



Office for Democratic Institutions and Human Rights

ISLAMIC REPUBLIC OF AFGHANISTAN
PRESIDENTIAL AND PROVINCIAL COUNCIL
ELECTIONS

20 August 2009

OSCE/ODIHR ELECTION SUPPORT TEAM
FINAL REPORT



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TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
A.	SUMMARY RECOMMENDATIONS FOR 2010.....	2
B.	LONG-TERM ELECTION REFORM	4
II.	ELECTION SUPPORT TEAM (EST) OVERVIEW	5
A.	MANDATE AND OVERVIEW	5
B.	OPERATIONAL AND SECURITY ISSUES.....	6
C.	METHODOLOGY	6
D.	ACKNOWLEDGEMENTS	7
III.	POLITICAL AND SECURITY BACKGROUND	8
A.	POLITICAL CONTEXT AND SYSTEM OF GOVERNMENT	8
B.	SECURITY ENVIRONMENT.....	8
IV.	ELECTION-RELATED LEGISLATION.....	9
V.	THE ELECTORAL SYSTEM	12
V.	POLITICAL PARTIES	13
VII.	THE INDEPENDENT ELECTION COMMISSION (IEC)	14
VIII.	THE ELECTORAL COMPLAINTS COMMISSION (ECC).....	17
IX.	VOTER REGISTRATION AND BOUNDARY DELINEATION	20
A.	VOTER REGISTRATION	20
B.	DISTRICT DELIMITATION	23
X.	CANDIDATE REGISTRATION	24
A.	CHALLENGES TO CANDIDATE REGISTRATION.....	25
XI.	THE ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT.....	26
A.	OVERVIEW OF THE ELECTION CAMPAIGN.....	26
B.	ELECTORAL OFFENCES DURING THE CAMPAIGN PERIOD	28
XII.	THE MEDIA AND ELECTIONS	29
XIII.	THE PARTICIPATION OF WOMEN AND MINORITIES	31
A.	PARTICIPATION OF WOMEN	31
B.	PARTICIPATION OF MINORITIES AND SPECIAL NEEDS VOTING.....	33
XIV.	THE PARTICIPATION OF CIVIL SOCIETY AND OTHER STAKEHOLDERS.....	34
A.	PARTICIPATION OF CIVIL SOCIETY.....	34
B.	DOMESTIC OBSERVATION.....	34
C.	PARTICIPATION OF POLITICAL PARTY AND CANDIDATE AGENTS.....	36
XV.	CIVIC AND VOTER EDUCATION	36
XVI.	ELECTION DAY	37
XVII.	COUNTING AND THE PRELIMINARY RESULTS PROCESS.....	39
XVIII.	POST ELECTION DAY AND THE FINAL RESULTS.....	41
A.	INDICATIONS OF FRAUD.....	42
B.	THE AUDIT PROCESS	43
C.	ECC DECISIONS ON POLLING, COUNTING AND TALLYING OF PRESIDENTIAL RESULTS	44
D.	THE IEC AND THE FINAL FIRST ROUND PRESIDENTIAL RESULTS	45
E.	THE SCHEDULED SECOND ROUND OF THE PRESIDENTIAL ELECTION.....	46
F.	PROVINCIAL COUNCIL RESULTS	47
G.	POST-ELECTION ACTIVITIES.....	48

XIX.	CAPACITY BUILDING AND SUSTAINABILITY	49
A.	COMMITMENT TO INTERNATIONAL STANDARDS FOR ELECTIONS	49
B.	ELECTORAL CYCLE SUPPORT	51
C.	ELECTORAL CALENDAR	53
D.	INTERNATIONAL ASSISTANCE	53
E.	BALANCED SUPPORT BETWEEN ELECTORAL ELEMENTS	55
XX.	ANNEXES	56
	ANNEX 1: VOTER REGISTRATION.....	56
	ANNEX 2: DOMESTIC OBSERVATION.....	60
	LIST OF ABBREVIATIONS	64
	ABOUT THE OSCE/ODIHR	66

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OSCE/ODIHR Election Support Team Final Report

I. EXECUTIVE SUMMARY

Following an invitation from the Afghan government, 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 2009 Afghan presidential and provincial council elections “to support government and international efforts” and “to produce a report on the electoral process... including a set of recommendations” for the next elections in 2010 and beyond.¹

The 20 August presidential and provincial council elections in Afghanistan were the third since 2001, and the first to be Afghan-led. They were held under extremely challenging circumstances, including a volatile security environment that undermined the ability to hold credible elections. The lack of effective measures to prevent irregularities, widespread fraud on election day, and the failure of the Afghan-formed Independent Election Commission (IEC) to respond resolutely and efficiently to malpractices, resulted in a deep lack of confidence in the process.

Despite repeated calls for long-term and sustained electoral support after the 2004 and 2005 elections, insufficient attention was paid to this priority recommendation in the following years. As a result, an opportunity for a comprehensive voter registration exercise, legislative reforms and capacity-building of the IEC was missed. Although the international community provided both the financial resources and expert advice, this assistance came too late to maximize its impact. Furthermore, during these elections, the IEC failed to implement its tasks in an independent and impartial manner. Some of its actions and decisions raised doubts about its neutrality.

All of these serious deficiencies, combined with the high cost of the elections in terms of lives, resources and credibility, raise questions of the appropriateness and usefulness of holding elections under the dramatically challenging circumstances prevailing in Afghanistan in August 2009. With parliamentary and district elections coming up, serious political consideration should be given to the possibility of delaying them until at least the most basic conditions for democratic elections are more firmly in place.

A broad range of election stakeholders must take immediate and resolute actions so as to restore public confidence in the democratic process in Afghanistan. However, opportunities for reform before the 2010 elections are limited, particularly given the restriction on amendments to the election legislation one year prior to an election and the technical impossibility to convene a *Loya Jirga* to make constitutional amendments before district councils have been elected. This “legal deadlock” will have to be addressed at the highest

¹ PC Decision 891, available at: http://www.osce.org/documents/pc/2009/04/37105_en.pdf.

political level to allow the possibility of introducing significant and necessary reforms before the next elections.

A pro-active and comprehensive approach to fraud prevention and investigation is needed, which should draw relevant lessons from these elections and avoid past mistakes. The investigation should thoroughly look into all polling stations with suspicious results as well as into a random selection of polling stations. An extensive examination of a range of polling stations, not only those with extreme results and/or crude signs of fraud, is recommended.

This report attempts to contribute realistic and concrete recommendations on how to improve electoral processes, to help Afghanistan meet its international commitments in the field of elections, and to allow Afghan voters to regain trust in the process and enjoy fully their democratic rights.

A. SUMMARY RECOMMENDATIONS FOR 2010

Should elections be held in 2010, a number of actions are critical to avoid the most egregious problems of 2009.

1. Reform of the IEC

Strengthening the independence, impartiality, transparency, accountability and credibility of election administration as a whole, but most especially of the IEC, should be a priority.

- Independence

A key method of establishing an independent election commission is to ensure that there is a broad range of commissioners that are not aligned to one particular political position or office and in which the public and election stakeholders have confidence. Serious consideration should be given to broadening the appointment process for IEC commissioners before the next elections, to strengthen the independence and representativeness of the IEC, and to improve confidence in the electoral process. The appointment of IEC commissioners should not be left solely to the president but should be a shared responsibility among stakeholders. This could include the possibility of parliamentary input, review and/or confirmation of the candidates proposed by the president.

- Transparency

The insufficient level of transparency in the work of the IEC should be urgently addressed. IEC sessions should be open to representatives of political parties and observers to ensure full public scrutiny. All IEC decisions and regulations should immediately be publicly available on the IEC website. In regard to polling and counting, the IEC should be required to display all results data at the polling centre and to immediately publish on its website all results data entered at the tally centre. This should include basic reconciliation data such as the number of entries on the list of voters and the number of invalid ballots. The IEC should be required to publish a complete breakdown of final results by polling station and with full information on how decisions of the Electoral Complaints Commission (ECC) have been implemented. Greater attention should be given to ensuring that the public, parties, candidates, agents and observers are given full explanations well in advance of the procedures that will be undertaken at each stage of the election process.

- Accountability

The IEC, as the body ultimately in charge of the conduct of elections, is to ensure that the implementation of all aspects of the electoral process is in line with the law. The IEC has lost the public trust that any election administration body needs to be credible. Its commissioners should accept full responsibility for the deficiencies and fraud that occurred in these elections and draw the necessary conclusions. It is strongly suggested that the reappointment of the IEC occurs before the next elections in line with a broader appointment process to restore confidence in its work, independence and impartiality. In addition, as provided by law, the IEC should strictly implement the legal provision according to which decisions of the ECC are final. IEC decisions and actions should be subject to complaint to the ECC.

- Credibility

A thorough review of the work of the IEC as well as anti-fraud measures for all aspects of the elections should be considered to strengthen the credibility of the IEC and remove the culture of impunity that exists. For instance, a stronger system of staff supervision and management could be developed. The IEC should remove staff implicated in fraud and refer such cases for prosecution. The IEC and state security agencies should be more proactive in ensuring that their staff does not in any way obstruct observers or agents. The IEC should investigate signs of fraud and annul results where appropriate. The IEC should prepare additional resourcing to enable a comprehensive investigation into cases of possible fraud during the next elections.

Of particular importance are election standards detailed in international human rights instruments to which Afghanistan has acceded.² Adherence to such obligations should be the basis of international financial and expert assistance.

2. *Strengthening checks and balances in the electoral process*

Checks and balances in the electoral process should be reinforced, in particular by strengthening the role of the ECC and of domestic observers, including candidates and their agents.

- The Electoral Complaints Commission

According to the law, the ECC should be disbanded after the 2009 elections; however, OSCE/ODIHR EST suggests reconstituting it immediately and seeking to transform it into a permanent body. The basic structures and national staff should remain in place and the intervening period should be used to develop staff skills, improve organizational capacity and conduct outreach activities. The weaknesses in the current judicial structures in Afghanistan mean that the ability of the ECC to operate independently and according to the highest judicial principles is critical for effective election dispute resolution, oversight and confidence that any shortcomings in the administration of an election will be addressed. This is particularly important given the record of fraud and the culture of impunity which has developed. The ECC is also important in providing a model of good adjudicatory practice in Afghanistan for reference beyond the election process.

² This includes the International Covenant on Civil and Political Rights, acceded to by Afghanistan in 1983 (see below, Chapter XIX).

The ECC has a role to play between elections, and its capacity and resources should be developed before the 2010 electoral process. ECC functions in between elections could include:

- Providing continuous oversight for the full range of electoral activities such as voter registration and IEC decisions and activities;
- Contributing to electoral reform;
- Increasing stakeholders' awareness of the complaints process;
- Building stakeholders' knowledge about its role and functions; and
- Conducting post-election analysis of its work.

- Domestic Observation

Domestic observation serves as a vital part of a democratic election, acting as a basic safeguard through deterrence and detection of shortcomings and fraud. This can help promote confidence in the process and acceptance of results. It also provides important opportunities for citizens to learn about democratic institutions and to become actively involved in the democratic processes. Domestic observation is particularly important at the current time given the record of electoral fraud now established in Afghanistan and the consequent lack of public confidence in democratic elections. In addition, the limited access available to international observers in Afghanistan due to the security situation underscores the importance of more effective domestic observation.

Sustained technical assistance should focus on developing the organizational capacities of domestic observer groups and strengthening their methodology to monitor and report on elections in a professional and credible manner. Further focus and assistance should also be given to the training of candidates' agents.

3. *Priority of Election Reform on the Agenda of the Afghan Conference*

In order to foster political commitment and will for reform, and to agree upon principles and priorities of reform, it is recommended that high-level multi-stakeholder consultations take place on these immediate issues as well as on longer-term election reform at the upcoming international conference on Afghanistan planned for January 2010 in London.

B. LONG-TERM ELECTION REFORM

Longer-term electoral reform should also begin immediately. An enduring and consistent commitment is essential for reform to be effective. Short-term "fixes" cannot address the profound electoral problems in Afghanistan. Priority recommendations for longer-term development include:

- Legal reforms

Many legal reforms require constitutional amendments, including the rationalization of the electoral calendar which foresees elections every year but three between 2009 and 2027. Other areas of legal reforms include the election system. This should include consideration of whether the current single non-transferable vote (SNTV) system is the most appropriate electoral system for parliament, provincial councils and district councils, or whether an alternative electoral system that encourages the creation of political parties while protecting

the right of independent candidates would have more benefit for the development of a stable democracy.

- Voter registration

The creation of a reliable, complete and accurate voter register is crucial to ensure universal and equal suffrage and to safeguard against fraud. A comprehensive voter register which enjoys the trust of citizens is required, along with voter identification with photographs for all registrants, including women. This objective should therefore be an urgent priority on the electoral reform agenda. Voter registration and constituency delimitation are linked to the broader issues of civil population registration and cartography. The interdependence of these issues presents significant political and technical challenges that must be addressed to mitigate fraud, and for representation to be accurate and uncontested.

In the longer-term, two broad options for voter registration exist. First, voter lists could be extracted from a civil registration system. Second, a stand-alone voter register could be created and maintained by the IEC. Broad consultation should take place on the viability and sustainability of these two possible options so that a way forward can be clearly determined. Both options would require significant time and resources as well as a well-planned process to ensure that they are implemented between elections.

Electoral reform and development is an urgent matter that requires immediate political and technical attention. Failure to address the shortcomings of the 2009 electoral process and the weaknesses in the electoral framework risk further disputed elections that Afghanistan can ill afford.

II. ELECTION SUPPORT TEAM (EST) OVERVIEW

A. MANDATE AND OVERVIEW

In a letter dated 22 February 2009 to the then-OSCE Chairperson-in-Office, Ms. Dora Bakoyannis, the Minister for Foreign Affairs of the Islamic Republic of Afghanistan, Dr. Rangin Dadfar Spanta, requested that the Organization for Security and Co-operation in Europe (OSCE) support the upcoming presidential and provincial council elections. In response, the OSCE Permanent Council adopted Decision 891,³ which tasked the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to send an Election Support Team (EST) to Afghanistan “*to assist government and international efforts on the presidential and provincial council elections.*” Afghanistan is an OSCE Partner for Co-operation. The 2009 EST follows previous OSCE/ODIHR ESTs deployed during the 2004 presidential and 2005 parliamentary elections.

The OSCE/ODIHR EST was composed of twenty team members from eleven OSCE participating States and led by Mr. Toralv Nordbø. Following a small advance team deployment, the majority of experts arrived in country on 26 July and departed on 20 September. Due to the protracted election process, the OSCE/ODIHR EST continued to operate with a limited number of experts in Afghanistan until 4 November.

³ For the full text of the decision see: http://www.osce.org/documents/pc/2009/04/37105_en.pdf.

Although there was no permanent field presence outside Kabul, field visits were undertaken as security allowed and regular discussions were held with domestic and international observers with a field presence.

The OSCE/ODIHR EST has been designed to assist through the provision of additional expertise to supplement front-line technical assistance and to provide recommendations for future elections. Recommendations included in this report are formulated with a view to the expected 2010 parliamentary elections and subsequent elections. The OSCE/ODIHR EST covered a full range of electoral issues, including four areas of particular focus. These relate to: voter registration, domestic observation, the legal framework and capacity building. A more detailed analysis of voter registration and domestic observation is provided in annexes to this report, while issues related to the legal framework and capacity building are so all-encompassing that they are included throughout the document.

B. OPERATIONAL AND SECURITY ISSUES

The OSCE/ODIHR was tasked by the OSCE Permanent Council with the implementation of PC Decision 891, with the OSCE Secretary General providing support on security-related issues. Preparations for the deployment began with the participation of an OSCE/ODIHR representative in the European Union's (EU) initial exploratory mission to Afghanistan from 14-27 April. The Head of OSCE's Security Management participated in a follow-up visit from 8-13 June. Following the exploratory mission, the Chairperson of the OSCE Permanent Council circulated a project proposal outlining the format, scope, duration, composition and security arrangements for the OSCE/ODIHR EST.

