



SPECIAL REPORT

2301 Constitution Ave., NW • Washington, DC 20037 • 202.457.1700 • fax 202.429.6063

ABOUT THE REPORT

Since the fall of the Taliban in November 2001, Afghanistan has held four rounds of elections: the 2004 presidential race, the 2005 and 2010 Wolesy Jirga and provincial council contests, and the 2009 presidential and provincial council votes. The 2014 elections—which will occur as international security forces are preparing to leave the country—will be a barometer of how effective U.S. and other foreign forces were in bringing a genuine democratic process to the country.

ABOUT THE AUTHOR

Zekria Barakzai is currently a senior policy adviser to Afghanistan's anticorruption office, a senior consultant to Democracy International Afghanistan, and general director of Democracy Watch Afghanistan. From 2005 to 2013, he served as a high-ranking official with Afghanistan's Independent Election Commission and worked as a counterpart to the head of the legal department of the country's Joint Electoral Management Body. Barakzai holds a master's degree in international relations.

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Zekria Barakzai

2014 Presidential and Provincial Council Elections in Afghanistan

Summary

- The constitution of Afghanistan, though formally enshrining the internationally recognized standards of a “free, universal, secret, and direct vote” for elected institutions, is a flawed document with respect to many aspects of the electoral process.
- Deficiencies in the electoral legislation have been addressed. For the first time, the legislation governing the polls has been adopted by parliament rather than issued by decree. In addition, the commissioners for both the Independent Election Commission of Afghanistan (IEC) and the Electoral Complaints Commission (ECC) are appointed through a consultative process involving the legislature and judiciary, and not simply by presidential appointment as was the case previously.
- Despite these important legislative changes, the IEC and ECC remain somewhat dependent on the executive branch to fulfill their functions. It will be important that they demonstrate through their decisions a consistent attitude of independence that allows the elections to take place in an atmosphere of maximum trust.
- Security will be the main challenge for the next round of elections in the country. The IEC needs to make its own independent assessment of the security situation in the country and avoid the creation of ghost polling centers, which was one of the reasons for massive fraud in the past.
- Given that a comprehensive polling center-specific voter registry was not possible, the IEC needs to adopt an effective antifraud strategy based on deterrence, detection, and mitigation of electoral fraud.
- Special attention should be paid to the establishment and effective functioning of the ECC. Its late establishment and lack of operational capabilities will have a negative impact on the credibility of upcoming elections.

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- The technical deficiencies of the IEC, including staffing, election budget, and effective international technical assistance, should be addressed as soon as possible.

Introduction

In April 2014, voters in Afghanistan will cast their ballots in what is arguably the most important election since the fall of the Taliban in 2001. A smooth political transition will depend on the success of both the presidential and the provincial council contests. Because international security forces are scheduled to leave the country by the end of 2014, it is even more critical that the election process contribute to long-term security and stability in the country by delivering a legitimate successor government to that of President Hamid Karzai.

A failure of the 2014 elections would have catastrophic consequences for peace and stability, not only in Afghanistan but also across the entire region. Averting this failure depends in large part on the independence and effectiveness of electoral institutions, wide public participation, and an effective antifraud strategy. Because of the experience of previous elections—in particular those of the presidential and provincial council in 2009 and of the Wolesy Jirga (lower house of the parliament) in 2010, in which the democratic process was overshadowed by a worsening security situation, massive fraud, and political manipulation—this report focuses on the main challenges to the next round of elections.

The recent adoption of the Electoral Law and the Law on Structure and Responsibility of the IEC and the ECC by the parliament, and their approval by the president in July after vetoes several months earlier, paves the way for a legitimate electoral process in 2014. The implementation of the provisions of both laws is a test for the IEC and the ECC to fulfill their mandates effectively.¹

Legal Framework

The constitution of Afghanistan, though enshrining the internationally recognized principle of a “free, universal, secret, and direct” vote for elected institutions, is a flawed document when it comes to many of the details of the electoral process in the country.

According to the constitution, the term of office for the president expires on May 21 and the Wolesy Jirga term on June 21 of the fifth year after their election. Elections for these bodies must be conducted thirty to sixty days prior to these dates,² thus requiring that elections be conducted in the spring. This requirement means that most of the logistical preparations as well as the campaigns need to take place during harsh winter conditions, when much of the country is inaccessible because of snowfall, melting snow, rain, and floods. In addition, because Afghanistan is a largely agrarian country, spring is one of the busiest times for farmers and rural communities—a large segment of Afghan society—which could negatively affect turnout for the elections.

Another problematic provision is paragraph 6 of Article 61, which states that “if a candidate for presidential elections dies during the first or second round of polling, or after elections before the announcement of results, elections should be conducted once again.”³ That is, from the polling date until final results are announced, the death of any presidential candidate, regardless of whether he or she had significant support, would require the elections to be conducted again. In light of the clear Taliban strategy of targeted killings of political actors, this provision, whatever the original intention of the constitution’s drafters, adds a major vulnerability to the process.

Furthermore, the terms of constitutionally elected bodies are set such that seven types of elections need to be conducted at near constant intervals. Presidential and Wolesy Jirga elections are held every five years (though not in the same years), provincial council elections every four years, and district and village council elections every three years. Municipal council and mayoral elections are called for in the constitution, but their terms are not specified: The 2010 electoral law calls for them to be conducted every four years, but they have not yet been held.⁴ If Afghanistan were to conduct all these elections according to the letter of the law, forty-one elections would be held over the next twenty years. Elections are the most complex and expensive events in peacetime in any country in the world. The election cycle prescribed by the constitution is simply not sustainable under the best conditions in Afghanistan, let alone the current conditions of insecurity and fiscal precariousness.

