



AFGHANISTAN

PRESIDENTIAL ELECTION

9 October 2004

**EUROPEAN UNION
DEMOCRACY AND ELECTION SUPPORT
MISSION**

FINAL REPORT

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I. EXECUTIVE SUMMARY

The successful conduct of the 9 October presidential election was a remarkable achievement towards the establishment of democratic institutions in Afghanistan. Huge logistical challenges were overcome to ensure that voters and candidates were able to take part in an electoral process that generally met many key international standards for democratic elections. Although the election was held against a background of restrictive security concerns, polling day was notable for its calm atmosphere and the impressive participation of voters who were provided with a genuine political choice from a varied spectrum of candidates. Nevertheless, the electoral process was not without significant political and technical shortcomings and, as attention turns to the parliamentary and local elections due to take place in April 2005, it is vital that urgent steps are taken to ensure that the best possible conditions exist for a genuine and meaningful electoral process in Afghanistan.

The European Union established a Democracy and Election Support Mission (DESM) for the presidential election, the first mission of its kind. Over nearly three months, the DESM undertook a comprehensive assessment of key aspects of the electoral process and wider issues relating to the democratic transition of Afghanistan. The DESM followed all phases of the work of the Joint Election Management Body (JEMB) across the country and liaised closely with candidates, political parties, civil society groups, government authorities and international agencies.

The Electoral Law, adopted in June 2004, provided a basic legal structure for the conduct of elections but needed to be supplemented by a wide range of regulations issued by the JEMB. Overall, the legal framework for the presidential election was sound but awareness of its provisions amongst electoral stakeholders was worryingly low and, regrettably, important decisions were often taken late and without proper consultation. The transparency of the whole electoral process is insufficiently guaranteed and should be improved, especially as regards the rights of access for observers. A comprehensive review of the legal framework should be undertaken ahead of future elections, *inter alia* to address certain omissions relating to the announcement of results, rules pertaining to candidates as well as mechanisms for addressing complaints and resolving electoral disputes.

Over 10.5 million Afghans were registered as voters during a large-scale **registration** programme that genuinely attempted to achieve a universal franchise. In particular, the encouragingly high proportion of women registered as voters is to be welcomed. However, public confidence in the accuracy of the voter register was undermined by the lack of sufficient safeguards to prevent multiple voter registration, significant levels of which are widely acknowledged to have happened. The credibility and sustainability of the existing voter register was further weakened by the decision of the JEMB not to produce voter lists for specific polling centres. Substantial work will be needed to update the voter register to include the names of newly eligible voters or persons not previously registered. The JEMB should urgently identify the procedures by which it will develop a voter register that assigns each voter to a specific province and district, as will be required for parliamentary and local elections.

Overall, the **administration of the election** by the JEMB was professional and efficient; given the geography and infrastructure of Afghanistan, its operational performance was, to a large degree, satisfactory. However, the effective functioning of the JEMB and its Secretariat was hampered by an absence of internal rules of procedure resulting in slow decision-making and unclear or overlapping chains of command between the different agencies involved. Delays in the implementation of a number of key aspects, particularly the recruitment and training of polling staff, caused unnecessary problems on election day, especially in relation to the widely-reported difficulties in the use of indelible ink. While future elections should now benefit from a pool of

experienced polling staff, the JEMB will need to ensure that it produces and implements operational plans with clearly defined and realistic timeframes and sustainable budgets.

The **JEMB** oversaw the election in a proper and impartial manner; however, the perception of it as a neutral and independent body was undermined by the fact that its Afghan members had been appointed by President Karzai. The full independence of the JEMB and its members – both Afghan and international – is not sufficiently guaranteed in law and may allow conflicts of interest. Steps should be taken to strengthen confidence amongst electoral stakeholders in the impartiality of the JEMB, possibly through the appointment of members who are cross-partisan or who are credibly independent.

Afghan refugees in Pakistan and Iran were granted the right to participate in the presidential election through an ambitious programme of out-of-country registration and voting (OCRV). Despite a number of problematic aspects, especially resulting from the extremely short timeframe for its implementation, the programme was very successful and ensured that almost a million extra Afghans were able to vote for the first time.

Generally, all **candidates** were able to enjoy their legitimate right to campaign without interference and, following a change in the governorship of the western province of Herat, there were few reported instances of candidates suffering any deliberate restriction on their right to freedom of assembly or of expression. However, the prevailing lack of security across Afghanistan, especially in the south and the southeast, greatly limited real opportunities for campaigning to take place. There were also persistent and credible reports of intimidation of voters by local commanders in a number of provinces, despite considerable efforts through civic education programmes to promote confidence in the secrecy of the ballot. Substantial efforts should continue to be made ahead of future elections to stabilise the security situation in order to allow voters, electoral officials, journalists and candidates to be free from threats and violence. Allegations of intimidation and other electoral offences will need to be investigated thoroughly and, if necessary, perpetrators prosecuted.

The **election campaign** itself was relatively quiet although an atmosphere of political debate, based on candidates' different platforms, did emerge. There were no recorded instances of inflammatory or ethnically divisive rhetoric being used. However, a requirement for candidates to report their sources and expenditure of campaign funds was routinely ignored. The perception of a fair and equal campaign was undermined by the active involvement of a number of public officials and the use of state resources in the campaigns of certain candidates; the distinction between the campaign activities and the official functions of President Karzai was frequently blurred. Clear rules on the use of state resources and the role of state officials from all levels of government should be adopted ahead of future elections. The JEMB should also develop procedures to ensure that compliance with the campaign regulations is duly monitored and enforced

Significant work is still needed to develop a professional level of election coverage by the **Afghan media**. Candidates were guaranteed reasonable access to the media through the provision of generous amounts of free airtime on state broadcasters and print space in state newspapers. This served as a counter-balance to the State-media's own excessive news coverage of President Karzai, which appeared to contravene a legal obligation to ensure balanced editorial coverage. The JEMB established a Media Commission to regulate and supervise media coverage of the election campaign, which undertook a consultation exercise with relevant stakeholders before developing the regulatory framework on the media. However, the Media Commission's effectiveness was limited by inadequate resources to investigate breaches of its regulations, especially by regional media, and by the JEMB failing to act upon a number of its recommendations to issue sanctions against non-compliance.

To widespread public satisfaction, **polling on 9 October** passed calmly and was not disrupted by any major security incidents. For the most part, voting procedures went smoothly and polling staff appeared to perform their tasks properly. Problems with the use of indelible ink caused considerable controversy and led to a purported, and short-lived, 'boycott' of the election by all candidates except President Karzai. There appears to be no verifiable instances of multiple voting having taken place, although reports of other significant irregularities include isolated cases of ballot-stuffing and under-age voting. Reports of the conduct of the out-of-country voting in Pakistan and Iran were generally positive. Prior to the parliamentary elections, further, improved, training of polling staff is required.

A combination of complex procedures for the **counting of votes**, inadequate staff training and investigations by an international expert panel into numerous complaints from candidates relating to irregularities on election day caused long delays in the announcement of results; however, the JEMB ensured that counting took place in a mostly transparent manner and that preliminary results, when available, were published promptly. Overall, the official final results, announced on 3 November, were widely considered to be credible and accurate. However, initial and deserved optimism in the relative peacefulness of the election process was severely undermined by the kidnapping of three international election officials on 28 October.

Civil Society in Afghanistan performed a valuable role in the presidential election. The Afghan Independent Human Rights Commission (AIHRC) took proactive and professional steps to monitor and comment, often critically, on the environment surrounding the election. The newly-established Foundation for Free and Fair Elections in Afghanistan (FEFA) contributed significantly towards local confidence in the electoral process through an effective and countrywide domestic non-partisan observation programme on election day. In addition, around twenty other civil society organisations also participated in the observation process.

Wider issues related to the democratisation of Afghanistan have tended to be overshadowed by the holding of the presidential election, but they must continue to be actively pursued. The process of disarmament, demobilization and reintegration (DDR) of militia units must be successfully concluded in order to remove the threat of intimidation, inter-factional violence or armed resistance. The work of the AIHRC and other bodies to ensure justice on issues related to crimes against humanity should be supported at all levels. A properly trained and independent judiciary is urgently required to ensure that the rule of law and human rights are respected, while further efforts to build up and reform the security agencies are needed to eliminate corruption and the dominance of the narcotics trade. Attempts should be made towards developing the role of civil society, especially in relation to promoting public participation in the political process. Substantial efforts are needed to combat illiteracy and to increase and protect the role and participation of women in public and daily life.

Parliamentary elections – to the *Wolesi Jirga*, the lower house – will be the crucial next stage in the process of democratic transition and must be held as soon as is practicable in order to provide an effective constitutional balance against the otherwise unfettered power of the presidential executive. To ensure the bi-cameral National Assembly is properly established, elections for the provincial and district councils must also be held simultaneously, as they will play an essential role in establishing the upper house, the *Meshrano Jirga*. In order to ensure the feasibility of holding of parliamentary and local elections, the following minimum steps should be taken:

- The Central Statistical Office (CSO) should produce realistic population data based on credible methodology, in order to allow the JEMB to determine, as early as possible, the allocation of

parliamentary seats between provinces and the size of local councils. The process of determining seat allocation should be wholly transparent. The President will need to assign and declare the boundaries of each province and district, preferably upon consultation with major stakeholders and the published advice of an independent agency, such as the CSO.

- The JEMB will need to:
 - establish a lower-tier of election commissions, preferably at provincial level, in order to ensure the effective administration of parliamentary and local elections.
 - adopt, as early as possible, clear regulations and procedures on campaigning, voting and counting. Specific reform is needed of the procedures for the nominations of candidates.
 - publish regulations on the methods by which it will update the voter register and assign voters to specific provinces and districts.
 - prepare a comprehensive operational plan with realistic timeframes (taking into account weather conditions) and budget estimates. There should be verified commitments to funding by donors.
- A basic legal framework detailing the powers and duties of provincial and district councils should be established.
- A large-scale public awareness campaign should be prepared and implemented urgently to inform voters effectively on the parliamentary and local elections, including the role of the new institutions and the changes to the procedures used during the presidential election, especially in relation to voter registration.
- Substantial efforts should be made to consult with and develop the capacity of political parties, independent candidates, civil society groups and the media on the electoral process, especially the legal framework and appropriate skills for election campaigning.
- Particular focus should be placed on improving the participation and awareness of women candidates and voters.

There is widespread dissatisfaction at the choice of the Single Non-Transferable Voting system for parliamentary and local elections. The system is wholly inappropriate for the development of a democratically representative and effective parliament as it is likely to result in a lower house that is fragmented and which could easily be dominated by powerful individuals with a minority of the popular vote. Urgent consideration should be given to adopting a more suitable election system for Afghanistan following immediate consultation with relevant national stakeholders and international advisors.

The DESM congratulates the people of Afghanistan on the unprecedented success of its presidential election.

II. INTRODUCTION

In recognition of the importance of the first election for the president of Afghanistan, the EU Democracy and Election Support Mission (DESM) was established in Kabul on 14 August 2004 to analyse key aspects of the election process, to prepare comprehensive recommendations for improvement of the electoral and wider democratic processes, to provide support to the Afghan Independent Human Rights Commission (AIHRC) and to strengthen the capacity of domestic election observation groups.

The DESM consisted of 25 election and field experts from 17 EU Member States, who were based in Kabul and seven other regional centres for the duration of the presidential election process.¹ DESM members visited 23 of the 34 administrative provinces in Afghanistan and also undertook visits to Iran and Pakistan to assess the out-of-country registration and voting process. The DESM operated under separate memoranda of understanding, with the Afghan Ministry of Foreign Affairs (MFA) and with the Joint Electoral Management Body (JEMB).

The DESM wishes to express its appreciation to the Afghanistan MFA and the other national and international authorities operating in Afghanistan, especially the JEMB, its Secretariat and the UN Assistance Mission to Afghanistan (UNAMA). The DESM warmly acknowledges the extensive support and cooperation it received from the Delegation of the European Commission in Afghanistan, the Office of the EU Special Representative and the diplomatic missions of EU Member States in Kabul, Islamabad and Tehran. Sincere thanks are also offered to the International Organisation for Migration (IOM) for its effective operational assistance to the DESM.

III. PRESIDENTIAL ELECTION - 9 OCTOBER 2004

A. Political Background

The 9 October presidential election in Afghanistan was a significant benchmark in the process towards democratic transition in Afghanistan as outlined in the Bonn Agreement of December 2001. The Bonn Agreement, which followed the overthrow of the Taliban regime and twenty-three years of conflict, envisaged the transitional process culminating in the adoption of a new Constitution for Afghanistan – successfully achieved in January 2004 – followed by the election, by June 2004, of a president and a parliament. An initial postponement of both elections was announced in March 2004 and, when in July the presidential election was eventually called, it was also confirmed that elections for the National Assembly would be further deferred to April 2005. Importantly, the presidential election was the first opportunity for the Afghan population to participate directly in the transitional process. To that extent, the election was a crucial indicator as to whether there was genuine popular endorsement of the Bonn Agreement and its commitment towards consolidating peace and stability in Afghanistan.

The election was Afghanistan's first for its head of state. Under the Constitution, the president holds wide-ranging powers and heads the executive branch of government.² The incumbent

¹ The eight regional centres were: Jalalabad (eastern region); Gardez (south-eastern region); Kandahar (southern region); Herat (western region); Kunduz (north-eastern region); Mazar-i-Sharif (northern region); Bamyan (central highlands region) and Kabul (central region).

² See Constitution, Article 64. *Inter alia*, these include: supervising the implementation of the Constitution; determining state policy and issuing legislative decrees; acting as Commander in Chief of the military; and appointing government ministers and members of the judiciary and high-ranking officials of the police and armed forces. The president is limited to two terms of office.

transitional president – and election favourite – was Hamid Karzai, who had been formally appointed to the position on an interim basis at the Emergency *Loya Jirga* of June 2002. The election could therefore be regarded as a direct test of popular support for the incumbent and the policies and manner with which he governed.

A total of 18 candidates took part in the presidential election. All but four stood on an independent platform, without the formal support of a political party. This reflected the lack of popularity and the weak capacity of most political parties in Afghanistan. Only a handful of individuals had access to sufficient resources and a national network of activists to support an effective challenge to Karzai. All needed to rely on personality, religious factors and, in particular, their ethnic affiliation or regional loyalties developed during conflict to extend their range of support. The leading opponent, Yunus Qanooni, an ethnic Tajik, was Karzai's former Minister of Education and a close associate of the late Ahmed Shah Massoud, the assassinated leader of the Northern Alliance and symbolic national hero of Afghanistan. Other key opponents included General Abdul Rashid Dostum, an ethnic Uzbek, and Mohamed Mohaqeq, an ethnic Hazara; both prominent figures from Afghanistan's bloody civil war widely regarded as having close links to militia groups. None of the other 14 eventual candidates was likely to be capable of garnering similar levels of support. It is notable, however, that in a bid to appeal beyond immediate ethnic origins, all major candidates presented tickets that reflected Afghanistan's varied ethnic composition: for example, the two vice-presidential nominees of Karzai were drawn from the Tajik and Hazara communities.³

The election took place against a background of continuing instability and insecurity attributable to two sources. The first was the remnant of the post-Taliban forces and other extremist insurgents oppose the democratic transition process and, especially, the presence of international military forces in Afghanistan. The second source of instability came from the inter-factional violence and related criminal activities of regional and local warlords. In mid-August, there was a serious outbreak of violence in western Afghanistan that involved the governor of the province of Herat, Ismail Khan, a leading warlord. Shortly after the start of the official election campaign, Ismail Khan was dismissed from the position of governor and further violence ensued before pro-government forces restored order.

There was considerable interest from the international community in the presidential election. As regards security, US-led Coalition Forces and the NATO-led International Security Assistance Force (ISAF) increased their presence during the election period and worked closely with Afghan security forces to prevent the Taliban and other insurgents from making good their threats to disrupt the process.

In addition, considerable sums of financial aid and technical assistance had been provided to the Afghanistan Transitional Authority (ATA) by the international community to support the post-Bonn democratic transition. This included some €80 million from the EU as a whole for voter registration and for other aspects of the electoral process.

B. Legal Issues

1. The Legislative Framework

The primary legal sources on elections in Afghanistan are the 2004 Constitution and the Electoral Law, the latter being adopted by presidential decree in May 2004. As it provides only a skeletal

³ As an example of the intricate politics of Afghanistan, one of the vice-presidential nominees of Karzai was Abdul Zia Massoud, the brother of Ahmed Shah.

framework on electoral procedures, the Electoral Law needed to be supplemented by a wide range of regulations and decisions, which were drafted and approved by the JEMB. While the overall legislative framework for elections can be considered to provide a suitable basis for the conduct of democratic elections, a number of problematic aspects remain.

In particular, there were no formal regulations governing voting or counting procedures; rather, the JEMB adopted two internal training manuals that had been produced for polling station and counting centre officials.⁴ This lack of clarification on essential procedures was a worrying omission and reflected a wider failure to ensure certainty amongst electoral stakeholders of the procedures to be followed. A number of important regulations and decisions were taken far too late in the process to ensure that there were adequate opportunities for candidates and electoral staff to be made aware of the practical impact of the regulation or decision before its implementation.⁵ Moreover, there was a general failure by the JEMB and the Afghan authorities to properly consult with relevant stakeholders ahead of the adoption of key legislation. As a result, there was an unacceptably low level of public awareness of the legislative framework, with many candidates, and even some JEMB officials, being unaware of important provisions.

The legal framework failed to guarantee transparency throughout the electoral process. While appropriate rights of access were provided to polling centres on election day, there was no similar guarantee for observers or candidate agents to attend JEMB sessions at other times. It is accepted international best practice that such sessions should be inclusive and open to accredited observers and candidate representatives in order to strengthen confidence in the impartiality of decision-making. This was especially important in the current election given the wide discretion of the JEMB to interpret and create legislation.

There is also no provision in the Election Law that requires the publication of results, whether preliminary or final, within certain time-frames; such a requirement would strengthen confidence and transparency in the results process. A further issue requiring clarification is the procedures for enabling 'special' voting by persons unable to attend polling stations (e.g. prisoners, serving military or hospitalized voters); there were no such procedures for the presidential election.