A Memorandum of Understanding (MoU) was signed between the Government of Afghanistan and the OSCE Secretary General on 15 July, establishing the modalities for the deployment, including security. An exchange of letters took place between the OSCE and NATO Secretary Generals, defining *in extremis* support, in line with previous co-operation in 2004 and 2005. In addition, there was an exchange of letters with the United Nations Special Representative of the Secretary General (UN SRSG) in Afghanistan, defining the security support which the UN would provide, including relations between the OSCE/ODIHR EST and the UN Department of Safety and Security (UN DSS).

C. METHODOLOGY

The OSCE/ODIHR EST held regular meetings with election administration authorities, candidates, political parties, domestic observers, civil society organizations, security agencies, ministry officials and the media. The OSCE/ODIHR EST also met with various international agencies including international electoral assistance implementers,⁴ the UN SRSG, the diplomatic community, and international observer organizations.⁵ In addition the

⁴ Including the United Nations Development Programme (UNDP), International Foundation for Electoral Systems (IFES), the Asia Foundations (TAF) and the National Democratic Institute (NDI).

⁵ International observer missions included: the EU, the National Democratic Institute (NDI), the International Republican Institute (IRI), Democracy International (DI), and the Asia Network for Free Elections (ANFREL).

team followed electoral events, including training sessions, polling and counting,⁶ the tallying process and the audit process. The team attended press conferences and stakeholder meetings regularly.

The OSCE/ODIHR EST undertook four field visits, to the north (Faryab), the south (Helmand), the west (Herat) and the east (Logar). In addition, the OSCE/ODIHR EST obtained field information through FEFA,⁷ international observer groups and phone and video-conference contacts with counterparts in the field. Furthermore, post-election interviews were conducted with nearly 40 women in five provinces.⁸

The OSCE/ODIHR EST produced a series of non-papers that highlighted points for consideration and made recommendations.⁹ These were shared with the Independent Election Commission (IEC) and UNDP ELECT¹⁰ for their consideration. Copies were also sent to other key election counterparts. Additionally, assistance and feedback to FEFA were regularly provided. The OSCE/ODIHR EST worked closely with long-term technical assistance providers. It did not issue any press releases, and gave no media interviews or comments on the process.

D. ACKNOWLEDGEMENTS

The OSCE/ODIHR EST would like to thank the Government of Afghanistan, in particular the Ministries of Foreign Affairs and Interior, for its assistance and co-operation. The team also extends its gratitude to the IEC, the Electoral Complaints Commission (ECC), and other Afghan authorities, at all levels, for their support and assistance. The assistance of UNDP ELECT and other international implementers was very much appreciated. Likewise the OSCE/ODIHR EST wishes to thank the United Nations Assistance Mission in Afghanistan (UNAMA), the International Security Assistance Force (ISAF) and the Provincial Reconstruction Teams (PRTs) that facilitated field visits. The OSCE/ODIHR EST welcomed the support of the European Commission and the EU Election Observation Mission as well as the co-operation of other international observer missions. Finally the OSCE/ODIHR wishes to thank the OSCE participating States for their generous financial contribution to this project.

⁶ On election day, the OSCE/ODIHR EST visited more than 40 polling stations in Kabul province following voting and the count of presidential votes. On the day after the elections, the team followed the counting of provincial council ballots.

⁷ Free and Fair Elections Foundation of Afghanistan, the leading domestic observer organization.

⁸ Interviews were conducted with candidates, NGO staff, elected representatives and provincial heads of the Ministry of Women's Affairs.

⁹ The non-papers covered a range of subjects, such as: the value of a cut-off date for official withdrawals by candidates, transparency in the results process, considerations for a possible second round, audits and recounts, results analysis, further considerations for a possible second round, IEC implementation of ECC decisions and results transparency.

¹⁰ UNDP Enhancing Legal and Electoral Capacity for Tomorrow (UNDP ELECT).

III. POLITICAL AND SECURITY BACKGROUND

A. POLITICAL CONTEXT AND SYSTEM OF GOVERNMENT

The Islamic Republic of Afghanistan has a presidential system of government with a president elected for a maximum five year term with a two-term limit. As well as being the head of the executive branch, the president is head of State and Commander-in-Chief of the Armed Forces. The bicameral Parliament (the National Assembly) is composed of an upper house (*Meshrano Jirga*)¹¹ composed of 102 members, and a lower house (*Wolesi Jirga*) composed of 249 members directly elected for five-year terms from the 34 provinces. Provincial council members are elected for four-year terms. The 2009 presidential and provincial council elections are the third elections since the Bonn Agreement,¹² but are the first to be Afghan-led.

Presidential elections should be held every five years, 30-60 days before the end of the presidential term.¹³ However, on 29 January 2009 the IEC announced that elections could not take place within the period stipulated in the law¹⁴ due to a combination of factors including the security situation, seasonal weather, and a lack of preparation. The IEC established 20 August as the date for the presidential and provincial council elections. Following some dispute about this new date, the mandate of the incumbent president was extended to cover the delay in the election date. The Supreme Court considered the extension to be in line with constitutional provisions.

B. SECURITY ENVIRONMENT

The election process was hampered by an intense campaign of violence by the Taliban and other anti-government elements. Acts and threats of violence hindered turnout and reduced scrutiny of the elections, thereby increasing opportunity for fraud and decreasing the effectiveness of the fraud mitigation measures. Election day had the highest number of violent incidents of any day in seven years.¹⁵ At least 11 IEC election officials were killed in implementation of their duties by the end of election day, and there was violence targeted against candidates and their supporters.¹⁶

In the run-up to the 20 August elections, there was an effort on behalf of the foreign and Afghan military forces to secure as many areas as possible for election day. This, combined with a general deterioration in security, resulted in higher levels of foreign forces' fatalities than in all previous years since 2001, with similar increases for Afghan security personnel. Active combat took place and continues to occur in the southern and eastern parts of the

¹¹ Members of the *Meshrano Jirga* are appointed by the president and provincial councils (Constitution article 84). District council representatives have not yet joined the *Meshrano Jirga* as district council elections are yet to be held.

¹² Officially known as the Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions.

¹³ Constitution, article 61.

¹⁴ According to the Constitution the president's mandate should have expired on 22 May.

¹⁵ ISAF reported over 400 individual security incidents on 20 August.

¹⁶ For example in the week before election day, it was reported that four of Dr Abdullah's campaign workers were kidnapped in Badghis province, political party leader Burhanuddin Rabbani was attacked in Kunduz, and one of the candidates running for the provincial council in Jawzjan was shot dead.

country. Additionally, the more traditionally secure areas in the north and the west of the country also suffered increased terrorist activities. Security in the capital deteriorated, despite a particular effort on the part of national and international forces; in the week prior to the election there were two fatal attacks in Kabul.¹⁷ In addition to security incidents, threats and intimidation took a number of forms including soft tactics such as night letters and propaganda broadcasts, and hard tactics such as abductions and killing of candidates and election workers.

Afghan National Security Forces (ANSF) were responsible for the security of the elections, supported by international military forces. The Afghan National Police (ANP) provided the primary front-line of security with a second layer of support from the Afghan National Army (ANA). The National Directorate of Security also played a leading role in security. In some cases, local militias were utilized by the Ministry of Interior to provide additional security strength. However, their management, experience, mandate and neutrality was questioned. The IEC decided that it would only operate when ANSF personnel were present, and that local militias would not be sufficient.

Prior to the scheduled second round, the security situation deteriorated further, most significantly on 28 October when three militants conducted a suicide attack on a guest house in Kabul that resulted in eight deaths including those of five international UN staff. The Taliban claimed responsibility, stating that the intended targets were the internationals working on elections.¹⁸

IV. ELECTION-RELATED LEGISLATION

Afghanistan has ratified a number of international treaties whose provisions relate to elections, including the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the 1966 International Convention on the Elimination of all Forms of Racial Discrimination (CERD).

The legal framework contains many of the necessary provisions for democratic elections. Fundamental freedoms of peaceful assembly, association, expression and movement are guaranteed in the 2004 Constitution, as is the right to be elected by universal adult suffrage and the right to vote. The framework for the conduct of elections includes the 2005 Electoral Law and the 2004 Political Parties Law, the 2002 Law on Gatherings, Strikes and Demonstrations and the 2004 Media Law. In addition to these instruments, elections are regulated by a number of presidential decrees and numerous IEC regulations.

¹⁷ On Saturday 15 August, there was an attack against the ISAF HQ in the security zone containing the presidential palace, the US embassy and several government offices. Seven people were killed and a number of others wounded including ISAF troops. On 18 August, another suicide bomber drove into an IM convoy on the busy Jalalabad Road in Kabul killing ten and injuring over fifty military and civilians, including one ISAF soldier and two UN Afghan staff. Earlier on the same day a rocket impacted in the grounds of the presidential palace.

¹⁸ On the same morning two rockets also landed in the vicinity of the presidential palace and one in the Serena hotel. The intended target(s) are not certain but a Taliban statement claimed that the Serena hotel was also targeted because of the international election workers staying there.

Nonetheless, there are significant shortcomings in the legal framework. Election related legislation has remained limited with a number of provisions not set out in statutory law¹⁹ and an over-reliance on regulations issued by administrative bodies. The present legal framework remains grounded in presidential decrees approved during the transitional period prior to the establishment of the legislature that followed the 2005 parliamentary election. Although all these decrees as well as new election-related draft laws have been discussed in Parliament, disputes between the Parliament and the presidential office over interpretation of constitutional provisions have slowed the process of legal reform.

There is also some lack of legal certainty as the Constitution does not state which body has interpretive authority. While the executive and judicial branches assert that this authority lies with the Supreme Court, the Parliament and many jurists believe such powers lie with the Commission on the Supervision of the Implementation of the Constitution.²⁰

Strengthening the legal framework for elections has begun with drafts prepared for a new Electoral Law and an IEC Structure Law. Nevertheless, disputes between the Parliament and the presidential office over interpretation of constitutional provisions have slowed down the process of legal reform.²¹ For example, the proposed new law on the IEC structure was passed by Parliament but sent back for review by the president who questioned the constitutional nature of the provision that conferred on the Parliament a right to confirm the president's appointment of IEC commissioners.

Article 109 of the Constitution specifies that "Proposals for amendments of the Electoral Law cannot be included in the working agenda of the assembly during the last year of the legislative period." Following some difference of opinion on what constitutes "the last year",²² there appears to be agreement that the Electoral Law cannot be altered before the scheduled 2010 parliamentary elections. Differences of opinion remain over whether this provision also applies to changes to the law on IEC structure. Furthermore, changes to the Constitution would require the holding of a *Loya Jirga*.²³ This, however, does not appear technically possible at the current time as district council representatives are required to sit as part of the body and they have not yet been elected.

Recommendations:

1. Urgent constitutional and legal amendments are required to improve the conduct of future elections. Efforts should be made to address politically the "legal deadlock" blocking such reforms, i.e. the legal infeasibility of changes to the Constitution without district council representatives and the constitutional block on reforms within a one year time-frame of elections.

¹⁹ A number of areas, including transparency of results, campaign finance requirements and campaign conduct would benefit from consistent legal standards but remain to be established in statutory law.

²⁰ The Commission on the Supervision of the Implementation of the Constitution is envisaged in article 157 of the Constitution and is yet to be established. Its members are to be appointed by the president and confirmed by the Parliament. The relevant law is awaiting publication in the Official Gazette.

²¹ Draft bills that have been slowed down include a new Electoral Law, a law on the structure of the IEC, a political parties law, a law on local governance and a media law.

²² It was argued by the Speaker of the *Wolesi Jirga* and others that the current Parliament is in its fourth year of the legislative period, since its inception was at the beginning of 2006.

²³ Constitution, article 111.

2. Serious consideration should be given to the timing of the next elections, with the possibility of delaying future elections to allow for election reform.
3. The Constitution should be amended taking into account international standards, lessons learned from the 2009 elections, and recommendations from expert and observer missions. International technical assistance should be made available. 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.
4. The new draft Electoral Law should be revised taking into account international standards, lessons learned from the 2009 elections, and recommendations from expert and observer missions. International technical assistance should be made available.

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.
5. 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.
 6. 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.
 7. Legislation should be passed as soon as possible establishing the functions and powers and resource requirements of constitutionally mandated provincial and district councils.
 8. Constitutional and legislative reforms should result from a consultative process that involves the IEC, civil society, political parties and the international community to promote confidence in future electoral processes.
 9. Attention should be given to improving mechanisms for legislative development. This should include working with key jurists in Afghan institutions that have an influence on decisions or a decision-making role in the legal field, including parliamentarians, and representatives of the parliamentary secretariat, the president's office, the Ministry of Justice and the Supreme Court.

10. Parliament should be supported to be a more effective body. Parliament should be particularly supported in addressing electoral reform, especially in regards to election-related legislation.

V. THE ELECTORAL SYSTEM

Elections for the office of President are based on a single national constituency, with a second round required if no candidate receives more than 50 per cent of the valid votes cast.²⁴ For other elections including for the *Wolesi Jirga* (parliament), provincial and district councils, a single non-transferable vote (SNTV) system with multi-member constituencies is stipulated in the Electoral Law. 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).

While this is argued to be simple for the voter, the SNTV system has profound disadvantages. It significantly hampers political party development and therefore weakens the effective operation of elected bodies. It also results in a high number of wasted votes.²⁵ The requirement for voters to mark for a single candidate in a multi-member constituency makes it extremely difficult for parties to work out how to divide their potential votes to prevent one of their candidates being elected with an excessively high number of votes and therefore the other candidates of the party not being elected. Conversely the party's votes may be overly divided between too many candidates resulting in none of their candidates being elected.

Under SNTV with large constituencies there can be very large numbers of candidates which can make for unwieldy ballot papers. For example, in Kabul there were over 520 provincial council candidates on a ballot that took the form of a nine page booklet. This is complex for voters as well as being expensive and difficult to administer.

The SNTV system remains in use despite its acknowledged shortcomings. Although there has been historic aversion to political parties (considered the principal reason for the original choice of SNTV), this is thought to be waning. Following a consultation in 2007 there was parliamentary discussion about a new electoral system with a proposal for a modified mixed proportional system. However this was not agreed and the SNTV system remains in the new draft Electoral Law currently under consideration.

Recommendation:

11. 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.

²⁴ Constitution article 61 and Electoral Law article 18.2.

²⁵ Wasted votes are votes that do not directly impact the election outcome. Under the SNTV system, in an election such as in Kabul province which had over 520 candidates for the 34 provincial council seats, votes cast for the 486 other candidates who are not elected would be considered as wasted, as well as those votes for elected candidates in addition to that necessary to win a mandate.

V. POLITICAL PARTIES

While political parties play an important role in many democracies, parties have for long time been associated with conflict and ethnic/military factions in Afghanistan and currently have a marginalized role. As stated above, under the SNTV system, parties must undertake a prohibitively and unrealistically high degree of planning and strategizing in order to estimate a suitable number of candidates for a constituency and encourage their supporters to divide their votes accordingly. Instead of promoting party growth, the SNTV propagates fragmented elected assemblies. This is seen by many stakeholders as profoundly inhibiting parliamentary performance and therefore undermining the separation of powers necessary for effective democratic functioning.

The right to form political parties is established in article 35 of the Constitution on condition that parties do not contravene the holy religion of Islam and the principles established in the Constitution. Parties cannot be based on military or quasi-military organizations, affiliated with foreign political parties or sources, or founded on tribalism or sectarianism. Parties are required to have accountable financial resources. The current Political Parties Law is overly restrictive in prohibiting security personnel and certain members of the legal profession²⁶ from being members of political parties.²⁷ A new draft Political Parties Law has been passed by Parliament and is awaiting presidential approval.

One hundred and eight parties were registered with the Ministry of Justice prior to the 2009 elections.²⁸ However, fewer than 40 parties supported candidates.²⁹ For the provincial council elections, more than 80 per cent of the 3,197 provincial candidates were registered as independent.³⁰ On the presidential ballot of 41 candidates, seven had party names listed.

A number of candidates referred to the disadvantages of running independently, namely difficulties with fund raising, mobilizing supporters, recruiting agents as well as reaching out to the public. Yet typically candidates chose not to align with a party. A July 2009 NDI report³¹ noted that:

“Many parties remain regionally, ethnically, and religiously based and are reliant on one or two strong personalities. Only a handful of parties have developed an identifiable policy platform and ideology. Some parties are well-established but lack legitimate funding sources, while others have very little money and great difficulty raising funds. Internal organization structures are weak due to a combination of elements including a lack of resources, limited input from the wider membership, and a lack of organizational

²⁶ According to article 13.3, judges and prosecutors “shall not be members of political parties during their time in office.”

