

Election Evaluation Mission

Afghan Voter Registration 2003 and Elections Projects 2004/2005

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Margie Cook
Dr Dan Finn

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PART 1

EXECUTIVE SUMMARY

The conduct of the 2005 elections was the culmination of a remarkable set of achievements for Afghanistan and its supporters especially the United Nations as the guarantor responsible for delivering on the Bonn Agreement; the international community whose financial, operational and in-kind support underpinned the entire process; and the individuals - both Afghan and international - whose expertise contributed to the successful delivery of two complex inaugural elections and with them the conclusion of the Bonn process of transition to democratic government.

The complexity of the Afghanistan context in 2002 as planning started for the elections cannot be underestimated. Afghanistan was reeling from decades of unrest and fighting during which millions of citizens fled to neighbouring countries. No successful elections had been conducted for approximately 30 years. There was neither peace nor stability; no functioning government or economy and no effective judiciary. The education system had effectively collapsed and the country was littered with the deadly *debris* of war. “We had no security, no economy and no honour for human beings. Our national crisis was also an international threat” said Aziz Rafiee of the Afghan Civil Society Forum. “Now we have a legitimate government, an elected president and parliament, international allies and a place within the international community. We cannot compare.”

Constraints on a successful process were many and are outlined in detail below. The elections were delivered in the context of a hybrid mission - a political mission in a post-conflict environment where peacekeeping was provided by a coalition military force; international assistance was provided by various instrumentalities, not through the UN; and elections would not follow, but be integral to and run parallel with the peace-making and stabilization processes.

The timeframe established pursuant to the Bonn Agreement was unrealistically tight, even for a country not bedevilled by such myriad problems. Development objectives were always going to take second place to political goals and in this context, interests in the quick delivery of a successful outcome. Security, time and political imperatives were not only the three most dominant and inflexible constraints within which the elections Unfolded; they were also the most costly.

Two assumptions underpinned the work of the Evaluation Team:

- The first is that elections are a process, not an event. No successful election occurs in a void of preparation, education, planning and skills development. This requires long term commitment.

- Second, the real test of the 2004/5 elections was not in the close-down of a successfully delivered program, but will emerge in the long term confidence or otherwise of the Afghan people in the outcomes of the process and consolidation the transition to democracy in succeeding years.

Effective and reliable elections are dependent upon many factors including, but not limited to:

- a sound constitutional and legislative legal framework;
- an independent, well-trained, smoothly operating and efficient electoral management body not only expert in the application of laws and procedures but expert in complex project management planning and delivery;
- adequate funding ;
- a secure, reliable and cost-effective voter registration process;
- meaningful and timely civic and voter education;
- issue and policy-driven political interests able to engage in effective communication with their constituents;
- security forces schooled in human rights principles and trained in their roles and responsibilities of security forces during the electoral period;
- a well-trained and impartial domestic observer corps, and
- a media sector aware of and willing to adhere to the principles of impartial, fair, accurate and unbiased reporting.

Ideally, technical assistance and other election support programs are based on the objective of long-term indigenous sustainability achieved via a dedicated capacity-building effort. This is usually delivered in the context of reasonably stable, if often impoverished and sometimes politically unstable and volatile environments. Post-conflict environments, however, create far more testing challenges.

In Afghanistan the process started from scratch. The constraints under which the elections were delivered are detailed later in this report. In essence, there were no working institutions, no effective government or government instrumentalities; no electoral law; no viable economy and no census or reliable civil register. Security was absent. Experience in electoral administration was nil. Creating and focusing on long term capacity building via dedicated training programs, work experience, study opportunities and the examination of comparative experiences was not an option.

While the Bonn Agreement tied the election process to a timeframe that even without the myriad constraints would have been ambitious, all interviewees agreed it was driven to some extent by national interests concerned for a brisk delivery of outcomes and a quick ‘success story’. Choices had to be made and in the context of working to create some viable institutional structures and a sense of hope for the future, delivery of the elections took precedence over long term capacity building.

In the course of executing its mandate to support the Afghanistan elections, 2004/5, the United Nations, through the UN Assistance Mission in Afghanistan (UNAMA), made a number of significant changes in the structure for UN-coordinated electoral assistance and management. The changes made were necessary to respond to challenges and concerns about effectiveness, but raise questions about the correct organizational approach(es) for the cooperative management of elections in post-conflict situations. These structures successively achieved their primary objectives during the 2004 Presidential and 2005 Parliamentary and provincial council elections, although criticisms have been made concerning the quality and sustainability of the voter registration (VR) program, 2003/4; and budgetary and other controls in 2005. These concerns, while legitimate, should not undermine the perception of successful UN electoral contributions 2003/5, but instead must be the subject further reflection on organizational issues.

In the event, the enormously complicated Afghanistan elections were successfully delivered in accordance with the Bonn Agreement, to great acclaim. In the view of the Evaluation Team, these successes have been overshadowed to some extent by post-election crises and tensions, and as yet there has been little opportunity to formally assess the process and reach agreement on the way forward. In keeping with the recommendation that lessons learned from such endeavours be institutionalised and recorded, it is suggested that a “Lessons Learned and Best Practices” seminar or conference, that draws on the Afghanistan experience as well as experiences from elsewhere, be conducted in the near future to assist forward planning for election management not only in Afghanistan but in other countries where the UN is engaged. At such an event, significant achievements and contributions can be recognised and celebrated, future directions clarified and best practices recorded for on-going reference in planning and project implementation.

This report examines three main areas:

- The institutional and management arrangements for the 2003/4 and 2005 election projects are evaluated in the light of sustainability, impact and effectiveness;
- The legal framework is examined with a view to necessary amendments.
- The report concludes with an analysis of the proposed longer-term capacity building program and offers some recommendations for future strategies. (A technical appraisal of the voter’s register is provided in an attached separate report.)

A separate more detailed parallel report on management issues within the UN system has been provided to UNDP.

With only three members, the ability of the team to address all issues was somewhat limited.

Acknowledgements

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opportunity to meet with officials of other Afghan governmental institutions, including Hon. Farooq Wardak of the Presidential Administration and Hon. Younos Qanooni, Speaker of the *Wolesi Jirga*.

While in Kabul, members of the Team also had the opportunity to meet with numerous representatives of international organizations. Finally, in the course of this evaluation we have met with, received questionnaire responses from or interviewed by phone more than eighty individuals in Kabul, Herat, Shindand and Bamyan in Afghanistan, and in countries around the world where former international staff are now dispersed. We gratefully acknowledge the comprehensive and thoughtful responses provided by many of the respondents.

Margie Cook	Team Leader
Dan Finn	Member, Legal Adviser
Mario Valle	Member, Voter Registration Adviser

Kabul,
24 April, 2006.

PART 2

CONSTRAINTS

Against the backdrop of immense challenges as outlined below, the successful delivery of the Afghanistan election process is a remarkable achievement. Constraints included:

Unrealistic timeframes: Hailed as a significant step towards peace and stability for Afghanistan, the Bonn Agreement of 5 December 2001, under Part 1(4), set a two year deadline from the convening of the Emergency Loya Jirga for the conduct of elections, and in Annex 3 requested the assistance of the United Nations in the conduct of the electoral processes starting with the creation of a voter's register (and national census). The timeframe and request to the UN was fully supported and endorsed by all parties to the Agreement, but none-the-less locked all parties into what is acknowledged in hindsight to be an almost unworkable schedule. As Karl Harbo, Head of the Delegation of the EU says: "In retrospect, the Bonn timetable was impossible." The Bonn Agreement put in train a timetable that in the best of all possible worlds, was ambitious in its expectations for the establishment of a broad ranging series of government institutions and conduct of elections; and created a daunting set of administrative, funding and execution challenges.

Planning: Some early weaknesses in implementation were exacerbated by a lack of early planning. It was almost a full year after UNAMA entered the country that the first EAD assessment was made. Planning for voter registration in 2003 was affected by funding availability resulting in delayed starts and subsequent amendments to operational plans were necessitated by changing security circumstances. Planning for the actual elections was not able to proceed however until these matters were enshrined in a Constitution. Planning was often last-minute and was criticised as chaotic on occasions in 2004, and costly in 2005. For example, it was decided only two months prior to the 2004 election to proceed with out-of-country registration and voting and, close to the election in 2005, it was only one day before campaigning started that partner agencies were requested to develop a campaign training tool for candidates. No enduring lessons learned or evaluation studies were conducted at the end of the Presidential elections. The dramatic change in management and the hiatus in implementation at the beginning of 2005 set planning back by three months at which time there was still uncertainty about such essential elements as the method of voting.

Environmental: Afghanistan's severe winters limit the available months within which voter registration and elections can be held. The impassability, and indeed lack of roads and transport infrastructure necessitates complex and costly logistics solutions at all stages of the process. The absence in Afghanistan of a functioning judiciary, literacy, effective outreach media, infrastructure, and the absence of a secure environment all impacted on project delivery.

Security: Security was the single highest cost element in any of the election phases, impacting on personnel and human resources as well as major implementation and contracting decisions. Because many areas in Afghanistan, especially in the south and in

border regions were deemed non-secure for UN staff, private security companies were hired, and in late 2003 security concerns precluded the placement of staff even in regional centres. Security concerns became acute following the bombing of the UN headquarters in Baghdad. This was exacerbated by a number of incidents including the killing of a UN worker in Zabul; bombings in Kandahar and Kabul including the UNAMA compound in Kandahar, the residence of UNV workers in Kabul (December 2003) and a suicide bombing outside the UEC headquarters in Kabul (January 2004); and the kidnapping of election staff. Restrictions were placed on the entry into Afghanistan of internationals and UNV headquarters stopped recruitment of UNVs into the country pending review of security issues. As well, restrictions were placed on the use of schools as registrations sites because of the concern regarding the safety of school children. The UN's minimum operating security standards (MOSS) was a limiting factor regarding the voter registration process and where and how international staff could operate. Together with cost considerations, it was security (as opposed to capacity-building) that was a key factor in "Afghanisation" of the election process.

Political vs Development Objectives Debate: There are inherent tensions between political and development agendas in post conflict situations. In Afghanistan there was unanimous agreement that the political agenda founded in the Bonn Agreement was the dominant priority. However development representatives argue that their goals were sidelined. On the one hand development contributes to political stability. On the other, political stability is a precondition for development. It would appear this tension has been the source of a continuing disconnect between the development (aid) and political (embassy) branches of some donors, manifesting itself at the conclusion of the process in a reluctance to move forward with longer-term capacity development since "development goals had not been respected". The fact is choices were made and a clear and known choice was that development would take second place to the political need to get the election concluded as part of the peace process and as the basis for on-going institution-building and strengthening. In interviews, much mention was made of anecdotal references to pressures from the certain donors, particularly the United States.

Workable electoral administration: The election process started in a vacuum of knowledgeable and experienced national electoral staff. The loss of all Afghan commissioners and many staff at the end of 2004 effectively neutralized capacity building initiatives to that time and was a challenge for the 2005 team.

Funding: The election process was dependent not only upon the generosity of donor support and the commitment of core UN funding, but the timely release and availability of funds to meet objectives. In signing the Bonn Agreement, the UN and international community implicitly committed themselves to the provision of financial support to effect its objectives. Difficulties with the timely availability of donor contributions as needed emerged as a recurring theme throughout the electoral processes of 2003/5. It is noted that on average, pledges by donors take 10 – 14 weeks for to be made available as cash to a project due to administrative processes. Ambitious and time-specific objectives were constantly tempered by bureaucratic and administrative realities – both in terms of the processes required to be followed by donors in sourcing and transferring commitments; by

project managers in ensuring compliance with regulatory procedures; and in the need for continuous resource-mobilisation to meet emerging needs.

Funding delays were reportedly a key factor in the Voters Register Project¹ which was jump-started by an initial injection of \$1m from UNDP. While arguably the project should have commenced more pro-actively in anticipation of the receipt of further funding, direct causal links can be drawn between these early problems and later expenditures such as the ballot paper procurement of 2005. VR lack of ready funding led to constant revision of Operational Plans, complicated by security issues significantly restricting plans for regional deployment. Informed interviewees report that compromises then required to be made including the abandonment of the provision of ID for registrants and the non-linking of registrants to polling places, led to a voter register of greatly limited utility. Despite attempts to rectify the problem in 2005, time and resources did not permit this. The inherent weakness of the VR then directly affected budget costs, especially in 2005.

The impact of the early delays is highlighted in the Peacekeeping Best Practices Section of DPKO *Lessons Learned* discussion paper of the 2004 elections and is described as something of a Catch-22 situation. “By 1 October 2003, the scheduled start date of the project, the voters register project had virtually no money and the project had to be postponed another two months. At that point only two per cent of the funding requirements had been made available by donors and the project relied almost exclusively on advance funding from UNDP... The gap in funding led to changes in operational planning which in turn undermined donor confidence in the preparation, potentially slowing donations.....In addition, ‘earmarking’ complicated an already difficult financial situation.... By the beginning of December only twenty eight percent of the commitments had been made available and once again, operational plans had to be changed.”²

Method of Voting (Parliamentary): The SNTV method of voting was imposed against expert advice on projected costs and complexity. This issue is examined further in the Legal Section. In its Final Report of 2004 the OSCE Election Observation Mission stated that: “it is the unanimous verdict of international elections experts that the single non-transferable vote system chosen for the parliamentary election is impractical and inappropriate. This decision should be re-examined by the new government, UNAMA and the new JEMB. The OSCE Team recommends a hybrid system similar to that in use in other transitional countries...” Strong advice against the SNTV system also came from electoral experts, and from the international community. The US position on SNTV was that: “ultimately it was the President’s decision and the US would not intervene. Strong advice was provided as to the potential costs, but the final position was that costs should not be the deciding factor.”³

Chronology of Events

A table outlining the various component activities and events related to this report is at Annex 6.

¹ This constraint was mentioned both by individuals engaged in the project and in other reports.

² DPKO, Peacekeeping Best Practices Section, Lessons Learned Afghanistan Elections 2004 p 13.

³ Deborah Alexander, State Department, in phone conversation on 23 April 2006.

PART 3:

INSTITUTIONAL AND MANAGEMENT ISSUES

1. STRUCTURES FOR INTERNATIONAL ASSISTANCE IN MAJOR ELECTORAL CHALLENGES

SUMMARY

International assistance for major electoral processes – particularly in post-conflict situations – present organizational challenges for the regular structures that are relied upon by the United Nations, in cooperation with international donors and other providers, to provide electoral assistance. In these cases, special organizational arrangements may be required in order to respond to the situation and help achieve the goals and objectives of the International Community.

In Afghanistan, for the Voter Registration (VR) project, 2003, and Presidential election, 2004, international management was conducted through regular channels initially involving formation by the UN Assistance Mission in Afghanistan (UNAMA) of a UNAMA Election Component (UEC), and subsequently through direct execution (DEX) by staff recruited by the U.N. Development Program (UNDP) under UNAMA supervision. Subsequently, as a result of that experience and in view of the additional challenges presented by the 2005 Legislative elections, an outside management team was retained that reported to UNAMA on the political side, and was supported administratively and logistically by the UN Office for Project Services (UNOPS).

While the 2005 organizational structure was successful in delivering credible elections, the new structure was adopted in a somewhat *ad hoc* manner and raises a number of issues with respect to management structure, oversight and supervision, as well as recruitment and staffing. Since similar special arrangements may be adopted for future major electoral programs, these issues should be considered lessons learned for such cases.