The JEMB did not adopt rules of procedures to regulate its decision-making process, despite being required to do so by its establishing document.⁶ The JEMB is obliged to take its decisions by consensus "whenever possible"; however, it is unclear what steps need to be taken where consensus cannot be reached. Worryingly, the only stipulated procedure for resolving an issue where there is no consensus is for the JEMB to refer the issue to the incumbent president.⁷ This provision, although apparently not used in the presidential election, has clear potential to undermine any guarantee of independence by the JEMB.

A major issue of concern ahead of election day related to ambiguous provisions in the Constitution and the Election Law which require the holding of new elections upon the death of a presidential

⁴ Both regulations were adopted on 17 August 2004. The counting procedures included in the manual for counting centre staff were later changed, without formal approval from the JEMB.

⁵ For example, the Campaign and Campaign Financing Regulations were not adopted until 5 September, only two days before the start of the official election campaign, while the Regulation on Complaint Procedures was not adopted until 27 September.

⁶ Presidential decree on the Establishment of the JEMB (adopted 26 July 2003), Article 11.

⁷ *Ibid*, Article 10: "If necessary, in a matter in which no consensus can be reached, the whole issue may be brought before the President."

candidate.⁸ The provisions are problematic in that they may allow the electoral process to be disrupted, either by a candidate's accidental death or by their deliberate targeting by insurgents. At the request of the Ministry of Interior, the Supreme Court gave its opinion on the Constitutional provisions, which restrictively interpreted their effect. The JEMB gave a separate but similar interpretation of the provisions contained in the Electoral Law.⁹ These circumstances reflected the lack of clarity on whether the JEMB is bound by decisions of the Supreme Court, an issue that became particularly controversial when the Supreme Court requested that the JEMB disqualify a candidate, Abdul Latif Pedram (see below).

The legal procedures for dealing with electoral complaints during the presidential election were problematic. The JEMB did not adopt a regulation on the filing of complaints during the election campaign period; in practice, complaints could only be filed using existing procedures that related to the voter registration period. A specific regulation on the procedure for complaints filed during polling day and the counting period was adopted unacceptably late on 27 September. In general, the complaints procedures were complex, unfairly limited the right of appeal by aggrieved parties, provided inadequate sanction against violators and allowed insufficient levels of transparency in the adjudication process. It was also unclear whether the procedures permitted independent oversight of electoral complaints by the judiciary. Moreover, there was an extremely low awareness of the relevant complaints procedures amongst electoral stakeholders, with no attempt being made by the JEMB to include training on the appropriate mechanism for filing complaints in their various voter education programmes.

2. Registration of Candidates

The criteria to allow a person to be registered as a presidential candidate are contained in the Constitution and the Electoral Law.¹⁰ The Constitution requires candidates to be Afghan citizens, aged over 40 and Muslim, with no criminal convictions.¹¹ The Electoral Law stipulates a further seven qualifications, which include a requirement that candidates may not control or be part of a militia. At the time of their nomination, presidential candidates must also provide the names of two vice-presidential nominees who must meet the same criteria.

In order to show their serious intent, presidential candidates were required to submit a sum of money (50,000 Afghani, or around €900) and photocopies of at least 10,000 voter registration cards. The latter is unsuitable for use in a nomination procedure as it is not necessarily proof of support of the candidate who submitted it; indeed, there were widely publicised reports that excess numbers of photocopied cards accumulated by one candidate were shared with other candidates. At least one candidate was found by the JEMB to have submitted duplicate copies of the same card but it was too late for the JEMB to withdraw his registration. There were also unconfirmed reports that some voter registration cards were not returned after copying.

⁸ Constitution, Article 61: "In case of the death of one of the candidates during the first round of the elections, or after the elections but prior to the announcement of the results, new elections shall be held..."; similar provisions are contained in Electoral Law, Article 17.

⁹ The death of any candidate during the hours of polling would have resulted in the postponement of the election and the re-opening of nominations. Should a candidate have died after the close of polls but before the certification of final results, a re-run would only be called if the dead candidate either was the winner or, where a second round was needed, would have qualified for the run-off.

¹⁰ Constitution, Article 62; Electoral Law, Article 16

¹¹ The requirement for a presidential candidate to be of a particular religious faith would appear to be contrary to Article 21(1) of the Universal Declaration of Human Rights ("Everyone has the right to take part in the government of his/her country, directly or indirectly..."), to which Afghanistan is a signatory.

In total, 23 candidates submitted nomination papers by the 26 July deadline. After nominations are received, the Election Law allows the JEMB just seven days to assess whether all nominated candidates meet the relevant criteria. This would appear to be too short a period of time to allow for a thorough or fair review of a candidate's eligibility to take place, especially as a number of other agencies must be consulted as part of the review process. Three candidates were considered by the JEMB not to have complied with the nomination procedures; none of the rejected candidates opposed this decision. Two candidates withdrew their nominations, apparently willingly.

After the completion of the review period, the Electoral Law allows an unspecified period of time for members of the public to file an objection. The JEMB reported that over a hundred objections were received against two of the provisional list of 18 candidates and one of the vice-presidential nominees, primarily because of their perceived connection to militia.¹² The JEMB announced that the three nominations would still be accepted following written confirmation from the named candidates that they were no longer connected or would remove their connections to militia units. However, there existed no formal mechanism for the JEMB to verify whether a candidate had complied with these commitments ahead of election day.

The Electoral Law is silent on the possibility of disqualifying a candidate after their nominations are approved as would be needed, for example, if a candidate was found to have threatened force, or where a candidate was considered to have "[pursued] objectives that are opposed to the principles of Islam...". This issue came to prominence when the Supreme Court called for the JEMB to disqualify Abdul Latif Pedram as a candidate for allegedly making blasphemous remarks.¹³ Similarly, the Electoral Law does not provide for circumstances where a candidate or their vice-presidential nominee chooses to withdraw; under current provisions, the candidate would remain in the contest.¹⁴ These lacunae should be addressed.

C. Voter Registration

The voter registration process ran from 1 December 2003 to 20 August 2004. During its first five-month phase, when it was limited for security and operational reasons to urban centres, less than two million names were registered. A second, more intensive phase commenced in May and – through a combination of innovative public outreach, especially in rural areas, and an apparent shift in political will and cultural mores – led to the registration of a total of 10,567,834 names. The fact that women voters comprised 41.3 per cent of this total was an especially impressive achievement given the traditional restrictions imposed on their participation in public and social life.¹⁵ Overall, the voter registration process was a genuinely inclusive attempt to achieve a universal franchise and provided a solid base for the fullest participation of voters in the presidential election.

However, despite the success of the wider process, there were a number of problematic aspects with the voter registration procedures. In particular, confidence in the accuracy of the voter register was significantly undermined by the high level of 'over-registration' that appeared to have taken place.

¹² The three persons named by the JEMB were Dostum, Mohaqeq and Khalili (vice-presidential nominee of Karzai).

¹³ Pedram had questioned the lack of equal rights for women in Afghanistan, particularly in relation to polygamy and divorce. The Chairman of the Supreme Court, Mawlaw Fazl Hadi Shinwari, condemned these remarks as a criticism of Islam. This conservative interpretation caused great controversy amongst Afghan analysts. The JEMB refused to disqualify Pedram but decided to await the results of an investigation by the Public Prosecutor.

¹⁴ Shortly before election day, two candidates (Gailani and Aryan) announced their withdrawal in favour of Karzai. Both candidates appeared to believe that any votes then cast for them would be transferred to Karzai.

¹⁵ Only one region - the central highlands – had a majority of women registered as voters (53 per cent); however, the southern region had by far the lowest proportion of registered women voters (21 per cent), with the southern provinces of Zabul and Uruzgan having less than 10 per cent each.

The total number of registered voters was much larger than had been expected, for while no accurate population figure exists for Afghanistan an official 2004 UNAMA estimate had calculated the total voter population to be around 9.8 million voters.¹⁶ The over-registration was commonly acknowledged to have been caused by multiple registration, many instances of which were verified by UNAMA and the AIHRC.¹⁷ The procedures for issuing voter registration cards contained insufficient safeguards to prevent any person from collecting multiple voter registration cards; because of the general absence of formal identification documentation, voters were allowed to be registered at any registration site they chose, merely upon oral confirmation of their identity and eligibility. There was no realistic procedure to allow the information provided by the voter to be verified or to be cross-referenced against data from other registration sites.

The lack of safeguards against multiple registration also meant that it was difficult to prevent the registration of a significant proportion of minors (i.e. those aged below 18). A decision by the JEMB to empower polling station staff to stop an apparent minor with a valid voter registration card from voting was only taken on 30 September, which was too late for it to be included in the training programme for polling staff. Contrary to the Electoral Law, the JEMB had earlier decided that only persons reaching 18 years of age by 25 September 2004 would be eligible to vote.¹⁸

Although the Electoral Law requires voters to cast their votes in the place where they were registered, the JEMB adopted procedures which allowed voters to be registered at any registration site and to vote at any polling centre they wished.¹⁹ In the short-term, this decision was seen as an attempt to widen the opportunities for registration, for example through the use of mobile registration teams in rural areas and for home-visits, which especially benefited women registrants. However, a consequence of these procedures was that the JEMB decided against developing localised voter lists which, by assigning voters to a specific voting location, would have provided a credible safeguard against multiple voting and other types of voting fraud as well as providing an accurate indicator for the number of polling stations required in each district and the number of ballot papers needed for each polling station. It is not clear whether sufficient personal and geographical data was obtained from voters during the registration process to have allowed voter lists to be produced; this data will be crucial for the longer-term sustainability of the current register of voters, as the forthcoming parliamentary and local elections in Afghanistan will require voters to be assigned to specific provinces and districts.

In order to strengthen confidence in the accuracy of the register of voters, the Electoral Law requires it to be made available for public inspection to enable challenges to be made against names that are wrongfully included. In practice, the JEMB failed to comply with these provisions, as access to the voter register was made very difficult (it was exhibited only in provincial capitals and with no publicity) and the single national register made available was incomplete, containing only two-thirds of the total number of registered voters. Moreover, the final register of voters certified by the JEMB on 24 September was also incomplete, with almost 800,000 names of voters needing to be inputted. Earlier in the process, a joint investigation by AIHRC and UNAMA had shown that

¹⁶ The estimate by UNAMA was an extrapolated figure based on various sources including the 1974 census and estimates at demographic changes including population displacement, migration and return as well as births and deaths. In some regions, primarily the east and south-east, the total number of registered voters was substantially higher than the population estimates.

¹⁷ See the UNAMA/AIHRC Second Joint Report on the Verification of Political Rights (5 September). There were also many media reports of voters acquiring multiple voter registration cards, with several reports highlighting a belief amongst voters that the cards also enabled eligibility for humanitarian assistance.

¹⁸ See JEMB decision 14, 25 April 2004, which was taken before official confirmation of the election date. The Electoral Law Art 13 (1.1) states that a voter must “[have] completed 18 years of age at the time of the election.”

¹⁹ Electoral Law, Article 14(1): “Electors shall cast their vote in the place where their names are registered in the voter registration list.”

an entire district in Daikundi (central highlands region) had not been included in the voter register, apparently because of administrative oversight.

D. Election Administration

1. The Joint Electoral Management Body (JEMB)

The JEMB is a temporary merger of the Interim Afghan Electoral Commission (IAEC) and the UNAMA Electoral Component (UEC) and was established with a mandate to administer all elections during the transitional period.²⁰ The JEMB consists of 11 voting members, including six Afghan members of the IAEC who were appointed by President Karzai in May 2003. The JEMB Secretariat was responsible for the procedural, operational and financial preparation of the election. Staff recruitment and the development of its institutional structure were facilitated by the UEC through a number of UN agencies and private logistical contractors. The overlapping competencies of the JEMB, its Secretariat and the different implementing agencies often created confusion, for example, in relation to the procurement of electoral materials.

While the IAEC's establishing document guarantees the independence of its six members, the perception of their impartiality – especially during a presidential election – was undermined by the method of their appointment. Although the DESM did not note any display of partisan decision-making by the JEMB, it is significant that almost all opposition candidates expressed their lack of confidence in its neutrality, an opinion that was accentuated by the refusal of the JEMB to allow candidate representatives to attend its sessions. In an attempt to strengthen transparency and confidence in its impartiality, the JEMB established an *ad hoc* committee to liaise with candidates, but this had only partial success and was boycotted by several candidates. It is accepted international best practice that such sessions should be inclusive and open to both accredited observers and candidate representatives in order to strengthen confidence in the impartiality of decision-making. This was especially important in the current election given the wide discretion of the JEMB to interpret and create legislation.

The five international members of the JEMB were appointed by the Special Representative of the UN Secretary General (SRSG); unsatisfactorily, it appears that the members are appointed as contracted representatives of the UEC rather than in their independent capacity. This created a potential conflict of interest given the dominant role of the UEC and UNAMA in key operational and political issues, especially in the regions.²¹ In practice, communication between the JEMB and its Secretariat was inadequate and, on several occasions, the Secretariat failed to keep the JEMB properly informed of key decisions it had taken and *vice versa*.²² A number of important issues, both operational and legislative such as the voting and counting procedures, were implemented by the Secretariat without the formal approval or endorsement of the JEMB, thus limiting the accountability of the decision-making process to an inappropriate degree.

The JEMB did not operate with formal rules of procedure and its meetings were marked by prolonged debate and delayed decision-making. These were further lengthened by a requirement for JEMB decisions to be taken by consensus rather than a majority vote and by the absence of simultaneous translation facilities. Nevertheless, the JEMB members appeared to approach their role with appropriate conscientiousness.

²⁰ The transitional period runs to the date when the National Assembly is established

²¹ A prime example of the overlapping interests of the JEMB and UNAMA was seen in the role played by the UNAMA spokesperson to provide official press briefings on the work of the JEMB.

²² For example, Secretariat staff did not attend JEMB sessions while JEMB members did not attend key operational and planning meetings held by the Secretariat.

The hierarchical structure of the JEMB does not envisage devolved decision-making below a centralised level. However, the policy of ‘Afghanisation’, whereby the JEMB Secretariat sought to rely on national rather than international staff at provincial and district level, appeared to be generally successful in providing a pool of experienced election administrators for future elections; indeed, national staff members were often considered by DESM members to have out-performed their international counterparts. On the other hand, there was less success in developing the capacity of national counterparts at a more senior level and most decision-making on major operational issues involved few national staff members. The selection of polling staff was undertaken on a decentralised basis by JEMB staff at a district level, often with the assistance and approval of local community leaders. The JEMB Secretariat did not provide sufficiently clear guidelines on recruitment and, in many instances, there were complaints that openly partisan supporters of particular candidates had been appointed.

2. The Administration of the Election

In their overall administrative role, the JEMB and its Secretariat operated in a mostly professional and efficient manner, especially in their capacity to ensure that the election ran to schedule despite the novelty of the electoral process to Afghans and the intrinsic logistical and operational challenges created by the country’s difficult landscape and its often non-existent infrastructure. The DESM commends the bravery of the staff members of the JEMB and its implementing partners during the voter registration and election periods who worked under the continual threat of attack by insurgents.²³ The very fact that the election took place is, in itself, indicative of a generally successful election administration.

Nevertheless, the effectiveness of the election administration was compromised by the late implementation of a number of key logistical issues; in particular, the recruitment of around 130,000 extra polling centre staff (including around 30,000 staff members retained from the voter registration programme) was delayed until the start of September, creating serious problems in finding sufficient numbers of available persons.²⁴ There were further delays in the determination of the number of polling centres and polling stations.²⁵ The final number – 4,807 polling centres and around 22,000 polling stations – was not known until election day, and marked a considerable decrease from the JEMB’s aim, announced in early September, to have 25,000 polling stations. Although the JEMB failed to adequately explain the reduction in the number of polling stations, it appears that it was because of a failure to recruit a sufficient number of polling staff and security personnel. Voters and community leaders in rural areas expressed dissatisfaction at the limited number of polling centres in their vicinity, which in practice often meant that they had to travel long distances in order to vote.

The delay in the recruitment of polling staff had a consequential impact on delaying the implementation of a training programme, which was largely left to the last-minute. While the training programme was mostly effective in outlining voting procedures, it failed to address a number of important issues, in particular the procedures for the close of polling and the completion of polling station records. Crucially, delays in finalising important procedural changes, especially

²³ Twelve JEMB staff were killed and over 30 injured in various attacks during the registration and election period.

²⁴ There were particular difficulties in recruiting female polling staff and in many locations, female polling stations were staffed by male elders who had been approved by local *shura*. The JEMB required at least five per cent of polling staff to be disabled but there is no record whether this target was achieved.

²⁵ Polling centres contained different numbers of polling stations, each serving a maximum of up to 700 voters. As men and women voted separately, each polling centre contained at least two polling stations, although some contained over fifteen polling stations and served several thousand voters.

in relation to the use of indelible ink and the mechanism for handling complaints, meant that polling staff were inadequately prepared in these key areas. There was a similar lack of preparation of the staff recruited to work in counting centres.

Apart from well-documented issues related to the procurement of indelible ink, the supply of election materials was generally unproblematic.²⁶ However, there was some controversy over the decision of the JEMB Secretariat to order the delivery of 17.5 million ballot papers given that there were only 10.5 million registered voters, a figure that itself was considered inflated.²⁷ The extremely high excess figure was caused by the uncertainty as to how many voters would vote in each polling station; thus, provision was made for every polling station to have 700 ballot papers, sufficient for the maximum number of potential voters using the polling stations. The ballot papers were printed in Canada following an international tender process and it was notable that, had a second round been necessary, logistical arrangements – including the printing of new ballot papers and the re-equipping of polling stations – would have required at least a four weeks to be completed, even though the Constitution only provides for a gap of two weeks between the official announcement of results and the holding of a second-round run-off. Overall, the JEMB appeared to be inadequately prepared for the possibility of implementing a second-round.

