



Office for Democratic Institutions and Human Rights

# ISLAMIC REPUBLIC OF AFGHANISTAN

## PARLIAMENTARY ELECTIONS

18 September 2010

OSCE/ODIHR ELECTION SUPPORT TEAM REPORT



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**ISLAMIC REPUBLIC OF AFGHANISTAN  
PARLIAMENTARY ELECTIONS  
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**OSCE/ODIHR Election Support Team Report**

**I. INTRODUCTION**

Following an invitation from the government of the Islamic Republic of Afghanistan, the OSCE Permanent Council mandated the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to deploy an Election Support Team (EST) to the 18 September 2010 parliamentary elections “to produce a report on the electoral process [...] including a set of recommendations [...] for implementation as appropriate in the post-election period.”<sup>1</sup> The OSCE/ODIHR EST deployed eight experts to Kabul for five weeks around election day to work closely with Afghan and international stakeholders.

The parliamentary elections have shown some progress made in holding elections, but they also underscored a number of serious challenges that need to be addressed in the coming years. These challenges are not new. In 2009 alone, the OSCE/ODIHR offered 136 recommendations to improve the conduct of Afghan elections. Combined with 2004 and 2005 OSCE/ODIHR reports,<sup>2</sup> as well as those of domestic and international observers, there now exists a comprehensive body of recommendations on electoral reform.

Given the large number of existing recommendations, the OSCE/ODIHR EST focused its attention on the implementation of previously identified priority areas<sup>3</sup> instead of formulating new recommendations. This focus on implementation comes at the specific request of the Independent Election Commission (IEC).<sup>4</sup> Furthermore, it is in line with the stated intentions of Afghan authorities made during the 20 July 2010 Kabul International Conference when they committed to “initiate within six months a strategy for long term electoral reform that addresses in particular the sustainability of the electoral process.”<sup>5</sup> Finally, addressing implementation is timely, as there is now a possible two-year break before the next elections that gives time to commence the process of electoral reform committed to at the Kabul Conference.<sup>6</sup>

In line with the mandate and with this approach in mind, this document reports on the 18 September parliamentary elections and seeks to contribute to the ongoing debate on

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<sup>1</sup> OSCE Permanent Council Decision No. 953, 29 July 2010.

<sup>2</sup> All previous reports can be found at: <http://www.osce.org/odihr-elections/33049.html>.

<sup>3</sup> The areas, identified by the OSCE/ODIHR EST as those most critical for reform, include: reforming the electoral legal framework, strengthening mechanisms for the effective protection of electoral rights, building the IEC as an independent, professional and impartial electoral management body, developing inclusive voter registers for safeguarding electoral integrity, establishing accepted electoral boundaries, bolstering effective political parties and reinforcing domestic observation as an essential scrutiny on elections.

<sup>4</sup> Meeting between Mr. Manawi, IEC Commissioner, Mr. Ahmadzai, Chief Electoral Officer, and the OSCE/ODIHR on 15 June 2010.

<sup>5</sup> Communiqué, Kabul International Conference on Afghanistan, 20 July 2010, Article 9.

<sup>6</sup> This is based on the widely held assumption that lower-level elections called for in the Constitution will be delayed. District and lower-level elections are currently challenged by a lack of boundary delimitation and insufficient quality voter registration data. In addition, the purpose and mandate of the lower level elected bodies are not fully clear.

electoral reform in Afghanistan. It offers a possible, although certainly not the only, way forward to implement long-term electoral reform for the consideration of the Afghan authorities and the international community. While the report addresses seven priority areas identified as most immediately challenging and crucial for election reform, it does not provide an exhaustive list of issues that could be addressed to improve elections in Afghanistan. Recommendations made in previous OSCE/ODIHR reports remain important to the development of a stable democratic process.

As a Partner for Co-operation to the OSCE, Afghanistan is not party to the body of OSCE commitments on democratic elections included in the 1990 Copenhagen document. However, in 1983, it ratified the United Nations International Covenant on Civil and Political Rights (ICCPR), which establishes universal rights and obligations in regards to democratic elections. The Convention and the authoritative General Comments issued by the UN treaty monitoring body<sup>7</sup> constitute a basis for developing agreed directions and benchmarks for electoral reform in Afghanistan.

## II. OVERVIEW OF THE 2010 PARLIAMENTARY ELECTIONS

The parliamentary elections held on 18 September were organized immediately after the controversial 2009 presidential and provincial council elections. They took place under challenging circumstances. While these elections saw some positive developments, they also highlighted serious, systemic deficiencies. Despite clear improvements within the IEC, dramatic levels of fraud, violence and highly disputed outcomes were apparent, which did not contribute to fostering credibility of and public confidence in the democratic process.

The elections were held under a revised Electoral Law, passed by presidential decree in February 2010 without sufficient consultation, with parliament excluded. This takes from the strength of the law, as the process did not provide for wide public support. The late passage left the IEC limited time to implement new procedures and regulations. The law contains a number of provisions that are not consistent with Afghanistan's human rights commitments, and is silent on other key issues such as time limits to respond to complaints.

New IEC leadership was appointed before these elections, as called for in previous recommendations. Under new leadership, the IEC implemented significant improvements in a very short period of time before election day, increasing transparency and improving planning and procedures. These include holding open and transparent meetings, publishing decisions, and making individual polling station results available in more user-friendly formats. The IEC also dismissed 6,000 staff implicated in fraud in 2009 and introduced a new recruitment system in an effort to remove those thought to have been involved in manipulations and fraud. However, the advances have yet to be institutionalized as they are not fixed in law and are, for the time being, rather dependent on individual actions and support from the international community.

These elections were competitive with 2,506 candidates competing for 249 seats split proportionally among the 34 provinces, thus offering a large and genuine choice to voters. However, the candidate registration process was marred with repeated allegations of

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<sup>7</sup> See article 25 of the ICCPR and General Comment 25 by the UN Human Rights Committee; <http://www2.ohchr.org/english/bodies/hrc/index.htm>.

warlords and others associated with illegally armed groups being allowed to run for office, in contravention of legal provisions. Under a new system prescribed by the Electoral Law,<sup>8</sup> the IEC and the Electoral Complaints Commission (ECC) were required to take a leading role in the vetting process of candidates.<sup>9</sup> The very large numbers of candidates in certain constituencies<sup>10</sup> presented some technical challenges for the election administration in designing the ballots and in counting them. The number of candidates also made it challenging for voters to identify their candidates and mark their ballots accordingly.

As in 2009, the election campaign was marred by violence. The IEC reported deaths of at least 3 candidates, 13 campaign workers, and 2 election officials. The number of security incidents on election day has reportedly been exceptionally high, even greater than in 2009.<sup>11</sup>

There were also numerous reports of abductions and coercion. In half of the provinces, domestic observers reported pressure, threats and intimidation on voters and candidates. Inter-candidate violence and intimidation seemed to have increased for these elections. As a result, campaigning was low-key and typically conducted without direct contact with voters, often remotely with candidates located in other provinces (usually Kabul). Consequently, citizens had limited ability to enjoy the fundamental freedoms, including freedom of expression, peaceful assembly, association and movement, which are necessary for the conduct of democratic elections.<sup>12</sup>

Election day saw a high incidence of violations, fraud and irregularities reported by observers and the media. They included use of fake voter registration cards, multiple voting, ballot stuffing, underage voting and proxy voting. There were also reports of elections not taking place but results being submitted. Various observers and election commentators reported levels of attempted and actual fraud to be comparable to last year, despite improved IEC procedures. Reference has also been made to a “culture of fraud” with candidates feeling that there was no opportunity to win fairly and so justifying illegal activity.<sup>13</sup>

Following election day, the IEC headquarters received results forms, with ballots and other materials remaining in the provinces. During the tally process it became apparent that, despite new control measures, a high number of results forms were of poor quality. The IEC was in possession of a large amount of highly questionable data while being under pressure to announce results promptly. In contrast with past elections, the IEC took a proactive approach that led to the annulment of 1.3 million ballots. However, there was no

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<sup>8</sup> 2010 Electoral Law, article 12(7).

<sup>9</sup> A new Vetting Commission was established composed of representatives of the IEC, Ministry of Defence (MoD), Ministry of Interior (MoI) and the National Directorate of Security (NDS), with final decision on disqualification sitting with the ECC.

<sup>10</sup> For example in Kabul, the ballot contained 664 candidates for 33 seats.

<sup>11</sup> The International Security Assistance Force (ISAF) reported an increase in incidents of more than a third over last year's vote, which at the time was the most violent day of Afghanistan's post-Taliban period. The Afghanistan NGO Safety Office (ANSO) recorded 443 Anti-Government Element initiated events on election day (a 56 per cent increase on the 2009 election day). The MoD figures show that 24 individuals were killed on election day (13 police officers and 11 civilians).

<sup>12</sup> See for example reports by the Afghan Independent Human Rights Commission (AIHRC).  
[www.aihrc.org.af/2010\\_eng](http://www.aihrc.org.af/2010_eng).

<sup>13</sup> See for example reports by the Afghan Analysts Network, <http://aan-afghanistan.com>.

explanation or observation of the decision-making process, thus compromising transparency of the annulment process and related decisions. Furthermore, the IEC annulment decisions could not be appealed.

The ECC received 5,856 complaints relating to polling and counting, with 2,495 of these categorized as “A – *could alter the results of the election*”. Most complaints were adjudicated at the provincial level, with minimal oversight from the ECC headquarters, although there were reports of Provincial Electoral Complaints Commissions (PECCs) referring cases to the ECC headquarters for reasons of intimidation. Observer groups reported a lack of transparency in PECC activity, with decisions often not being displayed. PECC decisions seemed to often lack legal reasoning.

