



EUROPEAN UNION  
ELECTION OBSERVATION MISSION  
Parliamentary and Provincial Elections  
AFGHANISTAN 2005

**Largely peaceful election day  
and generally well-administered election process so far,  
despite shortcomings and challenges ahead,  
mark an important step forward for Afghanistan**

**STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS**

**Kabul, 19 September 2005**

*The European Union Election Observation Mission (EU EOM), headed by Ms Emma Bonino, Member of the European Parliament, was deployed in July 2005 upon receipt of an invitation issued by the Government of Afghanistan and the Joint Electoral Management Body (JEMB). The EU EOM includes a core team of 13 experts, 60 long-term observers (LTOs) and 24 short-term observers (STOs) deployed across the country. Since the beginning of July, the mission has observed the electoral process in 29 of the 34 provinces of Afghanistan. On election day, the EU EOM was enhanced by the presence of locally recruited STOs from EU embassies and institutions in Afghanistan. It was also joined by a delegation of seven members of the European Parliament, led by Mr José Ignacio Salafranca Sánchez-Neyra which fully shares the findings and conclusions of this preliminary statement. Overall, the mission was able to draw on the findings of a total of 159 observers in nearly 900 polling stations. The mission will remain in country until the end of October to observe counting, tabulation and the complaints adjudication process.*

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**Preliminary Conclusions**

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**The 18 September 2005 elections for the *Wolesi Jirga* (lower house of the new National Assembly) and provincial councils have so far been generally well-administered. Election day was largely peaceful. Millions of Afghan voters and thousands of candidates participated in the electoral process, many of them showing great courage in the face of a challenging security environment. Despite shortcomings that cannot be overlooked, the elections mark a significant step forward for Afghanistan's democratic development. However, important stages of the process, including counting and the tabulation of results, remain to be completed and will be carefully observed by the EUEOM.**

**Afghanistan is still emerging from decades of war and destruction, which have devastated its economy, infrastructure and human capital. Following the presidential election of October 2004, these elections are a landmark in a transition process designed to put in place a representative government and thereby to help bring peace to Afghanistan after a quarter-century of conflict.**

**The EU EOM would like to recognise the efforts and commitment demonstrated by the Afghan people, the Joint Electoral Management Body and the 160,000 officials who administered the elections. The EU EOM also commends the important role played by domestic observers in polling stations across the country.**

Positive elements observed during the election process so far include:

- The legislative framework can be considered to provide for the conduct of future elections, though shortcomings remain and will need to be addressed;
- So far the JEMB has generally administered the election process well, and with commendable openness to election stakeholders, despite the undoubted complexity of these elections and the logistical and security challenges;
- The large number of candidates from a variety of ethnic, social and political backgrounds offered the electorate a wide choice of political contestants;
- Despite continuing violence in some areas and serious security concerns, the election process has remained firmly on track;
- The Media Commission's free access scheme enabled a significant amount of candidates to access the broadcast media to campaign and female candidates were well represented in the initiative;
- Women registered in large numbers as candidates (10% of the total) and voters (44% of the total) and around a quarter of seats in the Wolesi Jirga and provincial councils are reserved for women;
- Civil society played an important role in the election process through the deployment of large numbers of domestic observers across the country over the election day period.

Shortcomings observed during the process so far include:

- Numerous reports of intimidation as well as the deplorable cases of killing of candidates, clerics, election workers and others;
- Security problems impeded campaigning in parts of the country;
- The election system created significant political and administrative challenges (a large number of candidates, unwieldy ballot papers, etc.);
- Although a voter registration update was carried out, shortcomings from the 2004 registration process remained and a final voters list was not produced;
- Except for the Media Commission's free access scheme, there was a notable absence of election-related coverage in the mass media;
- Civic education efforts did not adequately reach voters in remote areas and in minority enclaves, and women remain generally less well-informed than male voters;
- The Electoral Complaints Commission (ECC) was provided with insufficient resources and investigative capacity, and a number of its decisions were taken late in the election process, creating problems and uncertainty for the election authorities, candidates and voters.

