



## **ISLAMIC REPUBLIC OF AFGHANISTAN**

### **FINAL REPORT**

## **PRESIDENTIAL AND PROVINCIAL COUNCIL ELECTIONS 20 AUGUST 2009**

### **EUROPEAN UNION ELECTION OBSERVATION MISSION**

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*This report is available in English, Dari and Pashtu, but only the English version is official.*

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## I. EXECUTIVE SUMMARY

Following an invitation by the Government of the Islamic Republic of Afghanistan and the Independent Election Commission (IEC), the European Union Election Observation Mission (EU EOM) was present in Afghanistan from 2 July 2009 to 6 November 2009 to observe the Presidential and Provincial Council Elections held on 20 August 2009.

In accordance with its mandate, and despite several constraints that the EU EOM faced, it conducted a comprehensive assessment of the entire electoral process with reference to the international standards for democratic elections and the laws of the Islamic Republic of Afghanistan. The EU EOM expressed its opinion on the electoral process in several press releases and the Preliminary Statement on 22 August 2009. The constraints, in addition to the general security limitations and an increase in violent incidents on election day that seriously affected the EU EOM observers' access to the polling stations, included the recurring lack of willingness by important interlocutors such as the Independent Election Commission (IEC) and the UNDP ELECT to facilitate access to information required for effective observation.

The Presidential and Provincial Council Elections took place in an **exceptionally challenging environment**. Since the internationally organized elections in 2004 and 2005 missed opportunities to reinforce key institutions, strengthen the rule of law and control corruption have contributed to a degree of impunity and insecurity which has severely damaged faith in the credibility and effectiveness of democratic governance. In addition, ongoing armed conflict had spread to more parts of the country.

The 2009 Presidential and Provincial Council elections were the first after the fall of the Taliban in 2001 to be **organised by Afghan institutions**, albeit with significant international technical assistance and capacity building support by mainly the UN Development Programme's Electoral and Legal Capacity for Tomorrow project (ELECT). The success of the ELECT project however, was affected by the fact that, despite recommendations made in 2005, the international community only started to address essential organisational needs for the 2009 elections in late 2008. The project took on too broad a mandate, and at times, UNDP ELECT effectively acted as an institution parallel to national authorities. International advisors working for ELECT were also at times uncooperative or obstructive when the EU EOM sought necessary information.

Forty-four candidates registered for the Presidential Elections, almost all as independent **candidates** running largely on the basis of their ethnic or tribal origins or their personal and political reputation. This evidenced the weakness of party politics in Afghanistan. Although the 2004 Constitution establishes the right to form political parties, the electoral framework refers only to individual candidates.

The national **legal framework** for elections is largely inherited from the transitional period which followed the Bonn Agreement of 2001, and which provides a reasonable technical basis for the conducting of democratic elections in accordance with international standards. However, there are some weaknesses significant enough to jeopardise the process. These include the constitutional provision on the date of presidential elections that is objectively impossible to implement; the lack of independence of the judiciary and the Independent

Election Commission (IEC); the lack of clarity of some provisions of the Electoral Law (e.g. on withdrawal of candidates and its consequences), the lack of regulation on campaign financing; lack of guarantees for transparency in the electoral process, etc. Regulations governing the electoral process were issued on an *ad hoc* basis and were not adequately consolidated and disseminated. This led to a general lack of clarity, consistency and transparency.

Although the **Independent Election Commission** functioned efficiently, and technical arrangements were made according to appropriate timelines despite the considerable infrastructural and security challenges, the IEC was not generally considered to be independent and impartial, and it was not consistently transparent. The IEC did not consistently facilitate access to information required for effective observation of election administration, and this was particularly the case at later stages of the process (e.g. tallying and auditing of results).

The IEC failed to make public the final list of polling stations, depriving both voters and observers from reliable and complete information on where voting would take place. After election day, the IEC issued a mass of contradictory, unreliable and changing figures regarding the number of polling centres and stations that were open. The real number remain unknown, as do the exact numbers of polling staff recruited and polling staff finally employed, with a breakdown by gender.

The establishment of a Gender Unit at the IEC was a positive measure, but the expansion of its structure and remit beyond the public outreach department less than three months before the elections limited its ability to implement practical measures in a timely manner. The recruitment drive for female polling station staff began too late, which undermined its success.

The storage and custody of the sensitive materials earmarked for polling centres that did not open on polling day was under the joint responsibility of the IEC and UNDP ELECT advisors. Somewhere along the custody chain, a substantial amount of these electoral materials was subsequently used to commit serious fraud, by ballot stuffing and by the operation of ghost polling stations.

Despite recommendations following the 2005 elections, the **Electoral Complaint Commission** (ECC) was established at a very late stage of the process, partly due to lack of resources and the security situation, but also administrative delays. The ECC was able to significantly improve its regulatory and operational framework for adjudicating complaints compared to previous elections.

The 2009 Presidential and Provincial Council Elections were carried out **without a consolidated and accurate voter register**, which weakened the integrity of the process. Despite recommendations across the board since 2005 in favour of establishing an accurate voter register, only a top-up exercise was organised in 2008 and 2009. This Voter Registration Update (VRU) resulted in the issuing of some 4.7 million additional voter cards, which together with the previous 12.5 million meant that well over 17 million voter cards were in circulation. Of these, several million are likely to have been duplicates, but the data processing of the VRU had not finished before the election day. The clearest signal of doubt

regarding the accuracy of the Voter Register Update lay in the figures for women's registration, which evidenced fraudulent over-registration and registration by proxy in some provinces where women hardly leave their homes.

The Electoral Law provides for the **vetting of candidate** nominees for criminal activities or close links to Illegal Armed Groups (IAG), while the Constitution excludes candidates who have criminal convictions. The vetting process suffered from a lack of political will and support, as many international parties to the Joint Secretariat of the Demobilisation and Reintegration Commission failed to provide essential information. Further, the narrow timeframe for appealing against decisions or for opting to disarm, significantly limited the impact of the vetting as a sustainable incentive to encourage prospective candidates to disarm.

**Campaigning** took place in an environment characterised by serious de facto limitations on the freedoms of movement and assembly caused by ongoing military operations, particularly in the south, and by an increased number of attacks by the Taliban aimed at disrupting the elections and deterring participation. Although there were several serious attacks on presidential candidates and campaigners, most presidential candidates were able to campaign in almost all provinces. With fewer resources and less security support, provincial council candidates faced more serious security problems and in a number of cases the range of their campaigns was limited to the capitals of provinces and districts. Women provincial council candidates were especially affected and some were not able to campaign at all.

Broadcast **media** played an important role in covering the election campaign, producing a variety of programmes. EU EOM monitoring showed that only the four main presidential candidates (Mr Hamid Karzai, Dr Abdullah Abdullah, Mr Ashraf Ghani and Dr Ramazan Bashardost) received extensive coverage during the campaign period, with little exposure for the other presidential contestants or for the candidates for Provincial Council elections. State-owned media devoted the largest part of their political coverage to Hamid Karzai, mainly in neutral or positive tones. The media's right were seriously affected by the decision of the National Security Council requesting journalists to refrain from reporting on any violent incidents during polling day that would discourage people from voting. The majority of the Afghan media complied, but 15 Afghan and international journalists were detained at the site of an election day shooting incident in Kabul which they had come to report on.

The principle of universal suffrage was undermined by the fact that **many women were effectively disenfranchised**. Although Afghan women's civil and political rights are enshrined in the Constitution, women's participation as candidates, voters and administrators of the elections was severely limited. Leading women's organisations maintained that one of the main hurdles for women's participation in the electoral process is their inability to register for themselves. In a significant proportion of cases, women's polling stations were staffed by men, making the voting process less accessible to women. In addition to widespread cultural opposition to women in public life, insecure conditions also disproportionately affected them: women did not generally enjoy their rights to freedom of movement, association and expression. The chasm between women's legal rights and the extent to which they could actually participate was clearly exploited as an opportunity for fraud.

**Election day was marred by a significant increase in the number of violent incidents** targeting polling centres and government facilities as well the voters throughout the country. The deterioration of the security environment inevitably also affected the movement and observation activities of EU EOM observers. Despite this, EU EOM observers were present at the opening, polling and counting in 268 polling stations in 17 of the country's 34 provinces.

EU EOM observers in the observed polling stations considered that voting operations were administered in a reasonably satisfactory manner, in admittedly very difficult circumstances. Despite the significant deterioration of the security environment, a commendable number Afghan citizen came out to cast their vote. The participation rate was considerable in the northern parts of the country and particularly low and in some cases extremely low in the southern and south-eastern regions.

The Electoral Complaint Commission received a total of 2,584 complaints of irregularities during polling and counting and on the basis of the preliminary results. Complaints included allegations of ballot stuffing, poor quality ink, malfunctioning of the voter card puncher, intimidation of voters, obstruction of candidates' agents and observers, and accusations of fraud committed by polling staff or local authorities, as well as immense discrepancies between the low participation on election day and the number of votes recorded in the results forms.

On 2 September the IEC started uploading **preliminary presidential results** onto its website per polling station and per polling centre. The percentage of votes entered for the south, fraudulent votes included, were daily increased, in a piecemeal fashion, so as to encourage the electorate to accept in small doses a result which, in one large dose might have been rejected as obviously fraudulent. Continuous analysis of the progressively updated results by EU EOM analysts revealed that the IEC had not applied its own measures for the detection and mitigation of fraud. The EU EOM's analysis indicated that some 1.6 million votes were suspect or fraudulent, the vast majority of which were for Mr Karzai.

Citing the evidence of considerable fraud, the ECC on 8 September ordered the IEC to conduct an audit and recount of polling station results. However the IEC proceeded with the announcement of preliminary presidential results on 16 September, attributing 54.6 per cent of the valid votes to Hamid Karzai and 27.75 per cent to Abdullah Abdullah. Following protracted debates and confusion, on 5 October the IEC started an audit of a sample of suspicious ballot boxes under the supervision of the ECC. As a result of the audit huge amount of voter were invalidated and on 19 October the IEC, by announcing the final presidential results, declared that there would be a runoff ballot scheduled for 7 November between Hamid Karzai and Abdullah Abdullah, since neither of the presidential candidates had obtained more than fifty per cent of the valid votes.

**Dr Abdullah declared his withdrawal** from the elections on 1 November reasoning his decision by the lack of transparency of the process and the lack of independence of those implementing the elections, especially mentioning the Chairman of the IEC, whose dismissal he stated to be a condition *sine qua non* for electoral integrity. Following this statement, on 2 November the IEC cancelled the runoff and declared Hamid Karzai the winner of the presidential election, however, its decision in this instance was not in accordance with Article

37(2) of the Electoral Law, which refers to withdrawals before election day, nor with the IEC's own interpretation of this provision.

Although Provincial Council votes were tallied at the same time as the presidential election results, there was no information about **Provincial Council results** until more than five weeks after election day, when they were partially (30 provinces out of 34) posted on the IEC's website on September 28. A number of complaints regarding Provincial Council elections are still pending and the publication of results is not complete.

The EU EOM makes a number of **recommendations** to improve the framework and implementation of elections in Afghanistan. A number of these may require time. In the view of the imminence of the 2010 Parliamentary and District Councils elections, recommendations highlight the most urgent measures which could feasibly be implemented within a short time frame. The main recommendations concern the followings:

- *The independence of the IEC should be enhanced; its members who participated in fraud during the 2009 elections should be removed. The appointments system also should be reformed, however **until it is changed, party and candidate agents, national and international observers, should be entitled to attend meetings and plenary sessions of the IEC.***
- *No further elections should take place without significant strengthening of the accuracy and reliability of the registration of voters. **In the short-term, processing of data on the Voter Register Update should be completed. An update should also be carried out to register citizens who reach the age of majority between the last update and the next elections.***
- *All existing regulations and amendments complementing the law should be consolidated and made readily-available to all stakeholders.*
- ***District boundaries should be discussed and established in a formal regulation prior to the holding of District Council Elections.** The Ministry of Interior should determine an official list of districts and it should be technically supported in this process.*
- ***Technical assistance should be provided to the IEC and the Demobilization and Reconciliation Commission (DRC) to enforce the vetting requirements, with impartial implementation of due process and objective criteria. The DRC should be supported by the international community both financially and politically.***
- *In order to complete investigations and retain experienced staff members, the Electoral Complaint Commission should not be dismantled between the end of the 2009 electoral process and the start of the next elections. **Alternatively, it should be established for the next elections in a timely manner, at least six months prior to election day or its anticipated date. The ECC should as a matter of priority be provided with more comprehensive support for the 2010 elections.***
- ***Existing fraud detection and mitigation measures should be fully implemented. Detailed and binding procedures for the detection and mitigation of fraud should be published at the beginning of the electoral process so they are open to scrutiny by stakeholders and the wider public.***
- *The IEC Gender Unit should streamline its strategic plan to focus on ensuring the participation of women in the electoral process. Consultation and coordination with women's groups should be established to ensure best use of knowledge and resources.*

*Comprehensive training for electoral staff and the public alike should communicate the unacceptability and illegality of men voting on women's behalf.*

- *The precise number of seats in Parliament, Provincial and District Councils which are reserved for women under the legal provision should be published and disseminated.*
- *The capacity of domestic observer organisations should be enhanced to enable them to produce an assessment of the electoral process and to make public recommendations. The same technical assistance bodies should not advise both the election administration and the domestic observer organisations whose role is to evaluate that election administration.*

## II. INTRODUCTION

The European Union Election Observation Mission (EU EOM) was present in the Islamic Republic of Afghanistan from 2 July 2009 to 6 November 2009 following an invitation from the Government of the Islamic Republic of Afghanistan and the Independent Election Commission (IEC) to observe the Presidential and Provincial Council Elections on 20 August 2009 and the runoff scheduled to take place on 7 November which was eventually cancelled by the IEC. The EU EOM was led during the first round of the electoral process by Mr Philippe Morillon, a former Member of the European Parliament (France) and then Mr Thijs Berman, a current Member of the European Parliament (Netherlands) for the second round of the Presidential Election. The mission's mandate was to conduct a comprehensive assessment of the entire electoral process with reference to international standards for democratic elections and the laws of the Islamic Republic of Afghanistan, in accordance with EU methodology and "*The Declaration of Principles for International Election Observation*" commemorated under the auspices of the United Nations in October 2005. One month before election day, 36 long term observers were deployed to observe the pre-electoral environment and preparations, and on election day the mission deployed a total of 120 observers from 22 member states of the European Union as well as Norway, Switzerland and Canada. The EU EOM was by far the largest international observation mission deployed in the country

The EU EOM analysed the country's legal and electoral framework, as well as the quality of key tools such as the voter register, and logistical arrangements for polling day. Candidates' freedom to campaign and the freedoms and responsibilities of the media were also monitored, as was the extent to which both Afghan men and women were able to enjoy their civil and political rights. Although deployment was affected by general security limitations and an increase in violent incidents on election day, EU EOM observers were present at the opening, polling and counting in 268 polling stations in 17 of the country's 34 provinces.

On 22 August 2009, the EU EOM released a Statement of Preliminary Findings which detailed the mission's findings regarding its observations on election day as well as highlighting a number of issues of concern, including widespread violence, the IEC's lack of independence, the absence of a single and accurate voter register, weaknesses in the legal and regulatory framework with regard to the withdrawal of candidates, the regrettably late establishment of the Election Complaints Commission (ECC) and the very limited extent to which Afghan women were able to participate in the process. The EU EOM remained in the country to observe and analyse the later stages of the electoral process, focusing on the

tabulation of results and the complaints mechanism. Once the preliminary results were made public, the EU EOM carried out an analysis which revealed evidence of fraud. A public statement in this regard was made on 16 September 2009.

The EU EOM would like to thank the Government of the Islamic Republic of Afghanistan and especially the Ministry of Interior and the Afghan National Police for their assistance, cooperation and provision of security arrangements for the members of the EU EOM in Kabul and in the provinces. The EU EOM would like to thank the EC Delegation, the Swedish Presidency, the EUSR and the representatives of member states for their continuous assistance and support as well as the British and Dutch Embassies for facilitating the stay of observers in the Provincial Reconstruction Teams (PRTs) premises. Thanks are also to be extended to all national and international interlocutors for their invaluable assistance and facilitation of the mission and all international observation groups for their cooperation.

### **III. POLITICAL BACKGROUND**

#### *A. Political Context*

The Islamic Republic of Afghanistan is a landlocked country in the centre of Asia. A cross-road between East and West, it has often had to face the challenges of having geo-strategic importance. In 1919, following the third British-Afghan War, the country regained full independence, first as a kingdom and then, from 1973, as a republic. From 1979, Afghanistan suffered almost 20 years of conflict, first during the nine years of the Soviet-Afghan war and then between different Afghan factions until the Taliban took control of the country in the mid-1990s.