DISCUSSION

Stages of International Assistance

The 2004 Presidential and 2005 National Assembly and Provincial Council elections in Afghanistan were organized under a strong imperative, derived from the Bonn Agreement, 2003, to achieve a credible and generally accepted electoral outcome that would contribute to stability, national development, and advancement of human rights. This process was supposed to occur in a very limited timeframe and under very difficult conditions in terms of security, geography, socio-economic factors, and limited and damaged national infrastructure and administrative capacity.

Voter Registration, 2003-04

The first major electoral process assisted by the IC, mainly coordinated by UNDP, was for the voter registration (VR) exercise 2003-04. Initially, management of international support was through the UEC established directly under UNAMA. Initial results of the VR exercise in 2003 were poor, however, and overall management of the VR program – as well as the subsequent presidential election, 2004 – were transferred to a Joint Electoral Management Body (JEMB) composed of the members of the Afghan Independent Electoral Commission (IEC), as well as international members.

Presidential Election, 2004

Before and during the 2004 election, management of international support was through a DEX unit composed of staff recruited by the U.N. Development Program (UNDP). The DEX unit reported primarily to the UNAMA Deputy Special Representative of the Secretary-General (DSRSG), Political; but also to the DSRSG, Development (to the latter primarily on matters related to capacity-building).

Under these arrangements, the VR program realized greatly improved results and the presidential election transpired successfully. At the same time, however, there was dissatisfaction within the IC concerning UNDP management of international assistance, particularly in the areas of recruitment and other administrative and logistical support.

Legislative Elections, 2005

Following this experience, the even greater challenges posed by the 2005 legislative elections – which involved elections to the national House of the People as well as provincial councils in separate provincial constituencies – led to special recruitment of a Chief Electoral Officer (CEO) and accompanying senior international staff, as well as transfer of support functions to UNOPS. UNDP continued to carry the mandate for mobilizing resources for the international assistance effort, but retained no direct role in overseeing how funds were expended.

The special management team (SMT) retained for the 2005 elections included CEO, Mr. Peter Erben, and four senior associates. These five officials were actually under contract with a U.S. non-governmental organization (NGO), the International Foundation for Election Systems (IFES). Mr. Erben served jointly as Chief Electoral Advisor to UNAMA and (during the period of its operation) as Chief Electoral Officer (CEO) of the JEMB.

Reportedly, the CEO was selected primarily due to his successful management of the out-of-country voting (OCV) program in Iran and Pakistan during the 2004 presidential election, as well as other experience. (He was also deputy director of the IFES Center for Transitional and Post-Conflict Governance, and had also been on IFES contract while managing the OCV exercise.) Being under contract with a non-UN instrumentality, the CEO was unable to approve financial transactions; but he was otherwise granted full managerial and

operational authority, subject to reporting to the JEMB, UNAMA and (indirectly) other stakeholders.

The UN Secretariat's Election Assistance Division (EAD) played its established roles throughout the stages of UN assistance to electoral processes in Afghanistan. These roles included vetting recruitments, assessing needs and progress, and reporting on election-related political and technical matters within the UN system. (The respective roles in electoral assistance of UNDP and EAD are described in a document circulated by the UNDP Administrator and the Under Secretary-General for Political Affairs, 17 January 2001, entitled, "Note on Guide for UNDP and UNDP on Electoral Assistance".)

Another major shift that occurred in organization of international assistance for the 2005 elections was assigning the primary role in administrative and logistical support directly to UNOPS. UNOPS was put into direct contact with the CEO, and undertook all forms of support (including related financial transactions) under instruction by the CEO. In order to bring an effective and accountable working relationship into existence, UNOPS placed two of its staff (general and financial) at the JEMB.

Various reasons have been offered by knowledgeable parties about the reasons for the management restructuring prior to the 2005 elections. It has been suggested that UNDP proved unable to recruit the best staff for senior management and other international positions. There is broader agreement that UNDP was unable to provide efficient administrative support not only for recruitment but for electoral operations overall.

On the other hand, it has been said by several interlocutors that the 2004 structure was more effective in capacity-building in the IEC and its Secretariat – something that was accorded lesser priority in 2005 due to the constraints under which international managers were operating at that time. (At the same time, however, some persons who were directly involved credit the improved organization of the 2005 effort with a having a better "learn by example" effect on national participants.)

In any event, it is generally recognized that the new management structure adopted in 2005 was more effective overall, and that without this special arrangement the elections of last year very well might not have succeeded to the extent that they did. The reasons for the management restructuring, and its implementation, contain a number of lessons in different areas which should be considered in organizing future major electoral events assisted, supported and/or organized by the UN, international donors, and electoral service provider organizations.

Continued Support, 2006 and Beyond

With the completion of the national elections, international assistance to electoral processes in Afghanistan has been restored to a more normal management structure. UNDP has developed a program for continued assistance, 2006-8, dubbed Project ELECT, which aims to put electoral administration on a more sustainable basis. While technically in effect since 22 March, several components of the project remain problematic, and full funding has not

yet been obtained. (The components and objectives of this project are described elsewhere, in the section on the IEC.)

Issues for International Assistance

Management Structure

Major electoral challenges – such as the Afghanistan voter registration, presidential election and legislative elections – may exceed the regular capabilities of UN bodies in terms of staff recruitment, program design, project management and oversight, and administrative and operational support. No single agency or entity may have the range of capabilities necessary to run or supervise the entire program, in terms of specialized knowledge, management capability, recruitment abilities and administrative support capacity.

For these reasons, it is to be expected that in such cases various forms of interagency coordination will have to be adopted. To avoid the necessity to resort to *ad hoc* measures, including the implications of bringing in an outside management team (see next section), it would be desirable to design one or more templates for coordinated approaches.

In creating such a template, the strengths and limitations of the different agencies and entities should be taken into account: UNDP, for example, has project management capabilities, but more limited administrative and operational support capacities. UNOPS is a project-oriented, implementing agency with strong administrative and operational capabilities. The EAD has specialized recruitment ability, as well as a role in monitoring and reporting on UN and other electoral activities. UNDP also has strengths in such related areas as capacity-building and civil society organization.

Consideration has been given to combining the capabilities of UN bodies relevant to supporting or conducting electoral processes through memoranda of agreement (MOA). For example, such an MOA has reportedly been discussed between UNOPS and EAD.

Improved cooperation and coordination among UN bodies would not necessarily obviate the need, on suitable occasions, to retain a special management team to take control of an especially challenging electoral situation. But clearer understandings, and mechanisms, developed in advance among the agencies would help ensure that there is adequate oversight and supervision over, as well as effective support for, outside management.

Oversight and Supervision

Internationally-assisted or managed electoral activities present a triple requirement for oversight and supervision, since they involve political, operational/technical (hereinafter collectively “technical”) and administrative elements. Means should be found to address the oversight and supervisory needs in all three dimensions, either separately or in combination.

On the international side, senior management is usually comprised of a Chief Technical Advisor who reports to UNDP, cooperates with national electoral institutions, liaises with the international community more generally, and serves as the chief project officer. For donors and other international assistance providers, the political and technical dimensions are often combined in the person of a senior electoral advisor. In both cases, the administrative elements are often addressed by an administrative/financial supervisor.

When there is direct execution of an electoral process by a UN body, such as UNDP, it should be assumed that the agency will make adequate arrangements for direct oversight and supervision of the CTA and project staff. Even in this case, however, it would be desirable for the agency itself to establish special channel(s) for reporting so that it has the necessary information to monitor implementation of the program. Thus, even if the agency has provided the management team, it may wish to consider also retaining a senior electoral advisor providing internal political and operational reporting and analysis. Similarly, in any large-scale program, a special administrative/financial comptroller would also be helpful.

Special considerations apply when an outside management team is brought in to conduct the activity on behalf of the agency. In this case, the sponsoring agency would have an even greater need to retain a special senior advisor to help it monitor and assess the political and operational dimensions of the electoral process. Similarly, the agency responsible for administrative and operational support (if separate), must have its own channel of information and analysis in the person(s) of an administrative/financial supervisor.

During the 2005 electoral process in Afghanistan, an outside management team was recruited, and retained on contracts executed by an external instrumentality. The team, composed of the CEO (concurrently chief electoral advisor – see below) and several senior managers, were contracted through IFES. The CEO reported directly to the UNAMA DSRSG-Political. A number of political advisers and political officers also worked within the SRSG/DSRSG's office in areas of political and electoral oversight. In fact, the CEO, who worked directly with the JEMB, also held the title of Chief Electoral Advisor (CEA) to UNAMA, especially during periods when he was not working in the capacity of CEO for JEMB.

The situation was somewhat different on the operational/administrative side. Operational and administrative support for the management team and the entire electoral program was provided by UNOPS. UNOPS did have administrative and financial supervisors in place, which appears both desirable and necessary – if not necessarily sufficient – in view of what was said above.

During 2005, yet another complication arose from the fact that the CEO and senior management team were retained under contracts with an external organization, IFES. This was because the CEO was also continued to hold a senior manager position with IFES, in an area directly related to his activities on behalf of JEMBS and UNAMA.

During this time IFES (as well as many other organizations and suppliers) was also involved in providing a range of services and products for the elections, but with funding from other

sources (mainly the U.S. Agency for International Development [USAID]). It does not appear that IFES entered into any agreements of a financial nature with UNAMA or JEMB during this period.

At the same time, several consultants associated with IFES were selected for positions on the JEMB itself or other electoral bodies (including the Election Complaints Commission, or ECC). These appointments were either made independently using external funds; or if on contract with the UN, were subject to vetting by EAD.

Thus there does not appear to be any specific conflict-of-interest involving the relationship of the CEO with IFES, although IFES-associated consultants may have benefited from their connections with the CEO in obtaining appointments. Perhaps in this situation, however, it might have been desirable to have an independent review of decisions by the CEO which would result in substantial benefit to IFES or its associates.

Recruitment and Staffing

The recruitment of international specialists for the 2003, 2004 and 2005 electoral programs alike has been criticized. No doubt attracting qualified international staff under the circumstances was extremely difficult.

Recruited international staff may be divided into several categories – including experts, middle-level professionals, and general staff. In the latter category would be included recruits for various field positions, including at registration centres, voting stations and counting centres.

During 2003-04, most of the latter personnel were UN Volunteers (UNV); these were mostly substituted in 2005 by recruits directly hired through UNOPS – some of whom were former UNVs. The replacement of UNVs by direct hires for general staff positions resulted in a total of some 540 international staff being recruited during the 2005 elections. The quality of service provided by both the UNVs and other general staff involved in supervising electoral operations in the field, especially at counting centers, has also been criticized.

CONCLUSIONS

After the experience of the 2004 Afghan Presidential elections, an extraordinary international management structure was put into place for the more complex 2005 Legislative elections. The CEO and senior electoral management were retained on external contracts and granted a high degree of autonomy, and reporting was streamlined and limited to political matters. These special arrangements reportedly helped lead to the level of success that was achieved in the 2005 elections.

To avoid resorting to *ad hoc* arrangements, the UN bodies involved in electoral assistance and support should develop a template for joint activities during major electoral events, especially in post-conflict situations. Any special arrangement that is put into place in future

should address the issues inherent in the structure that was established in Afghanistan in 2005.

Specifically, future special arrangements should address monitoring and oversight concerns both with respect to political and technical reporting and financial and administrative control. The latter controls should be reinforced in situations in which an external manager or management team is retained, so that potential gaps in accountability or conflicts-of-interest can be avoided.

RECOMMENDATIONS

Management Structure

- UN bodies should seek to avoid the necessity for forming *ad hoc* management arrangements for major electoral events in future by working together to agree in advance on joint frameworks for such programs.

Oversight and Supervision

- The agencies responsible for political and technical oversight and operational and administrative supervision should appoint relevant senior staff (including a Chief Electoral Advisor and Administrative/Financial Control Officers) to monitor management decisions and report on them. This is particularly necessary when external management is brought in to conduct a major electoral program;
- When the CEO or other senior recruited management for a major electoral activity is closely connected to another organization, decisions that could benefit that organization or its associates should be specially monitored by the administrative supervisor or financial comptroller.

Recruitment and Staffing

- Greater efforts should be made by UN agencies recruiting staff for electoral programs to compile a more extensive roster of qualified individuals;
- Mid-level professional and general staff recruited for electoral activities should be brought onboard in sufficient time to receive necessary familiarization and training.

2. PROCUREMENT AND RECRUITMENT

SUMMARY

The election projects all demanded massive and fast procurement of resources, materials and staffing from thousands of jeeps to forty million ballot papers; contracting of thousands of national field staff through to the erection of a fully operational office compound for the IEC in Kabul and in the eight regional centres; provision of adequate security in high risk situations; and development and delivery of millions of pieces of civic and voter education materials.

External credibility has been undermined by gossip, unsubstantiated rumour and misinformation regarding the high levels of staffing in 2005; compensation, perquisites and privileges of international staff; and by debate over the costs of the 2005 election and the gap between the eventual cost and the pledges received.

DISCUSSION

UNDP maintained responsibility for resource mobilization throughout the process and over the period 2003-2005 donors and the UN contributed a massive \$300+m to the three projects.

In 2004, procurement and recruitment fell under the ambit of UNDP through a DEX modality with recruitments for UNAMA and UNOPS operations remaining with these agencies. UNOPS' extensive operational resources were utilised in 2004 and its fast-track financial management systems were a consideration in the management change for 2005. In 2005 all recruitment and procurement passed to UNOPS which utilised a faster, higher-risk imprest account for procurement (despite an apparent agreement to utilise the ATLAS system) and SSA contracting for most staff. UNDP's responsibilities in 2005 were restricted to resource mobilisation and reporting to donors. This change is reviewed in Part 1.

Despite having delivered a successful election in 2004, the very lean management team of 2004 was effectively dismissed in the changeover from UNDP to UNOPS management and replaced by a large-scale operation in 2005. The 2005 situation was complicated by the appointment of a senior management team (SMT) which, because it was outsourced through a non-UN agency (IFES, a Washington-based firm), had no delegated financial authority but did possess full programming authority. This disconnect was found by the Evaluation Team not only to be an unsatisfactory modality but risky in terms of possible perceptions of conflict of interest and lack of fluidity in financial accounting. UNOPS retained full financial responsibility for procurement, staffing and expenditure and in the light of the frantic pace of decision-making, took the prescient decision to place a senior officer within the SMT offices to safeguard the integrity of UN procedures.

The changeover and subsequent loss of staff was the cause of a serious delay in moving the 2005 project ahead as the management team was not in place until March and recruitment had to be fast tracked after that time.

Throughout the process and in accordance with established procedures, EAD approved all substantive electoral appointments. There were on occasions extensive negotiations with regards to the numbers of international staff hired and the level of seniority of some proposed appointments. EAD states that while appointment numbers were high, the level of seniority was relatively low, and at times they were directed by the SRSG to make specific appointments. Likewise, UNOPS reports that they too were on occasion directed by the SRSG to proceed with certain procurements.

Questions have been raised about a number of 'big ticket' items procured in 2005. A good example is the decision to order 40 million ballot papers for the 2005 elections, which prima facie seemed excessive. However due to the absence of a viable voter's register which linked voters to polling stations, it was impossible to judge how many voters would appear in which regions to vote. The choice was made to ensure sufficient ballot papers were available in each station in the event of large turnouts. The alternative was insufficient ballot papers which could have led to civil strife. Likewise, with the adoption of the SNTV system giving rise to almost 6,000 candidates and a huge ballot paper, it was found that the ballot boxes were not large enough to accommodate the 2005 papers, so new ones had to be procured. While time constraints continually impacted on decision-making a number of other significant expenditures were perhaps excessive in hindsight. The Media Centre for example, was used for only a short time and usage does not appear to revert to the IEC.