²⁷ 2004 Political Parties Law, article 13. United Nations Human Rights Committee, General Comment 25, paragraph 25 states that: “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.”

²⁸ An increase from the 86 parties that were registered ahead of the 2005 parliamentary elections.

²⁹ A party or coalition, could “endorse” a candidate, although a presidential candidate was still required to gather 10,000 signatures.

³⁰ NDI “Political Parties in Afghanistan”, July 2009, page 11.

³¹ IBID.

experience and strategy. There is a weak connection between the parties and their members that have been elected to the Wolesi Jirga or the provincial councils. The rank and file party members have very little influence on the direction and operation of the parties.”

Recommendations:

12. 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.
13. 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.
14. The media could refer to parties for comment and hold debates on issues between political parties and broadcast them live on audio visual media.
15. 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.
16. Particular support could be given to promoting parties with multi-ethnic platforms and to engaging women and young people in political parties.

VII. THE INDEPENDENT ELECTION COMMISSION (IEC)

The 2004 and 2005 elections were administered by the Joint Election Management Body (JEMB), formed of both UN and Afghan representatives. However, in practice the elections were predominantly run by international experts. In contrast, the 2009 elections were run by Afghans, albeit with substantial support from international advisers.

In 2006, the president appointed seven Afghans as IEC commissioners for five-year terms as part of the transition from the JEMB to the IEC. The current legislation does not require any consultation or parliamentary confirmation. The lack of a broader process of consultation has resulted in allegations of the IEC being biased towards the incumbent President. Parliament passed a draft IEC Structure Law, which if enacted would broaden the appointment process.³² The IEC commissioners hold closed meetings with no public record of discussions or decisions. Transparency problems have been further emphasized by the lack of some essential information on the IEC’s website.³³ The appointment mechanism of the IEC and an

³² The president’s office has argued that IEC commissioner appointment power should remain exclusively with the president whereas Parliament has argued that the *Wolesi Jirga* should be required to give a vote of confidence in the proposed appointments.

³³ For example, on 18 August, the IEC issued a press release stating that an official date for candidate withdrawal had been set for 07:00 that same morning. To date the press release is not on the IEC website, nor is any accompanying decision by the IEC commissioners.

insufficient level of transparency in its work have led to a lack of confidence in the election administration and a perception of partiality in favour of President Karzai.

The IEC secretariat is comprised of nine departments overseeing various election administrative functions. However some functions typically found in election management bodies are missing or weak in the IEC. For example the IEC has not established a structure for taking or responding to complaints regarding IEC administrative actions and decisions, thereby precluding opportunity for implementation of administrative remedies where reasonable and appropriate.

The secretariat is headed by a Chief Electoral Officer who is appointed by the president, thus reinforcing the dominance of the incumbent President over key posts in the election administration. Other senior secretariat personnel are hired through the civil service commission while subordinate staff is hired directly by the IEC. There are 400 permanent staff members at the IEC secretariat who are all paid from the national budget. For this election, permanent staff was appointed to all 34 provinces; however, they were hampered by the lack of permanent premises and inadequate communication resources.

Support was given to the IEC by 190 UNDP ELECT embedded advisory staff and others from organizations such as IFES and TAF. Strengthening the capacity of the IEC has repeatedly given way to the pressing urgency of election delivery in condensed timeframes. As a result, the distinction between “doing” and “mentoring” among some international advisers has not been fully realized. At this stage, the degree of professional maturation among IEC secretariat departments varies significantly and in some key departments full reliance on international advisors and technical support remains particularly pronounced.

Recommendations:

17. 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.
18. 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.
19. In order to restore confidence in the election administration before the 2010 elections, a new appointment of IEC commissioners should be immediately conducted, based on a broad consultation mechanism.
20. The insufficient level of transparency of the IEC should be addressed urgently. IEC sessions should be open to representatives of political parties, observers and accredited journalists. IEC decisions should immediately be publicly available.
21. 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.

22. 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.
23. Greater attention should be given to ensuring that the public, parties and candidates, agents and observers are given full explanations well in advance of the procedures that will be undertaken at each stage of the election process. Particular emphasis is needed on the plan for tallying, results announcement and investigation.
24. 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.
25. 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.
26. 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 voter registration unit should also be expanded. 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.
27. 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.
28. A technical assessment should be undertaken of hardware and software. This includes current utilization, opportunities for streamlining and rationalization and future needs. A particular focus should be made to ensure there are adequate project management

applications and the necessary financial management software to more closely align with UNDP ELECT systems (to which Afghan staff has no access).

29. 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.

VIII. THE ELECTORAL COMPLAINTS COMMISSION (ECC)

The ECC is a temporary³⁴ administrative body responsible for dealing with electoral offences, complaints and challenges. Its sanctioning powers include remedial action, fines, recounts, re-polling, removal of a candidate, invalidation of ballot papers, and prohibiting of offenders from working for the IEC.³⁵

There is no explicit provision for submitting appeals of ECC or IEC decisions to the judiciary, as provided for in international legal instruments;³⁶ article 52.6 of the Electoral Law establishes that “decisions of the ECC shall be final.” The shortcomings in the current judicial structures in Afghanistan mean that the ability of the ECC to operate independently and according to the highest judicial principles is critical for effective dispute resolution and adjudication, oversight and confidence that any shortcomings in the administration of an election will be addressed. This is particularly important given the record of fraud and the culture of impunity which has developed. The ECC is also important in providing a model of good adjudicatory practice in Afghanistan for reference beyond the election process.

The ECC is composed of five ECC commissioners: three internationals appointed by the UN SRSG, and two nationals appointed by the Supreme Court and the Afghan Independent Human Rights Commission (AIHRC).³⁷ ECC staff was predominantly Afghan.³⁸ It was reported that at times staff and possibly ECC commissioners experienced pressures and were subject to intimidation.

Stakeholder opinions vary on the appropriateness of having all Afghan ECC commissioners. While this is ultimately desirable, various points should be considered before committing to such an arrangement:

- Whether there is broad stakeholder confidence in having all Afghan ECC commissioners.
- Whether an appointment mechanism that is representative can be established. It would not be advisable to extend the currently employed arrangement for the IEC of presidential appointees, as this clearly lacks stakeholder involvement and results in a lack of

³⁴ Article 52.7 of the Electoral Law stipulates that the ECC should discontinue its work 30 days after the certification of results.

³⁵ Electoral Law article 54.1.

³⁶ ICCPR, Article 2, paragraph 3 (b) states that, “To ensure that any person claiming such a remedy shall have his right thereto 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.”

³⁷ Electoral Law article 52.1.

³⁸ At any one time the ECC had no more than 20 international advisors.

confidence, and arguably independence. In addition to the Supreme Court and the AIHRC currently responsible for nominations, other institutions such as Parliament could be involved.

- Whether there is adequate legislation, requiring transparency of procedures and decisions (with reasoning) to be publicly available.
- Whether there should be a phased approach with a period of one or more ECC commissioners being international and the extent of their powers (for example, equal or over-ruling).
- The extent of international support available to assist the ECC to fully implement its mandate to the highest standards.
- How mechanisms can be developed to protect ECC commissioners and staff from pressure and intimidation. For example, strong transparency measures including international counterpart presence could be a pre-requisite. Full security service measures to protect ECC commissioners should also be in place.

For the 2009 elections the ECC commissioners and management, operational and field structures were established very late. The much delayed appointment of the commissioners resulted in their first meeting only taking place on 26 April. The reduced time made establishing procedures, hiring a skilled staff and establishing provincial structures even more challenging. There was limited opportunity for building the capacity of local staff to conduct investigations that conform to due process and to provide effective remedy. The limited time also restricted the public information campaign the ECC could undertake to inform stakeholders of the complaints process and the dispute resolution mechanism. Furthermore, there was no provincial presence during candidate registration: therefore, challenges to candidacy were lodged with the provincial IEC offices for forwarding to the ECC.

The respective competencies and authorities of the IEC and ECC became subject to varying interpretations during the post-election day period (see *Post Election Day and the Final Results* section). The IEC interpreted the Electoral Law as not providing for IEC powers of annulment and therefore deferred invalidation decisions to the ECC. This meant in effect that the ECC acted as the first and last instance for decisions on annulment, thereby removing opportunity for appeal.

Recommendations:

30. With the impending 2010 election, the ECC should immediately be reconstituted after it closes following the 2009 election. The basic structures and national staff from the 2009 elections should remain in place and use the intervening period to focus on the following areas:
 - a) Developing its own capacity. This is particularly important given the current weaknesses in Afghanistan's legal branch and the consequent legal knowledge and experience deficit within the country. 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.³⁹ Oversight could also be provided of by-elections, should they ever be held.
 - 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).
31. 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.
32. 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.
33. 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.

³⁹ This is currently potentially covered under article 53.r of the Electoral Law which refers to electoral offences as covering violations of “provisions of this Law or other legal instruments governing the electoral process.”

34. 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.
35. 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.
36. The ECC should have full unfettered access to IEC facilities, staff, materials, documents, results database, computer records, polling records, etc (in user-friendly formats).
37. 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.

IX. VOTER REGISTRATION AND BOUNDARY DELINEATION

A. VOTER REGISTRATION

The 2001 Bonn Agreement requested “the United Nations to conduct as soon as possible a registration of voters in advance of the general elections...”⁴⁰ For the 2004 elections, 10,942,989 voters were registered. Prior to the 2005 elections the JEMB conducted a voter registration update, resulting in a total of 12,469,238 voter registration cards issued by the time of the 2005 elections (55.6 per cent for males and 44.4 per cent for females). Questions were raised about the abnormally high percentage of women registered in 2005, particularly in the more conservative south and southeast of the country, and the consequent potential for fraud.

These two voter registration drives were deficient in that they did not identify potential duplicate registrations and did not assign voters to polling centres. These two issues were specifically addressed in requirements for a joint civil and voter registration in 2006.⁴¹ A pilot project was undertaken by the IEC and the Ministry of Interior with support from UNDP and IFES. Nevertheless, in July 2007, the presidential cabinet decided to delink civil and voter registration.

In August 2008, the IEC announced that it would conduct a voter registration update for the 2009 elections,⁴² with the intention that the data gathered could serve as a basis for a more

⁴⁰ Annex 3, December 2001.

⁴¹ The London Conference (31 January - 1 February 2006) at which the Government of Afghanistan and the international community agreed to achieve benchmarks including “a permanent civil and voter registry with a single national identity document”, Annex 1, Benchmarks and Timelines.

⁴² IEC press release, 20 September 2008.

extensive voter registration process in the future. The exercise was open to all, but was aimed at those who would turn 18 by election day, who lost their old voter registration cards, or who were returning refugees or IDPs.⁴³ The exercise ran in four phases from October 2008 till February 2009 with mobile registration continuing in many districts up to July 2009. The process resulted in the issuance of 4,720,906⁴⁴ new voter registration cards. During this exercise, for the first time new registrants were linked to a polling centre, photographs were added to voter registration cards (although they were not mandatory for women) and fingerprints and photographs were captured for biometric processing.⁴⁵

The biometrics-based mechanism was intended to detect multiple registrations among the new records. However, late processing of the new registrations due to various organizational, procurement and technical problems did not allow for a thorough cross-checking of data to prevent voter registration fraud. These new records could not be matched with the inherited 2004-2005 records and it was impossible to determine whether holders of old voter registration cards had re-registered and received another voter registration card. Due to the incomplete data entry of the 2008/2009 voter registration data, the quality of the biometric enrolments is not yet clear and therefore the extent to which this data is reliable enough as a basis for a future comprehensive voter register still needs to be determined.

It also appears that there was pressure on IEC staff to inappropriately issue voter registration cards. The total number of voter registration cards distributed in the country since 2004 is now over 17 million. This figure exceeds the generally accepted number of eligible voters, which is thought to be in the region of 15 million. The failure to respond to alleged misconduct may have contributed to the culture of impunity and subsequent irregularities by some IEC staff on election day.

Domestic observers⁴⁶ reported problems such as multiple registration, proxy registration of women (facilitated by women registrants not being required to have their photograph taken), under-age registration and partisan behaviour by some IEC voter registration staff that were not addressed by the IEC.

In the absence of a census or basic population data, voter registration numbers are apparently considered to be a measure of individual support or community strength. Voter registration cards could be seen as desirable for a group or community to demonstrate a potential vote bank. Furthermore, without any national identity documents, the voter registration cards are also reported to be useful for individuals as a form of identification. A census is urgently required to accurately determine the number and location of the Afghan population.

Women's registration is of particular concern given the practice of allowing women to choose not to have their photos taken for the voter registration cards. In some of the most

⁴³ Registrants were asked to provide a prescribed document; however if the registrant lacked one of these, the voter registration centre chairperson could confirm the identity or ask the registrant to bring a confirmation paper from a village elder.

⁴⁴ IEC press release, 12 July 2009 including those registered by the continuous and mobile voter registration until 11 July 2009.

⁴⁵ Biometrics is defined as the measurement of physical characteristics, such as fingerprints, DNA, or retinal patterns, for use in verifying the identity of individuals. It is used as an additional safeguard against voter registration fraud.

⁴⁶ Fair and Free Election Foundation of Afghanistan (FEFA), May 2009.

insecure, and traditionally conservative, provinces the recent voter registration update resulted in improbably high levels of female registration. In Logar, for instance, more than twice the number of voter cards was issued to women than men (approximately 36,000 women to 14,000 men). The same was true of Nuristan (31,000 to 12,000).

Since only the most recently registered voters have been assigned to polling centres, no voter lists were printed for use in polling stations on election day. Instead, voters were required to show their voter registration card, whose number was to be recorded in a list of voters to be filled out in each polling station.⁴⁷ The lack of pre-prepared voter lists compromised operational planning as it was not possible to know how many ballots were needed at each polling station, thus increasing opportunity for fraud and decreasing the ability to identify fraud when it occurred.⁴⁸

The data entered could be used in post-election examination of electoral malpractice; for example, entries recorded in the list of voters in a polling station could be compared with the new database created during the voter registration update as a check on the accuracy of polling station activities, although to date such activities have not taken place.

Recommendations:

38. 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.
39. 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:

- a) 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.
 - b) 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.
40. The resulting strategic roadmap should determine whether:
 - a) 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
 - b) To continue a stand-alone voter registration effort.
 41. Should elections be held in 2010, the IEC should consider one of the two following options in advance:

⁴⁷ All voters were able to vote at any polling station within the province in which they had registered.

⁴⁸ A voters list that details which voters may vote at a polling station reduces the number of excess ballots in circulation and presents an extra obstacle for individuals attempting to cast multiple ballots.

- a) Conduct a further registration update in a manner similar to 2008/2009, which assigns voters to specific polling centres. If undertaken, it should be based on lessons learned from the last exercise and the resulting data should be compared to the audited 2008/2009 data set to minimize multiple registrations.
 - b) Not require voters to be registered for the 2010 elections, and possibly the 2011 village council elections as well. Another voter registration update in 2010 would allow voters who lost their card or who turned 18 since the last update to register, but would not result in the development of a voter list in polling stations to prevent fraud. As there is little practical difference in an election with a registration update that does not result in a voter list or an election without a registration update, registration efforts could instead be focused already on developing either a complete standalone register or a civil registry, providing a longer-term outlook for completion. Procedures would, however, need to be developed to address issues related to minimum voting age and provincial/district boundaries.
42. 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 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.

B. DISTRICT DELIMITATION

While there are pressures for revision of district boundaries, the existing 364 districts (plus 34 provincial capitals) are regarded by some national and international stakeholders as an adequate basis for the holding of district council elections due in 2010. Furthermore, within current timelines no delimitation exercise seems possible before the 2010 elections given the lack of technical preparations.

The Independent Directorate for Local Governance (IDLG) stated that complete delimitation of villages must be undertaken before village council elections can take place. It is unclear whether any technical preparations have been undertaken or are planned. There is also confusion with respect to institutional responsibility with, *inter alia*, the IDLG, IEC, AGCHO,⁴⁹ and the Central Statistics Office appearing to be involved.