In addition to the unsustainable electoral cycle, the constitution is unrealistic in its call for secret votes for all village council elections. Such a process requires printing ballots and other costly measures to ensure the secrecy of the vote in forty-five thousand villages. It is crucial that the country have democratic institutions at all levels, in particular the grassroots, but conducting these elections according to the rigid prescriptions of the constitution is an extremely expensive and logistically difficult exercise the country cannot afford. Currently, as part of the National Solidarity Program, which provides block grants to communities, village and district assemblies are elected by communities according to traditional practices and are not perceived as lacking legitimacy.⁵

The constitution provides for the establishment of an independent election commission to “administer and supervise all kinds of elections in country.”⁶ But the mechanism for appointing its members is unspecified, though it is specified for other commissions and judicial bodies—such as how the members of the Independent Commission for Supervision of the Implementation of the Constitution are appointed, which is quite clear.⁷ This issue has been the subject of intense disagreement between the president, the political opposition, and the parliament.

The constitution also lacks any provisions specifying the adjudication of electoral complaints. On the one hand, it gives the authority of electoral administration and supervision to the IEC, yet on the other it provides the judiciary with the authority to adjudicate all cases against legal, natural persons or the state,⁸ and specifies that under no circumstance can a case be moved outside the jurisdiction of the judiciary.⁹ The resulting ambiguity became controversial in 2010 when the president established a special court under the judiciary to adjudicate elections-related complaints, despite the legal existence and practical functioning of the ECC, which acted independently of the judiciary.

To definitively resolve the problems of the legal framework for elections in the constitution will ultimately require amendment. Because of the complexity of the amendment procedures and the current political environment, a formal amendment of the constitution is not feasible in the near future. It is therefore crucial that the recently adopted Electoral Law and the Structure and Responsibility Law of the IEC and ECC correct to the extent possible the described issues.

IEC Independence and Neutrality

Whether an election is accepted as legitimate and fair depends to a great degree on how the election management body is perceived by voters, political parties, candidates, and other stakeholders. Ensuring the independence and neutrality of such a body is particularly vital in postconflict situations, when a significant lack of trust among political actors is often conspicuous. In Afghanistan, this mistrust is exacerbated by the substantial powers vested

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To gain the confidence and trust of all stakeholders...the legal framework must guarantee maximum independence and neutrality of the IEC and define its authority, structure, and responsibility with as much clarity as possible.

in the executive by the constitution, as a result of which electoral institutions are subjected to many forms of interference, both direct and indirect, by the executive, and in many ways depend on the executive.

The independence and neutrality of the IEC have been an issue of great controversy in previous elections. During the 2009 presidential campaign, Abdullah Abdullah, the challenger to President Karzai in the second round, boycotted the elections because of the massive fraud that had taken place in the first round and the perceived lack of independence and neutrality of the IEC. In the lead-in to the 2014 presidential and provincial council elections, the Political Parties and Coalitions Cooperation Council, which was established in September 2012 and includes twenty-one major political parties and coalitions, has continuously demanded “free and fair elections in 2014 by a fully independent and neutral IEC and ECC.”¹⁰

To gain the confidence and trust of all stakeholders to the process, as well as acceptance of the results by the wider public, the legal framework must guarantee maximum independence and neutrality of the IEC and define its authority, structure, and responsibility with as much clarity as possible. In Afghanistan’s short, recent democratic history, however, opportunities to secure trust through the creation of independent institutions have largely been missed.

In 2005, Karzai signed legislative decree no. 23 on “the structure and working procedures of the Independent Election Commission.” The decree put in place criteria for IEC commissioners, specifying their terms of office and procedures for their removal. It did not, however, cover many aspects of the structure and responsibility of the IEC, such as the appointment procedures of IEC commissioners, the structure of the IEC at central and local levels, its legal authority, and the definition of the respective roles of the Board of Commissioners and the IEC Secretariat.

Article 156 of the constitution gives the IEC broad authority to “administer and supervise all kind [sic] of election” in the country, but the most important means of ensuring the real independence and neutrality of the institution is through the appointment procedures for its commissioners. If the president has the sole power to appoint and remove members of the commission, it will be difficult for many to consider an independent and neutral institution, especially in those situations, such as in 2009, when the president presents himself for reelection.

The next draft of the law was prepared by the IEC and sent to the Ministry of Justice in 2008. The IEC draft, though it specified provisions on the authority of the IEC, the respective responsibilities of the chairman, the commissioners, and the secretariat, as well as the decision-making process within the IEC, nonetheless left the appointment of IEC commissioners once again to the president alone.

In considering this draft, the Wolesy Jirga changed the appointment procedures for the IEC commissioners and put in place a mechanism by which the president would submit the proposed members of the election commission to a vote of confidence by the Wolesy Jirga. This draft was adopted by the parliament and sent to the president for endorsement. Instead of signing, the president referred the law to the Supreme Court to review the constitutionality of the appointment mechanism adopted by the parliament. The Supreme Court argued that the constitution specified which high-ranking officials were subject to a vote of confidence from the Wolesy Jirga, and that all other officials could not be made subject. It therefore ruled that that provision of the Wolesy Jirga law was unconstitutional.

In 2012, the Ministry of Justice sent a new version of the law to the Wolesy Jirga for approval. In this draft, the appointment procedures of the IEC commissioners were again not changed: The draft stated that “the IEC has seven members which shall be appointed by the president for five years.”¹¹ In its consideration of the document, the Wolesy Jirga conducted

a series of consultations with political parties and civil society organizations (CSOs). This resulted in the inclusion of new provisions concerning the ECC as well as the IEC, and the renaming of the legislation to “the Structure and Responsibility Law of the IEC and ECC.”