The Evaluation Team requested to review copies of the procurement documents in these cases, but was denied access on the basis of confidentiality. However the team has been assured that in relation to procurement all regulatory processes were meticulously observed and it is assumed a document review will take place as part of a financial audit.

Questions have also been raised about the high levels of international staffing in 2005. With preparation not beginning effectively until March for a September election, utilizing a complex voting system that eventually involved almost 6,000 candidates in difficult security environments, staff numbers were increased to cope with high-pressure, short term workloads.

The external constraints led to constantly changing plans. There was a completely revised management and personnel structure half way through the process. Delivery of all project elements was to various degrees in the context of crisis management mode. A number of subjective but none-the-less tangible considerations influenced high-level management decisions to move to an alternative structure and new staff.

Consultation on procurement requirements was sometimes lacking, both within the JEMB; to donors on the implications of emerging issues; with UNOPS in terms of adequate time to review decisions; and with UNDP who retained responsibility for reporting to donors. For example it was suggested by two IEC Commissioners that the decision on both the ballot

papers and ballot boxes were presented only after procurement decisions had been taken. Donors were however appraised of the evolving budget and the contingency factor although engagement with donors in a substantive sense was somewhat lacking throughout the process. The result was that there was neither much sense of 'ownership' nor an accumulative appreciation of the limitations on capacity-building, even though the fact of this limitation ought to have been clearly understood by virtue of the overtly political agenda that shaped the timeframes.

Unfortunately these negative aspects have influenced perceptions of a program which delivered successfully on the Bonn mandate, the overwhelming impact of which has been to generate much goodwill and confidence in democracy-building in Afghanistan.

CONCLUSIONS

In relation to staffing, the Team finds that in accordance with the General Assembly resolutions and standard rules of practices established between EAD and UNDP and DPKO, all regulatory procedures were followed, with staffing decisions for substantive electoral positions all approved by EAD.

In relation to procurement, the 2005 situation was complicated by the appointment of an outsourced management team with full programming authority but no delegated financial authority which remained with UNOPS. While the implications of the management decision were known and discussed in terms of the projected staffing complement and management approaches, and the successful outcome is not questioned, the appropriateness of this contracting modality needs review particularly for situations where responsibility for election delivery rests with the UN.

The evaluation team has been assured that in relation to procurement all regulatory processes were meticulously observed by UNDP in 2003/4 and by UNOPS in 2005.

RECOMMENDATIONS

- In large, fast-moving projects with no options for extension, especially those with extensive field-based operations, an alternative financial management structure such as a Special Execution Modality, should be considered.
- The appropriateness of an outsourced contracting modality that separates programming from financial accountability requires review and, if approved, the creation of specific policy guidelines and operating procedures.
- The agency with responsibility for donor mobilisation and donor reporting must be directly linked to the financial and program reporting lines.

3. CAPACITY-BUILDING AND SUSTAINABILITY

SUMMARY

Balancing the political imperatives and development objectives was a continuing challenge. It is recognised that from the outset not only did political imperatives clearly outweigh development objectives but the limitations on effective capacity development were well understood. While this was “an election we had to have” the program did recognise the need to embed a degree of institutional capacity-building at the IEC level through the ‘Afghanisation’ and ‘co-responsibility’ models of 2003/4 and the ‘shadow counterpart’ model of 2005. The impact of these approaches was however relatively negligible as they were subsumed by the delivery imperatives.

At a practical level the close-down of the election project at the end of 2005 appears to have overlooked issues of bottom-line sustainability. For example, licence ownership of anti-virus protection and other software services in IEC reverted to UNOPS at the end of the project. The IEC is currently without IT backup, virus protection and other services which places the capacity weaknesses in the IEC itself. The ownership and status of other equipment and resources also remains in doubt, especially until such time as the unfunded financial liabilities are the 2005 project are satisfied.

While civic education initiatives are difficult to measure without a baseline survey as a control, the low level of invalid ballots and the high turnout are indicative of a reasonably successful voter education drive. However, while selected NGOs were engaged to deliver civic education at the local level, there appears to have been no effort to institutionalise a national civic education development or training body to work on ‘deepening democracy’ programs or to leverage success. The Afghan Civil Society Forum (ACSF), which was one of the main NGO umbrella groups involved in the process, has no on-going connection with election-related civic or voter education or with the IEC, so that the investment in this area is consequently fragile.

The challenge remains to recognise the need to leverage the investment in election delivery with a thoughtful and achievable capacity-building process directed towards achievable and cost-effective elections in the future.

DISCUSSION

The ‘Afghanisation’ model was never a capacity-building model but was driven more by costs and security concerns than sustainability. This model did, however, have some very positive impacts in terms of formalised locals skills-base development, as was evident from field-based interviews. At HQ level, the “co-responsibility” model was more cosmetic than actual, raised expectations in terms of control, and created confusion in terms of ownership of electoral policy management and administration.

At the end of 2004 all the Afghan personnel within the JEMB and many of the Secretariat staff departed rendering the capacity-building and sustainability problem largely academic. A clear choice was stated in 2005 *not* to prioritise capacity-development due to the pressures of election delivery within a tight deadline, although a ‘shadow’ system that placed Afghan counterparts alongside international staff members was introduced to provide ‘on-the-job’ training. This worked extremely effectively where personalities allowed for it. Others report that “Afghan staff stood like statues” throughout the process and had no effective role to play. Afghan responses to the 2004 and 2005 models are somewhat inconsistent and subjective.

Overall, the effectiveness of these initiatives was ad hoc at best, their impact remains frail, and the institutional capacity of the IEC is weak. However the constraints speak for themselves in terms of no institutional history of elections; no pre-existing skills base; massive planning and delivery tasks; impossibly pressured timeframes and huge security constraints.

At the regional and provincial levels the situation is dire.

There are no apparent sustainability plans in place for anything from office space and equipment servicing at the practical level, to training of newly elected officials at the governance level. Future planning must address these issues as well as planning for election delivery in much reduced financial and operational contexts.

The fragility of the sustainability outcomes is also a product of the different cultures and strengths of the managing and implementing agencies. UNDP has a mandate⁴ for Long-term capacity building, alongside a lead role in the provision of policy advice and programs to strengthen sustainable democratic institutions and processes, and coordination of electoral assistance among donors, national and international actors. UNOPS is the premier logistic and operational arm and has no inherent capacity building mandate. UNAMA’s mandate was more political. In 2004 and 2005, the lack of harmonisation between these competing mandates was problematic. However the over-riding constraint that precluded effective sustainability was the externally imposed limitation of time.

There is a need to recognise and acknowledge the choices that were made in 2004 and 2005 in terms of delivering on the Bonn Agreement. While the choices were driven by pragmatism, none-the-less the recognition has always been there that long-term commitment was essential. As the OSCE mission found in 2004:

“There is a danger inherent in the success of the Presidential elections. Afghan voters had high expectations – some would say unrealistic expectations – that holding successful elections would make a difference in their lives. Elections alone will not make such a difference. The international

⁴ Note of Guidance for UNDPA and UNDP on Electoral Assistance. See also Section 1 discussion on Management Structures which raises the point that within UNDP, there is a view that the ‘capacity development mandate’ was not tabled as a priority given the overriding political agenda.

community has a responsibility to stay the course in providing assistance and the security to make reconstruction possible.”⁵

The situation did not fundamentally alter in 2005. This remains the current challenge for the international community.

CONCLUSIONS

The existing national capacity for sustainable electoral administration remains weak and even precarious, in terms of its continuing salary crisis. The IEC and IECS budgets and structure remain at the large-scale level for which they were established in anticipation of an imminent national election. The size of these organizations, their functions and budget need to be reassessed in terms of their proper and sustainable level. Partnerships with NGOs for the purpose of civic and voter education require nurturing and the development of concrete long-terms plans.

RECOMMENDATIONS

- The size of the IEC itself should be reduced, so that it can operate more collegially and serve as a board of directors. It would appear that no more than five commissioners should be appointed to the IEC, on terms that provide for security of tenure and regular rotation of membership. Additional members could be appointed prior to elections, if that would enhance the neutrality and balance of the Commission.
- The size of the IECS, based on previous recommendations of the PESG, should also be reassessed. The number of staff (approximately 120 at HQ and an additional 70 in the provinces) is too large, and in any event many of these personnel will likely depart prior to the next elections. Meanwhile, the ongoing work of the IEC does not appear enough to engage the remaining staff.
- The IEC should develop a detailed work-plan to justify current levels of funding and staff, as well as to engage donors in a more credible and focused capacity-building program.
- Consideration should be given to the elaboration of a long term civic education strategy and partnership with NGOs and the building up of local training capacity and expertise.

⁵ OSCE Election Support Mission, Final report, Presidential Elections, p.5

PART 4

ELECTION ADMINISTRATION: FROM TRANSITIONAL TO INDEPENDENT AND SUSTAINABLE

SUMMARY

International support to electoral processes in post-conflict Afghanistan has been provided on an extraordinary scale. As in other post-conflict situations, a large autonomous but cooperative transitional structure was established and supported in order to ensure the success of elections. The focus now must shift, however, to ensuring the independence and sustainability of Afghan electoral administration.

For the future, the main goal for continued international support to the electoral process will be to assist the Independent Electoral Commission (IEC) retain and build capacity, ensure its independence, and develop and implement sustainable programs. Costly transitional arrangements should be diminished; and the components of current International Community support, coordinated through the current UNDP electoral project cycle (Project ELECT), should be assessed in terms of these objectives.

With respect to that status of the IEC as an Afghan public body, steps should be taken by the Government, in coordination with the National Assembly, to safeguard and enhance IEC independence and neutrality. These would include executive and legislative actions on appointments to the EIC, the tenure of commissioners, and the IEC budget and staff.

DISCUSSION

International Support to Electoral Administration

Election administration in Afghanistan has passed several major milestones, including formation of an Independent Election Commission (IEC) – initially on an interim and subsequently permanent basis – and cooperative management of three main electoral events: Voter registration, 2003-04; presidential election, 2004; and national and provincial legislative elections, 2005. These events have been supported by successive programs of support by the International Community, coordinated by UNDP through four cooperative projects with the Government of Afghanistan.

Now that national elections have been successfully completed, the focus must shift to putting election administration on a sustainable basis. This goal is the subject of the current UNDP project, “Enhancing Legal and Electoral Capacity for Tomorrow” (ELECT). This project has three main objectives: Further building IEC capacity to carry out its mandate as an independent body; contributing to a legal and institutional environment that enables the

IEC to carry out its responsibilities; and conducting a joint voter/civil registration pilot project.

At present the international community continues to support core funding of the IEC in terms of Commissioner and Secretariat salaries, pending confirmation of government arrangements to fund the IEC, beginning with the salaries of commissioners.

Composition and Structure of the IEC

The current members of the IEC, nine in number, were appointed by Presidential Decree (No. 21, 19 January 2005). The structure and procedures for the IEC were established by a separate Decree (No. 23, 24 January 2005). Under the latter decree, the term of office for commissioners is three years; and while they are protected from removal in certain cases they enjoy no overall security of tenure.

In terms of the structure of the IEC, the latter Decree does not make entirely clear whether the commissioners are intended to function like a board of directors, or as senior administrators directing the work of the IEC Secretariat (IECS). The only relevant article, on decision-making by the IEC, concerns voting by 2/3 majority, which implies that the commissioners are intended to act collegially as a board on policy matters. This impression is reinforced by the existence of the position of Chief Electoral Officer, who has direct control over the work of the Secretariat (Decree No. 86, 2003).

Coincidentally or not, the number of regular IEC members (exclusive of the Chairman), is the same, eight, as the number of administrative regions in the country. Thus, each member of the IEC has been designated to pay special attention to a single region. In addition, eight departments have been established in the IECS; and similarly each IEC member has reportedly taken lead responsibility for one department. It can be readily seen that this emerging structure could easily become unduly duplicative and bureaucratic.

Support for the IEC and IECS

Until very recently, the salaries of IEC commissioners as well as the IECS were paid directly by the International Community. While agreement in principle has been reached that in future the commissioners will be paid by the Government, this situation was unresolved at the time this report was being prepared. An agreement was reached recently under which the staff and operating expenses for the IECS will continue to be met by the International Community until September 2006. Canadian CIDA has indicated it will provide transitional funding for 2006. The Ministry of Finance has provided one third of the funds requested by the IEC for this year.

There continues to be a dispute, however, concerning the salary level for IEC members. While the Government has agreed to provide their salaries, according to the IEC Chairman the Civil Service Commission takes the position that its rules for the disbursements of contributed funds (in this case, from the World Bank) call for interview and evaluation of each recipient. The resulting salaries would be in the range USD 300-2,000 monthly. The

Commissioners respond that, as Presidential appointees, they are all entitled to top scale, and should not be subjected to such additional procedures.

While this drama has played out, the situation of the IECS has become very difficult. Engrossed in their own salary dispute with the Government, the commissioners have been slow to present renewal contracts to UNDP for the secretariat, both at headquarters and in the field. This has led to disgruntlement and could result in the loss of qualified personnel. It would also appear that many staff, at least at headquarters, have not been coming to work regularly as a result.

Thus it could be said that the IEC and IECS right now are in crisis.

Scale of IEC Staff and Operations

The Project ELECT program document, under the first objective, does not describe the anticipated size of the IEC and Secretariat, nor discuss how IEC programs would be coordinated with other Government programs (including those of the Interior Ministry with respect to the anticipated national civil registration). But previous work by the Post-Election Strategy Group (PESG) recommended that the IEC remain at nine members and be permitted to retain a professional staff of approximately 117 at its headquarters, in addition to two professional staff at each of its 37 provincial offices, for another 74 professional staff. (There would also be a three-member provincial election commission in each province, but these would presumably function only during electoral periods.)

While recommending retention of a large staff for IEC, the PESG report does recognize that in future electoral administration should be integrated better with other government operations. The PESG recommended, for example, that the IEC plan to utilize certain government employees (*wiz*, teachers) as workers in future elections; and also make use of some public facilities, especially school buildings.

According to the IEC Chairman, the IEC proposed to the Government a staff of over 400, but only 218 positions were approved. At the current time, there is no detailed work plan specifying the duties of the personnel already onboard or authorized. (See below.) So it is difficult to assess whether the large number of positions currently authorized could be utilized effectively.

Current IEC Activities

The Chairman provided a list of current IEC activities, as follows:

- Preparing for and conducting by-elections;
- Preparing for and conducting municipal legislative/mayoral elections;
- Preparing for and conducting district elections;
- Preparing for and conducting emergency elections;

- Developing and implementing the joint national identity register/voter registrar pilot program with the Ministry of Interior (MoI);
- Conducting a joint civic education project, also with MoI;
- Conducting an operational assessment (“lessons learned” exercise) of previous elections;
- Preparing strategies (operational/structural/planning) for future elections;
- Logistical and budgetary planning;
- Electoral law development;
- Capacity-building;
- Strengthening ties with international election administration bodies;
- Storing assets transferred to the IEC, and establishing regional field offices;
- Most importantly, establishing provincial offices; and
- Preparing and conducting a national discussion on electoral law among political parties, the International Community, and other stakeholders (unclear when).

While this is certainly an imposing list, it is currently unaccompanied by a detailed work-plan. On this point, the only material available on this subject is contained in the PESG reports (presumably the annexes), which do not constitute a detailed work-plan. In the absence of such a plan for the coming years, it is hard to see how investments for capacity building now would result in improved performance in future elections, especially since quite likely much of the staff would have turned over by that time.