Recommendations:

43. 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.
44. 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.

⁴⁹ Afghan Geodesy Cartography Head Office.

X. CANDIDATE REGISTRATION

Legal requirements to stand as a candidate are established in articles 62 and 85 of the Constitution and in articles 14 and 15 of the Electoral Law. Article 62.1 of the Constitution requires presidential candidates to be Muslim, and this restricts the right of non-Muslim Afghans to run for office.⁵⁰

A total of 44 candidate nominations were submitted for the presidential election and 3,324 for the 420 provincial council seats. The IEC published the list of candidates without actively addressing the legal requirements for candidates not to “practically command” or “be members of an unofficial military force or armed group.”⁵¹ Instead, any exclusion on this basis was left to the challenge process through the ECC (see below). After the ECC had concluded with challenges to candidacy, the IEC published a final list of 41 presidential candidates and 3,196 provincial council candidates. National and international interlocutors raised concern that a significant number of candidates had associations with illegal armed groups, which are not conducive to democratic leadership thereby demeaning the electoral process and elected institutions.

Although the start of the campaign period was the deadline provisionally established for withdrawal, a number of candidates subsequently withdrew their candidacies before 20 August, often in explicit support of other candidates. However, only five out of twelve presidential candidates who publicly announced their withdrawal followed the formal procedures and therefore the other seven technically remained registered as candidates. The IEC did not issue clear instructions with a definitive deadline for withdrawal until two days before the election, setting the deadline for that same day. Unofficial and late withdrawals increased the likelihood of voter confusion on election day and uncertainty over how final percentages of valid votes would be calculated.⁵² This is particularly important in the presidential race given the 50 per cent threshold requirement for a first round victory.

Recommendations:

45. The legal framework should be amended to allow for Afghans of all religions and beliefs to exercise their fundamental right to run for the presidency.
46. The new Electoral Law should clearly define the procedures for the candidates to withdraw and establish a deadline date for withdrawal that falls sufficiently in advance of election day to allow the voters to make a fully informed choice. Ideally the deadline for withdrawals would be before the printing of ballots. The new Electoral Law should

⁵⁰ Article 25 ICCPR, United Nations Human Rights Committee, General Comment 25, paragraph 10: “Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.”

⁵¹ Electoral Law article 15.3.

⁵² The IEC decided that votes cast for the candidates who had officially withdrawn from the race should be counted and recorded on the polling station results sheets in the same manner as the votes cast for all other candidates. The IEC centrally announced these votes in the releases of the polling station results data in a special category of “votes invalidated due to candidate withdrawal.”

specify whether ballots cast for officially withdrawn candidates but whose names are still on the ballot are counted as valid votes.

47. The IEC could provide detailed information to potential and actual candidates about the legal and practical requirements and implications of contesting an election. This could include information on: potential costs, security arrangements, organizing and accrediting agents, withdrawing etc. Information should also be given by the ECC on complaints mechanisms and potential sanctions.
48. An outreach campaign could be conducted to the general public to explain the legal requirements for and restrictions on candidacy.

A. CHALLENGES TO CANDIDATE REGISTRATION

Following the IEC publication of the provisional candidates' list, a period for challenging the eligibility of candidates was opened between 16 and 21 May. The IEC decided not to actively assess candidate nominations for compliance with the Electoral Law, particularly with article 15.3 which bars candidates who practically command or are members of illegally armed groups. Therefore the primary responsibility for assessing compliance was de facto passed to the ECC.

The ECC referred to the programme for Disbandment of Illegal Armed Groups (DIAG)⁵³ which is responsible for identifying illegally armed groups and their key members. The Disarmament and Reconciliation Commission (DRC)⁵⁴ identified 116 individuals included on the DIAG list who had submitted nomination papers. This information was forwarded to the ECC who then informed the identified candidates about their inclusion on the DIAG list and afforded them an opportunity to respond.

The DIAG process has been and remains controversial in the electoral process. It is regarded as not sufficiently transparent and ineffective at removing the worst offenders, thus legitimizing dubious characters with elected positions. There is merit in extending grounds for candidacy exclusion to include offences relevant to transitional justice, such as barring those responsible for human rights violations from running as a candidate. However, to be effective such grounds for candidacy exclusions would require an effective mechanism for establishment of guilt with full regard to due process. Such mechanisms are not yet established.

In total the ECC received 302 challenges to nominations and rejected 57 nominations, three of which related to the presidential election and 54 to provincial council nominations. Fifty four of these were disqualified for links with illegally armed groups.⁵⁵ A further 90

⁵³ The DIAG process was authorized by a series of presidential decrees, in particular Decree No. 50 of July 2004 which declared illegal all groups and remnants that did not integrate into the Afghan security forces. A subsequent vice-presidential directive established the structure and partners of the DIAG program. DIAG was then incorporated into the Compact adopted during the international conference on Afghanistan in London in 2006.

⁵⁴ The DRC is composed of representatives of the Ministry of Defense, Ministry of Interior, NDS, ISAF and UNAMA.

⁵⁵ One of the 54 was also disqualified for a previous felony conviction.

candidates withdrew their nominations during the period of review and two more were disqualified because they had not resigned from public office.

Recommendations:

49. The IEC should take primary responsibility for assessing candidate nominations for compliance with the Electoral Law.
50. 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.
51. 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.
52. 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.

XI. THE ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT

A. OVERVIEW OF THE ELECTION CAMPAIGN

The Constitution guarantees freedom of peaceful assembly, movement and expression, and these rights provide the basis for the regulation of the campaign of candidates and political parties. The IEC published an election campaign regulation establishing the campaign period and setting out basic principles for the campaign,⁵⁶ including a ban on the use of language or campaign material that incites violence or ethnic or religious divisions.

The volatile security conditions in many parts of the country had a significant impact on campaign activities. Numerous threats and attacks on both military targets and the civilian population as well as direct attacks on candidates and their campaigns were recorded (particularly in the south and south east). As a result, freedoms of assembly and movement

⁵⁶ As required under article 38 of the Electoral Law.

for candidates and the public were severely restricted.⁵⁷ Despite this, four of the main presidential candidates held campaign rallies across the country that were peaceful and without major incident. Hundreds and sometimes thousands of supporters turned out for these events.

All candidates were able to request state resources in support of their campaigns, including police protection and military helicopter transport to attend public rallies in insecure areas.⁵⁸ However, some candidates complained that there was no organized request system with only certain candidates being authorized access to these resources. Others complained about the lack of resources to mount an effective campaign strategy. There were limited discussions of candidate platforms. Policy driven debate was encouraged in the round table programmes commissioned by the Electoral Media Commission (EMC).⁵⁹ While candidates often emphasized ethnic and tribal loyalty there were attempts by some candidates to cross such ethnic divides.

On 25 March, the IEC approved the Regulation on Political Campaign Finance which requires presidential candidates to provide information on their assets and campaign contributions. There was no equivalent for provincial council candidates. Candidates were required to submit regular reports of their contributions, and failure to do so resulted in ECC fines to eight presidential candidates after the failure to meet the 18 July deadline.⁶⁰

Recommendations:

53. The IEC together with relevant government ministries should establish a more realistic and transparent system for the use of state resources, including security resources, for campaign activities. The likely limits of resources available should be clearly communicated prior to the start of the candidate nomination period.
54. Once the final list of candidates is announced, the IEC could communicate to the candidates a list of deadlines, including for the submission of campaign finances. The IEC should immediately follow up on any failure to submit financial information. This should be extended to candidates for all races, not just the presidential race.
55. Candidates for provincial council seats could be provided with support and training in development of campaign platforms, strategic planning, and the legal and electoral framework. Campaigns could also be encouraged to place a strong emphasis on denouncing fraud, condemning violence and ensuring that supporters do not contravene the principle of non-intimidation. Consideration also could be given to making it mandatory for candidates to attend a brief seminar on these matters and to signing an accompanying code of conduct for the election campaign.

⁵⁷ Op. cit. General Comment 25, paragraph 12: "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected."

⁵⁸ Letter No. 952 14/04/1388 issued by IEC.

⁵⁹ The EMC is a temporary body established by the IEC to monitor the reporting and coverage of the electoral campaign period and deal with complaints concerning any breaches of fair reporting or coverage of political campaign, or other violations of the Mass Media Code of Conduct.

⁶⁰ ECC press release, "The Electoral Complaints Commission has imposed fines on eight presidential candidates", 8 August 2009.

B. ELECTORAL OFFENCES DURING THE CAMPAIGN PERIOD

Electoral offences are listed in article 53 of the Electoral Law. Offences related to the campaign period include providing false information to an electoral body, threats, intimidation or attacks on voters or candidates and offering or receiving a payment or other benefit for the purpose of influencing the electoral process. Further offences include being in possession of more than one voter registration card, using funds originating from illegal activities or of foreign origin or any other violation of codes of conduct or regulations issued by the IEC, the EMC or the ECC.

The ECC received a total of 467 complaints during the campaign period. Of these 249 were adjudicated with 49 resulting in sanctions or warnings and 200 in dismissal. The remaining 218 cases were outstanding by election day, thus limiting access of complainants to timely and effective remedy as provided for in international legal instruments⁶¹ and diminishing the deterrent value of sanctions. Delay was reportedly due to the late establishment of the ECC. Upheld complaints mostly related to failure to submit interim reports on campaign expenditures, but also included attacks on the dignity of a voter or another candidate, and use of government offices or resources for campaigning.

Both the Election Campaign Regulation and Regulation on Political Campaign Finance prohibit the use of public resources for the electoral campaign unless similar conditions are provided to all candidates. The president also passed a decree on Non-Interference of Government Officials in the Electoral Process in 2009 to reiterate this point. There were numerous reports of the incumbent's use of the state apparatus for campaigning outside of the IEC established regulations. The ECC made two sanctioning decisions regarding the use of state resources for campaign activities, including against Vice President Khalili for the use of Ministry of Defence helicopters for campaign purposes without providing adequate notice.⁶²

Recommendations:

56. 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.
57. State authorities should proactively check for misuse of public resources in order to provide for equal opportunities to all contestants. Greater effort needs to be made by the government, at all levels, to raise awareness of public officials of their roles and responsibilities during elections. Any transgressions should prompt an immediate public response by the ministry involved and penalties should be handed down to those involved.

⁶¹ ICCPR, Article 2, paragraph 3 (a) which states, "To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."

⁶² ECC Press Release, "The Electoral Complaints Commission Issues a Sanction for Misuse of Government Resources", 10 August 2009.

58. The IEC could disseminate information concerning non-interference of government officials in the electoral process, along the lines of the restrictions included in article 7 of the IEC election campaign regulation.
59. The IEC together with relevant government ministries could establish a more realistic and transparent system for the use of state resources, including security resources, for campaign activities. The likely limits of resources available could be clearly communicated prior to the start of the candidate nomination period.
60. 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.

XII. THE MEDIA AND ELECTIONS

There has been significant expansion in recent years in the number of media outlets operating in the country with an exponential growth in television and radio channels. Despite clear positive trends overall, there remains a number of challenges to ensuring that freedom of speech in the media is adequately guaranteed and protected. During the election campaign, the security situation meant that journalists in southern and eastern parts of the country experienced restrictions on their movement and the environment was not conducive to guaranteeing their safety. Since 2006, journalists have also experienced increased intimidation and physical assault. Adequate legal protection is not present and journalists have been exposed to pressure from the authorities.

The overall legal framework for the media could benefit from further development, especially as regards defamation. The penal act contains criminal provisions for defamation and uses vague content standards,⁶³ and the regulatory bodies do not have clear and independent appointment procedures.⁶⁴ The current regulatory authority was widely viewed by interlocutors as politicized.

The Electoral Law requires the media (radio, television, and the press) to cover the elections in a fair and unbiased manner. It also calls upon the IEC to appoint a temporary media body, the EMC, to regulate the media's coverage of the elections.

In some cases, broadcasters provided a wide range of coverage of the presidential candidates. Round tables and studio-based interviews supported by the EMC were produced by both state-owned and private broadcasters, providing a platform for the presidential contestants. However, according to EMC monitoring, the programming of the state-owned broadcaster,

⁶³ Joint statement by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression, 2004: "criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws."

⁶⁴ Joint statement by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression, 2009.
http://www.osce.org/documents/rfm/2009/05/37655_en.pdf.

Radio and Television Afghanistan (RTA), provided excessive coverage of President Karzai in its news bulletins.

While the EMC supported the round table discussions with presidential candidates, its role in regulating the media sector during the election campaign was low key and of limited impact. Its establishment led to overlapping jurisdictions with the existing Media Commission of the Ministry of Information and Culture, which were not defined clearly either in law or regulations. Its lack of sanctioning power further reduced its efficacy, and its failure to refer complaints to the ECC in a timely manner meant that infringements of the law were not addressed in a way that could have had a meaningful impact on the election campaign.

On 18 August 2009, the Ministry of Foreign Affairs issued a statement requesting both the national and international media not to report instances of violence related to the elections as well as prohibiting journalists from visiting the scenes of attacks on polling stations. Implementation of this request was inconsistent among media outlets. At least 15 journalists who ignored the request were reported to have been arrested on election day. This infringed on the right of the media to report, unnecessarily restricted freedom of speech in the media, and violated basic principles of the Constitution and international law.⁶⁵

Recommendations:

61. 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.
62. 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.
63. 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.
64. 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.

⁶⁵ The United Nation's Human Rights Committee recognizes a three-pronged test for such restrictions which should be: 1) provided by law 2) for the purpose of safeguarding one of the legitimate interests listed; and 3) necessary to achieve this goal. The statement and subsequent action do not meet any of these criteria. It was not provided by law and had no constitutional basis and it was disproportionate and not necessary.

65. 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.
66. 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.
67. Greater efforts could be invested in training journalists and media organizations in election coverage. These initiatives could include a wide range of subject areas including the Electoral Law, coverage of campaigns, election day and post-election day coverage.

XIII. THE PARTICIPATION OF WOMEN AND MINORITIES

A. PARTICIPATION OF WOMEN

Women's rights are enshrined in the legal framework for elections, with 25 per cent of seats on provincial councils reserved for women. For these elections, two women ran for the office of president, seven for vice-president, and 312 for provincial council seats – a modest increase over the 2004 and 2005 elections.⁶⁶ However, women remain drastically underrepresented as voters, candidates, and election administrators. The deteriorating security situation, low levels of education and cultural norms acted as deterrents to women's participation. Women candidates faced a number of obstacles to effectively presenting themselves to the public, most significantly an insecure environment in which to campaign⁶⁷ and a lack of funding. Kandahar and Uruzgan were the only two provinces where the number of women provincial council candidates fell short of the 25 percent of reserved seats for women,⁶⁸ considering the deteriorating security environment in both of these provinces the willingness of women to present themselves as candidates can be considered significant.

Reports from election day indicate that women's turnout was considerably lower than that of men. Proxy voting - usually by men for women relatives - and often aided by women's photo-less voter registration cards, continued to feature as problems in many areas of the country. Domestic observers, including up to 3,758⁶⁹ accredited female domestic observers, noted instances of men voting with women's voter cards in Kabul, Paktia, Ghor, Kunduz, Laghman, Paktika, Kandahar, Logar, Kapisa, and Balkh. As the IEC has to date not produced clear gender disaggregated data it is not possible to know the female turnout, the number of female polling stations, or the staffing levels of female poll workers and body checkers (FEFA reports that around 650 women's polling stations did not open or were staffed with

⁶⁶ In 2004, one woman ran for president. In the 2005 provincial council races, 247 women were candidates.

⁶⁷ Women candidates reported threatening calls and letters, violent attacks on their homes, and destruction of their campaign offices and campaign posters. Female candidates interviewed by the OSCE/ODIHR EST frequently cited security as the primary deterrent to campaigning and cited a lack of state-provided personal security provision.

⁶⁸ In 2005, no women ran for the three reserved seats in Uruzgan, two women ran for the three reserved seats in Zabul, and four women ran for the five reserved seats in Nangarhar.

⁶⁹ UNDP Elect, *Weekly Report for Period 25-31 August 2009*, www.afghanelections.com.

male workers).⁷⁰ Domestic and international observers noted instances where women came to the polls but left when they did not find women staff. Further, information and recruitment campaigns for women voters, poll-workers, and observers began late (in some cases only days before the election) and did not sufficiently target rural or illiterate women, nor did they seek to engage men on the importance of women's participation.