3. Civic Education

Given the Afghan population's limited experience of elections and wider democratic processes, effective civic education was a crucial factor in ensuring the success of this election. The civic education programme faced significant challenges, including very high levels of illiteracy, a large rural population, a limited access to electronic media and, in particular, the exclusion of many women from social interaction. The JEMB worked closely with international agencies and thousands of civic educators from civil society organisations to produce a civic education programme that was generally considered successful in securing that voters, across the country, were given sufficient knowledge on the basic mechanics of the electoral process, including voter registration, the location of polling centres and the procedures for voting. The civic education programme benefited substantially from support given by *shuras* (councils of elders) and tribal or religious leaders to gain access to communities through group sessions.

Nevertheless, there were numerous shortcomings with the preparation and implementation of the civic education effort. The development of a programme and materials to inform voters on the presidential election started late, caused by uncertainty over funding and the scheduling for holding elections. The materials developed appeared not to be based on research on Afghan society and sought to apply a uniform approach to all parts of the population. Given the size of Afghanistan and the novelty of the exercise, there were insufficient numbers of civic educators to allow issues to be covered in depth, with most group sessions lasting no more than two hours. To this extent, there was limited public awareness of key principles of the election process, such as the guarantees for the secrecy of the ballot, while the programme did not seek to adequately address potentially important issues for voters, such as the mechanism for filing complaints and the possibility that a second round may be needed. There was serious concern that the reliance on community leaders to organise many civic education sessions may have compromised the sense that there was genuine freedom of choice.

²⁶ The procurement process of the indelible ink is comprehensively reviewed in the report of the Impartial Panel of International Experts (see below, 'Complaints').

²⁷ These figures referred to the provisions for in-country voting only. A further 4 million ballot papers were ordered for out-of-country voting, despite there being an estimate of only 2 million potential voters.

The JEMB did not seek to provide specific education programme for candidates or their representatives or political party agents on the electoral process. Although some training was provided by the National Democratic Institute of the United States (NDI), the majority of some 70,000 candidate representatives or political party agents accredited by the JEMB to observe polling day had received no training on their rights and obligations.²⁸ The JEMB had compounded this omission by approving late the procedures for the accreditation of candidate representatives or political party agents, and by extending the deadline for accreditation to 4 October.

E. Out of Country Registration and Voting²⁹

Refugees from Afghanistan living in Pakistan and Iran were provided with the opportunity to participate in this election through an out-of-country registration and voting (OCRV) programme, implemented by IOM on behalf of the JEMB and UNAMA. The programme was highly ambitious, both in terms of scale – with an estimated 2 million potential voters in both countries, it was considered to be the largest ever OCRV programme – but also in the limited timeframe made available for its implementation. Delayed decision-making by the JEMB, which did not decide to go ahead with the programme until 30 May, as well as protracted protocol arrangements (the memoranda of understanding with the Governments of Iran and Pakistan were not signed until the 12 and 20 July respectively), meant that the OCRV programme had less than 90 days to be implemented.

The decision to conduct OCRV was politically controversial – the largest group of likely out-of-country voters are Pashtuns resident in Pakistan, who were widely assumed to be supporters of President Karzai – and initially there was no consensus on the JEMB for the programme. The DESM received complaints about the decision to conduct OCRV from almost all other candidates, even those considered to have constituencies amongst refugee communities. Several interlocutors also complained to the DESM about the decision to exclude from the OCRV process the estimated 2 million Afghan refugees in other countries, including those in EU Member States. Concerns were also expressed at the lack of provision to allow former refugees to be registered as voters if they had returned to Afghanistan following the close of the voter registration period in mid-August. It is estimated that over 100,000 Afghans will thus have been prevented from participating in the election after returning home, including many who, having come from Pakistan or Iran, would have been able to participate in the OCRV programme had they remained in those countries.³⁰

The DESM was concerned at a number of issues related to the implementation of the OCRV programme. Because of its extremely short timeframe, the programme did not seek to ensure the universal franchise of refugees in Pakistan and Iran and, in decisions based more on IOM's operational capacity than on the geographical location of refugees, several areas where large numbers of refugees live were not allocated registration or voting sites, such as Karachi. In Pakistan, eligible refugees needed to be registered as voters ahead of election day; however, for Iran, UNAMA had mistakenly advised the JEMB that a voter registration programme was unnecessary because of the quality of the refugee register compiled by the Iranian authorities. In fact, the Iranian refugee register was out-of-date and inadequate as the intended basis for a voter

²⁸ For example, a candidate representative may challenge a voter's entitlement to vote, or may file a complaint against irregularities.

²⁹ UN Security Council Resolution 1536 "encouraged Afghan authorities to enable an electoral process that provides for voter participation that is representative of the national demographics, including...refugees."

³⁰ Taken from figures from the UN High Commissioner for Refugees in Afghanistan estimated that between 2,000 to 3,000 refugees were returning daily during the election period.

register.³¹ There were also inconsistencies in determining the eligibility of OCRV voters: in Iran, voters needed to produce documentation that showed their refugee status was recorded with the Iranian authorities; in contrast, Afghans in Pakistan were entitled to be registered to vote regardless whether they were 'official' refugees. Unsatisfactorily, the OCRV programme's procedural framework was never formally approved by the JEMB and the decision-making channels between IOM, UNAMA and the JEMB were insufficiently transparent, open or accountable, as shown by the lack of public consultation on the decision not to hold voting in certain areas.

Nevertheless, the DESM considers that the OCRV programme was generally successful and allowed significant numbers of Afghans to vote for the first time. IOM implemented the programme in an efficient and professional manner, especially given the limited timeframe available.

Around 738,000 voters were registered in Pakistan during the 1-4 October registration period, a higher figure than had been predicted by IOM and UNAMA, but only a quarter of those registered were women. In an improvement to the procedures used in Afghanistan, voter lists were produced for each of the 1650 registration and polling sites, enabling greater protection against multiple or fraudulent voting. The registration process was assessed positively by the DESM, which visited registration centres in Quetta and Islamabad, and by staff from EU diplomatic missions in Islamabad who visited registration centres in all areas as accredited special guests. The DESM also visited Tehran ahead of election day, where around 1,100 polling stations were established in seven provinces.

F. Election Campaign

1. Candidates

The official election campaign opened on 7 September, although campaigning and related politicking had already been taking place since early August when the names of all candidates were confirmed. While the campaign came to life during its last week, with a number of rallies taking place, for the most part the campaign was low-key and, despite the widespread enthusiasm for the election itself, no candidate appeared to generate significant levels of public interest. It appeared that popular opinion had already decided that the eventual outcome – a Karzai victory – was a foregone conclusion. Overall, an atmosphere of real political debate did emerge, with all candidates able to present their different (but rarely contrasting) political platforms to the public through the provision by the State media of access to free airtime and print space (see below). However, campaigning techniques were rather basic and relied mostly on lobbying through the traditional channels, such as mosques or *shuras*. Most of the 18 candidates had no functioning countrywide network of regional representatives and a number of candidates complained that the 30-day campaigning period was too short to allow them to adequately travel around Afghanistan.

Furthermore, the prevailing lack of security across Afghanistan, especially in the south and southeast, greatly limited real opportunities for campaigning to take place.³² Nevertheless, and importantly, all candidates appeared to be able to enjoy their legitimate right to campaign without the adverse interference of State authorities or other agencies and there were few recorded instances

³¹ The lack of any accurate register meant that the number of Afghan refugees in Iran who were considered eligible to vote was estimated as anywhere between 400,000 and 600,000.

³² On 16 September, a helicopter carrying Karzai came under attack on a campaign visit to the southeast, while on 6 October, a roadside bomb was targeted against the convoy of Ahmed Zia Massoud, one of Karzai's vice-presidential running mate, as he attended a campaign rally in the north-eastern region. The attack left two dead and four injured.

of any candidate suffering any deliberate restriction on their right to freedom of assembly or freedom of expression. The ouster of Ismail Khan as governor of Herat removed a significant obstacle to the opportunities for pluralistic campaigning in the western region. There was concern that the Supreme Court's intervention over the comments made by Pedram was an unwarranted attempt to interfere in his freedom of expression. There were no recorded instances during the election campaign of the use of inflammatory language or speeches that attempted to be ethnically or regionally divisive; indeed, the platforms of all candidates included a call for 'national unity'. There were few recorded instances of violence or significant unrest between activists during the election campaign, although at least one person was killed while putting up posters on behalf of Qanooni.

As part of their campaign, almost all opposition candidates joined together in a so-called Joint Coordination Committee of Candidates (JCCC) to attack the incumbent Karzai on a range of electoral and wider political or constitutional issues. An initial threat by the JCCC participants to boycott the election unless Karzai resigned from office was later tempered to a more general condemnation of what were perceived to be the unfair benefits he enjoyed as the incumbent. Another regular issue during the campaign period was the openly acknowledged negotiations taking place between candidates that sought either to find a 'unity' opposition candidate or attempts by candidates to gain assurances of future ministerial positions should they withdraw in favour of another candidate.

Effectively, the contest was between six major candidates – Karzai, Qanooni, Mohaqeq, Dostum and, to some extent, Pedram and Jalal – who could call on sufficient resources and regional support to campaign across the country. The prospect of a fair campaign, however, was significantly undermined by the active involvement, contrary to election legislation, of a number of ministers, provincial governors and other State officials in the campaigns of Karzai and, to a lesser extent, Qanooni and Dostum. There were recurring reports of attempts by police and other state officials attempting to openly interfere with campaigning activities, such as blocking putting up of posters, or of the arbitrary dismissal of some state employees for being known as supporters of a particular candidate. While the incumbent publicly claimed that he would not be undertaking campaigning – allegedly because of the non-availability of funds – he continued to undertake a range of official duties, such as opening roads and schools, during the campaign period. This clearly gave him an unfair advantage over other candidates, not least because these activities were extensively reported in the State media.

All candidates benefited from international support towards the payment of posters and media spots. A regulation requiring candidates to report their sources of campaign finances and the manner of its expenditure was routinely ignored. Although each candidate was required to submit bi-weekly financial reports during the campaign period, only two did

2. Intimidation of Voters

There were numerous reports of intimidation of voters during the presidential election campaign; by their nature, however, very few of these cases were verified. Most instances of intimidation – which included pressure, threats and the use of violence – came from insurgent and extremist groups opposed to the election and were made against persons involved in the electoral process, including JEMB staff and even those registering as voters.

There were fewer reported cases of intimidation made against voters to vote for a certain candidate. One widely publicised case involved a *shura* in the southeast announcing that the houses of any person not voting for Hamid Karzai would be destroyed. Such threats reflected the general failure

of the civic education process to convince voters of the secrecy of their individual ballot. Recurring complaints were also made against Rashid Dostum and his supporters for applying of undue pressure against voters in northern provinces.

G. Media Environment

1. Media Landscape

The media in Afghanistan is a mixed system of State and non-state broadcast and print outlets. The radio and television sector is particularly lively, with 21 State-run stations, 19 of which are in the regions. The state broadcaster, Radio Television Afghanistan, dominates the sector nationally and has six regional television stations. There are also several non-state television channels. In addition, there are some 22 non-state regional radio stations which receive financial and technical support from international funders. Internationally-based radio stations such as the BBC, Deutsche Welle and Voice of America (VOA) broadcast in local languages. Central Asian broadcasters such as Radio Iran, Radio Pakistan and Radio Tashkent can also be heard in various regions.³³

An estimated 300 publications, including daily, weekly and monthly newspapers and magazines, are registered with the authorities, most with very small circulations and limited distribution. While most are independent of the government, many are little more than partisan newsletters reflecting the political outlook of their proprietors.

Sustained efforts have been made by the international community in recent years to boost standards of journalism, increase media diversity and build technical capacity within existing outlets. However, Afghanistan remains one of the most information poor countries in the world with an adult literacy rate of only 36 per cent, poor infrastructure and a difficult terrain which place many parts of the country beyond the reach of broadcast and print media.³⁴ The election marked an important challenge for a fledgling media which has had no experience of reporting on a democratic electoral process and with journalists working in the absence of established state structures and facing severe financial and security constraints as well as poor access to information.³⁵

2. Legal and Regulatory Framework

The principle of media freedom is enshrined in the Constitution. The interim government has committed itself to media freedom and to making legal changes necessary to ensure this. A Media Law passed in 2004 promotes freedom of thought and speech and prohibits censorship. However, the law has been criticised by domestic and international human rights groups for being overly restrictive of journalistic freedoms. It does not contain any specific provisions relating to the protection of journalists. While the law states that every citizen has the right to seek and obtain information, there is no dedicated freedom of information law.

The regulatory framework for media coverage of the election campaign was provided by the Mass Media Election Campaign Code of Conduct (hereafter Code of Conduct) and the Regulations on the Application of the Mass Media Election Campaign Code of Conduct (hereafter Media Regulations),

³³ A national radio frequency survey conducted by the NGO Internews (April 2004) showed that State radio covered 74 per cent of the population, international radio stations covered 69 per cent and independent stations covered 38 per cent.

³⁴ Adult literacy rate from UNDP Human Development Report on Afghanistan 2003

³⁵ In a September 2004 survey of 132 journalists conducted by Internews, "Covering the First Elections," journalists reported that the biggest constraint in providing fair and objective news was the threat of warlords and local commanders (43.9%) Almost 32 % cited lack of information and inability to collect information.

issued by the JEMB shortly before the start of the campaign. A six-member Media Commission was established as an operational body of the JEMB tasked with monitoring the mass media during the election campaign period for compliance with the Media Regulations. The Media Commission established a Regulatory Compliance Unit and a Monitoring Unit to collect data and investigate complaints against media conduct or possible breaches of the Media Regulations. Based on such findings, the Media Commission could make recommendations to the JEMB to act in relation to any breaches of fair coverage; the JEMB then had the power to impose sanctions, including issuing a public warning and/or ordering a correction, retraction or right of reply, or referring the matter to the Director of Public Prosecutions for legal review on an expedited basis.³⁶

The Code of Conduct and Media Regulations required the mass media, *inter alia*, to make reasonable efforts to ensure accurate, fair, equitable and unbiased coverage during the election campaign period, including not extending special privileges to particular party leaders or candidates, including incumbents; to inform the public about the election process and promote democratic values; to broadcast or report on special events such as election related debates which provided opportunities for the public to question party leaders and candidates. The Media Regulations provided generous amounts of unpaid airtime/print space for all candidates in state-run media during the election campaign period.³⁷ While the presidential candidates were generally satisfied with the amount of free access airtime allocated to each of them on state radio and television, not all candidates made use of this opportunity. The Media Commission is to be commended for its efforts countrywide to consult interested parties about its draft Code of Conduct and Media Regulations and for its close work with the State broadcaster.

The Media Commission made two sets of recommendations to the JEMB to issue sanctions against media outlets for breaches of the Media Regulations. The Commission was unduly slow in making its first set of recommendations to the JEMB, with the result that more than half of the 30-day election campaign period had elapsed before the JEMB took remedial action in the form of public reprimands against five state-run media outlets (four newspapers and Herat regional state TV) for breaches relating to insufficient access to free print space or airtime for candidates. The Media Commission subsequently submitted another four recommendations to the JEMB, three of which concerned further public reprimands against state newspapers which had previously been reprimanded by the JEMB. The fourth recommendation concerned a serious breach by a non-state run channel, Ayna TV, which almost exclusively devoted its news coverage of candidates to Abdul Rashid Dostum. On investigation, the station informed the Media Commission that it accepted payment from Mr Dostum for covering his activities, in violation of the regulations governing paid political advertisements. The JEMB failed to take any action on these second set of recommendations.

Overall, the commission's behaviour during the election campaign period was rather low-key. Crucial aspects of its work were late, including the distribution of its finalised Code of Conduct, Media Regulations and complaints procedure, apparently due to a lack of technical support in legal drafting and translation of documents. The Media Commission lacked further resources to adequately publicise its role or inform candidates and members of the public of their right to make complaints and there was a widespread lack of public knowledge of its role. No complaints were received by the commission from members of the public or candidates and all of its recommendations were made *ex officio*. The Media Commission's work was also hampered

³⁶ Article 6 (1) Media Regulations.

³⁷ State-run broadcasters were obliged to make available twenty minutes of total broadcast time per week for free political advertising to each candidate. Candidates were entitled to one-third of a page of free advertising every two days in state-run daily print press and once every week in non-daily state-run press. Non-state broadcasters were obliged to make available two minutes of free access time per week for candidates.

because it lacked a dedicated team of staff to investigate alleged breaches of its code and regulations. Its efficacy was also undermined by the overly-cumbersome working and reporting structures between the Media Commission and the JEMB and by the JEMB failing to act fully on its recommendations.

3. Media Monitoring³⁸

The DESM conducted media monitoring from 6 September to 6 October 2004 over a cross-section of state, non-state and international media.³⁹ The monitoring focused mainly on radio as the medium which an estimated 56 per cent of the population listens to almost daily (compared to 29 per cent for television).⁴⁰ The media sample consisted: State television (*TV Afghanistan*), monitored daily during the peak evening viewing period, from 7p.m. to 11p.m; five radio stations (the State *Radio Afghanistan*, the internationally based *BBC Afghan Stream* and *VOA Dari and Pushto* as well as the non-state Afghan stations, *Arman FM* and *Killid FM*) were monitored daily during peak-time evening programmes; and four daily newspapers (State-owned *Anis* and *Hewad* and the non-State owned *Arman-e-Millie* and *Erada*).⁴¹

Monitoring of the media was aimed at ascertaining whether presidential candidates gained equitable access to the media, whether the media and the authorities adhered to the Media Commission's Code of Conduct and Media Regulations during the campaign period and whether it was possible for members of the public to gather sufficient information via the media to assist them in making a decision on election day.

Media coverage of the presidential candidates in monitored outlets increased as the campaign intensified. The allocation of free airtime and print space in State-run media outlets allowed candidates ample opportunity to present their electoral platforms to the public and to voice robust criticisms of the transitional government. The State broadcast media made concerted efforts to attempt to fulfil their duties in this regard, although adherence to the detailed schedule for free access in State newspapers was sporadic. Not all candidates made use of their full allocation of free airtime on the state broadcasters. In particular, Dostum and Jalal used only half of their allocated airtime each while several others used more than the full 80 minutes. Overall, given that this was the first time media outlets faced such detailed independent regulation, problems of compliance were inevitable.