Defamation, libel and related offences remain criminal offences and it appears that while Afghanistan’s media continue to be diverse and active, a number of challenges to freedom of expression remain, thereby limiting Afghanistan’s compliance with ICCPR Article 19. Particular concern was expressed over state interference and undue limits on freedom of expression during the election period. TV channel Emroz, owned by an incumbent candidate, was closed down by executive decision (for allegedly fuelling religious tensions) bypassing the established regulatory bodies. International media also reported that at least three journalists were arrested and detained during election day. Media commentators have expressed concern at the rising levels of violence against journalists.

The IEC accredited 15 domestic observer organizations. The largest observer group was the Free and Fair Elections Foundation of Afghanistan (FEFA), a network of around 24 civil society groups. FEFA had approximately 7,000 observers accredited, about one third of whom were women. Of these, 400 were long-term observers, and the remaining were short-term observers working across all 34 provinces. However, only 222 of the 400 districts were covered. FEFA’s observation methodology in 2010 appeared markedly stronger than in previous years and the organization also reported it had submitted extensive and detailed complaints information to both the IEC and ECC. A number of FEFA’s staff was subject to violence, abduction, threats and intimidation.<sup>14</sup>

The under-representation of women remained a key feature of the 2010 parliamentary elections. Only 16 per cent of all candidates were female. Women candidates and their staff appeared to be particular targets of violence and intimidation by the Taliban and other illegally armed groups. The low number of female domestic observers and candidate agents increased opportunities for fraud in female polling stations.

On 15 November, the ECC issued a press release announcing it had adjudicated all category A complaints, that the results will impact the outcome of some of the races and that they would shortly inform the IEC of the decisions. The IEC made the necessary adjustments based on the ECC findings and on 24 November released the final results for 33 of the 34 provinces. The 11 seats from Ghazni will be further reviewed before being released. The IEC Chairperson stated that an additional three candidates were disqualified, bringing the total number of winning candidates disqualified for fraud to 24.

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<sup>14</sup> Four FEFA observers were assaulted on election day by candidate agents and powerbrokers in Daikundi, Farah, Kandahar, Ghazni and Takhar. Two others were kidnapped by Taliban and subsequently released.

### III. MOVING FORWARD: THE PROCESS FOR ELECTORAL REFORM

The complexities and controversies of recent elections in Afghanistan have been challenging for state institutions, political parties, voters, civil society and development partners. Concerns relate to the electoral process and also to the consequent ability of the elected institutions to fulfil their representative function and to operate effectively. However, unlike the last period of more than one year without an election (after the 2004-2005 election cycle), reform is now on the agenda of Afghan authorities, international donors and technical assistance providers.

Recent elections demonstrated the nature and scope of electoral challenges in Afghanistan. Sustained, concerted and broad efforts, as well as a clearly defined and comprehensive strategy, are needed to effectively address the fundamental issues in coming years. The political commitment by Afghan authorities to establishing a strategy for electoral reform was made during the July 2010 Kabul Conference. The next step is the formulation of this strategy. Afghan leadership and ownership should be the fundamental principles of the reform process. Equally, the international community needs to prioritise electoral reform as vital for the security and stability of Afghanistan.

The process for development of a reform strategy is critical to a positive and accepted outcome. The immediate priority is to agree on the formation, composition and mandate of an Afghan-led body that will be responsible for leading the reform process. Consideration could be given to a number of factors relevant to the creation of an effective body that will be capable of moving the reform process ahead:

- **Empowered**  
Election reform needs commensurate political commitment at the highest levels within Afghanistan and internationally. Any technical improvements are likely to be of limited effect without strong political engagement. Electoral reform should constitute an integral part of any wider plan for Afghanistan's future, as democratic elections are essential to long-term stability.
- **Broad mandate**  
Technical improvements alone cannot address the systemic challenges to democratic elections. A wide range of structural issues, including a deficient legal framework, vulnerable electoral management bodies, ineffective checks and balances, underdeveloped political parties and weak protection of electoral rights negatively affect the credibility and effectiveness of an election.
- **Widely composed**  
Electoral reform needs to be an inclusive process and involve different segments of the Afghan society, including the executive and legislative branches of power, political parties, and civil society. Parliament, as the representative law-making body, should play a lead role with the participation of other electoral stakeholders such as the IEC, the ECC and other ministries involved in the organization of elections. The international community also has a key supporting and advisory role to play. While implementation should be an Afghan process, the responsibility for successful reform will be broadly shared with the international community as long as elections are internationally funded.

- **Fully consultative**

Consultation with stakeholders, including civil society groups that represent voters' interests, enables practical suggestions to be heard and confidence to be built in the reform process. The inclusion of women and minorities in the consultation process will help provide for a reform that is effective in meeting Afghanistan's commitments on equality and inclusion.

- **Transparent**

A well-defined, open approach to electoral reform will help build public confidence in the process. The public at large should be informed who is responsible for the reforms, how reform is being approached and what is the progress made.

- **Informed**

International legal obligations, good practices and expert opinions should inform the reform process. International legal standards for elections provide a backbone for addressing reform. Practical considerations, existing infrastructure and constraints should be considered to make sure that the reform is realistic, implementable and sustainable. The IEC and the ECC could produce post-election reports including lessons learned and recommendations for improvements.

- **Well resourced**

Reform requires commensurate human and financial resources to be successful. Evidence of commitment to and progress towards the realization of international standards for elections should be positively reinforced with planned additional donor support. Consideration could be given to conditioning resources on an institution or organization demonstrating tangible commitment and progress in reforming. While such conditionality may be counter-productive when there is an approaching election, the period between elections allows greater opportunity for donors to suspend certain funding if the recipient agency is not striving for and effectively trying to implement electoral improvements. Such an approach does not force Afghan counterparts to deliver an "international agenda", but rather provides information and incentives for choices by Afghans, based on Afghanistan's obligations under the ICCPR and other relevant conventions.

- **Long-term**

While there may be a two-year window in which to begin electoral reform, many issues will have a longer horizon for completion. Sustained efforts will need to be made to ensure that reform continues, even during the 2013/2014/2015 election cycle. Particular efforts will be needed to avoid the risk that, with some reforms still incomplete, fraudulent practices do not become further entrenched and voters do not become further alienated from the democratic process.

Continuity in electoral assistance is critical to institutions and organizations being able to effectively deliver during an election. Development agencies and partner countries "should plan and implement electoral assistance within a framework of democratic governance by thinking ahead 10 years, rather than reacting to each electoral event as it

occurs.”<sup>15</sup> They should recognize that “inter-election periods are as crucial as the build-up to the elections themselves.”<sup>16</sup>

- **Accountable**

Once a strategy is developed and agreed upon, progress in implementation should be monitored, with progress and delays shared publicly. Benchmarks and implementation timeframes should be defined for the formulation and the actual implementation of the reform strategy. The Joint Coordination and Monitoring Board was mentioned at the Kabul Conference as one possible mechanism to monitor progress.<sup>17</sup>

- **Sustainable**

The development of sustainable structures for elections is a vital part of any efforts at reform. While it is doubtful that the national budget will be able to cover current electoral running costs, the ability for international donors to maintain current levels of funding is also unlikely. Therefore, sustainable, long-term solutions need to be found. The reform process would provide an opportunity to explore different options for administering future elections weighed against the current and expected GDP of Afghanistan for the years to come.

#### IV. SEVEN PRIORITY AREAS FOR ELECTORAL REFORM

Since 2004, the OSCE/ODIHR has provided nearly 300 recommendations that are supplemented by reports of domestic and international observer groups. During the course of the 2010 elections, the OSCE/ODIHR EST reviewed this rich body of recommendations from which it drew seven priority areas that could form the basis for future electoral reform.

##### A. PRIORITY AREA 1: REFORMING THE ELECTORAL LEGAL FRAMEWORK

Strong executive powers characterize the current legal architecture in Afghanistan, with many laws passed by presidential decree rather than promulgated by Parliament.<sup>18</sup> For elections, the legal framework is comprised of the Constitution, the 2010 Electoral Law, the 2009 Political Parties Law, the 2002 Law on Gatherings, Strikes and Demonstrations, the 2009 Mass Media Law and a number of election-related presidential decrees.<sup>19</sup>

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<sup>15</sup> ACE (Administration and Cost of Elections) Focus on Electoral Assistance, see <http://aceproject.org/ace-en/focus/focus-on-effective-electoral-assistance>.

<sup>16</sup> EC Methodological Guide on Electoral Assistance, see [http://www.ec.europa.eu/europeaid/multimedia/publications/publications/thematic/evaluation-methodology-external-assistance\\_en.htm](http://www.ec.europa.eu/europeaid/multimedia/publications/publications/thematic/evaluation-methodology-external-assistance_en.htm).

<sup>17</sup> Article 29 of the Kabul Conference Communique refers to the “*Joint Coordination and Monitoring Board (JCMB)*” that will “*monitor and assess progress of the Government and the international community in achieving the commitments stated... The Kabul Process is to include annual meetings between the Afghan Government, the international community, and civil society, including those providing services, to promote norms and standards for mutual accountability.*”

<sup>18</sup> The executive enjoys substantial lawmaking powers under the Afghanistan Constitution under articles 76, 65 and 79.

<sup>19</sup> These are supplemented by a number of IEC and ECC published and unpublished regulations and procedures for implementing the electoral law.

Legislation related to elections would benefit from a comprehensive review to create a sound legal framework for democratic elections fully compatible with Afghanistan's international obligations and to improve electoral performance. Nearly all reform efforts can be taken by addressing primary legislation alone.<sup>20</sup>

Improvements to the legal framework are best achieved through an inclusive, consultative process involving key stakeholders both inside and outside the executive and parliament to ensure legitimacy and credibility. An inclusive process is an effective means to review, study, and build consensus for a well-constructed vision for reforming the electoral framework. The IEC has a role to play in the legal reform by providing lessons learned and technical input, along with other expert opinions. International treaties ratified by Afghanistan containing election-related obligations should be the basis of reform.