Election day was relatively calm and peaceful and the voting process was assessed as "very good" or "good" in 92.7% of the polling stations visited by EU EOM observers. While many polling stations around the country opened late and the secrecy of vote was not always maintained, polling procedures were generally followed by election officials. In addition to domestic observers, large numbers of candidate agents were also present in polling stations.

The final assessment of these elections will depend, in part, on the completion of counting and tabulation, the complaints and appeals process, and the certification of the results by the JEMB. The EU EOM will remain in country to observe the remaining aspects of the election process, and will publish a final report, containing detailed recommendations to improve the election process, within two months of the completion of the entire process.

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## **Preliminary Findings**

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### **Background**

From 1979 when the Soviet Union invaded Afghanistan until late 2001 when the Taliban were driven from power, Afghanistan was devastated by conflict. Meeting in Bonn under UN auspices in December 2001, Afghan factions agreed a roadmap designed to put in place a “broad-based, gender-sensitive, multi-ethnic and fully representative government”.

Following the adoption of a Constitution in January 2004 and the successful conduct of the presidential election in October 2004, the establishment of a National Assembly will mark the culmination of the political transition process set out in the Bonn Agreement. The National Assembly is to consist of a directly elected lower house (Wolesi Jirga) and an upper house (Meshrano Jirga) which is partly appointed by the President and partly indirectly elected by the provincial councillors. Provincial councils have an important role to play in this architecture since they must elect part of the membership of the Meshrano Jirga.

### **Legislative framework**

Elections in Afghanistan are governed by the Constitution, the Electoral Law, Presidential Decrees, and regulations adopted by the JEMB. Overall, the legislative framework can be considered to provide for the conduct of future elections, though shortcomings remain in a number of areas that will need to be addressed.

The law endeavours to allocate seats proportionally to each province for Wolesi Jirga and provincial council elections on the basis of population size and for this purpose the JEMB depends on the accuracy of population data supplied by the Central Statistics Office. It is evident that a full and systematic population census is overdue and should therefore be conducted as soon as practicable. The possibility of linking such census to the production of a reliable voters register should be seriously considered.

The version of the Single Non-Transferable Vote (SNTV) election system adopted for these elections, while simple in concept, means that all candidates compete against each other as independents. While recognising that there are no international standards for choice of election system, the SNTV system has placed considerable strains on many aspects of electoral administration, including the need to produce huge ballots in several provinces and generally driving up costs in a substantial way. Moreover, under SNTV, the relationship between share of votes received by a party or community and its level of representation in parliament may be very weak. This can produce problems for the legitimacy of institutions produced by the election system. The particular version of SNTV chosen in Afghanistan may hinder the development of political parties and there are also concerns that it may lead to a fragmented parliament. Given these concerns, it would be advisable for the choice of electoral system to be reviewed in advance of future elections.

The Electoral Complaints Commission (ECC) was set up by the Electoral Law. It is composed of three international and two national commissioners - one of whom is a justice of the Supreme Court. The ECC adjudicates complaints and challenges related to the electoral process. Since the Afghan Constitution ostensibly grants jurisdiction to the Supreme Court to review all cases not specifically excluded by the Constitution itself, it follows that it has a role in reviewing decisions of the ECC. The presence of a Supreme Court judge in the ECC is not appropriate and should be reviewed. Generally, the issue of whether the Supreme Court has jurisdiction in relation to electoral matters is of great importance and must be definitively resolved before further elections.

### **Election administration**

The JEMB consists of nine Afghan election commissioners and four international election commissioners. Its Secretariat is responsible for implementing its decisions and for practical organisation of the elections. The Secretariat is headed by a Chief Electoral Officer who sits as a non-voting member on the JEMB. Following the Presidential elections, a secondary tier of the election administration was established with the creation of Provincial Election Commissions (PECs).