The news and current affairs coverage of the candidates by the State broadcast and print media dedicated a preponderant share of their coverage to the incumbent. While it is normal for an incumbent to receive more media coverage than rivals because of their continued conduct of official duties, there was excessively extensive coverage in the State broadcast media of many official

³⁸ Comprehensive results of the DESM media monitoring are annexed below.

³⁹ For technical and logistical purposes, only media outlets which could be accessed from Kabul were monitored. Five media monitors used a media monitoring methodology which includes both quantitative and qualitative analysis. The methodology, which has been used in numerous EU election missions, measures the time (in seconds), space (in cm²) and tone (positive/negative/neutral) devoted to presidential candidates as well as their deputies.

⁴⁰ Data from Asia Foundation Voter Attitude Survey, February 2004.

⁴¹ The sample selected was based on three main criteria: ownership, penetration and audiences/readership. While official population as well as media audience and readership figures do not exist, a few surveys have been conducted which give general indications of trends. *BBC Afghan Stream* broadcasts in Dari and Pushto and is a very popular and respected service. *VOA* is funded by the US Government. *Killid FM* is a talk radio station which reaches an estimated 2.8million people in Kabul province. *Arman FM* broadcasts in Herat, Mazar and Kabul and claims 2 million listeners in the capital. *Anis* is one of the oldest government-run daily newspapers published mostly in Dari with an estimated print run (EPR) of 5,000. *Hewad* is a Pushto state daily newspaper with EPR of 10,000. *Erada* is a Pushto-Dari non-state daily newspaper with EPR of 10,000. *Arman-e-Mili* is a Dari non-state daily newspaper with EPR of 4,500.

activities, such as the opening of a road, that were essentially campaign events. Such coverage of these activities presents possible concerns with respect to the principle contained in the Media Commission's Code of Conduct for the provisions of equitable and fair coverage.⁴² State television dedicated 77 per cent of its editorial coverage of candidates to Karzai, over ten times more than the share devoted to the second most covered candidate, Mr Qanooni (see Annex below, Chart 1). However, this imbalance was reduced considerably when unpaid airtime was included (see below, Chart 2).

On State *Radio Afghanistan*, the share of editorial coverage of presidential candidates devoted to Mr Karzai was even higher at 83 per cent – twenty times more than the second most covered candidate, Mr Qanooni (see below, Chart 3). Again, this disparity was considerably reduced when free access airtime was included (see below, Chart 4).

Generally, the media's editorial coverage of the presidential campaign was passive and unimaginative. Most regional media were not active in generating their own news, with some reports of outlets even seeking payment for editorial coverage. This lack of professional and ethical standards is probably due to a combination of factors: the general arrested development of the media; inadequate resources; poor training of journalists; insecurity; lack of experience of journalists of their role and responsibilities in covering an election process; a prevalent culture of self-censorship and deference to the government; intimidation by local power brokers; and concerns about security. Candidates were equally not proactive in grasping opportunities for editorial coverage, perhaps reflecting a view that the media's role in influencing the electorate was only marginal.

Encouragingly, most coverage of candidates was non-partisan, with media outlets allowing direct presentations of platforms rather than being analytical or critical. While the State broadcasters' news and current affairs coverage was excessive, its "tone" for all candidates in terms of the editorial judgment of the media outlet was largely neutral. This trend was also prevalent in other state and non-state media. All media outlets refrained from biased coverage aimed at smearing candidates.

The non-state broadcast media, including international media, generally afforded more balanced editorial coverage of the presidential candidates, with non-state stations, *Killid FM* and *Arman FM* as well as the *BBC Afghan Stream* devoting about a third of the total time devoted to presidential candidates to Karzai (see below, Charts 5, 6 & 7). The only exception was *VOA* which devoted 65 per cent of its time to Karzai (see below, Chart 8).

The trend of excessive coverage of the incumbent noted in the state broadcast media was also reflected in the two State-run newspapers monitored. The daily *Anis* devoted 72 per cent of its coverage of the presidential candidates to Karzai, seven times more than allocated to the second most covered candidate, Asifi, at 10 per cent. However, this editorial imbalance was redressed when free access space for candidates is taken into account. (see below, Charts 10 & 11). In the state-run daily *Hewad*, this editorial imbalance was not so pronounced. It devoted 58 per cent of its coverage of candidates to Karzai, followed by 12 per cent for Jalal and 4 per cent for Qanooni. When free access space is included, Karzai's share dropped to 23 per cent, with 8 per cent each for Asifi and Pedram. (see below, Charts 12 & 13). The non-state daily *Erada* devoted 70 per cent of its coverage of candidates to Karzai, followed by 13 per cent for Qanooni and 4 per cent for Dabir. The

⁴² Code of Conduct Principle 1(f): "The Mass Media shall not extend special privileges to particular party leaders or candidates, including incumbents, and ensure that all such parties and candidates are portrayed in news and election coverage in an unbiased and impartial fashion."

non-state *Arman-e-Mili* devoted 52 per cent of its coverage of candidates to Mr Karzai, followed by Sirat (20 per cent) and Qanooni (11 per cent). (See below, Charts 14 & 15)

Several broadcast media outlets made efforts to be inventive in terms of programme formats in their coverage of the presidential campaign. The BBC Afghan Stream and VOA included phone-in programmes where viewers could question candidates invited to the studio. State television is also to be commended for its efforts to incorporate special information programmes into its election coverage schedule in accordance with the Media Commission's Code of Conduct.⁴³ These included round-table discussions, *vox-pops* and other programmes aimed at informing voters about the electoral process (see below, Chart 9).

Non-state audio-visual media monitored did not consistently air free access broadcasts for candidates, despite the fact that the regulations obliged them to make such time available. All 18 candidates received unpaid assistance from the Afghan media and communications company, Awaz, to produce high-quality three-minute radio and TV "spots" which were funded by the European Commission through its Delegation to Afghanistan. There appeared to be some distribution problems with these spots, as well as reticence on the behalf of broadcasters to air them as part of unpaid access time for candidates. Several non-state stations openly admitted that they expected payment in order to broadcast the spots. However, the Internews not-for-profit media organisation which produces programming for numerous radio stations incorporated the spots into its daily output.

There were numerous breaches of the media silence which began 48 hours prior to the opening of the polls and it is regrettable that the Media Commission's mandate did not extend to monitoring this period.

H. Participation of Women in the Electoral Process

Despite the inherent and traditional discrimination against women in Afghanistan society, this presidential election saw important steps being taken to advance women's participation in the political process. A commitment that women should be able to register and vote on an equal basis to men was placed at the root of the all election planning by the JEMB and its Secretariat and considerable effort was made to implement this policy. In particular, women were a priority target group during the second phase of the voter registration period that focused on rural areas and the southern and south-eastern regions, where there is strong cultural resistance to the involvement of women in public life. To a large extent, support to their participation was endorsed by an active network of women's civil society groups as well as by many community and religious leaders, with a number of *fatwa* being issued in favour of women's participation. Generally, this focus succeeded in ensuring a much higher than expected proportion of women – 41.3 per cent – was registered to vote. However, there were numerous reports that insecurity, threats and discriminatory acts in many areas prevented women from registering in equal numbers, especially in the southern and southeastern regions and Pakistan where registration of women was comparatively much lower.

An important illustration of the participation of women in this election was the visible role played in the contest by the one woman standing as a presidential candidate, Massouda Jalal, and three other women who were vice-presidential nominees. While the overall proportion of women to men as

⁴³ Principle 5: The Mass Media should broadcast and/or report on special information programmes, such as debates, which provide an effective opportunity for journalists, current affairs experts and/or the general public to put questions to party leaders and other candidates, and for candidates to engage in public debate with each other.

presidential candidates was relatively low, it marked an important foundation for future progress that can be built upon during parliamentary and local elections, which impose a minimum representation of women in the National Assembly and local councils. A number of key senior positions within the JEMB and the Secretariat were also held by women. However, the JEMB faced real difficulties in recruiting sufficient numbers of women – and, in particular, literate women – to act as civil educators and polling staff on election day.

The success of the registration programme was mirrored by similar levels of participation by women as voters on election day. Attendance at female polling stations was recorded by the JEMB as around 40 per cent of the voter turnout.⁴⁴ However, this generally notable level of participation was marred in some southern regions where turnout of women voters was extremely low, with one province (Urozgan) recording just 2 per cent of women voters.⁴⁵ Such figures show that substantial efforts are still needed at all levels to improve the participation of women in the electoral process.

I. Participation of Civil Society

Civil society organisations in Afghanistan performed a valuable role in the presidential election. In partnership with the JEMB and international agencies, a range of different domestic non-governmental organisations developed useful civic education programmes to promote public participation in the electoral process, especially in relation to voter registration. The involvement of the NGOs, many of whom were locally or regionally based, was a generally successful attempt to maximise the geographical coverage of the civic education programme, although there was some concern over the quality and impartiality of the activities of some organisations. The more traditional forms of civil society in Afghanistan, especially *shura*, were also widely involved by the JEMB – as well as by candidates – in promoting the electoral process.

In June 2004, thirteen prominent NGOs established the Foundation for Free and Fair Elections in Afghanistan (FEFA) to initiate and implement a programme of domestic non-partisan observation of the presidential election.⁴⁶ Despite its lack of previous experience and significant failings in their overall technical capacity, FEFA was able to organise the recruitment and training of 2,600 persons to participate as observers on election day. This enabled a majority of the polling centres nationwide to be covered by non-partisan observers and, in these circumstances, FEFA can be considered to have provided an effective and appropriate contribution significantly towards local confidence in the electoral process, especially through their release of timely and credible reports and press statements.

The Afghan Independent Human Rights Commission (AIHRC) played a prominent and important role during the presidential election. Along with UNAMA, the AIHRC produced three joint reports on the verification of political rights in Afghanistan which sought to ascertain the environment for the holding of democratic elections.⁴⁷ These comprehensive and professional reports were often critical of many aspects of the pre-election period, especially in relation to the prevailing security conditions and the prevalence of intimidation of voters by warlords. The reports also succeeded in highlighting a number of omissions by the JEMB and governmental authorities that in some cases saw remedial action being taken, including the suspension of State officials involved in

⁴⁴ In Pakistan, the participation of women was 29 per cent and, in Iran, 40 per cent.

⁴⁵ In Zabul province, the turnout was 11 per cent women voters and in Helmand, 7 Per cent.

⁴⁶ FEFA was established with the support of the US National Democratic Institute (NDI) and, later, received technical advice from the DESM.

⁴⁷ AIHRC and UNAMA had been formally requested to produce such reports by the ATA government. While these reports were regarded as credible and independent, a number of commentators questioned whether there was a conflict of interest in the role played by UNAMA given its wider involvement in the electoral process.

campaigning. Through its network of provincial offices, the AIHRC was also able to provide independent advice to voters and other electoral stakeholders on issues such as the procedures for filing complaints. Worryingly, AIHRC staff members have received threats and harassment resulting from their investigations.

J. Election Day⁴⁸

Election day passed calmly and was not disrupted by any serious security incidents related to the elections. Despite cold temperatures and inclement weather, turnout – at around 69 per cent in country – was relatively high but lower than expected, which many consider a reflection of the over-registration and the issuing of multiple voter registration cards. Voters queued in an orderly manner and there were few reports of crowd troubles. For the most part, voting procedures went smoothly and polling station staff generally performed their tasks properly. There were widespread reports of under-age voting by persons holding valid registration cards. Candidate representatives were present in many polling stations, while domestic non-partisan observers mostly covered urban polling centres. Few problems were reported in relation to the punctual opening of polling centres or the supply of sufficient election materials. The JEMB publicly announced at 15:00 that polling could be extended by two hours if considered necessary by polling centre supervisors. This somewhat unclear announcement caused some confusion and, in fact, most polling centres did not extend voting beyond 16:00, the appointed closing time.

Problems with the use of indelible ink as a safeguard against multiple voting emerged early on election day, with widespread claims that the ink could be washed off. These problems were widely reported in both the international and domestic media. The DESM can confirm that the indelible ink used, if applied properly, left a permanent mark that could not be washed off. While polling staff had been trained to ‘mark’ voters’ thumbs using an indelible ink pen, many staff members were confused by the different types of pens and inks that they had been supplied with. In some polling stations, the indelible ink came in pots rather than pens; in the polling stations where they had been provided, the indelible ink pens were of the same dimensions and appearance as pens that contained standard, and therefore washable, ink.⁴⁹

The remaining safeguard against multiple voting was the punching of holes in voter registration cards. This seems to have been mostly effective and the DESM was unaware of any verifiable evidence that problems with the use of indelible ink actually allowed serious cases of multiple voting to take place. While it is commonly acknowledged that a significant number of people held multiple voter registration cards, there were very few reports of people voting, or attempting to vote, more than once.

The out-of-country voting (OCV) by Afghan refugees in Pakistan and Iran also proceeded successfully. Turnout in Pakistan, at around 77 per cent of the total number of persons who had registered as voters between 1-4 October, was higher than in Afghanistan. In Iran, around 240,000 votes were cast.⁵⁰ Polling in both countries was generally calm with no significant security incidents. A number of irregularities were reported, especially in relation to the secrecy of the

⁴⁸ Members of the DESM visited around 70 polling centres on election day in eight regional urban centres. The DESM also coordinated closely with over 130 members of EU diplomatic missions who, as accredited ‘special guests’, visited numerous polling centres across Afghanistan, Pakistan and Iran.

⁴⁹ The only distinguishing feature was the writing on the side of the pens, which was in English only. One read ‘indelible ink’ and the other ‘permanent ink’. To add to the confusion, polling stations were also supplied with another pot of (washable) black ink to be used for the certifying stamp for ballot papers.

⁵⁰ In Iran, the turnout was around half of the estimated 400,000 to 600,000 eligible voters. Both turnout figures are genuinely impressive for an out-of-country voting programme, especially as 9 October was a working day in Iran.

ballot, under-age voting and isolated cases of bias shown by polling station officials. Unlike Afghanistan, there were no problems with the use of indelible ink.

K. Counting Process

In an attempt to assure voters of the total secrecy of their vote, it was decided by the JEMB that the counting of votes would take place at centralised counting centres rather than at a polling station or polling centre level. It was considered that this would increase secrecy and reduce the possibility of intimidation through counting the results of polling stations *en masse*. In taking away any possibility to know how each individual polling station voted, however, the JEMB removed a recognized safeguard against electoral fraud, especially ballot-stuffing or the falsification of records.

Although initially envisaged to be undertaken at a provincial level, in mid-September the JEMB decided that vote-counting would take place at eight regional counting centres only. The change in policy, taken to increase security of the counting process and to provide for higher levels of international supervision, created significant operational difficulties, especially in relation to the increased requirement to transport sensitive election materials.

The procedures for the counting of votes were outlined only in a manual for counting centre staff rather than in a formal JEMB regulation. Despite improvements introduced to expedite counting at regional counting centres, which allowed five different stages of counting to take place simultaneously rather than consecutively, the procedures were still extremely complex, time-consuming and led to a lengthy delay between the close of polling and the announcement of results.

Although the counting process started on 10 October with the procedure of reconciliation (whereby ballot boxes were opened to see if the number of ballot papers inside tallies with the number recorded in the polling station record, known as the General Return Form), the actual counting of votes did not start until 14 October. Although the JEMB publicly claimed that the delay was prompted by the widely-reported investigation into election day irregularities by the impartial panel of election experts (see below), in any event it would not have been possible for counting to have started until the end of the 72-hour period during which complaints against election day could be filed.

While the process was further slowed by the inadequate training of inexperienced counting centre staff, significant problems emerged during the reconciliation process because of a high proportion of erroneously completed General Return Forms. This meant that there was a high level of discrepancy between the number of ballot papers found in ballot boxes and the number of voters recorded as having voted. The JEMB had issued no formal instructions or guidelines on what steps should be taken where there was a significant discrepancy and considerable discretion was given to counting centre supervisors to resolve problematic cases.

Progressive preliminary results were published on the JEMB website as soon as they became available on 16 October and were regularly updated. While this contributed to the transparency of the counting process, the JEMB did not release important data that would have strengthened public confidence in the integrity of the count. In particular, from the start of the reconciliation process, the JEMB could have announced, but chose not to, such information as the number of ballot boxes returned, the number of voters recorded as voting, the number of ballot papers issued to voters and the number of ballot papers found in ballot boxes. Instead, the JEMB only announced the number of reconciled ballot papers, as well as the number of votes cast for each candidate and the number of invalid votes.

The low share of invalid ballots (1.3 per cent) was a positive aspect of the process, especially given the high level of illiteracy in Afghanistan. It can be attributed to the straightforward ballot paper which apparently made it easier for voters to indicate their choice.

L. Complaints

The regulations relating to the procedures for filing complaints during the presidential election were adopted by the JEMB extremely late in the process.⁵¹ It is unclear why there was such a delay, which made it impossible for there to be adequate levels of awareness and understanding of the complaints mechanism amongst electoral staff and other electoral stakeholders, especially candidates, many of whom had already expressed their lack of confidence in the independence and impartiality of the JEMB in addressing problems with the electoral process.

The procedures themselves lacked clarity on the steps to be taken in filing a complaint. There were unclear restrictions on what and whose actions or decisions could be challenged. Considerable discretion was given to JEMB staff – including under-trained and possibly partisan polling staff – to dismiss complaints arbitrarily and without the requirement to produce reasons. It was unclear as to whether a complaint had a right of appeal and, if so, to where the appeal would be filed. Moreover, the JEMB was inadequately prepared to receive complaints, with limited institutional resources to effectively handle and investigate complaints (the JEMB Complaints Unit had just one staff member) and the JEMB itself was often unable to take decisions on complaints within the stipulated timeframe.

Given the lack of awareness on the available procedures and the concerns of most candidates against the JEMB, it was unsurprising that relatively few formal complaints – around 30 – were received by the JEMB before election day, and none were of particular significance. Instead, more serious complaints – such as concerns over multiple registration cards or OCRV – tended to be brought through informal channels, such as by using the media. At a regional level, numerous complaints were brought to the attention of UNAMA and AIHRC field offices but rarely the JEMB.