The most significant change was the new mechanism for appointing IEC and ECC members. The approved law provided that an initial list of twenty-seven eligible candidates should be nominated: twelve from academic councils of the state universities, twelve from private universities, and three from CSOs involved in elections.¹² A selection committee would pick fourteen of the twenty-seven candidates after considering “national participation and gender balance” and submit them to the president. From those fourteen, the president would appoint nine members of the IEC, including at least two women, for a period of six years.¹³ The selection committee would comprise the speaker of the Wolesy Jirga, the speaker of the Meshrano Jirga, the chief justice, the chairman of the Independent Commission for Supervision of the Implementation of the Constitution, the chairman of the Afghan Independent Human Rights Commission (AIHRC), the leaders of those political parties that have at least six members in parliament, and one representative of a CSO related to the election process.¹⁴

Although the proposed appointment mechanism was more inclusive, provided strong checks and balances, and constituted a compromise with the president, it was also extremely complicated, time-consuming, and difficult to implement. For example, there are thirty-one state universities and seventy private universities in the country and dozens of CSOs related to the election process. The law does not make clear how they will choose the twenty-seven nominations for the IEC membership. On the other hand, there are many qualified people outside universities and CSOs.

This draft law was vetoed by Karzai in April 2013 and sent back to the parliament either to be amended or to have the original draft adopted by the two-thirds majority necessary to override the president’s veto. Ultimately, the two houses of parliament agreed to a revised law and adopted it. Karzai signed this version in July.

On the crucial and previously controversial issue of the appointment mechanism for members of the IEC and ECC, the new law provides both an open merit appointment process for commissioners as well as a more consultative process. It retains the described selection committee and requires it to nominate twenty-seven candidates for IEC membership and fifteen for ECC membership. From this short list, the president appoints nine to the IEC and five to the ECC, taking into consideration “national participation and gender balance.”

In August, the nine members of the IEC were appointed in accordance with the new legislation. At the time of writing, the process for selecting the ECC commissioners is ongoing. Although parliament’s participation in the appointment process was a big step forward, it has been marred by the inability of civil society groups to agree on a representative to the selection committee. The IEC decision was therefore made in the absence of a civil society representative. There has also been a lack of transparency and suggestions of interference by influential political figures, raising some questions about the credibility of the process.

The law limits the authority of the ECC as the final arbiter for the election process. It gives full authority over adjudication of complaints and challenges but limits disqualification of candidates from the final candidate list to eligibility criteria and does not consider other offenses or any violations by the candidates during the electoral process.

The establishment and functioning of the ECC remain the biggest challenges for the next election. Under the previous legislation, the ECC was established only during the electoral period and was then promptly dismantled. The new legislation makes the ECC a permanent body, like the IEC. Nonetheless, the new body still needs to be established from scratch, requiring staff to be hired, offices in all provinces to be opened, agreement on rules and

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procedures to be reached, and other major foundational tasks to be completed to enable it to play its proper role during the election. These considerable logistical and administrative tasks will have to take place at the same time that the ECC begins to adjudicate the eligibility of candidates during the nomination period.

The Electoral Process

The electoral law is the main legal instrument regulating the electoral process in Afghanistan. Despite the importance of achieving consensus around the rules of the electoral game, all elections in the country in the past ten years have been conducted under legislative decrees issued by the president rather than under legislation adopted by parliament.

For trust and confidence to be established in the electoral process, electoral legislation should be not only adopted by parliament but also widely discussed with political parties, CSOs, observation entities, and other stakeholders during the drafting process. Broad consensus over the rules of the game is more likely to lead to greater electoral participation and acceptance of the results.

The most important issues the law should cover are the electoral system, the complaints mechanism, and the authority of the IEC over the process.

The electoral system, which determines how votes are translated into seats, is the central political issue in the law. In particular, the electoral system can be either the locomotive of political party development and effective representation or its brake. The constitution specifies certain provisions for the presidential election, such as the two-round system, but leaves the determination of the electoral system for the Wolesy Jirga, local councils, and mayoral elections to the discretion of the legislature. The sole exception is the specified quota of seats in the Wolesy Jirga to be held by women.

The electoral system for the legislature was raised during the drafting of the constitution in 2003. Because of political uncertainty and divergent views over whether Afghanistan should have a parliamentary or a presidential system, however, it was removed from the text. As a result, according to one analyst, “the new constitution, which provoked significant unhappiness, was ratified only with the help of strong political pressure.”¹⁵

After the ratification of the constitution, the transitional administration assumed the task of working out the details of the electoral system in cooperation with the Joint Electoral Management Body (JEMB)¹⁶ and the United Nations Assistance Mission in Afghanistan (UNAMA).¹⁷

By early 2004, the JEMB had proposed what most experts believed was the best option for Afghanistan: a closed-list proportional representation (PR) system using multimember districts based on the thirty-four provinces. The issue was discussed in the cabinet and was rejected as not suitable. One of the reasons given was the negative experience of political parties in Afghanistan’s recent history. The political parties established in the 1960s were seen by many as the main reason for both the communist coup in 1978 and the subsequent civil war between Mujahideen parties (Tanzims) in the 1990s. The other option considered was the first-past-the-post (FPTP) system, using single-member constituencies. But without a census, an accurate voter registry, and boundaries delimiting electoral constituencies within provinces, this approach was impossible to implement. The only remaining option was the single nontransferable vote (SNTV) system. “Afghanistan ended up with SNTV not as a result of extensive deliberation and careful evaluation of its pros and cons, but rather by a fairly random process of elimination. SNTV was simply better than the other systems combining a single vote for a candidate with provincial multimember constituencies.”¹⁸