Recommendations:

68. 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.
69. 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.
70. 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.
71. 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.
72. The IEC could strengthen its gender mainstreaming, particularly through ensuring IEC staff members working on gender issues have positions with authority within the organization to be able to make a meaningful contribution. The IEC could also strengthen its gender unit, having gender officers or focal points in provincial offices, and increase the number of female employees in all its departments and provincial offices. There could be a significant budget dedicated to gender equity activities.
73. 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).
74. 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.

⁷⁰ OSCE/ODIHR EST interviewees also reported that in some provinces there were no female staffed polling stations outside of the provincial capitals.

B. PARTICIPATION OF MINORITIES AND SPECIAL NEEDS VOTING

The Constitution recognizes the diversity of ethnicities in Afghanistan and grants each group equal rights under the law. There are no restrictive or discriminatory measures against ethnic groups participating in elections. Of the main ethnic groups, Pashtun is the largest, estimated to represent approximately 41 per cent of the population, followed by Tajik at 37 per cent, and Hazara and Uzbek each representing 9 per cent of the population.⁷¹ However, the lack of a recent census means that such data is imprecise.

Article 16 of the Constitution provides for the use of minority languages in areas where they represent a majority. However, the IEC reported that outreach materials would only be produced in the Dari and Pashtun as they wanted to avoid controversies as to which minority languages should also be used.⁷² Civil society representatives complained that local languages have not been used when airing public announcements regarding the election campaign process.

In total, approximately 850,000 Kuchis are registered to vote. As a nomadic population, the Kuchi have one national ballot for parliamentary elections, and did not participate in the current provincial council election, as they are not attached to one location.

The Electoral Law contains provisions for the IEC to provide, on an exceptional basis, special facilities for nomads, refugees, Internally Displaced Persons (IDPs), people with disabilities, members of the armed forces, civil servants and electoral officials. For the first time, the IEC established 75 polling stations throughout the country to cover the needs of hospitalized people, prisoners and members of the armed forces. Out-of-country voting was not provided.

Recommendations:

75. 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.
76. As stipulated in the Constitution, local languages, in addition to Dari and Pashtu, should be used for voter education and information.
77. 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.
78. Where possible, the IEC could establish Kuchi officers or focal points in the IEC regional or provincial offices to increase awareness among the Kuchi population of the electoral process and to better design measures to address their particular needs.

⁷¹ Afghanistan in 2006: A survey of the Afghan people, the Asia Foundation. Available at:

<http://www.asiafoundation.org/pdf/AG-survey06.pdf>.

⁷² However the IEC public outreach department was able to recruit civic and voter education trainers who spoke the local language in areas where there are higher densities of various minority groups for the “face-to-face” outreach program. In addition, production companies which prepared radio and TV broadcast materials also duplicated messages in Uzbek and Tajik on a voluntary basis.

79. In its recruitment policy, the IEC could consider the possibility of establishing a quota for people with disabilities amongst its staff, as was the case in 2005.

XIV. THE PARTICIPATION OF CIVIL SOCIETY AND OTHER STAKEHOLDERS

A. PARTICIPATION OF CIVIL SOCIETY

During these elections, Afghan civil society organizations (CSOs) were involved in a series of activities, including domestic election observation, civic and voter education, public discussions and media programmes to mobilize citizens in the elections process. While civil society continues to grow, there are some capacity, legal and political challenges which could inhibit their further development. Non-profit organizations in Afghanistan are divided into two broad categories for regulatory purposes – NGOs and social organizations. The two categories are subject to separate legislation and have different, onerous registration requirements within different ministries.

Recommendations:

80. 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.
81. 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.

B. DOMESTIC OBSERVATION

Domestic observation is one of the key activities to promote transparency and checks and balances in the election process. It provides the invaluable element of public scrutiny. This can help promote confidence in the process and results acceptance. It also provides important opportunities for citizens to learn about democratic institutions and to become actively involved in the democratic processes. Domestic observation is particularly important at the current time given the record of electoral fraud now established in Afghanistan and the consequent lack of public confidence in democratic elections that may be expected. In addition, the limited access available to international observers in Afghanistan due to the security situation underscores the importance of the need for more effective domestic observation.

For these elections the IEC registered 21 domestic observer groups who in turn registered 9,228 individual observers. While this figure may be regarded as impressive, particularly given the security environment, there were challenges and shortcomings in domestic observation support and activities. The IEC provided individual accreditation to observers of

registered entities. Nevertheless, in some provinces there were delays in accreditation, which at times made it difficult for observer groups to prepare adequately for deployment. To date, no breakdown has been given by the IEC of the number of accreditations by province or gender. Prior to the election, some registered observers publicly identified with contesting candidates.

The Free and Fair Elections Foundation in Afghanistan (FEFA), a network of 16 CSOs, is by far the largest domestic election observation group in Afghanistan. FEFA registered 7,276 observers for deployment on 20 August, including 400 long-term observers and 64 provincial co-ordinators. However, the deteriorating security hampered FEFA's ability to operate freely. FEFA estimates that it had full access to all districts in only seven provinces (out of 34), significantly compromising their ability to gain a representative picture of the election process nationwide. It should also be acknowledged that FEFA representatives were subject to pressure and intimidation, and operating at all in such circumstances is extremely challenging.

Since FEFA observed elections in 2004 and 2005 it has expanded its capacity in terms of the number of observers it can field and has undertaken advocacy on electoral reform issues in the period between elections. Nonetheless, FEFA continues to face considerable capacity challenges and has suffered from a lack of funds in the periods between elections. Funding was made available late, negatively impacting FEFA's planning of observation activities.⁷³ In addition, there has not been consistent support and technical advice to FEFA. This contributed to some limitations in FEFA's work such as the late preparation of election day forms, the lack of a database of observations, no consistent recording of results at polling stations, no written preliminary statement, and no plans to observe the results process or the crucial post-election period.

Recommendations:

82. Allegations of pressure and intimations of domestic observers should be thoroughly investigated and those responsible held accountable.
83. 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.
84. International observers and non-partisan domestic observers must maintain strict neutrality and impartiality.
85. 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.
86. Domestic observers should strengthen their ability to submit complaints and to follow the complaints processes.

⁷³ In May 2009, the UNDP ELECT programme provided US\$ 1,820,117 to FEFA to observe the 2009 elections.

87. 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.

C. PARTICIPATION OF POLITICAL PARTY AND CANDIDATE AGENTS

The IEC stated that 92,897 presidential candidate agents and 169,709 provincial council candidate agents were accredited for these elections. While this number is impressive, there were problems with the accreditation procedure and with candidates' and agents' understanding of their roles. Some candidates reported that their agents had been obstructed on election day.

Candidates complained that a significant number of their accreditations for agents were only received one day before election day, making it impossible to deliver the accreditation cards to agents in remote areas and to arrange their deployment. The two top presidential contenders both claimed that they had approximately 29,000 agents accredited (for the originally planned 28,000 polling stations). However, it is not clear whether candidates knew how to effectively manage the large quantities of data agents collected. Training for candidates and agents was late and limited in length and content.

Recommendations:

88. 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.
89. The IEC should ensure that agent accreditation is issued at least two weeks in advance of election day (requiring appropriate deadlines to process applications).
90. 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.

XV. CIVIC AND VOTER EDUCATION

Civic education for the 2009 elections was undertaken by civil society and voter education by the IEC. Civic education focuses more broadly at the role of elections in a democracy while voter education addresses more specifically the importance of electoral participation and how to register and vote. There was a consensus amongst most civil society groups that civic education would be best delivered by a civil society coalition, to take advantage of the diversity of experience, and streamline material delivery mechanisms. However, international donors bound by specific procurement rules, instead contracted four primary organizations to conduct civic education. This was undertaken through a variety of means including theatre, community discussion and training as well as indirectly through community elders and religious leaders. Other funding built upon existing capacity building programmes in a number of organizations, providing technical assistance in the development of training materials and delivery strategies.

For voter education, the outreach department of the IEC secretariat, with international support, engaged in an extensive, multi-layered public information campaign for the voter registration update and the 2009 elections. Only about 60 of a planned 400 small grants were awarded for promoting election information in conjunction with local sporting events, craft and poetry competitions, Koran recitations and theatre presentations. Much of the outreach work instead centred on local face-to-face encounters with groups of voters, local CSOs, local government officials and elders and religious leaders. An effort was also made to identify and engage influential women. The IEC's campaign also included an election hotline, which received up to 40,000 calls a week from all over the country.

Recommendations:

91. Efforts should be made to counter the negative consequences of the 2009 electoral process and restore public trust in democratic processes. While the implementation of key recommendations included in this report would serve this objective, active citizenship could also be promoted covering areas such as advocacy on community priorities, public discussions with elected officials, observing government activities and engaging in policy dialogues with candidates during elections.
92. The IEC could undertake more extensive voter education also between elections, with additional emphasis on electoral safeguards that protect the integrity of the process. This could continue to be in written and non-written forms. Verbal messages could be undertaken in local languages wherever possible.
93. The IEC could build stronger associations with CSOs to support their outreach efforts and could rely more on their expertise. The IEC should keep CSOs informed of small grants through the extensive network of the Agency Co-ordination Body for Afghan Relief (ACBAR) and by offering to review and provide official endorsement of CSO messages prior to distribution.
94. The international community should establish a donor group on civic and voter education to increase co-ordination of a variety of initiatives to enhance civic education across the country and to different target groups.

XVI. ELECTION DAY

In spite of an extremely challenging security environment and limited infrastructure, the IEC conducted operations on time and in all provinces for the 20 August election day. However, delays in reaching agreement with security agencies on which polling centres would open resulted in confusion, a lack of accountability and transparency, and a loss of ballot control by the IEC in many parts of the country. This opened opportunities for fraud, brought allegations of ghost polling stations, and damaged public confidence in the process.

UN DSS reported that on election day there were more violent incidents than there had been in any other single day in seven years.⁷⁴ Such violence and intimidation were a primary

⁷⁴ ISAF reported over 400 individual security incidents on 20 August.

reason cited for the consistent reports of very low voter turnout. It also profoundly curtailed scrutiny of the process by observers, agents and the media in many parts of the country, hence increasing opportunities for fraud and corruption of the process.

IEC staff at headquarters and in the provinces were reported to be subject to pressure, and intimidation, as well as offered bribes. The IEC reports that in total 11 of its staff were killed during the course of their duties by the end of election day. Despite this difficult environment, the IEC was able to employ staff. It was, however, not able to recruit sufficient female personnel. Men also were used to staff female polling stations.

Systematic procedures were developed; however, these lacked certain checks and balances, in particular a count of the number of voters entered on the “list of voters” recorded in polling stations on election day. The main procedural problems reported were the inadequate punchers (used for marking voter registration cards) and some instances of failure of the indelible ink (the primary anti-fraud safeguard measure).⁷⁵ At 16.10, ten minutes after the scheduled close of polls, the IEC extended voting by one hour. This last-minute instruction was not uniformly known about or applied and caused problems in some stations where ballot boxes had already been opened and counting had begun.

Recommendations:

95. Audit, complaint findings and a wider post-election assessment should be used to identify polling errors and omissions with the view to further develop operational procedures and practices. Feedback from polling staff, and the findings of observer and expert missions could also be considered.
96. 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.
97. The IEC could make it clear to staff that centre managers and polling station chairs who fail to return the results forms, the list of voters or other documentation without sufficient explanation, will not be paid until the failure is corrected.
98. Stronger instructions should be given to polling staff to make sure that only voters whose voter registration card identification number is written down on the polling station list of voters receive a ballot paper. The total number of entries on the list of voters should be recorded in the reconciliation/results form and reconciled with the number of ballots issued.
99. District Field Co-ordinators (DFCs) should confirm the number of polling stations that have opened at each polling centre and include this information in their election

⁷⁵ Ink as an anti-fraud safeguard was particularly important in this election given the lack of a voter register (which is also normally a prime mechanism against multiple voting). Ink is, however, not totally reliable and can be removed with chemicals such as bleach etc. The effectiveness of inking depends not just on the quality of the ink but also on how it is stored and applied.

morning reporting. The number should be reconfirmed and reported when materials are retrieved. Explanations should immediately be given for any discrepancies.

100. The IEC could develop a system of random visits and audits of polling stations on election day in particular in areas where little observer presence is possible because of security concerns, where ballot shortages are reported, or where there has been a history of fraud or questionably high registration or turn-out (particularly by women).
101. Any general decision regarding the extension of polling hours should be made and distributed before the hour established for closing of the polls.

XVII. COUNTING AND THE PRELIMINARY RESULTS PROCESS

Counting was conducted at polling stations for the first time.⁷⁶ Copies of the results forms were displayed and given to candidate agents. Counting of individual polling stations provided greater transparency and more detailed results data that enabled identification of suspicious polling stations. However, with the lack of security not allowing for the full deployment of domestic observers and candidate agents, the count at polling stations may also have allowed for manipulation.

The IEC reported that counting was complete in 90 per cent of polling centres by 17.00 hours on 21 August.⁷⁷ Upon completion of counting, documentation was placed in a Tamper Evident Bag (TEB) for transfer to the provincial capital and then to Kabul. In some cases documents arrived as late as 29 August. The rest of the material, including ballots, were placed in ballot boxes and returned to the Provincial Election Commission.

The establishment of the tally centre in Kabul, training staff, and testing the systems commenced occurred less than a week before election day, reportedly because of problems with the software. No independent testing of the software was conducted and made available to stakeholders. Despite these shortcomings, tallying in Kabul was generally well-organized and efficient. Some areas could still be further improved. Polling staff competency limitations negatively impacted the quality of the completed forms (for ballot reconciliation and the results for each of the two races). This necessitated time-consuming follow-up which delayed results processing. While results forms returned to Kabul had to pass through a double-blind data entry process,⁷⁸ ballot reconciliation forms were not entered using the same system. This weakened the accuracy of the process and reduced opportunity for identifying anomalies. No record was made of the number of entries on the list of voters and there was no examination or data-entry of the list of voters.

There was a fundamental lack of transparency, particularly in regard to:

- Which polling stations opened and which did not.

⁷⁶ In a few locations, counting was conducted by polling stations at the provincial level. In 2005, ballot paper from different polling stations were mixed and counted at the provincial level. The new draft Electoral Law currently requires counting at the district level.

⁷⁷ Delay was reported in various provinces including Farah, Logar, Paktika, Kandahar and Helmand.

⁷⁸ Double blind data entry is the process of entering data by two different staff members and then comparing the numbers to ensure they match. Those that do not are reviewed. This ensures against human error or possible fraud during the tally process.

- The results of some polling stations were not made public. As it was not clear which polling stations had opened, it was not possible to know which results data was missing.
- Posted polling station results information was incomplete. Publicly available polling station results data on the IEC website did not record the number of invalid ballots (standard results data). It also did not detail if the polling station was for men, women or Kuchi.

Results examination was further inhibited by results data not being available in a user-friendly electronic format and candidate order being varied.⁷⁹

The process of identification and response to suspicious polling station results used by the IEC was not clear. The IEC pre-identified various triggers for identification of polling stations with suspicious results that warranted further examination, but did not make them publicly available. It appeared that a higher-than-anticipated number of polling stations had results that hit the trigger thresholds. The IEC then apparently altered the triggers thereby reducing the number of polling stations identified for further investigation. The new triggers established criteria that identified only the most extreme cases, namely, when results were reported for a polling station that was not open, when more than 1,000 ballots were cast (stations were issued with 600) and when more ballots were used than were issued.⁸⁰ Following application of the new triggers and some IEC audit activities, the IEC identified 447 polling station results as suspicious (see section XVIII on post-election-day).

The preliminary presidential results took four weeks to be released with the final announcement on 16 September. The first provincial council results were released only on 26 September with one final province (Nangarhar) not released until 6 December.