Another problem with the list, aside from the lack of specificity, is that many of the activities included are either viewed dubiously by the International Community, or are being developed independently by various IC actors. For example:

- The IC would not be inclined to support by-elections required under a Presidential decree when elected legislators (in the House of the People or provincial council) are killed, since those elections would involve province-wide elections to decide on replacements for individual legislators;
- For a number of reasons (discussed elsewhere in this report), the IC is unenthusiastic about municipal or district elections, especially the latter, prior to the next national elections in 2009-10;
- There appear to be some serious issues concerning the design and implementation of the proposed joint national ID/voter registration pilot program (see elsewhere in this report); and
- While certain IC organizations have called for a national dialogue on electoral law amendment or codification, it must be said that this might not have the desired impact until the new National Assembly begins to work on detailed legislation and a date for future elections gets closer to hand.

CONCLUSIONS

The number of staff that the PESG recommended for retention by the IEC seems overly large, especially in view of the absence of a detailed work-plan on current and future activities. This leads to questions concerning for how long and to what extent the IEC should retain its extraordinary, “transitional” character; or begin to become better integrated into regular government processes while retaining its independent character to the maximum extent possible. The independence and neutrality of the IEC also needs to be strengthened through changes to the method of appointment of commissioners and their tenure, and to current budget and staff arrangements. The need for nine full-time Commissioners is doubtful.

RECOMMENDATIONS

- Continuation and further development of electoral administration through the IEC should emphasize maintaining its independence and effectiveness while beginning to move beyond the large-scale, transitional character it assumed during recent electoral processes;
- The precise role and functions of the IEC prior to the next national elections should be more clearly defined, and a detailed work-plan should be developed for IEC tasks, resources and staff during this period;
- The proposed scale of IEC staff, programs and facilities should begin to be planned in accordance with maintaining its effectiveness and independence, while realizing efficiencies through greater integration with other governmental processes.
- The number of IEC commissioners should be reduced, especially during periods between elections. In order to encourage a collegial approach in which the commissioners act as a “board of directors” rather than heads-of-department, the number of full-time commissioners should not exceed five.
- Means should be adopted to ensure the professionalism and balance of IEC by involving the Legislative as well as Executive branch in the appointment of commissioners.
- In reconstituting the IEC, appointments should be made in a way – such as “staggering” the terms of new appointees – that would result in regular rotation of membership, so that there would not be a wholesale turnover of membership prior to elections which might occur on different schedules.
- IEC commissioners should be protected from removal except for cause, determined through procedures that protect the individual in question.

- Adequate funding for essential IEC operations should ultimately be provided through the State budget.
- While the IEC remains supported by the IC, a management committee, jointly chaired by the IEC and a Donor Representative should be introduced to focus on long-term capacity building initiatives and shorter-term progress.
- IEC staff should receive sufficient compensation and career incentives to encourage their retention, and the IEC should retain autonomy over staff management.

PART 5

LEGAL FRAMEWORK FOR ELECTIONS

1. GENERAL LEGAL FRAMEWORK

SUMMARY

The Afghan Constitution establishes a presidential political system with direct elections for that office, the House of the People of the National Assembly, provincial councils and local governments. The varying terms of office for the Presidency and House of the People (five years), provincial councils (four years) and local governments (three years) would create a cycle in which elections occur about two years out of every three. Elections are conducted by an Independent Election Commission.

Under the Constitution, election to the Presidency is by receiving a majority of the votes cast, with a second-round election between the two leading candidates occurring if a majority is not obtained in the first round. The Constitution does not specify the method of election to legislative offices, but under the Electoral Law such offices are awarded to the individual candidates who receive the largest number of votes. This system, referred to as single non-transferable vote (SNTV), was employed for the elections to the House of the People and provincial councils.

Implementation of the SNTV system has caused considerable difficulties for election administration and outcomes: A very large number of individual candidates registered; candidate-based ballot-papers were voluminous and difficult to transport; voters had difficulty filling in their ballots; and some candidates (including ones who formerly commanded or are linked to armed groups) were elected because they were easily-recognized figures or voters were influenced to select them.

The provisions and implementation of the Electoral Law also created other issues, including not only the “commanders” problem but the so-called “assassination clause” (see below). These and a number of other issues will have to be addressed through further legislative action, including amendments to the Law or a broader codification.

DISCUSSION

Constitutional Basis

The Afghan Constitution, 2003, establishes the democratic political system of the country, which is of the presidential type; and provides for direct elections to many public positions. Under the Constitution (Art. 156), elections are to be administered by an Independent Electoral Commission (IEC).

The elections for which direct elections are explicitly provided include those for the Presidency (together with two vice presidents, Arts. 60-61); the House of the People (*Wolesi Jirga*, Art. 83); provincial councils (Art. 138); district and village assemblies (Art. 140); and municipal mayors and councils (Art. 141). The regular term of the President and vice presidents are five years; of members of the House of the People also five years; of members of provincial assemblies four years; and of members of district and village assemblies three years.

The Constitution also provides for indirect election of the members of the upper house of the National Assembly, the House of Elders (*Mesbrano Jirga*, Art. 84). Each provincial council elects one of its members to serve instead in the House of Elders for a term of four years; the district councils of each province elect one member from among them to serve for a term of three years; and the President appoints one third of the membership for a term of five years (with one-half of the Presidential appointees being women).

The method of election to the Presidency is based on a majoritarian election system in which a second-round election may be required (Art. 61; see section on methods of election). The method of election to the House of the People is not specified, except that the constituencies from which members are elected shall be awarded mandates in accordance with their relative populations, and *inter alia*, that the number of mandates shall not exceed 250 (Art. 83).

The method of election to provincial councils is not specified in the Constitution, nor is the method of election to future district and village assemblies, or future municipal mayoralties and councils.

Note that the Constitutional provisions regarding the term of various elected offices, if fully implemented, would create a complex election calendar; by one calculation elections would be held during 39 of the next 60 years. It is doubtful if such a schedule is desirable or achievable from an administrative and financial perspective, and could have definite disadvantages in terms of generating voter fatigue and creating problems for political stability.

Legislative Provisions

The Electoral Law was first enacted in 2004, prior to the Presidential elections, and was subsequently amended in 2005, before the elections to the House of the People and provincial councils. (The 2005 amendments included establishment of an independent Electoral Complaints Commission, which is discussed in the section on dispute resolution.)

National and Provincial Elections

With respect to Presidential elections, the Electoral Law does not expand substantially on the detailed provisions on this subject in the Constitution. The Law does, however, provide greater detail on national and provincial legislative elections. It fixes the number of seats in

the House of the People at 249, and also provides for their allocation to different provincial constituencies and the method of election of candidates there. (The specifics of the award of mandates in the House of the People are described at greater length in the section on methods of election.)

“Single Non-Transferable Vote”

Under the Electoral Law, subject to the requirements for special representation for women, mandates are acquired on the following basis: “... Provincial seats shall be awarded to candidates on the basis of the number of votes they have received. ... In each province, seats shall be awarded to the most voted candidates” (Art. 21.1-2). This provision has been interpreted and implemented by the IEC to create a so-called single non-transferable vote (SNTV) system of election. In this system, candidates run individually and voters cast one vote, for their preferred candidate. While district elections have not yet been held, a similar method would presumably apply for those elections (see Art. 32.1.b).

As is made clear in the Final Report of the Joint Electoral Management Body (JEMB) for the 2005 elections, the SNTV system was one of the main difficulties in conducting the elections. Some 5,800 candidates were registered to stand for election, and in some provinces hundreds of candidates were on the ballots. Due to unfamiliarity with voting and widespread illiteracy, the ballot-papers included photographs of the candidates, arbitrary symbols as well as the candidates’ names. The papers were therefore multi-page folios which were difficult to transport in bulk, unwieldy to read and insert into the ballot-box, and confusing to voters. It therefore took time for each voter to fill in the ballot, and many voters requested and/or received assistance in doing so from polling officials.

“Commanders” Issue

The SNTV system was adopted due to the Government’s desire to limit the role of political parties due to their poor image, since many parties have been linked to armed groups which caused so much damage to the country and its people during the periods of civil war. At the same time, however, the system – with its focus on individual well-known candidates – has been criticized for essentially letting the foxes into the henhouse. That is, well-known former commanders and other figures linked with armed groups stood for and won numerous seats in the House, a fact to which is attributed a loss of enthusiasm for the electoral process and representative political institutions by voters. (Additional issues concerning the desirability of the SNTV system are included in the section on methods of election.)

During the 2005 elections, the “commanders” issue had to be addressed in connection with the registration of candidates. The Electoral Law disqualifies from candidacy for political office individuals who “practically command or are members of unofficial military forces or armed groups” (Art. 14.3). Neither the IEC itself during the candidate nomination process, nor the Electoral Complaints Commission (ECC; see later section) upon objection to a candidacy, was reasonably able to resolve such issues. Therefore the ECC relied on the advice of the Disarmament and Reintegration Commission, a mixed commission including

UNAMA, Government and Coalition representatives. This process caused concern, however, that necessary investigations had not been concluded, or that the findings were subject to political influence.

Other Issues

The Electoral Law contains many necessary and useful provisions on the conduct of elections in general, and Presidential and national, provincial and district (see Arts. 30-32) legislative elections in particular. Still, it must be said that the Law is not comprehensive, and gaps in its provisions have necessitated the promulgation of numerous regulations by the IEC.

“Assassination Clause”

Two particular provisions of the Law, collectively dubbed the “assassination clause”, have drawn special attention. Under these provisions (Arts. 21.4 & 29.2), the death of an elected member of the House of the People or a provincial council would result in replacement by the unsuccessful candidate of the same gender who received the largest number of votes. (Since candidates are elected individually, this creates a perverse incentive – *viz.*, to eliminate successful candidates, since that could result in a change in political or ethnic representation, as well as a way to obtain a mandate.)

The Government attempted to address this problem through a presidential decree under which replacement of a deceased winner along the lines described in the Law would occur only in the event that the death of the elected member resulted from natural causes; otherwise, a by-election would be held. The problem with this, however, is that it would be very onerous to hold a by-election, since national and provincial legislative elections are held in province-wide constituencies.

In fact, this problem is not hypothetical, since two elected members of provincial councils have been killed. The first was in Laghman Province, but the Government may be able to avoid a by-election there since the event occurred prior to publication of the decree. More recently, however, the Speaker of the Takhar Provincial Council was also killed.

Language and Other Additional Issues

Finally, a number of other issues pertaining to the Electoral Law and other legal instruments have been identified, notably in a February 2006 report by IFES. To these must be added the question of the language of election proceedings and materials. The Constitution (Art. 16) provides that the Pashto and Dari languages are official languages of the State, but that other recognized languages (of which there are six) shall be official languages when they are spoken by a majority of people in the “area”. Even if a comprehensive law on languages were adopted to implement this provision, it would be unlikely to address specifically the range of language issues with respect to elections – including the languages in which proceedings of election bodies can be held; in which various submissions may be made; and with respect to ballot-papers, other electoral materials and public communications.

Independent Election Commission (IEC)

The present IEC was established through a legislative act (decree) of the President, prior to the constitution of the National Assembly (Decree No. 21, January 2005). The decree also appointed the current nine members. The structure and procedures of the IEC were set forth in a subsequent decree (No. 23, January 2005). (Please refer to an earlier section for more detail concerning the issues regarding IEC composition and operations, as well as independence.)

Other Elections

The specifics for other elections called for in the Constitution – including for village councils and municipal mayoralities and councils – have not yet been determined through legislation. In 2003, the Government enacted a Municipal Election Law, but its provisions concerning electoral administration have been superseded by the Constitution, which assigns those functions to the new IEC.

The Government is now hoping to move toward district and municipal elections, since it believes that exercising the vote at this level would encourage voters to view themselves as stakeholders in decisions which affect the quality of their everyday lives. Plans to conduct such elections, however, may be impeded by a lack of resources and problems with the voter register which was created 2003-05. (The VR database and many VR materials do not adequately specify the district or municipality in which a voter resides, so that assignment of voters to constituencies would be problematic. See Annex, Concept Paper on Voter Registration for District and Municipal Elections.)

Another problem for district elections is that the boundaries (and even provincial assignment) of many districts are not clearly defined. Under the Electoral Law, disputes concerning the boundaries of districts are to be resolved by the Ministry of Interior (MoI); such disputes must be submitted not later than 170 days prior to the election date (Art. 12). (Of course, it is unlikely that the date of district elections would be determined as much as 170 days in advance; so those wishing to dispute boundaries would be well advised to make their submissions early!)

CONCLUSIONS

The Constitutional framework for elections in Afghanistan is basically sound, but the differing terms of office for the Presidency and House of the People, provincial councils and local governments pose a challenge for sustainable electoral administration. The Electoral Law appears to provide a sufficient legislative basis for electoral administration, although it would benefit from additional development to address known problems and so that the IEC would have less need to issue detailed regulations regarding its implementation.

The main issue that arises under the Electoral Law is the individual candidate-based (SNTV) method of election to the House of the People, provincial councils, and future district, municipal and village assemblies. This method of election to legislative bodies is difficult to administer, confusing to voters, and arguably undemocratic. The outcome of elections based on SNTV is likely to include large numbers of votes being cast for well-known and powerful figures – some of whom may have undesirable affiliations, socially divisive programs, or undue influence on voters.

There are also a number of other issues pertinent to the Electoral Law, such as the “assassination clause” and “commanders” problem. These issues, along with the general issue of the method of election to legislative bodies, should if possible be addressed through amendments prior to the next election – whether it be for local bodies (at the district and/or municipal level) or at the national level.

In the aftermath of the 2005 elections, it will likely take some time for the newly-established House of the People to address electoral issues. The new House is still in process of organizing itself, and has now proceeded to review the formation of the post-transitional Government. Then the House will then be in a position to work on legislative issues, but electoral matters would probably not be of high interest until some elections are in the offing.

RECOMMENDATIONS

- The Constitution should be amended at the soonest practical time to modify the terms of office specified at various levels (national, provincial and local) for elected officials, so that the election calendar will not be overburdened. In doing so, it would be best to adopt a two-tier cycle, with regular elections occurring not more frequently than every other year.
- The Electoral Law should be amended to replace the SNTV method of election for legislative candidates with another system or systems appropriate for Afghan conditions. Alternate systems would include proportional representation (PR) in large constituencies; either first-past-the-post (FPTP) elections of single candidates or elections of multiple candidates from smaller geographical constituencies; a combined (or “mixed”) system involving both PR and small constituency elections; or PR with a system of compensatory mandates for participants that obtain a substantial number of votes or meet other criteria.
- The “commanders” issue should be addressed through more detailed provisions in the Electoral Law, or in connection with a broader program of transitional justice.
- The independence of the IEC should be protected and enhanced, and measures should be taken to improve the efficiency of its structure and put electoral administration on a sustainable basis in cooperation with other government operations (see separate recommendations earlier).

- The Electoral Law should be subjected to a thorough review by the IEC, with assistance by the International Community; and definite proposals should be made to address the omissions and deficiencies that have been identified.
- In formulating proposals for amendment to the Electoral Law, the IEC should also consider proposing a codification of the Electoral Law including additional regulatory material as well as other related legislation.
- While it will be difficult in the near term to attract the attention of the Government or National Assembly for amendment or codification of electoral and related laws, the International Community should continue to stress the importance of undertaking this task, if possible prior to the holding of new elections at any level.

2. METHOD OF ELECTION

SUMMARY

Under the Constitution, the President is directly elected on the basis of receiving a majority of the votes cast. If no candidate wins election in the first round, a second round is held between the two leading candidates.

