary from 35,000 to 55,000, with low quality.²⁹ Police actions have failed to gain citizens' trust and have even actively undermined support for the administration because of the abuse of authority. Part of the problem lies in the police's morale-sapping and inappropriate use as ill-trained, ill-equipped fighters on the counter-insurgency frontlines.

The Afghan National Army (ANA) meanwhile has had the benefit of much greater resources and engagement. It still works largely in support of international forces which, after initial light investment, now include 61,000 troops with the multinational International Security Assistance Force (ISAF)³⁰ and over ten thousand additional U.S. troops dedicated to training, logistics and counter-terrorism missions. It was reported in April 2009 that the ANA had 82,000 personnel, or 62 per cent of the 134,000 strength scheduled to be reached

inadequacies in related departments, and develop capacities for offering qualitative and fast services" (Article 5).

²¹ In the central province of Bamiyan, it has dramatically highlighted the lack of a highway despite the centre's continued promises. "Mud-plastered road in Bamiyan a protest against government", BBC Dari Service, 11 April 2009.

²² Crisis Group interview, Fazl Hadi Muslimyar, Jalalabad, 11 February 2009.

²³ For more on appointments and the tensions between such an approach and state-building see Antonio Giustozzi and Dominique Orsini, "Centre-periphery relations in Afghanistan: Badakhshan between patrimonialism and institution building", *Central Asian Survey*, vol. 28, no.1 (March 2009); and Martine van Bijlert, "Between Discipline and Discretion: Policies Surrounding Senior Subnational Appointments", AREU, May 2009.

²⁴ Crisis Group observations, Kandahar, 2006-2009.

²⁵ "Ghazni governor accused of violating the law", Pajhwok Afghan News (Dari), 7 April 2009; and Richard A. Oppel Jr. and Sangar Rahimi, "Afghan lawmakers accuse a governor of graft", *The New York Times*, 15 April 2009.

²⁶ The failure to hold district council elections has had a further constitutional impact as they are meant to provide representatives to the Meshrano Jirga (Article 84 of the constitution) and the Loya Jirga (Article 110).

²⁷ "Progress toward security and stability in Afghanistan", Report to Congress in Accordance with the 2008 National Defense Authorisation Act, U.S. Department of Defense, January 2009, p. 9. Figures correct as of November 2008.

²⁸ In April 2007 the Joint Coordination and Monitoring Board (JCMB) agreed to this "temporary" increase from 62,000. The JCMB oversees progress of the January 2006 Afghanistan Compact, a five-year commitment between the international community and the Afghan government towards a "shared vision of the future" across three pillars of security; governance, rule of law and human rights; and social and economic development. It is chaired by a representative of President Karzai and the UN's Special Representative of the Secretary General (SRSG) with 30 members, seven from the Afghan government and 23 representatives of major donor and regional countries, along with multilateral institutions and military commands. See Crisis Group Asia Briefing N°59, *Afghanistan's Endangered Compact*, 29 January 2007.

²⁹ See Crisis Group Asia Briefing N°85, *Policing in Afghanistan: Still Searching for a Strategy*, 18 December 2008; and Asia Report N°138, *Reforming Afghanistan's Police*, 30 August 2007.

³⁰ "International Security Assistance Force and Afghan National Army Strength and Laydown", ISAF, 15 June 2009.

by end-2011.³¹ An earlier assessment noted that only around a quarter of 72 ANA units were capable of operating independently.³²

Provision of security is central to perceptions of government legitimacy. In December 2008, the United Nations Assistance Mission to Afghanistan (UNAMA) estimated that of some 350-plus districts, the government did not control ten, with access to a further 165 difficult or problematic.³³ Even in areas with government-controlled district centres, insurgents may exercise influence over the surrounding countryside and road networks with the violence steadily expanding – often through short-term alliances with criminal or other non-ideological groups – from the south and east to the west as well as pockets in the north. The campaign of terror has focused on police and others involved with the government. For instance, the provincial council secretary of Nangarhar was gunned down in February 2009 and a female Kandahar provincial councillor assassinated in April. There have been repeated suicide attacks on the Kandahar provincial council's meeting place, sending a chilling message prior to the election.

Operating under the banner of their old regime, the Islamic Emirate of Afghanistan, the Taliban has succeeded in attracting a diverse array of commanders and networks to join the insurgency. This includes the Haqqani network in the south east, blamed for a series of sophisticated multi-pronged attacks in Kabul, which bear the hallmark of patronage from the international jihadi networks, while Gulbuddin Hekmatyar's Hizb-e Islami operates in the north, east and centre of the country.³⁴

Growing disillusionment with governance and the absence of security and basic services provide fertile ground for the recruitment of foot soldiers to join the insurgency. Less ideological armed groups and criminal elements, including drug traffickers, are also taking advantage of the increasing lawlessness. Spiralling

narcotics production is both a source and a symptom of insecurity. Those involved have a vested interest in opposing the rule of law even as many have taken seats at the heart of government, using their official positions to facilitate business and their money to buy more influence.

Regionally the situation has deteriorated significantly. The Pakistan military's jihadi proxies, used as policy instruments in both Afghanistan and India, have expanded their influence and control over parts of northern Pakistan, including the regions that border on south-eastern Afghanistan. They are actively supporting and fighting alongside Afghan insurgents.³⁵

The escalating insurgency could have a number of potential impacts on the electoral process in 2009 and 2010. Most obviously it could mean a low turnout in the areas of greater violence and intimidation, as well as less observation and scrutiny of the process in such areas, increasing opportunities for large-scale fraud. With the insurgency centred in the Pashtun-dominated areas of the south and east and thus mostly impacting the ballots of one ethnic group, any effects on the perceived legitimacy of the polls are multiplied.

C. PATRONAGE POLITICS

There has been little incentive for interest groups to coalesce and stabilise in the absence of robust political parties and with governance marred by the politics of patronage and personal privilege.³⁶ The leaders of mujahidin-era Islamist political groupings, known as *tanzims*, and individual powerbrokers still dominate politics. Fluid and opaque alliances make it difficult to distinguish the government from the opposition. New, small "democratic" parties have failed to make much headway.³⁷ With few institutional incentives to be part

³¹ Ibid.

³² "Report on progress towards security and stability in Afghanistan", U.S. Department of Defense, op. cit., p. 42. In September 2008 it was agreed by the JCMB to increase the target size of the ANA from 84,000 to 134,000.

³³ "The Situation in Afghanistan and its Implications for International Peace and Security", UN document A/63/751 – S/2009/135, 10 March 2009, p. 5.

³⁴ The remnants of Hizb-e Islami (Khalis), directed by his son as the Tora Bora Military Front, claims allegiance to the Taliban, as does the Mansoor network of the south east. See Crisis Group Reports, *Countering Afghanistan's Insurgency: No Quick Fixes and Taliban Propaganda: Winning the War of Words?*, both op. cit.

³⁵ There are no signs of Pakistani action against the Afghan Taliban presence or that of the Haqqani network and Hekmatyar's Hizb-e Islami. The Pakistani military offensive in Swat or the planned operation in South Waziristan Agency in the Federally Administered Tribal Areas is unlikely to curb cross-border violence unless the military ends its policy of supporting some Pakistani Taliban groups, even as it confronts those that are now targeting Pakistan itself. See Crisis Group Asia Reports N°164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009; and N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006.

³⁶ For more on political manoeuvring prior to 2005 see Crisis Group Briefing, *Political Parties in Afghanistan*, op. cit.; and Crisis Group Report, *Afghanistan's New Legislature: Making Democracy Work*, op. cit.

³⁷ See Anna Larson, "Afghanistan's New Democratic Parties: A Means to Organise Democratisation?", AREU, March 2009.

of a team rather than retain the freedom of individual negotiation for each vote, even political parties with members in the Wolesi Jirga have failed to exercise discipline over them.

Influential international actors have followed a similar strategy, reluctant to take action against warlord “allies” for present, let alone past, abuses, and uninterested in helping build the capacity of nascent political parties and representative institutions.³⁸ A leader of a new, small moderate political party complained: “The international community has extended support to fundamentalist forces and has not paid attention to democratic forces, [or] the people. They [the international community] think warlords are the answer”.³⁹

A noticeable political trend following Hamid Karzai's presidential election has been the Pashtunisation of the centre with major, mainly Tajik, Northern Alliance⁴⁰ figures eased out of cabinet: Mohammad Qasim Fahim removed as defence minister; foreign minister Abdullah Abdullah quitting when effectively demoted; and Qanooni re-emerging as leader of the Wolesi Jirga.⁴¹ While rightly complaining of exclusion from the centre in the early post-Taliban years,⁴² Pashtuns now head a number of power ministries including defence, interior and finance. Former members of the Pashtun-dominated Hizb-e Islami, largely drawn from educated backgrounds, also occupy important government positions even as questions linger over allegiances to Hekmatyar.

The largely non-Pashtun Northern Alliance was re-constituted in March 2007 as the National United Front, later simply the National Front. The Jamiat-i Islami formed the backbone of the “opposition alliance”, with its leader Burhanuddin Rabbani as chairman, although some members, including the party's northern regional chairman and Balkh governor Atta Mohammad Noor, did not join. The party founded by Atta's rival Abdul Rashid Dostum, the Uzbek-dominated Junbish-i Milli-

yi Islami Afghanistan,⁴³ was part of the initial line-up, though a largely silent partner.

The two major Hazara players, Mohammad Mohaqqueq, the head of Hizb-e Wahdat-e Islami-yi Mardumi Afghanistan, and Vice President Karim Khalili, stayed out. Some Shia-Hazara representation was provided by Mohammad Akbari's Hizb-e Wahdat-e Islami Milli as well as Sayed Mustafa Kazimi's Hizb-e Iqtedar-i Milli. Kazimi, the coalition's spokesman, was killed in the November 2007 Baghlan bombing. Stranger bedfellows – providing some Pashtun representation – included a grandson of the late king, Mustafa Zahir, and former People's Democratic Party of Afghanistan (PDPA) officials Nurul Haq Oloomi and Sayed Mohammad Gulabzoi. While announcing a platform of desirable constitutional changes, including a more parliamentary and devolved form of government, the National Front's various factions failed to work together at a local level or in the National Assembly. The real objective was to select a single candidate for the presidential race to challenge President Karzai – something they ultimately failed to do.

³⁸ Similar international support for favoured individuals over institutions and democratisation is evident in Pakistan. See Crisis Group Asia Reports N°137, *Elections, Democracy and Stability in Pakistan*, 31 July 2007; N°77 *Devolution in Pakistan: Reform or Revolution?* 22 March 2004; and N°40 *Pakistan: Transition to Democracy?*, 3 October 2002.

³⁹ Crisis Group interview, Kabul, 27 January 2009.

⁴⁰ More correctly called the United Islamic Front for the Salvation of Afghanistan, it consisted mainly of non-Pashtun elements, including the largely Tajik Jamiat-i Islami, the Uzbek Junbish-i Milli-yi Islami and the Hazara dominated Hizb-e Wahdat.

⁴¹ See Crisis Group Report, *Afghanistan's New Legislature: Making Democracy Work*, op. cit., p. 9.

⁴² See Crisis Group Report, *Afghanistan: The Problem of Pashtun Alienation*, op. cit.

⁴³ Junbish has been going through some internal changes with Sayed Noorullah Sadat named *rayes* (head of party) and Dostum the *rahbar* (leader of the party) at the party congress in mid-2008. Dostum, who has largely been in Turkey since late 2008, at one stage announced that Noorullah was fired, although this dispute was later smoothed over.

III. ELECTORAL FRAMEWORK

The constitution provides basic direction on “free, general, secret and direct” polls, which are to be conducted by the Independent Election Commission (IEC).⁴⁴ The president⁴⁵ stands for a five-year term on a slate with two vice presidents and must receive more than 50 per cent of the votes cast nationwide – with a run-off between the top two candidates if necessary.⁴⁶ There is a maximum two-term limit.⁴⁷ The Wolesi Jirga is elected for five years with representatives “proportionate to the population of each constituency”⁴⁸ while provincial councils are chosen every four years, “proportionate to the population”.⁴⁹ Used in 2005, the controversial Single Non-Transferable Vote (SNTV) remains the electoral system for the Wolesi Jirga and provincial council elections. A province forms a single constituency with multiple representatives (around a quarter of seats reserved for women in both bodies through a top-up system),⁵⁰ all standing as individuals and with each voter given only one choice.⁵¹ District councils, which have not been elected to date, have a three-year term with little constitutional direction on implementation.⁵²

Broadly accepted electoral institutions and a comprehensive legal framework are essential for electoral credibility. Disappointingly little has been achieved since the last election in Afghanistan, although most technical and logistical problems were long foreseen

⁴⁴ Article 156 of the constitution: “The Independent Election Commission shall be established to administer and supervise every kind of elections as well as refer to general public opinion of the people in accordance with the provisions of the law”.