Recommendations:

102. There are advantages and disadvantages to counting either at the polling station or at the provincial level. A thorough review of the merits of each option should be undertaken before the next elections to determine what option is most appropriate given the current circumstances. Furthermore, regardless of where the count is organized, counting should continue to be done by polling stations to provide for optimum transparency and accessibility to both candidates and observers.
103. Results forms should be redesigned to include the number of entries on the list of voters so there is full reconciliation data. They should also record all entries in digits and full words.
104. 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

⁷⁹ User-friendly data is particularly important given the extremely large number of candidates. Data was only available in an html or pdf format. Candidate order in results reporting for the presidential race varied making aggregations complex.

⁸⁰ The lack of a voters list meant that an unknown number of voters could go to any polling station. Each station was issued with 600 ballots (this allowed for a ballot overage of 60 with 540 being the maximum average turnout). However, procedures allowed stations to receive extra ballots from another polling station.

- 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.
105. The IEC should conduct testing of the tally centre systems and software with involvement of an independent entity, or at least in presence of candidates' agents and observers, in order to be transparent and to promote stakeholders' confidence. The testing should take place in time to allow necessary changes, if required, to take place before election day.
 106. The IEC should provide information on the plan for tallying, results announcement and investigation before the elections. It should brief parties, candidates, agents, observers and media representatives on the results and tally process. Likewise technical assistance could include training to those involved in scrutiny on how to examine such processes.
 107. 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.
 108. Polling station data on the IEC website should include the number of invalid ballots, whether the station was for men, women or Kuchi, and consideration could also be given to listing the number of entries on the list of voters.
 109. All results data should be fully publicly available in a user-friendly digital format (for web down-loading and analysis).
 110. Polling station boxes stored at the provincial offices could be more clearly marked and easily identifiable, and should be kept under full security with access control.
 111. The IEC could analyze the forms and other materials received at the tally centre in order to develop future systems, form design and training. Future training could particularly emphasize counting and the packing of materials.

XVIII. POST ELECTION DAY AND THE FINAL RESULTS

The post-election day period was protracted with investigations into widespread fraud. The scale of the fraud was large, with approximately one quarter of ballots being annulled, including one third of the leading candidate's votes. During the process the IEC changed its interpretation of the law, deferring responsibility for annulment to the ECC. It appears, however, that the IEC then applied ECC decisions on annulment selectively in contravention of the Electoral Law. The IEC announced total results that are not consistent with independent calculations and did not give a full breakdown of polling station results, thereby precluding any possibility of checking the veracity of the totals announced.

A. INDICATIONS OF FRAUD

Various indicators of fraud emerged in the days after the election including through complaints, testimonies and media reports, as well as through implausible results patterns. As stated above, the IEC loosened its triggers by which it was to identify questionable ballot boxes, thereby allowing polling stations with questionable results to be approved and included in preliminary results. At a press conference on 6 September, the IEC announced that it had annulled the results of 447 polling stations following its own investigations. The next day it reversed this decision, and instead, referred to the 447 polling stations as “quarantined” for ECC decision on annulment, and released no results data for these stations.⁸¹ The IEC argued that as the Electoral Law does not explicitly state that the IEC has powers of annulment, it could not annul and would defer such decisions to the ECC.⁸² Thus the IEC did not undertake quality control of its own activities and responsibilities.

In response to the extensive signs of fraud and the IEC’s lack of management responsibility on the matter, the ECC issued an Order on 8 September instructing the IEC to audit and recount the presidential ballots in polling stations where the total number of ballots cast was equal or greater than 600, or where the number of valid votes cast for a single candidate was 95 per cent or higher (when the total number of ballots cast exceeded 100).

During this period some concerns were raised about the security of sensitive materials, particularly in the provincial offices.

Recommendations:

112. 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.
113. 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.
114. 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.
115. A strong emphasis should be put on the security of materials. Arrangement for access to facilities should be limited with complete records kept of who has keys and who has permission to enter. Logs should record each authorized person’s time of entry and departure from the facility. All electronically maintained data should be fully backed

⁸¹ As explained in an IEC press release dated 6 September and released on 7 September, and also at an IEC press conference on 8 September.

⁸² While the Electoral Law does not have explicit provision for IEC annulment, it is also not precluded. Earlier IEC regulations and statements refer to IEC annulment - IEC Regulation on Counting adopted in January 2009 refers to disqualification of results for dealing with instances of tainted results and the 2 August “IEC Fact Sheet on Fraud Mitigation and Detection Measures” also refers to IEC annulment of results.

up. Paper records of all potentially relevant data should also be fully secured. This should include information on the establishment and tracking of polling centres and stations, poll worker recruitment and pay records.

B. THE AUDIT PROCESS

The impending winter meant that there was little time available for holding a second round, if required. Therefore there was a strong imperative for the audits and recounts to be conducted in a speedy manner. The UN SRSG brought in three additional international experts who spearheaded a sample-based approach to the audit.

The audit proceedings were concluded on 8 October, one month after the original ECC Order, following a drawn-out process of preparing and agreeing procedures, identifying the sample and undertaking the audit. An administrative error in the understanding of the ECC criteria (with a requirement for ballot validity being incorrectly applied)⁸³ resulted in a further set of samples being drawn.⁸⁴ This resulted in a total of six different categories of samples, containing 358 polling stations from a total of polling stations affected by the 8 September ECC order of 3,498.⁸⁵ While the sampling approach had the advantage of being less operationally demanding, it also had multiple profound disadvantages:⁸⁶

- The sampling and consequent extrapolation of findings to the remaining identified polling stations not sampled was extremely complex. This made it difficult to comprehend and scrutinize and was therefore damaging to confidence in the process.
- Extrapolation of findings to the remaining identified polling stations not sampled could reportedly only be made in a general way with all candidates receiving the same percentage annulments. This reduced the accuracy of the result and diminished individual accountability. The lack of candidate-specific extrapolation also sets a precedent of a perverse incentive for fraud (as any fraud identified results in the same proportion of annulments for competitors).⁸⁷
- Individual polling station results were not annulled (only a percentage of votes), thereby reducing opportunities for precisely identifying problematic stations and staff.

⁸³ The 8 September ECC Order to the IEC called for ballot boxes with 600 or more votes to be audited, but an administrative error resulted in this being interpreted as ballot boxes with 600 or more *valid* votes being identified for audit. Similarly the ECC Order calls for ballot boxes with 95 per cent or more total *valid* ballots for a single candidate to be audited, but this was interpreted as 95 per cent of total votes for a single candidate.

⁸⁴ The original sample drawing took place on 24 September, and the second on 5 October.

⁸⁵ The categories of samples were: 1) Polling stations in which 600 (600 being the number of ballots distributed to each polling station) or more valid votes were cast; 2) Polling stations with more than 100 votes in which one candidate received 95 per cent or more of the total votes cast; 3) Polling stations in which 600 or more valid votes were cast AND in which one candidate received 95% or more of the total votes cast; 4) Polling stations in which 600 or more total votes were cast, except those already covered in point 1; 5) Polling stations in which one candidate received 95 per cent or more of the total valid votes cast, except those already covered in point 2; 6) Additional polling stations in which 600 or more total votes were cast AND in which one candidate received 95% or more of the valid votes.

⁸⁶ Disadvantages refer to an audit process for determining a results outcome. They do not apply to an audit process that is used as an analytical tool for a post-election assessment.

⁸⁷ This particularly applies to lower-scoring candidates as identification of their actions would result in higher scoring opponents being more severely impacted by annulments.

Furthermore, the audit activities were not comprehensive, thereby reducing opportunity for identifying fraud. For instance, recounts were not conducted. There was no examination of the list of voters that is a prime source for investigation into actual turnout. There was no examination of invalid ballots. Not all valid ballots were looked at: of the 10 per cent sample of dubious ballot boxes, only half of the ballot bundles were examined, and of these only a selection of ballots were looked at.

Recommendations:

116. A sample-based approach to audit methodology should be avoided for determining a results outcome.
117. Election dates in Afghanistan should be set to allow for an extended period of post-election investigation.

C. ECC DECISIONS ON POLLING, COUNTING AND TALLYING OF PRESIDENTIAL RESULTS

On 19 October, the ECC released its final decisions in regards to the presidential race. These covered three areas:

- Complaints: The ECC received a total of 2,854 complaints related to the presidential race after election day, 604 of which were classified as “A” meaning that they had the potential to materially affect the outcome of the election.⁸⁸ On the basis of these category “A” complaints, 210 polling stations were annulled, 135 fell under the audit and 12 were required to have their results corrected.
- The 8 September ECC audit and recount order: Between 53.26 per cent and 96.27 per cent of votes were annulled in the six categories.
- Quarantined results: Upon request of the IEC, the ECC made decisions on 646 boxes that the IEC had quarantined. The ECC concurred with the IEC findings of clear and convincing evidence of fraud in a number of cases and ordered invalidation. In 18 cases, the ECC did not find clear and convincing evidence of fraud and decided that these should be included in the results.

Democracy International undertook a statistical analysis⁸⁹ of the ECC decisions and concluded that President Karzai had lost nearly one million votes (995,802), approximately one third of his total. Across the candidates, approximately 23 per cent of votes were annulled due to complaints and audit findings. President Karzai was left with 48.29 per cent and Dr Abdullah with 31.54 per cent.⁹⁰

⁸⁸ The ECC issued regular press statements and updates on its website of complaints received, categorization status and decisions (including reasoning and justification).

⁸⁹ <http://www.democracyinternational.com/afghanistan>.

⁹⁰ The Democracy International calculations did not include the quarantined boxes (as the results of these stations were not in the public domain). Therefore according to the ECC decisions, another 18 polling stations should be added. As 600 ballots were issued to each polling station, the total number of ballots in the 18 stations should come to around 10,800 which is approximately 0.25 per cent of the total valid votes, and therefore would not significantly alter the totals indicated in the Democracy International analysis.

It is also noteworthy that the analysis shows that only 1.3 per cent of annulments were based on complaints, with 98.7 per cent being due to the audit process.⁹¹ The additional quarantined polling stations that were invalidated meant that more than one quarter of all votes was annulled.⁹²

Recommendations:

118. 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.
119. 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 emphasised.
120. 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.

D. THE IEC AND THE FINAL FIRST ROUND PRESIDENTIAL RESULTS

A period of uncertainty followed with questions being raised about acceptance of ECC decisions. The authority and competency of the ECC had been previously challenged when ECC Commissioner Barakzai resigned, citing foreign interference and corruption by the other ECC commissioners.⁹³ President Karzai then made public commentary that “the resignation has cast serious doubt on the functioning of the Commission [the ECC].”⁹⁴ However, on 14 October President Karzai reportedly rejected Commissioner Barakzai’s resignation and requested him to return to the ECC for the ‘good of the nation’.⁹⁵

Following the ECC’s 18 October decisions, President Karzai was reported to be in deliberation about whether to accept or reject the decisions of the ECC, which meant that a second round was needed as he had not secured over 50 per cent of valid votes as required.

⁹¹ Although some polling stations were subject to complaints and audit proceedings and therefore the actual number of votes affected by complaints is higher than indicated.

⁹² 1,319,317 votes were annulled of an original total of 5,662,758. This left 4,343,441 valid votes.

⁹³ Commissioner Barakzai referred to the other Afghan commissioner as a pawn of the internationals, and called the decision-making of the ECC “un-Islamic”.

⁹⁴ 13 October, ABC News.

⁹⁵ Commissioner Barakzai then returned to work at the ECC.

On 20 October, President Karzai accepted a second round.⁹⁶ The IEC called for the second round to be held on 7 November and announced the final results for the first round, giving President Karzai 49.67 per cent of the valid votes and Dr Abdullah 30.59 per cent.

There were, however, a number of remarkable discrepancies. The IEC did not implement all ECC decisions, invalidating only 147 polling stations based on complaints (against 210 in the ECC decision) and adding 79 polling stations from quarantine into the final results (when the ECC stipulated only 18 should be added). The final results as published on the IEC website were not only departed from the figures independently calculated by the ECC, they were also incomplete, thereby preventing any check on the total results announced by the IEC and undermining confidence in the outcome. In particular, while the IEC stated that there were 23,960 polling stations certified as open,⁹⁷ the OSCE/ODIHR EST analysis of the IEC website found results for only 21,004 stations (i.e. 2,956 polling station results were missing). Of those published, 1,081 polling station results were without data. In total it seems that 4,037 polling stations results were missing, leaving results for only 19,923 stations.

On 4 November the ECC wrote to the IEC requesting explanation of the results discrepancies.⁹⁸ The letter questioned whether the extrapolation percentages were correctly applied, and noted that “*most of the difference – 154,000 votes – is accounted for by an unexplained increased number of votes counted for candidate Karzai.*” The letter further stated that “*the ECC is also unclear how the number of votes added to the final count from the quarantine was calculated.*” The OSCE/ODIHR EST is not aware of any reply by the IEC to this letter.

The IEC initially stated that 26,162 polling stations opened on election day in 6,289 polling centres,⁹⁹ but upon confirmation of the final results, the IEC declared that only 23,960 polling stations were certified as open in 6,167 centres.¹⁰⁰ The reasons for this difference of 2,202 polling stations have also not been explained.

E. THE SCHEDULED SECOND ROUND OF THE PRESIDENTIAL ELECTION

The IEC began preparations for a second round of voting planned for 7 November. However these became controversial. Issues of concern included:

- The IEC’s understanding of the nature of ECC decisions given their selective application on the first round results.
- The transparency of the results process for the second round, given the lack of transparency in the first round results.
- The number of polling centres. Contrary to advice and expectation, the IEC increased the number beyond those that were certified as open for the first round. This was at

⁹⁶ During the press conference President Karzai appeared to question the annulment decisions by the ECC, commenting that “Over a million votes were annulled, mostly from the south. Voters are not blamed. Why their votes are not counted should be deeply investigated. But this is not the right time – we should move forward for national unity.”

⁹⁷ 21 October, IEC press release.

⁹⁸ The letter is available at:
www.ecc.org.af/en/images/stories/pdf/ECC2009%20Request%20to%20IEC%20for%20Explanation%20on%20Final%20Results%2020091107_ENG.pdf.

⁹⁹ Stakeholder meeting, 30 August.

¹⁰⁰ IEC press release, 21 October.

the request of the Afghan National Security Forces (ANSF) and the Independent Directorate for Local Governance (IDLG).¹⁰¹

- Limited change in staff and no strengthening of polling procedures.

On 1 November, Dr Abdullah declared that as his conditions for the second round had not been met, he would not take part in the run-off scheduled for 7 November. His demands had included the immediate dismissal of the IEC Chairman, and the temporary suspension over the election of key government officials including the ministers of the interior, education, and borders and tribal affairs. He also called for oversight of the ministry of finance, cultural affairs, religious affairs, and Radio Television Afghanistan (RTA).

There is no explicit provision in the Constitution, Electoral Law nor IEC regulations in regard to candidate withdrawal before a second round. Furthermore, the second round faced increased security concerns, raising feasibility issues, with further loss-of-life anticipated. On 2 November the IEC announced that President Karzai, the leading candidate of the first round and the only candidate for the run-off was re-elected. Referring to article 61 of the Constitution, the IEC stated that a run-off can only be held between the “two leading or most voted candidates of the first round.”¹⁰² On 4 November Dr Abdullah held a press conference in which he stated that the decision of the IEC “had no legal basis” and was “illegal”.

Recommendation:

121. The Electoral Law should explicitly detail what should happen if a candidate withdraws before a second round. Deadlines for withdrawal should be made clear in an IEC regulation.

F. PROVINCIAL COUNCIL RESULTS

Concerns with fraud in the presidential race also apply to the provincial council races and are of particular worry given that provincial council races have much closer margins of victory and therefore face a greater potential for fraud to change the election outcome.¹⁰³ Analysis of provincial council results was problematic without results data for such complex races being available in a user-friendly format. Unnatural voting patterns (e.g. exactly 600 people voting in multiple polling stations) raise questions of veracity. The total number of ballots cast for

¹⁰¹ The IEC proposed 5,817 polling centres, a reduction from the 6,167 that were declared open for 20 August (IEC press release, 21 October). The reduction was based on various factors including fraud, chain of control issues in insecure areas, very low voter turnout and weak security. The international community supported such a reduction. However during a meeting with the ANSF and the IDLG, the total became a subject of negotiation with the ANSF and IDLG proposing that more be opened than in the first round following new areas becoming secured. The 6,322 centres that were then planned to open were 155 more than the 6,167 that were certified as open for the first round and 505 more than the IEC proposed.