Since the fall of the Taliban in November 2001, Afghanistan has taken significant steps towards democracy. The Bonn Agreement, signed on 5 December 2001 by major Afghan factions under the auspices of the United Nations, established a post-Taliban transitional road map. The adoption of the Constitution in 2004 and the holding of Presidential and then Parliamentary and Provincial Elections in 2004 and 2005 respectively were important achievements based on this agreement.

Presidential, Parliamentary and Provincial Council Elections were conducted by joint Afghan and UN efforts in 2004 and 2005 and gave Afghan citizens their first opportunity since the 1960s to elect their government representatives. In 2004, Mr Hamid Karzai was elected president, with 55.4 per cent (4.4 million votes) against 16 opponents, receiving votes from large numbers of ethnic Pashtuns but also from Tadjiks and Hazaras, while most other candidates received votes largely from within their own ethnic or tribal groups. Turn-out for the 2004 Presidential Elections was 70 per cent of the 10.5 million registered voters, while the Parliamentary and Provincial Council Elections the following year registered a lower participation rate, with just over 50 per cent of the 12.4 million registered voters taking part.

The elections of 2004 and 2005 demonstrated Afghan citizens' willingness to engage in democratic processes, not least as a means to ensure security and stability. Since then however, missed opportunities to reinforce key institutions, strengthen the rule of law and control corruption have contributed to a degree of impunity and insecurity which has severely damaged faith in the effectiveness of democratic governance.

The 2009 Presidential and Provincial Council elections were the first in decades to be organised by Afghan institutions, albeit with significant international technical support. However it is clear that the political and social conditions had deteriorated in almost every respect since the previous elections and posed greater challenges than ever.

### *B. Key Political Actors*

A total of 44 candidates registered for the Presidential Election, almost all as independent candidates running largely on the basis of their ethnic or tribal origins or their personal and political reputation. The relatively large number of presidential candidates was a sign of increasing pluralism although in fact, as in any comparable system, few of these candidates had any realistic chance of success due to limited resources and small support bases. Nearly half of the contenders were well-known public figures, such as former ministers, members of parliament or warlords. The top four contenders were the incumbent, Mr Hamid Karzai, and his former ministers Dr Abdullah Abdullah, Mr Ashraf Ghani and Dr Ramazan Bashardost.

- Mr Hamid Karzai is a member of the Popalzai tribe, linked to the Royalists and the Pashtun conservative establishment. He was selected by the United States and appointed by the Loya Jirga on 12 June 2002 to be the first President of the Afghan interim government. He was originally fully supported by the Pashtun tribes but over the course of seven years lost some of this backing due to poor governance and a failure to ensure security in Pashtun areas. President Karzai sought to present himself as the guarantor of unity and reconciliation and also engaged in drawing in opposition leaders and candidates by promising important posts in the future government or as provincial governors.
- Dr Abdullah Abdullah, a former Foreign Affairs Minister, was the leading candidate of the United National Front. He is closely linked to the former Northern Alliance and specifically to the Panshjiri faction once led by the late Ahmad Shah Massoud. Dr Abdullah is also a former spokesperson of President Rabbani and for many Afghans he is thus associated with the inter-factional fighting in Kabul and many war crimes of the Rabbani government. Despite his mixed Pashtun-Tadjik origins, Dr Abdullah is more closely identified as a representative of the Tadjik ethnic group. Dr Abdullah's political persona relied partly on his ties with the Panshjiri faction of the United National Front and partly on his efforts to include other ethnic groups, especially the Pashtuns, in his support base.
- Dr Ramazan Bashardost is of the Hazara ethnic group and is not associated with any particular political movement. He is a former Planning Minister in President Karzai's cabinet. Dr Bashardost was very critical of President Karzai and his family, and ran a campaign characterised by humility, residing next to the Wolesi Jirga compound in a traditional tent. Dr Bashardost won the support of Afghans from a wide range of ethnic groups, not least by harnessing their disillusionment with Afghan politics.
- Mr Ashraf Ghani Ahmadzai is Pashtun, a former Finance Minister and a longstanding World Bank official, who is prominent among Afghan intellectuals and in the international community. However, he was relatively unknown by the

general population. Mr Ghani was initially seen as one of the three most popular candidates but in the later stages of campaign he was overtaken by Dr Bashardost.

Major candidates aimed to create alliances with prominent leaders from other ethnic groups, as illustrated by the nomination of Mr Karzai's vice-presidential candidates, Mr Fahim and Mr Khallili, who represent the Tadjik and the Hazara ethnic minorities. Both vice-presidential candidates and several other key allies of Mr Karzai, such as Uzbek leader General Abdul Rashid Dostum, are alleged to have been involved in human rights violations, war crimes and organised crime. These tactical alliances were negatively perceived by some Afghans, who tended to be concerned by an apparent reincarnation of old mujahedin alliances. Some less prominent candidates tried to form coalitions among themselves but the success of these initiatives was limited. Both with prominent and minor candidates, the need for alliance-building was linked to the weakness of the political party system and the influence of block-voting according to ethnic or tribal affiliation.

The weakness of party politics in Afghanistan was evidenced by the fact that although 85 of the 120 political parties in the country had some degree of involvement in the elections, this was largely limited to corraling support for presidential candidates or providing financial support to provincial council candidates. The minor role played by political parties is partly due to strong ethnic and tribal identification; negative associations given the prominence of the Communist parties Parcham and Khalq during Communist rule, and only nominal acknowledgment of political parties in the country's legal framework. Although the Constitution establishes the right to form political parties, the electoral framework refers only to individual candidates.

Among the more cohesive political parties are those Islamic parties which developed in the 1960s in opposition to the process of secularisation and gained further importance during the Jihad against Soviet occupation of Afghanistan. The most important Islamic political movements are the Hisb-e-Islami, led by Gulbeddin Hekmatyar, the Itihad-e-Islami, led by Sayyaf and the other Hisb-i-Islami led by the Mohammed Younis Khalis.

In the Provincial Council elections, a total of 3,193 candidates, including 333 women, stood for 420 seats. Provincial councils in each of Afghanistan's 34 provinces advise and collaborate with the provincial administration headed by a governor who is appointed by the President.

### *C. System of Government*

The Constitution of the Islamic Republic of Afghanistan (2004) provides for a representative system of government with a directly elected president and elected members of a lower house of parliament and local assemblies elected on the basis of universal suffrage for citizens over 18. The President is Head of State and Commander-in-Chief of the Afghan army and heads the executive branch of the central government of Afghanistan. The Legislature is composed of a bi-cameral National Assembly elected directly in the case of the Lower House (Wolesi Jirga) and indirectly for the Upper House (Meshrano Jirga). Wolesi Jirga was last elected for a five-year term in 2005.

Based on Articles 138-9 of the Constitution, the 2007 Provincial Council Law determines the roles of Provincial Councils, which include an involvement in the development of the provinces and in the improvement of administrative affairs, alongside provincial representation in central government. While the remit of Provincial Councils is essentially of a consultative nature, elections for their members constitute an element of democratic local governance. Provincial Council members also currently form two thirds of the Upper House in the absence of District Councils which have not yet been established. Members of the Upper House are appointed through a mixed system,<sup>1</sup> according to which one third of the House should be made up of members of each Provincial Council nominated by their peers, another third of members of District Councils according to the same system and individuals appointed by the President.<sup>2</sup> Importantly, members of the Provincial Councils are to be represented in the formation of a Loya Jirga entity which is entitled under the Constitution to decide, among other things, on constitutional reform.<sup>3</sup>

#### IV. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

##### A. Electoral System

The Constitution defines the electoral system for Presidential elections, whereas the electoral system for Provincial Council elections is outlined in the Electoral Law.

The president can hold office for a maximum of two five-year terms. The electoral system is a **Two Round System (TRS)**, meaning that to be elected president a candidate should receive an absolute majority of votes through a general election. Failing this, a runoff second round election should be organised between the two candidates who obtain the highest number of votes during the first round.

Provincial Council members are elected using the **Single Non-Transferable Vote (SNTV)** election system in 34 single-constituency provinces. The Electoral Law guarantees women at least one quarter of the seats in each Provincial Council. The number of seats on each Provincial Council is determined on the basis of the number of inhabitants<sup>4</sup> and ranges between nine and 29 seats amounting to a total of 420. Provincial Councils are elected for a four-year term.

Using SNTV for Provincial Council elections, the system enables proportionality in relation to the size of constituencies and the number of seats in each of them. This enables the representation of minorities within each province. The system also permits easy counting and is straightforward for voters. However, the SNTV system also presents serious disadvantages. Applied to the Provincial Council election, this system limits the extent to which elected candidates are representative of the voter population. Indeed, the chosen inclusive system of

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<sup>1</sup> Article 84 of the Constitution states that one individual amongst each Provincial Council members shall be elected by their respective council for a four-year term.

<sup>2</sup> The Presidential Decree on the Election of Provisional Representatives of Provincial Districts for Membership in the Meshrano Jirga published on 26 October 2005 ruled that each Provincial Council would appoint two representatives instead of one in order to make up for the absence of District Council members.

<sup>3</sup> Article 111 of the Constitution enumerates the competence of the Loya Jirga and Article 110 defines its composition.

<sup>4</sup> See below, Part B. *Delineation of Constituency Boundaries and Allocation of Seats*

registration of candidates leads to high numbers of candidates. In such a context, the SNTV allows candidates to be elected with a relatively small number of votes and therefore risks distorting the overall will of the constituency's electorate. With such a system and in a context of weak political parties, there is also little incentive for candidates to organise themselves in coalitions or parties, because seats are won individually. Alongside some provisions of the Political Parties Law, the SNTV system consequently fails to introduce an incentive for the development of political parties. This increases voters' tendency to vote for local leaders representing the private interests of small groups, rather than favouring the development of coalitions of candidates around broader programmes and interests.

The lack of political parties has had a serious impact on the functioning of the Wolesi Jirga, which is governed by the same electoral system. It has limited the opportunities for developing democratic practices within the Parliament and by the same token has limited checks and balances in Afghan politics. Although the consequence of SNTV on the functioning of Provincial Councils is less quantifiable as these assemblies are deprived of law-making competence, the use of such a system misses an opportunity to introduce a democratic process at the local level.

#### *B. Delineation of Constituency Boundaries and Allocation of Seats*

The Presidential Election is based on a single constituency which covers the whole territory of Afghanistan. The delimitations of each of the 34 provinces have not changed since 2004, when Panjshir and Daikundi became provinces.

Although no controversy over constituency boundaries was raised before the Ministry of Interior, which has competence to resolve related disputes, the lack of accurate data on the population of Afghanistan does not allow for certainty in the allocation of seats in each provincial council (the Electoral Law stipulates that the number of provincial council seats is determined according to each province's population). Ethnic tensions that have affected Afghan national unity throughout the country's history render this question a sensitive one and the lack of clear population data might be closely linked to the political implications of the respective size of the main ethnic groups of Afghanistan.

There has been no national census since 1979 and available figures are only estimates based on growth rates and calculated by the Central Statistics Office (CSO), the agency which is officially competent in this respect. In early 2009 the IEC made a request to the CSO for an update on the population, which was submitted accordingly. Although the Electoral Law does stipulate the duty to publish the calculations used in the allocation of seats to provinces for legislative (Wolesi Jirga) elections (Art.20.4), the same duty is not explicitly extended to other elections with multi-member constituencies. Although this data was not made public, there was no change in the number of seats per provincial council. The CSO itself has expressed its doubts regarding the figures it issues and has stressed the need for a proper census to establish accurate population numbers.

With regard to the upcoming election of district councils however, the fact that there is no official list of all districts in Afghanistan and instead different lists are used by different national and international actors is problematic. An official list is essential in good time

before the elections by law. Disputes which might realistically arise in drawing up such a list will need to be addressed through an objective and transparent process.

### *C. Legal Framework*

#### *a) International Standards*

The Islamic Republic of Afghanistan has ratified the most important international instruments relevant for elections, including the 1966 International Covenant on Civil and Political Rights (ICCPR) in April 1983, the 1966 International Convention on the Elimination of all Forms of Racial Discrimination (CERD) in August 1983 and the 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in March 2003. These international treaties are binding for Afghanistan and the Constitution explicitly states the Afghan state's duty to observe international instruments which Afghanistan has ratified, including the United Nations Charter.<sup>5</sup>

These texts include human rights and fundamental freedoms which are essential to the conduct of genuine democratic elections. Article 25 of the ICCPR establishes international human rights specifically relevant to elections, which are also embedded in the 1948 Universal Declaration of Human Rights: elections are to be held periodically, elections must be genuine, all citizens have the equal right to universal suffrage, the free will of voters must be respected and the secrecy of the vote is to be respected. The General Comment No. 25 of the United Nations Human Rights Committee further details the right to participate in public affairs<sup>6</sup> established by Article 25 of the ICCPR.

#### *b) National Legal Framework for Elections*

The national legal framework for elections is largely inherited from the transitional period which followed the Bonn Agreement of 2001, with all the applicable laws therefore adopted by presidential decrees before a parliament was elected. It is principally shaped by the 2004 Constitution and the Electoral Law of 2005. Other important laws include those on the Formation of the Independent Electoral Commission (IEC) and on the Structure and Working Procedure of the IEC of January 2005, the Political Parties Law of 2003 and, adopted in 2009, the Presidential Decree on Non-Interference in the Electoral Affairs of Elections, which applies specifically to government officials. The Constitution guarantees relevant civil and political rights as well as fundamental freedoms relevant to elections and additional legislation further elaborates the implementation of these rights.<sup>7</sup> The statutory laws related to the elections are complemented by regulations and decisions issued by the IEC.<sup>8</sup> In addition, four codes of conduct define the roles of Political Parties, Candidates and Agents, Electoral Officials, Officials of the Electoral Complaints Commission and Observers.

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<sup>5</sup> Article 7 of the Constitution.

<sup>6</sup> General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment No. 25.

<sup>7</sup> Additional legislation includes the Law on Assemblies, Strikes, and Demonstrations adopted by presidential decree on 09 January 2003 and the police law published on 22 September 2005, which together provide a framework for guaranteeing the freedom of assembly in accordance with democratic and international standards.

<sup>8</sup> Article 56 of the Electoral Law gives the IEC the right to adopt regulations where necessary to clarify elements of the electoral process.

Overall, the legal framework for the 2009 Presidential and Provincial Council elections would provide a reasonable technical basis for the conduct of democratic elections in accordance with international standards and with the international instruments ratified by Afghanistan. A number of areas of the legal framework are however problematic and depart from international standards. It is yet important to stress that despite these problems, the major shortcomings of the electoral process result from the failure to enforce the existing legal and regulatory provisions rather than from the weaknesses of the legal framework.

Most key problematic issues relate to insufficient legal or regulatory provisions for the independence and transparency of the IEC<sup>9</sup> (*see below*); the lack of guarantees of transparency in the mechanism for the registration of candidatures (*see Chapter VII B. Registration and Vetting of Candidates*); the lack of regulation on campaign financing and the absence of a mechanism for the enforcement of provisions on the transparency of spending (*see Campaign*); a lack of clarity on the competence of the IEC; a lack of regulation setting up transparency in the results tabulation process and deadline and a clear process for publishing preliminary results; and the absence of a right to appeal in the adjudication process and of clarity over the role of the judiciary in the electoral process (*see Complaints Chapter*). Furthermore, a number of provisions of the Electoral Law are challenging either because they depart from Constitutional provisions or because they have the potential to disrupt the electoral process. The Constitution itself contains an article on when elections should be held that is objectively impossible to implement (*see below*).

The provision of the Constitution which stipulates that presidential elections be held 30-60 days prior to May 22 of the fifth year after the last election is problematic as weather conditions do not allow for organising elections in the first months of a calendar year.<sup>10</sup> In accordance with the Electoral Law, the IEC decided on 29 January 2009 that the elections could not take place within this timeframe and instead would be held on 20 August 2009.<sup>11</sup> The IEC's decision was in line with best practices to optimise citizens' opportunity to enjoy their right to vote. However it also generated uncertainty about whether the current President was mandated to serve beyond the five-year period in office, resulting in a ruling in the affirmative by the Supreme Court. This also fed an ongoing institutional crisis as the Supreme Court's jurisdiction on this matter has been questioned. By naming a specific date at a time when elections cannot be technically organised, the Constitutional provision is a source of protracted uncertainty in an already unstable context.