Recent amendments to the Electoral Law have not followed an inclusive process. Although there were some positive developments, the new 2010 Electoral Law lacks detail or is silent on some key issues. The following priorities could be considered when reviewing and reforming the electoral legal framework:

- IEC appointment mechanism, structure, functioning and transparency (see priority area 3: Building the IEC as an Independent, Professional and Impartial Electoral Management Body);
- ECC mandate, appointment mechanism, structure, functioning and transparency (see priority area 2: Strengthening Mechanism for the Effective Protection of Electoral Rights);
- The electoral system (see priority area 6: Bolstering Effective Political Parties);
- Candidacy eligibility requirements;
- Vetting mechanism for candidate links to illegally armed groups;
- Media coverage of electoral contestants, media rights and obligations during elections, including decriminalization of defamation, libel and related offences;
- Clarifying the role of police on election day;
- Investigation and prosecution of electoral offenses;
- Overly burdensome political party registration requirements (see priority area 6: Bolstering Effective Political Parties);
- Rights and responsibilities of election observers (see priority area 7: Reinforcing Domestic Observation as an Essential Tool for Scrutinizing Elections).

Furthermore, parts of the Constitution are either not in line with international obligations or create an overly burdensome electoral process. However, care should be taken when addressing constitutional reform. Changing the Constitution is practically difficult due to the need to convoke a Loya Jirga.

Should the decision be made to reform the constitution, the following constitutional provisions could be reviewed:

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<sup>20</sup> Primary legislation refers to legislation other than the Constitution. The Constitution can only be amended by a Loya Jirga. The process of organizing a Loya Jirga is difficult, as it requires representation of bodies not yet elected (district councils).

- The high number of elected bodies and a lack of synchronisation of the election calendar are burdensome and expensive to implement.
- Restrictive candidacy requirements for the President<sup>21</sup> are inconsistent with ICCPR principles.<sup>22</sup>
- Presidential authority to pass legislation on such key issues as the adoption of a new electoral law is problematic because it circumvents the legislature's powers to make laws and weakens principles of separation of powers.

## **B. PRIORITY AREA 2: STRENGTHENING MECHANISMS FOR THE EFFECTIVE PROTECTION OF ELECTORAL RIGHTS**

Protection of electoral rights is key to confidence of citizens in the electoral process as it provides assurances to the citizenry that violations of their rights and freedoms will be adequately redressed. Systems for effective remedy of electoral disputes must be strong as they ensure that rules are respected and that if they are violated perpetrators are punished.

Electoral fraud and a culture of impunity for election misconduct remained rampant in 2010. This is in part due to a weak democratic culture and lack of accountability that cannot be overcome by technical improvements alone. Basic structural developments can improve the process, however, and are necessary for the sustainability of effective checks and balances in the electoral system.

Protection of electoral rights has primarily been undertaken by the ECC, a temporary administrative adjudicatory body. The ECC is formed at least 120 days before an election and is responsible to address complaints against the list of candidates and voters, and complaints related to electoral violations. The ECC also acts as the final appellate body. On one hand, forming such an important body for the integrity of electoral processes only shortly before an election is impractical as challenges in recruiting staff, developing procedures, and ensuring continuity, consistency and timeliness of decisions may negatively affect the quality of an election. On the other hand, making the ECC a permanent body with offices in all provinces would be expensive and ultimately unsustainable.

### **1. Reforming the Mechanisms for Election Dispute Resolution**

Consideration could be given to reforming the mechanisms for election dispute resolution. The ECC's mandate could be consolidated, the ECC headquarters made permanent, the PECCs' adjudicatory powers discontinued, and the role of election commissions in hearing complaints reinforced.

The ECC could be transformed into the final appellate body responsible for adjudicating electoral disputes as the last and final instance. It would have ongoing oversight of elections. Consequently, election commissions at all levels would become responsible for reviewing election-related complaints at the first instance. Complaints would be filed first

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<sup>21</sup> Article 62.1 of the constitution restricts candidacy to Muslims citizens born of Afghan parents.

<sup>22</sup> General Comment 25 paragraph 3 states: "No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of... religion." Also paragraph 15: "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as... descent."

to the relevant election commission, with a possibility to appeal to higher level commissions before a final appeal to the ECC. The processing of first instance complaints is a normal function of an election administration. Transferring complaints to the election commission would require capacity within the IEC secretariat and lower level commissions on adjudicating electoral disputes.

These proposed changes would present several advantages. It would eliminate the need for ECC representation at the provincial level (PECCs), which would reduce costs, streamline election dispute resolution and augment the legal consistency of decisions. While a permanent body, in between elections, the ECC could have a reduced structure that would be active in developing its own capacity, increasing complaints awareness, providing a check on other electoral activities and contributing to electoral reform development. In the long run, the ECC could be eventually integrated into the judiciary when greater confidence and competence within the court system to deal with electoral issues are achieved.

## **2. Reviewing the Appointment Mechanism for ECC Commissioners**

Amended as part of the changes to the 2010 election law, the ECC Commissioners are now appointed solely by the President, in consultation with the National Assembly and the Supreme Court. The method of appointing commissioners should be further reviewed and broadened. The appointment mechanism should ensure that the ECC is independent, inclusive, impartial and professional and that it enjoys the confidence of all stakeholders.

Consideration could be given to maintaining some international ECC commissioners until there is full confidence in the body's neutrality, independence, competence and capacity. The international presence in the past three election cycles has resulted in a general perception of independence and a broad interpretation of the mandate. However international commissioners may risk undermining confidence in Afghan judicial decision making, and would not be consistent with ultimately placing the appeals mechanism within the judiciary. Therefore it will be important to work towards a fully-Afghan mechanism by progressively phasing out the presence of international commissioners but maintaining international expertise in an advisory capacity.

## **3. Strengthening Judicial Response to Electoral Violations**

In parallel to these changes, the judicial response to electoral violations could be improved. In practice, minimal prosecutions for serious electoral offenses have been undertaken,<sup>23</sup> although some actions seem to have been initiated this year. Given the extremely high levels of fraud and violence, the general lack of resolute legal actions to investigate, prosecute and punish those responsible for serious violations reinforces a culture of impunity.

While various provisions of the Penal Code (1976) provide sufficient basis for prosecution for serious electoral offences, there is no express provision for a mechanism to investigate and prosecute such violations in the Penal Code and Criminal Procedure Law. Changes are needed to clarify the confusing or overlapping jurisdictions that inhibit more robust follow-

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<sup>23</sup> The Attorney General's office reported no prosecutions were undertaken after the 2005 and 2009 elections. Meeting with the Deputy Attorney General, 14 October 2010.

up on a range of serious criminal violations. In addition, the IEC could be granted the same explicit authority as the ECC to refer cases directly for prosecution.

**C. PRIORITY AREA 3: BUILDING THE IEC AS AN INDEPENDENT, PROFESSIONAL AND IMPARTIAL ELECTORAL MANAGEMENT BODY**

While the IEC made significant improvements in the conduct of the parliamentary elections, further efforts are needed to consolidate the progress made and to operate more effectively in the challenging conditions at the district and polling centre level. To do so, the IEC needs to ensure continuity of select staff, review recent experiences through a lessons learned exercise and undertake further capacity building. A strategic planning exercise could be undertaken, with a view to identifying future priorities, organizational restructuring and resource requirements. Continued support from the international community is an important part of equipping the IEC to hold an election without international assistance in the future.

Several areas could be considered as part of the long-term electoral reform process to build on recent developments. These include:

- **Reforming the Mechanism for the Appointment of IEC:** There is a need to develop a legal basis for the appointment of the IEC. All IEC members are currently exclusively appointed by the president without any approval or oversight. This appointment mechanism should be reviewed and modified in a way that fosters impartiality, independence, professionalism and public trust in the work of the IEC. Numerous good practices exist that meet these principles. A mechanism might include, for instance, a parliamentary confirmation of presidential nominees for the IEC membership. Conversely, parliament could nominate candidates who would in turn be appointed by the president. Many solutions exist, but it is up to Afghan stakeholders to determine the most appropriate way forward.
- **Increasing Transparency:** Transparency in decisions, procedures, operations and outcomes could be enhanced in order to build trust in the professionalism, impartiality and competence of election commissioners as well as in the integrity of the electoral processes. This is particularly important in regards to the breakdown of results, the annulments process and all IEC decisions.
- **Reinforcing Institutional Oversight:** Institutional independence of the IEC could be strengthened. The IEC could have full control over procedures, staffing and budget, which would decrease its operational and financial dependence on the executive. Similarly, as capacity is built, autonomy from international donors should also be increased.
- **Strengthening IEC control over Field Operations:** The IEC faced a significant challenge in developing operations in the field. The security situation makes operating in large parts of the country difficult and sometimes impossible, due to violence from insurgents and intimidation by local powerbrokers. Corruption and non-implementation of procedures are common. Various measures could be taken to further IEC control over field offices and to fight fraud. Progress in these areas is heavily dependent on an improved security situation in country.

Consideration could be given to the following measures:

- Holding elections on a rotational basis, for instance for only a few provinces at a time, to allow a concentration of resources and supervision;
- Providing the IEC with the legal authority to impose sanctions and take remedial actions for any electoral violations, subject to a right of appeal to the ECC;
- Vigorously prosecuting election officials responsible for electoral violations to signal that fraud is no longer tolerated;
- Redoubling efforts to engage female staff and develop procedures to address possible fraud during voter registration and in female polling stations;
- Implementing additional election day measures to ensure security of the vote.

