

# Democracy International Election Observation Mission Afghanistan Parliamentary Elections 2010



FINAL REPORT

June 2011





Election Observation Mission to Afghanistan  
Parliamentary Elections 2010

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FROM THE AMERICAN PEOPLE

## DEMOCRACY INTERNATIONAL

Democracy International, Inc. (DI) provides technical assistance and analytical services and implements democracy and governance programs worldwide for the U.S. Agency for International Development (USAID) and other development partners ([www.democracyinternational.com](http://www.democracyinternational.com)). DI offers substantive expertise across the full range of democracy and governance programming, including (1) elections and political processes (election management and administration, voter education, international and domestic election monitoring, political party development); (2) governance (local government and decentralization, legislative and institutional strengthening); (3) the rule of law (constitutional and legal reform, justice-sector reform, court administration, legal profession, anticorruption, human rights); and (4) civil society development and advocacy. The firm also offers recognized technical expertise in analytical services, including survey research, assessments, evaluations, project designs, and democracy assistance studies, as well as with strategic communications.

Since its founding in 2003, Democracy International has worked in more than 40 countries and in all regions of the world. In the past 25 years, DI's principals have advised and worked with election management bodies, civil society and election-monitoring organizations, political parties, legislatures, government agencies, and others in more than 70 countries.

Democracy International has endorsed the Declaration of Principles on International Election Observation and the Code of Conduct for International Election Observers, announced by the endorsing international election observation organizations at the United Nations in 2005. DI's principals have contributed substantially to the modern practice of international election observation. They have helped launch and advised nonpartisan domestic election monitoring organizations and have directed monitoring programs and international observer missions around the world. In the late 1980s, Glenn Cowan invented the path-breaking, sample-based Parallel Vote Tabulation (PVT) election-monitoring methodology. Eric Bjornlund is author of a comprehensive study of election monitoring, *Beyond Free and Fair: Monitoring Elections and Building Democracy* (Wilson Center Press and Johns Hopkins University Press, 2004).



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# MAP OF AFGHANISTAN



Source: University of Texas, Perry-Castañeda Library Map Collection

## ACKNOWLEDGMENTS

This report is based on information gathered through the ongoing work of Democracy International (DI) in support of Afghanistan's democratic transition. It draws heavily on the findings of DI's election observation delegation to Afghanistan's 2010 Wolesi Jirga elections. Although we believe this report reflects the collective views of our observer delegation, DI takes full responsibility for its contents.

The success of an election observation mission rests on the ability of its core staff and observers to work seamlessly together, often in difficult circumstances, to contribute to a set of collective goals—strengthening the integrity of an electoral process not least among them. Election observation missions are challenging to implement. They require a collective focus and sense of determination that is all too often absent in international development.

We are grateful to the members of our observation mission, including all of our long-term and short-term observers. Each observer made real sacrifices to join the delegation in Afghanistan and make this important mission possible. There are real risks associated with observing an election in Afghanistan, and each and every one of DI's observers deserves recognition for taking a risk to make a contribution to advancing democracy in Afghanistan.

The ultimate success of this mission was a product of the hard work and determination of DI's core staff that was based in Kabul throughout the election period. We are particularly grateful to Alessandro Parziale who served as DI's Chief of Party for the election observation mission. Mr. Parziale's leadership was steady and his management of the staff and observer delegation was seamless.

DI greatly appreciates all the talented, committed members of its core team, including Miguel Arranz, Director of Operations; Colin Cookman, Media Coordinator; Will Covey, Deputy Director of Operations; Brian Flynn, Deputy Security Director; Ed Harris, Security Support Officer; Chris Jackson, Legal Expert; Luai Jaffal, IT Coordinator; Jeremy Kelly, Online Editor; James Long, Research Director; Greg Minjack, Campaign and Political Parties Expert; Carlos Navarro, Senior Elections Expert; Jed Ober, Chief of Staff; Mario Orru, Observers Coordinator; Christy Quirk, Observer Coordinator; and Jeremy Wagstaff, Communications Director. Each made a unique contribution to the mission. We especially appreciate their collective sense of purpose. This team developed an essential sense of camaraderie that helped to carry them through extremely challenging times. Throughout the entire election observation mission, the team worked as one in one of the most difficult environments in which to deliver a high-quality program. We will be forever grateful for their commitment to our goal of strengthening democracy in Afghanistan.

Elections may have never been held in more challenging security conditions than in Afghanistan in 2010. Since Afghanistan's presidential and provincial council elections in 2009, the security situation in the country has deteriorated. Despite these conditions, DI was able to deploy more observers to more provinces in 2010 than we did in 2009 and to enable them to safely do their work. We are grateful for the efforts of our core staff in Kabul and particularly for the long hours our Security Director, Nick Maroukis, and his team devoted to ensuring the safety of our staff and observers. With their help, DI was able to deploy international observers to some of the most

challenging locations in a war-torn country without a single security incident. We greatly appreciate Mr. Maroukis's contributions to our mission and his ongoing support of DI's efforts to advance democracy in Afghanistan.

In addition to the core staff in Kabul, we greatly appreciate the important contributions of our U.S.-based staff. Patrick Fn'Piere played a key role in supporting the implementation of this election observation mission by leading DI's observer recruitment and deployment operation from DI's home office in Bethesda. Mr. Fn'Piere managed a team of associates. Adedayo Bolaji-Adio served as the primary point of contact between observers and DI's headquarters. Emily Bremner and Maggie Moore provided important logistical support. Morgan Simpson provided backstop support for DI's core staff based in Kabul and dealt with accounting issues. Ms. Bremner, Ms. Moore, and Ms. Simpson traveled to Afghanistan to support the mission on election day.

Moreover, this election observation mission would not have been possible without the support of DI's Afghan staff in Kabul. Sear Rashid, Frishta Hassam, Samira Sultani, Sediq Alikhil, Faiz Erkin, and Abdul Latif deserve recognition for their dedication and critically important contributions throughout the mission.

We also want to recognize Dr. Mohammed Ibrahim Kazemi for his contributions to the mission. As a Program Officer for DI in Kabul since January 2010, Dr. Kazemi has provided the highest level of programmatic support. His knowledge of Afghanistan's election system and his relationships within the Afghan elections community were critical to the mission's success. We are grateful for his past and ongoing contributions to our mission.

A number of people contributed to drafting this report. Jed Ober was the report's primary author, and Alessandro Parziale contributed throughout the report's preparation. Chris Jackson, Greg Minjack, and Carlos Navarro provided critical substantive input. Eric Bjornlund edited the report, and Tim Duvall and Kris Thorpe provided editing support.

We are also extremely grateful for the support we received from members of the international community in Kabul. We would like to thank Carlos Valenzuela, Constanza Lucangeli, and Rachel Wareham of UNDP, Carina Pirelli and Stefan Darnolf of IFES, Andy Campbell of NDI, Gilles Saphy and Charlemagne Gomez of the European Union, Daniel Wurm of NATO/ISAF, Ichal Supriadi of the Asian Network for Free Elections, Samsor Gazi-Alam of the Asia Foundation, and Jonathan Felts and Gretchen Birkle of IRI.

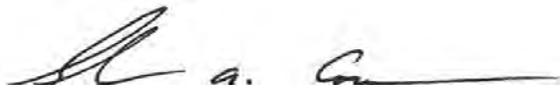
We are also grateful for the support provided to DI's mission by the Free and Fair Election Foundation of Afghanistan (FEFA). In particular, we would like to thank FEFA's Executive Director Jandad Spinghar and Naeem Asghari, FEFA's Manager of Programs.

This mission would not have been possible without the invitation and cooperation of Afghanistan's Independent Election Commission. We are grateful for the Commission's assistance throughout the electoral process and would like to extend our special thanks to the Chairman of the Commission, Fazel Ahmed Manawi, and the Chief Electoral Officer, Abdullah Ahmadzai. We would also like to thank Mohammad Farid Afghanzai for making himself regularly available.

In addition to the IEC, we would like to extend our thanks to the Electoral Complaints Commission and particularly Commissioner Johan Kriegler for being accessible to DI. We would also like to thank Betty Welz for her assistance in facilitating DI's access to information throughout the electoral process.

Finally, we would like to thank the United States Agency for International Development and the U.S. Department of State for the support and trust they provided DI throughout the mission. We would like to extend particular gratitude to Peter Wiebler, Adam Schmidt, Goranka Henegar, Idrees Ilham, and Joe Taggart. In addition, we are grateful for the support of U.S. Ambassador to Afghanistan Karl Eikenberry.

Democracy International appreciates the opportunity to organize this important election observation mission and for the continuing opportunity to support democratic development in Afghanistan.



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## ACRONYMS AND ABBREVIATIONS

|       |  |
|-------|--|
| AIHRC | Afghan Independent Human Rights Commission                                   |
| CEO   | Chief Electoral Officer  |
| DFC   | District Field Coordinator   |
| DG    | Democracy and Governance   |
| DI    | Democracy International  |
| DIAG  | Disbandment of Illegally Armed Forces  |
| ECC   | Electoral Complaints Commission  |
| EOM   | Election Observation Mission   |
| FEFA  | Free and Fair Elections Administration                                       |
| HTML  | Hyper Text Markup Language   |
| ICSIC | Independent Commission for Overseeing the Implementation of the Constitution |
| IEC   | Independent Election Commission  |
| IFES  | International Foundation for Electoral Systems                               |
| ISAF  | International Security Assistance Force                                      |
| JEMB  | Joint Electoral Management Body  |
| LTO   | Long Term Observer   |
| NATO  | North Atlantic Treaty Organization   |
| NDI   | National Democratic Institute  |
| NGO   | Non-Governmental Organization  |
| PDF   | Portable Document Format   |
| PECC  | Provincial Electoral Complaints Commission                                   |
| PEO   | Provincial Electoral Officer   |
| PIEC  | Provincial Independent Election Commission                                   |
| PVT   | Parallel Vote Tabulation   |
| SNTV  | Single Non-Transferrable Vote  |
| STO   | Short Term Observer  |
| SRSG  | Special Representative of the Secretary General                              |
| TEB   | Tamper-Evident Bags  |
| UNAMA | United Nations Assistance Mission in Afghanistan                             |
| UNDP  | United Nations Development Program   |
| USAID | United States Agency for International Development                           |



## EXECUTIVE SUMMARY

On September 18, 2010, Afghanistan held elections for the lower house of its parliament, the Wolesi Jirga. As the second Afghan-led elections since the fall of the Taliban, they were a critical test of whether Afghanistan's ability to conduct fair elections had improved since its presidential and provincial council elections in 2009.

Afghanistan's 2009 elections ultimately harmed the cause of Afghan democracy. Widespread fraud, a biased election commission, and a controversial, aborted runoff election tarnished the integrity of the process. Far from strengthening the credibility of the nation's electoral institutions, the process bred doubt and skepticism within the Afghan electorate and among the international community that Afghanistan could indeed administer credible and acceptable elections.

This context framed the 2010 Wolesi Jirga elections. Events in early 2010—especially a presidential decree that amended the electoral law without broad consultation—continued to diminish hope that the 2010 election process would be better administered. However, new leadership within the Independent Election Commission (IEC) and presidential concessions on the makeup of the Electoral Complaints Commission (ECC) combined to renew hope that the elections could restore confidence in the democratic process.

These elections were critical not only as a way to restore confidence but also to ensure the credibility of an institution that had established itself as an important counterbalance to the executive. In the year preceding the September elections, the Wolesi Jirga had begun to show its independence from the executive branch by enacting a series of legislative actions that challenged the president's authority. This newfound legislative balance to the executive was positive for a country struggling to establish sustainable democratic institutions.

### Pre-Election Period

The international community generally agreed that the 2009 election had irreparably tainted the IEC leadership. It did not seem realistic that the same individuals accused of complicity in widespread fraud could manage an election that would instill necessary confidence in candidates and voters. President Karzai agreed electoral reform was necessary but, in contrast to his critics, claimed the primary problem with the electoral system was foreign interference in the process rather than executive influence.

Although all of the observer organizations to the 2009 election process called for electoral reform, none endorsed the method by which it was ultimately pursued. The 2010 electoral law was adopted through an Article 79 presidential decree and was drafted through a process that did not seek consultation from relevant stakeholders.