Current legislation does not sufficiently guarantee the independence of the IEC. Although the Constitution and Electoral Law as well as the Code of Conduct for Electoral Officials contain provisions stipulating the IEC's independence, appointment and removal procedures are not consistent with these requirements. The seven IEC commissioners are nominated by the President, without the need of the approval by any other institution. With regard to removal

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<sup>9</sup> This principle is embedded among others in Article 1f(i) of the United Nations General Assembly's resolution on promoting and consolidating democracy.

<sup>10</sup> Article 61 of the Constitution refers to 1<sup>st</sup> day of Jawza, which is 22 May.

<sup>11</sup> The IEC took into consideration factors including the security situation, limited accessibility to several mountainous regions of the country in April and May due to weather conditions and the limited timeframe to carry out operational aspects of the elections. Article 55 of the Electoral Law entitles the IEC to postpone the elections when the holding of an election is impossible for security, financial, or technical conditions or other unpredictable events or situations.

of commissioners, the law states that this may take place following conviction of a crime or breach of the Electoral Law, if two thirds of the commissioners submit a request to the President to have their colleague removed.<sup>12</sup>

The mandate of the IEC is derived from the Constitution (Articles 156 and 195.3) and defined in more detail in the Electoral Law and two laws on the IEC. These legal provisions give large competence to the IEC, consistent with its duty to administer elections. However, the competence and composition of the IEC are set out in only general terms, leaving a margin of interpretation regarding its scope. Partly due to the lack of clarity of its mandate, the IEC gave views on its own mandate towards invalidation of results in preliminary results which conflicted with regulation that it had itself previously adopted.<sup>13</sup>

A number of provisions of the Electoral Law appear problematic either due to risks they pose to the electoral process or because of their lack of consistency with the Constitution. Of particular concern is Article 18(4) of the Electoral Law which requires that a fresh election be organised in the event of the death of a presidential candidate during the election. Although the aim of this article was to discourage potential attempts to assassinate candidates, it was in fact perceived as a possible motivating factor for those wishing to disrupt the electoral process, which was a serious threat in the 2009 context.<sup>14</sup>

While the IEC did adopt a set of regulations prior to the elections on the main aspects of the process,<sup>15</sup> a number of areas were not covered by such texts, leaving room for conflicting interpretations. The IEC Regulation on Certification of Results, for example, did not establish deadlines and a clear mechanism for publication of results, nor did it provide a sufficient guarantee for exclusion of suspicious results. The lack of clarity concerning the procedures for candidates to withdraw (*see Chapter VII C. Late Withdrawal of Candidates*) had particular importance in the 2009 Presidential Elections.

#### *D. General Legal Context*

Attempts to address some of the shortcomings of the legal framework have been made, notably with the presentation before the Parliament of a draft Electoral Law in January 2008 and the adoption of a draft law on the IEC in 2009. However, significant institutional difficulties have seriously hampered the law-making process and the prospect of improvements to the legal framework for elections in Afghanistan.

The lack of independence of the Supreme Court from the executive has been documented in several reports. It is confirmed by the fact that government officials explicitly reject the principle of separation of powers. This reflects a general weakness of the judiciary, which lacks an effective court system and accessible jurisprudence, combined with a lack of access

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<sup>12</sup> Presidential Decree of 21 January 2005 ‘On the structure and working procedures of the Independent Electoral Commission.’

<sup>13</sup> The IEC Regulation on Certification of Results included the possibility for invalidating results, while IEC decision 61-1388 referred 447 quarantined polling stations to the ECC for legal proceedings.

<sup>14</sup> This provision was interpreted by the Supreme Court prior to the 2004 polls, which limited the scope of the Article to unnatural death. However this would still need to be established by a Court.

<sup>15</sup> It is generally accepted that “The Electoral law should have the rank of statute law. Rules on interpretation, in particular those on technical questions and matters of detail can be in the form of regulations.” (see Venice Commission of the Council of Europe, Code of Good Practice in Electoral Matters, 2002)

to justice affecting the majority of the population. Although this has not directly impacted on the electoral process, the lack of trust in the electoral complaints mechanism results from the lack of practice in putting complaints before an independent and efficient judiciary and from the related preference for informal dispute settlement mechanisms. The establishment of an independent judiciary is crucial for instituting the rule of law in Afghanistan and to enforce human rights and accountability for offences and crimes. It is noteworthy that the Office of the Attorney General initiated investigations on cases of corruption in the government and other bodies after the end of the presidential electoral process. This type of initiative is a positive sign although the judiciary still requires further support and would also benefit from capacity building enterprises.

The inappropriate influence of the executive on the judiciary has meant that important legislation which could have established crucial checks and balances in the Afghan governmental system has not been introduced.

The Supreme Court has indeed taken several decisions all reinforcing a clear imbalance of power in favour of the executive. This worsens a situation where the Parliament is already undermined by its high degree of fragmentation, largely due to the absence of any party political organisation but also due to the disruptive or divisive presence of a number of controversial representatives elected in 2005 when no efforts were made to vet candidates.

This institutional flaw resulted in a stalemate during the consideration of a draft Electoral Law in 2009. Although problematic in a number of respects, the Electoral Law was drafted with a view to implementing some recommendations made following the 2005 elections. It included positive changes such as the introduction of a role for political parties in the electoral system. Parliament debated just nine articles of the new law before the timeline became too short for an adoption prior to the 2010 elections within the timeframe imposed by the Constitution.<sup>16</sup>

Despite these difficulties, Parliament has adopted a number of important draft laws in the past years and in particular the draft Law on the Structure, Duties and Authorities of the Independent Election Commission, the Media Law and the Law on Commission on the Supervision of the Implementation of the Constitution.<sup>17</sup> The executive however has either entirely dropped these draft laws, or republished the texts with amendments added by the Supreme Court. Such amendments include removing the vote of approval by the Parliament on the appointments of IEC commissioners and the director general of national radio television, provisions which would have helped ensure greater independence of these bodies vis-à-vis the Presidency.

Furthermore the competence of the Supreme Court in determining the constitutionality of draft laws has been debated on many occasions. For instance the Supreme Court's competence to rule on the extension of the administration's mandates beyond the constitutional deadline for Presidential elections has been opposed by the Parliament, as illustrated by the draft law on the Commission on the Supervision of the Implementation of

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<sup>16</sup> Article 109 of the Constitution: "Proposals for amending elections law shall not be included in the work agenda of the National Assembly during the last year of the legislative term".

<sup>17</sup> At the time of the writing the Supreme Court ruled some Articles unconstitutional and President Karzai rejected the draft after the Parliament had approved it.

the Constitution, where Parliament gave the Commission the prerogative to interpret the Constitution.<sup>18</sup> The Supreme Court ruled that the Commission should in fact have its competence restricted with regard to interpreting the Constitution. The content of this Supreme Court decision was published in the September 2009 Official Gazette, attached to the law creating the Commission. The lack of clarity of the Constitution with respect to the body entitled to give authoritative interpretation of the Constitution has created a genuine constitutional crisis. The current practices of amending legislation simultaneously to publishing it also departs from the law-making process as dictated in the Constitution.

## V. ELECTION ADMINISTRATION

### A. *Structure and Composition of the Election Administration*

The 2009 Presidential and Provincial Council Elections were administered by the Independent Election Commission (IEC), as provided for by Article 156 of the Constitution. The IEC, created by Presidential Decree in January 2005, is a permanent body whose membership, organisation, responsibilities and functions are determined by the Constitution and the Electoral Law. The IEC is the authority responsible for the preparation, organisation, conduct and oversight of elections and referenda in the Islamic Republic of Afghanistan, and has a governing body with a chairman, deputy chairman and five other commissioners appointed by the President for a three-year tenure which can be indefinitely renewed. According to the law, the IEC is independent from other branches of government and administrative institutions. The functions of the IEC include: establishing regulatory frameworks, supervising its own Secretariat in the organisation and conduct of elections, registration of candidates, resolving or referring complaints and disputes and inviting domestic and international election monitors to observe election operations. It is also responsible for certifying and announcing election results and facilitating any transfers of power. The IEC Secretariat (IECS) is its implementing arm and is headed by a Chief Electoral Officer (CEO) and two deputies. The CEO is the accounting officer and is responsible for ensuring efficient management of the day-to-day activities of the IEC.

Presidential, Parliamentary and Provincial Council elections were conducted by joint Afghan and UN efforts in 2004 and 2005 but in 2009 the IEC led the organisation of the elections, with external electoral assistance. In accordance with UN Security Council Resolution 1806 (2008) and in close cooperation with the UN Assistance Mission to Afghanistan, the UN established the Development Programme's Electoral and Legal Capacity for Tomorrow project (ELECT) which delivered programme and project design, management coordination, channelling of funds; mobilisation of donor funding and deliverance of technical assistance and advice to the main electoral bodies, especially to the IEC. For that extensive support the ELECT project managed a basket fund from which support was provided to the IEC, to the ECC, to domestic observers and to civic education programmes.

Despite recommendations made in 2005, the international community only started to address essential organisational needs for the 2009 elections in late 2008. Therefore the ELECT project began to be implemented much too late. In addition, the project took on too broad a mandate, advising bodies which are supposed to be independent and even those which are

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<sup>18</sup> The creation of this body is required by Article 157 of the Constitution.

tasked with monitoring each other. Some 140 ELECT technical assistants provided support to the IEC.

While ELECT should be commended for delivering significant parts of its very difficult mandate in an efficient and appropriate manner, ELECT management and part of ELECT's personnel showed a lack of transparency, an unwillingness to provide meaningful electoral data and little or no cooperation in sharing necessary and pertinent electoral information with the EU EOM, which unnecessarily increased the difficulties of the EU EOM observation.

### *B. The Administration of the Elections*

The IEC had extensive responsibilities and powers and discharged most of its responsibilities up to election day in a responsible manner. It should be particularly commended for that part of its work given the climate of fear among many of its staff members, who worked under enormous security constraints and were exposed to threats to their physical safety. Thirteen election administration staff members were killed in the four days surrounding election day.

Overall the IEC functioned efficiently and technical arrangements were made according to appropriate timelines up to election day, despite the considerable infrastructural and security challenges. For the first time there was provision for Special Needs voting, allowing hospitalised citizens, army personnel and prisoners to cast their votes. The EU EOM welcomes this initiative in accordance with the principle of universal suffrage. The establishment of a Gender Unit at the IEC was a positive measure. However, its late establishment less than three months before the elections limited its ability to implement practical measures in a timely manner.

The IEC was not widely considered to be independent and impartial, and it was not consistently transparent. Perceptions of the IEC's independence were not helped by existing appointment procedures, including the selection of commissioners by the President. Furthermore, there were credible reports from some provinces, verified by the EU EOM, that the IEC exerted pressure on its staff in a manner which raised serious questions about the commission's impartiality. Serious allegations were made concerning the impartiality of some IEC staff and the ECC ruled on the removal of IEC officials in at least two cases. Although the EU EOM generally received periodic and reliable information from the IEC, there were serious exceptions, particularly in the later stages of preparations. The IEC did not consistently facilitate access to information required for effective observation of the election administration. In particular, procedures for retrieval of materials, tally centre procedures and auditing of results procedures were not made available in due time to the EU EOM to allow proper and timely analysis, as well as efficient observation of the implementation of the scheduled procedures.

There was a serious lack of access to and transparency of IEC Regulations, due to its failure to publish the relevant texts in a timely manner, as well as a grave absence of information about dates on which the regulations were adopted by the IEC. Late changes to IEC Regulations fell short of international standards as they introduced further confusion regarding the legal and regulatory framework, both for voters and for national and

international observers.<sup>19</sup> Although the EU EOM was provided with the latest versions of the Regulations in the course of July 2009, other stakeholders, including at least some observer groups, were provided with outdated versions of those regulatory texts in the information package distributed by IEC in July. These out-dated versions were also posted on the IEC's website. The changes between the old and new versions included several important features of the electoral process. For instance, the regulation on counting as included in the observers' information package erroneously referred to provincial tallying for Provincial Council elections, thereby misleading some observers.

The IEC Rules of Procedures state that its decisions are public and final but subject to appeals to the extent permitted by the Electoral Law (Art.3.11) and that the IEC Secretariat shall record decisions and all votes (Art.3.9.10). However, the fact that observers were not allowed access to the IEC's deliberative meetings, combined with the IEC's failure to make its decisions public during the period when preliminary results were being published, contributed to a lack of transparency in the process.

Security constraints severely affected the last stages of preparations and it was always known that in some areas it would not be possible to secure all polling centre locations. While the conditions dictating modifications in the locations of polling centres and stations were beyond the IEC's control, the fact that the list of polling centres and stations was never made publicly available meant that neither voters nor observers had reliable and complete information on where voting would take place. Furthermore, the lack of sound information from the IEC administration during the post-electoral period produced a mass of contradictory, unreliable and changing information regarding the numbers of polling centres and stations that were open on election day.<sup>20</sup> The real number remains unknown, as do the exact number of polling staff recruited and the number of polling staff finally employed in view of the cancellation of polling centres, with a breakdown by gender.

The storage and custody of the sensitive materials intended for polling centres and stations that did not open on polling day was under the joint responsibility of the IEC and ELECT advisers, to be kept under the same conditions as the surplus sensitive materials supplied to the provinces. In provinces where ELECT advisers were present, it was mandatory that the materials be kept under the joint custody of the IEC Provincial Electoral Officer (PEO) and the international ELECT adviser or, in the absence of the adviser, the PEO and Logistics Officer were to be the joint custodians. Somewhere along the custody chain, a substantial amount of the electoral material which had been assigned to polling centres and stations which did not open, and which had been delivered to IEC provincial centres, was subsequently used to commit serious fraud, by ballot stuffing and by the operation of ghost polling stations, as denounced by the EU EOM on 8 and 16 September 2009.

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<sup>19</sup> The Guidelines for the Legal Framework for Elections of the Organisation for Security and Cooperation in Europe (OSCE) summarise this best practice as follows: "The legal framework should be structured so that it is readily accessible to the public, transparent, and addresses all the components of an electoral system necessary to ensure democratic elections."

<sup>20</sup> A final published list of 23,314 polling stations was published at the beginning of October, but the IEC provided the EU EOM with a 'final list' of more than 26,275 polling stations open on election day, without any explanation about the discrepancy.

*a) Recruitment and Training of Electoral Officers and Polling Staff*

Provincial trainers trained 3,150 District Field Coordinators (DFCs), who acted as supervisors for the conduct of elections in the 356 districts of the country. Women accounted for 23 per cent of those recruited. By and large, the recruitment of women throughout the country was difficult; particularly severe in the Kabul area, as well as in the south and south eastern regions, where security constraints often led to the recruitment of male polling staff only. The EU EOM assessed the training in general to be well-organised and seriously conducted, and the training material was deemed to be excellent. Overall, EU observers evaluated the performance of polling staff as satisfactory, good or very good in the majority of cases observed.

*b) Voter Information and Civic Education*

Contrary to the elections in 2005, in 2009 the IEC was wholly responsible for voter information campaigns and it centralised all electoral messages, via IEC officials and civic educators. The IEC produced a large and high-quality range of voter information and voter education products, utilising radio and TV, posters and other mass media. The deteriorating security situation had a negative impact on the ability of civic educators to access a considerable number of districts, making it difficult and sometimes impossible for them to reach voters in rural and remote areas and to deliver essential election support programmes.

*c) Detection and Mitigation of Fraud by the IEC*

The IEC informed the principal stakeholders of the measures undertaken for the detection and mitigation of fraud. Those safeguards were built around the quality of the materials, controls on the movement of sensitive materials, procedures to discourage fraud and an emphasis on the transparency of the process, with the help of agents, observers and media to detect errors or malfeasance. However, attempts to defraud in zones with security problems, where candidate agents, observers, media and voters were present to a lesser extent, if not totally absent, were largely successful.

Among the mitigation measures put in place by the IEC were the establishment of rules and triggers for investigation.<sup>21</sup> Unfortunately, those self-imposed rules were not applied, and the system was flooded with massive fraud, detected but uncorrected at the Tally Centre, until evidence of the fraud from two sources – mainly the EU EOM and the ECC – forced its partial correction.

## **VI. VOTER REGISTRATION**

### *A. The Right to Vote*

Article 33 of the Constitution guarantees citizens the right to vote. It further guarantees the principle of free, general, secret and direct voting for the Presidential Election (Article 61) and elections for the Provincial Councils (Article 138), recalled in the Electoral Law (Article 2). According to the Electoral Law, to be eligible to vote one must be an Afghan citizen at the

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<sup>21</sup> See Results section for further detail.

time of registration, be 18 years of age or over on the day of the election, not have been legally deprived of civil or political rights by a court of competent jurisdiction, and be registered as a voter by the IEC.