⁴⁵ Article 60 of the constitution: “The President shall be the head of the state of the Islamic Republic of Afghanistan, executing his authorities in the executive, legislative and judicial fields in accordance with the provisions of this Constitution”.

⁴⁶ Articles 60 and 61 of the constitution.

⁴⁷ Article 62 of the constitution.

⁴⁸ Article 83 of the constitution.

⁴⁹ Article 138 of the constitution.

⁵⁰ Articles 22 and 29 of the Electoral Law (2005).

⁵¹ For more on how SNTV came to be chosen in Afghanistan (previously used in Japan and currently only found in Vanuatu, Jordan and the Pitcairn Islands), see Andrew Reynolds, “The Curious Case of Afghanistan”, *Journal of Democracy*, vol. 17, no. 2 (April 2006).

⁵² Article 140 of the constitution. “Councils shall be established to organise activities as well as attain active participation of the people in provincial administrations in districts and in villages”. Mayors and municipal councils are also supposed to be elected although no term limit is set. Article 141 of the constitution.

and meaningful reform recommended. The 2005 Post-Election Strategy Group put forward a number of reforms, including the retention of IEC staff, a more realistic electoral timetable and better legal framework, and such basic suggestions as buying a large government printing press rather than repeatedly printing ballots at enormous expense abroad.⁵³ A 2006 UNDP post-election assessment similarly emphasised the need for foresight and sustainable planning if elections were to be part of a wider democratisation process rather than individual, and expensive, events.⁵⁴ The lack of UN, donor and Afghan attention to electoral reform, particularly in 2006-2007 when there was sufficient time to ensure implementation, lies at the heart of many of the difficulties Afghanistan faces today. Even relatively simple technical issues have become highly politicised contests.

A. LEGAL FRAMEWORK

All laws enacted as presidential decrees before the 2005 inauguration of the National Assembly have been submitted to the legislature but remain in force unless specifically annulled.⁵⁵ Given the hundreds of backed-up decrees and a new assembly that lacks the organising power of political parties, legislation is a slow process.⁵⁶ Tight constitutional timelines for laws to move through the bicameral legislature and receive presidential assent have been routinely ignored⁵⁷ in what is often a chaotic process with amendments introduced right until the last minute. When the president has been thwarted – the Wolesi Jirga having the power to override his veto with a two-thirds majority⁵⁸ – he has tended to deem such laws unconstitutional and directed them to the Supreme Court or simply left them in limbo.

⁵³ “Post-Election Strategy Group Progress Report”, op. cit.

⁵⁴ “Afghanistan Voter Registration 2003 and Elections Projects 2004/2005”, op. cit.

⁵⁵ Article 161 of the constitution.

⁵⁶ Recent streamlining of internal legislative processes has somewhat improved things.

⁵⁷ Article 97 of the constitution: “The House of the People shall not delay more than one month the draft proposal. The House of the People after approving the proposed draft shall send it to the House of the Elders. The House of the Elders shall decide on it within 15 days”.

⁵⁸ Article 94 of the constitution: “in case the President rejects what the National Assembly has approved, the President shall send it back, within 15 days from the date it was presented to the House of the People mentioning the reasons for rejection and with expiration of the period or if the House of the People re-approves it with two-thirds of all the votes, the draft shall be considered endorsed and enforceable”.

None of the three laws governing the conduct of polls – the Electoral Law, the Political Parties Law and the Independent Electoral Commission Structure Law – have yet been enacted in revised form, stalled largely through government efforts. Because no electoral law can be changed less than a year before the end of the legislative term,⁵⁹ there is no time for revision even for the 2010 parliamentary polls. Ensuring that a more comprehensive and robust framework is in place for future elections is vital and must be the subject of wide public consultation by the National Assembly.

1. The Electoral Law

The difficulties with the SNTV electoral system were clear during the last provincial council and National Assembly elections; this was the most pressing issue to tackle in a revised law. Large multi-member constituencies see representatives winning seats with wildly varying mandates. The absence of disciplined political parties to carefully analyse prospects and correctly limit candidates and apportion supporters can mean inequitable political representation. For instance there can either be large numbers of “surplus” votes for individual candidates or political groups can split their votes too far between multiple candidates and get far fewer seats than their power base represents. Having individual, as opposed to party-based, candidates further leads to large, unwieldy ballot papers – some up to seven pages long in the 2005 polls – problematic both for voters and electoral administrators.

There was some early debate at the IEC about a mixed proportional system, but in the end only SNTV was placed before the Wolesi Jirga in the revised law.⁶⁰ Despite Qanooni's bitter complaints about SNTV and considerable work on alternative systems at the committee level, the house acquiesced, most likely after behind-the-scenes deal making. Only minor tinkering

was proposed, such as dividing some of the larger provinces into two constituencies for National Assembly polls and party membership to appear on the ballot if desired. The Wolesi Jirga also proposed that the vote count be moved to the district level in response to the long delays and accusations of fraud at the provincial count centres in 2005. It also suggested a higher number of supporters and a larger deposit be required of presidential candidates.

To date, the proposed law remains stuck in the lower house over the continued inclusion of the controversial provision of ten seats in a national constituency for Pashtun Kuchis (nomads).⁶¹ Some believe this was aimed at helping tilt the Wolesi Jirga in Pashtuns' favour, prompting a five-week walkout in 2008. A commission established to look into the issue has so far failed to come up with an acceptable compromise.

2. The Independent Election Commission Structure Law

In the 2005 polls the president had the sole right to appoint the Independent Election Commission.⁶² With the formation of the National Assembly, the Post-Election Strategy Group strongly argued that, in accordance with international best practice, elected representatives should be consulted on nominations to guard against partisan membership – or perceptions of it.⁶³

When the law came before the Wolesi Jirga without such a provision the house tried – quite reasonably – to assert its right of approval over presidential IEC appointees. This provision was contained in the final

⁵⁹ Article 109 of the constitution.

⁶⁰ “After extensive consultations with civil society, parliamentarians and international stakeholders, the IEC made initial recommendations to the Ministry of Justice on amending the existing Election Law. These recommendations included a mixed electoral system combining the Single Non-Transferable Vote (SNTV) with a Proportional Representation (PR) system. After consultation with the Afghan government, the IEC resubmitted two separate versions of its recommendations – one version reflected the SNTV system while the other proposed a mixed proportional representation system based on closed lists. The decision has been left to the MOJ and the Cabinet as to which of the proposed electoral changes will be referred to the National Assembly for consideration”. “Elections White Paper. Supporting Feasible, Sustainable and Affordable Elections in Afghanistan”, Election Working Group paper for JCMB V, April 2007, p. 1.

⁶¹ The constitution states that members shall be “proportionate to the population of each constituency” and the election system shall provide “general and fair representation for all the people of the country”. Article 83. For further discussion of the controversial provision of special seats for Kuchis see Crisis Group Report, *Afghanistan's New Legislature: Making Democracy Work*, op. cit.

⁶² Presidential Decree No. 23, “The Structure and Working Procedure of the Independent Election Commission”, 24 January 2005, states that the chairman heads the IEC, which also has a vice-chairperson and members appointed for three years. They must act free of governmental or outside influence and are forbidden from assuming high public office for one year after the end of their term. Decisions are made by a two-thirds majority.

⁶³ It had specifically recommended that election commissioners be appointed by the president from a list approved by two-thirds majority of the Wolesi Jirga and Meshrano Jirga, following submissions by a nominating committee with civil society representation. “Post-Election Strategy Group Progress Report”, op. cit., pp. 19-20.

law, agreed upon in February 2009 and presented to the president. Karzai has refused to approve it, apparently arguing that such a provision is unconstitutional because the constitution does not explicitly provide for such oversight. Since checks can promote impartiality and greater confidence in election commissions such intransigence would appear unwarranted. Even if the law is not technically passed in time for the 2010 polls, the elected president would be wise to put IEC nominees before the Wolesi Jirga for approval before preparations begin in earnest for those elections.

Changes in the new law as it emerged from the National Assembly also sought to sensibly stagger the appointments of commissioners to ensure a mix of experience and fresh approaches. It further stipulated that local election officials must belong to different areas than the ones they would oversee. Concerned this would be difficult to implement, the IEC also pointed to a loss of local knowledge and contacts. Such a provision, however, reflects wide public disquiet at perceived bias by, and potential pressure on, staff working in areas where they have close ties.

3. The Political Party Law

Although they lack a substantial place in the broader electoral framework, the numbers of political parties have continued to grow, with 102 registered with the justice ministry by April 2009.⁶⁴ The new Political Parties Law, passed by both houses of the National Assembly in 2008, aimed at restricting the growth of what are often little more than leadership vehicles by raising the required number of registered members from 700 to 10,000. The bill still required groups to register with the justice ministry when an independent entity would have been more appropriate. It also failed to tackle a number of legal impediments to safeguard robust pluralism.

The vague test in the earlier law stating that parties shall not “incite to ethnic, racial, religious or sectional violence” was weakened even further to simply inciting “biases” on any of those grounds. A bar on parties that “pursue objectives that are opposed to the principles of the holy religion Islam” remained.⁶⁵ These provisions are a potential weapon against minority groups or those deemed “non-Islamic” trying to form parties. Meanwhile, little attention was paid to strengthening the ban on political parties with “military organisations or affiliations with armed forces”. As this provision in

the previous law was widely ignored, a far more detailed procedure should have been created for verifying that political parties did not have armed wings.

In any event the president rejected the law over a provision that political parties could have offices abroad and the government must provide security for them. Since political parties are integral to any functioning democracy, the law needs to be substantively revisited.

B. ELECTORAL INSTITUTIONS

The 2009-2010 elections will be the first post-Taliban polls held under Afghan lead.⁶⁶ Strong, independent election institutions are essential to spearhead preparations and counter political interference. Afghan electoral bodies consist of the Independent Election Commission (IEC) that oversees the process and the Electoral Complaints Commission (ECC) which deals with “offences, complaints and challenges”.⁶⁷ Unlike previous elections the international community’s formal role is only to assist and advise.

1. The Independent Election Commission

The IEC is composed of a board of seven commissioners, which sets policy and oversees the technical preparations of the IEC Secretariat (IEC(S)) headed by a chief electoral officer. The IEC(S) has 34 provincial offices divided into eight regions with 400 permanent staff (230 core and the remaining support staff). On election day total staff will increase to 165,000 in about 7,000 polling centres.⁶⁸

As discussed, the IEC has been appointed solely by the president and its perceived partisanship is a major potential shadow over the legitimacy of the 2009-2010 elections – something that donors should have been far more vocal about before making funding commitments. Karzai loyalist Azizullah Ludin was appointed to head the body in 2007 and has done little to challenge perceptions of his ties. He has, for instance, publicly criticised those who had spent long periods abroad for seeking to stand in the polls, presumably referring to such potential candidates as former finance minister Ashraf Ghani Ahmadzai and former interior minister

⁶⁴ “List of Licensed Political Parties”, justice ministry, www.gov.af, accessed 19 April 2009.

⁶⁵ Article 6, draft Political Parties Law (2008) as rewritten by the Wolesi Jirga April 2009.

⁶⁶ The Joint Electoral Management Body (JEMB), a temporary institution established in 2003 comprising the Independent Election Commission and the UN electoral component, dissolved following the 2005 elections.

⁶⁷ Article 52, Electoral Law (2005).

⁶⁸ Crisis Group interview, Zekria Barakzai, IEC deputy chief electoral officer, Kabul, 15 May 2009.

Ali Ahmad Jalali,⁶⁹ alleged that some of the candidates have mental health problems,⁷⁰ and has generally made his support of Karzai's re-election evident.