¹⁰² IEC press release, 2 November.

¹⁰³ According to the published preliminary results the average number of total votes per elected provincial council member was 11,564 with a low in Zabul of just 1,667. The average percentage scored by the most voted-for candidate in a province was 8.3 per cent with half of the candidates claiming first place scoring less than 7 per cent of the total valid votes cast in a province.

the provincial council races is comparable to the presidential race.¹⁰⁴ This raises questions given that 1,319,317¹⁰⁵ presidential ballots were later annulled and that logically a significantly smaller number of people were expected to vote in the provincial races (as people were not able to vote in the provincial council race if they were not in their home constituency and the Kuchi were only able to vote in the presidential race). FEFA and various candidates reported discrepancies between provincial council results collected at polling stations (ad hoc) and those published on the IEC website.

The IEC conducted investigations in Ghazni, Kandahar, Paktika and Nangarhar and then published new results, to which complaints could then be submitted to the ECC.

Recommendations:

122. A post-election examination of the particular problems encountered in the provincial council races should be conducted, as these are more akin to the upcoming parliamentary elections and therefore identification of risk is especially urgent.
123. 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).

G. POST-ELECTION ACTIVITIES

At the time of departure of the OSCE/ODIHR EST from Kabul, the IEC did not report specific plans for post-election follow-up. On 31 October the ECC wrote a letter requesting the IEC to give details of staff involved in polling stations in which clear and convincing evidence of fraud had been found, so that the ECC could investigate their conduct during polling and counting.¹⁰⁶ The letter concluded by stating that “*For all the individuals indicated by this request, the ECC also requests the IEC’s response as to whether or not the IEC believes they are responsible for electoral misconduct and what, if any, remedial actions the IEC has taken or plans to take in response.*”

Recommendations:

124. 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

¹⁰⁴ The total number of valid ballots in the preliminary results for the provincial council races is 5,480,033, and for the presidential race it was 5,662,758. Observer groups have requested results data in a usable format (excel).

¹⁰⁵ According to reports by Democracy International.

¹⁰⁶ This includes: i) Polling staff responsible for identified polling stations where fraud was found to have taken place. 1,391 polling stations are identified that have shown “clear and convincing” evidence of fraud, including 741 that the ECC’s audit and recount decision determined to be 96 per cent fraudulent. ii) Polling centre managers for 452 polling centres, in which at least 50 per cent of the polling stations were determined to be fraudulent. iii) District level polling staff for 23 polling districts that had at least 50 per cent of their polling stations determined to be fraudulent.

www.ecc.org.af/en/index.php?option=com_content&view=article&id=50&Itemid=56.

stations that did not fall under the 8 September ECC Order or an ECC complaints decision.

125. 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.
126. 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.
127. 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 centres and stations throughout the day could be developed using staff from other parts of the country.
128. The penal code could be revised to include stronger reference to election violations, covering the campaign, polling and the post-election period.

XIX. CAPACITY BUILDING AND SUSTAINABILITY

UN Security Council resolution 1806 places a strong emphasis on Afghan ownership and leadership in regard to elections. This is positive in terms of sovereignty, in avoiding democratic activities being regarded as a foreign imposition.¹⁰⁷ However, the following prerequisites are required for the process of transfer to be sustainable:

1. Commitment to international standards for elections;
2. Development of a standard electoral cycle;
3. A sustainable electoral calendar;
4. Long-term international support; and
5. Balanced international support between electoral elements.

A. COMMITMENT TO INTERNATIONAL STANDARDS FOR ELECTIONS

In 1983, Afghanistan acceded to the ICCPR and thereby agreed to be bound by its provisions. The ICCPR and its accompanying authoritative “general comments” (particularly General Comment 25) specify various international standards relating to elections.¹⁰⁸ The lack of reference and explicit requirements for adherence to basic international standards for elections, which are outlined in UN human rights instruments, risks that elections are

¹⁰⁷ It is also consistent with the Paris Declaration on Aid Effectiveness: Ownership, Harmonisation, Alignment, Results and Mutual Accountability, 2005 (www.oecd.org/dataoecd/11/41/34428351.pdf).

¹⁰⁸ Op. cit. For further information on international standards for elections see the EU’s “Compendium of International Standards for Elections” available at:
www.ec.europa.eu/external_relations/human_rights/election_observation/index_en.htm.

conducted that lack basic safeguards.¹⁰⁹ The shortcomings of the 2009 elections indicate that a re-structuring of electoral arrangements and electoral support are needed to avoid repetition of problems encountered this year.

Any requirement by the international community for implementation of standards stipulated under the ICCPR is therefore consistent with Afghanistan's own stated obligations. The primary recommendations of the OSCE/ODIHR EST are directly tied to international standards. They include:

- The independence of the IEC: ICCPR General Comment 25 specifies 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*”¹¹⁰
- Adherence to oversight mechanisms: ICCPR General Comment 25 specifies that “*There should be independent scrutiny of the voting and counting process and 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.*”¹¹¹
- Full transparency of IEC activities: UN General Assembly Resolution 55/96 calls upon States to ensure “*through legislation, institutions and mechanisms... the transparency and fairness of the electoral process.*”¹¹² It also calls upon States to improve “*the transparency of public institutions*” as well as to enhance the accountability of public officials.¹¹³
- Anti-fraud measures: ICCPR General Comment 25 specifies that “*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... The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents.*”¹¹⁴

It is notoriously difficult for donors to agree on establishing conditionalities in the field of election assistance when the political imperative to hold an election becomes overriding. In light of the serious problems encountered in the 2009 elections, both Afghanistan's complete dependence on international funding for the conduct of elections and its stated commitments under the ICCPR increase the obligation by, and opportunity for, donors to establish stronger conditions of assistance.

Recommendation:

129. Conditions for future assistance should be adopted by donors. Requirements should primarily be made in regard to basic international standards for elections, in particular

¹⁰⁹ In contrast, the ELECT revised project document (December 2008) states that Output 5 of the project is “*National elections conducted. That the 2009 and 2010 elections are concluded by the IEC and other responsible bodies with minimal disruption or controversy.*”

¹¹⁰ Op. cit., General Comment 25, paragraph 20.

¹¹¹ Op. Cit., General Comment 25, paragraph 20.

¹¹² UN General Assembly Resolution on promoting and consolidating democracy (A/Res/55/96), article 1d(iv). <http://daccessdds.un.org/doc/UNDOC/GEN/N00/565/15/PDF/N0056515.pdf?OpenElement>.

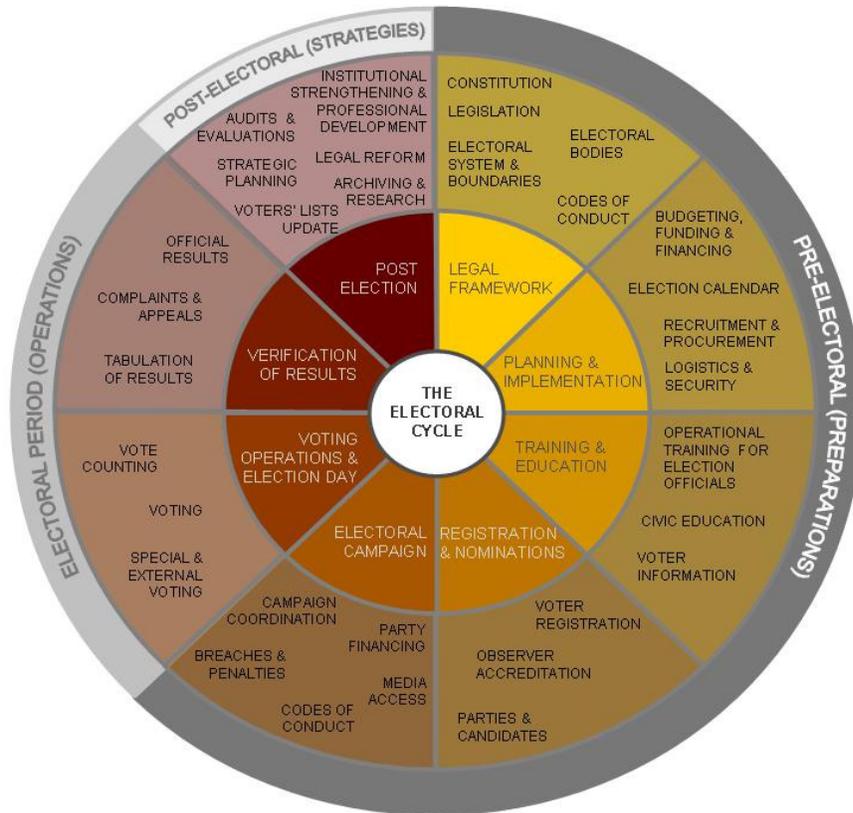
¹¹³ UN General Assembly Resolution on promoting and consolidating democracy (A/Res/55/96), Article 1f(i). The Resolution was adopted by the General Assembly on 4 December 2000 by 157 votes (including Afghanistan) to none, with 16 abstentions.

¹¹⁴ Op. cit., General Comment 25, paragraphs 11 and 20.

those detailed in international human rights instruments to which Afghanistan has acceded and is therefore obligated to adhere. In the event that stipulated conditions are not met, such shortcomings should be identified in technical assistance project reporting to donors and stakeholders. This would provide a level of knowledge of problems with the electoral process in advance of the election. Based on this, decisions could be made by donors on which political responses may be appropriate and what aspects of assistance may be withheld as a consequence. The persistence of severe shortcomings should also result in a consideration as to the level and focus of continuing support.

B. ELECTORAL CYCLE SUPPORT¹¹⁵

An electoral cycle is broken down into eight phases:



The electoral cycle approach emphasizes that “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.”¹¹⁶ The approach recognizes that “electoral assistance has to take stock of all the steps of the electoral cycle and that inter-election periods are as crucial as the build-up to the

¹¹⁵ The electoral cycle approach was developed jointly by International IDEA, the European Commission and UNDP.

¹¹⁶ ACE (Administration and Cost of Elections) Focus on Electoral Assistance, see <http://aceproject.org/ace-en/focus/focus-on-effective-electoral-assistance>.

elections themselves, thus requiring regular inter-institutional contact and support activities before, during and after election periods, for the sake of lessons learned and inter-institutional memory aiming at improved electoral processes in beneficiary countries.”¹¹⁷

Following the 2005 elections in Afghanistan, the “post election” phase and the “legal framework” phase were insufficiently addressed. The legal framework was not subject to reform, the IEC was given minimal support, and voter registration was left incomplete. Addressing such issues at the current time is particularly complex given the dense electoral calendar. Although the planning for the 2010 elections needs to start immediately, it is crucial that there is a full opportunity to evaluate the 2009 elections (phase eight of the electoral cycle). This should cover the IEC and also other electoral entities as well as the technical assistance. Priority issues to consider include:

- The role and responsibilities of the entity: This should include looking at responsibilities undertaken to date, and those that should or could be undertaken. For example the IEC did not take a pro-active approach to fraud, but planning should include consideration of what functions it should fulfill to administer future elections effectively.
- Current capacity and identification of capacity shortfalls: Based on the role and responsibilities of the entity, this should include a department-by-department review to determine where challenges remain unresolved.
- Capacity building effectiveness: A review of the support given to date and recommendations for future assistance for the 2010 elections and beyond would be beneficial. This could include a review of capacity building activities that have taken place so far, including examination of the role of advisors and training. This could also look at advice given and advice not taken up in order to determine decision patterns, and to identify methods to improve support. All areas of an organization’s work should be looked at, including financial and management functions. This should also identify suitable mentoring and coaching strategies, as well as impact evaluation and analysis methodology.

Future contracts and agreements should include clear requirements for capacity assessments before and after services are provided, records of what capacity building tools are left behind and recommendations for future capacity building. Contracts and agreements could also require clear information to donors on advice not taken (and the consequent potential impact of such lapses).

Recommendation:

130. Assistance given should be based on an electoral cycle approach, with technical assistance being undertaken substantially on a continuous basis (at every stage in the cycle) rather than just in the period immediately prior to an election.

¹¹⁷ EC Methodological Guide on Electoral Assistance, see http://www.ec.europa.eu/europeaid/multimedia/publications/publications/thematic/evaluation-methodology-external-assistance_en.htm.

C. ELECTORAL CALENDAR

Presidential and parliamentary elections are scheduled to be held every five years, provincial council elections every four years, and district and village¹¹⁸ assembly elections every three years. Article 141 of the Constitution also refers to city municipalities and mayors being elected, with discretion over election frequency being left to lower laws. Such a high number of direct elections (seven), and the current sequencing pattern, would result in there being a maximum of three years without an election in the next 17 calendar years. The frequency of constitutionally-required elections is problematic as it does not allow the electoral cycle to fully develop. Further, it is demanding and expensive for the election administration, especially bearing in mind the current challenging circumstances. Such costs cannot be paid for by the Afghan state or sustained by the donor community. Frequent elections are also arguably contributing to voter fatigue.

Recommendation:

131. All efforts should be made at the earliest opportunity to rationalize the electoral calendar. This could involve harmonizing the length of electoral mandates so that multiple elections may be held in the same day and year.

D. INTERNATIONAL ASSISTANCE

Elections in Afghanistan, including the 2009 elections, have essentially been internationally financed. The 2009 elections were initially praised for being “Afghan-run.” However, during the post-election day period there was much criticism of the appropriateness and impartiality of various IEC decisions. Thus, questions arose about the process of “Afghanization” and the lack of observable impact of international assistance.

Following the 2004 and 2005 elections, attention to electoral reform was not sustained. There was no comprehensive voter registration exercise, no Electoral Law reform and an insufficient institutional development of the IEC. Opportunities to establish fundamental building blocks such as a truly independent, a fully functioning IEC, addressing the problematic SNTV electoral system, and reducing fraud through a voter register were, in short, missed. The UNDP ELECT programme, established in 2006, was initially minimal in size and scope,¹¹⁹ thereby missing an opportunity of a period without impending elections that could have been better used for capacity development.

In its Resolution 1806 of 20 March 2008, the UN Security Council decided that “*UNAMA and the [SRSG will], within their mandate and guided by the principle of reinforcing Afghan ownership and leadership, lead the international civilian efforts to, inter alia (...) support, at the request of the Afghan authorities, the electoral process, in particular through the Afghan Independent Electoral Commission, by providing technical assistance, co-ordinating other international donors, agencies and organizations providing assistance and channelling*

¹¹⁸ The duration of mandates for municipal assemblies and mayors is specified in the sub-national governance policy.

¹¹⁹ The project had approximately a \$5 million budget, although reportedly not all funds were used (2007 Annual Report).

existing and additional funds earmarked to support the process". The appropriateness of the policy of Afghan "ownership and leadership" has remained subject to criticism.

Only in mid-2008 was the UNDP ELECT project substantially expanded to advise on the "creation of sustainable national voter register, support to delivery of elections in 2009 and 2010 and support to the broader electoral framework through capacity building, engagement and support to civic and voter education, media development, political parties, domestic observation and emerging issues as agreed."¹²⁰ The late start of such substantial work reduced opportunities for a full implementation of the mandate. Such challenges were further compounded by the deteriorating security environment, as well as the limited infrastructure and low levels of literacy.

The mandate was primarily implemented by UNDP ELECT directly. In addition, some components were funded bilaterally by other donors (primarily USAID) through contracts with other implementers, in particular IFES and TAF. In total, it is estimated that the international community has committed over \$400 million for elections over the 2008-2010 period (this figure does not include security costs).

To date the Afghan state has contributed less than one per cent of the IEC's overall costs (2008-2009) and has made no contribution to the costs of the ECC. The cost of elections is unsustainably high and there is an imperative to reduce electoral running costs for the sake of sustainability. This must be carefully balanced with holding elections that achieve stakeholder confidence and adhere to international standards.

The widespread fraud that is acknowledged to have taken place during these elections,¹²¹ along with the IEC's lack of response to charges of corruption raise multiple questions regarding the effectiveness of donor- and international community support. Ultimately, donors were in not in a position of control over the standards of the process they were funding.