### *B. Voter Registration*

Voter registration establishes the eligibility of individuals to cast a ballot, allows the identification of voters on polling day and is a significant safeguard against multiple voting and impersonation. The 2009 Presidential and Provincial Council elections were carried out without a consolidated and accurate voter register, which weakened the integrity of the process.

In preparation for the Presidential, Parliamentary and Provincial elections, voter registration exercises were carried out in 2003 and 2004, with a top-up exercise in 2005, producing a total of 12.5 million voter cards. Despite recommendations across the board since 2005 in favour of establishing an accurate voter register, a final decision not to undertake an exercise capable of producing an accurate voter list was made by the IEC, in consultation with the President, in July 2008. This was justified at the time by citing the security risks posed by undertaking a fully-fledged registration process. Instead, a top-up exercise was organised in four phases, aimed at registering citizens coming of age for the 2009 elections, those who had lost their cards since 2004-5 and those who had changed residence. This update resulted in the issuing of some 4.7 million additional voter cards, which together with the previous 12.5 million meant that well over 17 million voter cards were in circulation. Of these, several million are likely to have been duplicates.

A biometrics-based (fingerprint) mechanism to detect multiple registrations in the new records was put in place for the top-up exercise of 2009. The IEC's Communication and Information Technology (CIT) department began work on producing a database of the 4.7 million additional voters, which stored photographic and biometric (fingerprint) records, and assigned each voter to one particular province and polling centre. However, the IEC CIT did not have the capacity to carry out database work in parallel with its other demanding tasks, and input work on the voter register database was interrupted for several months to allow for the processing of the elections results. Before the interruption the IEC's CIT stated that it had successfully processed more than 3 million entries into the database, with a surprisingly low number of unusable registration forms (1 per cent to 2 per cent), and had identified tens of thousands of duplicates that would be assessed upon completion of the database.

Security problems contributed to a serious over-registration of female "ghost voters" which was detected during this VRU exercise. In eight provinces<sup>22</sup> female registration amounted to around 50 per cent and in three provinces (Paktia, Khost, Logar) it reached 60 per cent and above. These were all areas noted for previous fraudulent over-registration and registration by proxy, and where women hardly dared to leave their homes.

The new registrations gathered in the 2009 VRU could not be matched with the 2004-2005 records and it was not therefore possible to produce an adequate Voter List for the 2009

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<sup>22</sup> Nuristan, Panjshir, Daikundi, Kapisa, Logar, Badghis, Khost, Paktika

elections. No Voter List was printed or displayed at any stage anywhere in the country to serve the voters and contribute to fraud prevention.

## VII. REGISTRATION OF CANDIDATES

### A. *Registration of Political Parties*

The Constitution guarantees the right to form political parties, provided certain provisions are respected.<sup>23</sup> The registration of political parties is governed by the Political Parties Law, and the legal eligibility criteria are generally in line with international standards. However, the procedure for registration stipulated by the law leaves room for political interference and lacks sufficient detail to guarantee a fair, impartial and transparent process, especially given the requirement of validation by several bodies. For example there is no clear notification procedure with deadlines to process applications.

Although there were 138 registered political parties in Afghanistan in August 2008, these have played only the smallest of roles in the country's institutional and political life. With no explicit role for the political parties, the rules on registration of political parties have had virtually no effect on the electoral process. The scant role played by political parties is one factor in the weighting of power towards the Presidency and away from Parliament.

### B. *Registration and Vetting of Candidates*

The Constitution and the Electoral Law establish formal and substantive requirements for those running for Presidential and Provincial Council office<sup>24</sup> which are generally non-discriminatory and in line with international practice. A candidate for the presidency must be at least 40 years old while candidates for Provincial Council elections must be at least 25. All candidates must be Afghan citizens who have not been legally deprived of their civil rights. All candidates must be registered as voters with the Independent Electoral Commission (IEC), and presidential candidates may not hold citizenship from another country.<sup>25</sup> Candidates for the Provincial Councils must reside in the province in which they wish to stand. Prior to the submission of their nomination papers, candidates must resign from any positions they hold in the government, electoral administration or judiciary, as listed in Article 15(1) of the Electoral Law. Nomination papers must be supported by the names and signatures of 10,000 citizens, in the case of presidential candidates, and 200 provincial residents for Provincial Council candidates.<sup>26</sup> Candidates for the presidency must each file a deposit of 50,000 Afghanis (appr. 690 euro), while Provincial Council candidates must file a deposit of 4,000 Afghanis (appr. 55 euro). These deposits are refunded if the candidate is elected or if they reach or exceed a set percentage of the valid vote – 15 per cent for presidential candidates, 2 per cent for provincial council candidates. Nomination period for

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<sup>23</sup> Among others, the Constitution forbids the 'formation and operation of a party on the basis of tribalism, parochialism, language, as well as religious sectarianism,' requires that the party's 'organisations and resources [...] be transparent,' that the party 'shall not be affiliated with foreign political parties or other sources' or have military or quasi-military aims and organisations. Finally, a political party's 'manifesto and charter shall not contravene the Holy religion of Islam and principles and values enshrined in the Constitution.'

<sup>24</sup> Articles 62 and 85 of the Constitution.

<sup>25</sup> Article 62 of the Constitution.

<sup>26</sup> Article 35(2)c of the Constitution.

presidential and provincial council candidates were between 25 April to 12 June 2009, which allowed time for a challenges period between 16 and 21 May 2009 in accordance with the calendar adopted by the IEC.

The Constitution and the Electoral Law provide a legal basis for the vetting of candidates. The Electoral Law disqualifies nominees with close links to Illegal Armed Groups<sup>27</sup> (IAG), while the Constitution excludes candidates who have been convicted of crimes. In a context of general impunity for past crimes, however, the number of individuals affected by these provisions was extremely low, even where past abuses were documented by the United Nations, civil society groups and national and international human rights groups. Voters generally expected that individuals notorious for carrying out serious crimes should be excluded from the elections, regardless of whether they had first been convicted by a judicial decision. Such exclusions were, however, not foreseen in the law and might conflict with the principle that individuals are entitled to due process in establishing their personal liability for crimes.

In countries marred by recent conflict or by an ongoing succession of conflicts, the judiciary is often weak. In such situations transitional justice measures are often considered as part of the effort to restore the rule of law and to address past crimes, while at the same time pursuing the broader objectives of reconciliation and peace. The desirability of vetting and if necessary excluding candidates appears particularly relevant to the establishment of democratic institutions in the Afghan context. Public dissatisfaction with the limitations of the vetting process illustrated, to some extent, popular support for it, and the hope amongst voters that elections could lead to more accountable governance. Vetting falls into a broader set of transitional justice measures of agreed by the government in a 2006 Action Plan for Peace, Justice and Reconciliation. The plan's impact have been limited to the dismissal of a handful of government officials on the basis of their links to Illegal Armed Groups and to the creation of a museum demonstrating the country's violent past. A truth-telling mechanism has also been created, principally by the Afghan Independent Human Rights Commission, which previously issued the *Call for Justice* report in 2004.<sup>28</sup>

The IEC did not participate in the vetting process, as it did not establish a procedure for verification of the validity of applications for candidatures and instead merely required candidates to sign a sworn statement stating that they met all the requirements to stand for the relevant election. While this saved the IEC from criticism regarding decisions which could have been seen as political, the decision placed a considerable burden on the Electoral Complaints Commission (ECC), which became the only body directly responsible for checking for failures to comply with the legal requirements for nomination, including responsibility for the vetting of candidates for links to Illegal Armed Groups.

The ECC decided to rely on the decisions of the Disarmament and Rehabilitation Commission (DRC) as to whether a nominee for elections was linked to an Illegal Armed Group. This commission collated information through a long process involving its Joint Secretariat, composed of five organisations - the Ministry of Interior, Ministry of Defence,

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<sup>27</sup> Article 15 (3) of the Electoral Law states those that should be excluded 'practically command or are members unofficial military forces or armed groups.'

<sup>28</sup> The AIHRC is currently conducting a mapping exercise of past crimes, which could give rise to other relevant programs.

National Security Directorate and the UN SRSG and ISAF Commander - in the framework of the Disbandment of Illegal Armed Group Program (DIAG). Excluded candidates could either disarm or contest their alleged links to Illegal Armed Groups in order for their status to be reconsidered. However, the timeframe for appealing against decisions or for opting to disarm was too narrow, and damaged the vetting procedure's compliance with the principle of due process. It also limited the impact of the vetting procedure as an incentive for prospective candidates to disarm.

The ECC received 302 challenges to nominations, 50 of which related to presidential and vice-presidential candidates and 252 to provincial council candidates. After adjudication of the challenges, the final number of candidates was 41 for the Presidential Election (with 82 vice-presidential candidates) and 3,195 candidates for the provincial council elections.<sup>29</sup> The ECC excluded 56 nominations (two presidential, one vice presidential and 53 provincial council) for non-compliance with legal provisions. A total of 54 candidates were excluded because of their links to Illegal Armed Groups, one for being convicted of crimes listed in Articles 62 and 85 of the Constitution, and one for having dual nationality.

The ECC's decision to rely on DRC data to determine vetting challenges was partly due to the late establishment of the ECC and the need for in-depth investigations, which the provincial offices of the ECC in particular were not in a position to conduct. The decision also enabled the ECC to distance itself from potential accusations of partiality and to rely on the most objective data available. However, the vetting was still criticised in some quarters, since the DRC's data is itself seen as flawed by some political stakeholders and by many in Afghan civil society.

The vetting process suffered greatly from a lack of political will and support, with international parties to the Joint Secretariat failing to provide information on the links of individuals to Illegal Armed Groups. The data employed in the process emanated principally from the government, which failed to pass on information on notorious warlords. The process also suffered from interference from local authorities and local leaders seeking to influence DIAG offices in at least five provinces. The mechanism used for its implementation was neither sufficiently transparent, nor inclusive and objective. Importantly, it lacked a legal definition of what constitutes an Illegal Armed Group. The DRC also faced serious pressure from several quarters, with reports that excluded candidates visited the DRC to complain about its decisions, and of other more serious pressures exerted by the executive. While the DRC took some courageous decisions to exclude influential candidates, a substantial number of candidates who were widely believed to be linked to armed groups stayed in the running, and the vetting process lost credibility with the public as a result. Among the individuals who were candidates despite strong allegations of their involvement with Illegal Armed Groups were the two elected Vice Presidents and some provincial council members who, according to preliminary results, appear to have subsequently been elected.

All of the EU EOM's interlocutors have stressed the importance and sensitivity of vetting process in view of 2010 legislative elections. The race for the Wolesi Jirga is expected to be

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<sup>29</sup> The number of 3,195 was announced by the Special Representative of the Secretary General for Afghanistan on 7 June 2009.

very competitive with a large number of candidates running and it will require a remapping exercise to update data on Illegal Armed Groups.

### *C. Late Withdrawal of Candidates*

In early July, public announcements by some presidential candidates that they were withdrawing from the electoral race in favour of others were followed by debates on the legal weight of such declarations and of their consequences for the electoral process. On 6 August, the IEC issued a decision, based on Article 37(2) of the Electoral Law<sup>30</sup> which regulated the late withdrawal of candidates. It required that a candidate wishing to withdraw from the election after the end of the nomination process should officially inform the IEC of their withdrawal so that any votes cast in their favour could be invalidated. Votes cast for those candidates who withdrew without officially notifying the IEC, in accordance with procedure would be counted in their own name by the IEC.

While clarification of the law was necessary, this decision contradicted IEC Regulations on Nomination and on Counting which imposed a deadline for withdrawals, and the IEC Regulation on Counting regarding the definition of valid and invalid votes. It also diminished transparency as the conclusion was that votes for withdrawn candidates would be counted as valid at polling stations but invalid at the tally centre. This would make it more difficult to cross-check the accuracy of tallying. In addition, some held the view that the reduction of the total number of valid votes cast for the Presidency would effectively also reduce the number of valid votes required for the first candidate to obtain more than half of all votes, making it less likely that a second round would be necessary.

## **VIII. ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT**

### *A. Overview of the Election Campaign*

Campaigning for the Presidential and Provincial Council Elections officially started on 16 June and continued until 18 August.<sup>31</sup> Freedoms of assembly, association and expression are protected by the Constitution and a new Election Campaign Regulation, amended in May 2009, provided the main legal framework. Only three political parties were visible and actively supported candidates: Jumbish-i-Milli,<sup>32</sup> Hezb-i-Wahdat<sup>33</sup> and the United National Front.<sup>34</sup>

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<sup>30</sup> Although the English version of the Electoral law stated in its Article 37(2) that ‘If a candidate withdraws his or her candidacy or dies after the end of the candidate nomination process, or if his or her name is excluded from the list of candidates by the ECC, the votes cast in his or her favour **shall not have any effect on the counting process**’, the translated version from Dari says: ‘**shall not be included in the counting process.**’ Article 37(2) is applicable to both elections.

<sup>31</sup> The IEC determines the official campaign period, with the only requirement that this period ends 48 hours before the start of polling (Article 38(1) of the Electoral Law).

<sup>32</sup> *Jumbish-i-Milli* is led by Gen. Rashid Dostum, who decided to side with Mr. Karzai in the last phase of campaign.

<sup>33</sup> *Hezb-i-Wahdat* is led by Mohammad Karim Khalili who was offered the opportunity to retain his position as Vice President by Mr. Karzai.

<sup>34</sup> The United National Front is a coalition led by the former president of Afghanistan Mr. Burhanuddin Rabbani. The UNF supported Dr. Abdullah.

Presidential candidates addressed the electorate with similar messages, promising to tackle insecurity, establish peace and stability through national reconciliation, quell rampant corruption and improve the country's economy. The most sophisticated programme was presented by Mr Ashraf Ghani, who also paid attention to women voters, while the only candidate campaigning to transform the political power structure into a parliamentary system was Dr. Abdullah. In the quest for peace and stability most presidential candidates said they preferred to seek negotiations with insurgents rather than pursue an exclusively military strategy.

Campaigning took place in an environment characterised by serious *de facto* limitations on the freedoms of movement and assembly caused by ongoing military operations, particularly in the south, and by an increasing number of attacks by the Taliban, aimed at disrupting the elections and deterring participation. Although there were several serious attacks on presidential candidates and campaigners, most presidential candidates were able to campaign in almost all provinces. With fewer resources and less security support, provincial council candidates faced more serious security problems and in a number of cases their campaigns were restricted to the capitals of provinces and districts. Women provincial council candidates were especially affected and some were not able to campaign at all.

Instances of intimidation, threats and direct attacks were reported throughout the campaign period, targeting candidates, election administration workers and members of the electorate.<sup>35</sup> Five provincial council candidates were killed during the electoral period and another five were abducted.<sup>36</sup> Presidential candidates were targeted 19 times, in incidents which included attacks on their campaign staff and offices. Although most cases of threats and all of the more serious attacks were linked to anti-government insurgents, citizens also suffered intimidation from influential local leaders, as did some provincial council candidates. While in secure areas campaigning took place without serious disturbances, in many pockets of instability there were no campaign activities at all, or only activities of an extremely low-key nature, mainly based on the distribution of leaflets.<sup>37</sup>

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<sup>35</sup> The most common were late night calls and threatening letters. These were reported in all provinces, and in particularly in Ghost, Wardak, Logar, Laghman, Kunar, Nangahar, Paktika and Paktiya. The insurgents sought to intimidate voters through the use of radio broadcasts from radio stations like The Voice of Sharia or Radio Nangahar, which are located in areas out of governmental control such as the pockets of instability in Kunar or Nangahar provinces.

<sup>36</sup> This number represents the known cases of assassinations of provincial council candidates since May 2009.

<sup>37</sup> On 1 August, in Kunar Province, Ghaziabad District, unidentified militia attacked a campaign gathering for the presidential candidate Dr. Abdullah with heavy weapons and small arms fire. No casualties or damage were reported. There were many others election-related security incidents recorded, including: attacks on campaign staff (e.g. on 30 July in Qala-i-Landani in Jawzjan Province a campaign manager of Mr. Karzai was killed in a roadside bomb explosion); abductions of provincial council candidates (e.g. on 30 July in Azra District, Logar Province – one candidate was abducted . Another was kidnapped in Sardara village of Darzab District in Jawzjan Province on 31 July); kidnapping of electoral personnel (e.g. on 1 August in Chak District in Wardak Province – a District Field Coordinator was kidnapped); destruction of electoral premises (e.g. on 30 July a polling centre was burnt in Dihsabz District in Kabul Province); attacks on campaign offices (e.g. on 29 July in western Herat Province a blast destroyed the campaign office of Mr. Karzai and on the same day a bomb destroyed the campaign office of Dr. Abdullah in Urgan District in Paktika Province). Also, intimidation of citizens and of provincial council candidates was continuing as in the previous reporting period. Source: UN DSS, UNAMA, EU EOM Observers.