On the technical side, the handover from a joint international-cum-national operation to solely Afghan institutions was fraught with budgetary and staffing difficulties.⁷¹ Onze report in 2006 stated: "it could be said that the IEC and IEC(S) right now are in crisis",⁷² describing inadequate facilities and little direction. The chief electoral adviser describes the period until mid-2008 as a "funding graveyard... the lack of investment was a tragedy for Afghanistan and we can't afford to have it happen again".⁷³

Both the Afghan government and donors showed little interest in laying early groundwork to ensure strong electoral institutions and a sustainable electoral framework despite grand benchmarks in the 2006 Afghanistan Compact that the IEC would "have the high integrity, capacity and resources to undertake elections in an increasingly fiscally sustainable manner by end-2008".⁷⁴ International disinterest may have been due to the \$15 million overrun of the 2005 polls,⁷⁵ partly attributed

to a much extended count process, which made it hard to close off one project and begin the next. This deficit was slowly met over the following two years, in part by selling off election equipment, which then had to be replaced, a false saving at best. Meanwhile, many of the most experienced staff left as salaries plunged.⁷⁶ By April 2007 offices had been established in only 29 of 34 provinces.⁷⁷

Four of the seven current election commissioners are new appointees since 2005⁷⁸ and for many staff 2009 will be their first substantive experience of an electoral process, with ability varying widely between provinces. While there have been some capacity-building programs in the intervening years, early and sustained efforts were not made to meet the challenges that lay ahead, particularly given the complexity and scale of the provincial council elections. Even getting salaries to field staff has been difficult, with many going unpaid for weeks or even months. The voter registration process went more smoothly than predicted although data management and retrieval of materials from the field highlight areas that require greater focus and coordination. There have also been persistent allegations of nepotism and partisanship in hiring practices, many by those who were excluded. Recruitment practices and staff conduct should be transparent and accountable. Every effort must also be made to ensure staff and appropriate facilities and equipment are retained for 2010 and beyond.

2. The Electoral Complaints Commission

The ECC is an ad hoc body, first created in the 2005 Electoral Law, and meant to exist only over electoral periods, completing its work within 30 days of the certification of results. Because the 2005 Electoral Law has yet to be replaced, it still consists of three international appointees of the UN as well as two Afghan commissioners: one appointed by the Afghanistan Independent Human Rights Commission (AIHRC) and the other by the Supreme Court. This separate, large and expensive electoral appeals body – costing

⁶⁹ See "FEFA is concerned over the comments made by the head of the Independent Election Commission on the criteria for the Presidency and regards such statements in breach of IEC's impartiality", press release by Free and Fair Elections Foundation of Afghanistan (FEFA), 13 July 2008.

⁷⁰ He told a press conference when announcing final candidate lists: "There are people among the candidates that even if you are not a psychiatrist you would say take them to Ali Abad hospital [Afghanistan's best known mental health institution]". Sardar Ahmad, "41 candidates for Afghan presidential ballot", Agence France-Presse, 13 June 2009.

⁷¹ "After the dissolution of the Joint Electoral Management Body for the regulation of the elections whose budget was provided by the international community, the Ministry of Finance set aside 30 million afghanis (approximately U.S. \$600,000) for the expenses and general activities of the Commission in the first year after its founding. After the establishment of the Commission due to the lack of necessary budget and inadequate pay, the Commission lost many of its qualified elections staff and its activities in the provinces declined". "Statement of the Independent Election Commission regarding the determination of the date for holding the presidential and provincial council elections", 30 January 2009, p. 6.

⁷² Cook and Finn, *op. cit.*, p. 25.

⁷³ Crisis Group interview, Margie Cook, ELECT chief electoral adviser, Kabul, 28 May 2009.

⁷⁴ The Afghanistan Compact, January 2006. It further committed to: "the Government of Afghanistan contributing to the extent possible to the cost of future elections from its own resources".

⁷⁵ "Voter Registration and Elections 2004 and 2005", overview, UNDP, p. 2. The final cost of the National Assembly and provincial council elections was \$172 million.

⁷⁶ Similarly, after the 2004 polls every Afghan election commissioner and many senior staff left. Cook and Finn, *op. cit.*, p. 21.

⁷⁷ "Elections White Paper. Supporting Feasible, Sustainable and Affordable Elections in Afghanistan", Election Working Group paper for JCMB V, April 2007, p. 2.

⁷⁸ "The legal mandate of the IEC commissioners described in [presidential] decree 21 of 2005 expired on 17 January 2008. Although this issue was flagged to the government prior to the expiration, it was not until 18 May 2008 that the President issued another decree appointing a new board of commissioners". ELECT Annual Project Report 2008, p. 14.

\$13 million for the 2009 polls – reflects the lack of trust in the current judicial system. There was considerable debate over the ECC's proposed size and scope with some arguing it should function only at a national level, others that it should have an investigative and/or decision-making capacity in the regions or provinces.⁷⁹ The latter view prevailed although delayed decision-making – with the UN only announcing its appointees in April 2009 – meant there was no sub-national presence by the ECC during the short period available to challenge candidate eligibility.

For the campaign period beginning 16 June, in which the ECC adjudicates complaints about alleged electoral offences, there are around 270 staff, including a dozen international recruits. As well as the central headquarters there are eight regional offices, each with two lawyers and two investigators, as well as Provincial Electoral Complaints Commissions (PECC) as the front line for complaints. While all professional staff had been recruited by mid-June they still lacked accommodation in every province outside Kabul.⁸⁰ The PECCs are descendants of Provincial Election Commissions (PEC), created in 2005, which unlike this time, answered to both the JEMB and the ECC. The personnel – some of whom are being hired again – have not received further training in the intervening years.

3. The United Nations' role

The UN's role in this round of elections is meant to be purely advisory as well as coordinating international assistance to all aspects of the poll. The UN Security Council's annual renewal of UNAMA's mandate in March 2009 charged it to:

support, at the request of the Afghan authorities, preparations for the crucial upcoming presidential elections in particular through the IEC, by providing technical assistance, coordinating other international donors, agencies and organisations pro-

viding assistance and channelling existing and additional funds earmarked to support the process.⁸¹

International funding is being largely coordinated through a basket mechanism, Enhancing Legal and Electoral Capacity for Tomorrow (ELECT), managed by the United Nations Development Programme (UNDP). This draws together substantial assistance to the IEC, with 44 international advisers to the headquarters and 71 in the field,⁸² as well as support to the ECC, election observation, civic education, media funding and police training. Altogether 150 international staff are to be employed, down from 500 in 2005; the failure to retain and build Afghan capacity is largely responsible for the continued need for such a large and expensive group. The lack of sustained preparations also left a shorter period for procurement and setting up facilities and systems, further driving up costs. An estimate after the last round of elections that \$100 million would finance five years of electoral operations, including both presidential and National Assembly polls⁸³ is long forgotten. The estimated cost for the 2009 polls is \$225 million⁸⁴ – although this includes additional security costs and wider programs such as some police training.⁸⁵

⁷⁹ The final report of the ECC in 2005 (under the chairmanship of Grant Kippen who returned to the ECC in 2009) advocated: "The planning and preparation for such a mechanism should be undertaken well in advance of an election, including by means of a thorough lessons-learned analysis. A future electoral complaints body should have the necessary resources and authority to investigate all complaints on its own, including at the provincial level, and independently of the electoral administration". Electoral Complaints Commission, Final Report, March 2006, p. 5.

⁸⁰ Crisis Group telephone interview, Maarten Halff, Election Complaints Commissioner, Kabul, 16 June 2009.

⁸¹ UNSC Resolution 1868, 23 March 2009. The previous year it had noted delays in preparations, stating that it "encourages the Afghan Government, with support from the international community, to accelerate the planning and preparation of such elections, stresses the need to establish a permanent Civil Voter Registry (CVR) in accordance with the Afghanistan Compact, and emphasizes the importance of free, fair, inclusive and transparent elections in order to sustain the democratic progress of the country". UNSC Resolution 1806, 20 March 2008.

⁸² Crisis Group email communication, Margie Cook, ELECT chief electoral adviser, 28 May 2009. For security reasons Logar, Wardak, Ghazni, Paktika, Khost, Farah, Zabul, Helmand, Nimroz, Uruzgan, Takhar, Laghman, Nuristan and Kunar do not have permanent advisers in place.

⁸³ "Post-Election Strategy Group Progress Report", 27 September 2005, p. 10. "International electoral assistance for the next five years, including subsidizing the ordinary running of the IEC, the voter registry and the polling operations, will be required, and has been estimated at slightly over \$101 million".

⁸⁴ There is currently a funding gap of \$18 million. The budget includes a quarantined allocation in the event of a run-off. ELECT Quarterly Project Report (First Quarter 2009), January-March 2009, UNDP Afghanistan, p. 5. The U.S. is by far the biggest donor, committing \$65 million. Other major donors include Japan (\$36 million), UK (\$29 million), Germany (\$22 million) and Canada (\$20 million). Ibid, p. 15.

⁸⁵ "The Situation in Afghanistan and its Implications for International Peace and Security", op. cit., p. 3.

The UNAMA human rights unit is also cooperating in a political rights verification exercise with the Afghanistan Independent Human Rights Commission; and a small separate elections unit has been created within the political section in Kabul. The UN's good offices need to be exercised more often, given the fractured nature of the political system in which even technical issues can become highly politicised contests. It is also likely that the UN's regional offices will have to be further drawn into the electoral process, helping coordinate efforts at a regional and provincial level.

IV. INITIAL PROCESSES

With the start of the election process, legal and institutional provisions are intersecting with the ground realities of growing insecurity, weak institutions and political manoeuvring. Even relatively simple processes are contested. With many of the necessary pre-election safeguards missing, much will depend of the conduct of the election from the preparations to the day itself – as well as the count process which follows, the latter proving the biggest technical challenge in 2005. The immediate focus, amid a challenging political and security environment, should be ensuring impartial bodies, a level playing field and an accepted arbitrator of disputes.

A. SETTING THE DATE

Even before the last election cycle finished, it was evident that “the electoral calendar implied in the current constitution does not appear functional in political, logistical or financial terms”.⁸⁶ An ad hoc committee was established to study the issue in October 2007 and had met twice by January 2008 but with little progress.⁸⁷ The most pressing issue involved the date for the presidential poll. This had a clear constitutional timing: 30 to 60 days prior to the end of the presidential term on 1 *Jauza* (Afghan calendar) on the fifth year after the last elections – in this case 22 May 2009.⁸⁸ First held in September 2005, provincial council elections are on a four-year cycle, although without a set date, while the Wolesi Jirga's term expires on 1 *Saratan* (Afghan calendar) of the fifth year after its election – 22 June 2010 – with elections to be held 30 to 60 days before.⁸⁹

At the 2004 Loya Jirga a constitutional provision was added at the behest of the Northern Alliance that efforts would be made to hold the first presidential and National Assembly elections simultaneously.⁹⁰ This did not happen. Combining the presidential and parliamentary polls in this second round was considered

⁸⁶“Post-Election Strategy Group Progress Report”, 27 September 2005, p. 4. The current set-up would mean elections in 39 of the next 60 years. “Afghanistan Voter Registration 2003 and Elections Projects 2004/2005”, Election Evaluation Mission”, p. 30.

⁸⁷“Census and Elections: Update for JCMB VII”, Islamic Republic of Afghanistan, 29 January 2008, p. 2.

⁸⁸ Article 61 of the constitution.

⁸⁹ Article 83 of the constitution.

⁹⁰ Article 160 of the constitution.

for logistical and financial reasons,⁹¹ although parliamentarians were reluctant to shorten their own term. In the end, the IEC simply disclosed, from around April 2008, that the presidential poll would be delayed until autumn 2009 to be held with the provincial council elections, and the National Assembly and district council elections would follow in the summer of 2010.⁹² Despite being involved in these consultations, later in 2008 Wolesi Jirga president Qanooni publicly objected to the delay in presidential polls amid concerns by parliamentarians at the lack of consultation and opposition and potential rivals' fears that Karzai was seeking to extend his time in office and hence his grip on power. In December 2008, the IEC formally reiterated the 20 August 2009 date.⁹³

The IEC invoked a provision in the Electoral Law allowing an "affected constituency" to have polls postponed "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".⁹⁴ Weather was cited as the reason for the delay since the constitutionally mandated April date did not allow enough preparation time after the winter,⁹⁵ and security concerns were also mentioned.⁹⁶

⁹¹ "Elections White Paper. Supporting Feasible, Sustainable and Affordable Elections in Afghanistan", Election Working Group paper for Joint Coordination and Monitoring Board (JCMB) V, April 2007, p. 1.