A long debate followed the announcement of the decree. After officially issuing the decree, the president presented it to the Wolesi Jirga, as required by law. Under the Constitution, an Article 79 presidential decree becomes law unless both houses of the national assembly move to reject the decree. In a near-unanimous vote, the Wolesi Jirga rejected the election decree. Afghani-

stan's upper house, the Meshrano Jirga, refused to vote on the decree, however, and thus President Karzai's decree became the governing electoral law for the 2010 elections.

More important than the controversy surrounding the process of amending the electoral law were the changes the decree put into force. The most important changes to the law affected the ECC. Specifically, the decree eliminated any reference to international representation on the commission and gave President Karzai the authority to appoint all five ECC commissioners without consulting any other institution.

Many important events unfolded between the certification of final results of the 2009 presidential and provincial council elections and the announcement of the official election calendar for the 2010 process. The president's electoral law decree, the dismissal of key election officials, the appointment of a new IEC chairman and chief electoral officer, and an informal agreement between the Special Representative of the Secretary General (SRSG) and president about the composition and procedures of the ECC all contributed to make parliamentary elections in Afghanistan a reality in 2010.

## **Security**

The security situation in Afghanistan is precarious at best and often life threatening. As such, the security environment has severely affected the electoral process. In many provinces, candidates, particularly women, could not campaign freely. In some cases, security concerns prohibited candidates from campaigning at all. The Taliban has repeatedly threatened anyone participating in Afghan elections. It intimidates, attacks, and even kills election officials and employees, parliamentary candidates, and others who engage in the election process. These threats have also seriously complicated efforts to carry out robust election observation.

## **Election Day**

Despite a challenging security environment, DI successfully deployed observers to 14 provinces. While security conditions significantly hampered the ability of DI observers to move freely on election day, the observers successfully observed election day proceedings. Many observer teams were able to witness the opening of the polls, the conduct of voting, closing, and counting procedures.

Most DI observers reported that the process was conducted without major incident or evidence of serious irregularities. DI observers, however, did identify some problems and irregularities. Such problems must be acknowledged so Afghanistan can take steps to prevent their recurrence and improve future elections.

## **Results Tabulation and Complaints Adjudication**

After election day, the IEC began the tallying process and held numerous press conferences to provide updates on how many provinces' and polling stations' results had been processed at the National Tally Center in Kabul. As the tallying process progressed, the IEC released partial results for various provinces and began to post results on its website. On October 20, the IEC announced the official preliminary results and revised turnout figures. The most significant development was an unexpected increase in the projected election day turnout from the 4.3 million

that had been announced on September 20 to 5.6 million. After the announcement of the preliminary results, the ECC held several press conferences to announce specific decisions on complaints and provide updates on its progress toward adjudicating all complaints, which would ultimately lead to the announcement of final certified results.

On November 24, 2010, the IEC announced the final, certified results of the September 18 Wolesi Jirga elections. At a press conference at the IEC media center, before assembled international and domestic observers and prominent members of the international community, the IEC Chairman, Fazel Ahmed Manawi, claimed success for the IEC throughout the 2010 electoral process in restoring the credibility and maintaining the independence of the commission despite enormous external pressure. The chairman also strongly asserted the IEC's sole authority to announce election results, a clear response to the willingness of other Afghan actors, especially the attorney general, to claim a significant role in managing the electoral process. The chairman asserted that the IEC made all decisions without foreign interference in the process and contended that the IEC maintained its transparency and accessibility throughout the entire process.

The chairman announced the final certified election results for 34 of Afghanistan's 35 electoral constituencies, all provinces except Ghazni province, as well as for the national Kuchi constituency. The IEC also announced that 24 candidates who had initially been announced as winners had actually lost, as the ECC had invalidated enough votes to change those overall results. In addition, the ECC disqualified three additional candidates for not officially resigning from government positions.

On December 1, the IEC announced the final certified results for Ghazni province, confirming that Hazara candidates had indeed won all 14 seats. Through a press release, the IEC announced that it had solved all technical problems related to the election results in the province and that the results were now final and certified for all of Afghanistan's 35 electoral constituencies.

## **Post-Election Period**

The next phase of the electoral process would see a series of candidate protests and repeated challenges to the authority of the IEC and ECC, first from the attorney general's office and then from a special court established by presidential decree.

Shortly after election day, a new organization of defeated or disqualified candidates called the Union of Afghan Parliamentary Candidates held numerous protest meetings around the country with three basic demands of the IEC and Government of Afghanistan: (1) to declare the September 18 elections illegitimate; (2) to hold new parliamentary elections using computerized national ID cards; and (3) to prosecute all individuals involved in electoral crimes in a timely and serious manner. Many of these candidates were upset that they had not been able to witness the auditing and invalidation of their own ballot boxes and, further, that the ECC had operated beyond its jurisdiction. As such, there was no course of appeal for candidates whose boxes were invalidated.

Unsatisfied with the election outcomes announced by the IEC and ECC and endorsed by the international community, President Karzai moved on December 26 to usurp the authority of Afghanistan's electoral institutions by announcing a presidential decree to establish a special court

to further investigate complaints related to the 2010 Wolesi Jirga elections, with a specific focus on identifying criminal offenses. The establishment of this court showed a clear disregard for the authority of the IEC and ECC as defined in the country's electoral law. Afghanistan's constitution and electoral law do not provide for the establishment of a special court to review election results. In addition, since the presidential decree establishing the court has never been made public in the gazette, the court's authorities are not legally defined and remain ambiguous at best.

Nevertheless, on January 19, 2011, the special court recommended that President Karzai delay the seating of the parliament for one month while the court completed investigations into alleged fraud conducted on behalf of winning candidates. While President Karzai initially agreed with the special court's recommendations, on January 24 he relented to international pressure and supported the seating of the parliament.

Despite rumors that the president would dismiss it, the special court remains active. At the time this report was published, the court had completed reviewing election results in most provinces and was still anticipating making some official announcements, potentially including changes to election outcomes. The continued existence of the special court undermines the independence of the Wolesi Jirga. Until the special court is dissolved and the supreme court, attorney general's office, and president of Afghanistan cease embracing investigations outside of the legal framework, the members of the Wolesi Jirga will conduct their duties with the fear that politically driven investigations could result in the loss of their seats.

## **Recommendations**

Afghanistan's 2010 parliamentary election process did not address the key deficiencies with the election system that observers and stakeholders have defined since the first post-Taliban election in 2004. Thus, the international assistance community, Afghan stakeholders, and international and national media have largely come to agree that free, fair, and credible elections cannot be held in Afghanistan without genuine and comprehensive electoral reform.

DI has identified six priorities for electoral reform, including: (1) political representation; (2) the environment for political campaigning; (3) the integrity of the electoral process; (4) the composition, powers, and functioning of the election commission; (5) the composition and powers of the complaints commission; and (6) international assistance for elections. Within these priorities, DI has developed 27 specific recommendations that would contribute to strengthening the election system in Afghanistan and further the consolidation of Afghan democracy. The recommendations are as follows:

### **Political Representation**

1. Reform the Single Non-Transferable Vote (SNTV) system.
2. Reconsider the Kuchi quota.
3. Maintain quotas for female representation.
4. Pursue serious constituency delimitation.

### **The Campaign Environment**

5. Establish a clear and transparent candidate-vetting process.

6. Refine candidate-qualification requirements.
7. Amend the political party law to facilitate party registration and ballot access.
8. Reinforce the prohibition on the use of state resources in campaigning.
9. Further develop financial reporting requirements.
10. Introduce vote tracking and reporting systems in Afghan legislative bodies.

### **Integrity of the Electoral Process**

11. Develop an effective and sustainable voter registration system.
12. Carefully review voting, counting, and tallying procedures and introduce innovations to reduce the likelihood of manipulation.
13. Develop participatory mechanisms to include diverse stakeholders in critical election planning processes, such as constituency delimitation and voter registration.

### **Composition, Powers and Functioning of the ECC**

14. Adopt an inclusive mechanism for appointing high-ranking IEC officials.
15. Strengthen the fiscal autonomy of the IEC.
16. Review the authority of the IEC and ensure its clarity in the law.
17. Examine opportunities to transfer responsibilities to IEC provincial offices.

### **Features and Powers of the ECC**

18. Adopt a new mechanism for the appointment of ECC and PECC commissioners.
19. End practices of having international commissioners sit on the ECC for future elections.
20. Address the shortcomings of a temporary ECC.
21. Add an ECC media deputy to manage ECC press conferences, press releases, and engagement with domestic and international media.
22. Encourage media responsibility.
23. Clarify ECC jurisdiction over IEC decisions.

### **International Assistance for Elections**

24. Support additional domestic observation groups and build their capacity to engage in broader advocacy.
25. Continue supporting the IEC and the ECC.
26. Provide support for additional election-security training for the Afghan National Security Forces.
27. Develop a long-term, coordinated assistance strategy to support the development of Afghan democracy.

## Toward Democratic Elections in Afghanistan

Afghanistan's 2010 parliamentary election process symbolized the country's ongoing struggle to establish the democratic foundation necessary for stabilization in the post-Taliban era. Compared to the 2009 elections, the conduct of the electoral process up to and including election day was much improved. The postelection period, however, again highlighted the deficiencies in the electoral legal framework that governs the administration of Afghan elections and the willingness of political actors to take advantage of such weaknesses.

Despite the lack of independence from the government of Afghanistan, without a reliable voter register, and in the face of profound security challenges, Afghanistan's electoral institutions still managed to achieve positive outcomes. Based on the strength of its leadership, the Independent Election Commission showed the citizens of Afghanistan that it could, in fact, administer an election in an independent and impartial fashion. Throughout the electoral process, the IEC resisted pressure to make decisions based on the preferred political outcomes of some rather than relying on the technical considerations that should drive its decision making. After election day, for example, election officials were actually threatened with arrest if they did not alter the results. Through its resolve, the IEC demonstrated that it is possible for an Afghan institution to resist executive branch pressure.

Of course, as described in this report, Afghanistan's 2010 elections process suffered from considerable administrative error, and the IEC and ECC did make mistakes throughout the process. Moreover, allegations of fraud, both founded and unfounded, continued to plague the process. Much work remains to strengthen the systems and processes by which Afghanistan administers elections. These systems, which the country's electoral institutions are responsible for developing and implementing, have so far failed to prevent widespread fraud from tainting the credibility of elections.

The unchecked strength of Afghanistan's executive continues to act as a source of instability, and the widespread fraud that marked the 2009 election process has helped fuel a culture of political corruption in which candidates and their supporters judge fraud to be a reasonable electoral strategy. Fraud again plagued the parliamentary elections in 2010.

Despite the clear and present threats to Afghan democracy, a genuine democratic spirit exists in the country. In the face of widespread insecurity and direct threats, millions of Afghans risked their lives to participate in the 2010 elections. The country's electoral institutions resisted interference and worked to bring about a reasonable electoral process. This provides a significant foundation for the beginning of a true democratic reform effort that can address the problems that continue to plague the country's fledgling democracy. Only with such reform can the democratic principles so many Afghans share be truly institutionalized and the aspirations of millions of Afghans, who strive for peace, stability, and a real democracy, be realized.

## INTRODUCTION

On September 18, 2010, Afghanistan held elections for the lower house of its parliament, the Wolesi Jirga. Technically the second Afghan-led elections since the fall of the Taliban, they were a critical test of whether Afghanistan's ability to conduct fair elections had improved since its flawed, controversial presidential and provincial council elections in 2009.

Afghanistan's 2009 elections were ultimately harmful to Afghan democracy. Widespread fraud, a biased election commission, and a controversial, aborted runoff election tarnished the integrity of the process. Far from strengthening the credibility of the nation's electoral institutions, the process bred doubt and skepticism within the Afghan electorate and among the international community that Afghanistan could indeed administer credible and acceptable elections.

This context framed the 2010 Wolesi Jirga elections. Events in early 2010—principally a presidential decree that amended the electoral law without broad consultation—continued to diminish hope that the 2010 election process would be better administered. New leadership within the Independent Election Commission and presidential concessions on the makeup of the Electoral Complaints Commission, however, combined to renew hope that the elections could restore confidence in the democratic process among the Afghan citizenry.