The Constitution also provides for direct election of members of the lower house of the National Assembly, the House of the People, as well as for members of Provincial Councils. Under the Electoral Law, elections for these bodies were held based on the single non-transferable vote (SNTV) system, under which each voter may cast a vote for a single candidate at-large.

The presidential election system is in accordance with international standards, although additional requirements for a first-round victory could give it greater legitimacy. The SNTV system for legislative elections, however, is seldom used in international practice in relatively large constituencies. While SNTV may prevent party-based factionalism in legislative bodies, it is difficult to administer, potentially leads to unrepresentative results, creates problems about strategic and bloc voting, and presents greater opportunities for manipulation of the results at the counting stage.

DISCUSSION

Presidential Elections

Under the Constitution (Art. 61), the President is elected on the basis of “receiving more than fifty percent of the votes cast ... through free, general, secret and direct balloting.” If no candidate receives the necessary majority in the election, then a second round is held between the two leading candidates. In addition, the President is elected as part of a ticket also including candidates for the two vice-presidencies (Art. 60).

The two-round system for the election of the head of state in a presidential political system is widely used in international practice. Requiring a runoff election between the two leading candidates from the first round helps ensure that the candidate who is ultimately elected is at least acceptable to a majority of the voters (even though a majority may have preferred other candidates as their first choice).

Afghanistan is a large country and one that is extraordinarily diverse in ethnic, regional and sectarian terms. A presidential election which is won by a candidate who obtains a majority of the votes cast (simple majority) in the first round may not be viewed as legitimate by voters who supported other candidates, especially if the turnout is low or uneven, or the candidate fails to obtain a solid majority of the votes cast.

In the 2004 presidential elections, there was a high turnout; the winning candidate, President Karzai, received a substantial majority of the votes; and none of the other presidential candidates followed closely in the number of votes received. A second-round contest between the leading and next candidate could have enhanced the legitimacy of the election by demonstrating the leading candidate's support and confirming that victory was achieved without manipulation of the results. But, in the event, the leading candidate actually surpassed most additional requirements that could be reasonably be imposed for outright victory in the first round.

Legislative Elections

Under the Constitution, elections to the national House of the People (Art. 83) and provincial councils (Art. 138) are through free, general, secret and direct balloting. The method of election to these bodies is not specified; but for elections to the House of the People, the Constitution requires the method adopted through the elections law to contain "measures to attain ... general and fair representation for all the people of the country, and proportionate to the population of every province"; and also specifically reserves seats in the House for two women elected from each province (Art. 83).

The size, composition and method of election to the National Assembly are determined through the Electoral Law (2004, as amended 2005). The number of members ("representatives") in the House of the People is set at 249 (Art. 19), of which 10 seats are reserved for nomads (*kuchi*), who vote in a separate constituency. The Constitution (Art. 83) also provides for at least two women to be elected from each province.

Under the Electoral Law, the constituencies (electoral districts) for election of representatives correspond to the 34 provinces, and the number of mandates allocated to different provinces is based on their relative population by determining the number of times it exceeds the average quota of population corresponding to a single mandate on a national basis, with the remaining mandates distributed according to the highest remainders (Art. 20). (During this process, provinces which fail to obtain two mandates are awarded that number regardless.)

For provincial council elections, the number of members is determined under the Electoral Law on the basis of the population of the province (Art. 28). One-quarter of the mandates in each province is reserved for women, except if there are an insufficient number of female candidates those seats would remain vacant until the next elections (Art. 29).

With respect to the method of election for representative, the Electoral Law (Art. 21) states only that, "In each province, seats shall be awarded to the most voted candidates." The same method is applied to award the mandates reserved for women from each province (Art. 22), except that if there are an insufficient number of female candidates those seats would remain vacant. Similar rules are applicable to election of candidates to provincial councils (Art. 26).

These provisions of the Electoral Law have been interpreted to apply the SNTV system of election. Under SNTV, each voter may vote for only one candidate. Although numerous political parties have been registered under the Political Parties Law, the Joint Election Management Body (JEMB) – consisting of the Afghan Independent Election Commission (IEC) and international representatives – decided not to associate candidates with their parties, if any, through the use of party names or symbols.

The SNTV approach was chosen due to an aversion in the Government, and reportedly among the people, for political parties – which have been associated with the hostile politics and military conflicts of past decades. But the SNTV system has also had a number of drawbacks:

- The ballots for SNTV elections were very voluminous and complex, and it was difficult for voters (many of whom are illiterate) to identify the candidate of their choice. This slowed the processes of voting and counting ballots, and led voters to request assistance from polling officials.
- With a large number of candidates listed individually on the ballot-papers, voters tended to cast their votes for well-known figures, many of whom were associated with armed factions.
- Such a candidate-based approach has made it more difficult for parties to operate during, and even after, legislative elections. (Notwithstanding this difficulty, parties – especially on the Opposition side – who succeeded in having candidates elected to the House of the People have been able to organize into coherent political factions there.)

In addition to these factors, a number of other disadvantages and risks of the SNTV system may be identified:

- SNTV does not necessary lead to a sufficient level of representativeness in the results of an election to be fully consistent with international standards, or perhaps even the requirement of the Afghan Constitution which calls for “general and fair representation for all the people of the country ...” (Art. 83). This is because – unlike or to a much greater degree than alternative methods of election to legislative bodies – SNTV does not guarantee that the number of votes cast for various candidates produces a corresponding level of political representation.

Since under SNTV voters cast their ballot for only a single candidate, a large number of votes will often be obtained by well-known individual figures. That large number of votes, however, would be applied to the election of individual candidates, and not be reflected in the overall outcome of the elections. In effect, the surplus votes received by individual candidates are cast aside, and other candidates elected on the basis of a much lesser number of votes. In effect, the outcome of the voting would be unrepresentative of the collective will of the voters. (This defect is greatly

magnified by the fact that the elections in question are in large constituencies, corresponding to the provinces.)

- Viewed another way, SNTV also poses a risk to the political system resulting from “bloc” or “strategic” voting. This possibility arises in the following way:

SNTV presents an opportunity for highly-organized and disciplined political parties or other formations (such as social movements) to achieve results in an election which exceed their influence in the overall political system. This would occur if those formations have and exercise a greater ability to instruct their supporters specifically how to cast their votes.

Some *bona fide* political parties might not be able to organize their voters to cast ballots in such a way that more than one or a few of their candidates receive a sufficient number of votes to be elected. But a highly-disciplined formation with great influence over voters could do so, thereby achieving representation greatly in excess of its overall support. (This could be particularly problematic in a country where many voters might be willing to join an organized effort to increase the political representation of certain activist social movements.)

- Finally, the SNTV method makes it easier to manipulate the results of an election through malfeasance at counting centers. Since under SNTV candidates win election by obtaining the greatest numbers of votes at-large, and there are a great number of individual candidates competing, unscrupulous persons at counting centers can affect the outcome by introducing a relatively small number of fraudulent ballots for an individual candidate or candidates.

CONCLUSIONS

The two-round system for election of a president is widely used in comparative election practice. While the second-round system may increase the expense of presidential elections, it helps confer legitimacy on the final outcome, especially in a diverse country with many different socio-cultural loyalties. (There is, however, always a danger that the more focused competition between two candidates in the second round can lead to a higher level of irregularities, and even intimidation or violence.) To ensure an outcome with the highest level of legitimacy, a voter turnout or supermajority requirement could be imposed on the first-round election.

The SNTV system used for legislative elections is problematic from at least two perspectives: First, the system itself is not fully democratic, in the sense that it does not necessarily lead to a representative outcome, especially in the province-wide constituencies used in Afghan national and provincial legislative elections. Second, the system is subject to being manipulated in a way which can threaten democracy, or lead to fraudulent results.

In the former regard, voting for individual candidates in large multi-member districts does not ensure a representative outcome, since the surplus votes obtained by popular candidates

– *viz.*, those which are not necessary to achieve victory for those candidates – do not affect the overall results. In the latter respect, a highly organized and disciplined party or social group can instruct its supporters to cast their votes in a way which would result in victory for the greatest number of its favored candidates. Or unscrupulous officials at counting centers can alter the results through inflating the vote for only a few candidates.

RECOMMENDATIONS

1. Consideration should be given to changing the method of election to the presidency. Additional requirements could be imposed for a first-round election victory in order to achieve greater legitimacy for an election which is won in this manner.

Such requirements could include, *e.g.*, that a majority of registered voters cast ballots in order for the results of a first-round election to be valid; or if not, that a candidate obtain a clearer majority in that round, perhaps reflecting broad appeal throughout the regions. At the same time, it should be recognized that second-round elections not only result in additional costs but sometimes also in greater tension and political conflict, as well as increased incentives for electoral irregularities as the political competition becomes more focused.

The current method of election to the presidency is determined by the Constitution. It is unlikely that the Constitution could be amended prior to the next national elections (2009-10), since that would require a complex process that could open up a whole range of contentious issues.

2. Serious attention should be given to changing the method of election to legislative bodies, particularly at the national (House of the People) and provincial (Council) level. In view of the difficulties, defects and dangers associated with the SNTV system, alternative approaches should be considered. These include: Proportional representation (PR) based on party lists; a “mixed”, or combined, system including proportional representation at-large with first-past-the-post (FPTP) or multiple-mandate elections in specific geographic constituencies; and PR with “compensatory”, or supplementary, mandates awarded to parties who obtain a substantial number of votes or meet other criteria. (The latter system is used in Albania, and was also recently used in Iraq; it has the advantage of not requiring a second ballot-paper.)

In addition, political parties who nominate a candidate should be permitted to include their official names and symbols on the ballot-paper next to the name of the candidate. This would facilitate voting, and enable parties to operate more effectively during the elections and deflect challenges from well-organized extremist groups.

The SNTV system used last year should if possible not be used again in the next legislative elections at the national (2009-10) or provincial (2009) level. It will

however take considerable effort prior to those elections to select, design and implement an appropriate and well-accepted alternative method.

3. CAMPAIGN REGULATION: CAMPAIGNING, FINANCE & MEDIA

SUMMARY

The Joint Electoral Management Body applied the constitutional and statutory authority of the Independent Electoral Commission to regulate the main aspects of the campaign period—including the campaigning itself, campaign finance, and media coverage and access. In principle, the main points of regulation in all these areas were addressed; but detailed rules were lacking, and monitoring and enforcement in all three areas was very limited.

DISCUSSION

The Independent Election Commission (IEC) has power under the Constitution (Art. 156) not only to “administer” but also “supervise” elections. The Electoral Law (Art. 38) also gives the IEC authority to “issue rules to regulate [the] electoral campaign period”, and also requires it to establish “an official electoral campaign period”, to end 48 hours prior to the commencement of the voting. The Law also more generally empowers the IEC to “issue Regulations, Procedures and separate Guidelines to better implement [its] provisions” (Art. 56).

The Electoral Law establishes the offense of “[f]ailing to comply with any order of the Commission, the ECC [Electoral Complaints Commission], or the MC [Media Commission]” (Art. 53[s]). In transitional provisions, the Law delegated the constitutional and statutory powers of the IEC to the Joint Election Management Body (JEMB), composed of international commissioners as well as the IEC members. A Presidential Decree (No. 24, 6 May 2005) also gave the JEMB the power to “[a]dopt regulations and ensure their actual implementation”; as well as to “[d]evelop and adopt, in consultation with political parties, candidates, mass media and electoral organizations, procedures to govern election campaigns and elections”.

Campaign Regulations

The JEMB published campaign regulations for both the 2004 and 2005 elections. The noteworthy aspects of the latter Regulation on the Electoral Campaign (Dec. No. 37, 5 July 2005) include:

- Organizers of campaign events must comply with all laws, including the Electoral Law and the law on gatherings and other mass events, and “not engage in speech or conduct likely to incite violence or ethnic or religious hatred”;
- Such organizers would be subject to sanction if electoral offenses are committed during campaign activities, unless they took reasonable efforts to prevent them;

- Pursuant to the presidential order cited previously, campaigners were prohibited from using public assets, facilities or resources unless the relevant authority made them available to all candidates on an equal basis;
- The 48 hour period referred to above was dubbed the “campaign silence” period, and extended also to include the hours of voting;
- Campaign materials were not to be displayed in or on public buildings without authorization, in accordance with the principle of equality of access;
- Campaign materials were not to include “messages or symbols likely to incite violence or hatred between ethnic or religious groups”; and
- Campaign materials were not to be displayed within 100 meters of polling centers during the campaign silence period.

Separately, the President also promulgated an Order on the Non-Interference of Governmental Officials in Electoral Affairs. With respect to campaign activities, this order generally instructed officials to “[r]efrain from any preferential treatment” of candidates, and “[r]efrain from misusing state resources to the benefit or detriment of a candidate”.

Finance Regulations

Campaign finance issues are mentioned in only one place (Art. 53) in the Electoral Law. This article, which deals with electoral offenses, describes the offenses of offering or receiving “payment or other benefit for the purpose of influencing the electoral process;” “[m]aking use of funds originating from illegal activities;” and “[m]aking use of foreign funds for the purpose of influencing the electoral process”.

The JEMB adopted regulations on campaign finance in both 2004 and 2005. In 2005, the Regulation on Campaign Finance (No. 48, 1 August 2005), included *inter alia* the following provisions:

- All candidates were to keep a comprehensive record of their campaign finances for the period 17 August – 30 October 2005, including all campaign-related contributions received or expenditures, whether in cash or in-kind, with in-kind contributions valued at fair market value;
- Such records were to be kept on a prescribed form, or equivalent alternative format;
- Candidates were to be held responsible for the accuracy and completeness of their financial reports, and sign them;

- The JEMB would keep confidential personal identifying information about candidates contained in their records, except as required for the resolution of complaints by the ECC or Media Commission;
- Candidates for the House of the People could incur not more than the equivalent of USD 15,000 in campaign-related expenses, and provincial council candidates half that figure;
- House candidates could receive contributions only from individuals registered to vote in Afghanistan, and not in excess of the equivalent of USD 1,000 in value from any single individual, and half that for provincial council candidates;
- Contributions could not be solicited through inducements of present or future benefits for the contributor, or pressure upon contributors by their employment superiors or others with influence over their employment status or remuneration.

With respect to implementation of these provisions, it is reported that the IEC did not put any mechanism in place for monitoring compliance. In addition, it is said that the IEC did not request to review the financial records of any candidate. In the absence of public inspection – which is also not provided for – therefore, enforcement would have to have been through an electoral complaint.

Media Commission and Regulations

The Electoral Law (Art. 50) requires mass media to treat the campaigns in “a fair and unbiased manner”, and in accordance with the Code of Conduct promulgated by the IEC. Under the Law, furthermore, candidates are supposed to have access to the media, to the extent possible; and state-run media should publish the positions of the candidates in a similar manner, as agreed with the IEC. The state-owned media are to institute policies to ensure fair coverage of the elections.

For the 2005 elections, the JEMB promulgated a Regulation on the Establishment of the Media Commission and Mass Media Coverage of the Elections (Dec. No. 43, 17 July 2005). Some of the highlights of this regulation include:

- A Media Commission (MC) composed of Afghan and international representatives was established to monitor the coverage of the electoral campaign and address complaints;
- All mass Media were to “endeavour to inform and educate the public” about the elections in an impartial manner;
- State-run media were in addition required to disseminate public announcements by the JEMB at no cost;

- Campaign advertisements were prohibited prior to the commencement of the campaign period, and during that period candidates were to have equitable access to opportunities for campaign advertising;
- Media coverage of the campaign, including opinion surveys, was prohibited during the period of electoral silence, and violations were punishable as offences;
- Anyone could submit a complaint to the MC about violations of the media regulations, and the MC could impose sanctions and penalties – including public reprimand, publication of a correction or the decision, mandatory retraction or right of reply, and/or referral to the ECC or prosecutors.