⁹² It was decided, stated the IEC: "in the presence of His Excellency the President, His Excellency the Chief Justice, respected speakers of both Houses, the respected Chief Prosecutor and jihadi leaders ... that the presidential and provincial council elections should be conducted in the fall of 2009 and the Wolesi Jirga and district council elections should be conducted in the summer of 2010". "Statement of the Independent Election Commission regarding the determination of the date for holding the presidential and provincial council elections", IEC, 4 March 2009.

⁹³ "Statement of the Independent Election Commission regarding the determination of the date for holding the presidential and provincial council elections", 30 January 2009.

⁹⁴ Article 55 of the Electoral Law.

⁹⁵ "[A]ttainment of the major principles of elections, that is, universality, fairness and transparency would be out of the question because then ... preparations must be made ... when most parts of Afghanistan are inaccessible due to harsh weather and preparations for elections would entail manifold problems". "Statement of the Independent Election Commission regarding the determination of the date for holding the presidential and provincial council elections", IEC, 30 January 2009.

⁹⁶ "[O]ne of the main reasons for delaying the elections is the suggestions and recommendations by the security forces who believed that the months of *Hamal* till *Jadi* are not suitable

Amid ongoing public outcry, President Karzai issued a decree in February 2009 implicitly backing an April poll date – by then technically impossible. The IEC, as expected, reiterated the August date.⁹⁷ The president's move however wrong-footed other contenders who had criticised the delay but were not ready for polls and lacked time to campaign. While they refocused their criticisms on the constitutional void between the end of the presidential term in May and the elections in August,⁹⁸ the Supreme Court again backed Karzai staying on until the polls.⁹⁹

While the electoral calendar does indeed need revision, the controversy reflected the fractured political environment and the lack of an accepted arbiter of disputes rather than an attempt to settle the issue with finality. When constitutional provisions have to be violated for any reason, in the absence of a Loya Jirga, the executive should hold broad, in-depth consultation with the nation's elected representatives, allowing them to put it to a vote. In this instance, instead there were closed door, ad hoc consultations. Although the creation of any interim administration, one widely proposed solution, would have been highly contentious and divisive, the president's unwillingness to compromise and rejection of even the smallest concessions that would have loosened his hold on state power could undermine perceptions of the election's legitimacy.

The international community should have played a much more hands-on role in the early stages. Instead the United Nations stayed largely on the sidelines while the U.S., after the controversy reached fever pitch, erred by publicly backing the August date before the Supreme Court announced its decision, which served

for security reasons and recommended that election be postponed till the final months of summer or fall". Ibid, p. 7.

⁹⁷ "Statement of the Independent Election Commission regarding the determination of the date for holding the presidential and provincial council elections", 4 March 2009. It stated the decision was in line with the "climate, budgetary, security and operational challenges".

⁹⁸ "Presidential Decree on Upcoming Presidential, Wolesi Jirga, Provincial Councils, District and Municipalities Elections", undated, released 28 February 2009.

⁹⁹ The court argued: "As observed, based on the logic and spirit of law and the formulation of the phrases, these two paragraphs complement each other. It means that the presidential term expires following the completion of the elections process within 30-60 days before 1 *Jawza* of the fifth year, clearly indicating that the presidential elections must have been held and a new President must have been chosen before the expiration of the presidential term". Unofficial translation of the Supreme Court Letter Addressed to the Office of Administrative Affairs and the Council of Ministers Secretariat, 29 March 2009.

little immediate purpose other than appearing partisan in an Afghan game of brinkmanship.¹⁰⁰ Similarly, anonymous media interviews by Western diplomats stating that Karzai is the inevitable victor¹⁰¹ are extremely unhelpful and reinforce Afghan perceptions of interference by foreign hands. U.S. President Barack Obama has declared that the U.S. is not supporting any candidate¹⁰² with retired diplomat Timothy Carney in charge of coordinating U.S. electoral efforts.

B. VOTER REGISTRY AND POPULATION DATA

1. Past exercises

In the 2001 Bonn Agreement, the UN was requested to assist with conducting a census and establishing a voter registry, both of which it failed to deliver.¹⁰³ These processes were again subject to tight benchmarks in the 2006 Afghanistan Compact¹⁰⁴ and were similarly missed. A census provides crucial information needed for drawing up constituencies and ensuring equitable representation. A full census has yet to be held in Afghanistan, with the last partial exercise in 1979 disrupted by conflict. In June 2008, the cabinet indefinitely delayed the planned 2008 census because of security concerns.¹⁰⁵ However, political pressures presumably also lay behind the decision. Given disputes among ethnic groups and regions over the relative size of their communities, ambiguity suited many.

A robust voter registry is a vital tool to prevent fraud and for poll planning. The original 2004 voter registration exercise saw 10.6 million Afghans registered –

with an additional 740,000 out-of-country registrants (with different cards, not usable in Afghanistan) in Pakistan.¹⁰⁶ Out-of-country voting was also conducted in Iran using identity cards, but without prior registration. In the 2005 update, an additional 1.7 million voter cards were issued.¹⁰⁷ Neither exercise linked voters to specific districts or polling centres or provided voter lists. This made district elections – had the delineation of boundaries been agreed, another essential prerequisite – almost impossible. Preparations for polls were also greatly complicated because people could vote anywhere, making turnouts unpredictable. In the 2005 elections, 40 million ballot papers were printed for around 12 million registered voters (each voting in two elections), increasing the potential for fraud.

In September 2005, the European Union election observation mission report noted: “Afghanistan still has no accurate Final Voter List despite two elections. The 2005 update is likely to have led to an increase in multiple registrations”.¹⁰⁸ Two years later, in 2007, an IEC report noted: “The necessity for a detailed and accurate Voter Registry, allocating voters to specific polling stations, cannot be underestimated”.¹⁰⁹

Following the 2005 parliamentary poll, it was broadly agreed that the voter registry would be tied in with a civil registry, providing the population with national identification while gathering basic data; a 2009 deadline was set in the Afghanistan Compact.¹¹⁰ A pilot project commenced in April 2007 only for the cabinet to decide a few months later that the two processes should be separated.¹¹¹ In 2008, amid ongoing rivalry between Afghan ministries over control of the project and the data, with elections now looming, attempts at wider

¹⁰⁰“Statement on President Karzai’s Decree”, Robert Wood, Acting Department of State Spokesman, 28 February 2009.

¹⁰¹“If I was a betting man I would reckon he (Karzai) was going to win on the first round,” one western official told Reuters. Sayed Salahuddin and Peter Graff, “Forty vie to unseat Afghanistan’s Karzai, Reuters, 13 June 2009.

¹⁰²“Statement by President Barack Obama on the start of the Afghan election campaign”, 16 June 2009, www.whitehouse.gov

¹⁰³Bonn Agreement, Annex III “Request to the United Nations by the Participants at the UN Talks on Afghanistan”, December 2001. “The participants in the UN talks on Afghanistan hereby ... request the United Nations to conduct as soon as possible (i) a registration of voters in advance of the general elections that will be held upon the adoption of the new constitution by the constitutional Loya Jirga and (ii) a census of the population of Afghanistan”.

¹⁰⁴“A permanent civil and voter registry with a single national identity document will be established by end-2009”; “The census enumeration will be completed by end-2008 and the complete results published”. The Afghanistan Compact, January 2006.

¹⁰⁵Pia Heikkila, “Afghan census cancelled due to security fears”, *The Guardian*, 11 June 2008.

¹⁰⁶UNDP Voter Registry Project and 2004 Afghan Elections Project Annual Report, November 2003–December 2004, pp. 23–24. 590,000 of the registrants in Pakistan voted.

¹⁰⁷“Final Report: National Assembly and Provincial Council Elections 2005”, JEMB, December 2005, p. 5.

¹⁰⁸“Statement of Preliminary Findings and Conclusions”, European Union Election Observation Mission, 19 September 2005, p. 5.

¹⁰⁹“Independent Election Commission Strategy for Afghanistan National Development Strategy (Draft)”, Islamic Republic of Afghanistan, March 2007, p. 5.

¹¹⁰“A permanent civil and voter registry with a single national identity document will be established by end-2009”. Afghanistan Compact, January 2006.

¹¹¹In June 2007 the Cabinet passed a decision separating voter registration from civil registration. “Census and Elections: Update for JCMB VII”, Islamic Republic of Afghanistan, 29 January 2008, p. 2.

exercises were abandoned in favour of yet another voter registry update at a cost of around \$80 million.¹¹²

2. 2009 voter registry update

The 2009 voter registry update was conducted in four stages countrywide¹¹³ between October 2008 and February 2009. Another 4.4 million voter cards¹¹⁴ were issued to those supposedly not previously registered. In reality there was little, if any, protection against multiple registrations in this and the two previous exercises, with 17 million voter cards now in circulation. Given this, turnout should be measured in raw numbers rather than as a percentage of the inflated registry which could give an unfairly negative impression.

The 2009 data, which ties new registrants to polling centres, has however been kept separate from that of previous rounds. It will be used in the future as the basis of a new registry with biometric information including fingerprints and photographs (although women were exempted) undergoing scanning in Kabul to detect multiple registrations. The outcome of this exercise depends on the quality of the data and honest, dependable staff. Multiple interviewees expressed misgivings, claiming that the fingerprints often appeared little more than purple smudges and that complicit election staff had overlooked individuals using different fingers to produce multiple cards.

Lacking a census or basic population data, voter registration numbers are seen as a measure of a community's strength, to be potentially flexed in elections. Noting that individuals and communities believe the cards have future bargaining value, an official from Kandahar said: "If they have registered they will be of importance to some political candidate; if not then no one will even bother to offer them a ride if they are standing by the side of the road. They are of no importance".¹¹⁵

In some provinces, successive registration exercises saw so many cards distributed that the total is now

greater than estimated population, underscoring the crucial need for basic population data and reliable national identity systems. Over the three exercises Nuristan has registered 443,000 voters¹¹⁶ while the estimated population (including those too young to vote) is 130,000.¹¹⁷ Similarly Panjshir has nearly 190,000 registered voters while the entire population has been estimated at between 109,000¹¹⁸ and 137,000.¹¹⁹ Such discrepancies could be the result of inaccurate population estimates or people registering multiple times over the years but not actually planning on using all their different cards on election day. However it increases the potential for fraud and highlights the difficulty of planning without reliable data.

The scale of women's registration should be of particular concern since some of the most insecure, and traditionally conservative, provinces have seen improbably high levels of female registration. In Logar, for instance, more than twice the number of voter cards were issued to women as men (36,000 women to 14,000 men) in 2009, and the same was true of Nuristan (31,000 to 12,000). This is in stark contrast to far more liberal Kabul where the proportion of females registering in 2009 was less than half that of males (124,000 to 300,000). The practice, which may have started as "proxy voting" (men in traditional areas voting for the women in their family) has now expanded into large-scale fraud and is centred in the Pashtun-majority south east. In the 2009 exercise, the three south-eastern provinces of Paktia, Paktika and Khost saw 205,000 female registrations against 167,000 males. In the neighbouring four southern provinces (Kandahar, Uruzgan, Zabul and Helmand), where many of the same cultural norms apply, there were 196,000 women to 363,000 men.

Registration in Paktika province, which reported that women had cast 47 per cent of votes in the 2004 presidential elections, reveals the extent of past fraudulent practices. This is a province where only sixteen girls attend primary school for every 100 boys (against a national average of 56),¹²⁰ and where the lack of female

¹¹²"The Situation in Afghanistan and its Implications for International Peace and Security", op. cit., p. 3.

¹¹³Phase One: 6 October-4 November 2008 (fourteen provinces in the north, north east and centre); Phase Two: 5 November-5 December 2008 (ten provinces mainly in the north and north west as well as Herat, Paktia and Kabul); Phase Three: 13 December 2008-13 January 2009 (six provinces in the south east and Farah in the west); Phase Four: 20 January-19 February 2009 (four provinces in the south).

¹¹⁴"The Situation in Afghanistan and its Implications for International Peace and Security", op. cit., p. 3.

¹¹⁵Crisis Group interview, Kandahar government official, Kabul, 16 March 2009.

¹¹⁶All voter registration figures used here are provided by IEC's 2009 Voter Registration Data.

¹¹⁷The Central Statistics Office (CSO) "Estimated Population of Afghanistan 2008-2009", puts Nuristan's population at around 132,000 while preparatory work for the census also by the Central Statistics Office, "A Socio-Economic and Demographic Profile Household Listing 2003-2005", puts it at 131,000.