These elections were critical not only as a way to restore Afghan confidence in the democratic process but also to ensure the credibility of an institution that had established itself as an important counterbalance to the executive. In the year preceding the September elections, the Wolesi Jirga had begun to show its independence from the executive branch by enacting a series of legislative actions that challenged the president's authority. This newfound legislative balance to the executive was positive for a country struggling to establish sustainable democratic institutions.

### Election Observation Program

Through support from the United States Agency for International Development (USAID), building upon its ongoing engagement in the democratization process in Afghanistan, Democracy International began its observation of the election process upon the IEC's announcement of the official electoral calendar on March 25, 2010. On May 27, 2010, DI received an official invitation from Afghanistan's Independent Election Commission to observe the country's 2010 parliamentary election process.

The purpose of DI's mission, as with past observation missions, was to observe and report on the electoral process and, to the extent possible, evaluate the degree to which the elections conformed to international standards. In doing so, the mission helped to promote good governance by strengthening democratic election systems and processes. The overarching goal was to help contribute to the integrity of the electoral process and provide independent and impartial analysis on the conduct of the elections. The project complemented ongoing efforts supported by the U.S. government and others to help build a more participatory, representative, and accountable democracy in Afghanistan. Given its observation of the 2009 elections and its continuing work on electoral reform after the conclusion of that process, DI was well prepared to manage a large-scale observation of the 2010 elections.

To achieve these goals, DI maintained a small core team in Kabul throughout 2010 to observe the changes to the electoral process in the aftermath of 2009 and the preparations for the 2010 elections. Additional election experts joined the Core Team in July, and collectively they began the logistical preparations necessary to ensure a successful September observation. Long-term observers (LTOs) began arriving in Kabul in August, and short-term observers (STOs) arrived the week before election day. In total, DI recruited 80 international observers and deployed them to 14 provinces, including Badakhshan, Bamyan, Balkh, Helmand, Herat, Kabul, Kandahar, Kapisa, Nangarhar, Panjshir, Parwan, Samangan, Uruzgan, and Wardak. DI's observer delegation included noted experts in election administration, election law, election monitoring, and Afghan politics.

This report presents DI's findings and provides recommendations for strengthening Afghan democracy and improving future electoral processes. Following a description of DI's observation methodology, the report outlines the pre-election context, including historical background and relevant political developments. The next section describes election preparations leading up to election day. The report then presents the delegation's observations from election day and the postelection period. Finally, the report offers recommendations for electoral and political reforms.

The information in this report comes from a variety of sources, including findings from DI's pre-election, election-day, and postelection observation mission. DI relied heavily on the extensive experience, expertise, and knowledge of its staff and delegates. DI's mission drew on credible local sources of information, including political leaders, candidates, government officials, national and international civil society organizations, national and international election observation groups, and journalists at both national and subnational levels.

## **Observation Methodology**

Experience has shown that international election observation can contribute to building the foundation for democracy. In politically uncertain environments, such as Afghanistan today, election observation can contribute to public confidence in the integrity of elections by encouraging fairer electoral rules, better campaign practices, and a more informed electorate. By increasing transparency, election observation deters fraud and helps reduce irregularities in election administration. Election observation also can provide meaningful moral support to democratic activists and political opposition leaders, and it educates audiences around the world about the struggle for democracy in transitional countries. Properly conceived and implemented, comprehensive international election observation not only provides an objective assessment of a given country's electoral process, it can also promote the integrity of the elections and related institutions, encourage public participation, and reinforce domestic engagement in democratic politics.

There is now an international consensus that democratic elections extend far beyond activities on election day, and, thus, election observation programs should have a broad scope. Accordingly, Democracy International's election observation mission to Afghanistan assessed a wide range of substantive issues, including: (a) the administration of the election, including the processes of voter registration, balloting, counting, and complaint resolution; (b) the institutional framework for the election, including election laws and the credibility and neutrality of the election commission; and (c) the political context and environment in which the elections take place, including

the extent of freedom of speech, movement and association, the fairness of the media, the opportunities for the opposition to compete, and the nature of the campaign. DI's observation mission considered all phases of the election process, including the campaign and pre-election period, the balloting and initial counting, the postelection aggregation and tabulation of votes and adjudication of complaints, and the formation of the new parliament.

Democracy International is a signatory to the Declaration of Principles for International Election Observation. As such, DI conducted its election observation mission in accordance with the principles articulated in the declaration, including respect for Afghanistan's sovereignty. All of DI's international observers followed the Code of Conduct for International Observers.

## **DI's Election Observation Mission**

DI's election observation mission observed all aspects of the Wolesi Jirga elections, beginning with the candidate nomination process in April 2010 through the announcement of the seating of the new parliament in January 2011. In all, DI deployed 80 election observers including 16 Core Team members, 18 Long Term Observers (LTOs), and 46 Short Term Observers (STOs), all of whom received support from DI's local staff members and security personnel. The Core Team was based in Kabul, while DI deployed LTOs to the field two weeks before election day. STOs were deployed to their respective provinces two days before election day. DI observed the entire electoral process before, during, and after election day.

Before their deployment, both LTOs and STOs convened for two days of briefings in Kabul with representatives of candidates, the Independent Election Commission, the Electoral Complaints Commission, the Free and Fair Elections Foundation of Afghanistan (FEFA), UNDP-Elect, and USAID as well as other civil society leaders, national and international political observers, and national and international journalists. These briefings covered the current political situation in Afghanistan, relevant electoral laws and procedures, the fairness of the campaign period, activities of other monitoring and assistance organizations, and other information relevant to effective and informed election observation. DI also provided training on poll watching techniques and accepted international observation standards. The briefings provided an opportunity for DI core staff members to apprise observers on the deployment plan and observation methodology for the mission. In addition, the briefings included information and training on security procedures and acceptable conduct for election observers, including relevant regulations and policies of the Afghan government, the IEC, and the U.S. government. In accordance with international standards, DI instructed its delegates to restrict themselves to observing the electoral process and to avoid any action that could be interpreted as interference in the process.

Following the briefings in Kabul, DI deployed short-term observer teams of two to locations throughout the country. Some STO teams joined DI's long-term observer teams in their areas of responsibility, while others were assigned to different provinces with the support of the NATO International Security and Assistance Force (ISAF). These teams arrived in their respective cities two days before the election to meet with candidates, local and regional political party representatives, local election administration officials, and representatives of other domestic and international monitoring groups to collect information on the local context and security situation.

On election day, DI's observers collectively visited more than 200 polling stations. The stations were chosen in consultation with Afghan facilitators and security personnel. The day after the elections, many DI observers returned to polling centers they visited on election day to continue their observation of the ballot counting. Following the elections, the delegates returned to Kabul for debriefing and discussion of their observations and findings, while the long-term observers remained around their country for an additional week to observe the collection of results from the polling centers to the IEC in Kabul.

All observers participated in debriefing sessions after returning to Kabul. At the debriefings, DI core staff members facilitated a discussion of the qualitative and quantitative findings of the observer delegation. The debriefings also gave observers the opportunity to compare their findings with other observers and share these findings with the core team.

The core team remained in Afghanistan to observe the postelection period, including the tallying of votes at the IEC's National Tally Center, the adjudication of complaints by the ECC, the actions of the attorney general's office and the supreme court related to the electoral process, the seating of the new parliament, and the continued scrutiny of the special court established by President Karzai.

As part of its mission, DI undertook research to provide information about the electoral process to key stakeholders, both before and after election day, and shared this information to the public via its website and other means. This research included two public opinion surveys: (1) a pre-election baseline household public opinion survey that measured public attitudes about democracy and elections, the electoral process, and the Wolesi Jirga; and (2) a postelection endline survey that repeated questions from the baseline survey to identify any changes in attitudes and perceptions as a result of how the election unfolded. The research component also involved the creation of a Ushahidi instance to display real-time data collected by DI's long-term and short-term observers in the days leading up to the election as well as on election day itself.

## GOVERNMENT STRUCTURE, LEGAL FRAMEWORK, AND ELECTORAL ADMINISTRATION

### Government Structure

Afghanistan has a bicameral national assembly with a president who serves as the chief of state and head of government. The president is directly elected by an absolute majority for a five-year term and can be elected for a maximum of two terms. The president has two vice presidents and a cabinet that includes 27 ministers appointed by the president and approved by the national assembly.

The bicameral national assembly is made up of the Wolesi Jirga (House of the People) and the Meshrano Jirga (House of Elders). The national assembly's core responsibilities include:

- Modifying, ratifying, or abrogating laws and legislative decrees;
- Approving social, cultural, and economic development programs;
- Approving the state budget and approving loans;
- Creating, modifying, or abrogating administrative units; and
- Ratifying international treaties and agreements (Constitution of Afghanistan, Article 90).

The Wolesi Jirga is considered the lower house of the national assembly and is made up of 249 representatives directly elected through a Single Non-Transferable Vote (SNTV) system, discussed below, for five-year terms from province-wide constituencies. The number of seats allocated to each province is proportional to the population of that province. The constitution reserves 68 seats for women (approximately two women per province) through a mechanism left to the electoral law. In addition, Kuchi nomads (a pastoralist cultural group that migrates seasonally along Afghan river valleys) elect 10 representatives through a single national constituency.

In cooperation with the Meshrano Jirga, the Wolesi Jirga's main responsibility is to make and ratify laws, as well as to approve the president's actions. Specifically, the Wolesi Jirga's duties include:

- Receiving, approving, or rejecting drafts of laws received from the government before final review by the Meshrano Jirga;
- Setting up special commissions to review and investigate government actions;
- Endorsing and enforcing a bill not approved by the president, with a two-thirds majority;
- Requesting official comment and explanation from ministers;
- Reviewing government development programs and the government's annual budget after review by the Meshrano Jirga; and
- Approving or rejecting ministerial appointments.

The Meshrano Jirga is considered the upper house of the national assembly and is made up of 102 members. The constitution calls for district councils to elect one-third of the members of the Meshrano Jirga, one per province, for three-year terms. Provincial councils choose another third, one per province, for four-year terms. The president appoints the final third to five-year terms.

Half of the presidential appointees must be women, two must be representatives from the disabled and impaired communities, and two must be Kuchis. Since district council elections have still not been held, each of the 34 provincial councils selects one of its elected members to temporarily hold a seat in the upper house. This mechanism will conceivably remain in effect until district council elections are held.

### ***Judicial Branch***

The judiciary is an independent organ of the state composed of the supreme court (Stera Mahkama), the courts of appeal, and the primary courts. The supreme court has nine members appointed by the president and endorsed by the Wolesi Jirga. Initially, three judges were appointed for four years, three for seven years, and three for 10 years. All subsequent appointments are for a period of 10 years. The supreme court proposes judges for lower courts who are subject to the approval of the president. In cases where no relevant constitutional provisions or laws apply, courts may utilize Hanafi jurisprudence (one of the major Sunni schools of modern Islamic judicial theory) (Article 130). The constitution also allows for the application of Shi'a jurisprudence in cases involving Shi'ites (Article 131).

### ***Provincial Governments***

Afghanistan is divided administratively into 34 provinces. The president is responsible for appointing provincial governors. The governor is the representative of the central government and oversees all administrative issues in the province. The Ministry of Interior appoints the provincial chief of police, who works with the governor on issues related to law enforcement.

Provincial councils are responsible for participating in the “attainment of the development objectives of the state and improvement of the affairs of the province in the manner prescribed by laws, and shall advise the provincial administrations on related issues” (Article 139). The constitution makes clear that the government operates according to a principle of centralism under which “the government...shall transfer necessary powers, in accordance with the law, to local administrations” (Article 137).

All provincial council members are directly elected through an SNTV system to four-year terms, and the number of members in each provincial council is based on the population of each province. Subsequently, each provincial council elects one of its members to the Meshrano Jirga by an absolute majority.

## **Legal Framework**

Afghanistan's constitution and electoral law establish the legal framework for Afghan elections. The constitution states that the “citizens of Afghanistan shall have the right to elect and be elected” (Article 33). The constitution also establishes the Independent Election Commission and grants it the authority to administer and supervise all elections (Article 156). The electoral law codifies electoral procedures administered by the IEC.