#### **D. PRIORITY AREA 4: DEVELOPING AN INCLUSIVE VOTER REGISTER FOR SAFEGUARDING ELECTORAL INTEGRITY**

An inclusive and accurate voter register that allows for voter lists in polling stations provides a strong safeguard for electoral integrity, and increases electoral efficiency by allocating voters to polling stations. However, after years of effort and significant resources invested, a voter list for polling station use is not available. The majority of registrants were not assigned to a specific polling station in earlier registrations, and the quality of the address data in the later registrations appears not to be reliable below the provincial level. There are also millions more voter cards distributed than voters,<sup>24</sup> including many without photos,<sup>25</sup> limiting their usefulness. Although untested, the use of biometric data collection for more recent voter registration drives is reported to contain incomplete data and be unable to identify multiple registrations. While the registers served a purpose in previous years, the further use of the current system appears unlikely to add benefit. A new process for voter registration should be developed.

Guiding principles for a voter registration exercise are accuracy of information collected, inclusiveness of the process, simplicity of procedures and convenience for the citizen. There should be clear agreement which authority is responsible for the voter register, how the process works, as well as what opportunities exist for updating and scrutiny. Consideration should also be given to cost, sustainability and maintenance requirements. Voter registration is a hugely complex issue; it would therefore be indispensable to develop a detailed plan for the implementation of a new voter register.

Two main options seem to be currently available: 1) Linking voter registration with the development of a civil registry<sup>26</sup> or 2) Establishing a stand-alone voter register.

**Joint civil/voter register:** Among the options for civil registration, a project has been developed by the Ministry of Communications and IT and the Ministry of Interior to develop a national identity document (NID) that would include a central register and smart cards containing biometric data. The IEC should be involved in the planning phase for any civil registration project, to evaluate whether it is compatible with voter registration needs.

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<sup>24</sup> While the total number of VR cards distributed since 2003 is 16,783,349, the Central Statistics Office (CSO) estimated the number of eligible voters in 2009 to be approximately 11 million.

<sup>25</sup> Female registrants were not required to have their photos included on the registration cards.

<sup>26</sup> At the 2006 London conference, it was agreed to create a “*permanent civil and voter registry with a single national identity document.*” Following a MoI and IEC pilot project (with international support), the presidential cabinet decided to delink civil and voter registration.

If the NID becomes the official document to vote, the project will need to be assessed with consideration given to:

- Sustainability (cost effectiveness, ability to maintain and update);
- Risk of disenfranchisement if all voters do not possess the NID;
- Potential for fraud (through an inflated list or no mandatory requirement for female registrants photos to avoid impersonation of voters), and
- The work required for conversion of data to a voters list (need for detailed address down to the most local unit so that voter lists can be compiled, possibility to easily extract all citizens over 18).

Such a thorough assessment should form the basis for deciding on the development of a joint or a stand-alone register.

**A Stand-alone Voter Register:** Should it be assessed that the data collected in the NID card project would not be suitable for voter registration, a stand-alone voter register would need to be created. A new register should lean heavily on lessons learned in previous exercises and voter registration exercises since 2004 should be thoroughly reviewed. A system for addresses and stronger training and controls are prerequisites for success as is the periodic update of the register before each election (removal of deceased voters, accurate registration of more mobile populations, inclusion of new voters).

As the current information collected in previous registrations is insufficient, a new system for information collection would need to be developed. Strong consideration should be given to finding sustainable solutions weighing for instance the usefulness of biometric data collection against initial and running costs. The procedure for registration should also be more rigorous than in years past. While a two-visit system is more demanding of the voter,<sup>27</sup> it would allow for verification, and thus reduce the excessive duplicates currently in circulation. It would also help ensure the quality of data collected allowing for information to be corrected upon return. All women should be required to have photographs on their registration cards to prevent impersonation. Finally, field activities are likely to remain the primary challenge to any registration system, as long as the current levels of insecurity continue.

Regardless of the option chosen, the development of a fully functioning voter register will be a multi-year project requiring commensurate resources, and is unlikely to be in place before the next national election. Therefore, an interim solution needs to be found until the voter register is fully functional.

**The Need for an Interim Solution:** The current system is unsatisfactory, as there is no voter list and the voter registration cards have lost their ability to act as a security check. A partial update of old data would be insufficient, as it would not result in voter lists in polling stations and would lead to an even larger number of registration cards in circulation. Only a full scale, new registration drive would provide the minimal safeguard of ensuring one card is issued per voter. However this option would be expensive, difficult to implement, redundant and possibly confusing if there were a longer term voter or joint civil/voter registration system being developed concurrently. As a result, for the short term, it might be advisable to hold the next national elections without requiring the use of voter registration cards. In the absence of registration cards and voter lists, this option would rely

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The voter registers in a first visit and then returns a second time to collect the registration card.

heavily on other forms of security against multiple voting – particularly inking – and would require a strong voter information campaign as well as training for polling officials.

#### **E. PRIORITY AREA 5: ESTABLISHING ACCEPTED ELECTORAL BOUNDARIES**

Boundaries are crucial for establishing what constituencies office holders will represent and for establishing where citizens' votes will be counted. Well delineated boundaries protect the fundamental principle of the equality of the vote.<sup>28</sup> While boundaries of each province seem to be agreed upon, district boundaries and lower-level boundaries (for municipalities and villages) have yet to be established.<sup>29</sup>

The operational framework for delimitation of electoral boundaries has not yet been developed. With multiple agencies involved, including Independent Directorate of Local Governance (IDLG), the IEC, the Central Statistics Office (CSO) and the Afghan Geodesy Cartography Head Office (AGCHO), institutional responsibility first needs to be clarified.

The method of information collection also needs to be established. Population data from a census<sup>30</sup> could be used as a basis for delimitation. However, for the census to be useful for demarcation of boundaries or voter registration, a complete address and/or GPS coordinates system would be required. As existing data is limited, and given the difficulties in undertaking field activities due to the security conditions, approximate estimates of population may need to be used.

Once the general framework is agreed upon, the following issues could be considered:

- **Need for a Sound Legal Basis:** The process for delimitation should be addressed in primary legislation. Legal provisions are needed for ensuring a clear authority and to support the mechanisms used. Emphasis should be placed on public participation, so that there is confidence in the process and that boundaries are in line with realities on the ground.
- **Formation of an Independent, Impartial Boundary Authority:** To avoid the politicization of the process, a neutral organization which implements delimitation of boundaries will be critical. This could be assigned to a specially formed boundary commission, for example one appointed by parliament and confirmed by the president, or one with members appointed from a number of sources, including the parliament, relevant ministries and civil society.
- **Establishment of Periodic Review:** This will be particularly important due to the dynamic evolution of the demography in Afghanistan and given that current delimitations may be limited due to imperfect access to population data.

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<sup>28</sup> Equality of the vote means that each individual vote weighs equally. Without clear boundaries and an accurate register of voters within boundaries, it cannot be ensured that the number of votes potentially required to be elected in one province or district is equal to those in another.

<sup>29</sup> There are differing estimates of the number of villages. The CSO estimates the number of villages to be 45,000. However AGCHO estimates that there are 49,000 villages.

<sup>30</sup> The last census was conducted in 1979 (and was only 65 per cent complete). The Council of Ministers has reportedly agreed to hold a census in 2012, and should the timetable be implemented and met the first results are expected by the end of 2012 with final enumerated results in 2014.

- **Creation of a Mechanism for Resolving Boundary Disputes:** This sensitive task should be bestowed to an independent agency formed for delimitation. Alternatively, the ECC could be given such a mandate.
- **Fully Resourced and Supported:** Sufficient time, adequate resources and sustained technical assistance are required to establish a delimitation mechanism, to gather or estimate population data, and to undertake delimitation exercises, especially in the current challenging circumstances.

## **F. PRIORITY AREA 6: BOLSTERING EFFECTIVE POLITICAL PARTIES**

Political parties are an essential part of any functioning and vibrant democracy. Parties provide a vehicle for citizens to enjoy freedom of association and the opportunity to participate in government and public affairs. Although political parties in Afghanistan enjoy a long history, political parties or groupings have remained consistently weak.<sup>31</sup> The political environment appears to be characterized by individuals with strong family and tribal ties, creating networks of patronage that can exert significant influence. The security environment and the negative public perception of parties<sup>32</sup> make it challenging for political parties to attract supporters, establish strong connections with their members, and to organize themselves and develop programmatic substance and internal democracy.

### **1. Reviewing the Electoral System**

The current electoral system in part hinders party development. Only 1.7 per cent of candidates ran on party tickets in 2010, a clear indicator of the extremely marginal role that political parties play in Afghanistan. The weakness of political parties has been partly attributed to the use of the Single Non-Transferable Vote (SNTV) electoral system,<sup>33</sup> which is well known to be a limiting factor for party development.

While the choice of the electoral system is the sovereign decision of a country,<sup>34</sup> a comprehensive and inclusive review of the electoral system might be considered to assess its merits, to evaluate whether it continues to match Afghanistan's policy objectives and to decide whether or not to modify it.

The parliament in its legislative capacity should play a leading role in a consultative and transparent review of the current electoral system. Political parties without parliamentary seats should also be involved in the discussions. Other possible stakeholders include the Afghan Independent Human Rights Commission (AIHRC), the IEC, civil society

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<sup>31</sup> Only a small number of parties operate by having a defined membership which plays an active role in policy development, advocacy, and the holding of conferences.

<sup>32</sup> This is reportedly partly due to the negative perception of the Communist Party during the Soviet occupation and the later Mujahedeen parties.

<sup>33</sup> Under SNTV the elector votes for one candidate and those candidates with the highest number of votes are elected (according to the number of mandates in a given constituency).

<sup>34</sup> General Comment 25, paragraph 21, states that "*although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors.*"

organizations working on elections, gender issues, governance and democracy-building, and representatives of ethnic and other groups which are not represented in parliament.