SNTV is viewed by many analysts as the biggest flaw in Afghanistan’s electoral system. Although the system is on its face simple for voters to understand and election administrators to implement and has the advantage of being friendly to minority groups, especially

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where districts are large and groups are organized, it has a number of decided disadvantages. First, it provides no incentives for political party development, which is crucial for postconflict political stability and the consolidation of democracy. It instead leads to a fragmented legislature that in turn weakens the role of parliament, especially when faced with a strong executive, as in Afghanistan. SNTV also results in a large number of “wasted votes.”¹⁹ In past elections, for example, only some 25 to 27 percent of the votes were cast for winning candidates and the remainder—the clear vast majority—for losing candidates. Other complicating factors include the size and complexity of the ballot papers: Because SNTV encourages many independent candidates to run, especially in large districts, the ballots sometimes run to forty pages. This is often confusing to the electorate and results in decreased turnout and much higher costs. In many cases, the difference in number of votes cast in favor of the first elected candidate and the last winner (that is, the winning candidates with the most and the least votes) is huge (from seventy thousand to two thousand). Additionally, the margin by which candidates win (that is, the difference in votes between the last winning candidate and the first losing candidate) is so thin that it creates a lottery effect that encourages frivolous allegations of fraud in the election process.

Several attempts have been made in recent years to change the SNTV to a more proportional system. In 2007, when the Wolesy Jirga discussed the electoral law, it considered adopting a mixed system in which one-third of the 249 seats would be elected through a closed-list PR system. The majority of the Wolesy Jirga voted against this proposal, however. The discussion was later suspended because of an unrelated but controversial provision allocating ten seats for Kuchis (nomads). A large number of members of parliament boycotted the legislative sessions until the electoral law was removed from the agenda. This development effectively ended the chances of revising the electoral law ahead of the 2010 parliamentary elections.

In 2012, the IEC began drafting the new electoral law. The draft proposed, again, that eighty seats of 249 should be allocated to political parties, but that the list PR system should be used in parallel with SNTV for independent candidates. The idea was rejected by the cabinet before the draft could be presented to parliament. The cabinet decided that the SNTV system should be replaced by single-member constituencies—that is, FPTP. The text of the subsequent law, prepared by the Ministry of Justice, was, however, confused on the issue. Article 10 of the draft stated that “for Wolesy Jirga and Provincial Council elections, the constituencies shall be determined based on allocated seats within the territory of the province by the [Electoral] Commission.”²⁰ Article 23 stated that “the seats in each province shall be assigned to candidates who receive the most valid votes.”²¹ In the first instance, it seemed that constituencies should be delimited by the IEC within the province, but the second seemed to indicate that SNTV should be retained. That the draft did not specifically refer to single-member districts left its provisions open to interpretation and therefore confusion.

Political parties, CSOs, and observer entities continue to demand a mixed PR-SNTV system, but making this critical change depends on a majority vote by the members of parliament. Given that political parties have little influence in the parliament and that the Wolesy Jirga is fragmented as a result of using SNTV as the electoral system, it is unlikely that parliament will change the system.

The other important issue is the electoral complaints mechanism. As mentioned, the constitution of Afghanistan has no provisions that address the issue. A robust, independent, and professional electoral complaints mechanism is key to the success and integrity of any elections in any country.

During the 2004 presidential election, the JEMB was responsible for adjudicating challenges and complaints. All polling complaints were addressed by polling center committees

The single nontransferable vote system provides no incentives for political party development. It instead leads to a fragmented legislature that in turn weakens the role of parliament.

on the day of the election. Those concerning counting and tabulating results were adjudicated by the provincial election authorities. Although an appeals mechanism had been foreseen in the president's 2004 legislative decree on electoral law, the IEC had "final and binding" decision authority.²² The 2004 law did not provide many details on sanctions and penalties in cases of violations but stated that "where the Independent Electoral Commission believes that an infraction has taken place it shall refer the matter to the relevant law enforcement or prosecutorial authorities, giving the reasons for its request."²³

After the 2004 election, extensive debates were held about the complaints mechanism. Losing candidates demanded that an independent commission be established to adjudicate election-related complaints. Many observer organizations recommended that a neutral commission was needed to ensure the integrity and transparency of the process. As a result, in the legislative decree by the president on the electoral law in 2005, the Electoral Complaints Commission was established. The ECC was composed of a member appointed by the Supreme Court, a member appointed by the AIHRC, and three international members appointed by the special representative of the secretary-general of the UN for Afghanistan. The 2005 electoral law provided details on the authorities of the ECC, its sanction powers, and actions that were considered to be offenses and violations of the electoral law.²⁴

During the 2009 presidential election crisis, when the ECC disqualified 1.2 million votes on the basis of massive fraud and moved the election to the second round, Karzai characterized the ECC as "foreign interference" in the electoral process. In a speech before the IEC in 2010, he blamed "foreigners" as having been the main problem in the 2009 elections. Later that year, he issued a new legislative decree governing elections in which he removed the international members from the ECC.²⁵ The 2010 electoral decree stated that "the President, in consultation with the Speakers of the two houses of the National Assembly and the Chief Justice of the Supreme Court, shall establish the Central and Provincial Electoral Complaints Commissions in order to address breaches, complaints and objections resulting from elections, and to manage the provincial complaints commissions and assess their decisions, at least 120 days prior to the election date."²⁶ The law did not specify including international commissioners, but under pressure from the international community, Karzai did agree to nominate two international experts. The ECC, in formulating its rules of procedure, stipulated that, to be considered valid, all ECC decisions required the concurrence of at least one international commissioner.