¹¹⁸"A Socio-Economic and Demographic Profile Household Listing 2003-2005", op. cit.

¹¹⁹"Estimated Population of Afghanistan 2008-2009", op. cit.

¹²⁰Afghanistan Human Development Report 2007, Center for Policy and Human Development, p. 164.

participation in public life has seen no female election staff and no female election observers thus far in 2009. In the 2005 parliamentary polls, 90,000 of the 166,000 new voter cards were issued in women's names with female turnout during that year's poll so unbelievably high that it has never been publicly released – the only province for which such a breakdown has not been provided. Despite this history, no additional action has been taken to tighten safeguards against this type of fraud, which requires the complicity of local election staff. In the 2009 voter update exercise, for instance, it was reported that 44,000 women had registered, just under the number of men at 45,000, in Paktika. The main domestic observer body, the Free and Fair Elections Foundation of Afghanistan (FEFA), reckoned the only female registration cards directly issued to women in 2009 were provided to those in hospital.¹²¹

Because security incidents were low during the 2009 voter registration process, it had some value in providing momentum to the electoral process. The expense of the updates, conducted in each case on an extraordinary basis rather than as part of an ongoing registration process, is however unsustainable and the technical faults glaring and repeated in three flawed exercises. There is an urgent need for a full-scale IEC and donor review following the 2009 polls on how best to proceed.

C. CANDIDATE NOMINATION

Constitutional candidate eligibility requirements state that the presidential and vice presidential candidates should be 40 years or over, should not hold dual nationality and should “not have been convicted of crimes against humanity, a criminal act or deprivation of civil rights by court”.¹²² Candidates for provincial councils must similarly have no criminal convictions.¹²³ While there is no set age for the provincial council, those who seek council seats in the Meshrano Jirga must be over 35.¹²⁴ Resignation from an extensive list of public positions – except for the president and parliamentarians – is required before nomination for any election.¹²⁵

The vetting of candidates, which proved so controversial for the 2005 National Assembly polls, has once again been subject to a tight timeline. Nominations took place between 25 April and 8 May with preliminary lists displayed to the public on 16 May with a five-day challenge period (later extended to May 23) and the ECC had until 8 June to adjudicate eligibility. Final candidate lists were published on 13 June – after an unexplained day's delay. Given the absence of a functional judicial system in recent decades, exclusions for criminal convictions are rare. Attention has rather focused on an Electoral Law provision excluding any individuals “who practically command or are members of unofficial military forces or armed groups”.¹²⁶

1. The contenders

1.1. Presidential elections

At the end of the candidate nomination period, 44 contenders – later reduced to 41 by the time the final list was announced – had put themselves forward in the 2009 presidential race in a contest that has focused almost exclusively on personalities rather than policies. Rather than seeking public consultation and grassroots support on potential candidates, the major political blocs resorted to closed-door negotiations; as one Kandahari trader put it: “all the campaigning is done behind bushes”.¹²⁷

Ramazan Bashardost, a fierce critic of the Karzai administration and the international community's reconstruction efforts, is one of few candidates focused on issues – albeit a single one. In the 2005 Wolesi Jirga poll, he gained one of the highest vote counts country-wide and from the legislature has continued populist denunciations of profligacy and waste. Bashardost has however failed to build a team or national organisation. Indeed the only major figure to announce he would be standing on a party platform was former finance minister Anwar ul-Haq Ahady, leader of the Pashtun-nationalist Afghan Millat party. He was criticised by his own party deputy and leadership rival,

¹²¹ FEFA report on voter registration, Third Phase, p. 3.

¹²² Article 62 of the constitution.

¹²³ Article 14 of the Electoral Law (2005) states that candidates for National Assembly, provincial council and district council polls must meet the provisions for National Assembly candidates under Article 85 of the constitution.

¹²⁴ Article 85 of the constitution.

¹²⁵ Electoral Law (2005), Article 15 demands that those holding the following positions must resign before filing for nomination: chief justice and members of the Supreme

Court and other judges, attorney general and public prosecutors, ministers and their deputies, governors and their deputies, and district administrators, mayors and *nahia* (municipal) administrators, members of the ministries of defence, interior and the General Directorate for National Security, general directors and directors of ministerial departments and government offices at the central and provincial level and electoral officials.

¹²⁶ Electoral Law (2005), Article 15.

¹²⁷ Crisis Group interview, community leader from Kandahar, Kabul, March 2009.

IDLG head Jelani Popal (who is seen as close to Karzai), for allegedly failing to obtain his party's assent, and later did not run, instead reportedly backing Karzai.¹²⁸

Nearly all candidates have declared themselves independents, only six standing for very small parties. These include Shahnawaz Tanai who was defence minister under PDPA president Dr Najibullah before fleeing after a failed coup and now leads Da Afghanistan Da Solay Ghorzang Gond; and Abdul Latif Pedram, who heads Congra-i Milli, a party of primarily non-Pashtun leftist intellectuals, who also stood in 2004 and took 1.4 per cent of the vote. In the interim he has had some legal difficulties after alleged involvement with Dostum in an attack on Turkman Mohammad Akbar Bai. Bai also stood – but was excluded in the vetting process – presumably not to win but for the same reason as Dostum and Hazara factional leader Mohaqqueq in 2005: to demonstrate strength within his ethnic bloc.

As widely predicted, the National Front failed to survive the announcement of a candidate. When former foreign minister and leading Northern Alliance personality Abdullah Abdullah was chosen in April, Mohammad Qasim Fahim left the alliance to back President Karzai, claiming lack of proper consultation. Dostum's Junbish also exited to form a coalition with Mohaqqueq's Hizb-e Wahdat. Both parties are now backing Karzai.¹²⁹ Abdullah, like other serious contenders, has failed to secure high-profile vice-presidential candidates but has ensured an ethnic mix, with royalist Hodayun Shah Asefi (a Pashtun who gained 0.3 per cent of the vote when standing in the 2004 presidential election) and Shia surgeon Cheragh Ali Cheragh on his ticket. Former World Bank official and finance minister Ashraf Ghani Ahmadzai's vice-presidential nominees are Kandahari landlord Mohammad Ayub Rafiqi and Hazara Mohammad Ali Nabizada. Ghani, a Ghilzai Pashtun who has spent much of recent decades in the West, has released an ambi-

tious twenty-year strategy as part of a slick campaign. Negotiations on an electoral alliance are ongoing between Abdullah and Ghani.¹³⁰

President Karzai has fallen back on the support of mujahidin factional leaders, selecting two as his vice-presidential nominees, which also has the advantage of dividing his National Front opposition. Karzai has retained Hazara factional leader Karim Khalili and is adding Mohammad Qasim Fahim to his vice-presidential ticket, a particularly controversial choice. The international community lobbied hard in 2004 to ensure Fahim was not on the slate.¹³¹ Overtures to Fahim appear to have included the appointment in May of an ally – previously removed as a police chief through interior ministry vetting – as governor of Parwan province. Karzai has also secured the endorsement of Barakzai strongman Gul Agha Sherzai, currently the governor of Jalalabad, who had publicly talked of standing as a presidential candidate in what appears to be a manoeuvre to obtain similar concessions.

Other less prominent Pashtun contenders include Nasrullah Baryalai Arsalayi, the brother of the slain eastern mujahidin factional leader Abdul Haq; former attorney general Abdul Jabar Sabit; Wolesi Jirga deputy chairman Mirwais Yasini; and senior minister

¹³⁰ Peter Graff, "Karzai opponent says in talks to field single ticket", Reuters, 17 May 2009.

¹³¹ "Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity", Human Rights Watch, 6 July 2005, states of the civil war period: "General Fahim was chief of the Afghan intelligence service and controlled several military posts in Kabul, and was one of the chief commanders under Massoud... Fahim controlled at least one of the military posts on Television Mountain throughout the period covered in this report, was involved in the planning of the Afshar campaign and took part in negotiations with Harakat commanders to gain their cooperation before the attack, and was directly involved in the Afshar attack" (p. 121). During the civil war, in February 1993, the Afshar campaign was a large-scale military effort by the Rabbani-led government, together with Ittihad troops, to capture the headquarters of Hizb-e Wahdat in the west of Kabul, having paid off a number of Harakat commanders. "There is credible and consistent evidence of widespread and systematic human rights abuses and violations of international humanitarian law during and after the Afshar operation, including intentional killing of civilians, beating of civilians, abductions based on ethnicity, looting and forced labour. The widespread and deliberate nature of these attacks suggests that some of the commanders involved in these abuses could be liable for crimes against humanity" (p. 74). Of Khalili, HRW says that he admitted taking Pashtun civilians prisoner and "more investigation is needed into Karim Khalili's involvement in military decision-making and his control over Wahdat forces" (pp. 61-62).

¹²⁸ Zubair Babkarkhel, "Ahadi vows support to Karzai in election", Pajhwok Afghan News (PAN), 23 May 2009.

¹²⁹ Sayed Salahudin, "Key opposition groups to support Karzai in Afghan poll", Reuters, 31 May 2009. Soon after this support was announced the presidential press office issued a clarification that Dostum, who had been in Turkey shortly after Akbar Bai was attacked in 2008 in what was widely believed to be a form of exile, "had all the rights of citizenship and can travel inside and outside the country like any other citizen". Further he retained "the rights and privileges of his position" as chief of staff of the commander-in-chief of the armed forces, a largely ceremonial position he was believed to have been suspended from. Press release from the office of the spokesman to the president, 19 June 2009.

Hedayatullah Amin Arsala, who announced a female vice-presidential nominee, Kabul MP Shenkai Zahin Karokhail, although she later stepped down. Initially, there were seven female vice-presidential nominees along with two presidential nominees: Shahla Atta, another MP for Kabul (although originally from Kandahar) and Frozan Fana, the widow of the aviation minister assassinated in 2003. Former Taliban commander Abdul Salaam Rocketi, who topped the Wolesi Jirga polls in Zabul in 2005, also put his name forward.

1.2. Provincial council polls

Countrywide 3,324 candidates nominated themselves for the 420 seats in 34 provincial councils.¹³² This includes over 500 candidates for the 29 seats on the Kabul provincial council, double the number of candidates from 2005. Across Afghanistan there was an increase of around 130 candidates on preliminary nominations in 2005, but further analysis showed stark regional differences. The northern region had 65 more candidate nominations, the north east 204 and the central highlands 26. In the less secure areas, numbers were down, with 220 fewer candidates in the south east than in 2005, 157 fewer in the south, 95 fewer in the east, and seventeen fewer in the west.

The number of female candidates increased to 342 from 286 in 2005. Of the quarter of council seats reserved for women, only two lack sufficient candidates to fill them (one each in Uruzgan and Kandahar) compared to five in 2005.¹³³ Reflecting the general trend, however, while there was an overall increase in female candidates, the numbers have decreased in ten provinces, mainly in insurgency-hit areas. This reflects the impact of threats against women in public life in these areas. Many are moving or withdrawing from the public eye; for example, in Gardez at least one of the three female councillors is no longer based in the province.¹³⁴ The overall increase in female candidates does not necessarily indicate progress in women's empowerment. It may simply reflect a better understanding of the system, with local power-holders hav-

ing seen the advantage of women's seats, which can be won with fewer votes.¹³⁵

Fewer candidates in some areas may result from better organisation and not just intimidation. In Kandahar, where there are only 3.9 male contenders for each of the eleven general seats (not including the four reserved women's seats), there has been a lot of behind-the-scenes work to reduce the number of candidates before election day. Overall, however, the effect of the insecurity on political expression appears stark, with over fifteen male candidates for every general seat in Bamiyan compared to fewer than five per seat in insecure areas such as Uruzgan, Farah, Paktia and Zabul.

The vast majority of candidates – 88 per cent – put themselves forward as independents, with five provinces having no official party candidates at all.¹³⁶ A total of 36 parties ran official candidates but twenty of those have only one or two candidates – in several cases only women. Indeed, one fifth of women candidates were officially affiliated with political parties. This greater proportion suggests that women seek the protection and campaign resources a party can offer and/or the groupings see value in female seats which may require far fewer votes to win. Of the new “democratic” parties, Hizb-e Jamhuri Khawahani Afghanistan, led by Sebghatullah Sanjar who heads a policy unit in the presidential palace, has the most (thirteen) officially affiliated candidates.