On election day, opposition candidates raised many complaints related to allegations to irregularities such as bias of polling staff, intimidation of voters or problems with voting procedures, especially the use of indelible ink. In response to this – and to some extent in recognition of the lack of confidence it held amongst the complainants – the JEMB was encouraged by UNAMA to establish an Impartial Panel of International Experts to investigate and report on the complaints. The panel established procedures and deadlines for the conduct of its investigation which were markedly different from the JEMB complaints mechanism. Importantly, the panel received the endorsement of all candidates and improved confidence in the post-election process.

Over four days, the panel received hundreds of complaints from which it calculated there were 661 different allegations, some of which led to some ballot boxes being temporarily quarantined. In its investigations, the panel found: that the problems associated with the use of indelible ink were caused by procurement and JEMB management failings; that multiple voting was not a significant problem; that there were many minor procedural irregularities, caused by insufficient training and delayed decision-making; that there were some problems relating to access to polling stations; that allegations of bias of polling staff were mostly explained by the need for assisting voters; that there

⁵¹ The three regulations were: ‘On Complaints and Irregularities during Election and Counting Processes’, ‘On Offences during Elections’ (both adopted 27 September) and ‘On Procedures for Investigation and Disposal of Complaints relating to Electoral Offence and other Irregularities’ (adopted 2 October).

were limited attempts at electoral fraud, such as ballot-stuffing; and that allegations of intimidation against candidate representatives mostly related to their exclusion from polling centres and that this was often justified by law. Overall, the panel confirmed that the allegations, in part and as a whole, did not cast doubt on the integrity of the wider electoral process or had any material impact on the overall result of the election.

A number of candidates and candidate representatives raised complaints relating to the counting process, which were addressed by the JEMB under its existing procedures.⁵² A number of these complaints related to instances where ballot boxes were found to be ‘stuffed’ or where there serious irregularities relating to the sealing of ballot boxes; this was seen to be a particular problem in Urozgan province. The JEMB did not announce how many complaints it received in relation to the counting process, nor the number of ballot boxes that had been excluded from the count.

M. Announcement of Results

The official result of the presidential election was announced on 3 November, shortly after the impartial panel had formally published the conclusion to their investigation (see table below). However, the final outcome based on preliminary results of over 99 per cent had already been known for over a week.

A total of 8,128,940 voters voted. Excluding out-of-country voters in Iran and Pakistan, this represented a turnout of around 69 per cent of the total number of registered voters in country. As a proportion of the total number of voters registered in province, the highest turnout took place in the province of Badghiz (west) (97 per cent), whereas Paktika (south-east) and Ghor (west) also displayed extremely high figures of 97 per cent and 95 per cent, respectively. The lowest proportional turnout of registered voters was recorded in Uruzgan (south) (35 per cent), followed by Panjshir (north east) (38 per cent) although this is likely to be due to bad weather conditions on election day. Also in the south, Zabul saw a turnout of 40 per cent and Logar (46 per cent). In Daikundi, the turn-out was nominally in excess of the number of registered voters, due to the additional registration carried out in one of the districts of the province in September.

Karzai was able to rely on his powerbase in the so-called Pashtun belt in the south, southeast and east of the country as well as on the predominantly Pashtun refugees in Pakistan. However, he won the election mostly because he managed to make inroads in the western – and to a lesser extent – northern provinces of the country as well as in Kabul. He also fared well in non-Pashtun provinces like Balkh and Badakhshan, but what really made the difference was his dominance in Herat, Badghiz and Farah, and the majority of refugees in Iran cast their votes in favour of the incumbent. Notably, Karzai won both the in-country (53.8 per cent) and out-of-country vote (69.7 per cent).

Overall, the ethnic vote, as represented by the four major contenders, accounted for more than four-fifths of the total (83.4%). Karzai was the only candidate who managed to overcome ethnic lines and this gave him the victory. In contrast, the other major contenders remained confined to their regional powerbases and appeared to lack a nation-wide appeal. The leading opposition candidate Qanooni garnered nearly 40% less of the total vote (16.3 per cent), whereas Mohaqeq and Dostum barely obtained double-digit figures - 11.7 per cent and 10 per cent, respectively.

⁵² The mandate of the panel restricted its investigations to allegations concerning election day only.

Official Results of the 2004 Presidential Election

<i>Candidate</i>	<i>Political Affiliation</i>	<i>Votes</i>	<i>%</i>
Hamid Karzai	Independent	4,443,029	55.4%
Yonus Qanooni	Hezb-e-Nuhzhat-e-Mili Afghanistan	1,306,503	16.3%
Haji Mohammad Mohaqeq	Independent	935,325	11.7%
Abdul Rashid Dostum	Independent	804,861	10.0%
Abdul Latif Pedram	Hezb-e-Congra-e-Mili Afghanistan	110,160	1.4%
Massooda Jalal	Independent	91,415	1.1%
Syed Ishaq Gilani	Nuhzat-e-Hambastagee Mili Afghanistan	80,081	1.0%
Ahmad Shah Ahmadzai	Independent	60,199	0.8%
Abdul Satar Serat	Independent	30,201	0.4%
Hamayon Shah Asifi	Independent	26,224	0.3%
Ghulam Farooq Nijrabi	Hezb-e-Istiqlal-e-Afghanistan	24,232	0.3%
Syed Abdul Hadi Dabir	Independent	24,057	0.3%
Abdul Hafiz Mansoor	Independent	19,728	0.2%
Abdul Hadi Khalilzai	Independent	18,082	0.2%
Mir Mohammad Mahfouz Nedae	Independent	16,054	0.2%
Mohammad Ebrahim Rashid	Independent	14,242	0.2%
Wakil Mangal	Independent	11,770	0.1%
Abdul Hasseb Aryan	Independent	8,373	0.1%
Valid Votes		8,024,536	100.0%
<i>Invalid Votes</i>		104,404	
Total Votes		8,128,940	

IV. ELECTIONS TO THE NATIONAL ASSEMBLY AND PROVINCIAL AND DISTRICT COUNCILS

In its decision of 12 June 2004, the JEMB determined that the elections to the National Assembly ('parliamentary elections'), initially envisaged by the Constitution to be held concurrently with the presidential election, would be postponed to April 2005. Elections to provincial and district councils ('local elections') are also required and are expected to be held at the same time as parliamentary elections.

The bi-cameral National Assembly will consist of a directly-elected lower house, the *Wolesi Jirga* (House of Representatives), and the *Meshrano Jirga* (House of Elders), the members of which will either be indirectly elected from provincial and district councillors or will be appointed by the President. The Constitution requires that the National Assembly can only be in session when both houses are functioning.⁵³

The Constitution and the Electoral Law guarantee that a minimum number of women will be represented in parliament. In the *Wolesi Jirga*, there must be at least an average of two women from each provincial constituency; currently, this would ensure there would be at least 68 women representatives (27% of the 249 parliamentary seats). In the *Meshrano Jirga*, at least half of the members appointed by presidential decree must be women; currently this would ensure at least 17 women in the upper house (16% of the envisaged 102 total membership).

⁵³ Constitution, Article 104.

A. Elections to the Wolesi Jirga

1. Multiple-Mandate Provincial Constituencies

The Election Law establishes that the 249 members of the lower house will be elected from constituencies consisting of each province in Afghanistan. There will be no out-of-country voting for parliamentary elections. Each constituency will have a multiple number of parliamentary seats, which will be allocated using a formula based on the size of each province's population in proportion to the national population.⁵⁴ The allocation of parliamentary seats will be a crucial political issue ahead of the parliamentary elections. Yet, while this system presupposes accurate and reliable population data, the Central Statistics Office (CSO) is only able to extrapolate estimates from previous and incomplete censuses. There remains great uncertainty – and, importantly, no political consensus – over the population size of Afghanistan, its separate provinces or any of its different ethnic groups. Moreover, despite a presidential decree of 5 June 2004 that listed their constituent districts, the boundaries of several provinces are also politically disputed. The credibility and legitimacy of the allocation of parliamentary seats between provinces by the JEMB will clearly depend on its use of verifiable and transparent population data.⁵⁵

2. The Single Non-Transferable Vote System

Many Afghan and international interlocutors have severely criticised the decision to use the Single Non-Transferable Voting (SNTV) system to award the multiple parliamentary seats within each provincial constituency.⁵⁶ Under this system, candidates contest the election on an individual basis irrespective of whether they are independent candidates or representatives of a party.⁵⁷ Parliamentary seats are not based on the proportion of votes cast in a constituency but, rather, are awarded to as many of the 'highest-polling' individual candidates as there are parliamentary seats allocated to that constituency. At least two parliamentary seats in each constituency must be awarded to the two highest-polling candidates who are women, even if they polled less than the lowest-polling male candidate.⁵⁸

A consequence of this irregular relationship between votes cast and seats won is that the SNTV system is widely acknowledged to discriminate against the development of political parties at both a national and local level. Political parties are historically unpopular institutions in Afghanistan and it appears that the SNTV system was chosen precisely to limit their possible role in future parliaments. Yet, while the system benefits popular independent candidates, it also strengthens those candidates, such as current or former warlords, who may dominate within a province. It is also likely that, without the discipline of stable political party structures, the resulting parliament

⁵⁴ Electoral Law, Article 19. The formula for seat allocation must be published in regulations by the JEMB. Each province must have a minimum of two seats.

⁵⁵ While the CSO must provide official population figures to the JEMB at least 90 days prior to the election, there is no specified deadline for the JEMB to decide on the allocation of seats. However, as the date of each election must also be called no later than 90 days before election day, the same deadline should apply by analogy (see Electoral Law, Article 37(1)).

⁵⁶ A comprehensive and critical assessment of the decision to use SNTV in Afghanistan is contained in the report '*Free, Fair or Flawed: Challenges for Legitimate Elections in Afghanistan*', published by the Afghanistan Research and Evaluation Unit (September 2004).

⁵⁷ A practical consequence of where individual candidates contest a multiple parliamentary seat constituency is that it can result in oversized ballot papers. Under the Electoral Law, ballot papers must contain a candidate's name, photograph and a symbol.

⁵⁸ In constituencies with only two parliamentary seats, at least one will be awarded to whichever female candidate polls highest.

will be fragmented and dominated by personalities or factions that may have little share of the popular vote.

There is virtually no public understanding of the electoral system that has been chosen for parliamentary elections, even amongst major political actors. While a series of discussions with political parties and civil society groups had taken place during the drafting of the Election Law, these had focused on the likely adoption of a proportional list system based on either national, regional or provincial constituencies; in fact, there was no proper consultation on the possible use of the current system and it appears that many actors may still not be aware that it was chosen. Without a comprehensive public information campaign, it is not yet possible to determine whether the current parliamentary electoral system will have the confidence of the public or future election candidates.

B. Elections to Provincial and District Councils

As well as being a vital contribution towards the democratisation of local self-government in Afghanistan, the election of local councils is a prerequisite to the formation of the *Meshrano Jirga* and indeed the Assembly as a whole.⁵⁹ For this reason, it has been expected that parliamentary elections will need to be held concurrently with local elections in order to ensure that both houses of the National Assembly can be established at around the same time. Any postponement of the local elections would both delay the formation of the upper house and stall the effective functioning of the *Wolesi Jirga* as laws must be approved by both houses.

The Election Law establishes that the number of members on any provincial council will be between nine and 29, and for any district council between five and fifteen, dependent on the size of the population of the province and district. Therefore, as with the proposed elections to the *Wolesi Jirga*, no provincial or district election is feasible until reliable population data is available to determine the size of the council. Moreover, as there is currently some controversy as to how many actual districts exist in Afghanistan and within which provinces they are placed, there is also a need for the proper delineation of district and provincial boundaries ahead of any election. The Electoral Law gives responsibility for the designation and announcement of provincial and district electoral boundaries to the President rather than a more appropriate governmental agency or independent body.⁶⁰

There are currently no provincial or district councils in Afghanistan: provinces are administered by governors appointed by the central government through presidential decree and, in turn, the heads of districts are appointed by the provincial governor. This system of local government is in urgent need of reform as it is notorious for its lack of democratic governance, with rampant corruption, dominance of warlords and violations of human rights. However, as yet, there is no legislative framework that details the role, powers and duties of the provincial or district councils once they are elected. It is not appropriate that local elections can take place without such a basic law being prepared.

The SNTV system is also to be used for local council elections, so that council seats will be awarded to as many of the 'highest-polling' candidates as there are seats allocated to that council. In cases where one popular candidate won the majority of votes, it means that the other candidates elected under SNTV would have the majority of council seats. Again, at least two seats in each

⁵⁹ One third of the *Meshrano Jirga* will be elected from the members of provincial councils. Another third will be elected from members of district councils.

⁶⁰ The designation of the boundaries must be announced by the President no later than 120 days before election day.

council must be awarded to the two highest-polling candidates who are women, even if they polled less than the lowest-polling male candidate.

C. Amendments to the Voter Register

The current national voter register is inadequate for the holding of parliamentary or local elections. As well as having a high level of inaccuracy through multiple registration, the current voter register provides no basis for the allocation of voters to districts and provinces; these are crucial requirements in determining where voters will have the right to vote in a parliamentary or local election. As there was previously no restriction on the location where voters could choose to be registered or to vote, the method of compiling the existing voter register ensured that only limited data was gathered that could identify the location a voter should be registered in. While it is possible to assume that information may be available to tie some voters to a specific location – for example, through cross-referencing the existing voter register with the records of where each voter voted on 9 October – it is unlikely that this could apply to all voters. The JEMB will need to produce clear and comprehensive procedures on the methods by which it will allocate voters to specific locations well ahead of parliamentary or local elections. Voters must be informed of their allocated location and be given the opportunity to challenge it if necessary.

As in any country, the voter register will need to be updated ahead of the parliamentary or local elections to allow for the inclusion of newly eligible voters (i.e. those who have come of age since last registration) and the removal of the names of deceased voters. It is essential that an updated voter register attempts to include the names of eligible voters who were previously unregistered, such as the tens of thousands of former refugees who have returned to Afghanistan. The process of updating the voter register will require complex safeguards in order to avoid further cases of multiple voter registration through the inclusion of any names of voters who are already registered.

D. Preparation of the Election Administration

Based on experiences from the 9 October presidential election, it is clear that the holding of parliamentary and local elections in Afghanistan will be a massive and costly administrative undertaking, regardless as to whether they are held concurrently or separately. It is certain that the logistical, operational, technical and financial challenges will be even greater if the elections are held within the proposed timeframe of April 2005. Although preliminary planning appears to have already begun with the development of a basic operational plan, it is essential that the JEMB undertakes a logistical ‘lessons learned’ process from the presidential election in order to ensure that all timeframes are realistic and credible if electoral stakeholders and donors are to have confidence in the realistic capacity of the JEMB to deliver elections in the proposed time-frame. With this in mind, the JEMB must focus on the possibility that the operational implementation of many aspects of an electoral process will be made considerably more difficult during the winter months by snow, especially in the central highlands, northern and north-eastern regions.

Under its current structure, the JEMB is poorly designed to administer provincial-level parliamentary elections. It is a highly centralised body with only two coordinators (one Afghan, one UN international) for each province.⁶¹ This structure is wholly inadequate to administer the extra workload that will be generated by the parliamentary election – such as liaison with candidates, monitoring campaigns or handling complaints – in an effective or a sufficiently transparent and accountable manner. The JEMB will need to decide on a new structure to

⁶¹ The provincial coordinators, who oversee the work of as many field workers as there are districts in that province, are supervised by regional coordinators.

administer parliamentary and local elections, which will probably require the establishment of independent election commissions with delegated powers for each province.

E. Nomination of Candidates for Parliamentary and District Elections

The Election Law currently requires all candidates for election – whether for president, parliament, provincial council or district council – to submit their nominations to the JEMB in Kabul at least 75 days before an election. The JEMB is required to verify the eligibility of all candidates against the criteria established by the Constitution and the Election Law within seven days and review any further objections that may be raised against a candidate's eligibility by members of the public. It is particularly important that there is a proper and fair review procedure of each candidate in order to prevent militia leaders or war criminals standing for election to parliament or a local council. There is already concern that a number of political parties with well-known connections to militia groups have already been registered by the Ministry of Justice. Any candidates nominated by such parties will need to be thoroughly reviewed by the JEMB in a clear and transparent manner if there is to be confidence in the vetting procedure.

The current system will clearly be unsuitable for dealing with the large number of candidate nominations that can be expected for parliamentary and, especially, local elections. It is extremely unlikely that such a centralised and time-limited procedure would be able to guarantee that candidate nominations and public objections could be properly and fairly reviewed. The prospect of candidates from rural provinces being required to submit nomination papers to Kabul is patently unworkable and unfair.

V. DEMOCRACY IN AFGHANISTAN

The post-conflict democratic development of Afghanistan started from an extremely low base and any assessment of the achievements made and continuing challenges must take this premise into account. Significant advances have been made since 2001. In many respects, however, important questions relating to achieving a sustainable democratic transition in Afghanistan have tended to be overshadowed by the intense, but essentially short-term, focus placed on just one strand of democratisation, the holding of genuine elections. In coming months, more focus and investment will rightly be placed on conducting the parliamentary and local elections; nevertheless, substantial and continued efforts by both the Afghan authorities and the international community will be needed in the longer term to ensure that the other pillars of a functioning democracy are properly established and strengthened as soon and as much as possible.

A. Civilian Control of the Armed Forces and Police

1. Disarmament, demobilisation and reintegration (DDR)

Despite the cessation of widespread conflict, Afghanistan remains dominated by weapons and unofficial or semi-official militia forces, led by commanders of varying degrees of influence and control who are still able to act with impunity. These factions constitute a real and ongoing threat to the integrity of the forthcoming parliamentary elections and to the wider democratisation process in the longer term.⁶²

⁶² Inter-factional clashes took place during the presidential election in the western and northern regions.

The DDR programme, by which militia groups are either decommissioned or assimilated into Afghanistan's official military forces, has so far disarmed and demobilized over 20,000 militia, around half of the target figure, and successfully led to the cantonment of the majority of heavy weapons. However its success has been inconsistent and many commanders have failed to cooperate fully. There is also concern over slower cantonment of small and light weapons (SALW) that are most likely to be used in cases of intimidation or by bands of local militia.