In 2012, while the Wolesy Jirga was discussing the IEC Structure and Responsibility Law, it decided to also include provisions governing the ECC. As with the IEC, the law approved by the Wolesy Jirga made the ECC a permanent body and provided for a more inclusive appointment mechanism. Under the new law, fifteen candidates were to be nominated as follows: three candidates from the Supreme Court, three from the Wolesy Jirga, two from the Meshrano Jirga, two from the Attorney General's Office, two from the AIHRC, two from the Afghan Bar Association, and one from elections-related CSOs. The selection committee (the same as for the members of the IEC) was to provide a short list of eight candidates, "considering national participation and gender," to the president, who would appoint five members for six-year terms, of whom at least one had to be a woman.²⁷

The law approved by the Wolesy Jirga provided that "considering the current circumstances in the country, the UN may introduce two temporary members of ECC."²⁸ President Karzai voiced his concern about the inclusion of international members of the ECC, and the Meshrano Jirga (one-third of whose members are appointed by the president), in its consideration of the draft, objected to the inclusion of international members. The issue was discussed and resolved by the joint commission of both houses on April 14, 2013, and the approved law was sent to the president for endorsement. Both houses agreed to remove international members of the ECC from its composition.

The structure law clarifies the line between the authority of the ECC and judiciary, stating that all election-related issues should be addressed by the ECC and that criminal acts committed during the electoral process should be adjudicated by the judiciary. Although it limits the authority of the ECC, in particular where the disqualification is concerned, the law provides a permanent and independent complaints commission that can contribute to a fair electoral process. The integrity of the ECC will depend on how its members are selected and how professionally it deals with irregularities and complaints during the electoral process.

Another controversial issue was the authority of the IEC to postpone elections. The government draft of the law gave the authority on the issue to a commission comprised of the IEC, security ministries, and the National Security Council. It was debated in the parliament but ultimately removed from the electoral law, leaving the issue vague. Insofar as 2014 will be the first time that elections will be conducted in the country in spring, and because they may need for technical or climate reasons to be postponed for a few months, the issue of authority to postpone will be a controversial one.

Finally, the newly adopted electoral law sets campaign spending caps of \$200,000 for presidential candidates and \$200 for village council contenders. The Afghan economy, meanwhile, is based on cash rather than credit and does not distinguish between black and white funding. In addition, the banking system handles only 5 percent of the national cash flow, and the IEC has no capacity to effectively implement the spending cap provision. The risk is clear: Money rather than personalities and programs will decide the 2014 elections. Afghanistan is also a battlefield for regional and international spy wars. The corresponding risk is that money from neighboring countries and mafia-like influences will overshadow any expression of popular free will to elect a leader.²⁹ The IEC needs to put in place an effective monitoring mechanism to avoid misuse of illegal money spent during the campaign.

Security Challenges

Security has been a major challenge in each Afghan election since 2005. In the 2009 presidential and provincial council elections and in the 2010 Wolesy Jirga elections, the worsening security situation was the main reason for the disenfranchisement of millions of would-be voters and the massive fraud that occurred.³⁰

Since 2010, the security situation has deteriorated further. Despite the surge of U.S. military forces, and some reports that Taliban momentum in the south and east of the country has been halted, the security gains are fragile and risk being unsustainable. The window of opportunity created by the surge of American forces in 2010 and 2011 was not used effectively by the Afghan government to consolidate its hold over the country, and as soon as international security forces leave, the resulting vacuum is likely to be filled by Taliban and other antigovernment elements.

Such forces have calculated that time is on their side, given the announced departure of international security forces by the end of 2014. The June 2011 announcement by U.S. president Barack Obama of the drawdown of U.S. forces also defined U.S. objectives in increasingly narrow counterterrorism terms and left the impression among many Afghans that the United States would withdraw irrespective of the conditions on the ground. From the Taliban perspective, there is no need now to mount extensive military operations: All it needs to do is to maintain enough persistent insecurity to prevent the government from delivering public goods and to discredit in the eyes of the local population the capacity of the Afghan National Security Forces (ANSF) to provide adequate security.³¹

From the Taliban perspective, there is no need now to mount extensive military operations: All it needs to do is to maintain enough persistent insecurity to prevent the government from delivering public goods and to discredit in the eyes of the local population the capacity of the ANSF.

An element of the Taliban strategy is focused on targeted killings of influential political and tribal leaders, as well as on spectacular suicide attacks designed to undermine confidence in the government. A February 2013 UNAMA report shows that though civilian casualties in 2012 dropped by 12 percent, “civilian casualties from targeted killings by Anti-Government Elements increased by 108 percent compared with 2011, to 1,077, comprising 698 civilian deaths and 379 injuries. Civilians perceived to be supporting the government, civilian employees of the government, religious leaders, tribal elders and persons involved in peace and reconciliation efforts were targeted. Killings and injuries to civilian government employees increased by a staggering 700 percent.”³²

Afghan National Security Forces are now about 352,000 strong and lead most military operations in the country. The ANSF, however, lack critical means in terms of equipment, air power, logistical support, and trained manpower to counter sophisticated insurgency attacks. At the same time, the International Security Assistance Force (ISAF), which used to provide much of this type of support, is leaving the country, and most of its remaining capacity will be absorbed by the huge and complicated withdrawal.

It is obvious that security will be the major challenge to the upcoming 2014 elections. Security arrangements need to be in place throughout the election process: preparations, election day security, and postelection counting, tabulation, and results announcement.