The 2010 Electoral Law does not prescribe a specific electoral system, but instead states that seats shall be assigned to “*the candidates who receive the greatest number of votes.*”<sup>35</sup> Although changing the electoral system may not necessarily require a change of legislation, it may be desirable to provide legal certainty to build support for the new system.

Consideration could be given to the following elements as part of the basis for the assessment of alternative electoral systems:

- Long-term political and governance aims and objectives.
- Adherence of a proposed system to international legal obligations.
- The degree to which a proposed system will encourage political alliances and political party growth.
- How a proposed system would ensure the constitutional requirement of 68 seats for women in parliament and could encourage greater numbers of women to participate.
- How easy a proposed system will be for voters to understand.
- How easy, cost-effective and sustainable the proposed system would be to administer.
- The degree to which the proposed system would encourage or exacerbate reconciliation between opposing ethnic groups.

## **2. Intensifying Party Assistance**

At the same time, efforts to support party development could be intensified. Special emphasis could be put on developing skills and facilities for political parties to function effectively within parliament as well as outside. Other areas could include support in regards to organizational coherence, policies and platforms, campaigning and public information, representative functioning, negotiation and building alliances within and between parties, oversight activities, the role of opposition parties and enhancing women’s participation. It will also be important to support internal democratic structures and practices. Without such assistance, Afghanistan’s fledgling parties may find it difficult to perform in the demanding political environment and to develop sound democratic practices.

## **3. Strengthening Parliament**

Parliament also requires long-term support to continue to develop itself as an institution responsible for adopting sound legislation and providing effective oversight to the executive. Various assistance activities may be furthered, such as development of the secretariat’s research and expertise capacity, and orientations and trainings for representatives in order to build institutional and individual knowledge on topics such as law making. This could include secretariat support for holding consultations, expert assistance on international obligations and good practices, and research capacity. Given the critical importance of electoral reform, particular emphasis could be given to improving parliament’s ability to address the issue.

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<sup>35</sup> 2010 Electoral Law, articles 22, 29, 32 and 35.

## **G. PRIORITY AREA 7: REINFORCING DOMESTIC OBSERVATION AS AN ESSENTIAL TOOL FOR SCRUTINIZING ELECTIONS**

Domestic observers are a crucial check on the election process. Such scrutiny is vital for gathering objective information on the election process, promoting confidence in the system and proposing improvements. The importance of domestic observation is magnified by the particular challenges of holding elections in Afghanistan. The weakness of political parties means that there is an extra onus on observers from civil society organizations to act as a check on the electoral process. Security conditions also mean that international observation coverage is weak or non-existent, further adding to the need for a trusted impartial domestic voice. The IEC accredited 15 domestic observer organizations in 2010. FEFA, the largest domestic observer group, plays a critical role in gathering facts, recording events and providing constructive commentary, analysis and recommendations.

**Rights and Responsibilities of Observers:** The IEC could support scrutiny of elections by domestic observers by including observer rights in the Observer Code of Conduct.<sup>36</sup> Such rights for observers could also be secured in primary legislation.

**Broadening the Role of Civil Society Organizations:** Donors could support non-governmental organizations to actively engage in electoral reform. Analytical skills could be developed through training in international standards and good practice for elections. As a check on the democratic process, they could be encouraged to play a more active role in undertaking parliamentary watch activities and advocacy.

**Reinforcing FEFA's Internal Structures and Building its Capacity:** FEFA should be further supported as it develops its strategy to institutionalize its structure and expand its activities. It could continue to develop its internal management structures and processes through external management support, peer-to-peer learning, and connections with domestic observer groups in other countries. Furthermore, it could develop its capacity to observe activities in the periods between elections. This could include developing focus on particular aspects of an election, such as campaign finance, the media or polling station location commentary.

**Committing Long-term Financial Support:** In recognition of the critical role of civil society organizations in democratic development in Afghanistan, including FEFA and AIHRC, the international community should make long-term funding commitments to developing a strong, vibrant, responsible and pluralistic civil society. Funding should include full accountability mechanisms linked to benchmarks and all assistance should be subject to periodic external evaluations.

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<sup>36</sup> The Code of Conduct for Observers contains a section entitled Rights and Responsibilities, but the section contains only responsibilities. There are no rights described, such as allowing full access to the process by observers, agents and reporters.

## ANNEX 1: INTERNATIONAL PRINCIPLES AND 2009 OSCE/ODIHR RECOMMENDATIONS

### PRIORITY AREA 1: REFORMING THE ELECTORAL LEGAL FRAMEWORK

#### A. International Principles

Afghanistan is a state party to a number of international treaties relevant to elections. These include the ICCPR,<sup>37</sup> the International Convention on the Elimination of Racial Discrimination (ICERD)<sup>38</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>39</sup> Afghanistan was among the UN Member States that adopted the Universal Declaration of Human Rights on 10 December 1948. The Constitution of Afghanistan enshrines these international commitments in Afghan law. Article 7 states that “[t]he state shall abide by the UN [sic] Charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights...”

The obligations contained within the Universal Declaration of Human Rights (UDHR) and ICCPR provide the basis for the assessment of electoral processes. The main standards are contained in article 25 of ICCPR and article 21 of UDHR, although there is a number of other election-related provisions for instance on fundamental freedoms that are central to a democratic process.

Article 25 of the ICCPR provides for the right of citizens to

*take part in the conduct of public affairs, directly or through freely chosen representatives”, “to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.*

In Article 5, the ICERD stipulates that:

*States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ...*

*(c) political rights, in particular the rights to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service ... .*

CEDAW provides for taking

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<sup>37</sup> Afghanistan acceded to the ICCPR on 24 January 1983.

<sup>38</sup> Afghanistan ratified ICERD on 5 August 1983.

<sup>39</sup> Afghanistan ratified CEDAW on 18 December 1979.

*“all appropriate measures to eliminate discrimination against women in the political and public life.”<sup>40</sup> “Temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discriminatory.”<sup>41</sup>*

## **B. Recommendations from 2009 on Reforming the Electoral Legal Framework**

- Urgent constitutional and legal amendments are required to improve the conduct of future elections. (*Recommendation 1 from 2009*)
- Priority election topics to be addressed in constitutional reform include rationalization of the electoral calendar, and an amendment to allow for a broadening of the IEC commissioner appointment mechanism. (*Recommendation 3 from 2009*)
- Priority topics for legislative reform include:
  - The electoral system.
  - The mechanism for appointment of the IEC commissioners.
  - Transparency requirements, such as the publication of all polling station data received (including invalid ballots).
  - Explicit provision of the respective roles and responsibilities of the IEC and the ECC. Both the IEC and the ECC should be vested with powers of investigation and annulment.
  - Provision for continuous ECC functioning.
  - Topics currently left to the prerogative and discretion of the IEC through regulations should be addressed, such as candidate withdrawal deadlines.
  - Voter registration requirements.  
(*Recommendation 4 from 2009*)
- The new Electoral Law should cover some matters that have to date been left to decrees, regulations and decisions in order to avoid discretion being inappropriately applied and to provide a unified cohesive legal document. (*Recommendation 5 from 2009*)
- Legal certainty should be established in regards to which body is ultimately responsible for interpretation of the Constitution. The role of the Supreme Court in electoral matters should also be clarified with specific conditions for intervention explicitly stated in law. (*Recommendation 6 from 2009*)
- Legislation should be passed as soon as possible establishing the functions and powers and resource requirements of constitutionally mandated provincial and district councils. (*Recommendation 7 from 2009*)
- The new law on political parties should not overly restrict members of certain professions from joining parties and should not prohibit citizens from being a member of more than one party. (*Recommendation 12 from 2009*)
- Serious consideration should be given to changing the appointment mechanism of IEC commissioners in the new IEC Structure Law to ensure broad consultation, promoting

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<sup>40</sup> CEDAW article 7.

<sup>41</sup> CEDAW article 4.1.

the independence and representativeness of the IEC and confidence in the election. This could include the possibility of parliamentary input, review and/or confirmation of the candidates proposed by the president. (*Recommendation 17 from 2009*)

- The Chief Electoral Officer should not be appointed solely by the president, but should also be appointed through the same broad involvement of stakeholders as utilized for commissioners. (*Recommendation 18 from 2009*)
- The IEC should produce a post-election report including lessons learned and recommendations for improvements. As part of this report, a review of IEC regulations and decisions from the 2009 elections should be conducted to identify omissions, inconsistencies and any lack of clarity, for correction before the next elections. The review should also identify which decisions might instead have benefited from regulation through law, such as those which could be perceived as having been taken in a politically biased manner, and include the review as part of the discussion of the draft Electoral Law. (*Recommendation 22 from 2009*)
- The law should require full transparency from the ECC, in regards to its procedures, decisions and reasoning. It should also provide for protection of individual complainants and witnesses. (*Recommendation 35 from 2009*)
- There should be further emphasis on ensuring a clear separation between issues of transitional justice and an election; neither the IEC nor the ECC should be responsible for deciding on issues of who is associated with illegally armed groups. The role of electoral bodies in relation to illegally armed groups should be strictly procedural, removing those identified by the body given the authority to determine such links. Electoral bodies should pass information provided by candidates during the challenge process to the relevant authority for that body to determine whether the individual could be considered no longer associated with such groups. (*Recommendation 50 from 2009*)
- A thorough approach to transitional justice, which includes effective mechanisms for establishment of guilt with full regard to due process remains to be developed. If the DIAG is to be used as the basis for assessing the legal requirement for candidates not to be associated with illegally armed groups, increased resources should be dedicated to this process and transparency should be extended with clearer information on the DIAG procedures and assessments. (*Recommendation 51 from 2009*)
- Upon submission of a nomination application, potential candidates should be eligible to see if their name is on the DIAG list. A longer period for candidates to comply with disarmament requirements should be provided for, and any assessment of compliance should be decided upon by the DIAG within deadlines that provide sufficient time for an adequate review. (*Recommendation 52 from 2009*)
- The Electoral Law should be amended to provide greater clarity. This should include clear and concise guidelines for the media's coverage of candidates and parties during the campaign period based on the principles of fair and unbiased coverage. State-owned media has particular obligations during election periods that need to be defined clearly. (*Recommendation 61 from 2009*)