Calls for the accelerated disarmament of commanders and their militia were regularly voiced by interlocutors of the DESM, including several political parties, NGOs and ordinary voters. It is considered extremely important that the existing DDR programme be completed as far as is possible by the start of the parliamentary and local election process. Addressing the SALW problem also requires urgent attention. There is lastly the need for confidence to be strengthened in the DDR programme through regular reporting that records its implementation (or possible non-implementation) in a clear, equal and transparent manner. This will be particularly valuable during the public review process for the nomination of candidates for the parliamentary and local elections.

2. Civilian Control of the Afghan National Army (ANA)

Much training and investment has been made to develop the ANA as a disciplined and effective armed force, and it has achieved some significant successes, through its partnership with international peacekeeping forces and in gaining public confidence as a non-factional protector of State and public interests. However, the number of troops needs strengthening rapidly, especially given their likely important role in the parliamentary elections. A further key area is the need to establish a clear command structure that incorporates civilian control and institutional accountability, such as a mechanism for parliamentary oversight of the Ministry of Defence.

3. Civilian Control of the Police Service

The process of building up the Afghan National Police (co-ordinated by Germany as lead donor) has made considerable progress, with 26,000 police trained by late 2004. However, it was also shown during the presidential election, when hundreds of private citizens (many of whom were also local militia members) were deputised to provide armed security to many polling centres, that there are still insufficient numbers of trained police officers, especially women police officers, for the security needs of Afghanistan. This confirms that further work is needed to meet the official government target of 50,000 police trained by the end of 2005 and also in other respects, particularly as regards improving public confidence in the police and strengthening the management structures in the Ministry of the Interior.

As with the ANA, there is a similar need to strengthen the command structure that ensures civilian control of police activities, including the rights of the judiciary and citizens against unwarranted police interference, and which will include parliamentary and local government oversight of the Ministry of Interior and local police services. There is also a lack of public confidence in the capacity of the police service to effectively enforce the law and to investigate crime, especially in relation to the increasingly affluent trade in narcotics.

The efforts to reform the Ministry of Interior and other measures for training and upgrading the police should be pursued with vigour. Steps will also need to be taken to further strengthen public confidence in the police and their activities, including credible procedures for the investigation of corruption allegations and where appropriate for prosecution.

B. Access to Justice

The credibility of the development of newly-established democratic institutions will fully depend on their ability to ensure that there is respect for legislation and the prosecution of those who violate it, regardless of their position. International support (co-ordinated by Italy as lead donor) has assisted the ATA in its efforts towards establishing a functioning and transparent judicial system after Afghanistan's prolonged conflict, in terms of reforming legislation, training judges and lawyers, and rehabilitating court rooms and other legal infrastructure. Nevertheless, enormous challenges clearly remain in this area. The current judicial system does not function effectively and has been particularly problematic in bringing to account those responsible for serious human rights abuses and other crimes.

1. The Transitional Justice Process

The process of transitional justice, which seeks both to document war crimes and other human rights abuses and to identify their perpetrators, is being pursued by a number of organisations led by the AIHRC which, despite threats and intimidation, work closely with victims and witnesses. It will be important for public confidence in the democratic process and the rule of law that the findings of these reports are widely publicised and acted on in a manner which enjoys broad public support. Whilst any transitional justice process must be Afghan-led and Afghan-owned, the international community should stand ready to assist, be it in the form of appropriate financial assistance or by making available legal or other kinds of expertise.

2. Independence of the Judiciary

The influence of the judiciary is undermined by delays in the implementation of an effective hierarchical court system with a defined jurisprudence and a clear appellate structure. There also exist many concerns over the independence of the judicial process from the executive. As was shown during presidential election by the intervention of the Supreme Court in the case of Pedram, there are further concerns over the understanding that the senior judiciary has towards its role within the separation of powers envisaged by the Constitution.⁶³ Many members of the judiciary are under-trained and are considered to have little professional capacity, especially in their new role to protect the human rights norms that now form the basis of the Constitution. Continued efforts will be needed to work with the Ministry of Justice and the Afghan legal community towards the development of a modern jurisprudence and the application of current and future legislation. Particular attention will need to be focused on strengthening the role of the formal judicial structures as the appropriate dispute resolution process, not least as this will be a crucial area for developing confidence in future elections. Further attempts should be made to improve the profile and role of women in the judiciary.

C. Civil and Political Rights

1. Awareness of Civil and Political Rights

The Constitution enshrines key civil and political rights and commits Afghanistan to respect related international treaties to which it is signatory, including the Universal Declaration of Human Rights. Although the civic awareness campaign for the presidential election referred to

⁶³ The Supreme Court itself currently fails to operate within the provisions of the Constitution, having over a hundred, rather than the stipulated nine, members.

the implementation of some of the rights related to elections, there have been limited attempts to properly inform the wider Afghan population of the basic rights they hold and the means by which they can be enforced. The AIHRC and other organisations should be supported in their work to broaden understanding and confidence in raising awareness, and monitoring the breach, of Constitutional rights, especially the key freedoms of movement, expression, association and assembly. The Afghan authorities will need to take further steps to ensure that such individuals and groups working to improve human rights are free from harassment and intimidation.

2. Rights of Women

The traditional discrimination against women in Afghan society is well-documented and constitutes a major obstacle to be overcome in the democratisation process. Although important steps have been taken to establish a Constitutional guarantee of equality and the high turn-out of women in the presidential election is very significant, there continue to be widespread violations of the rights of women and girls in Afghanistan.

Part of the approach to address gender concerns is that women should be better represented in the political field and especially in political party structures. A particular focus is required to assist political parties to increase their female membership and to include an appropriate number of women as their nominated candidates for parliamentary and local elections, as well as to ensure issues of direct relevance to women voters are addressed in their political platforms. Similar assistance will need to be provided to women who wish to consider standing as independent candidates. The provisions of the Election Law that guarantee a minimum representation of women in parliament and on local councils should lead to increased political support for the participation of women candidates, and will certainly lead to their greater participation in the political future of Afghanistan.

D. Good Governance

1. Corruption

As with the police service, there appears to be a low public confidence in the honesty of governmental structures with frequent cases of corruption among State officials, especially in provincial administrations. A key indicator of the possibility for change in this area was seen during the presidential election in the attempts of the JEMB Secretariat at regional and provincial levels to seek to appoint personnel – especially women – by virtue of their skill rather than their connection to office-holders. Acting against corruption and promoting accountability are key in establishing faith in government structures and the election processes that put governments into power.

2. A Credible and Effective Parliament

The forthcoming parliamentary and local elections will lead to the establishment of a National Assembly that will be able to play the crucial role in balancing and holding accountable the considerable political power exercised by the presidential executive in Afghanistan. Ahead of the electoral process, unique opportunities are now available to prepare and implement mechanisms through which both chambers of parliament could be developed and strengthened as a credible, effective and representative democratic institution. Urgent efforts are required to work with all relevant stakeholders – but especially political parties and voters – to raise awareness of the parliamentary system envisaged by the Constitution to ensure that there is a broad understanding of and participation in the parliamentary electoral process. France and India are helping the

government of Afghanistan in these tasks with France seeking to assist on the procedural side while India is assisting in the rehabilitation of a parliament building.

Although the Constitution identifies parliamentary powers and procedures, it will be extremely constructive to develop draft procedural frameworks for each chamber ahead of their first parliamentary session in order to prepare the basis for parliament to function effectively as soon as possible after the elections.⁶⁴ In order to ensure there is wide support for the mechanisms by which parliament will work, the draft procedural frameworks should be prepared in consultation with the likely parliamentary actors, who should commit to their swift adoption. In order to provide an important precedent towards ensuring wide scale public participation in the parliamentary process, there should also be consultation with relevant civil society actors, such as the AIHRC. The procedural frameworks should focus on: establishing draft rules of procedure for each parliamentary chamber; establishing draft rules for parliament to initiate, scrutinise and amend legislation; establishing draft rules for parliamentary oversight of the presidential executive and other executive agencies, including the military and police; developing guidelines for parliamentary committees and their draft rules of procedures; and, identifying the operational issues for the functioning of parliament, including security, the recruitment of staff, the use of offices, informational resources and the access of public.

The current plans to develop these procedural frameworks and to train up a core of staff for a future parliament are welcome and should be pushed strongly.

3. A Credible and Effective Executive

While the presidential executive that will be established following this current election will have generally popular endorsement, there will be a need for it to develop procedures that seek to ensure it operates in a democratic and transparent manner that has public confidence in its abilities. As well as addressing key issues relating to the prevention of corruption and impunity by its members, especially amongst its appointees to provincial governorships, the executive should also operate under open and systematic procedures that ensure public consultation and feedback on government policy and proposed legislation. Importantly, steps will need to be taken to promote equal access to government for relevant interests and stakeholders, including different regional and ethnic groups, and in this regard further consideration should be given to the establishment of an ombudsman service.

4. A Credible and Effective Local Administration

As has already been identified, there are significant flaws in the existing structures of local government and administration which urgently require reform. While in most areas there exists a degree of representative democracy in the government of local communities through the secular or religious *shuras*, the elected members of provincial and district councils will clearly have the potential to play a new and important democratic role in local self-government in Afghanistan.⁶⁵ It will be crucially important to establish by legislation the role and powers of the new councils before the conduct of elections, especially in relation to their role *vis-à-vis* the provincial administration appointed by central government, whose powers and duties – and criteria for appointment – need

⁶⁴ The Constitution (Articles 88 and 89) envisages that each chamber should establish working commissions to produce such procedures (referred to as “Internal Duties Regulations”), although no rules are identified by the Constitution for these commissions. The functioning of parliament would be delayed until each commission has produced and each chamber has agreed their procedural regulations.

⁶⁵ The Constitution (Article 141) also envisages the establishment of municipal councils “to administer city affairs”.

also to be clearly defined.⁶⁶ The legislation should require all local administration to operate with openness and accountability. There is a clear need for providing training to develop the capacity of local administrators and the members of local councils, as well as a civic education programme for increasing public awareness of the interaction between the local administration and the members of the public it serves.

E. Civil Society Development

1. Democratic Role of Political Parties

Despite misgivings in the general population stemming from the role political parties played during the civil wars, political parties appear to be increasing their influence in Afghanistan and will play a key role in contesting parliamentary and local elections. There are currently 51 political parties in Afghanistan that are registered with the Ministry of Justice, and a number more that have applied for registration. Political parties played a very limited role in the presidential election, with just four candidates officially representing parties, although a number of political parties openly but unofficially campaigned for Karzai, Qanooni and Asefi.

Only very few of the current political parties have a large-scale membership or national network of activists. Generally, most political parties tend to have a weak institutional structure with limited technical or organisational capacity but there is also very little awareness amongst leaders of the possible role of political parties in democratic development. As many of the stronger parties emerged during the anti-Soviet conflict and civil war, they are often closely associated with militia groups, while a number of persons considered to have been warlords now head political parties. Although there are some parties with clear ideological platforms, there is little to distinguish most parties from each other except through their fragmentary history and leadership. However, political parties essentially fall into four groups: old *jihadi* parties and movements; new *jihadi* movements; democratic parties; and post-communists.⁶⁷

Substantial efforts will be needed for political parties to participate as effective players in future elections. As well as requiring training in relevant organisational and capacity development, including campaigning skills, there is a significant lack of awareness amongst political parties of the wider electoral system and, in particular, the preparation that is required to nominate candidates or to structure their financial preparations for an election. Similar efforts are needed to develop awareness amongst those voters who intend to nominate themselves to stand as an independent candidate for the parliamentary or local elections. Although the Law on Political Parties provides for State funding of political parties (but not independent candidates), no such funding is currently provided. There is some concern that, in the absence of State funding, political parties will be dependent on illegal funding sources.

⁶⁶ The Constitution is silent on the role of provincial governors and their administrations. It is feasible that a person excluded from election to parliament or a local council for links with militia groups or war crimes could be appointed a provincial governor and exercise important powers.

⁶⁷ Old *jihadi* parties include Hezb-e Islami (Party of Islam); Jamiat-e Islami (Islamic Society of Afghanistan); new *jihadi* movements include Hezb-e Nuhzati Mili (National Movement of Afghanistan). Democratic parties include: Hezb-e Afghan Millat (Afghan Nation Party); Nuhzat-i Hambastagi Milli Afghanistan; and Hezb-e Jamhoorikhwahan-e Afghanistan, (Afghanistan Republican Party). The leading post-communist party is Hezbi Mutaahid-i Mili, which has experienced serious problems in being registered by the Ministry of Justice.

2. Democratic Role of Civil Society Organisations

Civil society has played a crucial role in the recent history of Afghanistan, with an extensive range of domestic and international NGOs successfully providing humanitarian aid and educational support, both in country and to Afghan refugees. During the transition period, civil society activity has continued to expand across the country, in particular through the development of national networks of different regional organisations, many of which have worked closely to involve the more traditional forms of civil society in Afghanistan, such as *shuras* or mosques, in the transition process. In particular, there have been major steps taken in developing networks of independent human rights organisations and women's groups. Civil society activists have also played a leading role in the development of democratic institutions, including as delegates to the two *loyas jirga*, but while considerable levels of international assistance has been provided to building the capacity of domestic NGOs, many experienced activists have also moved into government or employment with international agencies and, overall, there are notable weaknesses in the institutional and strategic capacity of most Afghan NGOs to deliver on their longer-term goals.

An important new area for the development of civil society in Afghanistan is to focus on the role it can play in relation to elected democratic institutions. Governmental agencies and the forthcoming parliament and councils should be encouraged at all appropriate steps to involve consultation with relevant civil society groups, while NGOs should be encouraged to promote public participation and debate within society in relation to government and the legislative and transitional processes. In particular, public confidence in the integrity of the work of the presidential executive, parliament and local councils could be strengthened through civil society group monitoring of the democratic process.

Of more immediate focus is the need for civil society groups to act as observers and monitors of the parliamentary and local elections. As it is possible that the next elections could lead to increased levels of violence, intimidation and the infringement of political rights, the AIHRC and domestic non-governmental organisations will require continued assistance to investigate and report on possible violations of the law as well as providing an independent referral point for tracking complaints filed by electoral stakeholders and monitoring key aspects of the electoral process, especially the nomination of candidates. There will also be a continuing need for domestic non-partisan election observation by organisations such as FEFA that are properly planned and securely funded. Greater emphasis is required by such organisations on the longer-term electoral process, including observation of the nomination of candidates and the election campaign.

There is also the possibility for much wider participation by civil society groups in raising awareness of the parliamentary and district elections, including official civic education programmes, as well as opportunities for civil society input to the post-election phases, such as through training of parliamentarians and local councillors. As part of this, the JEMB will need to prepare comprehensive civic education programmes that start well ahead of the parliamentary and local election campaigns. As well as focusing on the nature of the elections and the different roles of the institutions, the programmes will need to reinforce public confidence in the principles of secret balloting and individual freedom of choice. It will be especially important for voters to be educated on the mechanisms open to them to protect or enforce their democratic rights in the face of intimidation or undue pressure. It will be important that, as early as possible, all voters are made aware of their right to stand as candidates, as well as the changes to the voter registration procedures that are likely to assign voters to pre-determined polling stations.

3. Democratic Role of the Media

The development of the media as a democratic actor alongside the legislature, executive and judiciary, will be a vital aspect of the wider democratisation of Afghanistan in order for media to work with wider civil society in a potential ‘watchdog’ role. The under-developed media in Afghanistan faces significant challenges in exercising this potential role, especially as its journalists work under severe constraints on their freedoms that include intimidation, insecurity, a scarcity of verifiable information and a legacy of censorship. All of this leads to a media that has often displayed passivity and a lack of objectivity. It will be important for tangible steps to be taken to ensure the independence and protection of journalists in their work, with further support being given to bodies such as the AIHRC for monitoring press freedom.

Further training and institutional capacity-building for journalists in key professional skills and standards relating to coverage of political issues is essential, especially in relation to the role the media should play in reporting and monitoring the work of the government and the parliament. There is a specific need to strengthen the capacity of the regional media and the understanding of State media of their professional requirement for objectivity. To this extent, further consideration should be given to the transparency of government and the possibility of freedom of information legislation being introduced. The legal framework for the media is also in need of improvement, with fundamental issues relating to the establishment of regulatory bodies and determining the role of State television and radio as public broadcasters.

The media itself can play an informative role in building a wider public awareness of the democratic process through facilitating public debate and other initiatives. While this will be especially important during the parliamentary election campaign, the media will also need to be supported in developing a capacity to reporting on parliament and the progress of legislation.