The mission has conducted systematic observation of JEMB meetings and has concluded that debate between members has been open and frank with no evidence of external interference. However, this does not preclude re-examining the basis on which the JEMB is constituted if doing so would increase its public credibility.

In a positive development, the JEMB demonstrated more openness in comparison to the 2004 presidential election. The decisions of the JEMB were promptly published and the body met regularly with stakeholders. This has helped stakeholders follow preparations in the run-up to election day and greatly increased transparency throughout the electoral administration.

In organising the parliamentary and provincial council elections, the JEMB recruited and trained around 160,000 polling staff for 26,250 polling stations across the country. This represents a welcome increase over the corresponding figures for the 2004 presidential election. The production and distribution of election material according to tight timelines was also a considerable logistical challenge, which was generally addressed successfully.

### **Voter registration**

Like last year's presidential election, the elections for the Wolesi Jirga and provincial councils were not conducted on the basis of an adequate voter list. As for the Presidential election, in order to be able to vote in these elections, a voter had to be in possession of a valid Voter Registration Card. As a result of the Voter Registration Programme which ran from December 2003 to August 2004, nearly 10.6 million registration cards were issued before the Presidential election (59% to men, 41% to women). This year, a voter registration update was carried out for four weeks in June-July, to enable newly eligible voters to register, as well as those who had been unable to register previously or had chosen not to do so, and also to allow voters who have lost their card to obtain a new one. Since voting is meant to take place only in the province marked on the voter registration card, the update was also designed to allow voters to ensure that the correct province was marked on their voter registration cards. As a result of the voter registration update, a further 1.7 million voter registration cards were issued (56% to men, 44% to women).

Accurate voter registration is a fundamental element in the creation of a credible electoral system. In the absence of a national identity document scheme, there are few means of preventing multiple registration and this phenomenon is acknowledged to be widespread. This year's voter registration update could not address, and probably exacerbated, the problems which previously existed in this regard. For similar reasons, few safeguards are available to prevent registration of underage voters though some efforts have been made in this respect.

However, Afghanistan still has no accurate Final Voters List despite two elections. The 2005 update is likely to have led to an increase of multiple registrations. At the same time, difficult access to certain rural areas and Kuchi settlements left a significant number of potential voters out of the registration process. This is a further reason why a census is imperative and it should be integrated with the creation of a reliable voter register.

The continued registration of returnees is a positive development. Special provisions were put in place to ensure that returnees continued to be registered as close as possible to election day. However, the JEMB chose not to address the issue of electoral involvement of large numbers of refugees residing in Iran and Pakistan. Given their participation in the 2004 presidential election, the JEMB's failure to issue an official decision on this important matter is regrettable. While the lack of an initiative for out-of-country registration and voting is understandable for a number of practical reasons, out-of-country voters were not properly informed as to whether or not they would be able to exercise their right to vote.

### **Candidate registration**

Official certification took place on 12 July. While 5,800 were certified, 17 persons were rejected for a variety of reasons. Candidate nomination and registration procedures were in general reasonable, however some concerns arose in relation to the certification and disqualification process.

Under the Electoral Law, membership of illegal armed groups (IAG) is a barrier to being certified as a candidate and may be grounds for disqualification even after certification. The ECC was therefore obliged by law to process challenges made against persons seeking candidacy in relation to this criterion. The ECC, given its lack of investigative capacity, delegated investigation of these matters to the Joint Secretariat of the Commission for Disarmament and Reintegration, a government body, with international involvement, set up for wholly different purposes and which had no legal status within the electoral framework of the elections. While the ECC formally maintained legal control over the process, it is evident that the Joint Secretariat came to be the effective arbiter of who passed or failed the test of IAG membership. During the candidate nomination process, the ECC based on the recommendations of the Joint Secretariat provisionally excluded 208 persons from the list of candidates. By 12 July, again on the recommendations of the Joint Secretariat, the number of those who were finally excluded on IAG grounds had been sharply reduced to 11. Subsequently, 22 more candidates were disqualified at a very late stage on the same grounds. This aspect of the electoral process attracted great controversy and brought widespread criticism of the ECC. The mission notes that the Joint Secretariat is a body set up for purposes remote from elections and its role in the electoral process should be revisited.