- A new media law should ensure full compliance with international standards and to ensure clear legal provisions for the audiovisual sector. Vague provisions relating to standards in the law could either be clarified or removed and those provisions that are overly restrictive repealed. (*Recommendation 62 from 2009*)
- Afghanistan's media regulatory authority should be made independent from the government. The authority's mandate and powers should be established in law and it should be supported by an impartial and adequately funded secretariat. Key positions in this authority should be appointed transparently and without political interference. In the long-term it should also be made responsible for independently regulating the media during campaign periods. (*Recommendation 63 from 2009*)
- Legal clarity should be established with regard to sanctioning powers for violations of the requirement for fair and unbiased coverage. The overlapping jurisdictions of the regulatory bodies should be addressed. There should be increased co-operation between bodies and the ECC and procedures should be drawn up to ensure complaints are dealt with swiftly and possible sanctions administered. (*Recommendation 64 from 2009*)
- In line with international recommendations, defamation, libel and related offences should be decriminalized and subsequently an independent regulatory authority or civil courts should provide the appropriate mechanism for timely and effective redress. (*Recommendation 65 from 2009*)
- The mandate and responsibilities of state-owned broadcasters should be guaranteed in law. Mechanisms should also be established to ensure their independence from the authorities and public accountability, and a monitoring mechanism introduced to guarantee impartiality in programming. (*Recommendation 66 from 2009*)
- The new Electoral Law should continue to strengthen special provisions allowing special groups such as nomads, IDPs, people with disabilities, prisoners and persons working in the military the opportunity to vote. (*Recommendation 75 from 2009*)
- Rights and responsibilities of national and international observers as well as their rights to access all phases of the process and election-related documents should be clearly stated in the Electoral Law, rather than subject to IEC regulations. (*Recommendation 83 from 2009*)
- The Electoral Law should be amended to clearly articulate the rights and responsibilities of agents, including the right to be present in polling station and the right to access certain types of information regarding the process. (*Recommendation 88 from 2009*)
- The IEC's role regarding the annulment of polling station results should be made explicit in the law. The IEC should be required to give a full public explanation and reasoning for each such decision. Annulment decisions should then be subject to complaint to the ECC. (*Recommendation 112 from 2009*)
- Election dates in Afghanistan should be set to allow for an extended period of post-election investigation. (*Recommendation 117 from 2009*)

- A pro-active comprehensive approach to fraud investigation is needed, as reliance on complaints-based initiatives and information is insufficient. ... The procedures should be formalized in law, and until such a law is enacted, they should be codified in formal regulations of the IEC. Procedures should be made fully transparent. (*Recommendation 118 from 2009*)
- The Electoral Law should explicitly detail what should happen if a candidate withdraws before a second round of presidential elections. Deadlines for withdrawal should be made clear in an IEC regulation. (*Recommendation 121 from 2009*)
- The penal code could be revised to include stronger reference to election violations, covering the campaign, polling and the post-election period. (*Recommendation 128 from 2009*)

## PRIORITY AREA 2: STRENGTHENING MECHANISMS FOR THE PROTECTION OF ELECTORAL RIGHTS

### **A. International Principles**

ICCPR article 2.3 states that

*“All persons whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.... Such a remedy shall [be] determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”*

ICCPR article 14.1 enshrines the right to a fair hearing:

*“All persons shall be equal before the courts and tribunals... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...”*

General Comment 25 paragraph 20 states that

*“There should be... access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.”*

### **B. Recommendations from 2009 on Strengthening Mechanisms for the Protection of Electoral Rights**

- a) Developing ECC capacity. Training should be undertaken on international standards for elections and dispute resolution. Support should be given on case management, judicial administration, and law enforcement investigatory techniques critical to providing due process and effective remedy. Furthermore the ECC should establish links with the judicial and law enforcement structures of Afghanistan.
- b) Increasing complaints awareness. This should include researching and pilot-testing different methods of explaining the role of complaints and the ECC to stakeholders and making the complaints process as user-friendly and effective as possible.
- c) Providing oversight. The ECC should be a continuous oversight body, for the full range of electoral activities such as voter registration and IEC decisions and activities, thereby preventing a culmination of problems.
- d) Contributing to electoral reform. It will be particularly useful to have involvement of the ECC, as the oversight body in the election process, involved in the development of electoral reform plans, especially to promote checks and balances in the system being effectively structured and resourced.

e) Referrals to prosecution. The ECC should refer for prosecution IEC staff involved in misconduct during voter registration as well as polling and counting, should the IEC fail to do so in full.

f) Post-election analysis. The ECC should undertake an analysis of past elections, should the IEC fail to do so in full. In the case of 2009, this could include a detailed analysis of the types of fraud conducted (in voter registration, polling and counting).  
*(Recommendation 30 from 2009)*

- The ECC should have greater resources at its disposal and a stronger capacity to expand in case large numbers of significant complaints are received and to proactively deal with issues arising. This is particularly important for addressing future fraud and for establishing confidence in the electoral system. Appropriate recruitment, salaries and training should be allocated to provide for the ECC to fully deliver its mandate.  
*(Recommendation 31 from 2009)*
- The ECC should produce a post-election report with a summary of its procedures, decisions, lessons learned and recommendations for improvements. This should also include reference to issues and cases that could not be covered by the ECC given its limited time and resources, so that there is an institutional record of shortcomings in the process and directions for future work. *(Recommendation 32 from 2009)*
- Serious consideration should be given to turning the ECC into a permanent body to provide continuity and on-going oversight of the electoral process. Such maintenance should extend ECC institutional knowledge and capacity, thereby also improving legal predictability. Between elections, the ECC could have a reduced structure, but should be active in developing its own capacity, increasing complaints awareness, providing a check on other electoral activities and contributing to electoral reform development. The ECC should undertake its oversight function during all stages of the electoral cycle in order that problems may be addressed at the earliest opportunity rather than culminating during polling and results. *(Recommendation 33 from 2009)*
- Consideration could be given to transforming the ECC into an independent fully-national body, based on the above mentioned points for consideration and with an appointment mechanism that would ensure inclusiveness, impartiality and professionalism. Substantial international involvement and support should be continued to develop and monitor this critical electoral component. The responsibilities of the ECC should be ultimately transferred to the judicial branch when there is sufficient general and specialized competence and confidence in the court system.  
*(Recommendation 34 from 2009)*
- The law should require full transparency from the ECC, in regards to its procedures, decisions and reasoning. It should also provide for protection of individual complainants and witnesses. *(Recommendation 35 from 2009)*
- The ECC could undertake anti-corruption initiatives including provision of reasonable salaries, increased training, information control and oversight mechanisms to protect the integrity of the institution. Consideration could also be given to ensuring the ECC is comprehensively structured. This could for example include an executive director, a

legal advisor, a registrar, a chief of staff, and a records secretary amongst other positions. *(Recommendation 37 from 2009)*

- Consideration may be given to classifying campaign-related complaints in a similar manner to election day complaints, classifying the severity of the complaint based on objective criteria and beginning with the most serious. *(Recommendation 56 from 2009)*
- The ECC could undertake greater outreach work with candidates and agents on campaign offences and sanctions, on how to make complaints and how complaints are processed. *(Recommendation 60 from 2009)*
- Legal clarity should be established with regard to sanctioning powers for violations of the requirement for fair and unbiased coverage. The overlapping jurisdictions of the regulatory bodies should be addressed. There should be increased co-operation between bodies and the ECC and procedures should be drawn up to ensure complaints are dealt with swiftly and possible sanctions administered. *(Recommendation 64 from 2009)*
- The IEC should take a proactive approach to investigating signs of fraud and annul where appropriate. The IEC should be fully resourced to allow for comprehensive investigations to be undertaken in a timely manner before the next elections. *(Recommendation 113 from 2009)*
- Clear information should be given in advance to stakeholders of the likely protracted timeline for final results in future elections, to allow time for full investigations of indications of fraud. *(Recommendation 114 from 2009)*
- A pro-active comprehensive approach to fraud investigation is needed, as reliance on complaints-based initiatives and information is insufficient. This should include a comprehensive investigation into all polling stations with suspicious results, polling stations in areas where there was limited or no observation, and a random selection of polling stations. There should be extensive examination of a range of polling stations, not only those with extreme results and/or crude signs of fraud. This should include examination of the integrity of the ballot box, all ballots (including invalid ballots), the list of voters, the station journal, and the results and reconciliation forms. The procedures should be formalized in law, and until such a law is enacted, they should be codified in formal regulations of the IEC. Procedures should be made fully transparent. *(Recommendation 118 from 2009)*
- Stronger efforts should be made to prepare stakeholders on the importance of complaints and on how to submit complaints. This should be a long-term exercise beginning well before candidate nomination. This should be targeted at parties, candidates, observers and the general public. The independence and role of the ECC as an adjudicatory body should be clearly emphasized. *(Recommendation 119 from 2009)*
- The ECC should be fully resourced to be able to be proactive in using its powers of initiative and to respond fully to extensive complaints. *(Recommendation 120 from 2009)*