Afghanistan adopted a new electoral law in 2010 through a controversial Article 79 presidential decree. The law establishes guidelines for electoral administration, constituencies, voters, and candidate eligibility and registration for all Afghan elections. The law also codifies the Electoral Complaints Commission.

Afghanistan's political party law sets forth the manner by which political parties can engage in the election process. The law regulates party registration, party financing, party dissolution, and similar issues.

Two relevant presidential decrees are directly relevant to elections. The first, dated May 20, 2009, addresses noninterference in electoral affairs; it prohibits interference by any person or organization, foreign or domestic, with the process of free and fair elections. The second, dated January 9, 2003, establishes regulations on assembly, strikes, and demonstrations.

### ***Electoral System***

Parliamentary and provincial council elections in Afghanistan are administered through an SNTV system. Each province forms a multimember constituency with a set number of seats. There is no limit to the number of candidates who can run for seats, provided they meet the qualification requirements. Each voter is granted one vote, regardless of the number of parliamentary or provincial council seats allocated to a given province.

There is great debate over the use of the SNTV system in Afghanistan. Although some have defended the simplicity of the system as beneficial for an emerging democracy, most election experts now agree that SNTV is not appropriate in the Afghan context.<sup>1</sup> Because representatives are elected from multimember districts and voters have only a single vote, a popular candidate can win a large number of votes and leave relatively few votes to split among less popular candidates. The result is that candidates can win seats with very few votes, and a relatively large number of votes are “wasted” on losing candidates. The system also discourages the development of political parties; with elections being decided by a small number of votes, politicians are not motivated to seek the support of broad coalitions either as candidates or governing officials, but instead to cling to small ethnic support bases. Combined with the relatively large electoral districts (the provinces), the SNTV system in Afghanistan also results in a lack of diverse geographic and ethnic representation. In addition, the system accentuates the effect of intimidation and fraud, which makes it easier for candidates and officials seeking to manipulate the process and antigovernment groups such as the Taliban trying to disrupt it. Despite these criticisms, Afghanistan still relies on the SNTV system for provincial council and parliamentary elections.

## **Election Administration**

Afghanistan has two major electoral institutions. The constitution establishes the Independent Election Commission as the primary authority for the administration of elections. The electoral law establishes the second institution, the Electoral Complaints Commission, as the institution responsible for providing citizens the opportunity to submit election related complaints as well as for overseeing the adjudication of such complaints.

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<sup>1</sup> Eric Bjornlund, Glenn Cowan and William Gallery, “Election Systems and Political Parties in Post-Conflict and Fragile States,” in Derick W. Brinkerhoff (ed.), *Rebuilding Governance in Post-Conflict Societies and Fragile States: Emerging Perspectives, Actors, and Approaches* (New York: Routledge, 2007), citing B.R. Rubin, “The Wrong Voting System,” *International Herald Tribune*, March 15, 2005.

### ***The Independent Election Commission***

The Constitution of Afghanistan establishes the IEC and gives the commission the authority and responsibility to administer and supervise all of the country's elections and referendums (Article 156). Seven commissioners serve on the IEC, including one chairperson and one deputy chairperson. Although the IEC was established as a body independent from the branches of government, the president appoints its commissioners, which has led many to question the commission's independence and impartiality.

The IEC Secretariat is the executive body of the commission and consists of a chief electoral officer (CEO) and two deputies who manage a full-time staff. The Secretariat is responsible for implementing the decisions, regulations, and procedures adopted by the IEC. The IEC maintains offices in each of the provincial capitals, which are referred to as Provincial Independent Election Commissions (PIECs).

Although the law does not clearly define the powers of the IEC, the commission employs regulatory measures to properly prepare, organize, and conduct all elections and referendums in Afghanistan. The IEC's responsibilities include voter and candidate registration, regulation and oversight of electoral campaigns, design and distribution of electoral documentation and materials, invitation and accreditation of national and international observers, polling and counting operations, announcement of preliminary results, and certification of the final results.

### ***The Electoral Complaints Commission***

Afghanistan's electoral law establishes the Electoral Complaints Commission to "deal with electoral offenses, challenges and complaints, management of the Provincial Electoral Complaints Commissions (PECCs) and scrutiny of their decisions" (Article 61). The ECC and PECCs have jurisdiction to consider and adjudicate complaints alleging electoral offenses. The PECCs have original jurisdiction with respect to complaints and challenges within their respective provinces, subject to appeal by the ECC. The ECC can claim original jurisdiction over complaints and challenges filed directly at the national level and can review the decisions of PECCs if the complainant is not satisfied with the provincial decision. The decisions of the ECC are final and not subject to appeal or further challenge.

The electoral law also grants the president authority to appoint the commissioners of the ECC and PECCs (Article 61). These appointments must be made in consultation with the speakers of the upper and lower houses of the national assembly as well as the chief justice of the supreme court. The ECC is located in Kabul, and PECCs exist in all 34 provinces.

The decisions of the ECC, whether adopted on appeal, review, or in the exercise of its primary jurisdiction, are final, binding, and not subject to appeal or review by any domestic or international court (Article 62(6)). This has been interpreted to mean that the ECC has exclusive jurisdiction over the review of electoral complaints and appeals.

The ECC and PECCs commence their work at least 120 days before the election and cease functioning two months after the certification of final election results. After the dissolution of the ECC, its authorities and responsibilities are transferred to the IEC.

### ***The Media Commission***

A specific IEC regulation governs the formation of the Media Commission. The regulation gives the IEC responsibility for the appointment of a five-member Media Commission no later than 60 days before the election. The Media Commission is required to complete its work within 45 days after the announcement of final certified results. Media organizations are required to sign a Media Code of Conduct outlining duties and obligations, among them to refrain from inaccurate reporting.

The Media Commission has a number of specific responsibilities. Throughout the campaign period, the Commission bears the responsibility to take necessary and legal measures against the inaccurate portrayal of election activities in the media. This requires the Media Commission to distinguish between inaccurate reporting and the reporting of allegations of candidates and others that may be factually wrong. This duty requires careful application to avoid censorship, or even the appearance of censorship, while protecting the integrity of the IEC and ECC. The limited timeframe available to the Media Commission hampers its ability to conduct the level of investigation necessary to corroborate such accusations.

The Media Commission is also responsible for media outreach. The electoral law requires the media to make an effort to inform and educate the public on the electoral process and to cooperate, to the greatest extent possible, with the IEC and Media Commission to impartially inform citizens on issues such as the importance of voting, candidate platforms, basic campaign issues, and how to participate in the election (Article 59).

As the campaign period must end 48 hours before election day, the Media Commission has the responsibility to ensure the silence period is respected. Specifically, the Media Commission has the responsibility to ensure that the media does not cover political activity on behalf of a particular candidate, does not publish or broadcast results or conjectures from opinion polls, and accurately and promptly publishes official results released by the IEC.

### ***ECC Controversy***

The 2010 Wolesi Jirga elections were not administered solely on the basis of the legal framework explained above. The relevant laws and regulations did not address some key aspects of the electoral framework for the 2010 elections.

Afghanistan's previous electoral law, enacted in 2005, established international representation on the ECC by authorizing the United Nations Special Representative of the Secretary General (SRSG) to appoint three members to the commission. The electoral law decree of 2010, however, stripped the United Nations of its responsibility to appoint commissioners. Instead, the law specifically authorized the president to appoint all ECC commissioners.

Under pressure from the international community in April 2010, President Karzai reversed his previous position against international membership on the ECC and agreed to accept two recommendations for commissioners from the SRSG. The SRSG, Steffan de Mistura, nominated Judge Johann Kriegler of South Africa and Safwat Sidiqi, a former commissioner of the Independent Election Commission of Iraq.

The international community expressed considerable concern that the ECC still maintained a majority of commissioners appointed by President Karzai without consultation. In response to this concern, the SRSG announced at a press conference on March 23, 2010, that he had reached an agreement with President Karzai that would allay the fears of the international community. The agreement stipulated that all ECC decisions would require the endorsement of at least one of the two international members. Despite being widely acknowledged, the agreement was never written in law. Eventually, the ECC's commissioners would decide to make all decisions by consensus, thus rendering the informal agreement irrelevant.

## PRE-ELECTION CONTEXT

### Political Context

Afghanistan's 2010 parliamentary elections were technically the second Afghan-run elections in the post-Taliban era. The 2009 presidential and provincial council elections were the first, although there was a substantial level of international involvement. The level of international involvement was considerably less in 2010, as the role of international advisers at the IEC was mainly in support of operational functions and only two international commissioners served on the ECC as opposed to the three that served in 2009. Nevertheless, financial support from international development organizations was still essential.

The election process officially began on March 25, when the IEC announced the election calendar. Attention to the 2010 election process began immediately upon the conclusion of the 2009 process, however, with a controversy about the date on which the elections would be held. The contest was originally scheduled for May 22, 2010, and the IEC was in fact operating as if it planned to hold the elections then. On January 24, however, the IEC decided to postpone the elections until September 18, exactly five years from the country's previous parliamentary election. At the time, the commission cited a lack of funding from the international community as the primary reason for delay.

The real reason for the delay was more complex, however. Throughout the 2009 election process, the IEC was widely accused of rampant favoritism for the incumbent president. These accusations were never more intense than during preparations for the aborted presidential runoff election between President Karzai and the chief opposition candidate, the country's former foreign minister, Abdullah Abdullah. At that time, Abdullah made 17 demands that would have to be met before he would recognize a runoff as legitimate. Perhaps the most critical condition was the dismissal of the leadership of the IEC, specifically the chairman, Azzizullah Ludin, and the chief electoral officer, Daoud Najafi. The president refused to dismiss the two officials, however, which contributed to Abdullah's ultimate decision to withdraw from the runoff.

The international community generally agreed that the IEC leadership had become irreparably tainted with the perception of partiality. It did not seem realistic that the same individuals accused of complicity in widespread fraud could manage an election that would instill necessary confidence in candidates and voters. Many agreed that a critical step to restoring the credibility of the institution was to replace the commission's top officials. As such, the international community, including the U.S. mission in particular, publicly refused to provide funding for parliamentary elections unless reforms were undertaken, including the appointment of broadly acceptable individuals to lead the election commission.

President Karzai complicated matters by moving in early 2010 to amend Afghanistan's electoral law. Most observers and stakeholders to Afghanistan's previous election processes agreed that electoral reform was necessary. In fact, many believed a credible election could not be administered until such reforms were undertaken. Most defined the primary problem with the system as the lack of checks and balances built into the electoral framework. Among the specific concerns

was the sole authority under the law of President Karzai to appoint key election officials, including the chairman and chief electoral officer of the IEC.

President Karzai agreed electoral reform was necessary, but, in contrast to his critics, he believed the primary problem with the electoral system was foreign interference in the process rather than executive influence. Many analysts assert that his displeasure with the internationally led ECC throughout the 2009 process was the real motivation behind his electoral law decree. Most observers agree that President Karzai believed the commission tainted his credibility as the nation's legitimately elected leader.

### ***Controversy Surrounding the 2010 Electoral Law Decree***

Although all of the observer organizations to the 2009 election process called for electoral reform, none endorsed the method by which it was ultimately pursued. The 2010 electoral law was adopted through an Article 79 presidential decree and was prepared through a process that did not seek consultation from relevant stakeholders. Article 79 of the Constitution permits the president to pass laws in the event an emergency necessitates action while the Wolesi Jirga is in recess.

Democracy International was among the organizations that questioned the legality of the decree. Article 79 permits the use of a presidential decree when there is an emergency that precipitates a need for action. But in the case of the election law, such an emergency was not apparent, and the president's office did not adequately explain it.

A long debate followed the decree's announcement. After officially issuing the decree, the president presented it to the Wolesi Jirga, as required by law. Under the Constitution of Afghanistan, an Article 79 presidential decree becomes law unless both houses of the national assembly move to reject it.