### *B. Use of State Resources*

There were credible reports that Mr Karzai and his vice-presidential candidates misused state resources, including the resources of the Afghan National Army and Police. Specifically, the incumbent was consistently reported to have used the security forces' logistics to transport campaign team members and voters to rallies and to accommodate them in State guesthouses and other venues. The use of public resources to support election candidates is prohibited, but there is no mechanism to enforce this regulation.

Despite a decree explicitly prohibiting government employees from expressing partiality,<sup>38</sup> a number of state officials clearly supported President Karzai,<sup>39</sup> while others backed Dr. Abdullah.<sup>40</sup> Mr Karzai was also supported by many state officials including governors, directors of state agencies and members of parliament.

### *C. Campaign Finance*

There were significant disparities in the financial means available to rival campaigns. Inadequate financial means limited the campaign activities of many candidates; it seriously affected their safety as well their outreach. While the main presidential candidates did not face serious financial problems,<sup>41</sup> less well-off competitors in the presidential election and most of the provincial council candidates could run only small-scale campaigns, and had a more limited ability to counter security concerns. In contrast with the rules applied to the 2004 Presidential election, the IEC did not impose any limitation on campaign expenditure for the Presidential elections. Such limitations could have helped to ensure more fairness in the competition between candidates, and would have been more consistent with international standards.<sup>42</sup>

The regulations applicable to the campaign placed only basic conditions on campaign spending, forbidding the use of public, foreign or illegal funds for campaigning purposes. However there was no adequate mechanism to monitor their implementation.

Although the *Regulation on Campaign Finance Disclosure* obliged candidates to disclose their campaign finances, there were no mechanisms to systematically check the figures declared. Nevertheless, publication of the declared campaign assets of presidential candidates allowed complaints to be lodged with the ECC based on challenges to the published amounts. Eight presidential candidates never complied with the requirement to declare their campaign

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<sup>38</sup> See Articles 6 and 7 of the *Election Campaign Regulation* (as amended in May 2009).

<sup>39</sup> President Karzai was publicly supported by, among others, the Governor of the Nangahar Province, the IEC Chairperson in Kandahar and the Director of the Independent Directorate of Local Governance (IDLG). Lower ranking employees of state administration were also found to have openly supported the President.

<sup>40</sup> The Governor of Balkh Province, Mr. Mohammed Atta and the Governor of Panshir Province, Haji Bahlol,, both declared their support for Dr. Abdullah.

<sup>41</sup> According to UNAMA information, in Laghman Province alone the expenditures of the campaign offices for Mr. Karzai's and Dr. Abdullah were respectively US\$100,000 and US\$50,000 per month.

<sup>42</sup> Article 25 ICCPR, United Nations Human Rights Commission, General Comment No. 25, paragraph 19: "Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party." For another example, see also Article 1 (i), ECOWAS, Protocol on Democracy and Good Governance, 2001 (not applicable in the context of the Afghan elections).

finances. They were fined by the ECC for this violation but this sanction was not perceived to be particularly effective.

#### *D. Complaints During the Campaign Period*

During the campaign period, complaints and allegations were frequently aired in the media and informally shared with the ECC through text messaging and phone calls, but only a relatively small number of official complaints were submitted. Some electoral offences were reported by the Joint Monitoring Team composed of UNAMA and the Afghan Independent Commission of Human Rights (AIHRC), concerning allegations of intimidation and of state interference in the electoral process, as well as the violation of the right to non-discrimination and other violations of human rights. To the EU EOM's knowledge, no complaint was filed by the AIHRC.

The ECC noted that the complaints received were generally poorly documented, while EU EOM observers confirmed that there was a reluctance to file complaints before the Provincial ECC in most provinces. A majority of the initial complaints were challenges to nominations and were dismissed for being introduced too late. Other complaints referred to violation of campaign rules, abuse of state resources, threats to candidates and the recruitment of candidates' relatives to the electoral administration.

Before election day, the ECC issued decisions on 181 of the 467 lodged complaints, the majority of which related to campaign material disputes, abuse of public resources or the interference by government officials in electoral affairs. Presidential and vice-presidential candidates or their campaign teams were implicated in 118 complaints. The ECC dismissed 151 complaints due to lack of legal grounds or because of the complainants' failure to satisfy evidential requirements.<sup>43</sup> As well as disqualifying two provincial council candidates for holding governmental positions, the ECC took action against campaign-related offences including attacks on the dignity of one female presidential candidate, non-compliance of presidential candidates with their duty to disclose their campaign assets, government officials campaigning in favour of the incumbent President, and the use of public resources for campaigning purposes. The most significant decisions in this last category were against the campaign team of Dr Abdullah and vice-presidential candidate Mr Khalili. Warnings as well as fines were imposed on offenders. The ECC sometimes launched investigations on its own initiative, when there were indications that serious offences might have occurred. No decisions have been taken based on those investigations.

Over the period the ECC demonstrated impartiality and respect for due process in the decisions it issued, and all published decisions appeared to be sufficiently documented. The ECC was, however, unable to address all complaints in a timely fashion, and several complaints remained unaddressed at the end of the campaign period. The late issuing of decisions also reduced the potential for deterrent effect against electoral offences.

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<sup>43</sup> Complaints required detailed personal statements and evidence which were not always provided due to poor knowledge of the legal framework and judicial mechanisms.

## IX. MEDIA AND ELECTIONS

### A. Media Environment

The media sector in Afghanistan is made up of State and private entities and in the last seven years has witnessed remarkable growth, partly thanks to international financial support. Presently, there are around 20 private television stations and 100 private radio stations, as well as seven news agencies. Since 2004 hundreds of newspapers have registered with the Information and Culture Ministry, but most of these are not functional or have only been used to publish election-related propaganda. Radio remains the main source of information for voters in Afghanistan.

Ongoing conflict and the weak rule of law have contributed to a decline in press freedom in Afghanistan. Deterioration in the security situation and limited access to information are the main factors hampering journalistic activity and coverage in general, particularly during elections. Additionally, freedom of expression and pluralism of ideas are negatively affected by journalist's bias and lack of professionalism.<sup>44</sup> According to EU EOM interlocutors as well as local and international reports on media freedom, government actors and the security apparatus are the main sources of intimidation and pressure on journalists. This creates an environment of fear and self-censorship, particularly in the provinces.

National and international journalists faced increased violence and acts of intimidation in the days before as well as during election day, some of which were reported to have been initiated by supporters of the two leading presidential candidates.<sup>45</sup> Most of the intimidation cases remain unreported to the authorities as journalists express a lack of faith in government bodies.

On 19 August, following a decision by the Afghan National Security Council, the Ministry of Foreign Affairs issued instructions to the media to refrain from reporting on any violent incidents during polling day that would discourage people from voting. The government explained that instructions were issued to ensure national interests and security during polling day. The majority of Afghan media subsequently did not report election day related violence, attacks and security actions.<sup>46</sup> Other national and international media, which continued reporting, condemned this act as a violation of freedom of expression and the fundamental right of Afghan citizens' to have access to information. On election day, 15 Afghan and international journalists were detained in Kabul at the site of a shooting incident they had come to report on. Several were assaulted while under arrest. They were released after the polls closed.

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<sup>44</sup> Low levels of journalistic professionalism are largely due to lack of journalistic skills, low professional standards and the absence of technical support.

<sup>45</sup> According to Internews Network Report ("Afghanistan's Media Milestone – Local Coverage of the Afghan Elections", August 20, 2009), Amnesty International press release on August 12, 2009 and Human Rights Watch report released on August 18, 2009 <http://www.hrw.org/en/news/2009/08/17/afghanistan-human-rights-concerns-run-elections>.

<sup>46</sup> Of 27 local media outlets in five provinces interviewed by EU EOM after election day, 22 stated that they complied with the media ban, some of them considering it to be a regulation to be followed along with the Media Code of Conduct. This sample is confirmed by the EMC Narrative Report and Media Silence Period Report released on 23rd of August at the IEC Media Centre.

While acknowledging the government's concerns regarding national security, the EU EOM considers the election day instruction to the media to be inconsistent with the Constitution as well as with international standards of freedom of expression and people's right to information.

### *B. Legal Framework for the Media and Elections*

Clear guidelines to regulate media coverage of the election campaign were provided by the IEC Code of Conduct for Media.<sup>47</sup> In addition, the Electoral Law establishes a set of principles for election campaign coverage by the mass media and provides for the creation of a temporary Electoral Media Commission (EMC).<sup>48</sup> In order to maintain balance and equal access for all presidential candidates, the EMC also issued the Code of Conduct for the State-run media.<sup>49</sup> Only the EMC and the Media Commission of the Information and Culture Ministry are mandated to assess complaints about media coverage and breaches of the above mentioned Codes of Conduct.

However, the regulations set by the two Codes of Conduct were not consistently followed by all media outlets, several of which stated they prioritised coverage of presidential candidates according to their own assessment of what was newsworthy, and not necessarily according to principles of balanced access and coverage. State media, which gave preferential coverage to Mr Karzai within their news programmes, and thus violated the Code of Conduct, did not change their coverage when the EMC issued orders in this regard. After the elections, the EMC laid a formal complaint with the ECC against the state media,<sup>50</sup> for failing to abide by four EMC decisions.<sup>51</sup>

Media rights and responsibilities during the 2009 Presidential and Provincial Council Elections were defined by the 2004 Media Law which is considered as less effective than a revised draft law which was not published at the time of the elections. The majority of EU EOM media interlocutors perceived the draft law positively, particularly with regard to its provision for the definition of State-controlled broadcasters as public service broadcasters. However, journalists also pointed to the draft law's insufficient provisions regarding freedom of expression, the composition of the High Media Council<sup>52</sup> and the use of vague and general terms in some articles. Some governmental entities contest on Media draft Law's constitutionality<sup>53</sup> and some have argued it is 'un-Islamic.'

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<sup>47</sup> Based on the authority given by Art 56 of the Electoral law, the IEC adopted this Code of Conduct to regulate media participation for all the election processes. All media that asked for IEC accreditation to cover elections had to sign the Media Code of Conduct which provides specifically for fair access and balanced coverage of the political campaign.

<sup>48</sup> Electoral Law, Art. 51: The Independent Election Commission shall establish, at least 60 days prior to the election date, a Media Commission (MC). The MC shall monitor fair reporting and coverage of the electoral campaign period and shall deal with the complaints concerning any breaches of fair reporting or coverage of political campaign, or other violations of the Media Code of Conduct.

<sup>49</sup> Electoral Law, Art.50, points (2) and (3).

<sup>50</sup> RTA television, and the newspapers Hewad, Eslah and Anees, in violation of Article 53 (s) of the Electoral Law.

<sup>51</sup> According to UNDP/ELECT latest report, 25-31 August, 2009.

<sup>52</sup> Three ministers are mentioned in the composition of the Council.

<sup>53</sup> One reason for the delay of the draft law's publication was President Karzai's decision to send the law to the Supreme Court for interpretation of Article 13, which provides for public service broadcasters.

Media representatives considered that postponement of the publication of the law was due to the presidential election campaign, although two government ministers blamed the delay on minor administrative issues. Electoral Media Commission

The Electoral Media Commission (EMC) has a mandate to monitor fair reporting and coverage of the electoral campaign and address complaints relevant to any media offences and breaches of the Media and State-Media Codes of Conduct. The EMC was established more than three months ahead of election day, earlier than for the 2005 parliamentary elections.<sup>54</sup> It was set up on 10 May 2009 on foot of IEC regulations drafted with technical assistance from UNDP-ELECT.

This earlier establishment was a positive development but the EMC's temporary mandate – it ends one month after election day – offers a very limited timeframe to implement its activity in an effective way and to impose its authority. The EMC's 2009 mandate also encompassed new public outreach responsibilities.

From 9 July onwards, the EMC released reports with media monitoring findings at weekly press conferences which were well-attended by national and international media. EMC media monitoring reports<sup>55</sup> were comprehensive and useful as they offered timely evidence of election campaign coverage trends, which were largely consistent with EU EOM media monitoring findings. The EMC's media monitoring findings offered it the factual base to make public calls for compliance with its regulations on fair and balanced coverage.<sup>56</sup> The press conferences proved a good public platform for EMC messages in the absence of a dedicated website or any other form of dissemination.<sup>57</sup>

The EMC received 16 media-related complaints, mainly from presidential candidates' election campaign offices. In the provinces, complaints could have been filed with IEC provincial offices but all complaints were filed at central level and were related to national media. A report was released halfway through the electoral campaign covering all aspects of the media complaints and EMC decisions. Almost half of the complaints were related to the State media's imbalanced coverage and insufficient access being given to some presidential candidates in their news programmes. Most of the 16 complaints received by the EMC were filed by Dr Abdullah's election campaign office. More than one week after election day, EMC decisions on media complaints had not been published on the IEC webpage, which, apart from press conferences, was the EMC's main dissemination platform.

The EMC's very limited sanction powers<sup>58</sup> were an impediment to the full achievement of its mandate, as the body lacks regulatory mechanisms to force violators to comply with its decisions. In the case of Radio Television Afghanistan (RTA) for instance, the measures

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<sup>54</sup> In 2005 the Electoral Media Commission was established in the first day of the electoral campaign, just 60 days prior to election day.

<sup>55</sup> The media monitoring service, entitled Media Monitoring Project Afghanistan, was provided to the Electoral Media Commission by Insight Consulting, a private Afghan company.

<sup>56</sup> The EMC findings revealed a systematic bias in favor of Hamed Karzai on state radio and television as well as in favour of Dr Abdullah Abdullah on different private electronic media outlets.

<sup>57</sup> EMC received a page on the IEC website to disseminate its work approximately a week before election day.

<sup>58</sup> Whenever violations were identified, the EMC could proceed in the following ways: issuing warnings, requiring the violator to publish corrections, asking the violators to publish EMC decisions, ordering the violator to take back allegations or give right to reply.

imposed by the EMC were obviously not very effective as RTA did not publish EMC decisions concerning its own violations, contrary to an official request to that effect.<sup>59</sup> The Culture and Information Ministry also seems to have played a role in making it difficult for the EMC to impose penalties on RTA.<sup>60</sup> These particular aspects seem to have forced EMC to become one of the most outspoken election-related institutions, publicly and repeatedly demanding compliance with the regulations.

In the case of non-compliance with the Media Codes of Conduct, the IEC had the authority to withdraw media outlets' accreditation. However, both the IEC and the EMC regarded this as a drastic measure and the IEC preferred to refrain from such action until several warnings were given to the violators. No media accreditation was lifted during the electoral campaign or on election day.

As part of its public outreach programme, and in an effort to ensure adequate media access for all presidential candidates, the EMC also organised television and radio debates for presidential candidates. The EMC conducted eight television and seven radio roundtable debates of 40 minutes each, which were broadcast during primetime hours between 24 July and 17 August by five television stations<sup>61</sup> and 11 national and local radio stations.<sup>62</sup> Upon invitation by the EMC, 33 presidential candidates – mainly minor contestants in the presidential race who had less coverage in other programmes – participated in the debates.<sup>63</sup> These were opportunities for otherwise less visible candidates to publicly air their views and electoral platforms.

### *C. Monitoring of Media Coverage of the Elections*

The EU EOM monitored a sample of 12 news media from 19 July to 20 August. The media unit conducted a qualitative and quantitative monitoring of primetime programmes on four TV channels,<sup>64</sup> one of them State-owned, and four radio stations<sup>65</sup> of which one was State-owned and the others private. Four newspapers,<sup>66</sup> two of them State-owned, were also part of the analysis. In addition to monitoring the quantity of coverage, tone was also assessed, based on a scale of negative, neutral and positive.

During the election campaign, broadcast media played an important role in covering the elections, producing a variety of programmes: news, special news editions, interviews,

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<sup>59</sup> On 1 August Radio Afghanistan aired the EMC decisions related to RTA and two state-newspapers' violations. However this does not show compliance as RTA TV should rightly have published the decision. Similarly, when inaccurate news about a candidate was broadcast on RTA and the EMC ordered a corrected rebroadcast of the news, RTA complied with the decision only after 41 days.

<sup>60</sup> According to Mr Towhidi, EMC Chairman, the organization found most of the complaints filed against RTA in favour of the complainants, but was unable to apply its decisions also partly due to the interference of the Culture and Information Ministry.

<sup>61</sup> Ariana, Ayna, RTA, Shamshad, Tolo.