Recommendations:

132. UNAMA should take a stronger role in support and oversight of UNDP ELECT and in ensuring that electoral issues that arise are addressed politically by the international community with Afghan stakeholders.
133. 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.
134. Where possible, multi-donor funding should be streamlined so that organizations are not overwhelmed by burdensome reporting requirements. However, different management boards should be established with respective responsibility for the fundamentally different parts of the project.

¹²⁰ UNDP-ELECT project document, substantive revision number 1, 30 July 2008, page 2.

¹²¹ See decisions of the ECC and UN SRSG press conference, 11 October 2009.

135. 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.

E. BALANCED SUPPORT BETWEEN ELECTORAL ELEMENTS

The UNDP ELECT project contained an inherent conflict of interest with its direct provision of support to the IEC while at the same time supporting the electoral elements that are responsible for checking the work of the IEC (primarily the ECC and domestic observers). The provision of support from one body can lead to questions about the independence of checks and balances to an election, reducing public confidence in the electoral process. Furthermore, the IEC is on the project board that is responsible for support to the other electoral elements. It appears that this conflict of interest was reflected in UNDP ELECT support, which focused predominantly on IEC functions at the cost of limited support to the other essential electoral elements such as domestic observers, candidate agents and the ECC. The importance of these other electoral elements was very evident in the 2009 elections when the ECC in particular played a crucial role in identifying fraud and therefore maintaining the integrity and acceptability of the election.

Recommendation:

136. 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.

XX. ANNEXES

The OSCE/ODIHR EST covered the full range of electoral issues discussed in the report, but paid particular attention to four areas identified during an initial assessment visit as benefiting from closer review. The following annexes provide further information regarding potential future activity and support in two of these areas of particular focus for the OSCE/ODIHR EST: voter registration and domestic observation. The other two areas, legal framework and capacity building/sustainability are closely linked with general developments in many other areas of the electoral process followed by the OSCE/ODIHR EST and as such are included throughout the report.

ANNEX 1: VOTER REGISTRATION

The limitations and expense of the three voter registration exercises held since 2004, conducted in each case on an extraordinary basis rather than as a continuous registration process, is unsustainable and has not resulted in a voter register in polling stations that can be used to improve implementation efficiency and reduce opportunities for fraud. An urgent, full-scale IEC and donor review following the 2009 election is necessary to determine on how best to proceed.

Possible Activities for Review of 2008/2009 Voter Registration Process

1. Complete data entry of the 2008/2009 voter registration update forms.
2. Conduct data entry of the list of voters compiled in the polling stations on election day. The resultant database would act as a vital tool for subsequent analysis and will facilitate audit and analysis of other voter registration data.
3. Conduct an audit of all voter registration materials, concentrating on the reconciliation and accounting for the estimated eight million voter registration forms printed (each with a unique number) and determine, to the extent facilitated by any control mechanisms, if a given form was used, spoiled, returned or is missing. The above-mentioned database is a key resource to determine if missing forms ended up as fraudulent ID cards in any polling stations.
4. Assess the quality of the biometric data collected, including examining at the proportion of registration forms with missing or poor quality biometric data (photographs and fingerprints).
5. Conduct data-driven evaluations of both the old 2004/2005 and new 2008/2009 voter registration databases. "Data-driven" refers to computer tests undertaken at the data centre, including: record counts, missing data, validity of location data, unique name checks, gender and other demographic analyses and out-of-range data.
6. Consider conducting a field audit of old and new datasets to determine whether the information on the list matches the reality on the ground using well understood "list to

people" and "people to list" methodologies, adapted for the prevailing operational and security circumstances.¹²²

Post-2010 Planning

In the longer term, options for voter registration fall into two broad categories. First, voter lists extracted from a civil registration system. Second, a stand-alone voter register created and maintained by the IEC. The first approach would build upon the 2007 pilot project between the IEC and the Ministry of Interior with a view to developing a civil registry and national identification cards that would replace all previous voter registration documents. This approach would also have to take special efforts to ensure that perceptions of political interference in the process are minimized, as being pulled from the civil registry, the voter register would be based on data provided by a government ministry. The second option would discard the 2004/2005 dataset, set an expiry date for all 2004/2005 voter registration cards and conduct a new nationwide exercise to capture all eligible voters other than the 4.7 million already registered. Both options would require significant time and resources, and will require a well planned process to ensure that they are implemented between elections.

Voter Registry Based on Civil Registry (National ID Card)

The IEC must be involved in any Civil Registry/National ID Card project from its inception to ensure that the resulting database is capable of delivering voters lists fit for electoral use.¹²³ The IEC must also play a role in ensuring the lists can be reviewed and amended by voters to ensure confidence in the lists, and that any perception of political bias on the part of the agency (in this case a government ministry) responsible for collecting the data is minimized.

Civil registration in Afghanistan has struggled to evolve from the paper-based taskera system that has existed for some decades. The taskera is a plain paper document that lacks any security features and is considered of limited value as a national identity document. There is no centralized database of taskera data from which voter data could be extracted or against which voter registration data could be cross-referenced.

Efforts to update civil registration and national identity in Afghanistan suffer from a lack of clarity on institutional ownership with various ministries including Finance, Interior and, more recently, Information and Communications and Information Technology and the Independent Directorate for Local Governance as well as various donor organizations (including USAID, UNDP, IFES and GTZ) being involved.

It is clear that the very high cost and longer timelines associated with any comprehensive national identity card system or civil registry runs counter to the more urgent requirements of voter registration. A lack of strategic leadership and poor co-ordination of stakeholder

¹²² Done properly, field audits of voter registers can reveal problems in a manner that allows elections management bodies to take focused remedial action or, where the findings are positive, serve to strengthen public and stakeholder confidence in the voter registration process. In such audits or surveys, in brief, the contents of (a statistically representative sample of) the voters lists are checked by going door-to-door and determining whether the information on the list matches the reality on the ground. At the same time, a sample of real citizens of voting age will be taken and their presence on the voter lists will be checked. The results of both checks will be typically entered into a specially-developed database and the results output for interpretation and reporting.

¹²³ It is not clear if the IEC are involved in the national ID card project described by interlocutors.

agencies in the years following the 2005 elections meant that the opportunity to achieve joint civil voter registration slipped away. The relentless electoral calendar¹²⁴ facing the IEC going forward suggests that a dedicated effort would be required to ensure that the necessary resources would be available. As noted above, the development of a strategic road map for the voter registration process – analyzing options for national identity cards, civil registration and stand-alone voter registration, in the context of a population census and administrative and electoral boundary demarcation (delimitation) – is an important step in this regard.

Stand-alone Voter Registration (highly likely if a national ID card/civil registry is not realized or suitable) – for post 2010 elections

Drawing on the lessons learned from 2008/2009, and 2010 (should there be another registration update) and implementing improved procedures that address deficiencies in that process, a nationwide voter registration update could be conducted with the following characteristics:

1. Piloted and phased-in as appropriate given climate, security and operational conditions.
2. Accompanied by a comprehensive civic and voter education campaign, emphasizing that old cards are expired and inviting all Afghans of voting age to register.
3. Have very clear procedures prohibiting proxy registration, transparent monitoring activities during the process, and take action against offenders, whether registrants or voter registration staff.
4. Strict management of all sensitive voter registration materials to prevent loss or unauthorized issuance of voter ID cards.
5. Based on data from the 2008/2009 and possible 2010 exercise(s), focus on early and proactive quality control measures to minimize cases of poor photograph or fingerprint quality.
6. Based on data from the 2008/2009, possible 2010 exercise(s) and from captured data from the lists of voters (from election days), identify areas of "high risk" of voter registration fraud and concentrate internal audit resources in these places.
7. 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 facilitated by having female registration staff, having "women only" days at voter registration centres, female data-entry staff, restrictions on access to electronic data and other mechanisms to develop confidence in the process, such as a strong education campaign.
8. The resultant database should be rigorously audited. Information on duplicate registrations should be handed over for investigation and consequent actions (including possible legal action).

¹²⁴ Under the current legal framework elections will be held with a maximum of three years without an election in the next 17 calendar years.

9. Provisional voter lists should, as per the Electoral Law, be made available for public scrutiny. This activity will, naturally, be sensitive to prevailing security situations, but is an essential mechanism to enhance public and stakeholder confidence in the voter registration process.

ANNEX 2: DOMESTIC OBSERVATION

To date there have been gaps in the provision of sustained technical assistance to domestic observers. Stronger support throughout the election cycle would enable domestic observers to identify potential problems in advance, to better promote public confidence and citizen engagement and would further develop internal capacity. Future support programmes to domestic observation should provide long-term investment focusing on the development of the organization of the observer groups as well as their capacity to effectively observe. As relates to observation activities, strong results frameworks should be promoted, for example developing a complete database of observation records, to compare and analyse polling station and published results and to produce a written preliminary statement.

Institutional development

FEFA has faced internal challenges which have hampered its development, partly due to funding fluctuations and the increasingly complex challenges facing democratic transition in Afghanistan. In response, FEFA commissioned an external evaluation report in December 2008 which made recommendations aimed at strengthening the design and structure of the organization. As a result, significant changes to FEFA's governance structure were adopted in early 2009 which, among other things, extended the term of the Chairman from two to five years and reduced the Board of Directors from 16 to five individuals.

A new Board of Advisors was also created in order to address perceived conflict of interests on the Board arising from organizations determining the distribution of financial resources for observer deployment and then managing them at the field level. However, it is unclear if the information about this new structure has been effectively communicated to FEFA's membership and whether the Board of Advisors is functioning as anticipated. FEFA could also better develop the institutional strengths of its member organizations.¹²⁵ A further challenge that FEFA may face, is that it is registered as a social organization under Afghan law (as opposed to being registered as a NGO) and this may complicate receipt of foreign funding. The following suggestions should be considered:

- FEFA should undertake efforts to ensure that its new governance structure is fully implemented and that all member organizations of FEFA are fully cognizant of the new structure of the organization. Efforts should be made to ensure that FEFA can draw on the institutional strengths of participating organizations so that they can better contribute to the continuing evolution and management of the organization.
- FEFA should undertake a facilitated strategic planning process with a focus on identifying its internal challenges as well as strengths and opportunities so that it can produce a development plan that focuses on long-term organizational development as well as strengthening its ability to observe elections. FEFA should examine challenges such as: staff retention, internal division of labour, engaging FEFA's regional representatives, internal communications and fundraising. This strategic plan should

¹²⁵ FEFA's 16 civil society organizations include a wide variety of institutional strengths and areas of focus, such as legal reform, women's empowerment, civic education and CSO development.

identify opportunities for FEFA to define activities that promote its core values of electoral reform, citizen engagement and accountability.

- FEFA should consider expanding opportunities for learning from international experience in domestic election observation through further links with ANFREL¹²⁶ and engaging with other domestic observer networks, for example the European Network of Election Monitoring Organizations (ENEMO). Consideration should also be given to establishing direct experience sharing opportunities with peer organizations in the region, such as the Free and Fair Election Network (FAFEN) in Pakistan.

An effective observation strategy

In advance of every election, domestic election observation groups should develop an observation strategy through a consultative process involving the secretariat and board of directors. The strategy should cover the following topics:

- Methodology of observation – large scale or a more focused smaller statistical-based observation.
- Observation operation structure – definition of clear roles and responsibilities for the central office, provincial and district representatives and short-term observers.
-
- A security plan which prioritizes the safety of observers and contains security mitigation efforts and aims to provide for broad coverage in deployment.
- Clearly defined job descriptions for long-term and short term observers and operation staff members at the national level.
- Clear instructions on internal reporting and reporting relationships. Guidelines on communication and reporting procedures between Board members, staff members, provincial and district representatives and observers.
- Clear policies on external communications – including identifying those individuals responsible for media and donor relations. Ideally a communications unit should be established to coordinate and strengthen external communications.
- Communication of the election observation strategy to key members of the organization in advance of the election, including all central office staff members, provincial and district coordinators, and member organizations.

Implementation of an observation strategy

¹²⁶ FEFA has already benefited from membership in and co-operation with the Asian Network for Free and Fair Elections (ANFREL) by actively participating in foreign election observation missions and conferences and by cooperating with international observers from ANFREL during two Afghan elections.

The observation implementation plan should be guided by the observation strategy. In designing the observation implementation strategy, careful attention should be given to the following issues:

- Development of materials, training and checklists
Training materials, observation manuals, guidelines for long-term and short-term observation and election day observation checklists should be drafted to reflect the contents of the electoral observation strategy well in advance of elections.
- Recruitment
Domestic election organizations need to prepare detailed recruitment plans for volunteers well in advance of elections. For coalition-based observer groups, the involvement of member organizations is crucial.
- Selection of polling stations
A strategy for the selection of polling stations to be observed on election day should be developed with the input of local representatives which takes into consideration the local security situation, accessibility, and demographic diversity. Emphasis should be placed on deploying observers in a representative sample of polling stations where possible rather than simply the maximum percentage of polling stations possible.
- Security
A detailed security plan is needed which covers security at the national level and mitigates risk for long and short term observers. Contingency plans for the protection of key personnel and observers should be put in place in coordination with security services. When observation is not possible in all parts of the country, a strategy needs to be developed to gather information from key areas through alternative means such as mobile observers. Where no access is possible, comparing provisional results from inaccessible areas with other areas may be useful in detecting potential irregularities.
- Information gathering, analysis, reporting and communications strategy
Broad statements by observer groups that lack qualitative information are less reliable and convincing than specific detailed assertions. More careful design and use of observation forms, report templates, observation checklists and incident forms needs to take place. This, coupled with a more rapid results transmission system can improve the timeliness and effectiveness of FEFA's public reporting.
- Irregularities, provision of information and the complaints process
Observation groups typically use incident forms as the primary basis for gathering information on irregularities or violations observed in the electoral process. This systematic recording benefits the observer organization and means that constructive complaints information can be given. FEFA should consider adopting this methodology to strengthen their ability to analyze the quality of the electoral process, and to increase the quality of information it provides to the ECC.
- Observation of the work of the IEC at national and local levels
A clear observation strategy throughout the electoral cycle enables early identification of problems and clear public information on advances and developments taking place. It also enables the observer group to develop organizationally.

- Election results and post-election observation
The 2009 elections underscored the crucial importance of the results process at the IEC tally centre and the complaints process. Domestic observation groups need a detailed observation plan for this stage of the election, which should include comparisons of IEC results with results data collected themselves from polling stations, and also a statistical analysis of the published results data. It will be particularly important for domestic observers to have plans for observing fraud investigations by the IEC and ECC in future elections.

LIST OF ABBREVIATIONS

ACBAR	Agency Coordination Body for Afghan Relief
ACE	Administration and Cost of Elections
AIHCR	Afghan Independent Human Rights Commission
AGCHO	Afghan Geodesy Cartography Head Office
AGE	Anti-Government Elements
ANA	Afghan National Army
ANP	Afghan National Police
ANSF	Afghan National Security Forces
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of all Forms of Racial Discrimination
CSO	Civil Society Organization
CVR	Civil and Voter Register
DFC	District Field Coordinator
DIAG	Disbandment of Illegal Armed Groups in Afghanistan
DRC	Disarmament and Reconciliation Commission
ECC	Electoral Complaints Commission
ELECT	Enhancing Legal and Electoral Capacity for Tomorrow
EST	Election Support Team
EU	European Union
FEFA	Free and Fair Elections Foundation of Afghanistan
GDP	Gross Domestic Product
GTZ	Gesellschaft für Technische Zusammenarbeit
IEC	Independent Election Commission
ICCPR	International Covenant on Civil and Political Rights
ID	Identification Document
IDLG	Independent Directorate for Local Governance
IDP	Internally displaced person
IFES	International Foundation for Electoral Systems
IRI	International Republican Institute
ISAF	International Security Assistance Force

IM	International Military
JEMB	Joint Election Management Body
MFA	Ministry of Foreign Affairs
MOU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NGO	Non Governmental Organization
NDI	National Democratic Institute
NDS	National Directorate for Security
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
PRT	Provincial Reconstruction Team
RTA	Radio and Television Afghanistan
SNTV	Single Non Transferable Vote
TAF	The Asia Foundation
TEB	Tamper Evident Bags
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
UNDSS	United Nations Department for Safety and Security
UNSRSG	United Nations Special Representative of the Secretary General
USAID	United States Agency for International Development
VL	Voter List
VRU	Voter Registration Update

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).