In its Final Report on the 2005 *Wolesi Jirga* and Provincial Council Elections (6 November 2005), the MC found that compliance with the Media Code of Conduct during the elections had been high; most violations occurred during the period of electoral silence and may have resulted from misunderstanding; none of the 15 complaints received reflected serious violations; and sanctions imposed only included brief judgments and apologies when appropriate. The MC was especially commendatory toward the Sponsored Advertisement Program run by the JEMB, which provided equitable access to the media to candidates regardless of their financial status.

CONCLUSIONS

The regulations and mechanisms that were put into place to control the 2005 campaign period were a good second step. The main points of regulation of the campaign were addressed, and the regulations and their implementation undoubtedly contributed to the relatively orderly campaign. For future elections, the development of campaign regulations and mechanisms should continue. More effective monitoring and enforcement procedures will be particularly important in ensuring that future election campaigns are orderly and equitable.

RECOMMENDATIONS

- Development of regulations related to the campaign period – including with respect to campaign activities, campaign finance, and media coverage and access – should continue.
- The Electoral Law and other relevant legislation should at the appropriate point be amended to include more detailed provisions on these subjects;
- The mechanisms for implementation of campaign-related regulations should be strengthened, especially with respect to their capability for effective monitoring and enforcement.

4. DISPUTE RESOLUTION: COMPLAINTS, CONSULTATIONS, MEDIATION & APPEAL

SUMMARY

Grievances concerning electoral administration are not always best handled through adjudicatory proceedings. Some concerns about the systemic fairness of the electoral system are better addressed through regular consultations with stakeholders and, if warranted, by investigation and mediation.

The adjudication of legal complaints may be performed by an independent body, such as the Electoral Complaints Commission which was formed for the 2005 elections. Operating such a body is very resource-intensive, however, and consideration should be given to whether electoral administration is sufficiently developed for complaints to be adjudicated internally, with only appeals referred to an independent body.

DISCUSSION

The subject of dispute resolution includes not only the formal legal complaint and appeal process. Many electoral disputes do not result in complaints and lead to adjudication, due to their unsuitability for resolution in this manner. Such disputes might be better addressed through a regular consultation and mediation process.

During both recent elections, the losing candidates claimed that a variety of systemic actions had been taken which favoured Government candidate(s) and disadvantaged them. These allegations concerned, for example, whether access to registration centres and polling stations (both with respect to their locations and hours of operation) had been equivalent for voters from areas in which would tend to support the Government or the opposition.

Addressing such grievances is best done through a regular but non-adjudicatory process. This could include periodic as well as special consultations with the representatives of the various party or candidate campaigns. If the consultations do not result in agreement on issues concerning the electoral process, then further investigation and, if warranted, mediation could be conducted under the auspices of electoral administration.

In order to deal with legal complaints, an Electoral Complaints Commission (ECC) was established prior to the 2005 legislative elections, through the amended Electoral Law. The ECC had a mixed composition of three international and two Afghan members.

Under the Electoral Law (Art. 52), the ECC has jurisdiction over the adjudication of complaints related to electoral offences that are submitted prior to certification of the results of the election; and over challenges to the registration of candidates. The ECC may, however, as occurred during the 2005 elections (especially for investigation), delegate its authority to provincial election commissions (PEC).

The ECC decided thousands of cases, particularly general electoral complaints and candidate registration challenges. Many more “complaints” were submitted, but not in proper form or accompanied by sufficient evidence.

The final report of the ECC, and other references, indicate that its role was impeded by inadequate investigatory resources, particularly at the field level. This was despite the fact that its peak staffing reached about 200 during the electoral period. This was the reason that the ECC delegated some of its functions, especially investigatory aspects, to the PECs.

The ECC final report recommends continuation of the existing ECC infrastructure, with an expansion of staff and other resources at all levels. Under these recommendations, the ECC would continue to operate entirely independently of election administration, and have greater presence in the provinces.

Other suggestions have been made with respect to future electoral dispute resolution – *e.g.*, in a recent legal report by the International Foundation for Election Systems (IFES). Under this approach, the ECC would be restructured as an appellate body and there would presumably be much less expansion of the staff and other resources necessary for its effective operation.

At the same time, recommendations have been made – notably by the Post-Election Strategy Group (PESG) – for a continued and even expanded level of staffing for the Independent Electoral Commission (IEC), both in the capital and the provinces. If, in fact, the staff complement for overall electoral administration increases then expansion of a separate staff for ECC operations for future elections would appear unnecessary.

If the ECC were reconstituted as a body with exclusively appellate jurisdiction, electoral administration at the provincial (PEC) and central (IEC) levels would act on complaints directly; and only when these administrative remedies were exhausted would the ECC take cases on appeal. In addition to avoiding duplication of resources, this approach could give electoral administration a greater opportunity to address complaints and potentially remedy their causes, prior to adjudication.

Mention should be made that, during the candidate registration process, the Supreme Court of Afghanistan attempted to intervene in several cases. These actions by the Court were rebuffed on the grounds that the ECC had been established as the sole adjudicatory body for resolution of electoral disputes.

CONCLUSIONS

During the 2005 elections, the ECC acted upon a great many complaints, but complaints not submitted in proper form as well as more general grievances went unaddressed. General grievances about the fairness of elections are best addressed through improved consultation, investigation and mediation.

The key issue with respect to the formal adjudication of complaints is whether they should be addressed exclusively by an independent body – either the courts, when these have been developed sufficiently to exercise this role, or by a special commission – or whether that body should have jurisdiction only over appeals. In deciding this issue, consideration should be given to resource implications, as well as the level of development of electoral administration.

RECOMMENDATIONS

- Before and during future elections, the IEC should engage in regular consultations with the candidates and parties contesting;
- Grievances concerning the systemic fairness of electoral operations should in addition be subject to investigation and, if warranted, mediation;
- Consideration should be given to refashioning the ECC for future elections by assigning it an exclusively appellate role; this would appear to require amendment of the Electoral Law.

PART 6

VOTER REGISTRATION

(A Technical Report on the Voter's Register is provided in a separate, annexed report.)⁶

This chapter deals with issues about the creation of the voter's register, its inherent problems and the impact of those problems on the 2005 election in particular. It makes proposals for ways in which the current data might be utilised in future, especially for the municipal and district elections.

1. OVERVIEW OF VOTER REGISTRATION PROGRAM

SUMMARY

The voter registration (VR) program, 2003-04, played a role in mobilizing public support and demonstrating the feasibility of electoral operations for the first national elections, for the presidency. The considerable resources consumed by the VR program did not, however, create a basis for a permanent voter list (VL) that could put VR on a sustainable basis.

In particular, the absence of detailed geographical information about registered voters in the VR database did not enable them to be assigned to specific polling stations or permit good estimates of the number of ballot-papers required in various places, especially for the legislative elections in 2005. The problem of fraudulent and multiple registration and voting also undermined the value of voter cards (VC) and the VR records.

While the voter's register was unsatisfactory for the purposes of the 2005 election, the opportunity remains to 'mine' the register for useable data, especially for municipal or district elections, and to determine what data can be incorporated into a new system.

In the short term, studies could be undertaken to ascertain the usability of raw VR records to assist in registering voters for the local (district and municipal) elections that the Government wishes to conduct prior to the next national elections. If possible, however, an entirely new national VR system should be in place prior to the latter elections. (The Concept Paper that follows this section proposes specific actions to utilize existing VR records as the basis for registration of voters for district and municipal elections.)

At the same time, it is premature to support pilot-stage studies for such a new national VR program, which would be based on a proposed national civil registry, since the available

⁶ See Annex 7.

details⁷ concerning the the pilot program are deficient in terms of project design, technical evaluation, operational plans, TORs, proposed technology to be utilised, projected costs and outcomes. In addition the issues of whether the census should precede the new registration process, and whether or not the voter's register should be wrapped into a more comprehensive government information system, remain unresolved. It is strongly recommended that expert assistance be sought urgently that provides a solid information and research base on all these areas, so that an unwise further investment in VR not be made at this time.

DISCUSSION

Background

The parties to the Bonn Agreement (5 December 2001, Annex III.3) requested the United Nations to “conduct as soon as possible ... a registration of voters in advance of the general elections that will be held upon the adoption of the new Constitution”. (The same provision also requested the UN to carry out as soon as possible “a census of the population of Afghanistan”).

The next day, the UN Security Council endorsed the Agreement; declared its willingness to support the interim arrangements as well as implementation of the Agreement and its annexes in accordance with a proposal by the Secretary-General; and called on the International Community to strengthen their commitments to assistance (UNSC Res. 1383). Subsequently, to consolidate the role of the UN, the Security Council created the UN Assistance Mission in Afghanistan (UNAMA; UNSC Res. 1401, 22 March 2002). It was not until a year later, however, that the Council formally authorized the formation of an electoral unit within UNAMA, and called for international support for UN electoral activities in Afghanistan (Res. 1471, 28 March 2003).

Preliminary activities related to electoral planning in Afghanistan began as early as December 2002,) but a team of electoral specialists with the UNAMA Electoral Component (UEC) did not actually commence preparations for voter registration until March 2003. On 26 July that year, the Afghan President promulgated a decree establishing a Joint Electoral Management Body (JEMB) comprised of the members of the Interim Afghan Electoral Commission and UEC representatives, and authorizing it to undertake the voter registration (VR) process.

The JEMB subsequently adopted Electoral Registration Regulations. Under these regulations, registration of voters was to be based on their presenting themselves to

⁷ See Pilot Project for Joint Civil and Voter Registry in Districts Lalpur (Nangarhar), Waras (Bamian) and District 10 (Kabul City) of Afghanistan – Final Draft

registration officials, at which time they were to “declare a residence in Afghanistan for the purposes of the registration.” (The JEMB could, however, after notice, “establish exceptions to the requirement that applicants are included in the provincial list pertaining to their place of residence.”)

The regulations did not address how a registrant would demonstrate eligibility to vote, but indicated that registration officers “shall, after considering an application ... refuse to register an applicant if the Registration Officer is satisfied that the applicant is not qualified to be registered as a voter.” In this case, applicants were entitled to appeal to national field coordinators, who were located at regional centres.

There is little in the regulations to describe how the discretion of registration officers was to be exercised. Such officers were required to be neutral, impartial and non-partisan, and not to take instructions from any government, political party or other authority except the JEMB and its Secretariat. Beyond that, registration officers “shall be guided by the goal of ensuring a full, effective and fair registration of Afghan voters ... in accordance with the principles of the Voter Registration Decree”.

Voter Registration Program, 2003-04

Our inquiry into the conduct of the VR program has not yielded unambiguous evidence concerning whether the exercise, in its early stages or during implementation, was intended to result in a voter list (VL) that would continue to serve as the basis of registration of voters for subsequent elections. Some officials interviewed indicated that the exercise was a short-term solution driven mainly by the exigencies of holding early national elections as part of the Bonn Agreement transition process. Others insisted that the results were in fact intended to create a “sustainable” basis for registering voters for future elections as well.

It is clear, however, that a number of problems beset implementation of the VR exercise, particularly during its early stages, in 2003. These problems may have led to errors that were subsequently impossible to correct. One of the main problems was a very difficult funding situation, in which promised contributions from donors failed to arrive as expected even as concrete preparations were being made, staff were being trained, and the registration process was being rolled out.⁸

⁸ See for example DPKO, Peacekeeping Best Practices Section, Lessons Learned Afghanistan Elections 2004 p 13 which stated that: “By 1 October 2003, the scheduled start date of the project, the voters register project had virtually no money and the project had to be postponed another two months. At that point only two per cent of the funding requirements had been made available by donors and the project relied almost exclusively on advance funding from UNDP... The gap in funding led to changes in operational planning which in turn undermined donor confidence in the preparation, potentially slowing donations... In addition, ‘earmarking’ complicated an already difficult financial situation... By the beginning of December only twenty eight percent of the commitments had been made available and once again, operational plans had to be changed.”

In order to avoid political problems that might result if registration teams went from province to province on a determined schedule, the program was rolled out on a nation-wide but limited basis. With that experience, and as the number of trained personnel and other resources increased, the registration exercise expanded from regional centers, to provincial capitals, to other cities and districts.

Planning for the VR exercise was based on a target figure of an estimated 10.5 million eligible voters. The exercise commenced in regional centres on 1 December 2003 (Phase I), expanded to provincial and district centres on 1 May 2004 (Phase II), and concluded on 20 August 2004.

The results of the VR exercise during Phase I – approximately 1.8 million registrations – were disappointing. Last minute security problems precluded the use of United Nations Volunteers (UNVs), who were to be used from the early stages in field operations. In response, the Afghan Transitional Government advocated that the program be “Afghanised” in order to overcome the security limitations (the UN’s Minimum Operational Security Standards, or MOSS) on the activities of international personnel, and allow more rapid scaling-up and better economies. As a result, performance during Phase II improved greatly, resulting in some 8.7 million registrations, making for a total of over 10.5 million internal registrations. At the same time, to speed up the process and numbers of registrants, requirements for the presentation of identification were relaxed.

Meanwhile, nearly three-quarters of a million additional voters were registered in Pakistan, for out-of-country voting (OCV) there. (In the other OCV location, Iran, no registration was conducted, and refugees were able to vote on the basis of their identification cards.)

Issues Concerning 2003-04 VR Exercise

The main lingering issues about the registration process are that there were no procedures to establish the eligibility of applicants, or to prevent multiple registrations by individuals; and that full geographical information about voter residence was not included in the VR database. The first issue created problems of vote security, since there would be no controls on fraudulent or multiple voting. The second made it impossible, for the 2004-05 elections or future elections, to assign voters to specific polling stations.

Thus, despite its high price tag – some \$120 million – it is generally conceded that the voter registration (VR) process which preceded the 2004 Presidential election failed to achieve several major objectives. While over 11 million voters were registered, the resulting VR data is neither complete nor reliable, and cannot directly provide a usable basis for a sustainable VR system.

Lack of Information on Voter Residence

It remains unclear whether some of these issues derived from the design of the 2003-04 VR program or its implementation. For example, while the voter cards (VC) and corresponding

stubs (counterfoils) in the booklets used at registration centers contained spaces for more detailed geographical information on the residence of voters, this information was not always completely filled in and was seldom recorded in the database that was compiled from these records. Instead, for the most part the database reflects only the province in which the voter registered, and not the district, municipality or village, or other more particular area in which the voter was said to reside. This is despite the fact that the database had additional fields for more detailed information.

At this point, it is not even entirely clear at what stage in the VR process – during registration and issuance of VCs, entry of data, or compilation of data – the additional geographical information about voter residence was lost. Presumably the same factors – absence of clear and detailed instructions, and inadequate training and supervision of electoral staff – might have applied at any of these stages.

Failure to Obtain Verification of Identity

The absence of mechanisms to identify voters and confirm their eligibility, and to prevent multiple registration and voting, was also a major deficiency that has adversely affected the credibility of elections to date. With respect to identification of voters, they could have been requested to present their national identity booklets (*taskera*) or other proof of identity.

The existing *taskera* issued to citizens have often been lost, some were improperly issued, and these documents are resented by some citizens due to their associations with past regimes. Nonetheless the *taskera* are still possessed by a large number of Afghans. It seems there would have been no reason not to specify the *taskera* as one of the permissible means of establishing identity, provided voters without such a document had other means of doing so. For example, in the absence of specified documentation voters could have been permitted to support their application by attestation – *e.g.*, testimony or support by a local leader or perhaps two already-registered voters. (This system was successfully applied in Liberia last year.) Field staff commented that when a person's identity was in question, informal community-based verification was in fact sought.