<sup>62</sup> Salam Watandar, Sehar, Bamyan, Soli Paigham, Zuhra, Rabia e Balkhi, Aamoo, Killid, Maram, Nawa, RTA.

<sup>63</sup> According to EMC public information, all candidates were invited to participate but some of them did not accept the invitation. No reasons or names were provided.

<sup>64</sup> RTA, Tolo TV, Shamshad TV, Ariana TV (from 18:00 to 24:00)

<sup>65</sup> Radio Afghanistan, Radio Killid, Radio Salam Watandar, Radio Arman (from 6:00 to 9:00 from 18:00 to 12:00)

<sup>66</sup> Anis, Hewad, Arman-e-Milli, Cherag. All monitored newspapers were not published on Friday

current event programmes, roundtable debates with candidates and interactive programmes with radio listeners.<sup>67</sup> Coverage increased both in volume and frequency in the last weeks of the campaign.

In accordance with the Code of Conduct issued by the EMC, State-media RTA generally complied with the obligation to provide equitable time to all presidential candidates during prime time hours. Nevertheless, rules on time and the allocation criteria were somewhat unclear and partly for this reason were not consistently followed. In particular, requirements regarding the order of candidates' appearances and the amount of time dedicated to them were not fully respected. RTA explained that this was due to necessary changes to accommodate candidates' campaign activities or their willingness or availability to speak. Neither of the main presidential race contenders, Mr Karzai and Dr Abdullah ever made use of the free airtime granted to them by the State media.

All monitored media focused their programmes and reporting of the campaign mainly on the Presidential elections, without providing any significant coverage of the Provincial Council elections. During the EU EOM monitoring the whole period only four<sup>68</sup> main presidential candidates were given extensive coverage while little exposure was given to the other presidential contestants. State-owned media provided the largest part of their political coverage to Mr Karzai, mainly in neutral or positive tones. RTA TV allocated 63 per cent of its political news coverage to Mr Karzai. Dr Abdullah, Mr Ashraf Ghani Ahmadzai and Mr. Mirwais Yasini received respectively 11 per cent, 8 per cent and 2 per cent of coverage. RTA Radio allocated 56 per cent of its political news coverage to Mr Karzai while Dr Abdullah received 15 per cent, Mr Ashraf Ghani 7 per cent and Mr Mirwais Yasini 4 per cent. Private broadcast media followed a similar trend, devoting the main political coverage to the four presidential contestants, with limited visibility for other contestants.

The monitored print press covered the campaign and provided a range of opinion on the electoral process. State-run print media showed clear bias in favour of the incumbent president, both in terms of space and tone of the coverage. *Anis* and *Hewad* newspapers gave the greatest amount of coverage (75 per cent) to Mr Karzai. Overall the tone of the coverage in the print media was neutral. *Arman-e-Milli* was the only newspaper to print investigative articles, often criticising Mr Karzai's political decisions.

During EU EOM monitoring, *Tolo TV*, *Salam Watandar Radio* and *Cherag* newspaper were the media that displayed the highest amount of paid advertising. Even though candidates and political parties faced no restrictions on advertising in private media, it was mainly three major presidential candidates (Mr Karzai, Dr Abdullah and Mr Ashraf Ghani) who purchased paid campaign advertisements during this period. This has been explained by the high

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<sup>67</sup> On 23 July ToloTV broadcast one of the most highly anticipated televised debates between the leading presidential contenders. Mr Ashraf Ghani and Mr Abdullah participated in the debate. Mr Karzai, alleging the station's strong bias against him, announced 24 hours before the debate that he would not take part in the programme. On 19 August RTA TV aired the second most anticipated debate between Mr Karzai, Mr Ashraf Ghani and Mr Bashardost. Dr Abdullah did not take part and gave no explanation for his absence. Thus, voters were twice denied the opportunity to watch these key candidates exchange policy views in an interactive format.

<sup>68</sup> Mr Karzai, Dr Abdullah, Mr Ashraf Ghani, Mr Yasini.

commercial rates charged for paid advertising, which limited the other candidates' possibilities. There are no specific media regulations related to paid electoral advertisements.

Several of the monitored media<sup>69</sup> broadcast an increased amount of voter information and civic education spots (mainly sponsored by the IEC) in the last week of the campaign. However EU EOM observers in the field and media interlocutors in the provinces reported on the general deficiency of voter information as one of the shortcomings of the campaign. This was largely a reflection of the enormous access challenges posed by security conditions.

Campaign silence was generally respected by the media monitored by the EU EOM and no major media violations of the EMC regulations were reported during the 48 hour silence period and elections day itself. However a number of reports about Mr Karzai on 'official duty' commenting on voting and the election on Independence Day (the day before election day) and on election day itself were aired by State media RTA and the private station Shamshad TV.

## **X. WOMEN'S PARTICIPATION**

Women's civil and political rights are enshrined in the Constitution, which states the equality of all citizens and also explicitly provides for the respect of international instruments ratified by Afghanistan, including the 1979 Convention for the Elimination of All Discrimination against Women (CEDAW) and the 1966 International Covenant for Civil and Political Rights (ICCPR).

In reality, women's participation as candidates, voters and administrators of the elections was severely limited. Widespread cultural opposition to women in public life has created a number of obstacles, with cumulative effects. Women's more limited access to education<sup>70</sup> and resources and their poor representation in key institutions make it difficult to participate in political processes, particularly in an environment where it is not acceptable for women to deal directly with men. The lack of personal security which affected citizens in much of the country disproportionately affected women and consolidated the opinions of many families and communities that it was not appropriate for women to be active outside the home. As a result, women did not generally enjoy their rights to freedom of movement, association and expression.

Not all national legislation is consistent with the Constitution's provision of equality for all citizens. The Shia Personal Status Law 2009 contains a number of provisions wholly at odds with women's equal rights and which consolidate cultural restrictions on women. The controversial law's promulgation few weeks before election day also gave credence to views that women's rights in Afghanistan are bartered for political ends.

There is a chasm between women's legal rights and the fact that for the most part it remains culturally acceptable and even preferred that women do not participate directly in public life.

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<sup>69</sup> Among the twelve media monitored *Salam Watandar Radio* and private newspapers *Arman e Milli* and *Cherag* did not air or publish any voter information and civic education during the monitored period.

<sup>70</sup> An estimated 12.6 per cent of Afghan women are literate, compared to 32.4 per cent of men, according to the Afghanistan Human Development Report 2007/2008

This gap urgently needs to be narrowed and then closed in order to ensure respect of equal rights and genuine universal suffrage. Among the commitments made when Afghanistan ratified the CEDAW treaty is the commitment to ‘modify social and cultural patterns of conduct, with a view to achieving the elimination of prejudices and customary practices based on inferiority or superiority of either of the sexes or on stereotyped roles for men and women.’<sup>71</sup> In addition, in January 2002 President Karzai signed the Declaration of the Essential Rights of Afghan Women, which asserts men and women’s equality, equal protection under the law, institutional education in all disciplines, freedom of speech and political participation and the right to wear or not wear the burqa or scarf. This declaration is reproduced in the National Action Plan for the Women of Afghanistan, which outlines clear objectives and strategies for making women’s rights a reality. The Afghan leadership has made ample statements of commitment to women and now needs to ensure these are demonstrated.

Any assessment of the extent to which women enjoyed their rights during this electoral process must acknowledge that there is a clear trend at present for exploiting the gap between women’s theoretical rights and the extent to which they can actually participate, in order to carry out fraud. For example, high registration figures for women are not necessarily evidence that more women actually registered. Equally, women’s turn-out figures, if they become available, may not directly reflect the extent to which women voted independently.

#### A. *Women as Voters*

The principle of universal suffrage was undermined by the fact that many women were effectively disenfranchised. According to official figures, women accounted for forty per cent of those on the voter register.<sup>72</sup> However, for reasons detailed above this figure is not necessarily accurate and in all likelihood over-represents the number of women who actually registered.<sup>73</sup> Leading women’s organisations maintained that one of the main hurdles for women’s participation in the electoral process is their inability to register for themselves.

Men and women vote separately and the IEC struggled to recruit sufficient numbers of women as polling station staff. In a significant proportion of cases, women’s polling stations were staffed by men, making the voting process less accessible for women. Cultural and security considerations made it difficult to eliminate the practice of men voting on women’s behalf, a practice which effectively disenfranchises women as well as creating a space to exploit women’s participation rights to carry out fraudulent practices. Just prior to election day, still struggling to recruit women and aware of the reality on the ground, the IEC was somewhat fatalistic about the prospect of proxy voting, asserting that while wholly undesirable, it was quite likely to take place.

EU EOM observers in almost all parts of the country reported a significantly lower presence of women voters than men, reflecting concerns that security and cultural considerations would compound each other and limit women’s ability to leave their homes and vote.

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<sup>71</sup> Article 5, Convention on the Elimination of All Discrimination Against Women 1976.

<sup>72</sup> This is calculated by considering the 39 per cent of women on the Voter Register Update, according to IEC press release of 12 June 2009, alongside the 41 per cent of women on Voter Register for 2004 Presidential Elections, according to UNIFEM.

<sup>73</sup> See section on Voter Registration, particularly with regard to women’s registration figures.

### *B. Women as Candidates*

In addition to practical impediments such as poor access to resources, women face a significant deterrent in the form of attacks against women in public life. In recent years women parliamentarians, provincial council members, civil servants, journalists and women working for international organisations have been targeted by anti-government elements, by local traditional and religious power-holders, by their own families and communities, and in some instances by government authorities.<sup>74</sup> Threats against women in public life are undoubtedly under-reported, not least because some of the victims do not wish to deter other women.<sup>75</sup>

Two of the 41 presidential candidates were women, as were seven of the 82 vice-presidential candidates (8.5 per cent). Of the provincial council candidates, 333 were women, constituting 10 per cent of candidates. This was a slight increase in the national average<sup>76</sup> since the previous Provincial Council Elections but in close to half of the country's provinces, the proportion of women candidates decreased.<sup>77</sup>

The Electoral Law stipulates that a minimum of 25 per cent of the seats in each provincial council are reserved for women. Women do not run in separate lists and it is only in the instance that there are insufficient women among the most voted-for candidates that female candidates with fewer votes are then selected to take up seats in the provincial councils.<sup>78</sup> Although there is no reason why the quota could not be higher, this is a good system which guarantees a minimum representation and the nominal effect on competition is far outweighed by the absolute lack of a level playing field for men and women. In 2005 there were five provinces with insufficient women candidates to meet the minimum quota and this year there were two such provinces – Urozgan and Kandahar. However even in Kandahar the three women candidates only came forward after significant encouragement from organisations involved with women and they did not stay in Kandahar during the campaign period.

Women's political participation was specifically targeted in several parts of the country. Women candidates reported pressure to withdraw and campaigns against them by religious and community leaders in Laghman, Jawzjan, Sar-e-Pul and Herat. Women candidates have also suffered threats and attacks in Kabul, Takhar and Herat. In provinces such as Ghazni and Kandahar, women candidates reported that they could not campaign at all due to fears for

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<sup>74</sup> Silence is Violence – End the Abuse of Women in Afghanistan, UNAMA/Office of UN High Commissioner for Human Rights, 8 July 2009.

<sup>75</sup> Among others, Massouda Jalal, former Minister for Women's Affairs and presidential candidate in 2005 has stated she received many threats during her period of office and did not make them public so as not to alarm women who might consider political participation.

<sup>76</sup> In the 2004 presidential elections there was one woman candidate and in the 2005 provincial council elections, 242 women ran for the election, constituting 8 per cent of the candidates.

<sup>77</sup> There was a slight increase in the total number of provincial council candidates, from 3015 in 2005 to 3193 in 2009. The proportion of women candidates decreased in 14 of the 34 provinces, including Kabul, Kapisa, Parwan, Balh, Baghlan, Kunduz, Takhar and Ghor. Both the proportion and the number of women standing for election decreased in Bamyán, Laghman, Kandahar, Ghazni, Badakhshan and Herat. A number of these drops are in places where in the last year there have been attacks on schools and against women in public life, including assassinations.

<sup>78</sup> Article 29 c-e, Electoral Law 27 May 2004.

their safety, while in most parts of the country women carried out only low-profile campaigns close to home.

In response to women's security needs, the Ministry of Interior launched a programme through which women provincial council candidates could nominate a bodyguard, for example a relative, who would receive a week's training and be put on the police payroll for the duration of the campaign but implementation of the initiative was inconsistent.

### *C. Women in the Election Administration*

Two of the IEC's seven commissioners are women. The IEC subscribes to the positive discrimination policy of the Civil Service Commission, aiming to have all civil service institutions composed of 30 per cent women by 2010. The proportion of women among temporary IEC staff varied in the provinces from 1.16 per cent in Paktika to 37 per cent in Badakshan. In 14 of the 34 provinces, women made up between 20 and 30 per cent of the temporary electoral staff.

Recruitment of adequate numbers of female polling station staff and security searchers posed a serious problem. Three days before polling day, the IEC reported that it had recruited 120,462 people, of whom 43,341 (36 per cent) were women. Although the challenge to identify adequate numbers of able and willing women was undoubtedly exacerbated by poor security conditions, women's organisations with established networks reported that had they been brought into the process earlier, it would have been possible to identify sufficient numbers of women.

After the last elections in 2005, the IEC established a Gender Unit, but this unit was housed within the Public Outreach department until June 2009, when the Gender Unit's place in the IEC structure reflected its cross-cutting nature. The Gender Unit is run by two IEC employees, with a full-time international technical adviser who works from the same office.

### *D. Useful Initiatives*

There were a number of positive initiatives to encourage women's participation and men's understanding of women's rights. These included a declaration by Afghan clerics on 2 November 2008, which called on Afghan women to participate in the election and on men to encourage them, taking into consideration the principles of Islam. The Minister of Haj and Religious Affairs also took part in an event organised by the Ministry of Women's Affairs a few days before election day, in which he emphasised the importance of women's participation.

The Afghan Women's Network ran the '5 million women' campaign to encourage women to vote, and UNDP's- ELECT public outreach programme included seminars for women and mullahs. UNIFEM established a resource centre for women candidates and ran a telephone helpline from which women could be referred to the IEC, ECC or protection services, as appropriate.

A number of initiatives which did not overtly prioritise women's electoral participation can be expected to nonetheless have had an important impact, especially for some of the least

privileged women in the country. These included the civic education programmes run by the Counterpart (a non-governmental organization) and more long-term rights-based programmes run by organisations such as the Afghan Women's Education Centre. Counterpart's countrywide civic education programme, part of the Support The Electoral Process (STEP) initiative, is a good example of real civic education, rather than mere voter information, and targets men and women alike. The Afghan Women's Educational Centre also addresses both men and women, and purposefully integrates its training on rights into programmes determined by communities' own assessments of their immediate needs, such as literacy or vocational training. The programmes which most effectively address some of the root causes of women's participation difficulties require substantial amounts of time.

## **XI. PARTICIPATION OF NATIONAL MINORITIES**

Afghanistan has been described as a nation of minorities and although both Pashtuns and Tajiks vie for the title of being in the majority, the roughly equal proportion of these ethnic groups and lack of up-to-date data make these claims largely irrelevant. Available data indicates that Afghanistan's population is composed of Pashtuns (36.4 per cent to 42 per cent), Tajiks (27 per cent to 38.1 per cent), Hazara (8 per cent to 9.2 per cent), Uzbeks (8 per cent to 9.2 per cent), Aimaks (0.1 per cent to 4 per cent), Turkmens (1.7 per cent to 3 per cent), Balochis (0.5 per cent to 4 per cent) and other – Pashai, Hindki, Nuristani, Brahui, Hindkowan, etc. (1.9 per cent to 9.2 per cent). It is estimated that 80 per cent of the population is Sunni Muslim and 19 per cent Shia, with Hazaras forming the majority of the Shia followers.

Ethnic composition of populations varies throughout the country and different groups may be in a minority in one area but not others. There was no evidence of a consistent pattern of marginalisation or discrimination on the grounds of ethnicity. Rather, ethnic groups were courted for electoral support. In Afghanistan, any assessment or action on the basis of minority rights must be considered alongside the potential for ethnic groups to be used for political gain.

There are two main examples of the need for careful balancing of these considerations. The most significant is the case of Kuchi citizens. Kuchi nomads are a migrant Pashtun tribe, who are said to number some 2 to 3 million people. As nomads they have a special electoral status. In the 2005 Electoral Law, 10 out of the 249 Wolesi Jirga seats were reserved for Kuchis (seven for men and three for women). The new Electoral Law, which also foresees reserved seats for Kuchis, ignited a highly controversial debate between the executive and the Wolesi Jirga around the number of reserved seats to which Kuchis should be entitled according to their population ratio. Another example concerns contentions that the Shia Personal Status Law was promulgated in a bid to secure the electoral support of Hazara leaders.