Most political party activity is in the north, with the five northern provinces having 143 official party candidates compared to nine in the five southern provinces.¹³⁷ Junbish had the largest number, with 89 candidates spread across ten northern, north-eastern and western provinces, followed by Mohaqqueq's Hizb-e Wahdat with 51 candidates across eleven provinces. Hizb-e Islami Afghanistan, which managed to register as an official political party after the 2005 polls, stood in the largest number of provinces, with 40 candidates in fourteen provinces – the highest number (ten) in Nangarhar, its eastern heartland. A party representative there said they had divided the province into ten geographic areas and selected a candidate for each. Jamiat, probably the least organised of the former *tanzims*, showed a complete lack of discipline in Balkh, with 28 people on the party ticket when there are only nineteen provincial council seats. Junbish, generally highly organ-

¹³² A handcount of the preliminary lists obtained slightly different results with 3,332 candidates of which 344 were women. All the figures used – except the two totals – are from Crisis Group's count. The variations are small and general patterns should be clear. These were the initial nominations and as will be discussed further below some candidates later dropped out or were excluded through the vetting process.

¹³³ Nangarhar (one), Zabul (one) and Uruzgan (three).

¹³⁴ Crisis Group interviews, provincial councillors, Gardez, 1 April 2009.

¹³⁵ Crisis Group interview, Western diplomat involved with southern Afghanistan, Kabul, 14 May 2009.

¹³⁶ Panjshir, Khost, Nuristan, Zabul and Uruzgan.

¹³⁷ The five northern provinces are Samangan, Balkh, Jawzjan, Sar-i Pul and Faryab; the five southern ones are Nimroz, Helmand, Kandahar, Zabul and Uruzgan.

ised, similarly had 23 candidates for fifteen seats in Faryab, sixteen for fifteen seats in Kunduz and ten for nine seats in Sar-i Pul reflecting internal party divisions. A local Junbish representative emphasised they were working to reduce the numbers.¹³⁸

Some parties are however showing they learnt from previous failures. In 2005 Afghan Millat stood 31 candidates for the Nangarhar provincial council in 2005, dividing the vote so far it ended up with no elected representatives. This time it is putting up four men and one woman in Nangarhar (twelve nationwide) as official candidates and is seeking to apportion support by getting supporters to vote for them according to district.¹³⁹ Jamiat, which has 47 affiliated candidates nationwide, has none at all in Herat or the west despite Ismail Khan's continued influence, indicating, as in 2005, the presence of "unofficial" candidates, affiliated with political parties but standing as independents to escape party discipline, to avoid the stigma attached to parties because of their role in the civil war and under Soviet-backed regimes, or because there is little value in party affiliation in the current electoral system.

In some provinces such as Bamiyan, all the incumbents are running again while in others such as Baghlan only one third are. Several of those who are standing down spoke of running for the Wolesi Jirga in 2010 instead. Indeed, the Meshrano Jirga seats from the provincial councils may also be more contested, given the lack of authority of provincial councils and worsening security in some provinces.

2. Vetting

Candidates must sign oaths that they meet eligibility requirements. Other than that, the IEC absolved itself of monitoring compliance beyond the purely procedural – such as checking that the required lists of supporters were in order.¹⁴⁰ This followed months of work to strengthen exclusions for links to armed groups, including the interior ministry sending letters in early 2009 to around 100 people it understood might stand for

provincial councils, reminding them of disarmament requirements.¹⁴¹ In April, however, the IEC decided against pre-emptive checking of nominees' names against lists of armed groups before the production of the preliminary candidate lists. It was argued that the IEC was "not a security institution and does not have the capacity to determine [such issues]".¹⁴² Not one candidate was removed, even on procedural grounds, before the release of the preliminary lists, leaving eligibility solely to be determined by the ECC.¹⁴³

In the few days allowed for public submissions, the ECC received 302 challenges – around 50 about presidential and vice-presidential candidates and the rest about provincial council nominees from 31 provinces.¹⁴⁴ This was a substantial drop on the 1,144 challenges received in 2005 although that involved thousands of Wolesi Jirga candidates as well.¹⁴⁵ On 9 June the ECC announced that they had excluded three – minor – presidential/vice-presidential candidates (Akbar Bai, Sayed Jafar Hofiani and Ziauddin) and 54 provincial council candidates. Of those on presidential slates, there was exclusion for the first time on the grounds of a candidate having a criminal conviction – a foreign one. Another was excluded for holding dual citizenship.

All provincial council candidate exclusions were for links to armed groups.¹⁴⁶ Determining who is involved in an armed group was left to the Disarmament and Reintegration Commission (DRC), which consists of the ministries of interior and defence, the National Security Directorate, UNAMA and ISAF. The DRC was supposed to have revised a list of illegal armed groups, produced under the Disbandment of Illegal Armed Groups (DIAG) program, in 2008 and 2009.¹⁴⁷ Efforts had however been continually

¹³⁸ Crisis Group telephone interview, Mohammad Asif Payman, Junbish official in Faryab, 24 May 2009.

¹³⁹ Crisis Group interview, Mir Wali Khan, Nangarhar Afghan Millat official, Jalalabad, 10 February 2009; telephone interview, 24 May 2009.

¹⁴⁰ Article 35 of the Electoral Law (2005). A candidate for the presidential election must deposit 50,000 afghanis (about \$1000) and the names of 10,000 supporters. The money is returned if the candidate receives 15 per cent of the total valid votes. Provincial council candidates deposit 4,000 afghanis (about \$80) and 200 supporters' names, and receive the money back if they secure 2 per cent of the vote.

¹⁴¹ Crisis Group interview, Western security official, Kabul, 13 May 2009.

¹⁴² Crisis Group interview, Zekria Barakzai, deputy chief electoral officer, 15 May 2009.

¹⁴³ Before the final lists one more presidential and 90 provincial council candidates (including 13 females) had voluntarily withdrawn their names. "Final list for presidential and provincial council election candidates", IEC press release, 13 June 2009.

¹⁴⁴ ECC press conference, Kabul, 9 June 2009.

¹⁴⁵ ECC, Final Report, March 2006, p. 19.

¹⁴⁶ ECC press conference, Kabul, 9 June 2009.

¹⁴⁷ The "remapping" exercise was initiated by vice-presidential decree in September 2008. The Disarmament, Demobilisation and Reintegration (DDR) program, which was officially completed in 2005, focused on units on the defence ministry payroll. The follow-on Disbandment of Illegal Armed Groups (DIAG) program is today largely moribund. See Crisis Group Asia Briefing N°35, *Afghani-*

delayed, with it being unclear how much effort and time the security institutions put into validating the information on illegal armed groups gathered initially from provincial governors. The quality of the data is uncertain in what was a very opaque process subject to political pressures. The wider disarmament process needs to be strengthened, far greater consultation must be undertaken, and data should be gathered in a more open and robust manner. Information must be improved before vetting for the 2010 polls, with the international military forces and national contingents demonstrating far greater commitment to the process.

By the time the final candidate lists were declared, another presidential candidate and 90 provincial council candidates (including thirteen women) had voluntarily withdrawn their names.¹⁴⁸

V. STRENGTHENING ELECTORAL CREDIBILITY

These polls will not be – and were never going to be – perfect. Yet it is disappointing that more was not done in the interim years. Any move to set the bar too low in order to simply get the process done must still be resisted. If standards slide too far in the face of expediency, the results will have no legitimacy at all, fueling tensions nationwide and undermining public confidence in the new systems. Every attempt must be made to ensure the presidential and provincial council polls this August and the 2010 parliamentary and district elections are as free and fair as possible and that, looking ahead, electoral processes and institutions are strengthened, embedding norms and practices for longer-term sustainability.

A. LEVELLING THE PLAYING FIELD

The highly centralised constitutional set-up, exclusion of political parties from the electoral framework, and the failure to create many of the mandated representative bodies adds up to a system in which it is exceedingly difficult to defeat a presidential incumbent. While most others holding a position of power must resign to run for office, the president remains in place with powerful instruments at his disposal including the appointment of ministers, provincial and district governors and security personnel. These power-holders thus rely on presidential patronage and lack independent constituencies, both stunting the development of potential rivals and creating a powerful national network of dependents. Parliamentarians and provincial council members can also remain in office, but with far less authority and fewer resources at their disposal, the advantages of incumbency are less significant.

1. State resources

According to a state monitoring body, during the 2004 election campaign Karzai received 75 per cent of state television and radio coverage and launched donor-funded reconstruction projects throughout the country – travelling in U.S. helicopters – right up to election day.¹⁴⁹ This time, his rivals did not want him to remain

stan: *Getting Disarmament Back On Track*, 23 February 2005 and Asia Report N°65, *Disarmament and Reintegration in Afghanistan*, 30 September 2003.

¹⁴⁸“Final list for presidential and provincial council election candidates”, IEC press release, 13 June 2009. Further there were 510 corrections made to candidates’ names, symbols or party affiliation.

¹⁴⁹“‘Heavy poll bias’ towards Karzai”, BBC News, 4 October 2004. This was redressed a little when political advertising slots – available to all candidates – were taken into account, but Karzai still received three times as much coverage as any other candidate. See also “UNAMA Joint Verification of Political Rights Third Report”, 30 September 2004.

in power past the end of his term on 21 May partly because of the advantages of incumbency.

The weakness of political parties and their organising capacity makes it even more likely that state institutions, influence and resources will be mobilised during the election campaigns. IEC regulations require that: “No government department can contribute to the political campaign of a candidate or provide him/her with public resources unless equal conditions and facilities are considered for all candidates”.¹⁵⁰ It also puts the onus on candidates: “No person can use public resources for electoral campaigning unless similar conditions are provided to all candidates by the government”.¹⁵¹ But there is no specific penalty. A presidential decree also calls on officials to refrain from “direct or indirect influence” but likewise does not specify a penalty beyond stating that those who flout such instructions “shall be prosecuted according to the law”.¹⁵²

The interior minister has stated that he has already issued such a decree, with 25 police officers receiving warnings by April.¹⁵³ Certainly far quicker action is required than prosecutions. Ministers must be seen to react quickly when bias among their staff or misuse of resources is alleged. A number of ministers and governors are also perceived as acting in an openly partisan way and the IEC needs to speak up strongly on this – with the ECC called in if necessary. Since interference and pressure on officials is to be expected, ensuring a transparent and accountable appointments process for government positions is all the more important over the electoral cycle. Given the significant funding provided by foreign donors, the international community needs to be wary of actions that will raise perceptions of partisanship both in Kabul and out in the regions where national troop contingents are present. Admittedly, development initiatives cannot stop for months during the elections, and providing equal facilities to candidates, such as access to air transport, will be difficult with such large ballots. However, every effort should be made to ensure that foreign funds and resources are not used in a manner which will be perceived as partisan.

Although abuse of state resources is less likely to affect the provincial council and Wolesi Jirga elections, which have few authorities and resources, the Wolesi Jirga should issue clear guidelines, early in its 2010 term, on the use of offices, housing and official vehicles, as well as barring interference with the work of government or electoral officials.

2. Campaign finance

The Electoral Law bans “offering or receiving a payment or other benefit for the purpose of influencing the electoral process”, “use of funds originating from illegal activities” and “use of foreign funds for the purpose of influencing the electoral process”.¹⁵⁴ The Political Party Law similarly demands that “funds and expenses ... shall be public and transparent”¹⁵⁵ with individual donations limited to 2 million Afghanis (\$400,000) a year.¹⁵⁶ In 2005, regulations barred Wolesi Jirga candidates from spending over \$15,000 on their campaigns and provincial council candidates over \$7,500. But there was no specific mechanism to oversee such requirements, and the JEMB reportedly failed to examine the financial records of candidates.¹⁵⁷ In a country awash with narcotics funding and where neighbouring countries seek to exert their influence, oversight is essential.

While no spending limits have yet been declared, there do appear to be more specific financial requirements, at least for presidential aspirants, than previously. New IEC regulations demand candidates declare assets worth more than \$20,000¹⁵⁸ and maintain a separate bank account for campaign finances.¹⁵⁹ Logs must be kept with the names of donors and more specific records of all donations and payouts of over \$100.¹⁶⁰ All such records must then be submitted to the IEC within a month of election day¹⁶¹ – which will then be published. The effectiveness of such rules lies in their enforcement, and sanctions are weak. Non-submission or incomplete financial reporting is declared an “electoral offence” but there is no punishment beyond a ban on standing for future elections until such time as

¹⁵⁰ Regulation of Political Campaign Finance Disclosure, IEC, 25 March 2009, Article 3.