In addition to antigovernment insurgent groups, illegal armed groups affiliated with warlords are also a significant challenge: Earlier in 2013, a bomb was detonated in front of the Jowzjan provincial election office; on September 15, a provincial election official in Koduz province was assassinated by Taliban; and on September 16, four election workers in Faryab province were hijacked by an unidentified armed group. It seems that insurgents target elections in the south and east, and that unofficial armed groups target those in the north. To ensure security for the next round of elections, security forces need to take all such actions and factors into account. Kabul, meanwhile, needs to provide a generous support package for election officials killed during the campaign process; otherwise, the IEC will lose much of its capacity in the more unsecure provinces.

In the pre-election phase, the Afghan security institutions should verify the polling center list provided by the IEC and confirm the centers in which the security forces will be able to maintain security so that the IEC can decide which polling centers will open on election day. Experience from previous elections shows, however, that the assessment of the polling center list can be controversial. Security institutions often tried to present an overly optimistic picture of the security situation in the country and therefore declared an unrealistic number of polling centers in the most dangerous areas to be secure. Insofar as the lack of security also meant that there was little oversight, polling materials sent to these areas were particularly susceptible to fraud and manipulation. To counter this in the future, the IEC should have its own independent security assessment mechanism in place. If there are discrepancies in the findings between the IEC and the Afghan security institutions, the IEC should ultimately have the power to decide whether to open the polling centers in certain areas.

The security assessment of the polling centers for 2014 by security forces seems unrealistic in view of prevailing trends. In the 2009 and 2010 elections, when Afghan forces were strongly supported by international security forces, the IEC was able to open 5,200 to 5,300 polling centers. It is surprising that the ANSF have now declared some 6,600 centers secure. This situation could enable establishment of ghost polling centers and in turn massive fraud in the 2014 elections.

The other major issue in the pre-election phase will be logistical support by the ANSF and ISAF to the IEC. For the first time since 2001, the elections will be conducted in the spring, and most of the logistic preparations will need to be undertaken in winter, when many parts

The security assessment of the polling centers for 2014 by security forces seems unrealistic in view of prevailing trends.

of the country are difficult to access. From a security perspective, spring is a better time to hold elections because insurgency activities are less than in winter. Winter weather in the preparation stage, however, requires additional logistical support.

On election day itself, security forces need to provide security to voters, polling centers, and election officials. In previous elections, the first tier of security around polling centers was provided by the Afghan National Police (ANP), the second tier by the Afghan National Army (ANA), and the third by the ISAF. The major issue was mobilization of Quick Reaction Forces (QRF). The QRF was to react in extreme situations, but in reality it did not do so effectively. The IEC needs to establish an election security coordination center where all representatives of security forces are present and decisions can be made without delay to deploy the QRF.

Following the election, the ANSF should provide security for all counting centers across the country and be ready for any event following the announcement of results. Antiriot forces should play a major role in case supporters of losing candidates organize violent protests.

In addition, an effective public outreach campaign on security preparation for the next round of elections is ideal. This approach typically has a positive psychological effect on voters and contributes to a higher turnout.

Antifraud Strategy

Although security will be the main electoral challenge in 2014, experience suggests an urgent need to put in place and implement an effective antifraud strategy. This effort should not only be implemented by the IEC, it should be supported by the government, observers, candidate agents, the media, and CSOs. The strategy should be based on deterrence, detection, and mitigation of fraud. In past elections, massive fraud was detected and millions of votes were disqualified, but because fraud was not deterred, the elections were seen as fraudulent. Finding out where and how the fraud took place is the first step, but strict deterrence and mitigation measures to maintain the integrity of the process are critical.

Various factors other than security contributed to widespread and massive fraud in 2009 and 2010:

- interference by local power brokers, warlords, and government officials in the election process; use of government assets and resources in favor of or against certain candidates;
- creation of ghost polling centers by the IEC as a result of politically motivated and unrealistic assessment of the security situation;
- lack of transparency in recruiting polling staff, lack of neutrality of electoral officials, and impunity of those committing fraud;
- lack of effective monitoring and observation of the election process;
- tabulations in the polling centers;
- lack of voter registries specific to polling centers;
- weak control over chain of custody of ballot papers and other sensitive materials; and
- lack of IEC independence and neutrality.

A number of measures could and should be undertaken to address these issues. The IEC, as the constitutional body responsible for conducting and overseeing all Afghan elections, plays a major role in antifraud strategy and enforcement. In light of earlier electoral experiences, the IEC should consider the following measures:

Strict control over the chain of custody of sensitive materials. Such control is key to preventing fraud in all stages of the election process. As in 2010, all sensitive materials should be bar-coded and tracked throughout the process, from Kabul to the provinces, districts, and polling centers, and then back to the counting centers.

Transparent recruitment and vetting of polling officials. The measure is critical. Temporary staff of the IEC, district field coordinators (DFCs) in particular, play a crucial role in the electoral process. In 2010, efforts were made to make the recruitment process more transparent, but this process needs to be improved further. The recruitment of DFCs should start earlier and the process should engage observer groups and CSOs. Before DFCs are designated, a list of their names should be widely publicized, and there should be specific time allowed for public complaint against their previous performance or to highlight any affiliation with candidates or political parties. Any relevant allegations should be investigated and adjudicated by the IEC before DFCs are recruited. This action will help the confidence of candidates and voters in that they can be assured of the neutrality of the IEC.

Fraud mapping and internal audit. Both are needed. Because fraud in the 2009 and 2010 elections was widespread, the IEC needs to map where it was most egregious and take additional preventive measures in those areas, to include deploying internal IEC auditors to polling centers prone to fraudulent activities. The main task should be to identify actions that will deter and detect fraud in polling centers. These auditors should be well trained and reallocated from one province to another as needed.