## **XII. PARTICIPATION OF CIVIL SOCIETY**

Afghan civil society contributed to the transparency of the election process in Afghanistan. According to the IEC some 212,000 members of civil society organisations and candidate agents were accredited to observe the elections. The widespread participation of candidate

agents and domestic observers was considered important and, when they were able to attend, contributed significantly to the transparency of the voting and counting processes at the polling stations and at the Tally Centre.

A total of 21 organisations deployed 9,228 domestic observers. In an environment so marked by poor security conditions and significant factors deterring participation, it was especially encouraging that so many citizens took part in this constructive and evaluative approach to the electoral process.

The largest of the domestic observation organisations was the Free and Fair Election Foundation for Afghanistan (FEFA), which deployed observers to the provinces during the voter registration and campaign periods and published regular statements on the election process. FEFA stated that it deployed more than 7,000 observers on election day, in about 60 per cent of the polling centres and in nearly all the 34 provinces.<sup>79</sup> FEFA's observation was seriously hampered by poor security conditions and their observers faced several instances of intimidation.

FEFA held its last press conference on 22 August with a public statement that remained, as its previous reports, somewhat general. The organisation referred to irregularities observed by its teams<sup>80</sup> but did not provide statistically relevant information that could have contributed to the documentation of fraud. This weakness was in part due to the late provision of technical assistance. FEFA had requested capacity-building for long-term observation, including reporting, but in fact UNDP ELECT provided only short-term basic training.

### **XIII. COMPLAINTS AND APPEALS**

#### *A. The Electoral Complaints Commission*

The Electoral Complaints Commission (ECC) was the body competent for adjudicating all complaints relating to electoral offences, provided that the complaint was received prior to the certification of the results of the elections; and challenges on the eligibility of a candidate. The ECC was guided by principles of impartiality, confidentiality and transparency and was independent from the Independent Election Commission (IEC), although both bodies were supported by the same technical assistance programme, which was problematic. Complaints for electoral offences and challenges to candidacies may be filed by any person or organisation that has a valid interest in the electoral process.

The ECC is headed by five commissioners, of whom two are appointed by the President from, the Supreme Court and the Afghan Independent Human Rights Commission, and three by the Special Representative of the UN Secretary General for Afghanistan, from amongst international experts. All decisions require the consent of one of the two Afghan commissioners. ECC staff are mostly Afghan citizens, with a number of international advisers assisting its work.

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<sup>79</sup> According to FEFA's statements to the EU EOM, they were not able to deploy observers in the provinces of Nuristan and Kunar. Of the remaining provinces, they stated they were present in 60 per cent of polling centres.

<sup>80</sup> Some 350 irregularities on election day were mentioned in a general manner.

Despite recommendations following the 2005 elections, the ECC was established at a very late stage of the process,<sup>81</sup> partly due to a lack of resources and the security situation, but also administrative delays which indicated serious issues in the management of the project and the inadequacy of the UNDP mechanism regarding the ECC. With such delays, pre-election public outreach activities on the role of the ECC were considerably limited, hampering the organisation's ability to counter the public's lack of confidence in a complaints mechanism.

The Provincial Electoral Complaint Commissions (PECCs) were new features of the complaints procedure and constituted a major improvement. Unlike in the 2005 elections when provincial offices entitled to receive complaints were part of the electoral administration structure, the PECCs were solely subdivisions of the ECC, thus ensuring their formal independence from the IEC. PECCs were entitled to take decisions, to issue warnings and to initiate investigations independently. The original recruitment of PECC staff had serious flaws and some commissioners were dismissed in July for links to candidates or similar issues, which further delayed the PECCs' preparedness. They were not operational during the candidate nomination period and part of the campaign period and undoubtedly delayed adjudication of complaints throughout the electoral process. In some areas of the country, complainants were reluctant to submit written testimonies because of fears of reprisals. The physical location and atmosphere in some offices were not always conducive to maintaining confidentiality. These factors, coupled with the lack of female staff at times made it particularly difficult for women to access the complaints process.<sup>82</sup>

The ECC was able to significantly improve its regulatory and operational framework for adjudicating complaints compared to previous elections. In addition to its procedural rules, the ECC developed sound complementary guidelines. The procedures for complaints were established by the Electoral Law and the ECC's Rules and Regulations adopted in May 2009. The ECC is entitled to impose sanctions and penalties on offenders. These measures can include requesting the removal of a candidate from the candidates' list and invalidating ballot papers as well as imposing fines. PECCs' decisions were subject to appeal before the ECC commissioners. The appeal channel was not always open as most decisions were made directly by the ECC. The Electoral Law states that the ECC's decisions shall be final although under the Constitution the Supreme Court is entitled to revise all judicial decisions, including those of the ECC. However, international human rights law defines the right to remedy in the electoral process as guaranteeing an independent oversight of the electoral process<sup>83</sup>, and there are legitimate doubts that the Supreme Court meets international standards on independence.

Although the ECC and the IEC took measures to strengthen their cooperation by adopting a Memorandum of Understanding prior to the elections, both the IEC and the ECC confirmed that the document, which was not public, was limited to administrative aspects aimed at favouring a smooth flow of information, especially to ensure that the ECC received required information from the IEC in the course of its investigations. There were many delays in the

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<sup>81</sup> The ECC was inaugurated on 26 April 2009 subsequent to the start of the candidate nomination period.

<sup>82</sup> Only 21 women lodged a complaint during the campaign period.

<sup>83</sup> HRC General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment No. 25 and General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14): 13/04/84. ICCPR General Comment No. 13.

implementation or only partial implementation of ECC decisions by the IEC prior to and after to the certification of the results.

### *B. Electoral Offences*

The Electoral Law lists specific electoral offences in Article 53, which cover the main aspects of the electoral process, from threats and intimidation to disruption of the vote, several acts constitutive of fraud, use of illegal funds and others. Failure to comply with an order or decision of the ECC is also defined as an electoral offence.

### *C. Adjudication of Complaints related to Election Day, Counting and Tallying*

The ECC received a total of 2,584 complaints regarding irregularities during polling, counting and on the basis of the preliminary results, with more than half of these lodged within one week of election day. Due to their large number, complaints were categorised according to their impact on the results of the elections. Of the total complaints, 893 were categorised as of first priority, meaning that, if well-founded, they would have an impact on the results. Most of the complaints were lodged by candidates or candidates' agents and the most serious were mainly lodged at the ECC headquarters.

Complaints to the ECC included numerous allegations of ballot stuffing, poor quality ink, malfunctioning of the voter card hole-puncher, intimidation of voters, obstruction of candidate agents and observers, and accusations of fraud committed by polling staff or local authorities, as well as immense discrepancies between the low participation on election day and the number of votes recorded in the results forms. There were reports that some polling stations opened in illegal locations while others opened despite IEC announcements that they would not open.

Some of the complaints provided the precise reference of alleged offender, location and polling centre affected by the frauds and some included clear descriptions of events and reference to witnesses reportedly available to testify, while others remained vague. The latter led to the dismissal of the cases but the ECC was reported to have made additional requests for further details on serious claims. Allegations concerned all provinces of Afghanistan and a large number of districts in each province. The EU EOM received more than 400 copies of complaints and other summaries of allegations from three presidential candidates, more than a quarter of which referred to serious allegations and irregularities in the following provinces: Farah, Kabul, Kandahar, Uruzgan, Baghlan, Nuristan, Bamyán, Kunar, Herat, Badakhshan, Kapisa, Khost, Laghman, Paktia, and Paktika. Numerous allegations incriminated the local police and authorities as well as IEC's district coordinators.

The ECC launched several investigations in all but the three provinces of Jawzjan, Sar-e-pul, and Samangan. The ECC monitored all investigations from Kabul, and PECCs or special investigation teams were assigned to collect information. On 4 and 7 September 2009 the ECC released its first decisions on complaints, invalidating the under investigation polling stations in Ghazni, Paktika and Kandahar provinces, with the number of votes set aside unknown as most of those polling stations' preliminary results had not been published. It then ordered an audit and recount of polling stations matching certain criteria (see below). On 18 October 2009, the ECC adopted three decisions: i. Decision based on complaints, ii. Decision

on the quarantined polling stations and iii. Decision Regarding the Audit, marking the end of the period of adjudication of the results.

Overall, the scope of complaints-based decisions was limited: initial decisions invalidated a relatively small number of votes, which amounted to just 1 to 2 per cent of the total invalidated votes. The investigations were only complaints-based. The ECC did not, except on rare occasions, use its ex officio prerogatives to investigate extremely suspicious votes. On many occasions, while investigating allegations of fraud, the ECC only audited a limited number of boxes, leaving suspicious ones valid in polling centres where fraud was established. Its overall approach to the complaints mechanism was rather conservative, as were the triggers chosen in the decision to order an audit and recount. The stipulation that one candidate should receive 95 per cent of votes before an audit and recount would be triggered set an extremely high threshold and it meant that results which could realistically have warranted auditing were left unchallenged.

Given the scope of the allegations, the method of auditing was an appropriate measure as it was accepted by candidates and involved the IEC. However, it also illustrates the limitations of the ECC in the face of large-scale fraud and the burden created by the non-implementation of the IEC's safeguards against fraud. Nonetheless, the way in which investigations and cases were prioritised ensured the adjudication of the complaints in a reasonable timeframe.

#### **XIV. ELECTION DAY**

Election day was marred by a significant increase in the number of violent incidents, including rocket attacks and explosions targeting polling centres and government facilities throughout the country. The deterioration of the security environment inevitably also affected the movement and observation activities of EU EOM observers in several provinces and districts. Significant parts of the country where voting and counting did take place were inaccessible and observation results from election day inevitably reflect this reality.

A total of 120 EU EOM observers observed the opening, polling and counting process in 268 polling stations in 17 of the 34 provinces. EU EOM observers in these polling stations concluded that voting operations were administered in a reasonably satisfactory manner with no shortages of polling staff and election material in admittedly very difficult circumstances. The timely distribution of election material resulted in no observed shortages on election day, but for some errors in the distribution of the List of Voters. Shortcomings observed in the punching of new voter cards were partially solved during the day. Domestic observers, mainly from FEFA, were present in the observed polling stations and there was also a strong presence of presidential candidate agents in the locations observed.

EU EOM observers in the observed polling stations did not directly observe any cases of fraud. However, they received numerous reports from civil society organisations, candidate agents and voters on allegedly fraudulent incidents, mainly ballot stuffing taking place at polling stations, in most cases in favour of Mr Karzai.

The IEC decided during the afternoon of election day to extend the voting period one hour. This information was transmitted inconsistently to polling stations, in some cases even after

closing or after counting had started according to the original schedule. Some polling stations which had closed as per the original schedule were re-opened for another hour, adding a considerable amount of confusion to the process.

The IEC opted to carry out counting at polling stations as opposed to the previous practice of regional and provincial centralised count. In the majority of the cases observed by the EU EOM, counting was carried out in a generally impartial and transparent manner, in the presence of candidate agents and observers and assessed as satisfactory.

Despite the significant deterioration of the security environment during the period prior to and during election day, a modest number of Afghan citizens came out to cast their vote. According to direct observations by EU EOM observers and indirect credible sources and reports the participation rate was considerable in the northern parts of the country and particularly low and in some cases extremely low in southern and southern east parts.

## **XV. RESULTS**

### *A. Tabulation and Announcement of Results*

The intake of the Tamper Evident Bags (TEBs) with the results from each polling station took place in the presence of candidate agents and observers. While intake procedures were often not followed, the process seemed transparent and was open to agents and observers. Tallying of results took place at the Tally Centre situated in the IEC compound in Kabul. Preliminary partial results were announced first when tallying reached an approximate 10 per cent of the total polling stations (on 25 August), based on results entered into the IEC results database and approved for publication by the IEC commissioners. Accumulative results from all provinces were added and total preliminary results for the presidential election were completed and published on 16 September. This stage of the electoral process was completely dominated by the mounting evidence of considerable country-wide fraud, especially acute in the south and south east<sup>84</sup> and overwhelmingly in favour of candidate Mr Karzai.

The manner in which the announcement of results was carried out points to considerable electoral engineering, by entering first higher amounts of votes from the north, where Mr Karzai has less support, and far lower amounts from the south, where he has more support, but also where massive fraud was perpetrated in his favour. The percentage of votes entered for the south, fraudulent votes included, was daily increased, in a piecemeal fashion, so as to encourage the electorate to accept in small doses a result which, in one large dose might have been rejected as obviously fraudulent.

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<sup>84</sup> The South East, provinces of Paktia, Paktika, Khost, and Ghazni, produced the highest rates of fraud in the legislative elections of 2005. With 10% of the population, they produced 18 per cent of the votes.

## *B. Publication of Results*

The total preliminary presidential results<sup>85</sup> were announced on 16 September, giving 54.6 per cent of the valid votes for Mr Karzai and 27.75 per cent for Dr Abdullah.

The official number of polling stations opened on election day dwindled from an initial figure of 27,067 at the announcement of the preliminary and partial presidential results, to a final figure of 23,314 polling stations. The reduced figure was declared as polling station results were tallied, without any explanation for the discrepancy. The IEC produced and delivered a mass of inconsistent numerical information<sup>86</sup> at all levels for the preliminary presidential results. In addition to the inconsistencies in the figures provided by the IEC, polling stations that were included in the preliminary results on a certain date subsequently disappeared from the IEC's results archives. Some of them reappeared at a later stage while others remained absent, without any explanation about their status and the reasons for their removal or their republishing, all of which added to the overall lack of transparency.

### *a) Provincial Councils Results*

Although tallied together with the presidential election results, there was no information about Provincial Council results until more than five weeks after election day; they were partially (30 provinces out of 34) placed in the IEC's website on 28 September. Results from Nangarhar province are still unresolved at the time of writing.

## *C. The Audit and Recount*

In view of the deadlock provoked by the evidence of considerable fraud, which was denounced by the EU EOM<sup>87</sup> on 8 September 2009, the ECC issued a decision based on Article 49(2) and 54 (e) of the Electoral Law, ordering the IEC to carry out an audit and recount of ballot boxes for the presidential election in all polling stations where results met one of two high thresholds which strongly indicated that results could be fraudulent, namely if the total number of votes cast in a polling station for the presidential election was equal to or greater than 600 votes or if one the presidential candidates received 95 per cent or more of the total number of valid votes cast in any one polling station where the number of votes cast exceeded 100. These triggers were based on the clear patterns of either exceptionally high numbers of presidential votes cast per station or an exceptionally high percentage of ballots for only one candidate among fraudulent boxes which were investigated in Kandahar, Ghazni and Paktika and where the ECC reported to have found clear and convincing evidence of illegal voting or counting. The ECC's order specified that it did not preclude decisions on lodged complaints.

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<sup>85</sup> 100 per cent tallied gives 5,918,741 ballots, of which 5,662,758 valid, 173,200 invalid, invalidated for withdrawn candidates 82,783. For candidate Mr Karzai 3,093,256 votes, 54.6 per cent, Dr Abdullah 1,571,591 votes, 27.5 per cent and Mr Bashardost 520,627 votes (9.2 per cent). No quarantined polling stations.

<sup>86</sup> The following IEC generated statistics are inconsistent: Total no. of polling centres/polling stations open on election day, number of valid ballots, number of invalidated ballots for withdrawn candidates, votes included in the partial announced percentage, and the given numbers of polling staff.

<sup>87</sup> The EU EOM expressed its concern about the results from polling stations above the IEC's triggers on 8 and 16 September, quantifying at that last stage the number of suspicious/fraudulent ballots as 1.6 million in total, of them 1.2 million for candidate Karzai and 300,000 for candidate Abdullah

On 16 September 2009, the IEC published final preliminary results, without complying with the ECC's order for an audit and recount. The IEC publicly stated that an audit and recount could only be conducted after publication of the preliminary results. During the same period international experts were appointed by UNAMA to assist the ECC and the IEC in auditing the ballot boxes concerned by the ECC order. After long negotiations between the ECC and the IEC, the IEC established that the total statistical universe of suspect ballot boxes determined by the ECC order was 3,063,<sup>88</sup> and that these were unevenly distributed throughout the country. A sample of ten per cent of the boxes was audited, totalling 358 boxes.

After several delays, the ECC released a policy paper on audit and recount on 4 October 2009. The policy recalled the decision to rely on an audit of a sample of the suspect ballot boxes in order to save time and *"to obtain data that would reliably represent the existence of polling irregularities in polling stations with equivalent results nationwide"*. The objective of the process was *"to allow the ECC to make informed decisions about the prevalence of fraud in the polling stations affected by the ECC's order and to determine the impact on the results of the presidential election held on 20 August 2009."* It stated that *"A finding that a ballot box was fraudulent means that the integrity of the voting process for that box has been compromised, and that all the votes contained in the box should be invalidated, in accordance with accepted electoral practice"*.