In a near-unanimous vote, the Wolesi Jirga rejected the election decree. Shortly thereafter, the president argued that the Wolesi Jirga's rejection of the decree was itself unconstitutional. He cited Article 109, which prohibits the body from addressing election affairs in an election year. Members of the Wolesi Jirga, including its speaker, argued that while Article 109 was relevant in debating specific reforms, the body did have the authority to reject Article 79 decrees outright, regardless of the subject matter. Most Afghan legal analysts agree that while the law prohibits the Wolesi Jirga from acting on specific election issues within an election year, it does not prohibit them from rejecting decrees altogether.

In any event, the Meshrano Jirga refused to debate the election decree, and it ultimately became law. In the absence of the rejection of both houses, the decree was recognized as the official electoral law for the 2010 elections.

### ***Changes in the Election Landscape***

More important than the controversy around the process of enacting an amended electoral law were the changes the decree put into force. The most important changes to the law affected the ECC. As previously noted, President Karzai blamed the international membership of the ECC for his inability to secure a first-round victory in the 2009 presidential election. Thus, his election decree changed the appointment process for ECC commissioners. The decree eliminated any ref-

erence to international representation on the commission, despite the fact that many saw the international nature of the ECC as having helped salvage some semblance of legitimacy for the 2009 process. Formerly, as noted above, the ECC had three international commissioners appointed by the UN SRSG in addition to two Afghan commissioners, one appointed by the Afghan Independent Human Rights Commission (AIHRC) and one appointed by the supreme court. The new law gave President Karzai the authority to appoint all five ECC commissioners without consulting any other institution.

President Karzai's frustration with what he perceived as foreign meddling in Afghan elections persisted beyond 2009. In a press conference on April 1, 2010, he decried international interference in the 2009 election process. He specifically singled out the former chairman of the ECC as well as the head of the European Union's election observation mission. "There was fraud in the presidential election and the provincial election; no doubt there was massive fraud," he said. "That was not done by the Afghans. The foreigners did that."

In the short-term, the press conference severely strained President Karzai's relationship with the Obama Administration. In response to the comments, several key American officials questioned Karzai's efficacy as a long-term partner. Secretary of State Hillary Clinton, however, engaged President Karzai in a series of telephone conversations that helped mitigate damage to the relationship.

On April 7, in a move apparently to repair his relationship with the West, President Karzai formally accepted the resignation of the country's two top election officials, Azzizzullah Ludin and Daoud Najafi, who had become symbols of cronyism from their performance in the 2009 election process. The dismissals were a direct response to the intense international pressure President Karzai faced. The dismissal of Ludin and Najafi was necessary but not sufficient to garner U.S. support for the election process. The appointment of competent and well-regarded replacements was equally important to instill confidence in the process.

Two additional factors helped build support for international assistance to Afghanistan's 2010 election process, particularly within the U.S. government. The first was an informal agreement reached by President Karzai and the SRSG regarding the composition of the ECC. Based on the experience of 2009, the international community was reluctant to support an election process overseen by an ECC with no international representation. As such, international funding to support the election process was made conditional upon an informal agreement between the SRSG and President Karzai that assured international presence on the complaints commission. Karzai and the SRSG agreed that the president would name two international commissioners to the commission and that the ECC would make no decisions without the endorsement of at least one international commissioner. Although this agreement was never written into law, its existence was broadly acknowledged.

The second important step to ensure international support for the 2010 process was the appointment on April 17 of two new key IEC officials, a chairman and a chief electoral officer (CEO). The first appointment was Fazel Ahmed Manawi as chairman. Manawi had served as an IEC commissioner in 2009 and in several government posts before that. Most analysts and political observers lauded the appointment as an important step toward restoring the credibility of the

election commission; even President Karzai's political rival, Abdullah Abdullah, strongly supported Manawi. The second key appointment was that of Abdullah Ahmadzai as chief electoral officer. Known for his integrity, impartiality, and competence, Ahmadzai had served as Director of Field Operations for the IEC in 2005 and had worked with the Asia Foundation and Democracy International before his appointment as CEO.

Many important events unfolded between the certification of final results of the 2009 presidential and provincial council elections and the announcement of the official election calendar for the 2010 process. The president's electoral law decree, the dismissal of key election officials, the appointment of a new IEC chairman and chief electoral officer, and an informal agreement between the SRSG and president all contributed to make parliamentary elections in Afghanistan a reality in 2010.

### *The Wolesi Jirga*

The 2010 parliamentary elections were important to further establish the credibility of the Wolesi Jirga. Afghanistan has been criticized because of the perception that it has an unchecked executive. Since it was first elected in 2005, the Wolesi Jirga has grown into the only institution able to exercise some check on executive authority. Its previous session provided numerous examples of this independence. Specifically, the body rejected a number of President Karzai's cabinet appointments, key pieces of his national budget, and his decree to alter the country's electoral law. The Wolesi Jirga has received and seems to have benefitted from considerable development assistance. Although the institution still suffers from a lack of defined political alliances, a vote tracking system, and adequate systems for constituency relations, it has emerged as a body critical to the health of Afghan democracy. Despite Wolesi Jirga's shortcomings, Afghans seem to value the institution and view its members as important links between their local communities and the national government.

## **Security Context**

Afghanistan is a war-torn state that has endured conflict for the last 30 years. It has entrenched ethnic divisions that have worsened considerably through decades of civil strife. The security situation has deteriorated steadily since 2005 due to expanding Taliban influence, aggressive ISAF military activity, and the growth of serious criminal rings.

Accordingly, the security situation is precarious at best and often life threatening. The federal government controls Kabul and the immediate surrounding area, but local sheikhs, warlords, and the Taliban control a large number of the provinces, particularly in the south. As such, the security situation in the country has adversely affected the electoral process. In many provinces, candidates, particularly women, could not campaign freely. In some cases, security concerns prohibited candidates from campaigning in their home provinces and forced them to conduct their campaigns from Kabul. The Taliban has repeatedly threatened anyone participating in Afghan elections. It intimidates, attacks and even kills election officials and employees, parliamentary candidates, and others who engage in the election process. The situation has also seriously complicated efforts to carry out robust election observations.

Incidents of violence have been increasing steadily for several years. August 2009 saw high levels of violence with 1,250 significant incidents recorded. In June 2010 alone there were 2,745

significant activities, and projections for the following months were even higher. Threats against candidates and aid workers have been widespread, and a record number of foreign aid workers have been killed. Before the 2010 Wolesi Jirga election, only nine of 364 districts were considered entirely safe or under control by the federal government, 114 districts categorized as “high threat”, and the remaining 241 districts either “medium” or “low risk”.

Unlike previous elections, the IEC decided not to open polling centers where security could not be adequately provided. Almost 1,000 of the 6,835 polling centers initially proposed by the IEC were rejected outright due to inadequate security conditions; more polling centers failed to open on election day for security reasons. Unlike some groups that criticized the failure to open some polling stations, Democracy International thought the exclusion of these polling centers contributed to a better election process. The IEC closed unsafe polling centers to prevent fraud rather than to disenfranchise voters.

Because of the insecurity, the common-sense precautions adopted by the IEC did not prevent widespread fraud. The IEC ultimately excluded approximately 1.3 million votes, one-quarter of the votes cast, as fraudulent. As long as security remains in issue in Afghanistan, preventing fraud will remain a difficult challenge.

Because of insecurity, observers were only able to visit a small portion of the country. Observers must be briefed on an enormous number of security concerns, coordinators must pay careful attention to any and all observer movements and, in many cases, access to polling stations becomes infeasible. By any measure, a security situation this dangerous hinders successful election observation.

Security is an inevitable aspect of any operation in Afghanistan and, despite the significant impediment to observation, does not warrant the abandonment of electoral activities. It simply requires more constraints on observers and recognition that organizers of any electoral process or observation in the country must carefully consider the context.

## **IEC Preparations for Election Day**

Under new leadership, the IEC undertook measures to prevent the flaws of the 2009 elections from recurring. Through these proactive measures, the IEC strove to prevent its staff from committing or tolerating misconduct, manipulation, or fraud. The IEC’s actions included the dismissal of four of its Provincial Election Officers who had been found guilty of malpractice in the 2009 elections as well as the relocation of all 34 Provincial Election Officers to new provinces to lower the risk of corruption or favoritism by eliminating their proximity to their own power and patronage networks. It also centralized the recruitment of temporary staff (nearly 83,000 people including District Field Coordinators (DFCs), voter educators, and polling staff members) to avoid favoritism and, when applicable, to take into account staff members’ performance in previous elections. It created a blacklist of nearly 6,000 staff members alleged to have been involved in misconduct in 2009 and prevented those individuals from being rehired. And it instructed the Provincial Election Officers to relocate DFCs when they were at risk of facing undue influence or pressure in their assigned area of jurisdiction.

The IEC also created a detailed operational plan for organizing and carrying out the elections. The IEC approved this plan in the first week of June. The formal aspects of the plan did not differ significantly from the plans for previous elections, but the IEC's commitment to implementing the plan in the strictest way possible, in the face of extreme pressure and challenging conditions, did mark a significant change.

As part of the plan, the IEC outlined procedures for recruitment and training of its temporary staff. Security conditions, as well as certain cultural values and traditions, posed significant problems for the effective and timely recruitment and training of temporary polling staff members. Before election day, the IEC admitted to the existence of this problem, particularly with respect to the recruitment of female polling station security officers. Despite the difficulty, though, the IEC asserted its ability to recruit, contract, and train all necessary staff members for the effective management of all polling operations.

Despite official reports of the effective implementation of these fraud-prevention measures, including the dismissal and replacement of a few dozen DFCs a few days before the elections, DI observers and media outlets highlighted the complaints of many candidates and their party agents alleging the involvement of IEC staff in occasions of attempted fraud. Complaints and blame were rampant among the candidates; they accused each other of a wide array of malpractices including direct threats, intimidation, vote buying, and more as they fought to secure their own seats in the Wolesi Jirga.

The Free and Fair Elections Foundation of Afghanistan (FEFA), the country's largest domestic observation organization, was particularly critical of the IEC's centralized recruitment process. FEFA argued that the centralization of staff recruitment for 34 provinces was unrealistic and that the vetting process was not effective in preventing staff with links to candidates and warlords from being hired.

Notwithstanding these criticisms, the IEC took important steps to attempt to reduce fraud in preparations for the 2010 elections. Although fraud ultimately did occur, the IEC made progress in adopting more proactive fraud prevention measures and was generally more serious in preparing for fraud than in 2009.

## **The Candidate Nomination and Vetting Processes**

The candidate nomination period officially began on April 20 and was scheduled to continue until May 4. The IEC ultimately extended the process until May 5, giving candidates 15 days to register. Afghan citizens who wished to run for a seat in the Wolesi Jirga received nomination packages with instructions at IEC provincial offices around the country. To be eligible to run, candidates had to be citizens of Afghanistan, at least 25 years old, and not currently government employees. Each potential candidate was also required to collect at least 1,000 cards with supporters' signatures or thumb prints.

Before announcing the official preliminary list of candidates on May 13, the IEC submitted all materials to a verification process. The verification process resulted in 2,447 candidates being named on the preliminary list, including 386 women. More than 200 candidates, including 33 women, were not included on the preliminary list, presumably because their materials did not

pass the verification test. Upon publishing the preliminary candidate list, the IEC announced the beginning of the challenges and correction period. During this period, candidates could submit corrections to the IEC, and any Afghan citizen could challenge someone's candidacy by filing a complaint form at any IEC provincial office.

Most candidates with whom DI spoke reported that the candidate registration process ran smoothly and IEC provincial officers seemed well prepared and knowledgeable about the process. Nevertheless, the ensuing vetting process was problematic. In addition to a general lack of transparency on the part of the IEC and ECC, two specific aspects of the candidate vetting process came under intense scrutiny.

The first contentious process, introduced by President Karzai's electoral law decree, addressed whether a candidate had links to illegally armed groups. In 2009, the Disbandment of Illegally Armed Groups (DIAG) commission was responsible for determining links to illegally armed groups. The DIAG process itself came under intense scrutiny, mostly because of ambiguities in authority between DIAG and the ECC. President Karzai's 2010 electoral law decree changed the way that links to illegally armed groups were determined by removing DIAG and replacing it with a special investigation commission on leadership or membership of illegally armed groups (Article 12(7)). The IEC chaired this commission, which also included representatives from the Ministry of Defense, the Ministry of Interior, and the National Security Directorate. The special commission grappled with the same problem that DIAG did. The law did not clearly establish the criteria for what constitutes links to illegally armed groups.