¹⁵¹ *Ibid.*

¹⁵² “Non-Interference in the Election Affairs of the Year 2009”, presidential decree, 21 May 2009. It also requests “the UN representative office, other organs under its umbrella and the international community ... to refrain from any interference which may hurt their impartialness prior to and during the vote”.

¹⁵³ 11th JCMB, Summary of Proceedings, 19 April 2009, p. 4.

¹⁵⁴ Article 53 of the Electoral Law (2005).

¹⁵⁵ Article 14 of the Political Parties Law (2005).

¹⁵⁶ Article 15 of the Political Parties Law (2005).

¹⁵⁷ David Ennis, “Analysis of the Electoral Legal Framework of Afghanistan”, IFES, 28 February 2006.

¹⁵⁸ Regulation of Political Campaign Finance Disclosure, IEC, 25 March 2009, Article 2.

¹⁵⁹ *Ibid.*, Article 6.

¹⁶⁰ *Ibid.*, Article 4.

¹⁶¹ *Ibid.*, Article 8 and 10.

records are supplied.¹⁶² The IEC's ability to oversee such measures is also uncertain.

There has been little success to date on imposing financial disclosure requirements on senior government officials.¹⁶³ The constitution requires that the president, vice presidents, ministers, Supreme Court justices and the attorney general have their personal wealth "registered, reviewed and published" before and after their term;¹⁶⁴ a 2004 presidential decree expanded the number of posts even further, although representative bodies are not included.¹⁶⁵ Enforcement has been patchy. President Karzai publicly declared his assets – or rather lack of them¹⁶⁶ – but others do not appear to have done so and the institutions to receive or check the submissions are weak and roles not properly clarified.

With income tax requirements in Afghanistan since 2005, candidates should be asked to submit tax returns in 2010. Public officials and those running for public position should certainly be expected to prove they are complying. Such declarations are useful in determining illegal income.

3. Media

The media is essential to reach potential voters, as Afghanistan is largely rural with poor transport infrastructure and security concerns make physical cam-

paigning difficult. The media has flourished in recent years but is often highly polarised with many newspaper and television channels associated with factions or powerful individuals. The national broadcaster, Radio Television Afghanistan (RTA), despite ongoing efforts to ensure greater independence, has remained a traditional state broadcaster with the minister of information and culture closely overseeing everyday operations. President Karzai refused to sign the new Media Law passed by the National Assembly in 2008 which, among other things, sought to transform RTA into a public broadcaster; currently, as a state broadcaster, it is widely perceived to be a tool of the government. The ambiguity over which law is currently in force has been a source of tension between the executive and legislature.

The Electoral Law directs that the mass media "publish and disseminate the platforms, views and goals of the candidates in a fair and unbiased manner".¹⁶⁷ However, IEC regulations are weak on specifics, stating that private media shall "endeavour to inform and educate the public on matters relevant to the electoral process, and shall endeavour to cooperate with the [Independent Election] Commission and Media Commission to inform impartially the largest number of citizens".¹⁶⁸ The sponsored advertising program, in which candidates were given television or radio slots on a selection of public and private channels, was seen as one of the great successes of the 2005 polls. This time however there will only be provisions for state-funded access to media for presidential candidates – including the broadcast of a number of presidential roundtables – with a previous bar on paid advertisements removed.

A temporary five-person Media Commission is established during each election period.¹⁶⁹ IEC regulations give it a fairly narrow role in "monitoring the coverage", "reviewing complaints" and "providing the [Independent Election] Commission with information and reports".¹⁷⁰ There is no provision for enforcement. Indeed, the electoral media commission is directed to refer any alleged offences to the permanent media commission of the ministry of information and culture,¹⁷¹ which

¹⁶² Ibid, Article 11.

¹⁶³ For more detailed analysis see "The Transparency of Political Wealth", FEFA, March 2008.

¹⁶⁴ Article 154 of the constitution.

¹⁶⁵ "This extended such provisions to: "Members of the cabinet, chief justice and members of the Supreme Court and other judges, Attorney General and deputies, advisor to Ministries, Ambassadors, directors and members of the Independent Commissions, deputy ministers, Commanders of the military and independent departments, head of the military forces departments, heads of the police, national and border security, provincial governors, district governors and the directors of the civil service departments". It demanded that they: "within two weeks of the enforcement of this decree shall report the complete information on the specified forms regarding their income, mobile and non-mobile properties and assets, business activities and loans for him/herself, spouse, non-adult children to the president's office". Presidential Decree (1) 9 December 2004, as published in "The Transparency of Political Wealth", op. cit., pp. 43- 47.

¹⁶⁶ Karzai certified that he had deposited around \$10,000 in a German bank account during the years of war with no debts, and that he did not own a house, car or land. His wife's declared assets were \$10,220 worth of jewellery. "Karzai declares assets to offset corruption smear", Reuters, 26 March 2009.

¹⁶⁷ Electoral Law (2005), Article 50.

¹⁶⁸ Article 5, "Media Commission Establishment and Mass Media Activity Regulation", Independent Election Commission, 2009.

¹⁶⁹ The Media Commission is to be established at least 60 days before the polls. Electoral Law (2005), Article 51.

¹⁷⁰ Article 4, "Media Commission Establishment and Mass Media Activity Regulation", op. cit.

¹⁷¹ Article 4, "Media Commission Establishment and Mass Media Activity Regulation", op. cit.

includes the minister himself. This is problematic as many of the offences in the last election related to the 48-hour silence period just before the poll and demanded immediate action, not referral. More broadly, a government-appointed commission is not an appropriate arbitrator. Rather, the electoral media commission, appointed by the IEC, should have powers of sanction, while RTA and private channels should be closely scrutinised for bias.

B. SECURING THE VOTE

Elections not only reflect the state of security but can also affect it, adding to instability if perceived as unfair or helping stabilise a polity if people's voices are heard. The UN has called on members of the armed opposition to participate in the elections.¹⁷² While there is value in reaching out to disaffected communities, particularly in local elections, to ensure more equitable representation, seeking to draw in the Taliban itself at this stage is far more problematic, and indeed naïve. Given that the strategic momentum is currently felt to lie with the insurgents, they have demonstrated little interest in participating. A careful watch must also be kept during the election on any collusion – which has been fiercely denied – between the registered political party Hizb-e Islami (Afghanistan)¹⁷³ and the armed group led by Gulbuddin Hekmatyar.¹⁷⁴

¹⁷² The UN Special Representative of the Secretary-General (SRSG) Kai Eide was reported to have said: "Call it reconciliation, or the peace process, whatever you want, but I believe that the opposition should know that those who want to take part in the election and respect the constitution should have an option to do that". Jon Boone, "Afghanistan UN chief urges Taliban to contest presidential poll", *The Guardian*, 3 May 2009.

¹⁷³ It gained registration only after the 2005 election. It claims to have up to 40 members – all represented as individuals – in the Wolesi Jirga. See Crisis Group Report, *Afghanistan's New Legislature: Making Democracy Work*, op. cit., p. 8.

¹⁷⁴ Hizb-e Islami (Afghanistan) leader Abdul Hadi Arghandwal has been at pains to emphasise that ties have been broken: "The party has no splinters and has no problems. Members of the party are those who were in the party in the past too. We have not had any relations with the esteemed Hekmatyar after he was expelled from Iran and we have no links with him". "Afghan faction to make alliance with like-minded groups in coming election", Tolo TV, 10 July 2008, translation by BBC Monitoring. Hekmatyar in turn states: "[T]hey are neither Hizb-e Islami representatives nor can they speak on behalf of the party. The party believes in jihad against the occupiers". www.shahadatnews.com, 3 August 2008. There remains however great respect for Hekmatyar, with one Hizb-e Islami (Afghanistan) organiser in the north describing them as one "family" currently go-

In terms of armed intimidation, it is not just the insurgents who are feared. One political party activist stressed: "we are hostages because of the lack of disarmament".¹⁷⁵ Although the 2008-2009 voter registry update saw fewer security incidents than had been widely predicted, registration centres were still unable to open in eight districts – five in Helmand, two in Ghazni and one in Wardak¹⁷⁶ – and election staff have been threatened and kidnapped;¹⁷⁷ female workers, in particular, have been intimidated, making hiring difficult. Violent incidents included a convoy of election materials attacked in Wardak,¹⁷⁸ and attacks on people found with voter cards at Taliban checkpoints. Two provincial council candidates were murdered in May, one in Ghazni and one in Khost, and a number of police have been killed near voter registration centres, although they are an ongoing target for insurgent attacks. It is difficult to untangle the exact nature of individual incidents, whether they are criminal, factional or insurgent in nature. But there has, as yet, not been an all-out systematic assault on the electoral process.

Possible reasons have been widely debated. Some point to registration being done only in district centres, the most protected places in provinces, while polling is to take place in 7,000 polling centres down to village level. Others claim that insurgents themselves see the voter card as a useful ID.¹⁷⁹ Yet others believe that individual commanders may seek to influence the electoral process – particularly in local elections. One representative of a small "democratic" party spoke of travelling to Pakistan to talk with Taliban and Hizb-e Islami commanders to convince them to allow him to campaign, describing this as: "using undemocratic means to get democratic power".¹⁸⁰

Public statements by the insurgents have been restrained – as they tend to be on events and issues to do with

ing through some internal squabbles. Crisis Group interview, Hizb-e Islami (Afghanistan) official, Mazar-e Sharif, 2 February 2009.

¹⁷⁵ Crisis Group interview, leader of small democratic party, Kabul, 27 January 2009.

¹⁷⁶ Crisis Group interview, IEC deputy chief electoral officer Zekria Barakzai, 14 May 2009.

¹⁷⁷ For instance in Farah and Paktika election staff were kidnapped and then later released. FEFA report on voter registration, Third Phase, p. 5.

¹⁷⁸ ELECT Weekly Electoral Report, no. 27, 3-10 November 2008, p. 7.

¹⁷⁹ Jessica Leeder, "Taliban using voter cards as 'visas'", *Globe and Mail*, 13 May 2009.

¹⁸⁰ Crisis Group interview, Kabul, 19 January 2009.

civilians, whatever the reality of their actions.¹⁸¹ Taliban leader Mullah Mohammad Omar called for a boycott, arguing: “in the name of elections, selection is carried out in Washington. The figureheads are not the outcome of your votes but rather selected at the discretion of those sitting in Washington. Do not expect these figureheads to be able to assist you – though you may be bombed a myriad of times”.¹⁸² Other statements have similarly focused on undermining perceptions of the process and pointing out “foreign influence” rather than bloodthirsty threats. A May 2009 release on the Taliban website urged people to: “avoid taking part because this is just a game by the occupiers who want to show [an election] to the world”.¹⁸³ Locally, more threatening material has been found. A night letter distributed widely in Takhar province in the name of the unknown “Secret Army of the Mujahidin of the North” demanded that people not participate: “otherwise the mujahidin will prosecute and behead you with the sword of truth and consign you permanently to the pit of hell”.¹⁸⁴ Little is known of the origins of such groups.

ISAF has once again offered in extremis support but aims to keep in the background.¹⁸⁵ The promised 21,000 additional U.S. troops are supposed to be in place before the election – their impending arrival one of the reasons for the poll delay. Thousands more temporary troops have been pledged by other allies for the election period, although it is unclear whether they will stay past 2009.¹⁸⁶ The ANP was to guard the polling stations with ANA meant to form a second perimeter of defence, but given the shortage of police there will probably be a mixture of the two in the least secure areas. Indeed the process has highlighted the

lack of police on the ground.¹⁸⁷ During voter registration in Kandahar, for example, twelve ANP were meant to be at each centre when in reality there were only two or three.¹⁸⁸

Polling centres will be even more spread out; in Paktia province, for example, there are estimates of only about 30 police in some districts.¹⁸⁹ This has increased pressure to bolster police numbers with the interior minister proposing to induct an additional 4,800 police in Kabul and another 10,000 nationwide, to receive only three weeks’ training before the August elections – and the balance of instruction later.¹⁹⁰ These elections must feed into wider security sector reform, not undermine it. If police are quickly hired now, there needs to be a clear schedule to ensure they receive full training as soon as possible after these polls – certainly before the 2010 elections – and that there are sufficient funds to retain them.