PECs were empowered to act as first-instance bodies for the purposes of complaints adjudication. However, a widespread practice of PECs was simply to refer complaints to the ECC instead of adjudicating themselves. The ECC should function as an appeal body in the strict sense and its

place within the electoral framework should be reviewed with a view to achieving meaningful independence and appellate function.

The ECC's powers to disqualify candidates post-certification, though legally founded, has created significant uncertainty for some candidates and electoral administrators and has undermined voters' rights. This power should be reviewed, so as to introduce a "cut-off date" in the election calendar beyond which disqualification may no longer take place. In the current election, the ECC - close to polling day - had both disqualified candidates who had already been certified on 12 July and then in some cases reinstated them. The disqualification in some cases - and reinstatement in others - came so late in the process that the JEMB had no ability to inform the voters in the provinces concerned. The decisions themselves are not open to legal criticism but the ECC must have significantly greater regard to the practicalities of election administration. As a result, many voters who have cast their votes in good faith for candidates they were unaware had been disqualified will have their votes counted as invalid. This is unacceptable.

The combined effect of the Electoral Law and the Code of Conduct signed by candidates means that the ECC has probable authority to disqualify candidates after election day. This power should be closely reviewed.

## **Campaign**

Election campaigning began prior to the official campaigning period and candidates' posters were evident in many areas across the country. Rallies were also held in many parts of Afghanistan, but overall campaigning was localised and mosques and traditional meeting venues such as shuras were key sites for candidates to reach potential voters. The campaign environment varied throughout the country. In certain areas a vibrant and competitive environment emerged and in others the campaigning was far more subdued. In a number of areas there was a widespread feeling of inevitability that tribal affiliations would determine who voters would elect and campaigning was of secondary importance. Security concerns also restricted campaigning in certain parts of the country.

Numerous reports of candidates offering financial inducements to voters and, in some cases, literally buying voter cards for the purposes of committing electoral fraud have been received. All these activities are electoral violations and in some cases, criminal offences. The ECC has authority to investigate such matters without receiving formal complaints and should be given adequate resources to do so.

The mission has solid reasons to believe that that government officials, from Provincial Governor to district police chiefs, have involved themselves in political campaigning on behalf of certain candidates. This has ranged from specific endorsement of candidates to covert provision of resources. These acts are a clear breach of the Presidential Order on the Non-Interference of Government Official in Electoral Affairs, which states that offending officials will be subjected to legal sanctions. However, there is no evidence that any sanctions have been applied which is regrettable.

The JEMB placed legal restrictions on campaign expenditures by candidates, as well as limits on contributions given to candidates. These limitations apply for the official campaign period only but it is widely accepted that many candidates began spending significant amounts long before it began. There can be little doubt that campaign expenditures of some candidates have greatly exceeded the statutory limits.

## **Intimidation**

There have been numerous reports of intimidation of candidates, voters and election staff. The EU EOM deplors the death of seven candidates, seven clerics, five election workers and others. However, apart from outright violence, intimidation has taken various forms, but also one should not ignore the simple fact that the perception and expectation of intimidation are equally damaging as intimidation itself. Fear and suspicion have negatively affected the electoral process in certain parts of the country. State officials, such as chiefs of police, have been observed by the EU EOM directly intervening in the electoral process.