VI. RECOMMENDATIONS

The following recommendations in relation to improving the electoral and wider democratic process are offered for consideration and action by the Afghan authorities and civil society and by the international community:

Legal Framework for Elections

1. The legal framework should be comprehensively revised by the JEMB on the basis of lessons learned from the presidential election. Efforts should be made to include broad consultation with relevant stakeholders, including political parties and civil society, to strengthen confidence in and awareness of the legal framework.
2. The JEMB should commit itself to ensuring that all key legislation required for the conduct of elections is adopted as soon as possible and ahead of the of the formal start of an electoral process (i.e. the establishment of the election date or the opening of nominations). There should be greater publicity of the legal framework, including making available printed copies of legislation – preferably in a compendium – to electoral stakeholders.
3. As required by the Electoral Law and ahead of future elections, the JEMB should adopt formal, comprehensive regulations on the following issues:

- (i) procedures for voting on polling day, including provisions for special voting by prisoners, military, hospitalised and homebound voters;
 - (ii) procedures for the counting of votes, including time-frames for the starting and the completion of results, and requirements for the publication of results;
 - (iii) provision for observers, candidate representatives and political parties to have guaranteed access to JEMB sessions and to relevant materials;
 - (iv) procedures enabling the right to disqualify any candidate after their nomination is approved, clearly stating the criteria to cause disqualification and providing a right of appeal;
 - (v) procedures enabling any candidate to formally withdraw after their nomination is approved, clearly identifying the consequences of such action, especially after the printing of a ballot paper;
 - (vi) procedures to improve the candidate registration process, including removal of requirement to collect copies of voter registration cards and an increased period to allow effective vetting of nominations. The JEMB should establish a clear methodology for verifying each candidate's compliance with the qualification criteria, especially in relation to assessing candidate's connection to militia groups;
 - (vii) guidelines on the use of State resources and the involvement of public officials in election campaigns, with clearly sanctions against the breach of guidelines.
4. The JEMB should reform the procedures for submitting and dealing with electoral related complaints. The reform process should aim to introduce a complaints and appeals procedure that provides a clear and more transparent procedure for the effective resolution of electoral disputes throughout the electoral process, including the election campaign period. The right of appeal should be enshrined and the appellate structure should be clarified. The JEMB Secretariat's institutional capacity for receiving and handling complaints should be strengthened through the establishment of a properly resourced Complaints and Investigations Unit that operates under an independent mandate under the direct supervision of a JEMB member. Decisions on the resolution of all complaints should be endorsed by the JEMB. The decision on all complaints should be made publicly available. Training on the complaints procedure should be provided to all JEMB staff. Efforts should be made to provide training on the complaints procedure to electoral stakeholders and to include awareness of the right to file a complaint in the civic education programme.
5. As required by their establishing document, the JEMB should adopt rules of procedure for its internal conduct and decision-making processes. The rules of procedure should be binding on JEMB members as well as the JEMB secretariat and its contracted implementing partners. The rules of procedure should include: clarification of the steps to be taken where the JEMB cannot reach consensus, preferably through a vote, possibly a secret vote or a qualified majority vote; and guarantees of independence for all JEMB members and senior JEMB Secretariat staff.
6. The JEMB establishing document should be changed to remove the provision that allows referral to the president in the case where consensus cannot be reached.
7. The Electoral Law will need to be amended by presidential decree to include the following issues:
- (i) clarification of ambiguous provisions relating to the death of a presidential candidate before the announcement of results;

- (ii) clarification of the role of the judiciary in the electoral process, especially the status of the Supreme Court *vis-à-vis* the constitutional role of the JEMB/IAEC as the authority with responsibility for elections;
 - (iii) inclusion of key electoral rights and procedures currently governed by JEMB regulation only.
8. For future presidential elections, consideration should be given to amending the Constitution and the Electoral Law to allow a short extension of the period between the first and a second round to longer than two weeks to allow for operational needs.

Voter Registration

9. The JEMB should establish a credible mechanism for the creation of localised voter lists, preferably at a polling centre level. Substantial efforts should be made to ensure voters are made aware of the polling centre to which they have been assigned. Consideration should be given to run a pilot programme to ensure the feasibility of the proposed mechanism before it is applied nationally.
10. The JEMB should establish a credible mechanism for updating the register of voters to include newly eligible voters or previously unregistered eligible voters. In particular, efforts should be made to ensure the inclusion of returned refugees. The JEMB should identify the safeguards by which repeated registration of existing voters will be avoided.
11. A more effective procedure for the exhibition of the register of voters should be developed, based on the public display of voter lists for each polling centre at a district level. Efforts should be made to increase awareness amongst electoral stakeholders to challenge the inclusion of names of ineligible voters. Greater steps should be taken to prevent voting by minors.

Election Administration

12. The method by which members of the IAEC/JEMB are appointed should be revised in order to strengthen confidence in their independence and impartiality. Consideration should be given to whether the appointment of new members ahead of future elections may increase cross-partisan support of the JEMB.
13. The JEMB should establish, by regulation, a clear hierarchical structure for the administration of elections that stipulates the jurisdictional powers of the JEMB and its Secretariat, including regional, provincial and district administrators. In order to ensure full accountability, all policy decisions should be taken after full consultation between the JEMB and its Secretariat and should be endorsed by a formal decision of the JEMB.
14. Consideration should be given to the establishment – possibly by presidential decree – of a lower tier of election administration, preferably provincial-level election management bodies, to facilitate the effective implementation of parliamentary and local elections. These bodies should have clearly established powers. The appointment of members and staff to such bodies should be transparent and should be based on merit and the meeting of published criteria.
15. The JEMB should improve the procedures for identifying and publicising the locations of polling centres, including a deadline for polling centres to be identified. There should be earlier recruitment of polling staff, especially women members of staff. Training of polling staff

should be improved and lengthened to allow for detailed training in the methods for completing polling station records.

16. An effective focal point, preferably a sub-committee with designated officers, should be established by the JEMB to ensure structured and regular liaison with political parties and candidates in order to ensure proper consultation on all relevant issues takes place and there is proper distribution of materials.
17. The JEMB should take full responsibility for its public relations and media announcements. The JEMB should install simultaneous translation equipment for its meetings.

Out-of-country Registration and Voting

18. Should out-of-country registration and voting take place in future elections, consideration should be given to: involving refugees in other countries than just Pakistan and Iran; involving all refugees in Pakistan and Iran; and ensuring consistent voter registration procedures and similar eligibility criteria for voters.

Campaign

19. The length of the official campaign period should be extended from its current 30-day period to allow the possibility of a countrywide campaign.
20. Campaign financing regulations should be properly enforced. There should be clarification on the right of political parties to State funding. Consideration should be given to providing financial assistance to presidential candidates.

Media

21. The mandate of the Media Commission should be revised to increase its effectiveness as a supervisory body, including the power to monitor the campaign silence period. It should be provided with the authority to issue reprimands and other sanctions for breach of media regulations. Its investigational capacity should be strengthened and should work closely with the JEMB Complaints and Investigation Unit. The Media Commission should be properly staffed and resourced from core-funding. Consideration should be given to establishing regional Media Commission offices or the appointment of media focal points within the JEMB field structures. Members of the Media Commission should be appointed in a transparent manner using established criteria.
22. The Media Commission should be established in sufficient time ahead of the start of an election process to enable the timely preparation and publication of regulations based on wide consultations. The procedures used in the presidential election to provide free airtime and print space to candidates will need to be revised for parliamentary and local elections. The Media Commission should exercise its regulatory powers in a timely and appropriate fashion.
23. The Media Commission should publish its monitoring reports on a regular basis during the election campaign. Efforts should be made to increase awareness of the role of the Media Commission amongst media outlets and journalists, as well as other relevant stakeholders, with special focus on strengthening confidence in its independence and impartiality. Training should be provided to stakeholders on the regulatory framework, the criteria for compliance and the relevant complaints mechanism.

24. Further efforts should be made to towards developing the professional skills of journalists from State and non-State media, especially in relation to ensuring accurate and balanced coverage of elections. In particular, efforts should be made to boost the professional standards of members of the regional media.

Voting and counting procedures

25. The procedures for counting votes should be revised to allow counting to take place at provincial levels. Training for new counting centre staff should be improved.
26. Further consideration should be given, based on wide consultation, to whether counting should take place at a more localised level, such as at polling centres, in order to strengthen safeguards against voting fraud.

Parliamentary and Local Elections

27. Parliamentary and local elections should be held as soon as practicable. The process by which the JEMB determines whether parliamentary elections are held within the envisaged schedule of April 2005 and, if so, whether parliamentary elections and local elections are held concurrently, should be transparent and involve consultation with relevant stakeholders. The JEMB should identify in advance the criteria and the relevant factors that it will use to determine the date of these elections.
28. As a minimum, and in order to ensure parliamentary and local elections are held in accordance with the Electoral Law, the following steps should be taken:
- (i) The President will need to assign and declare the boundaries of each province and district, following consultation with major stakeholders and the published advice of an independent agency, such as the Central Statistic Office (CSO) (no later than 120 days before election day);
 - (ii) The CSO should produce realistic population data based on credible methodology, in order to allow the JEMB to determine, as early as possible, the allocation of parliamentary seats between provinces and the size of local councils (no later than 90 days before election day);
 - (iii) The formula by which the JEMB allocates parliamentary seats should be published. The allocation process should be undertaken in a wholly transparent and consultative manner;
 - (iv) The JEMB should publish regulations on and commence implementation of the methods by which it will update the voter register and assign voters to specific provinces and districts (see above, Recommendations 9 and 10).
29. In order to ensure a more effective and transparent administration of parliamentary and local elections, the following steps should be taken by the JEMB:
- (i) establish a lower-tier of election commissions, preferably at provincial level (see above, Recommendation 14);
 - (ii) produce revised regulations on the procedures for the registration of candidates (see above, Recommendation 3(vi)) that also allow nominations to be submitted and verified at a provincial level;

- (iii) adopt, as early as possible, clear regulations and procedures on campaigning, voting and counting;
 - (iv) establish consultative mechanism to allow for improved liaison between the JEMB and political parties and candidates at both national and provincial levels;
 - (v) prepare a comprehensive operational plan with achievable timeframes (taking into account winter weather conditions from December to March) and realistic budget estimates;
 - (vi) seek verified commitments to funding by donors;
30. In order to improve the participative nature of the electoral process and strengthen its credibility, the following steps will need to be taken by the JEMB and other Afghan authorities with the support of civil society and the international community:
- (i) all remaining applications by political parties should be completed, with a deadline announced for those wishing to still submit applications ahead of the elections;
 - (ii) efforts should be made to strengthen the organisational capacity of political parties – especially those with democratic platforms and not linked to militias – to participate fully in elections,
 - (iii) substantial efforts should be made to promote the role of women in political parties and as candidates in the electoral process;
 - (iv) further efforts should be made to improve the participation of women as voters, especially in the southern and south-eastern regions where registration and turnout of women voters was unacceptably low;
 - (v) support should be provided to civil society groups seeking to promote voter participation in the election, especially domestic non-partisan observer groups;
 - (vi) technical assistance should be provided to the AIHRC to strengthen their capacity in relation to monitoring the electoral process;
 - (vii) training should be provided to candidate representatives and political party agents
31. The JEMB, with the support of international advisors, should prepare and implement a large-scale public awareness campaign to inform voters effectively on the parliamentary and local elections, including the role of the new institutions and the changes to the procedures used during the presidential election, especially in relation to voter registration.
32. In recognition of the widespread dissatisfaction at the choice of the Single Non-Transferable Voting (SNTV) system for parliamentary and local elections and concerns about its suitability for Afghanistan's democratic development, the Afghan authorities should give serious and urgent consideration to adopting a more suitable election system for Afghanistan.⁶⁸ In the case that the SNTV system is retained, the JEMB should undertake an immediate process of consultation with and training of relevant electoral stakeholders to increase awareness and understanding of the SNTV system.
33. Ahead of local elections, the Afghan authorities should establish basic legal framework detailing the powers and duties of provincial and district councils.

⁶⁸ It is not normally considered to be international best practice to change the legislative basis of an election system shortly before holding an election; however, in the current circumstances of Afghanistan, this may still be considered appropriate given the lack of awareness of and preparation for the SNTV electoral system.

Democracy in Afghanistan

34. Aside from the work related to the conduct of the parliamentary and local elections, there should be continued strengthening over the longer term of the wider democratisation process in Afghanistan. Through close co-operation between all relevant actors, including the Afghan authorities, civil society and the international community, the following steps are recommended:
- (i) Urgent and tangible progress in completing the DDR programme should be achieved and reported on, with practical consideration being given to widening the disarmament of informal localised militia groups and restricting the prevalence of small and light weapons;
 - (ii) Clear and tangible steps should be taken towards tackling corruption and other abuses amongst state officials, including police officers, and other influential persons suspected of criminal activity;
 - (iii) Afghan led and owned transitional justice process should be taken forward in a manner enjoying broad public support, with appropriate assistance from the international community;
 - (iv) Further work is needed on establishing civilian control and public accountability of the Afghan National Army and the police service, including procedures to enable parliamentary oversight of the Ministries of Defence and Interior;
 - (v) Efforts must continue on training of military and police personnel on their professional roles relating to democratic institutions, to civilian control and to accountability of their activities, including issues relating to human rights. Further efforts should be made to recruit more women police officers;
 - (vi) Substantial further efforts should be taken to reform the judiciary in Afghanistan, especially the Supreme Court, as an effective means of resolving criminal and civil disputes. Professional training programmes for judges and lawyers should be continued, especially in relation to human rights protected under the Constitution and the legislation established under the transitional process. Attempts should be made to improve the participation and profile of women in the judiciary.
 - (vii) The work of civil society in relation to raising public awareness and monitoring of wider civil and political rights should be supported, especially by the Afghan authorities. Clear steps should be taken to ensure that individuals and groups working to improve such rights are free from harassment and intimidation. In particular, the institutional capacity of the AIHRC should be strengthened through training programmes and operational resources in order to ensure it is able to operate in a fully independent capacity;
 - (viii) Programmes to protect women and to improve their role in society should be sustained. As well as initiatives to support the participation of women as candidates and voters in forthcoming elections, particular focus should be given to encouraging political actors to address issues relating to women, through the development of lobbying initiatives for women's groups;
 - (ix) Strong international support should be given to the programme to support and strengthen the new parliament that is being prepared by the government with support from the French and which is expected to be released shortly. Wider programmes to promote public participation in the legislative process should be identified.
 - (x) The Afghan authorities should better define in law the powers of and qualification criteria for governors and other appointed administrators, as well as grounds for removing them from office. Further support is needed to help the government develop the institutional and professional capacity of all local administrators and councillors and to raise public awareness and consultation on the role of local self-government.

- (xi) Afghan leaders and governmental agencies should publish codes of conduct for the manner in which they will work – including declarations to be and remain out of narcotics trade. These codes of conduct should show members of the public how they can seek information and redress actions if necessary. Further consideration should be given to the establishment of an ombudsman service.
- (xii) Specific focus should be given to developing the role of civil society and the media (a) to monitor of the wider democratic process (b) to advance public debate and discussion on democratic and transitional issues (c) to promote public participation in the governmental and legislative processes.
- (xiii) Further efforts should be made to towards developing the professional skills of journalists from State and non-State media, especially in relation to ensuring accurate and balanced coverage of political events, including elections. In particular, efforts should be made to boost the professional standards of members of the regional media and legal mechanisms to ensure the independence and protection of journalists in their work should be instituted, with support given to bodies such as the AIHRC for monitoring press freedom;
- (xiv) Efforts need to continue also on developing the framework for media in Afghanistan which may include an independent regulatory body for the broadcast sector, a more general code of practice for all media and steps to improve access to information, preferably through the adoption of an effective legislation on Freedom of Information.

Annex: Media Monitoring Results (Charts 1-15)

Chart 1: Television Afghanistan coverage of presidential candidates excluding unpaid airtime

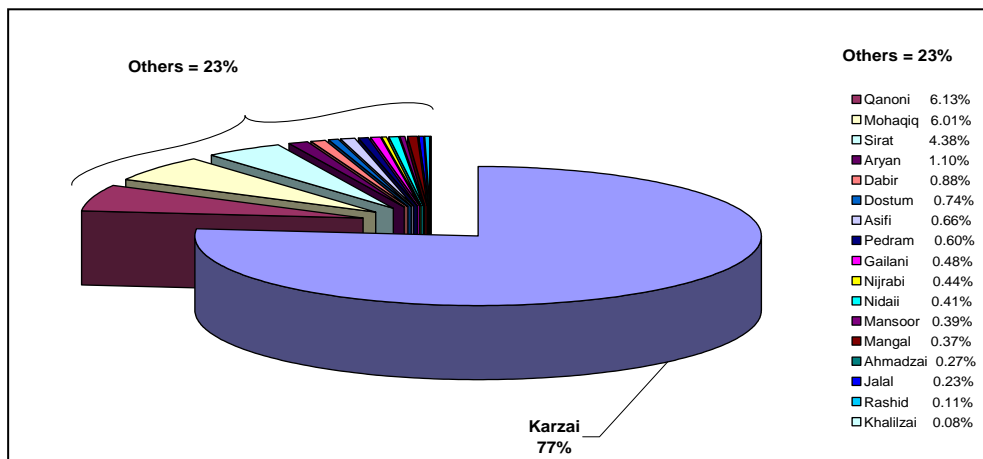
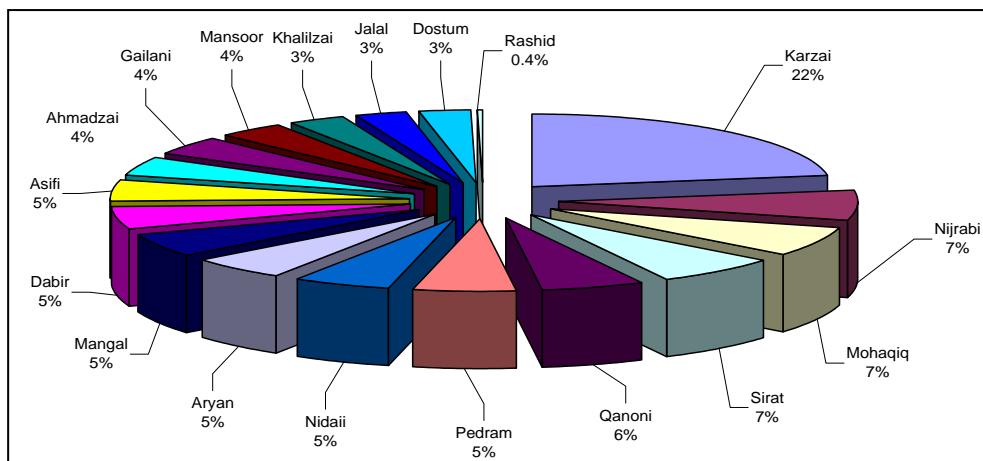


Chart 2: Television Afghanistan coverage of presidential candidates including unpaid airtime⁶⁹



⁶⁹ Unpaid airtime was calculated for the presidential candidates, even when the time was occasionally used by their vice-presidential running mates.