A broader issue with respect to the existing *taskera* is whether the corresponding records held in national and sub-national offices of the Ministry of Interior (MoI) could themselves have been used as part of the voter registration process. It is of course true that some of those records are damaged; and others may be contaminated by improper or fraudulent records. Nonetheless, relevant information could have been extracted from them and made available to VR officers to provide another control on voter identity. In the event, however, a decision was made not to rely in any way on the existing *taskera* system.

Assignment of Voters to Voting Districts

In designing the 2003-04 VR program, in addition, there was apparently no consideration of using other means of assigning voters to voting districts (precincts). Such precincts could have been made the basis for assignment of voters to specific polling stations in the area where the centre in which they registered was located – *e.g.*, by alphabet, VC number or

some other indicator. (This technique is sometimes referred to as creating “virtual” districts or precincts.)

In fact, it should still be possible to determine – on the basis of raw registration records, if not the VR database – at what centres voters registered. For electoral purposes, those voters could be identified as associated with the area in which the centre was located (the precinct), and instructed to vote at one of the polling stations there.

Counterpoint

As the previous discussion has shown, a variety of methods could have been used to verify the identity of voters, obtain more detailed information about their residence, or assign them to voting precincts. That these technical approaches should have been given greater consideration during the VR periods prior to the presidential election; and their application should again be considered in connection with future elections prior to the creation of an entirely new national VL.

As a counterpoint, however, it should be recognized that international and Afghan decision makers involved in designing and implementing the VR program 2003-04 also had a number of other important objectives. First, they wished to determine the approximate number of voters who might vote in certain areas; so that adequate supplies of ballot-papers could be made available there on election day. Second, they wanted to “jump start” the electoral process in terms of both electoral operations and public recognition and support. Third, they wished to test the feasibility and security of conducting large-scale national electoral activities in the field.

In fact, these objectives were partially fulfilled. Voter registration in 2003-04 ultimately occurred at over 5,000 centers, on either a continuous or partial basis; and over 10 million voters were registered. By registering, voters also received a new document, the VC, which may have contributed to making them feel stakeholders in the electoral process as well as national political life more generally. (At the same time, it is felt that the poor quality of the VCs will limit their utility and durability.)

Unfortunately, however, these achievements were overshadowed to some degree by defects in the VR process itself. The value of the VC was undermined by the lack of identity verification and widespread reports of multiple registration. And the VR database was later found inadequate (as a result of incomplete residential information) to estimate the quantities of ballots needed at various places. Nonetheless, the commitment of the people to come out and participate in elections had been clearly demonstrated.

Finally, it should be noted that the IC, as well as the parties to the Bonn Agreement and later the Interim Government, had decided to move quickly toward national elections, notwithstanding that not all the conditions for fully technically-satisfactory elections were in place. One of those conditions was an adequate estimate of the size of the population in the various provinces, which among other things would make possible an allocation of mandates

in the House of the People in accordance with the Constitution. (The allocation of mandates was delegated to the IEC under the Electoral Law.)

The population census called for under the Bonn Agreement was one of the conditions that could not be met before the national elections. Such a census is now scheduled to be completed by the end of 2008, under the Afghanistan Compact (London Agreement) of January this year – which replaces the Bonn Agreement which was in effect during the period of transition to democratically-elected national government.

In retrospect, however, it might be said that a more reliable estimate of the population and its distribution would have been a better guide for the production and distribution of ballots for the 2004 elections than the VR data were. While there may have been other factors (see above) justifying the massive VR program in 2003-04, perhaps greater consideration should have been given to obtaining such estimates through other means instead.

Unless the public mobilization and organizational value of the VR exercise was reason enough, it could be argued that the elections of 2004 could have been conducted without prior registration of voters. In this case, vote security could have been adequately provided through inking those who had voted. As during the elections which were conducted, the names of voters could have been recorded in a ledger. And the eligibility of those presenting themselves as voters could have been subject to challenge by polling officials and/or candidate agents.

Voter Registration Update and Ballot Delivery, 2005

A four-week VR update exercise was conducted prior to the 2005 elections, resulting in 1.7 million voters registering for the first time or correcting their previous registration. The bulk of these registrations (perhaps 1.5 million) were voters who had cast their ballots through OCV in the presidential election, but returned to Afghanistan subsequently.

According to the Final Report of the JEMB for these elections, consideration was given to undertaking a new registration program, or making modifications to the techniques that had been applied earlier. In the event, however, similar procedures were used for the update as for the original registration program, including reusing the registration booklets from the previous year. In addition to constraints on time, the large amount of money spent for VR during the previous two years made donors unwilling to support a major new exercise.

The absence of more detailed geographical information in the VR database continued to make it impossible to assign voters to specific polling stations, and difficult to predict what numbers of ballot-papers would be needed at various locations. This was even more problematic than the year before, however, since these legislative elections (for the national House of the People as well as provincial councils) were conducted on a provincial basis, requiring supplies of two lengthy ballot-papers for each polling station in every province.

Due to uncertainty about the residence of voters, and where they would go to vote, some 40 million ballot-papers were printed for the 2005 elections of which some 28 million went

unused. (These ballots were also pre-positioned at great expense so that they could be delivered to polling stations if needed. Subsequently, they were transported back to the IEC compound, at additional expense; and remain in storage there pending disposal.)

Current Status and Projects, 2006

The Government wishes to hold district and municipal elections prior to the next national elections. The lack of detailed geographical information about the residence of voters makes the current VR database unusable for determining in what district or municipality voters should cast ballots if elections are held for those units of local government. (Perhaps the raw records from the VR exercises could, if in sufficiently good condition, nevertheless be used for this purpose; see the following section, *Concept Paper: Voter Registration for District & Municipal Elections* and Annex 6 on technical aspects of Voter Registration.)

The Government of Afghanistan and the International Community agreed at the London Conference on Afghanistan (Jan.-Feb. 2006) on a set of principles, programs and projects for application in the post-transitional period. One of the projects included was that, “A permanent civil and voter registry with a single national identity document will be established by end-2009.”

The current Government of Afghanistan/UNDP electoral project, “Enhancing Legal and Electoral Capacity for Tomorrow” (ELECT), 2006-08, commenced just recently. The project element relevant to VR is described as a “Joint voter and civil registration pilot project designed, agreed upon and implemented leading to the design of a national project to establish a permanent civil and voter registry with a single national identity document.”

This sub-project would be conducted on a cooperative basis by the IEC and the Ministry of Interior (MoI). The components include a concept design for a joint civil/voter registry, and a feasibility study including a pilot project in three districts. There would also be a number of other elements, including an independent review of the current voter lists; proposals for relevant legislation; and an assessment whether the project could link voters to particular polling stations; as well as a range of capacity-building activities. The estimated cost of this project, as reflected in the ELECT project document, is approximately \$1.6 million (although contractors are preparing proposals for a substantially greater amount, approximately \$2.1 million).

According to an official of the MoI, that Ministry made a proposal within Government for a \$220 million national civil registration program. The MoI would, according to him, be able to “launch” the program throughout the country for \$60 million. The program would be intended to be sustainable, and the equipment procured is intended to be usable for at least 10 years. It is not clear how the broader-scale MoI proposal relates to the proposed civil/voter registration pilot program, but the official confirmed that there had been discussions with IEC regarding cooperation in this regard.

We believe that the magnitude of the ultimate civil registration program of MoI is so great that additional activities should not be undertaken until MoI has developed further

information on the design of its national program. Going ahead with pilot programs in three districts also seems premature, for the same reason.

Additional concerns are raised by inclusion of this sub-project in the ELECT program document, even though most of the activities described pertain more to the broader civil registry program than to VR. If electoral assistance is to be provided to link the VR to the new national civil registration program, then that could be done later after the shape of the MoI program, and its usability for VR purposes, can be determined.

CONCLUSIONS

For whatever reason, the VR database compiled in 2004 does not include specific geographical information concerning voters (either where they reside, or where they registered, or both). This is a major deficiency, which has delayed and/or prevented several important electoral operations. These include: Production of a permanent national voter list (VL); making available extracts from the VL for inspection and correction by voters; assigning voters to polling stations, as well as repeating the polling there if the returns were nullified; checking-off voters on the extract when ballots are issued to them; and potential assignment of voters to sub-provincial localities (districts, municipalities and villages) for local elections. It has also greatly increased the costs of ballot-paper production and delivery.

The reliability of the existing VR database and VCs issued to voters is also called into question by the failure to require any form of identity verification by voters. This problem has been magnified by widespread reports of multiple registration and voting.

For these reasons, the existing VR database cannot be used as the basis for a permanent and sustainable system. A new system should if possible be put into place prior to the next national elections, in 2004-05. Meanwhile, if the Government goes ahead with plans for district and municipal elections prior to national elections, then the feasibility of assigning voters to different localities based on information contained in the raw registration records resulting from the VR exercises in 2004 and 2005 should be assessed. (See Annex cited previously.)

The pilot program for a joint civil/voter registry needs to be thought through much more carefully before any preparatory activities are conducted. If a joint civil/voter registration system can be implemented, then it should be developed and implemented in time for the next national elections, to permit arrangements to be made for using civil registration records and documents as the basis for voter registration and identification purposes.

RECOMMENDATIONS

- In preparation for potential local (district and municipal) elections, a review should be undertaken to determine to what extent the raw records of the previous VR exercise could be used to assign voters to localities. In doing so, special attention should be given to recovering additional geographical information about voters from

registration booklets, and/or to assigning voters to polling stations based on the centres where they registered.

- A new VR system should if possible be put into place prior to the next national elections. That system should be based on verified voter identification; and should provide a basis for assigning voters to specific polling stations.
- More program details concerning the proposed national civil registry to be launched by the MoI should be made available prior to determining whether a pilot VR program should be undertaken on this basis.
- The pilot VR study process requires significant additional inputs in terms of project design, technical evaluation, operational plans, TORs, proposed technology, projected costs and outcomes. The respective roles of the participating agencies need further definition and a steering committee comprising all stakeholders and a representative of the donor community should be formally established to ensure harmonisation.

2. CONCEPT PAPER:

VOTER REGISTRATION FOR DISTRICT & MUNICIPAL ELECTIONS

SUMMARY

Problems have been identified with respect to voter registration (VR) for planned district and municipal elections (hereinafter “local elections”) in Afghanistan. Local elections would be held prior to the establishment of a national identification registry and distribution of new national ID cards, both of which are expected to be used as the basis of voter registration for the next national elections and all subsequent elections.

Two of the main problems that have been cited in this regard are: The precise geographical boundaries of districts have not yet been demarcated. And the geographical information contained in the national voter registration database created in 2003-05 is limited for the most part to the province in which voters registered, and does not contain information about their district, municipality or village, or more specific area of residence.

In fact, however, the written records upon which the VR data was based should contain a broader range of information relevant to registration for sub-national elections. This includes not only information on voters’ provinces, but also districts, municipalities or villages, and even specific areas of residence. The information was supposed to be written onto the voter cards (VC) which were issued to registrants, and also recorded in the corresponding stubs (counterfoils) retained in the VR booklets.

In addition, each VC and corresponding stub carries a serial number. The booklets filled in at registration centers contained 500 cards/stubs each (five cards/stubs per page times 100 pages). The booklets themselves were also numbered.

The geographical information provided by voters during registration, which should be preserved on the registration stubs as well as on the VCs, could potentially be used to assign voters to polling stations in the relevant geographical units. Equally intriguing is the possibility of using the numbered booklets and stubs themselves for this purpose.

This paper contains concepts for processing and utilizing the raw data contained in or on the existing registration booklets, so that it could be used to assign voters to particular geographic units (*viz.*, districts and municipalities). Two approaches to using the raw data for this purpose are described, which depending on the satisfactoriness of the data could be used singly or in combination.

DISCUSSION

The Government of Afghanistan wishes to conduct local elections at the district and municipal levels. The Government reportedly believes that participation in local elections will give the people a greater sense of being stakeholders in the political process by having a voice in decisions that affect their everyday lives.

It is widely assumed that no record of the residences of registered voters exists, since this information is not currently included in the database that was compiled as a result of the VR exercises in 2003-05. (For the most part, the database information only includes such information concerning the province in which voters registered, and not their sub-provincial place of residence.)

For this reason, discussion of VR for the local elections has been based on alternative methods of directing voters to the correct localities and polling stations therein. Some have proposed, for example, that the nationality identity bulletins (*taskera*) possessed by many Afghans, and corresponding identification records existing at local offices, be used for this purpose. Due however to the contamination of these records both in terms of institutional abuse and poor record keeping and storage, and the fact they are not universally maintained, they are neither reliable nor viable sources of data.

It has also been suggested that the existing Voter List (VL) could be used for the local elections, and that civic education and voter information campaigns be relied upon to direct voters to the correct localities for voting. In view of the fact that the VR exercise that resulted in the current VL did not require voters to register in their localities of residence, however, such a campaign might not be successful. The lack of control could result in fraud, multiple voting and other abuses, and would certainly be viewed negatively as a result.

In addition, if only voluntary means were relied upon to steer voters to the correct localities, there could easily be allegations that non-residents were being permitted to vote there, or even that voters were being directed to certain localities for political reasons, or even to “take over” a locality. Such allegations might lead to instability or even conflict.

The following sections describe a concept for voter registration in any local elections held prior to the next national VR exercise. This concept is designed to provide a way to register most voters to vote in their own locality. Two separate schemes are described, which could be used either separately or jointly:

1. “Data Mining” for Residence Information on Voters

As noted earlier, the written records of registration centres – which contained VCs for distribution to the voters who were registered and also have stubs reflecting the information obtained from the voters and written onto the VC – often contain geographic information about voter residence in addition to the province in which voters were registered. While not always complete, this information may include the district, municipality or village, and even more specific area in which voters reside.

The residential information contained in the VR records could be used to assign voters to particular localities (*wīz*, districts and/or municipalities). All that would be required would be for the additional data in the written VR records to be entered into the database – which already has additional fields for this purpose. Then the enriched database could be used as a temporary national VL for the local elections. The VL could then be divided into parts according to the district and municipality in which the voter is registered as residing, and through civic education voters could be directed to vote in polling stations in the localities indicated on their existing VC.

Problems could occur if the boundaries of districts – of which many are not completely defined, and others are in dispute – municipalities or other geographic sub-units were not determined prior to local elections. In addition, an investigation of the raw data contained in the registration booklets could reveal that registration staff often failed to fill in specific geographic information about the voter, including district and municipality. In that case, another technique could be used to assign voters to particular localities; a discussion of this technique follows.

2. Assignment of Voters to Localities based on Registration Centres

The alternative approach, which could be used instead of or in combination with data mining for residential information, would be to assign voters to localities based on where they registered to vote. As mentioned earlier, the registration booklets filled in at the registration centres operated during the 2003-04 VR period and 2005 VR update also contain a number on their cover as well as the serial numbers of the VCs issued to voters.

It should be possible to determine, using transportation and other records, which registration centre received a registration booklet bearing a particular number. If that can be ascertained, then the voters registered there, identified by the names and serial numbers in the booklet, could be assigned to vote in the locality in which the registration centre was located.

As mentioned previously, this technique could be used in areas for which it is discovered that insufficient geographic information had been recorded in order to determine the localities of residence of the voters. In addition, an extension of this technique could be used in the event precise demarcations of the localities (especially districts) cannot be made prior to elections there.