The special commission took its first action on May 30 when it referred the names of 85 candidates to the ECC for alleged links to illegally armed groups. The process was, unfortunately, not transparent, as the commission never revealed its sources for making determinations. The candidates were presumed guilty but were given until June 4 to prove their innocence to the commission. In addition, the commission gave inconsistent information about the number of candidates with links to illegally armed groups, first reporting 85, then reporting 89, and then decreasing the number to 83. This equivocation significantly reduced candidates' confidence in the commission.

Initially, the ECC felt it necessary to provide each candidate accused of having links to illegally armed groups the opportunity to challenge the alleged link. As a result, every accused candidate produced a letter to the investigative committee certifying his or her innocence. At this point, the situation deteriorated dramatically.

The investigative commission was not pleased with the candidates' letters and refused to either definitively remove the accused candidates or to allow them to run. Instead, the commission forwarded the list and letters to the ECC. The ECC, however, refused to take action and publicly expressed its opinion that the legal duty to make such judgments was the authority of the investigative committee. The IEC chaired a series of deliberative meetings through which the committee produced a new list of only 13 candidates with links to illegally armed groups.

The ECC once again provided candidates with five days to protest their inclusion on the excluded list. Some candidates were successful in having their names removed. On June 22, the IEC

announced the final list of candidates, which included 2,577 total candidates, including 406 women and 2,171 men.

Unfortunately, shortly after the announcement of the final candidate list, the vetting commission furnished an additional list of 26 candidates to the ECC with alleged links to illegally armed groups. Despite the objections of the vetting commission, the ECC decided to give the 26 candidates 48 hours to challenge the accusation. On July 7, the ECC decided that 31 candidates must be removed from the final candidate list for links to illegally armed groups. It was never clear where this number came from and how the commission determined guilt, but these candidates were ultimately removed from the candidate list.

The process for determining whether candidates had links to illegally armed groups was not the only part of the candidate vetting process that came under scrutiny. Candidates also had to resign from official government positions. Unfortunately, the electoral institutions never clearly articulated the resignation process to candidates. After the ECC ruled a number of candidates ineligible, a key deficiency in the regulation surfaced. Not only were candidates required to submit their resignations, but the relevant government agencies also needed to accept such resignations. Ministers, and, in some cases the president himself, were required to approve resignations.

Many candidates complained that the process was ripe for abuse and that those with a stake in the election could simply refuse to accept a resignation letter and thus prevent a candidate from running. After reviewing the relevant regulations and discussing the situation with numerous candidates who perceived the regulation as unjust, DI experts raised the issue with the ECC. The ECC declared that it did not have jurisdiction to alter regulations and, unfortunately, interpreted the regulation to mean that resignation letters did in fact have to be accepted. In total, the ECC removed 45 candidates for failing to resign from civil service positions.

Throughout the candidate-vetting process, both Afghan and international stakeholders complained about the lack of transparency and the willingness of the vetting commission and ECC to alter the process. On June 23, the SRSR criticized the candidate-vetting process, conceivably because so few names had been removed from the candidate list for links to illegally armed groups. Because of the ambiguities regarding the process for determining links to illegally armed groups as well as regulations for resigning from government positions, many candidates ultimately believed they were removed from the list for political reasons.

## **The Campaign Period**

The official campaign period for the 2010 Wolesi Jirga elections began on June 23 and continued through September 16 when a 48-hour silence period began.

The IEC approved a number of regulations to govern the campaign period. Particularly important, the IEC Regulation on Electoral Campaigns attempted to address the use of government resources in campaigning, a constant source of consternation among candidates during the 2009 electoral cycle. The regulation prohibited candidates and their supporters from interfering in other campaigns, armed forces personnel and foreign nationals from participating in campaigning, and government departments from making their resources available to candidates. It also re-

quired candidates to pledge to follow a code of conduct and required the media to provide fair and impartial coverage.

Article 56 of the electoral law establishes the code of conduct for candidates and political parties. The code of conduct regulates the participation of candidates and political parties in all phases of the electoral cycle, including voter registration, candidate nomination, electoral campaigns, polling, and counting. The code of conduct includes a number of specific provisions, including prohibition on the use of armed force, discrimination in campaign activities, ensuring the participation of women, respecting the secrecy of the vote, and respecting the principles of Islam in campaigning.

### ***Engagement of Political Parties***

The Government of Afghanistan also adopted a new political parties law in late 2009. The Wolesi Jirga passed the law in September 2009, and President Karzai signed it shortly thereafter. It was not published in the official gazette until December 2009.

The new law and its accompanying regulations drastically increased the registration requirements for political parties. For example, parties attempting to re-register under the new law and regulations had to collect at least 10,000 signatures from supporters and provide signed letters of commitment from at least 35 individuals in at least 20 provinces. This signified a significant increase from the 700 signatures required previously. In conjunction with the delayed publishing of the law, the new membership requirements made it difficult for parties to meet the revised registration requirements in time to qualify for the 2010 ballot.

Critics charged that enactment of the new law, and its accompanying regulations, was a cynical attempt to prevent the formation and growth of political parties. Critics of existing parties claimed that they are nothing more than aliases for ethnically or geographically based tribes, their chiefs or warlords, and their private armies. Some claimed that parties functioned solely as proxies for foreign interests.

Despite these views, the effect of the law on the engagement of political parties in the September election was clear: it limited party identification on the ballot. Leading up to the 2005 Wolesi Jirga election, more than 80 parties were legally registered. At the start of the official 2010 election campaign period, however, while 36 parties were registered, only five met all requirements to be included on the ballot.

### ***Campaign Finance***

The IEC also enacted new campaign finance regulations for the 2010 elections. The IEC approved these new regulations on March 3, 2010. The campaign finance regulations required candidates to disclose all assets in excess of 300,000 Afghanis (approximately US\$6,000), and disclose all campaign contributions and expenditures. The regulation required candidates to submit financial reports detailing these transactions 48 hours before election day. While the requirement that candidates file personal financial disclosures existed in 2009, most candidates did not file these reports, and enforcement was virtually nonexistent. The requirement that candidates disclose campaign contributions and expenditures was new to the 2010 process.

Beyond financial disclosure, the regulations set restrictions on campaign contributions. Under the regulations, Afghan citizens, political parties, and other domestic nongovernmental entities were eligible to make contributions to candidates. The regulation prohibited both foreign and government contributions to candidates and limited campaign spending to 500,000 Afghanis (approximately US\$10,000).

Most observers to the process were skeptical that candidates would abide by the campaign finance regulations. In the lead up to election day, rumors circulated that foreign contributions were flowing in, especially from Iran. Nevertheless, the IEC posted financial reports on its website as planned shortly after election day. DI analysts reviewed many of these reports and found that candidates did list specific contributions and expenditures. The increased transparency should be applauded, but without clear enforcement mechanisms the effect of the regulations at reducing illegal contributions and expenditures is unclear.

### ***Campaign Violence***

Numerous acts of violence against both candidates and their supporters marred the 2010 Wolesi Jirga campaign period. The most tragic of these actions occurred on August 28, when five volunteers for a prominent female candidate in Herat were found murdered. The candidate, Fauzia Gilani, is a member of one of the most prominent families in Herat and was a sitting member of parliament.

In response to the attacks on Gilani's volunteers and numerous violent actions against other candidates and their supporters, on August 29, 2010, the United Nation's Assistance Mission in Afghanistan condemned the campaign violence. Democracy International released its own press statement on August 31 calling on Afghan security forces to direct more resources to protecting candidates.

Investigations never uncovered the exact motivation behind these violent attacks. Nevertheless, the incidents underscored the widespread insecurity surrounding these elections. While many speculated that the Taliban was behind the attacks, others attributed the violence to the local nature of a parliamentary election and the reality that many Afghans view the seats in the Wolesi Jirga as true positions of power. Thus, some candidates might even resort to violence if they felt it would improve their chances of victory. Unfortunately, the intensity of the campaign violence prevented many candidates from campaigning at all.

### **Voter Registration**

The inadequacies of the voter registration system remains an important issue in Afghanistan. Afghanistan still lacks a comprehensive and accurate voter registry. One major obstacle to resolving this issue is the fact that accurate figures on the population of eligible voters do not exist; Afghanistan conducted its last census in 1976, and that was only a partial exercise. Since 2003, Afghan electoral institutions have repeatedly undertaken efforts to remedy this problem and create a trustworthy voter registry. These efforts have been largely unsuccessful, however, as a result of a lack of consensus among international and Afghan stakeholders and, unfortunately, general mismanagement.

To be eligible to vote, an individual must be at least 18 years old on the day of the elections, be an Afghan citizen, be registered with the IEC, and have not been deprived of his or her civil and political rights by a court. In 2003, the Joint Electoral Management Body (JEMB) adopted an approach to voter registration that remains essentially the same today; the individual must visit a designated registration center and personally request a registration card by providing proof of identification or personal data to demonstrate compliance with the legal requirements for registration. The cards also include thumbprints and photographs, the latter of which is mandatory for male voters and optional for female voters. Voting is not permitted without a registration card. Cards are not verified against voter lists at polling stations; rather, books are used to record the registration number of each voter's card at the time of voting. In this context, citizens may vote at any polling station in his or her province.

This registration system has various flaws that directly affect the integrity of the entire electoral process; indeed, it has been a source of extensive complaints and criticism. Due to their lack of training and impartiality, voter registration staff members have not always followed the procedures necessary to ensure the proper issuing of registration cards. As a result, there have been numerous reports of cards being issued in multiples as well as to underage individuals.

Over the last decade, Afghanistan has held four voter registration drives. The first was conducted for the 2004 presidential elections, and a total of 10.4 million cards were issued. For the legislative elections in 2005, a second drive was conducted to give new or previously excluded voters the chance to register. This gave individuals an opportunity to change the information about them, particularly their residential address, or to replace a lost card. The 2005 drive yielded 1.7 million additional registration cards, increasing the total number of cards to 12.1 million. In 2009, the IEC organized a third registration effort and issued approximately 4.7 million new cards, raising the total number of cards in circulation to 16.8 million.

For the 2010 Wolesi Jirga elections, the IEC decided to hold a fourth voter registration drive aimed at an estimated 600,000 individuals either requiring new cards or registering for the first time. To reduce the chance of malfeasance, the IEC implemented an approach of limited registration, opening only a few static registration centers in the provincial capitals, and conducted, in most districts, over the two-month period from June 12 to August 12. Critics argued that this approach disenfranchised individuals unable to travel to the capital cities to register. The IEC reported it issued 377,000 new voter cards during this registration drive.

The primary problem with this registration system was that the IEC did not implement any measure to prevent issuing multiple cards or to detect multiple registrations from drive to drive. These multiple registration efforts increased the opportunity for some individuals to cast multiple votes. Although the voting age population was estimated at about 12.5 million people, it was estimated that more than 17 million valid registration cards were in circulation for the 2010 elections. While indelible ink offered a potential check on the risk of multiple voting, it lacked reliability. Moreover, given the Taliban's ominous threats to cut off the fingers of those who had cast ballots, polling staff members often acquiesced to the pleas of voters to avoid the use of ink.

The alleged production and sale of fake voter cards fed suspicions of fraud throughout the election period. While the existence of fraudulent voter cards could have undermined the integrity of

these elections, its real effect was probably minimal. The strategic incentive to produce and distribute fake cards could not have been great given the excessive numbers of genuine cards in circulation. This is not to suggest that the production and sale of counterfeit cards should be dismissed. The danger that fake cards could be introduced into the system and used to cast ballots would seem to have the potential to affect the integrity and reliability of the process and reflects the unfortunate state of Afghanistan's voter registration system.

## **Participation of Marginalized Groups**

An essential component of the effort to advance democratic institutions in Afghanistan is the development of a representative voter base and legislative body. If large swathes of the public have no say in politics or governance, then the political process can hardly be deemed democratic. Rectifying this situation requires a serious and continuing effort to ensure that all groups within a population have reasonable access to the political process.