Security efforts on the election days should not solely focus on the south and other insurgency-hit areas. With the large number of candidates and parties, some northern provinces are more likely to see public order problems. While considerable planning has taken place, there is still a need for much greater urgency.

C. ENSURING ROBUST PROCESSES

An electoral process is only as good as the environment it takes place within and the electoral bodies driving and safeguarding it. A fair campaign period, the conduct on voting day itself, and the count and certification of results will determine the legitimacy of these elections. These need to be of a technically high standard, administered fairly, with robust oversight and impartial adjudicators, if public confidence is to be upheld. A system with thousands of individual candidates and limited local literacy and numerical capacity make this process all the more complicated. Ongoing training initiatives need to be implemented and maintained, with a substantial core of electoral staff nationwide. In the current round of elections, it seems likely that the UN will have to step up its support, instead of the initially envisaged hands-off approach.

¹⁸¹ See Crisis Group Report, *Taliban Propaganda: Winning the War of Words?*, op. cit.

¹⁸² “Message of the Esteemed Amir ul-Momineen Mullah Mohammad Omar Mujahid, on the eve of Eid ul-Adha”, Al Emarah website, 8 December 2008.

¹⁸³ “Press statement of the head of the political commission Mullah Abdul Latif Mansoor”, Al Emarah website, 5 May 2009.

¹⁸⁴ “Warning!”, night letter distributed in several districts of Takhar, April 2009.

¹⁸⁵ Renewing ISAF’s mandate, UNSC Resolution 1833, 22 September 2008, noted: “the leading role that the Afghan Authorities will play for the organisation of the next presidential elections with the assistance of the United Nations, and stressing the importance of the assistance to be provided to the Afghan Authorities by ISAF in ensuring a secure environment conducive to the elections”.

¹⁸⁶ Crisis Group telephone interview, NATO official, Brussels, 19 June 2009.

¹⁸⁷ An average of eight police per polling centre would mean 56,000 officers – a number few believe exist – before any of their other work is even taken into account.

¹⁸⁸ Crisis Group interview, security official, Kandahar, 18 March 2009.

¹⁸⁹ Crisis Group interview, security officials, Gardez, 4 April 2009.

¹⁹⁰ 11th JCMB, Summary of Proceedings, 19 April 2009, pp. 3-4.

1. Impartial institutions

The IEC sets the tone and must act impartially – and be seen to act impartially – with the IEC chairman, and other staff, making no public statements other than on technical issues. Before the 2010 poll, the next president should ensure that the Wolesi Jirga can approve election commissioners. The two most widespread kinds of fraud in 2005 were ballot stuffing and fraud during the counting process, both requiring complicity from electoral staff. The IEC must demonstrate that it is ready to take action against staff where there are problems. So far, little result has been seen after allegations of conflicts of interest or allegations of partiality.¹⁹¹ If the IEC fails to act, there must be a clear and well-publicised right of appeal to the ECC. Training on election day procedures must also be rigorous to prevent the confusion that occurred previously over the application of ink to voters' fingers. Staff also need to be familiarised with the new, more complex counting procedures.

Vote counting at large centres in the provincial capitals proved problematic in 2005, with weeks of delays and clear cases of fraud. The National Assembly has sought to transfer counting to district level in the current draft of the electoral law. In its own regulation, the IEC has however decided to conduct the count at the polling centres,¹⁹² which would appear most appropriate. The potential for "booth capturing" – all the centre's staff either intimidated or conspiring to stuff ballots and falsify the count – and intimidation are outweighed by the speed and transparency of results, as well as being a check against wide-scale fraud by one group or candidate. There should be extensive checks on every part of this process, from the count itself, to the transportation of ballots, to the tabulation of results. Results must be clearly posted at the polling centres and provided to candidate agents before transport. Observers also need to be allowed to travel with ballots to help guard against any changes between the polling centres and the IEC provincial and central facilities.

¹⁹¹ FEFA, for instance, alleged that the head of a voter registration centre in Maimana was the chairperson of the women's affairs section of a political party and that a senior election official in Paktia was the brother of a party representative (Second Phase report, pp. 2-3). In Nangarhar, it alleged that a parliamentarian influenced the hiring and firing of election officials. Third Phase report, op. cit., p. 3.

¹⁹² "Regulation on Counting", Independent Election Commission, undated 2009.

2. Complaints

In 2005, the ECC handled more than 5,423 complaints with 37 resulting in candidate disqualification.¹⁹³ The vast majority did not relate to electoral offences or were inadequately documented, and thus dismissed. This time there is a need for large-scale public outreach to explain the limitations of the complaints system, combined with training for legal unions, human rights and other civil society organisations, political parties and candidates to ensure that complaints filed are appropriate and well-documented. Going forward, there is a need for wide buy-in on the future scope and shape of the electoral complaints process, and adequate preparations and funds allocated for the 2010 elections.

3. Observation and monitoring

In 2005, 240,000 observers, political party and candidate agents and media representatives were accredited.¹⁹⁴ Even at that time the movement of international observers – the largest number from the European Union – was severely restricted by security concerns. Given the rising security threat, delegations are likely to be smaller and even more limited in areas to which they can travel during this round of elections. Despite these limitations, they can still be useful in observing the tabulation and auditing processes to better secure the count at levels where there can be wide-scale fraud.

The vast majority of those accredited last time were candidate and political party agents,¹⁹⁵ and this is likely to be the case again. These agents played a valuable oversight role in 2005 but, given some complaints of intimidation, at times a result of a misunderstanding of the procedures, efforts to ensure agents' understanding of the process are a priority. Candidates must also be warned that they will be held accountable for their agents' behaviour. Training on election processes – particularly on the correct voting and counting procedures – is supposed to be part of the

¹⁹³ Of these 23 were for links to illegal armed groups, eleven for holding government office and three for violation of electoral law or codes of conduct. Final report, Electoral Complaints Commission, March 2006, p. 20.

¹⁹⁴ In 2005 the JEMB registered around 10,600 domestic observers, 780 international observers, 32,000 political party agents, 198,000 candidate agents, 1,300 media. External relations section, Independent Election Commission website, www.iec.org.af.

¹⁹⁵ "Agent: a person appointed to represent a political party or candidate at an election", Article 1, "Regulation on accreditation of observers, reporters and agents of political parties and independent candidates", Independent Election Commission, undated.

accreditation process although it is unclear how far this will impact elections at the village level.

The Free and Fair Election Foundation of Afghanistan (FEFA), a network of civil society organisations nationwide, is the major local observation organisation. Its observers also face security constraints – for instance, they have been unable to travel with mobile voter registry teams.¹⁹⁶ In some areas such as Paktika, FEFA has not been able to hire female observers, which is especially problematic as female booths are separate and likely locations of fraud. Finances have also proved difficult with the first tranche of money from ELECT not arriving until after the first phase of voter registration. During this important part of the process FEFA had only one observer in Ghazni.¹⁹⁷ Altogether it mobilised some 780 observers during voter registration with plans for 7,000 during the election itself.¹⁹⁸

There have also been valid complaints about the technical deficiencies of FEFA's reporting, with a lack of reliable hard data about the scale of electoral fraud and the likely impact on the overall result. Far greater technical assistance is required. However, FEFA's reports have highlighted troubling incidents of underage enrolment, multiple registration and barriers to women's participation as well as naming electoral officials seen to act with partiality. Little action seems to have followed, demonstrating an apparent lack of concern by the Afghan government and donor community for ensuring that malpractice and malfeasance are tackled immediately.

VI. CONCLUSION: MAINTAINING MOMENTUM

The first technical steps for the 2009/2010 elections have proceeded on time, somewhat alleviating earlier concerns about whether polls would be possible at all. The emphasis should now be on safeguards to ensure they are politically meaningful. In the time remaining before the August polls, Afghan institutions, with the support of the international community, should focus on:

- training electoral staff particularly relating to the count and data management;
- ensuring the integrity of electoral institutions and processes by acting decisively against IEC or government officials in cases of partisanship;
- publicising widely electoral offences and how the complaints process works; and
- driving security planning between the many institutions involved.

The elections can help improve accountability and equitable representation and reinforce peaceful opposition, but if perceived to be unfairly conducted, they could provide a potential flashpoint. A very low voter turnout and/or widespread perceptions of large-scale fraud could undermine stability. Ultimately, it is the perception of the Afghan population that will measure electoral success. If they are to be encouraged to vote, they must be confident that their ballots will count; if the results are to be accepted, there must be confidence in the technical processes and impartiality of electoral institutions. Lowering standards or oversight will only worsen risks of instability.

The neglect of electoral institutions and planning in the years following the last polls is symptomatic of an overall lack of institution-building in Afghanistan. Strategic planning is urgently needed, firstly to ensure substantive improvements in 2010, and, looking further forward, to embed elections in broader democratic and institutional processes.

Planning for 2010 that should begin now includes:

- **The date of the polls.** There is no consensus as to when the current National Assembly's term ends: the constitutionally mandated June date or whether this is subject to a three-month extension like the president's term. A widely accepted decision is necessary for planning and to ensure the issue is not left to fester like the date of the current presidential election.

¹⁹⁶ Crisis Group interview, FEFA official, Mazar-e Sharif, 2 February 2009.

¹⁹⁷ Crisis Group interview, Jandad Spinghar, FEFA executive director, Kabul, 27 April 2009.

¹⁹⁸ Crisis Group interview, Nader Naderi, FEFA chairman, Kabul, 11 June 2009.

- ❑ **Operational planning and budget.** Expertise, facilities and equipment built up for 2009 should be retained and decisions taken now to ensure that Afghan budget lines and donor commitments are in place for the bridge period and the 2010 polls.
- ❑ **IEC reform.** Even if the IEC Structure Law is not technically in place, the next president should submit IEC nominees to a vote by the Wolesi Jirga as soon as possible to build trust in the body.
- ❑ **District council elections.** Since these should be preferably held in 2010, urgent action is needed to delineate boundaries¹⁹⁹ and to link people to districts in the voter registry.

The momentum after the 2009 elections must not be lost. The elections should be followed by a wide-ranging analysis of the process, feeding into a wider strategic review. Parallel to preparations for the 2010 polls, a post-election strategy group of major ministries, donors, civil society representatives and electoral experts needs to ensure the creation of a permanent infrastructure and electoral framework. Decisions will need to be taken on:

- ❑ **Electoral calendar.** This needs to be sustainably consolidated and clearly laid out for the future.
- ❑ **Legal framework.** The laws governing the political system need to be comprehensively reviewed with wide-ranging public consultation, including over the most appropriate electoral system, the future of the ECC, and the role of political parties.
- ❑ **Voter registry.** Data collected to date needs to be thoroughly reviewed and decisions taken on how best to proceed with linking voters to polling centres and creating robust voter lists. How and whether to tie this in with other data collection exercises such as a voter registry or census needs to be considered.
- ❑ **Embedded funding.** Planning needs to match available resources bearing in mind that the Afghan government will be assuming an increasing proportion of operational costs. Donor commitments will still be required and where possible should be multi-year and conditional upon decisions taken on meaningful electoral reforms.

The enormous international resources and attention now focused on elections after years of inaction must be used to drive ongoing improvements, matching

international rhetoric on the importance of building Afghan institutions and democratic norms with equivalent resolve. The aim should be substantive technical improvements in the 2010 polls and, more broadly, sustainable and widely accepted Afghan electoral institutions, with far greater support for the representative bodies in future. This second round of elections must not be a repeat of the first when “as soon as the election was finished there was no interest at all, they were conducted and forgotten”.²⁰⁰

Kabul/Brussels, 24 June 2009

¹⁹⁹“Disputes over constituency boundaries shall be raised no later than 170 days before the election date. Article 12 of the Electoral Law (2005).”

²⁰⁰Crisis Group interview, Afghan electoral official, Kabul, 2009.

APPENDIX A

MAP OF AFGHANISTAN



Map No. 3958 Rev. 5 UNITED NATIONS
October 2005

Department of Peacekeeping Operations
Cartographic Section

APPENDIX B

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in eighteen additional locations (Abuja, Baku, Bangkok, Beirut, Cairo, Colombo, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Ouagadougou, Port-au-Prince, Pretoria, Sarajevo, Seoul and Tehran). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Nigeria, Rwanda, Sierra Leone, Somalia, South Africa, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh, Burma/

Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia, Turkey and Ukraine; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Lebanon, Morocco, Saudi Arabia, Syria and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

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