Realistic allocation of ballot papers. The IEC needs to make logical decisions about the number of ballot papers released to each polling station, for excessive distribution has contributed to fraud in the past. The turnout in previous elections, voter registration data, population figures, and the security situation should be carefully considered during the allocation of ballot papers to the provinces, districts, and polling centers.

Antifraud public awareness campaign. This campaign is vital. In attracting voter cooperation with the IEC on antifraud efforts, the main message should draw on the experience of the past election, which was in many ways an affront to the dignity of all those who turned out to vote legitimately. In reality, the fraud and ballot stuffing did not help anyone, least of all the candidates in whose favor it took place. In 2009 and 2010, the ECC and IEC disqualified more than one million votes in each election on the basis of fraud. The main effect was to damage the reputation of the electoral institutions and of Afghanistan as a functioning democracy.

The Afghan government also plays an important role in antifraud efforts. Kabul should respect the independence of the IEC and refrain from any action that might damage the neutrality of the electoral institutions. Neutrality and noninterference of state officials are critical to the success of any antifraud strategy. In the past, presidential decrees specifying noninterference were issued but never actively enforced. Because there was no effective mechanism for sanctions, the decrees had little if any impact.³³

The IEC should put together a comprehensive framework and guidance for state officials, in particular security personnel, to assist but not interfere in the electoral process. State assets and resources should not be used in any case, either for or against a candidate. The framework should define which actions of state officials can be considered interference and punishable under the law. The IEC should be given the authority to collect evidence and propose to the president an official's removal from the job and further prosecution by legal institutions.

Karzai announced recently that he will not support any candidate in the upcoming election and will not allow government officials to intervene in the process. If this proves true, it would be wonderful news for all election stakeholders and a hope for a credible election process. The president, the government, the IEC, and the ECC should ensure strict implementation of the policy, and it should apply to all state officials, in particular to security forces and the Independent Directorate of Local Governance. Additional steps by the IEC and ECC could be built on this promise not to allow any pressure or intervention in the electoral process. The recent presidential decrees on code of conduct for state officials and security

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forces is a major step towards better elections in 2014, but the success of the decrees will depend on how they are implemented, as was the case in previous elections.

Free, fair, and transparent elections require effective and proactive observation and engagement of political parties, CSOs, and the media. Large numbers of observers, candidate and political party agents, and media representatives were accredited for the 2009 and 2010 elections.³⁴ The reality on the ground was that only a few polling centers were covered by observers. As a result, the checks and balances mechanism to avoid fraud did not function in most parts of the country.

In 2014, special attention should be paid to capacity and logistical support for observers. International technical assistance will play a major role in an effective and empowered observation process. The recent code of conduct for observers by the IEC, which bans the funding of the observer entities, should be revised as soon as possible, and the IEC should provide necessary assistance to observation entities and CSOs to contribute to the transparency of the process.

The IEC should encourage effective engagement of both the media and CSOs to the election process. Afghanistan has witnessed a massive progress of private media outlets in the past decade. These can play a vital role in antifraud strategy as well as public outreach activities, which will contribute to higher voter turnout and an inclusive electoral process.

Internal Capacity

A number of other technical issues urgently need to be addressed to enable the IEC to conduct the next round of elections with professionalism and integrity.

Certain critical positions in the IEC secretariat are currently vacant, which affects IEC planning capacity. These include deputy chief electoral officer in charge of administration and finance, the head of the field operations department, IT department, and logistics department. The IEC has advertised provincial election officers in ten provinces through the Civil Service Commission. These positions should be filled by suitable candidates as promptly as possible. Neutrality, professionalism, and experience should be the main criteria for recruitment.

Another matter is the decision by the president that the IEC budget for the elections should be executed by the Ministry of Finance. In the last elections, the budget was managed by UNDP. The new approach, according to presidential decree no. 45, is likely to have unforeseen and potentially negative consequences on the election process. Neither the Ministry of Finance nor the IEC has any experience in implementing government procurement rules for an election process where strict timelines need to be met. The IEC needs to negotiate and come to an agreement with the government on this issue as soon as possible.

Separate from the question of the Ministry of Finance's capacity to manage the IEC's budget is the issue of the perception. That a branch of the executive has control over the expenditures of an independent commission is likely to raise justified complaints of interference.

Finally, the UNDP ELECT project, which was designed as a capacity-building effort for the period between the two elections, should be redesigned to meet the needs of the IEC in a comprehensive election operation cycle for 2014 and 2015. The electoral timeline was announced thirteen months before last year's election, and due to late approval of the electoral and establishment of the IECC, this timeline should be revised according to the adopted law. For example, the campaign period in the current timeline is more than four months, but the adopted electoral law is limited to two months. This extra time should be used for strict verification of adjudication of challenges about candidates' criteria both by the IEC and the IECC.

Afghanistan has witnessed a massive progress of private media outlets in the past decade. These can play a vital role in antifraud strategy as well as public outreach activities.

Recommendations

A number of crucial steps need to be taken by the IEC, the government of Afghanistan, the parliament, and the international community to address the challenges of the upcoming 2014 presidential and provincial council elections. Time is running short. Any delay or inaction will have catastrophic consequences for this landmark political transition.

The IEC is constitutionally mandated to take the lead in addressing the challenges. The need is urgent for the IEC to establish a 2014 Election Task Force, which should include the speakers of both houses of the parliament, a chief justice, a national security adviser, security ministers, and representatives from the ISAF, the Independent Directorate of Local Governance, and the Ministry of Finance to address one by one all the election-related issues described, including—in particular—decisions on election security and the budget.