- Suspicions and/or identification of fraud in a polling station in one electoral race should result in examination of all ballots cast in that polling station (for all concurrent races). *(Recommendation 123 from 2009)*
- A full fraud analysis should be conducted in order to identify the nature of the different fraudulent activities that took place and what changes in practice should be undertaken. This should look at voter registration, polling, counting, transport and security of materials, tallying etc. It will also be important to look at fraudulent activities in stations that did not fall under the 8 September ECC Order or an ECC complaints decision. *(Recommendation 124 from 2009)*
- Stronger counter-fraud measures should be undertaken. These should include: stronger instructions to polling staff to make sure that only voters whose names are written down on the polling station list of voters receive a ballot paper, requiring a tally sheet for counting to be used and maintained with sensitive materials, and sealing results forms by covering the results column with a self-adhesive transparent tape. In districts and stations where there have been questionable turnouts, the IEC could implement a system where possible of requiring turnout reports at regular points throughout the day. *(Recommendation 125 from 2009)*
- Future candidates should be requested to publicly commit to a code of conduct. Similarly elections ethics efforts should be undertaken as part of training for IEC staff (including polling staff), parties and candidates, state security agencies and the media. *(Recommendation 126 from 2009)*
- Mindful of financial implications, the IEC could move some staff so they are working away from their home locations. A stronger system of IEC spot checks of the work in polling centers and stations throughout the day could be developed using staff from other parts of the country. *(Recommendation 127 from 2009)*

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**PRIORITY AREA 3: BUILDING THE IEC AS AN INDEPENDENT, PROFESSIONAL AND IMPARTIAL ELECTORAL MANAGEMENT BODY**

**A. International Principles**

Article 25 of the ICCPR provides for the right of citizens to

*“to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”* (emphasis added)

ICCPR General Comment 25 states that:

*“An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.”* Paragraph 20 goes on to state that *“The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting... so that electors have confidence in the security of the ballot and the counting of the votes.”*

UN General Assembly Resolution 55/96 calls upon states to ensure

*“through legislation, institutions and mechanisms... the transparency and fairness of the electoral process.”* It also calls upon States to improve *“the transparency of public institutions”* as well as to enhance the accountability of public officials.<sup>42</sup>

**B. Recommendations from 2009 on Building the IEC as an Independent, Professional and Impartial Electoral Management Body**

- Serious consideration should be given to changing the appointment mechanism of IEC commissioners in the new IEC Structure Law to ensure broad consultation, promoting the independence and representativeness of the IEC and confidence in the election. This could include the possibility of parliamentary input, review and/or confirmation of the candidates proposed by the president. (*Recommendation 17 from 2009*)
- The Chief Electoral Officer should not be appointed solely by the president, but should also be appointed through the same broad involvement of stakeholders as utilized for commissioners. (*Recommendation 18 from 2009*)
- Formal procedures should be established to ensure that all IEC regulatory and procedural documents are identified as officially approved, clearly noted with an effective date and immediately made publicly available. Rules of procedure should specify the “shelf-life” of regulations and the process by which adopted regulations may be amended or repealed. (*Recommendation 21 from 2009*)

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<sup>42</sup> UN General Assembly Resolution on promoting and consolidating democracy (A/Res/55/96) articles 1d(iv) and 1f(i). The Resolution was adopted by the General Assembly on 4 December 2000 by 157 votes (including Afghanistan) to none, with 16 abstentions.  
<http://daccessdds.un.org/doc/UNDOC/GEN/N00/565/15/PDF/N0056515.pdf?OpenElement>.

- Civil service commission and internal hiring policies should include special provisions to allow for implementation of timely disciplinary measures, including immediate dismissal, in cases where election officials at any level have engaged in or knowingly allowed others to engage in electoral offenses. Blacklisting of offending election officials must be strictly adhered to and referrals made for prosecution wherever possible. Such procedures should be well-publicized in the interests of overcoming the existing culture of impunity. *(Recommendation 24 from 2009)*
- There should be a clearer line of supervision and oversight of provincial election officers and field staff with particular emphasis on monitoring their integrity, neutrality and proficiency as election officials. Every effort should be made to improve communication capacities between the head office and provincial election officers on a permanent basis. Consideration should be given to having a permanent logistics officer at the provincial or regional level. *(Recommendation 25 from 2009)*
- A strategic planning exercise could be undertaken, with a view to identifying future priorities, organizational restructuring and resource requirements. Certain units embedded within secretariat departments should be expanded to take on greater responsibilities. The political unit should play a bigger role in the registration and vetting of candidates as well as overseeing campaign finance. The legal department should be strengthened to be able to deal with complaints to the IEC and to be able to pursue through legal channels incidents of alleged fraud in voter registration, voting and counting and tabulation. *(Recommendation 26 from 2009)*
- Within a framework of institutional development and strategic planning, staff positions and terms of reference could be reviewed in order to adjust taskings, qualifications and skill sets where needed. Educational incentives and degree programmes tied to contracted five-year terms of employment could be provided to improve retention of experienced staff. All recruitment and promotion should be strictly merit-based. For targeted national staff members formal study and professional certification should be undertaken including in the areas of project management, planning, logistics and procurement. Refresher training on legal drafting and codification of administrative regulations should also be provided. *(Recommendation 27 from 2009)*
- If there is full co-operation from the IEC and a willingness to consider advice, international advisors should continue to support the IEC secretariat at their current level at least until the end of 2010 (and probably beyond), subject to IEC commitment to reform and conduct elections according to international standards. *(Recommendation 29 from 2009)*
- The ECC should have full unfettered access to IEC facilities, staff, materials, documents, results database, computer records, polling records, etc (in user-friendly formats). *(Recommendation 36 from 2009)*
- More comprehensive and effective outreach activities are needed to recruit women as poll workers, body checkers and observers, as well as for civic and voter education. Outreach efforts could utilize local NGOs with existing networks in the communities. *(Recommendation 69 from 2009)*

- The location of polling centres should be reviewed, and private residences should not be used, especially those that are associated with or linked to candidates or government officials. The list of polling centres and stations should be established with security forces well in advance of election day and should not be subject to any increase. *(Recommendation 96 from 2009)*
- Procedures for the counting, tabulation and announcement of the votes cast for withdrawn candidates should be clearly established by the IEC well in advance of election day, to ensure clarity and to avoid accusations of procedures being introduced to advantage particular candidates. This information should be announced publicly and widely disseminated. *(Recommendation 104 from 2009)*
- The IEC should immediately make public complete data from all polling stations. Clear information should be given on which polling stations opened and which did not. All results received at the tally centre should be made publicly available, and then upon decision of the IEC each polling station result should be marked as approved by the IEC as a preliminary result. Those results not approved as preliminary should be accompanied by an explanation of the reasons for non-approval and any actions being undertaken. Procedures for investigation, audit and recount conducted by the IEC need to be clearly specified along with the possible sanctions, in advance of the election. *(Recommendation 107 from 2009)*
- Il results data should be fully publicly available in a user-friendly digital format (for web down-loading and analysis). *(Recommendation 109 from 2009)*
- The UN should continue to be responsible for, and should take a more active approach to the co-ordination of assistance. This should include regular meetings with all agencies undertaking technical assistance implementation in order to discuss and where possible agree upon respective areas of responsibility, activities, plans and inter-agency suggestions and recommendations. *(Recommendation 133 from 2009)*
- There should be simultaneous assistance with regard to both upcoming election and long-term organizational capacity development. Planning should be based on multi-year assistance, with a comprehensive review after each election to identify lessons learned and to plan further assistance. In addition to international advisors working with the IEC on implementation of particular electoral functions, there should be specific capacity development strategies and activities. There should also be a clear definition of the role of the advisors and the mechanisms for retention of knowledge in the recipient organization. *(Recommendation 135 from 2009)*

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**PRIORITY AREA 4: DEVELOPING AN INCLUSIVE VOTER REGISTER FOR SAFEGUARDING ELECTORAL INTEGRITY**

**A. International Principles**

The General Comment 25 states that:

“States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. *Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.*”<sup>43</sup>

**B. Recommendations from 2009 on Developing an Inclusive Voter Register for Safeguarding Electoral Integrity**

- To improve public confidence in the voter registration process and to ensure that a culture of impunity for voter registration fraud ceases, the IEC should consider conducting investigations into cases of voter registration fraud and, where appropriate, action should be taken against those staff and citizens who were responsible. *(Recommendation 38 from 2009)*
- A comprehensive review and audit of the voter register should be undertaken immediately by the IEC and an international expert group with a view to developing a strategic roadmap for the voter registration process.

This review and audit should include:

- Analyzing the 2008/2009 data and comparing these data to the 2004/2005 voter registration data to identify possible duplicate registrations. From these findings, determining whether the 2008/2009 data set is accurate enough to be used as a basis for a future comprehensive voter register.
- An assessment of the quality of the biometric enrolments so as to determine whether it would be appropriate to continue gathering data in this way for a future comprehensive voter register.

The resulting strategic roadmap should determine whether:

- To create a civil registry from which voters lists can be extracted and national ID cards would replace the voter registration cards in polling stations; or
- To continue a stand-alone voter registration effort.