Chart 3: Radio Afghanistan coverage of presidential candidates excluding unpaid airtime

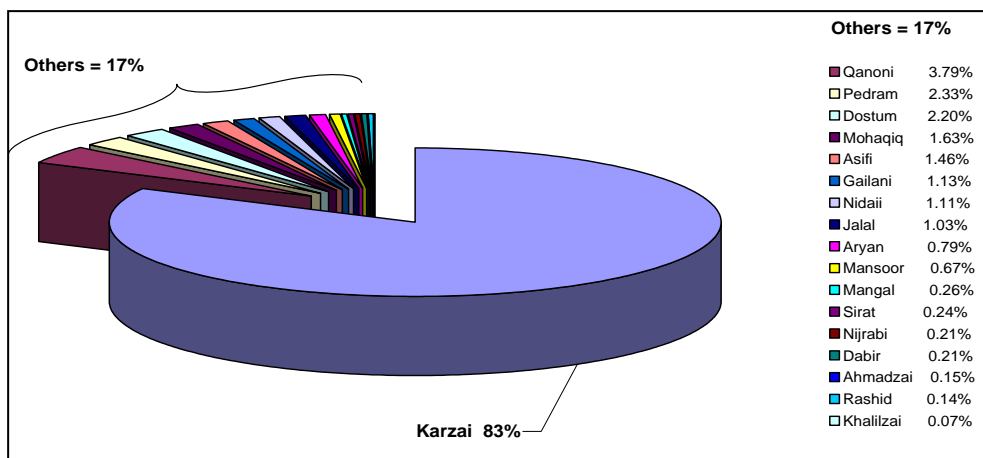


Chart 4: Radio Afghanistan coverage of presidential candidates including unpaid airtime

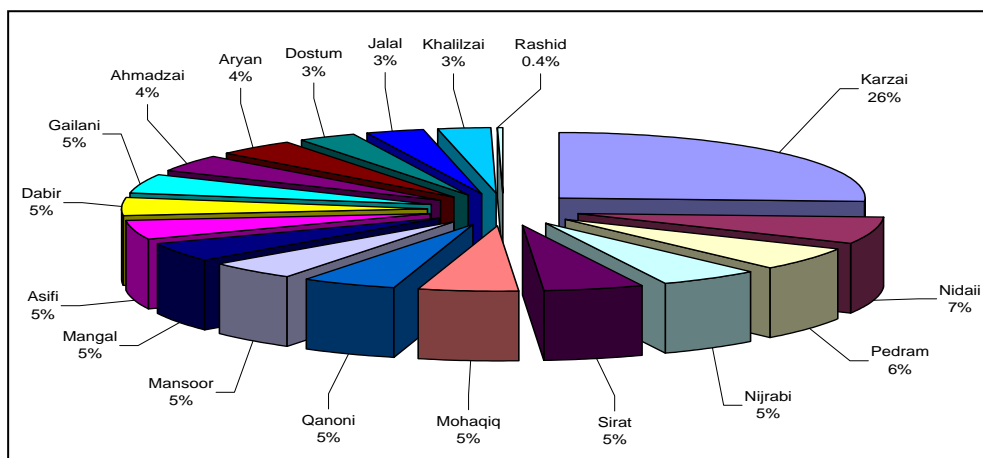


Chart 5: Radio Killid FM coverage of presidential candidates

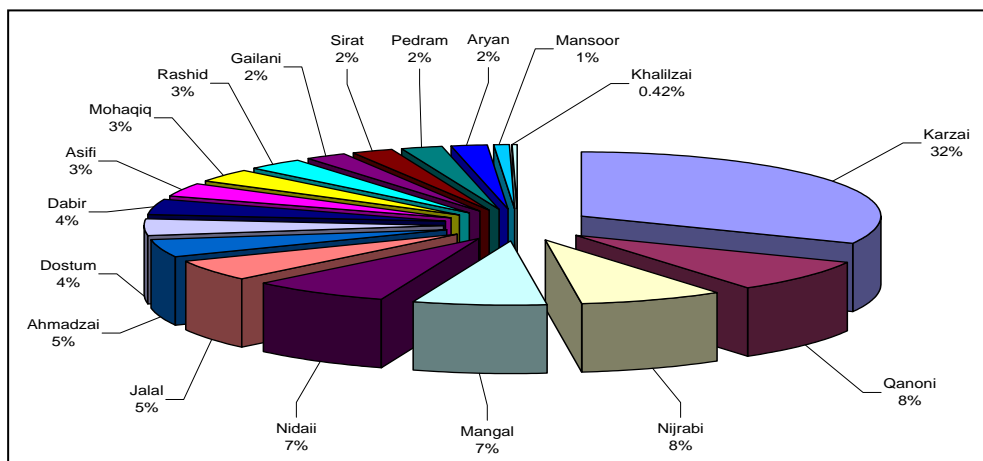


Chart 6: Radio Arman FM coverage of presidential candidates

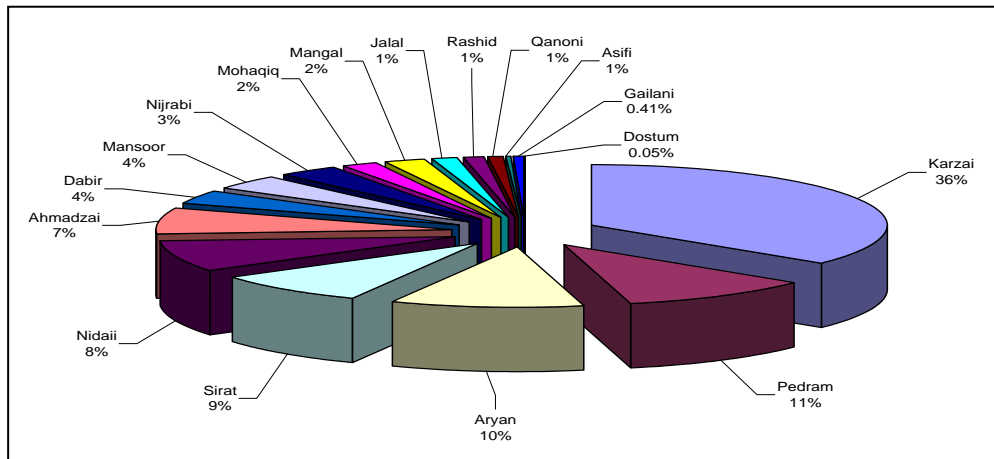


Chart 7: BBC Afghan Stream coverage of presidential candidates

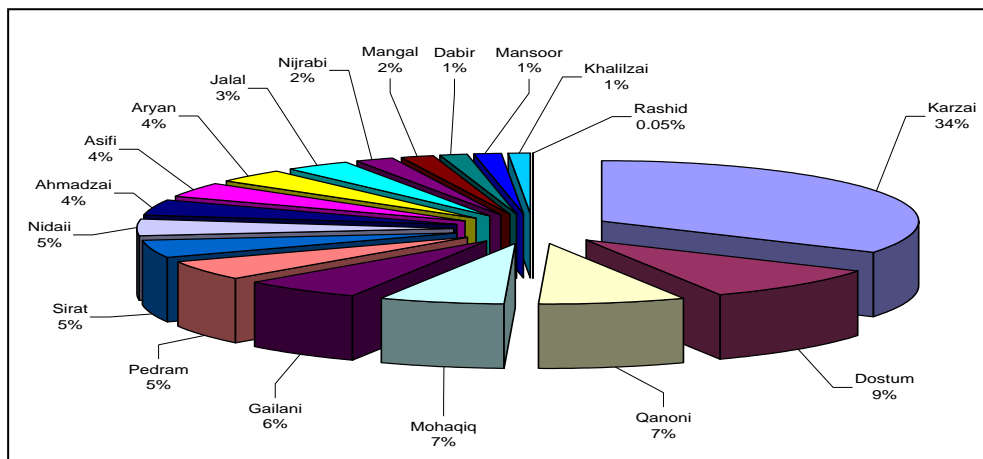


Chart 8: Voice of America Radio coverage of presidential candidates

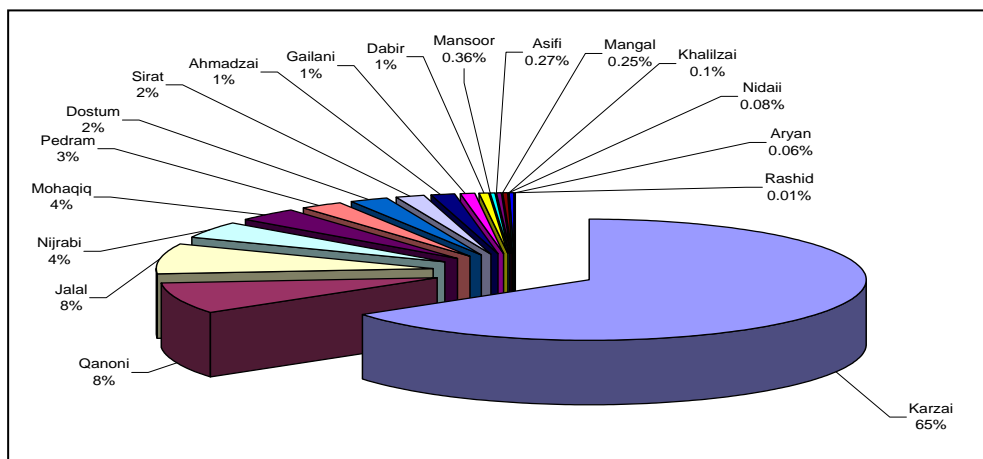


Chart 9: Television Afghanistan format for election and political editorial coverage

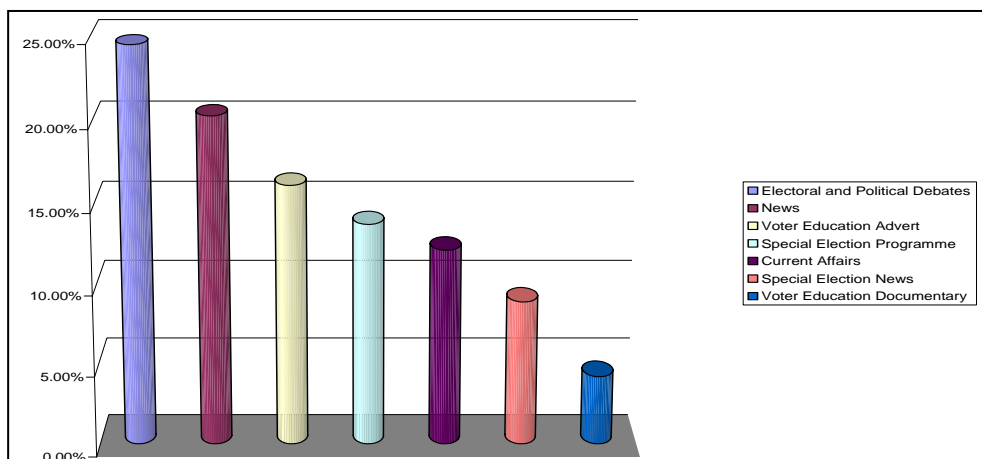


Chart 10: Anis newspaper coverage of presidential candidates including unpaid access

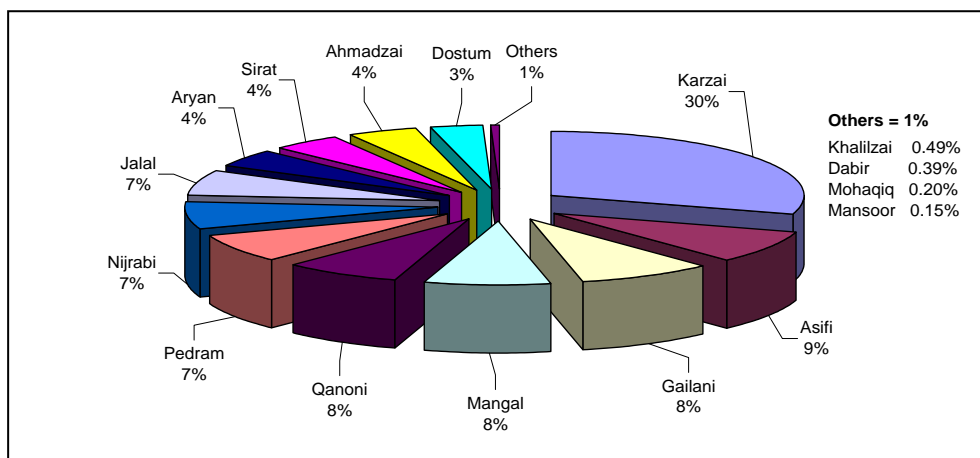


Chart 11: Anis newspaper coverage of presidential candidates excluding unpaid access

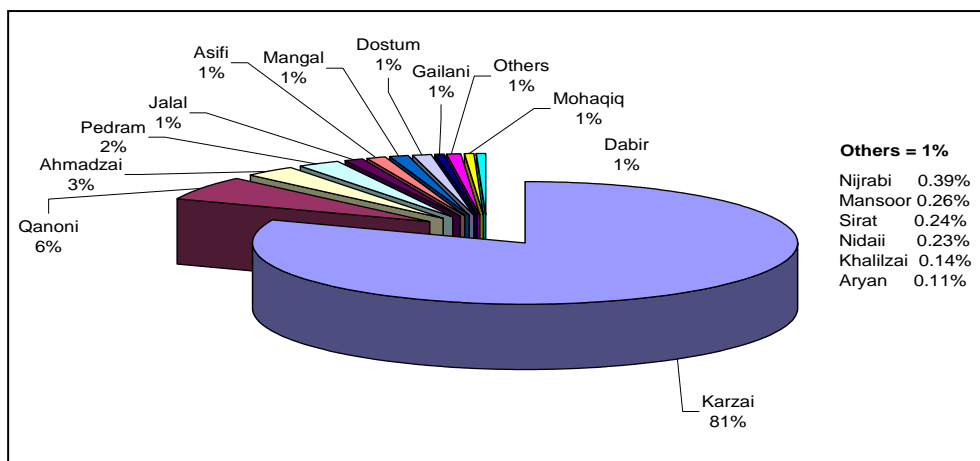


Chart 12: Hewad newspaper coverage of presidential candidates including unpaid access

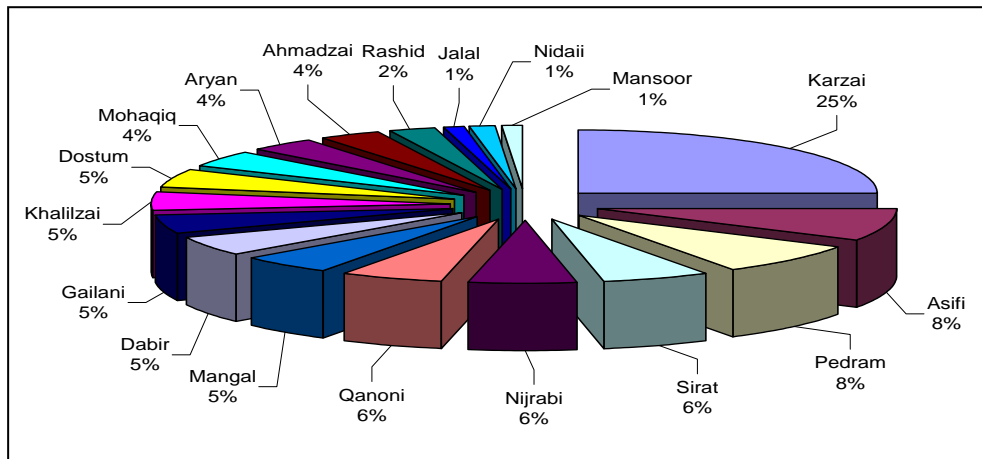


Chart 13: Hewad newspaper coverage of presidential candidates excluding unpaid access

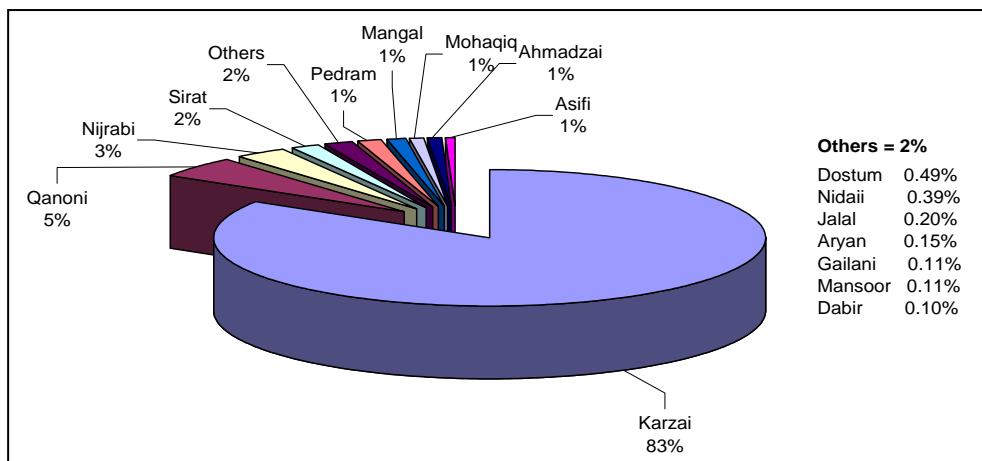


Chart 14: Erada newspaper coverage of presidential candidates

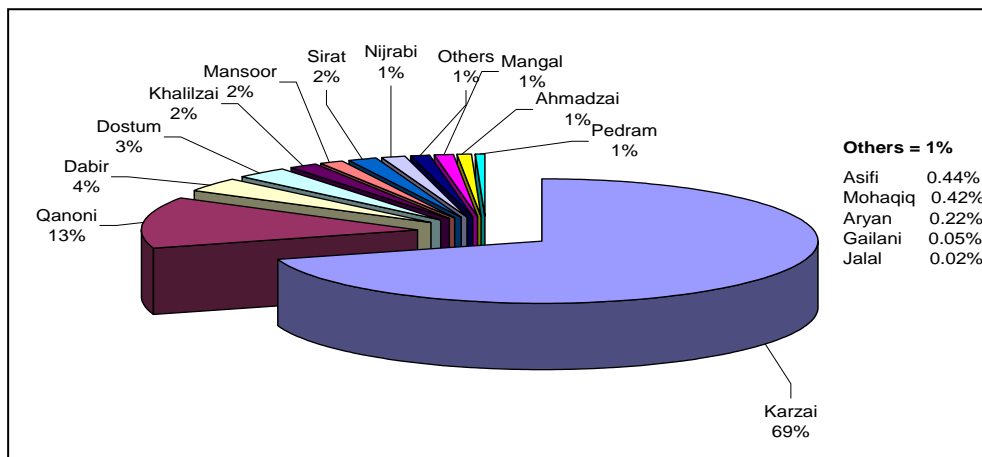


Chart 15: Arman-e-Millie newspaper coverage of presidential candidates