Given that a voter registry specific to polling places was not possible,³⁵ the IEC needs to concentrate on an effective antifraud strategy. The strategy should be widely discussed with all the stakeholders, and the IEC should publicly commit itself to implementation. The strategy and its effective implementation are the cornerstones of credible 2014 elections and therefore of the entire political transition.

The international community and the Afghan government should take immediate steps to facilitate the establishment and effective operation of the ECC. Its establishment is already late, but further delays will have a negative impact on the integrity of the elections.

The success of the 2014 presidential and provincial council elections depends on political will in the Afghan government; the neutrality, independence, and capacity of the IEC; effective public participation in the process; greater capacity of observation entities and CSOs to engage in the process; and coordinated international assistance to the elections process.

An effective antifraud strategy and effective implementation are the cornerstones of credible 2014 elections and therefore of the entire political transition.

Notes

1. Most of the findings and key elements of this report are based on the author's experience working with the Joint Electoral Management Body (JEMB), which oversaw the 2004 and 2005 elections, and subsequently with the IEC, the JEMB's successor organization, from 2005 to 2013. Numerous public documents have also been consulted.
2. Articles (61) and (83), Constitution of the Islamic Republic of Afghanistan, 2004.
3. Paragraph (6), Article (61), Constitution of the Islamic Republic of Afghanistan, 2004.
4. Article (36) and (38), 2010 electoral law.
5. Votes are held but they are generally not secret. The National Solidarity Program is recognized as highly effective, and few complaints have been lodged that the CDCs and DDCs are not legitimate or representative.
6. Article (156), Constitution of the Islamic Republic of Afghanistan, 2004.
7. Article (157) of the constitution provides that the members of the ICSIC will be proposed by the president and approved by the Wolesy Jirga.
8. Article (120) of the constitution states that "the authority of the judicial organ is to adjudicate all lawsuits in which real individuals or incorporeal including the state stand before it as plaintiff or defendant in its presence is expressed in according with the provision of the law."
9. Article (122) of the constitution states that "no law, under no circumstances, can transfer a case from the jurisdiction of the judicial branch to another organ as it has been determined by this constitution. This provision does not apply to establishment of Special Courts stated in Articles (69), (78) and (127) of this constitution and Military Courts and matters related to them. The structure and authority of these courts are regulated by law."
10. Political Parties and Coalitions Cooperation Council, press release, September 23, 2012, Dari.
11. Article (5) of the Draft Structure and Responsibility Law of the IEC by the Ministry of Justice, Dari.
12. Article (8) of the Structure and Responsibility Law of the IEC and ECC approved by Wolesy Jirga, 2012, Dari.
13. Paragraphs (2, 3, 4) of the Structure and Responsibility Law.
14. Paragraph (5) of the Structure and Responsibility Law.
15. See Larry Goodson, "Afghanistan's Long Road to Reconstruction," *Journal of Democracy* 14, no. 1 (January 2003): 82–99.
16. See Andrew Reynolds, "Electoral System Today: The Curious Case of Afghanistan," *Journal of Democracy* 17, no. 2 (April 2006).
17. The JEMB was a joint institution between the government of Afghanistan and international community that oversaw the first presidential, Wolesy Jirga, and provincial council elections in 2004 and 2005. It had thirteen commissioners, nine of them Afghans appointed by the president and four of them international members appointed by the Special Representative of the UN Secretary-General to Afghanistan. The JEMB was dissolved at the end of 2005 and all its authority was delegated to the IEC.
18. Reynolds, "Electoral System Today."
19. A wasted vote is generally described as a vote that is not for any elected candidate.
20. Draft electoral law prepared by the Ministry of Justice, Dari, 2012.
21. Ibid.
22. Chapter (9), Article (57), 2004 electoral law.
23. Paragraph (3), Article (58), 2004 electoral law.
24. See chapter (9), 2005 electoral law.
25. Under pressure from the international community, the president agreed to include two international members in the ECC. ECC rules of procedures provide that at least one international member of the ECC should agree for the decisions to be valid.
26. See chapter (13), 2010 electoral law.
27. Article (33), Structure and Responsibility Law of IEC and ECC approved by Wolesy Jirga.
28. Ibid.
29. Candidates are required to submit to the IEC documented proof of the support of at least one thousand voters. Reports indicate that voter registration cards are being sold on the open market for between \$5 and \$10.
30. More than 1.2 million votes in the 2009 presidential election were disqualified on the basis of massive fraud, as were 1.3 million in the 2010 Wolesy Jirga elections.
31. Vanda Felbab-Brown, "Security and Politics in Pre-Transition Afghanistan," in *Afghanistan in Transition: Crafting a Strategy for Enduring Stability*, edited by Beata Borka-Winter and Bartoz Wisiewski (Warsaw: Polish Institute of International Affairs, 2012).
32. UNAMA, "Afghanistan: Protection of Civilians in Armed Conflict, Mid-Year Report 2012," Kabul.
33. In 2010, the president signed a decree on noninterference in the electoral process, but no action was taken to prosecute officials who violated the decree. For example, Ismail Khan, minister of water and energy, ordered the tally officials in the IEC to assist specific candidates. His voice giving the order was recorded, but no action was taken.³⁴ A total of 280,000 observers, agents, CSOs, and media representatives were accredited in 2009 elections. This number rose to a record 379,000 in 2010 (www.iec.org.af).
35. In August 2012, the IEC proposed a comprehensive polling center-specific voter registration program. According to the plan, all polling centers in the country should have been opened for one month and eligible voters should have been able to register in these centers and vote in the same locations in the 2014 election. The government did not support the proposal, in part because the security forces were not prepared to secure the centers for a month, but primarily because the donors were reluctant to provide the requested \$80 million in funding.

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