## **Media**

Due to the extraordinary number of independent candidates the reporting of the elections presented a challenge to the media in maintaining balance in their coverage. However, such a challenge was not seriously taken up by a large percentage of the media. In the broadcast and print media there was a notable absence of election related coverage in mainstream programming and news. This was especially pronounced in the public media, with one exception *Anis* newspaper. But it was also evident in the private media.

Access of candidates to the media was therefore limited by the lack of election related coverage and the main vehicle for candidates to access the broadcast media was the sponsored advertising scheme established by the Media Commission that granted free access to radio and television to the candidates for them to broadcast their campaign platforms. Whilst it is to the benefit of the election process that, according to the Media Commission, approximately 53% of candidates took up free slots on radio and television it is regrettable that approximately 47% did not or could not due to technical restrictions.

Despite the low volume of election related coverage with the inclusion of the free access slots over 270 candidates or political parties were covered on television by the three channels monitored by the EUEOM. Similarly 180 candidates or political parties were covered on the three Afghan radio stations monitored by the EUEOM. Print media coverage was also extremely small in terms of volume and the campaigns of the candidates went largely unreported with the exception of the title *Anis* and a small amount of paid-for political advertising. The tone of coverage was almost entirely positive or neutral and there was a notable absence of negative coverage as well as critical analysis of the candidates and parties.

There were clear violations in the media of the 48-hour campaign silence period prior to opening of the polls, such as indirect campaigning of candidates during this period. The Media Commission's activities were generally characterised by lateness in attaining key objectives in its broader mandate. This was evident both in terms of the awareness of the candidates at the start of the official campaign period of the free access scheme, the signature of some of the contracts between the parties to participate in the scheme and knowledge of the media of the Code of Conduct and how to interpret such an instrument. However, the Commissioners and support staff must be praised for their efforts during the official campaign period in correcting some of these deficiencies mainly related to time constraints.

## **Civic education**

Civic education has been sub-contracted by the JEMB to other organisations and groups. Although significant efforts were undertaken under extremely challenging timelines, and there was evidence of some improvement as election day approached; overall the civic education programme did not reach sufficient numbers of voters in remote areas and villages, in minority enclaves, and women remain generally less informed than male voters. This was particularly true in the South and Southeast where house confinement of women is widely observed. When civic education did reach voters, it focused primarily on informing voters about polling procedures, whereas it did not adequately address wider issues such as the role and functions of the institutions which are to emerge from these elections.

## **Participation of women**

The Electoral Law, consistent with the Constitution, provides for a minimum of 68 women to be elected to the 249-seat Wolesi Jirga (approximately 27% of the total) and a minimum of 121 women to be elected to the Provincial Councils out of a total seat number of 420 (approximately 28%). The reserved seat system represents an appropriate method for ensuring the presence of women in public life. 12% of Wolesi Jirga candidates and 8% percent of Provincial Council candidates were women.

During the voter registration update, women accounted for an encouraging 44 per cent of new registrations. However, reports of proxy registration of women in the South and Southeast of the country are of concern.

Regrettably, the provision requiring that only two of the five election officials in each polling station need to be literate was widely disregarded with respect to women by local JEMB staff. This was a particular concern in the case of the Kuchi population.

## **Election day**

Election day was relatively calm and peaceful, without any major incidents. The EU EOM was in a position to observe voting in nearly 900 polling stations in 26 provinces. The voting process was assessed as “very good” or “good” in 92.7% of polling stations visited by EU observers. While many polling stations around the country opened late and maintaining the secrecy of vote was not always achieved, polling procedures were generally followed by election officials. In addition to domestic observers, large numbers of candidate agents were present in polling stations.



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For further information, please contact:

EU Election Observation Mission  
House 687, Street 15, Lane 4  
Wazir Akbar Khan, Kabul  
Filippo di ROBILANT  
079-877222  
[filippo.dirobilant@eueomaft.org](mailto:filippo.dirobilant@eueomaft.org)

EU EOM website :  
[www.eueomafg.org](http://www.eueomafg.org)