*(Recommendation 41 from 2009)*

- It should be mandatory for all registrants, male and female, to have their photograph on their voter registration card (in order to prevent attempts at fraud). This should be

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<sup>43</sup> General Comment 25 paragraph 11.

facilitated by having female registration staff, having “women only” days at voter registration centres, female data-entry staff and other mechanisms to develop confidence in the process, such as a strong education campaign. (*Recommendation 42 from 2009*)

- Further efforts should be undertaken to prevent proxy voting by men for women and improve the integrity of the voting process for female voters. This could be achieved by requiring photos on voter registration cards. (*Recommendation 68 from 2009*)
- The IEC could produce gender disaggregated data for every district in order to monitor women’s participation, and develop appropriate and timely interventions. In particular, an emphasis could be placed on recording such data on voter registration, polling staff, accreditation issued, and the polling station numbers for women’s polling stations (to accurately determine women’s voter turnout and for investigation of fraud). (*Recommendation 73 from 2009*)
- The IEC could make additional efforts to provide voter education, registration and voting opportunities for the Kuchi population, with such resources subject to regular review. (*Recommendation 77 from 2009*)

## **PRIORITY AREA 5: ESTABLISHING ACCEPTED ELECTORAL BOUNDARIES**

### **A. International Principles**

Article 25 of the ICCPR provides for the right of citizens to

*“to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”* (emphasis added)

General Comment 25 elaborates the principle of equality and states:

*"The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely."<sup>44</sup>*

### **B. 2009 Recommendations on Establishing Accepted Electoral Boundaries**

- Consideration should be given to using the existing district boundaries for the district council elections, should they be widely considered acceptable and should the elections be held in 2010. (*Recommendation 43 from 2009*)
- Village boundaries delimitation should be properly planned, resourced and implemented. The technical work in this regard must commence in 2009 if the work is to be completed before the 2011 village council elections. (*Recommendation 44 from 2009*)

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<sup>44</sup> General Comment 25, paragraph 21.

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**PRIORITY AREA 6: BOLSTERING EFFECTIVE POLITICAL PARTIES**

**A. International Principles**

Article 22 of the ICCPR stipulates that

*1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*

General Comment 25 states that

*“The rights protected by article 25 require freedom to engage in political activity individually or through political parties and other organizations... The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process... Although the ICCPR does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by Article 25 and must guarantee and give effect to the free expression of the will of the electors...”<sup>45</sup>*

The Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, adopted by the UN General Assembly<sup>46</sup> states

*“persons belonging to minorities have the right to establish and maintain their own associations.”<sup>47</sup>*

The UN Human Rights Council adopted recommendations on minorities and effective political participation that states

*“Political parties based primarily on minority or regional affiliation should not be prohibited solely for this reason. Nevertheless, narrowly drawn restrictions may be placed on the advocacy of violence to achieve political goals or on political platforms that incite hatred or discrimination.”<sup>48</sup>*

**B. 2009 Recommendations on Bolstering Effective Political Parties**

- Stakeholders should reconsider whether the current SNTV system is the most appropriate electoral system for parliament, provincial councils and district councils. It could be timely to review whether an alternative electoral system that encourages the creation of political parties while protecting the rights of independent candidates would have more benefit for the development of a stable democracy. (*Recommendation 11 from 2009*)

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<sup>45</sup> General Comment 25 paragraphs 25, 26 and 21.

<sup>46</sup> UN General Assembly Resolution 47/135, 18 December 1992.

<sup>47</sup> Article 2, paragraph 4.

<sup>48</sup> UN Human Rights Council, Recommendations of the second session of the Forum on Minority Issues on minorities and affective political participation, paragraph 33, A/HRC/13/15, 2 February 2010.

- The new law on political parties should not overly restrict members of certain professions from joining parties and should not prohibit citizens from being a member of more than one party. (*Recommendation 12 from 2009*)
- Consideration could be given to introducing state-funded incentives to parties, based on membership numbers and/or percentages of votes gained. The level of such state funding should be high enough to be meaningful and to have a positive impact. This would facilitate and provide an incentive for candidates to operate through parties. (*Recommendation 13 from 2009*)
- The media could refer to parties for comment and hold debates on issues between political parties and broadcast them live on audio visual media. (*Recommendation 14 from 2009*)
- Strong support should be provided for the development of political parties: the development of party structure, manifesto preparation, outreach, observation strategies, complaints submission etc. through trainings and other events. (*Recommendation 15 from 2009*)
- Particular support could be given to promoting parties with multi-ethnic platforms and to engaging women and young people in political parties. (*Recommendation 16 from 2009*)
- Additional mentoring and technical assistance that goes beyond training workshops could be made available to women candidates to build constituency support, public speaking skills, fundraising skills, media time, networking, and civic awareness. Programmes to promote candidate activities could seek to target men as well as women to increase support for women candidates throughout the community. (*Recommendation 70 from 2009*)
- Technical assistance could be provided to successful female candidates to enhance their ability to serve their constituents and build positive public profiles, as security allows. This assistance could be mainstreamed as much as possible to help women representatives build working relationships with their male counterparts. (*Recommendation 71 from 2009*)
- Stronger training to parties, candidates and agents on the role and work of agents and harnessing information from agents could be provided. Polling agent observation strategies, the recording and use of results data, and complaints submission could also be included in such training. (*Recommendation 90 from 2009*)

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**PRIORITY AREA 7: REINFORCING DOMESTIC OBSERVATION AS AN ESSENTIAL TOOL FOR SCRUTINIZING ELECTIONS**

**A. International Principles**

General Comment 25 states that

*“Citizens take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves.”*<sup>49</sup> It also states that *“There should be independent scrutiny of the voting and counting process... so that electors have confidence in the security of the ballot and the counting of the votes.”*<sup>50</sup>

In its resolution on strengthening the role of the United Nations in enhancing periodic and genuine elections, the UN General Assembly reiterates that

*“transparency is fundamental basis for free and fair elections”, welcomes “the contributions made by [...] non-governmental organizations to enhance the effectiveness of the principle of periodic and genuine election” and acknowledges “the importance of international election observation for the promotion of free and fair elections.”*<sup>51</sup>

**B. 2009 Recommendations on Reinforcing Domestic Observation as an Essential Tool for Scrutinizing Elections**

- Capacity-building could be provided to women-focused NGOs to build civil society that can monitor and support women’s participation in the electoral process. (*Recommendation 74 from 2009*)
- The government could merge the Law on Non-Governmental Organizations and the Law on Social Organizations into one single law dealing with registration of non-government and non-profit, non-political entities. There should be a rationalization of the complex registration and reporting requirements (e.g. applications should all be submitted to one executive entity only) and regulations concerning restrictions on the receipt of foreign funding by social organizations should be reconsidered. (*Recommendation 80 from 2009*)
- The international community should continue to support the development of Afghan civil society through technical assistance on institutional capacity building and NGO management and by raising awareness about the importance of civil society (including among Afghan authorities). Assistance could be particularly targeted to provinces of the country where there is weaker civil society activity. (*Recommendation 81 from 2009*)
- Allegations of pressure and intimations of domestic observers should be thoroughly investigated and those responsible held accountable. (*Recommendation 82 from 2009*)

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<sup>49</sup> General Comment 25 paragraph 8.

<sup>50</sup> General Comment 25 paragraph 20.

<sup>51</sup> UN GA Resolution on Strengthening the role of the UN in enhancing periodic and genuine elections and the promotion of democratization, sixty-fourth session, A/RES/64/155, 8 March 2010.

- Rights and responsibilities of national and international observers as well as their rights to access all phases of the process and election-related documents should be clearly stated in the Electoral Law, rather than subject to IEC regulations. (*Recommendation 83 from 2009*)
- International observers and non-partisan domestic observers must maintain strict neutrality and impartiality. (*Recommendation 84 from 2009*)
- Accreditation of domestic observers by the IEC should be finalized as far as possible prior to election day to enable groups to plan more effectively for deployment. (*Recommendation 85 from 2009*)
- Domestic observers should strengthen their ability to submit complaints and to follow the complaints processes. (*Recommendation 86 from 2009*)
- Domestic observers could be provided with sustained technical assistance to strengthen their observation and analysis of polling station results, comparing their recorded results with IEC published results. Long-term organizational assistance could be provided to FEFA in addition to financial and technical support for election observation activities. (*Recommendation 87 from 2009*)
- The Electoral Law should be amended to clearly articulate the rights and responsibilities of agents, including the right to be present in polling station and the right to access certain types of information regarding the process. (*Recommendation 88 from 2009*)
- The IEC should ensure that agent accreditation is issued at least two weeks in advance of election day (requiring appropriate deadlines to process applications). (*Recommendation 89 from 2009*)
- Stronger training to parties, candidates and agents on the role and work of agents and harnessing information from agents could be provided. Polling agent observation strategies, the recording and use of results data, and complaints submission could also be included in such training. (*Recommendation 90 from 2009*)
- Assistance to the checks and balances on the electoral administration should be managed separately from assistance to the organization of elections to avoid conflicts of interest or perceptions of conflict of interest. This is particularly relevant for the ECC and domestic observers, and also applies to party candidate agents and the media. Similarly, support to civil society on civic and voter education may be strengthened by being separately managed. (*Recommendation 136 from 2009*)

## ANNEX 2: ACRONYMS

<b>EST</b>	Election Support Team ()
<b>ICCPR</b>	United Nations International Covenant on Civil and Political Rights ()
<b>ICERD</b>	International Convention on the Elimination of Racial Discrimination ()
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>UDHR</b>	Universal Declaration of Human Rights
<b>IEC</b>	Independent Election Commission
<b>PEC</b>	Provincial Election Commission
<b>ECC</b>	Electoral Complaints Commission
<b>PECC</b>	Provincial Electoral Complaints Commission
<b>MoD</b>	Ministry of Defence
<b>MoI</b>	Ministry of Interior
<b>NDS</b>	National Directorate of Security
<b>DIAG</b>	Disbandment of Illegal Armed Groups
<b>ISAF</b>	International Security Assistance Force
<b>ANSO</b>	Afghanistan NGO Safety Office
<b>AIHRC</b>	Afghan Independent Human Rights Commission
<b>JCMB</b>	Joint Coordination and Monitoring Board
<b>IDLG</b>	Independent Directorate of Local Governance
<b>CSO</b>	Central Statistics Office
<b>AGCHO</b>	Afghan Geodesy Cartography Head Office
<b>FEFA</b>	Free and Fair Elections Foundation of Afghanistan
<b>SNTV</b>	Single Non-Transferable Vote
<b>NID</b>	National Identity Document
<b>IDP</b>	Internally Displaced Person

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect human rights and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).