In Afghanistan, women are the most significant marginalized group. Long-standing biases and obstacles, both religious and cultural, present serious barriers to female participation in government. Centuries of poor education and a systemic indoctrination of gender-biased religious belief inhibit female voters and candidates. Women face violence and oppression in the voting booth and in their homes, and exist in a system that is already largely dysfunctional. Key religious and political leaders at all levels of government actively oppose the expansion of female participation. A combination of fear and apathy has created a political environment in which women have been marginalized or entirely ignored as political actors.

In this context, the 2010 Wolesi Jirga election provided another opportunity to examine gender trends in Afghan politics and assess the progress of electoral bodies in promoting female participation and representation. The 2010 elections were unique in several respects, not the least of which was the increased effort of the IEC to promote female participation in the Afghan political process. In addition to the quota established in the 2001 constitution, the IEC established a separate Gender Unit to oversee the process of promoting female participation.

Foreign and domestic observers acknowledge that the cultural and political conditions of Afghanistan discourage equal participation. In this context, a quota system is one way to confront the cultural bias against women. The quota for female participation in the parliament requires that 25 percent of the Wolesi Jirga be female; this quota has been alternately criticized for being inherently undemocratic and praised for helping women achieve significant representation in a system that would not otherwise allow for representative female presence in government. Nevertheless, examination of the results from the 2005 and 2010 Wolesi Jirga elections reveals that the quota has proven invaluable in achieving female political representation.

In 2005, 68 women were elected to serve in the Wolesi Jirga. Of those 68, 19 were elected without the aid of a quota, and 49 were elected with the aid of the quota. In 2010 the problem was more acute. Of 69 women elected to the Wolesi Jirga, only 11 were elected without the quota and 58 because of it. Whether through the deteriorating resolve of female supporters or increasing levels of bias against women, the number of women elected without the quota decreased between the two elections, despite the efforts of the international community and domestic actors. In both elections, in the absence of a quota, women would not have achieved anything approach-

ing substantial representation. The severity of this problem has increased over time. While there are arguments against it, the quota seems to have ensured that women have a voice in government and to have motivated female participation in elections.

In an effort to facilitate the long-term participation of women and help enforce the quota, the IEC's Gender Unit seeks to promote increased gender participation. The Gender Unit has taken several important steps toward achieving that goal. In the last two years it has established a Gender Focal Points system that places a trained gender specialist in every province to help guide the process of increasing female participation and collect reports on its progress. The Gender Unit has also conducted consultations, lectures, and training programs for female and male IEC workers and local election officials to educate them on a range of topics, from lessons learned in previous elections to proper workplace decorum. It has also attempted to reach the broader community with focused outreach and publications. Nevertheless, foreign observers have criticized the Gender Unit for having little political clout, poor reach beyond Kabul, and a lack of well-trained staff. When the number of female candidates declined, the Gender Unit worked in cooperation with the Ministry of Women's Affairs, but due to poor staffing and poor planning little substantive progress was made.

Despite efforts to promote female participation, the problem is still significant. Although cultural biases and ubiquitous political barriers to entry for Afghan women are the root of the problem, political and governmental institutions can help address it. Although the gender quota is widely viewed as positive measure, cultural shifts will be necessary for sustained female participation in politics to be realized.

## ELECTION DAY OBSERVATIONS

Despite a challenging security environment, DI observers successfully deployed to 14 provinces. While security conditions significantly inhibited the ability of DI observers to move freely, all of the deployed observers successfully observed election-day proceedings. Many observer teams were able to witness the opening of the polls, the conduct of voting, the closing of the polls, and counting procedures.

Most DI observers reported that the process was conducted without major incident or evidence of serious irregularities. Among the observations of DI's delegation were the following:

1. Polling centers and polling stations generally received all necessary materials and documents required for polling in a timely fashion;
2. Polling officials seemed well trained on the process and generally implemented polling and counting procedures correctly;
3. Polling stations were generally set up to preserve the secrecy of the vote;
4. Party or candidate agents were present in most places to witness polling and counting procedures; and
5. Security agents effectively protected polling centers.

DI observers, however, did identify some minor technical problems and irregularities. These problems included polling centers opening late, thus delaying the start of polling; campaign advertisements consistently posted directly outside of polling centers (in violation of the legal prohibition of campaign advertisements within a 100-meter perimeter); officials permitting family or group voting, particularly in female stations; polling stations not accessible to disabled voters; and female security guards noticeably absent. Even if much less important than the extremely serious security challenges, such administrative problems need to be acknowledged so that authorities can take steps to prevent their recurrence and improve future Afghan elections.

As in previous elections, there was considerable controversy about the quality of the indelible ink and thus about whether the use of the ink could do anything to prevent multiple voting. On election day, reports surfaced that the ink was ineffective and was not being consistently applied. In locations where DI observers were present, however, the indelible ink was being applied consistently and did not appear to be easily removed. Thus, it seemed to be serving its purpose as an effective deterrent to multiple voting.

At an IEC election-day press conference, the IEC chairman directly addressed the issue of indelible ink and invited the audience, particularly media representatives, to test the quality of the ink. We applaud the IEC for attempting to confront an issue that threatened perceptions about the legitimacy of the elections. Nevertheless, several media outlets published articles referring to faulty indelible ink the next day.

## **Election Day Security**

Election day had mixed security results. While at least 14 people were killed on election day and the Taliban claimed responsibility for more than 100 attacks throughout the country, including an unsuccessful attack on a convoy carrying the governor of Kandahar, security experts agreed that the violence could have been much worse. Ninety-two percent of polling stations opened despite frequent threats by the Taliban, rocket barrages in many cities, and a host of complaints to the ECC that polling stations were inadequately staffed or insecure.

DI observers witnessed different elections, however, depending on where they were. Where security conditions were acceptable, voters felt more confident casting their ballots and turnout was high. Where poor security conditions prevailed, turnout tended to be lower. This was also true through the pre- and postelection periods.

Election day was violent by any measure. Rockets fired on cities and the attempted assassination of a governor are absolutely unacceptable. Nevertheless, given the dangerous and complex conditions that prevail in Afghanistan, the mere fact that people turned out to vote in the numbers they did was encouraging.

## **IEC Election Day Press Conferences**

As scheduled, the IEC held three press conferences on election day with the intent of informing stakeholders on election developments and releasing initial turnout figures. The IEC reported that it had collected much of the information released on election day via an internal communication system. This system relied on periodic election day reports filed by DFCs with provincial offices that were then shared with the central IEC office in Kabul. This system allowed the IEC headquarters in Kabul access to polling-station-level data on election day.

The IEC's three election-day press conferences were another sign of its newfound commitment to transparency. This signalled that the IEC understood the value of ensuring that national and international media and domestic and international observers had access to up-to-date and official information on election day. The increased transparency helped boost confidence in and the credibility of the election process.

Despite the increased effort, the IEC faced serious challenges processing the data from provincial offices, which hampered the consistency and accuracy of the information released in the days after the election. This was particularly true for turnout data. The lack of consistency and accuracy of IEC data proved to be a lingering issue throughout the results tabulation process and created suspicion about the transparency and reliability of the process in which the IEC had invested so much time and effort.

## **IEC Turnout Announcement**

On election day, the IEC declared that 4,632 polling stations had reported turnout figures by 4:00 pm. According to the IEC, 3,642,444 votes were cast in these polling stations, which represented 40 percent of the electorate. Of these 3.6 million votes cast, women cast 1,423,875 votes (39 percent), and men cast 2,139,523 votes (59 percent). Kuchi nomads cast the remaining 79,046 votes

(2 percent), which were not reported by gender. The IEC's election-day turnout figures only included reports from 79 percent of polling centers scheduled to open on election day, a fact that was not communicated at the time and led to significant confusion throughout subsequent phases of the process. On election day, the IEC was only certain that 86 percent of polling centers were open. The IEC itself was unsure if 14 percent of polling centers had actually opened on election day, which underscores both the challenging security situation on election day and the communications challenges in Afghanistan. The IEC struggled to provide clear information on turnout throughout the process.

## RESULTS TABULATION AND COMPLAINTS ADJUDICATION

After election day, the IEC began the tallying process and held numerous press conferences to provide updates on how many provinces' and polling stations' results had been processed at the National Tally Center in Kabul. As the tallying process progressed, the IEC released partial results for various provinces and began to post results on its website. On October 20, more than a month after election day, the IEC announced the official preliminary results and revised turnout figures. The most significant development was an increase in the projected election-day turnout from the 4.3 million that was announced on September 20 to 5.6 million. After the announcement of the preliminary results, the ECC announced several specific decisions on complaints and provided periodic updates on its progress toward adjudicating all complaints, which would ultimately lead to the announcement of final certified results.

### Results Tabulation

Once polls closed throughout the country, election officials conducted individual counts at the polling station level and tallied results for their assigned polling stations. The results were then recorded on results forms that were placed in Tamper-Evident Bags (TEBs) that remained sealed until they arrived at the National Tally Center in Kabul. The TEBs were then submitted to a system that attempted to identify fraudulent activity. After initial aggregation, the first step for detection of fraudulent activity involved comparing the information in the TEBs with the information collected on election day at the original polling stations. TEBs with significant discrepancies were flagged for further review. The second step consisted of ensuring that every item on a predetermined checklist was present in each TEB. If any of the items on the check list were absent, those bags were flagged for even more review. The third step required that all results forms be scanned and uploaded to the IEC's website so they would be publicly accessible.

The next step in the tallying process was to collect the data from each results form through a standard double-blind data entry system. Two separate data-entry technicians entered results from each form, and the two separate data sets were then compared to ensure accuracy. Any discrepancies were flagged. In addition, results forms meeting certain triggers were placed into one of two categories. The first category held those forms that were suspected of being fraudulent and were sent to senior IEC officials for scrutiny and an ultimate decision on whether they would be included in the tally. The second held those forms that clearly contradicted set thresholds, such as forms that showed votes cast in excess of the 600 ballots provided to a polling station, or were in some other way obviously fraudulent. These results were thrown out entirely.

The specific triggers used by the IEC were as follows:

1. The total number of votes (valid + invalid) exceeded or equaled 600;
2. More than 90 percent of valid and invalid votes were cast for one candidate (against the total of invalid and valid votes);
3. There were any inconsistencies greater than 4 percentage points between the total number of ballot papers withdrawn from the ballot box and the total number of valid and invalid votes;

4. There were discrepancies in excess of 4 percentage points of the total number of votes obtained by candidates against the total number of valid votes from the results sheet.

A series of teams then reviewed any results forms deemed questionable, including a liquidation team that checked for clerical errors, an inspection team that prepared a report on the suspect ballots, and a management team with the authority to request more serious investigations into suspect polling centers. Ultimately, after the process had taken place, the IEC secretariat made the decisions to invalidate questionable ballots.

### ***DI Audit on Posted Results***

Shortly after election day, the IEC began to publish preliminary results for each province on its website. For each polling station, the IEC uploaded a PDF scan of the handwritten results form as well as an HTML spreadsheet with the aggregated information from the IEC's central database for that polling station.

To assess the accuracy of the IEC's results tabulation process, DI undertook an audit of a random sample of more than 120 polling centers and more than 350 polling stations. DI statistical analysts downloaded copies of the actual results forms and conducted their own tally process. The analysts compared their tally results with tallied results published on the IEC website and found that the IEC results sheets were riddled with basic mathematical mistakes.

In the preliminary results announced on October 20, the IEC had corrected the mathematical errors in its results sheets. The IEC explained that the query used to extract the HTML sheets from their central database contained an error that had been corrected.

DI conducted a second audit and verified the accuracy of the new IEC results. This suggested that the IEC's double-blind capture tally process had been effective. Of the more than 85,000 votes checked by DI, fewer than 50 votes (i.e., less than 1 percent) were the result of mistakes. In conducting its second audit, however, DI found that in 10 percent of the polling stations examined, either the HTML form or the PDF form, or both, were not present, were incorrectly loaded, or were otherwise illegible.