The extension of this technique would run as follows: In the absence of a precisely demarcated locality, the locality for electoral purposes could be delimited by defining it as including the voters who registered at certain registration centres. That would enable an electoral district to be determined without the necessity for geographical demarcation. (Obviously, the electoral district should be fashioned as to coincide as much as possible with the recognized geographical unit.)

This technique was used, in different form, to establish districts for elections to the House of Representatives in the recent (October 2005) national legislative elections in Liberia: Lacking the ability to establish geographically-demarcated districts for those elections, the National Election Commission, with the assistance of the United Nations Mission in Liberia (UNMIL), instead delimited districts according to the number of voters registering at various nearby registration centres. The centres were then clustered to form the electoral districts and represented as such on maps, using geographic information system (GIS) technology. In delimiting the districts, reference was also made to existing administrative, socio-cultural, geographic and other factors.

Electoral districts could be established for local elections in Afghanistan on the same basis, except that the districts would be delimited without reference to the number of voters registering there. The national VL could be divided up according to locality (district and municipality), and maps of the electoral districts and corresponding polling stations could be published to inform voters where they would be able to vote in those elections. Based on their recollection of where they registered, voters would also know the approximate location to which they should return to vote.

CONCLUSIONS AND RECOMMENDATIONS

The concepts for voter registration for local elections in Afghanistan described herein would employ existing raw data from the voter registration process to assign voters to particular electoral districts – either on the basis of geographic information about their localities of residence or about the location at which they already registered to vote. These concepts could be used individually or in combination, depending on the completeness of the data in the records about the residential localities of voters.

It would appear that these techniques should be further examined, since they could offer a cost-effective means of registering voters for local elections based on existing national VR and underlying records. These techniques could also be superior to other proposals based on imperfect past national identity materials, or relying solely on voluntary measures such as voter information.

It is recommended, therefore, that the completeness and condition of the VR records from 2003-05 be ascertained through physical examination of these records. If the records are such as to sustain the techniques outlined herein for assigning voters to specific localities, then the International Community may wish to consider providing additional support to implement the concepts described in advance of planned local elections.

PART 7

FUTURE DIRECTIONS

The legacy of the 2003-5 election process is a hybrid of outstanding success in delivery of results, tempered by concerns regarding unmet obligations and lack of enthusiasm among donors toward continued electoral capacity-building. The Evaluation Team believes credit for the successful elections is a shared achievement, and that resolution to the exigent, remaining issues from 2005 a shared responsibility.

a. Budget Gap

There is a need first to draw a line under the 2003-2005 processes by resolving the budget gap issue and to record and institutionalise the lessons learned from 2003-2005.

Neither the funding gap nor the less-than-ideal level of capacity building stands in isolation from exigent and contemporaneous circumstances. On the one hand it has been shown that the additional expenditures comprising the funding gap are in fact explainable and that the likelihood of a budget increase was repeatedly made known to all parties as the project progressed.

The 2005 ballot paper expenditure is a good example. The amount expended on ballot papers is directly linked to frailties in the voter's register which did not tie voters to polling places, a flaw which in turn is linked with frailties in project delivery caused by delays in receipt and availability of funding as well as security issues outside the control of the program leading to multiple operational changes.

In addition, the endorsement of and support given at the political level for the SNTV method of election itself, contrary to the advice of the electoral experts, ensured that a huge number of candidates would need to be catered for on a massive ballot paper. The size of the ballot paper alone then necessitated the unanticipated procurement of new ballot boxes able to cope with the additional weight and size. These factors were widely discussed and noted in Observer Reports.⁹

Budget planning for 2005 was seriously affected by the decision to adopt the SNTV method of election which impacted on the size of ballot papers; on consequent civic and voter education needs; on the requirement for ballot boxes big enough to take the new ballot papers and on the complexity of the count which required an unanticipated two weeks to conduct at full operational capacity. The number of ballot papers required was directly affected by the absence of a voter's register that tied voters to specific polling places and the correct choice was made to ensure adequate supplies were available for the anticipated

⁹ For example, the European Union Election Observation Mission Final Report, 2005, pp.3, 18, 35.

turnout. Security costs were huge. The gap between pledges and commitments are explainable through these factors alone.

In this context it is the view of the Evaluation Team that a fair resolution to the shortfall is that the burden for outstanding costs should be shared amongst donors proportional to their contributions.

b. Record the Lessons Learned

The Afghanistan experience has much to offer in terms of positive and constructive lessons learned in the management and execution of highly complex election projects. It will be critical to institutionalise the lessons learned from the process so far, identify best practices, and develop a vision for the future that is both practical and achievable, based on principles of harmonisation, ownership and collaboration. Within the UN system the further development of Guidelines on agency mandates in post-conflict environments and on the creation of MoAs to streamline inter-agency harmonisation and cooperation will contribute to this process. Debate on emerging issues such as the role of elections as integral to the peace-building process or whether peace building should precede elections, and on balancing political and development objectives should be central to a lessons-learned discussion. These 'lessons' will in turn contribute substantially through best practice models to better election management not only in this country but elsewhere.

It is therefore recommended that a national 'lessons-learned' seminar be conducted in the near future, to *inter alia*:

- review the evaluation of the 2003-5 election programs
- re-establish the priority of on-going support to the IEC and related activities
- re-position the IEC more visibly and create a momentum for its transition to independence, appropriate and adequate core government funding and the legal reform agenda
- identify best practices to be shared more widely
- hear comparative experiences from other post-conflict countries
- identify major challenges for the future particularly the need to work towards cost-effective, technologically appropriate elections
- reach agreement on priorities for capacity-building

Participants would include:

- IEC
- relevant government agencies
- donors
- representatives of selected observer missions
- the UN and partner agencies
- the UNDP focal point on elections
- EAD and
- other identified parties

c. Focus on Long-term capacity-building

Third, the challenge for the international community now is to leverage its massive investment of \$300+m and ensure the long-term viability of the IEC.

It is the view of the Evaluation Team that expectations of a rapid transition to a totally independent IEC, adequately supported by government funding in the near future and backed up by necessary legal reforms, are unrealistic. As has been highlighted elsewhere, the drive for the past three years has been the achievement of political objectives. Capacity building and institution strengthening took second place. The IEC has come from nothing to being a visible structure with some degree of public confidence and presence at the national and regional levels in just three years. The reality is however that the present body has been functioning only since the beginning of 2005.

In this context, expectations of ‘independence’ impose huge burdens on an organisation which has been effectively run by outsiders since its inception. A period of transition, training and consolidation is required to enable the IEC to stand in its own feet and develop the capacity to both administer the electoral process; follow through on logistic and operational planning for a vastly different future electoral environment and work with the government to cement its position in the budget and as an independent institution.

The point is reinforced that elections are a process, not an event and that the true test of the effectiveness of the donor investment and institutional support comes not from the conclusion of the elections in 2005, but will come with the election cycle of 2009 and 2010 when the objectives of the London Compact are tested.¹⁰ Failure to support an appropriate capacity building and institution-strengthening effort in the coming years will not only squander the significant investment to date but almost certainly guarantee the need for massive expenditure again in 2009/10.¹¹

The chapters on legal reform address in detail the need to streamline the Commission’s size and structure at both the national and regional levels. In addition to the structural issues and the legal reform agenda, there are a number of initiatives that will assist this process

¹⁰ The London Compact determined that: “The Afghanistan Independent National Electoral Commission will have the high integrity, capacity and resources to undertake elections in an increasingly fiscally sustainable manner by end-2008, with the Government of Afghanistan contributing to the extent possible to the cost of future elections from its own resources. A permanent civil and voter registry with a single national identity document will be established by end-2009.”

¹¹ Refer again to OSCE comment: “There is a danger inherent in the success of the Presidential elections. Afghan voters had high expectations – some would say unrealistic expectations – that holding successful elections would make a difference in their lives. Elections alone will not make such a difference. The international community has a responsibility to stay the course in providing assistance and the security to make reconstruction possible.”

i. Development of Agreed Vision through ELECT

Strategies to ensure a strengthened IEC capable of meeting the goals of the London Compact and building on donor investment requires the crafting a development project that gradually reduces reliance on international support while improving national capacity.

It is important to develop a common future vision and strategy for electoral support in Afghanistan that leverages the very significant input to date, and assures the achievement of that vision. This will be assisted by further elaboration of the ELECT project with the articulation of TORs for the various components; the creation of a substantial research base especially with regards to the pilot project, and the establishment of an implementation framework that meets the development objectives of the donors; ensures the gradual consolidation of the capacity of an independent IEC to deliver election management, and provides a streamlined, centralised, cost-effective management structure.

Such component TORs will build on the ELECT project document and could be elaborated by a Needs Assessment Mission, or by the engagement of short-term consultants to identify detailed component objectives, activities and measures of success.

Such a process should be a collaborative one in partnership with the IEC and the identified ELECT partner organisations, namely IFES and The Asia Foundation, but led by UNDP as the coordinating body.

At the present time each agency is proceeding independently in its endeavours with the IEC. For example while The Asia Foundation hosted a strategic planning process with the IEC to develop a workplan, UNDP was not informed of either the process or outcome. IFES is proceeding through its legal adviser with the preparation of discussion papers on legal reform with a view to a July conference, but these [plans and papers have not been shared with UNDP nor has the core debate about the timeframe for the legal reform agenda been discussed. There needs to be a central point of coordination with the IEC and a strategic plan based on realistic objectives, cost-effective management structures and transparent donor coordination.

ii. Future Programming: Civic Education and other Initiatives

With regards to the civic education component of the ELECT project it is suggested that a program outline be identified that:

- Recognises current financial and resource limitations
- Provides for a mapping of NGOs – their capacity, demographic coverage, issues-based activities, experience and skills base, that measures their impartiality and which is used to identify suitable NGO partners in civic education
- Researches key messages, themes, target groups and appropriate strategies for civic education delivery

- Develops a national media support strategy to raise the profile of the civic education program
- Creates a working group that links NGOs with the IEC with a view to collaboration on voter education elections draw nearer and which ensures accuracy in relation to legal and voter education aspects of civic education
- Prepares and produces a national civic education curriculum and materials
- Provides core training to civic educators
- Establishes a grants-based program of support
- Establishes an on-going monitoring and evaluation system
- Identifies appropriate expert trainers and consultants
- Identifies relevant partner organisations such as government instrumentalities, religious and community leaders

It is also suggested that other, complementary programming initiatives be considered that broaden the horizons of the electoral terrain with a view to touching upon the responsibilities of other key players. When appropriate, for example, support to capacity-building of political parties will be critical, as will training to build up a viable, mature and incisive domestic observer network. Training of media in the principles of unbiased, factual, impartial, equitable and accurate electoral and political reporting will underpin voter and civic education. The provision of skills within the police and security forces on rights-based approaches to the policing of campaigns will assist the conduct of peaceful elections. All these elements can be built into on-going capacity-building program to be driven by a Steering or Management Committee as proposed in Section iv.

iii. Future Programming: Pilot Project

The existing VR database cannot be used as the basis for a sustainable system. A new system should be put into place prior to the next national elections, but in the meantime an effort should be made to review existing VR records with an eye to their utilization in connection with anticipated district and municipal elections.

The pilot program for a joint civil/voter registry needs further development before any preparatory activities are conducted. The Final Draft document developed with the Ministry of the Interior is deficient in many respects. It assumes certain security features but provides no evaluation of such processes. At no point does the Final Draft discuss the integrity of the voter's register as a discrete document and the protections required against improper use of voter registration information by government. The proposed budget is unrealistic and expectations about the eventual roll-out costs atmospheric in their estimates. The pilot project would benefit from further research into the various technical options and from expertise in the drafting of highly technical ToRs. The roles of other agencies such as IFES and UNDP experts require clarification and the political shape of the proposed Steering Committee – to be chaired by an international adviser – appears to remove ownership of the process from the participating authorities. There is no risk assessment attaching to the proposal. The anticipated national final cost of \$220m is unsubstantiated and *prima facie* extravagant.

If a joint civil/voter registration system can be implemented, then that should be made to progress sufficiently before the time of the next national elections to permit arrangements to be made for using civil registration records and documents for voter registration and identification purposes.

It is recommended therefore that:

- In preparation for potential local (district and municipal) elections, a review should be undertaken to determine to what extent the raw records of the previous VR exercise could be used to assign voters to localities. In doing so, special attention should be given to recovering additional geographical information about voters from registration booklets, and/or to assigning voters to polling stations based on the centres where they registered.
- A new VR system should be put into place prior to the next national elections. That system should be based on verified voter identification; and should provide a basis for assigning voters to polling stations.
- More program details concerning the proposed national civil registry to be maintained by the MoI should be made available prior to determining whether a pilot program for VR should be undertaken on this basis.

The pilot study process requires significant inputs in terms of project design, technical evaluation, operational plans, TORs, proposed technology to be utilised, projected costs and outcomes. The respective roles of the participating agencies need further definition and a Steering Committee comprising all stakeholders and a representative of the donor community should be formally established to ensure harmonisation.

iv. Establish an IEC / Donor Steering Committee to govern on-going technical support

Recognising the need for better coordinated donor collaboration, it is recommended that as long as a technical assistance program exists with the IEC, that a steering or management committee be established, possibly co-chaired by the IEC and a donor representative, and facilitated by UNDP. Partner agencies in the ELECT process would be represented. This committee would receive and review proposals for capacity-building projects within the context of the ELECT program, monitor progress, provide continual oversight and evaluation and ensure the objectives of the London Compact are always a priority consideration in the determination of any funded activity. The Committee would review TORs; receive regular reports from the IEC; hear reports from tender and other committees and approve all expenditures on capacity-building projects.

v. Harmonisation

Awareness of and harmonisation with complementary national programming is strongly urged¹² especially in relation to 'big ticket' items including the national census. For example, it has been argued that the national ID / voter registration project should not go ahead until the census is concluded. With the imminent roll-out of the pilot study, the implications of this debate must be clarified urgently and consensus reached on strategic directions. At a less significant level in terms of costs, harmonisation with other democracy-building programs being conducted at regional and local levels may well impact on the future civic education strategies in terms of messaging, target groups, areas and strategies.

LESSONS LEARNED

The report notes key lessons learned emerging from the evaluation which will no doubt be consolidated in the future lessons learned event. They include, but are not limited to, the following areas:

- Adequate, thorough early needs assessment
- Adequate time for planning and delivery
- Clear mandates for agency responsibility
- Unambiguous lines of authority
- Streamlined, integrated umbrella management structures
- Clarity on hiring principles and procedures
- Centralisation of programming and budget/procurement authority and delegations, or provision of high level oversight function
- Appropriate and inclusive lines of reporting
- Recognition of need for rapid response systems for elections especially in field administration
- Ownership of progress at national level and for donors
- Building of institutional capacity at intellectual and practical levels
- Focus on in-county civic education development and training
- Balance between donor and programming responsibility
- Adequate high-level expert support at CO, UNDP NY and EAD levels
- Harmonisation:
 - between UN and partner agencies;
 - with other complementary programmes in the governance area;
 - between political, development and delivery objectives.
- Recognition of environmental and contextual limitations
- Commitment to long-term capacity building in:
 - institutional strengthening;
 - functional electoral management;
 - civic education;

¹² Consideration might be given, for example, to a inter-agency governance working group

- legal and electoral reform;
 - political party development
 - Commitment to cost effective national structures and development support through thoroughly research technically excellent programming documentation
 - Thorough research base for long-term support programme
 - Importance of on-going monitoring and evaluation – especially mid-term – and institutionalisation of lessons learned
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