On 5 October the IEC started an audit of a sample of suspicious ballot boxes under the supervision of the ECC. The audit resulted in a reduction of the votes for Mr Karzai from 3,093,256 votes (54.6 per cent) to 2,283,907 (49.67 per cent) and for Dr Abdullah from 1,571,591 votes (27.5 per cent) to 1,406,242 (30.9 per cent), and determined the need for a runoff.

#### *D. The Runoff*

On 19 October the IEC announced the final presidential results and the conduct of a runoff scheduled for 7 November between Mr Karzai and Dr Abdullah, since neither of the presidential candidates had obtained fifty per cent plus one vote of the cast valid votes.

The IEC stated its intention to open an additional 500 polling centres. Moreover, it also announced its decision to reduce the number of polling staff in each polling station from five to two for the runoff. No reason was given for any decision, raising concerns given that polling centres and stations had clearly been the sites of fraud during the first round, and a lower number of polling staff would be more vulnerable to influence or threats.

On 1 November Dr Abdullah announced that he would not participate in the runoff, stating two main reasons for his decision: the lack of transparency of the process and the lack of independence from the government of those implementing the elections, specifically the

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<sup>88</sup> The EU EOM estimates that the number of irregular ballot boxes, as per the IEC triggers, well exceeds 5,000. The statistical universe comprises 3 distinct groups of ballot boxes: a) group 1: ballot boxes meeting criteria A (600 ballots or more); b) group 2: ballot boxes meeting criteria B (95 per cent or more ballots for a single candidate, with 100 ballots or more) and c) group 3: ballot boxes meeting both criteria A and B. The distribution of these groups is as follows: group 1: 627 boxes, group 2: 1,522 boxes and group 3: 914 boxes. The total number of ballot boxes to be audited is 313: group 1: 63 boxes, group 2: 150 boxes and group 3: 100 boxes.

Chairman of the IEC. Dr Abdullah said the dismissal of the IEC chairman in addition to three government ministers was a condition *sine qua non* of electoral integrity. Although the EU EOM is not in a position to comment on these conditions, it is clear that the lack of measures to address the fraud committed during the first round and the reluctance of the IEC to enforce the decisions of the ECC did undoubtedly jeopardise the legitimacy of the runoff.

Following Dr Abdullah's statement and withdrawal the IEC issued a press release on 2 November, announcing the cancellation of the runoff and declaring Mr Karzai the winner of the presidential election. Although no legislation or regulation specifically addresses the possibility of withdrawals in the second round, the IEC may postpone or suspend elections in certain circumstances where the legitimacy of an election is seriously threatened.<sup>89</sup> However, its decision to cancel the runoff was not in accordance with Article 37(2) of the Electoral Law, which refers to withdrawals before election day, nor with the IEC's own previous interpretation of this provision.

## **XVI. RECOMMENDATIONS**

On the basis of the EU EOM's findings, the following recommendations are made to improve the electoral process, for consideration by the Government of the Islamic Republic of Afghanistan, the election administration, political parties, civil society and the international community. While some elements of the electoral, legal and administrative framework require significant changes, recommendations are also made for improvements which could feasibly be achieved before Parliamentary and District Council Elections in 2010 and which should be considered as urgent and essential. Those recommendations for the most urgent changes possible within a short timeframe are highlighted.

### **Political Parties**

1. In order to give weight to the parliamentary system and strengthen the efficiency and transparency of law-making, appropriate measures should be considered to encourage and enable the development of political parties. These should include independent training programmes for political parties and possible public funding of political parties proportionate their political constituencies. In addition, the procedure for registering political parties should be made clearer and simpler, with notification procedures and regulation to ensure transparency.

### **Electoral System**

2. The electoral system for provincial (and legislative) elections should be reviewed, in a new draft Electoral Law due to be published after the 2010 legislative elections, to make it compliant with Article 109 of the Constitution. Consideration should be given to the need measure to encourage the development of political parties. The choice of the Single Non-

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<sup>89</sup> Article 55 of the Electoral Law on Postponement, Suspension, or Re-run of the Elections of the Electoral law states that: (1) If [...] unpredictable events or situations [...] seriously threaten the legitimacy of an election, the Commission may postpone or suspend polling in the affected constituency until the elimination of the condition. This article is to be applied by the IEC at its own discretion.

Transferable Vote system should be reconsidered accordingly. The choice of a more proportional system using lists of candidates could be considered, with a view to adopting a system ensuring proportionality and representation of minorities and geographical groups.

### **Legal Framework**

3. Appropriate measures should be taken, through legislation and other necessary action, to strengthen the independence of the judiciary, and specifically the Supreme Court. The respective roles of the Supreme Court and the Commission for the Supervision of the Implementation of the Constitution should be discussed and agreed upon by all Afghan institutions in order to establish properly delineated roles for each body avoiding future conflict and confusion.

4. The 2005 Electoral Law should be revised to clarify the provisions which lack detail and led to late, inconsistent or questionable interpretations during the 2009 electoral cycle. Technical assistance should be provided to both the Parliament and the Ministry of Justice on the proposed new Electoral Law, with a focus on training Afghan jurists on electoral matters.

**5. In the absence of a fully-revised Electoral Law, all existing regulations and amendments complementing the 2005 law should be consolidated and made readily-available to all stakeholders.**

**6. The most problematic regulations should be amended and completed. These should urgently include the following:**

- *Amendments to the Rules of Procedures of the IEC to introduce stricter decision-making procedures should be introduced to increase transparency.*
- *A regulation on certification of results should clearly establish the conditions in which ballot papers should be invalidated by the IEC. A regulation should also be introduced to set out tally procedures and triggers for audits.*
- *A regulation should impose a deadline for the IEC to declare the locations of all polling centres, to ensure timely information to voters, observers and party and candidate agents. On the basis of this regulation, the IEC should also adopt, before an established deadline, a list of all polling stations and centres.*
- *Particular care should be paid to the need for the IEC to correct preliminary results prior to their publication and the mandatory implementation of decisions of adjudications of the complaints on results.*

7. A Sub-Commission for the supervision of audit teams should be created by regulation, on the basis of Article 7 (2) of the Electoral Law which allows the IEC to delegate its authority to sub-commissions. Procedures should be developed and used for substantial training of audit teams, which should be deployed in all districts during election day. Audit teams should produce reports to the IEC to assist the establishment of preliminary results and these could be made available to the ECC in case of complaint. ***The IEC should build on the experience of the audits of the 2009 elections, particularly with regard to the audit conducted on the Provincial Council elections results.***

***8. Boundaries of districts should be established to enable the holding of District Council Elections. The Ministry of Interior should determine an official list of districts, ideally by reconciling data from different institutions, namely the Central Statistics Organisations (CSO), ILDF Afghanistan Geodesy and Cartography Head Office (AGCHO), Afghanistan Information Management Services (AIMS) and the Independent Directorate for Local Governance (IDLG). The Ministry of Interior should be technically supported in this process, which should involve consultation with municipalities and provincial authorities, but should be carried out at central level.***

9. Consideration should be given to addressing the absence of constitutional checks and balances between the three government powers. Eminently a sovereign act, constitutional reform would need to emanate from Afghan institutions and to follow an inclusive consultative process.

### **Election administration**

10. An election administration body that is neutral and independent and is perceived as such is essential to any election process. As soon as practicable, a change in the appointments system should be made so that IEC commissioners are appointed by a body other than the President.

***11. Pending a change in the IEC's appointment system, party agents and national and international observers should be entitled to attend meetings and plenary sessions of the IEC.***

***12. All IEC staff, and particularly the legal department, should be offered additional legal training. In addition to technical training, capacity building measures should focus on the fundamental human rights being upheld by elections.***

***13. The IEC should be responsible for initiating internal investigations on electoral offences allegedly carried out by its own staff, without the need for the ECC to begin the process. Penalties should be determined and efforts made to establish indirect responsibility, as listed in the definition of electoral offences in the Electoral Law.***

### **Voter Registration**

***14. No further elections should be held without renewed efforts to ensure the accuracy of the existing voter register which is an essential safeguard against fraud as well as a key tool for efficient election administration. In the short-term and in view of 2010 Legislative elections, this could be partially provided by the completion of the processing of outstanding data from the 2009 Voter Register Update to eliminate incorrect and multiple entries. For the sake of inclusivity, an additional update should be conducted to register citizens who will reach the age of majority between the last update and the next elections.***

15. As soon as is feasible, priority should be given to the establishment of an accurate and complete voter register. A committee of experts should assess the viability of using data already gathered for existing voter lists and propose a course of action to ensure the production of a reliable voter register. An independent assessment of this kind would include

determining whether existing data is sufficient or whether an entirely new voter registration endeavour is necessary. Other issues to consider include how to balance cultural sensitivities with the need to ensure accurate and reliable registration of women voters. The inclusion of photographs on all voter cards should be considered, and useful alternatives also put forward.

### **Candidate Registration**

*16. Technical assistance should be provided to the IEC and the Demobilization and Reconciliation Commission (DRC) to ensure open and effective cooperation between both bodies and enforce the vetting requirements with impartial implementation of due process and objective criteria. The DRC should be supported by the international community both financially and politically. Any submission of information from the Office of the Attorney General to the DRC on current criminal activities of applications should be considered.*

*17. International donors should provide sufficient support to ensure that the disarmament process is pursued and that individuals with links to illegal armed groups are encouraged to disarm. Political pressure should also be exerted on such groups by both the government and the international community. The 2010 elections should provide an incentive for compliance with the Disbandment of Illegal Armed Groups Program*

18. The IEC should play a larger role in the process of candidate vetting, within the limits of its powers. It should establish formal links with the Demobilization and Reconciliation Commission as soon as possible so that initial candidate applications submitted to the IEC can be cross referenced with updated data from the DRC's remapping exercise as well as other relevant information from the Disbandment of Illegal Armed Groups Program. This would allow the IEC to exclude individuals with obvious links to illegal armed groups from its preliminary lists of candidates. The IEC should notify the applicants of their rejection and the reasons from their rejection, to allow them to lodge challenges before the ECC.

19. The ECC should have an active role in the final check of compliance of the prohibition of links to Illegal Armed Groups, for instance requesting additional checks from the DRC when a candidate has claimed to have disarmed.

### **Electoral Complaints Commission**

*20. The ECC should be a permanent body. The key role played by the ECC in safeguarding the legitimacy of the elections should be acknowledged and it should as a matter of priority receive more comprehensive support for the 2010 elections, where the risk of fraud will be at least as great.*

*21. Training of ECC staff in fraud investigation should be conducted prior to the 2010 elections, with guidelines on how to establish responsibility for fraudulent actions.*

*22. All necessary support should be given to ensure completion of current and pending fraud investigations, especially those which involve IEC staff members. The findings of ongoing investigations should be formally transmitted to the ECC to allow it to take action against IEC staff found to have acted fraudulently.*

**23. The ECC would benefit from independence in terms of its administration, funding, and organisational set-up. A clear separation should be maintained between funds for electoral assistance programmes and ECC funds. If a programme such as UNDP-ELECT remains in place, two separate committees should set up to provide dedicated technical assistance to the IEC and the ECC. These provisions existed in theory but were not applied by ELECT. Decisions taken regarding the ECC should not involve either the IEC or ELECT staff who are involved in supporting the IEC.**

### **Media**

24. The newly-created public service broadcaster Radio Television Afghanistan (RTA) should develop a neutral, objective and informative editorial line in all its programmes, particularly during election campaigns. RTA reporting should be balanced and factual, including coverage of authorities' activities during an election period without any privileged treatment. Private broadcast media should adhere to requirements for impartial and fair campaign coverage giving impartial and balanced coverage in news and political discussion programmes to all parties and candidates.

25. The Electoral Media Commission should be granted more authority, including effective sanctioning powers for media outlets which do not comply with its decisions. The authorities should consider converting the Electoral Media Commission into a permanent body (as envisaged in Article 43 of the new Media Law) with a more general remit, but including specific duties and powers during electoral periods.

26. In order to increase awareness of its work, the EMC should have greater visibility. This could be achieved by setting up a dedicated website and a press office to issue regular press releases and statements.

27. Technical assistance should be offered to strengthen the professional skills of journalists, editors and managers 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.

### **Women's Participation**

**28. The IEC Gender Unit should streamline its strategic plan to focus primarily on ensuring the participation of women as voters and women as electoral administration staff, not least as polling station staff. The recruitment of women polling station staff members and searchers should begin much earlier in the electoral process and should from the outset work in coordination with women's organisations which have networks throughout the country.**

**29. All possible measures should be implemented to eliminate the practices of proxy registration and proxy voting. Such measures would include appropriate emphasis in training and support for voter registration and polling station staff, as well as public outreach programmes aimed at both men and women. Consultations should enable the identification of measures which would assist women to register and vote in person. These could include consideration of the best location for registration and voting sites and the**

*provision of adequate numbers of female voter registration and polling staff. This endeavour should be carried out by the Gender Unit at the IEC, in conjunction with appropriate organisations.*

30. The minimum quota of women's representation in provincial councils should be maintained or increased. The precise number of seats in Parliament, Provincial and District Councils which are reserved to women under the legal provision for a minimum 25 per cent representation by women should be published and disseminated.

*31. A consultation process with women active in politics should assess their security and other needs during the course of registering and campaigning. This could be coordinated between Ministry of Women's Affairs, the Ministry of Interior and women's non-governmental organisations. The usefulness of the Ministry of Interior's bodyguard programme for women candidates should be assessed. Once the programme has been either confirmed or adapted for the 2009 elections, consistent measures should be taken throughout the country to ensure that all eligible candidates are able to benefit.*

32. Renewed commitment should be given to the implementation of the National Action Plan for the Women of Afghanistan (NAPWA) to ensure that Afghan women have equal access to education and income so that they may avail of their civil and political rights.

### **Participation of Civil Society**

33. The capacity of domestic observer organisations should be enhanced to allow them to make a full assessment of the electoral cycle and to issue public recommendations in order to improve the quality and integrity of the electoral process. Technical assistance bodies which advise the election administration and other bodies to be assessed by election observation groups should be distinct from those which assist the observation groups.

### **Civic Education**

34. Civic education programmes should be established on an ongoing basis and all civic education programmes should emphasise women's right to participate. The early establishment of civic education for women should be prioritised and should seek the expertise of organisations with experience in general civic education, rather than dedicated voter information. These organisations could advise and participate in devising programmes for both men and women which take into account high illiteracy levels and other challenges. An evaluation of the efficacy of existing civic education programmes should also take place.

### **Counting and Tabulation**

*35. Counting should begin immediately after the close of polls, even if more than one election has taken place. This would reduce the scope for fraud.*

### **Detection and Mitigation of Fraud**

*36. Detailed and binding procedures for the detection and mitigation of fraud should be made available at the beginning of the electoral process so that electoral staff, voters,*

*observers and agents, are familiar with them and can cooperate in their implementation. Existing fraud detection and mitigation measures should be fully implemented and the IEC should publicise the rules and triggers that would draw attention to suspicious results and would allow for the separation of problematic ballot boxes for further scrutiny. Secrecy surrounding the rules and triggers which the IEC imposed on itself but eventually abandoned contributed considerably to the confusion over suspicious ballot boxes and what appropriate actions should have been taken.*

*37. Fraud detection measures should include the following considerations:*

- Reconciliation forms and the lists of voters are good instruments for the mitigation of fraud as they can be used to detect excess numbers of ballots. Although both were available in the 2009 elections, there was no incentive for their appropriate completion as they were not subsequently used to cross-check the number of voters with the number of ballots cast. Cross-checking of reconciliation forms and lists of voters should be mandatory for future elections.*
- Clear and binding procedures for auditing should be in place at the beginning of the electoral process, to avoid last-minute improvisations that are not generally understood by the public. Auditing is just a more precise and targeted way of counting and as such should be in the public domain and conducted in a manner which is transparent and understandable for voters.*
- The final number and locations of polling centres and polling stations should be publicised at the beginning of the electoral process. Any kind of changes in numbers or locations should be fully justified and publicised immediately. This would safeguard against the risk of fraud through ballot stuffing, using electoral materials earmarked for polling stations which never opened to establish ghost polling stations.*
- Clear and binding procedures should be in place to ensure efficient tracking of all unused electoral material. In order to prevent excess electoral materials being distributed to the provinces and used to commit fraud, only officially listed polling stations should receive electoral material.*