### ***Announcement of Preliminary Results***

As noted, the IEC finally completed its investigation and tabulation and announced the preliminary results on October 20. During the tallying process, the IEC ordered audits of 81 polling stations, recounts of 121 polling stations, and audits and recounts of 3,143 polling stations. Based on the audit and recount process, the IEC excluded results from 569 polling stations. In addition, the IEC excluded results from 587 additional polling centers from around the country where they determined real elections did not actually take place. The IEC also announced new turnout figures, indicating that 4,265,347 valid votes had been cast with 58 percent of votes cast by men, 39 percent by women, and 2 percent by Kuchis. In announcing the preliminary results, the IEC called upon candidates and their supporters to direct all complaints to the ECC.

## **The Complaints and Appeals Process**

In an effort to deal with the inevitable deluge of complaints from candidates and citizens across the country, the Government of Afghanistan established the Electoral Complaints Commission

and 34 Provincial Electoral Complaints Commissions to receive, investigate, and mediate complaints for the 2010 Wolesi Jirga elections. Citizens could file complaints from election day (September 18) up until three days after the release of the preliminary results (October 24). During that period, the ECC and PECCs received 5,856 complaints with varying degrees of severity. In accordance with ECC regulations, the complaints were separated into three categories with decreasing levels of priority. The ECC placed 2,495 complaints that could affect the outcome of the election in the “A” category; these complaints were dealt with as a first priority. The ECC placed the rest of the complaints in the “B” category, signifying that they could not affect the results of the election, or the “C” category, signifying that the complaints did not require further adjudication. By mid-November, the ECC and PECCs had completed their adjudication of Category A complaints and had begun consolidating their final report on that category of complaints. Several PECCs had also begun adjudicating Category B complaints. As of December 19, 2010, 100 percent of Category A complaints and 72.6 percent of all complaints had been adjudicated.

### *Decisions of the ECC*

Based on the adjudication of all Category A and some Category B complaints, the ECC made several decisions regarding the invalidation of results in the postelection period. The ECC invalidated results on the basis of complaints that revealed serious electoral violations; the invalidations could be appealed within three days of the announcement of invalidation. On October 8 the ECC announced the first round of decisions, which invalidated all of the results from 31 polling centers (approximately 62 polling stations) in Farah province. The ECC announced the next round of decisions on October 13, which resulted in the invalidation of all the votes from 220 polling stations in Faryab, Khost, Konar, Logar, Nangarhar, Paktia, Paktika, Zabul, Herat, Urozgan, Badakhshan, and Daikundi provinces. In addition, the commission invalidated all of the votes for one candidate and all votes from two polling stations for another.

The third round of decisions, announced on October 18, invalidated votes from 88 additional polling stations in Badakhshan, Balkh, Faryab, Ghazni, Logar, Herat, Khost, Kunar, Nooristan, Paktia, Paktika, Sar-e-Pul, Takhar, Zabul, Baghlan, and Wardak provinces. The fourth round of decisions invalidated the votes from 29 polling stations in Baghlan, Herat, Khost, Kunar, Wardak, and Badghis. On November 6, the ECC referred 413 candidates, coming from every province except Nimroz, Bamyan, and Panjshir, and several IEC staff members to the office of the attorney general for prosecution for electoral violations. On November 9, 2010, the final round of decisions on prioritized complaints invalidated votes from 15 polling stations in Khost, Juzjan, Logar, and Helmand provinces. In addition, the ECC announced that it had conducted an audit of 500 randomly selected ballot boxes from all 34 provinces to verify the accuracy of the count.

### *Nature of the Complaints and Appeals Process*

Three important factors affected the 2010 complaints and appeals process. First, the original jurisdiction granted to PECCs transferred ownership of the process to Afghans. Second, the limited jurisdiction claimed by the ECC gave the IEC more autonomy. Third, candidates engaged the media more actively throughout the complaints process, which increased political pressure on election authorities and confusion about the process.

### *Original Jurisdiction of PECCs*

President Karzai's 2010 electoral law decree provided original jurisdiction over complaints and appeals to the PECCs. Before the 2010 elections, the PECCs did not have the jurisdiction to decide complaints and, except in exceptional circumstances, did not even conduct investigations of complaints. In the past, they would simply forward each complaint as submitted to the ECC in Kabul, unless the complaint was rejected for not having met minimal filing requirements. Generally speaking, the shift in jurisdiction had several beneficial effects.

First, giving the PECCs original jurisdiction entailed further shifting of responsibility for the complaints and adjudications process from the international community to Afghan election bodies. With no international representation at PECCs, Afghan PECC commissioners became influential actors in the process. This differed significantly from 2009, when international commissioners at the national level largely controlled the complaints process.

Second, if investigation was necessary, the PECCs were in a better position to conduct investigations at the provincial level than their counterparts at the national ECC. Previously, when investigations were required, the ECC in Kabul would send an investigation team, which was costly, time consuming, and often impractical. This was no longer necessary with more autonomous PECCs and, conceivably, would be an improvement from the process in 2009.

Third, giving jurisdiction to the PECCs added two additional layers of appeal. The first level of appeal was the formal appellate process; the second was an informal review of every decision by the PECCs, wherein all cases were logged at the PECCs and assigned a case number. Thereafter, every decision noted on a case file was forwarded to the ECC in Kabul for review.

In about half of the PECCs Democracy International visited, at least one employee was a legal professional or judge or had previous PECC experience. Prior PECC experience was not necessarily a good indicator of performance, given the limited responsibilities of previous PECCs, but this was an achievement, considering the short recruitment period and the general disarray of the Afghan legal and judicial system.

The actual performance of the PECCs was, however, less than optimal. This probably had more to do with a lack of preparation time than incompetence or corruption. The standards of decision-making in PECCs varied widely, even in PECCs fortunate enough to have legal professionals on staff.

In one instance reported to DI, PECCs dispatched PECC staff members to polling centers on election day to try to handle complaints. Although this seemed to demonstrate admirable initiative, and there was probably no intent to interfere with the process, responsibility to handle complaints during the balloting process had been specifically assigned to the polling center chairperson. The PECC justified its actions on the grounds that a lack of voter education and awareness of the complaints process, even among the polling center staff, made it desirable to have a PECC representative present to help make sure the complaints were properly lodged. The PECC commissioners added that simply having a complainant fill out a form and leave it with a polling center chairperson or the Provincial Independent Election Commission, especially when the polling center or the PIEC was the subject of the complaint, was a process prone to error. According to the commissioners, the complainant would not trust the chairperson or the PIEC to forward the

complaint to the PECC or the ECC and having a PECC representative present would enable individuals to voice their complaints immediately. Without the opportunity to instantly report potential violations, they argued, Afghans might not trust the formal process.

DI received another report that a PECC applied rules of evidence in a haphazard and often incorrect manner. This particular PECC, even though staffed with a former judge and two lawyers, refused to consider any case that involved hearsay evidence. While hearsay is not favored, numerous exceptions make hearsay admissible. The same PECC also decided that every case had to have some supporting piece of physical evidence. In informal, administrative, or quasi-judicial hearings, the general rules of evidence should be relaxed, and there was no legal basis for such restrictive rules. Again, it is unlikely this action resulted from nefarious intent, but the effect was negative.

One DI observer team reported that a PECC had received a formal complaint and, before it could announce a decision, the parties to the problem resolved the issue with the assistance of one or more tribal elders. In discussions with other observers, it seems likely that similar situations occurred elsewhere even if they were not reported. The existence of informal or traditional dispute resolution mechanisms should not, however, stop further development or institutionalization of PECCs. In the future, the ECC should conduct more public outreach to promote the public perception that the ECC and PECCs are competent and trustworthy organizations capable of handling election-related disputes.

While there are certainly more examples of PECC limitations and shortcomings, most deficiencies and errors likely resulted from lack of time and training, rather than from incompetence or corruption.

### ***Limited Jurisdiction of the ECC***

The second factor that distinguished the 2010 complaints-and-appeals process from previous cycles was the limited jurisdiction claimed by the ECC. During the 2010 Wolesi Jirga elections, the ECC, citing Article 62 (1)(2), declared that its jurisdiction was limited to offenses enumerated in Article 63 of the Electoral Law. The ECC interpreted this to mean that it had no jurisdiction over IEC decisions to close polling centers and polling stations or to disqualify candidates.

This decision gave more discretion to the IEC than in 2009. While it reduced the workload of the ECC, it meant that the IEC decisions could not be reviewed. Many candidates publicly complained that the IEC was ineffective if not compromised and that, as candidates, they had no forum to seek review of IEC decisions. The decision to claim limited jurisdiction may have been counterproductive as it limited candidate's rights to appeal and opened the process up to the scrutiny of the attorney general's office.

### ***Candidates Engaging the Media During the Complaints Process***

The third important new characteristic of the 2010 complaints and appeals process was the way candidates engaged the media. On several occasions, individual candidates, and, in some instances, coalitions of candidates, filed complaints and almost immediately issued press state-

ments or held press conferences complaining about fraud. These candidates often alleged that fraud was widespread and thus the elections could not be considered free and transparent.

One such candidate in Ghor province admitted to DI that he had committed fraud. He asserted that the other candidates had done so as well. He and the other losing candidates, he said, simply did not commit enough fraud to win. He did not offer proof to support his accusations, but the same day the ECC announced the number of cases being investigated in Ghor province, which closely approximated the candidate's claims.

Throughout the postelection period, many analysts observed that the practice of filing complaints and engaging the media, an approach adopted by many losing candidates, harmed the electoral process. The candidate from Ghor admitted that the ECC and PECC had asked for more information about his allegations and that he had complained to the media before the electoral authorities had had the chance to investigate his claims.

By engaging the media with the message that the IEC and ECC had failed, however, when in fact there were ongoing investigations, the public and the international community were left with the impression that the process had failed or, worse, that the IEC and ECC were complicit in fraud. In the end, the candidate from Ghor admitted that he and others demanded the election be rerun only because they themselves had been unsuccessful in cheating.

It is an unfortunate reality that some candidates and their supporters will disagree with the results of the complaints adjudication process. It is also likely that, no matter what the IEC and ECC do and no matter how fair and transparent they are, some candidates and coalitions will claim fraud as a part of their political strategy. Allegations of fraud, particularly before the adjudication process has been completed, have the potential to harm the credibility of the electoral process.

### *Informal Arrangements for ECC*

The informal arrangements agreed to after President Karzai's electoral law decree, including naming two international commissioners to the ECC and agreeing that the ECC could not act without concurrence of one of those international commissioners, ultimately had a positive effect on the 2010 election process. The Afghan face of the ECC was an important step. The appointment of two commissioners from countries with no vested interest in Afghanistan aided the legitimacy of the process and left most outside observers comfortable that the ECC would still have the external influence necessary to withstand attempts at undue influence or the perception thereof.

The perception that the national ECC did not exert enough control over PECCs, however, hampered the commission. Because of the presidential authority to appoint the provincial commissioners, many questioned the independence and impartiality of PECCs, like that of the IEC and PIECs. Some argued PECCs were simply extensions of the president's office. Others argued they were unable to resist the pressure of local strongmen and that certain decisions, or the failure to make decisions, were based on fear of reprisal.

Although ECC regulations and the electoral law attempted to address such problems by referring cases to the ECC in Kabul, the ECC also attempted to alleviate such problems by assigning PECC commissioners to provinces away from their homes. Some interpreted the ability of

PECCs to refer cases to the ECC as an escape clause that, they argued, resulted in PECCs only accepting easy cases.

### ***Temporary Nature of the ECC***

The temporary nature of the ECC raises additional concerns. One reason for the temporary status of the body has been the international representation. International members of the ECC will not permanently reside in Afghanistan, and the Afghan government, protective of Afghanistan's sovereignty, understandably does not want to have a permanent body with international representation. At the same time, international donors that have funded Afghan elections in the post-Taliban era have consistently opposed an entirely Afghan ECC.

Many members of the ECC and PECCs complained about the lack of time to establish offices, recruit and train staff, and begin operations, all of which must take place within 120 days of election day. A full-time ECC would avoid some of the failings of a late start, but such advantages come at a cost and raise the issue of sustainability. But given the full slate of electoral events required by the constitution, it could be more costly to expand and contract the PECCs each time than to simply leave them in place.

Naturally, the IEC's job is more complex, but a scaled-back permanent version of the ECC could be sustainable and justifiable. One proposed model for ECC composition between electoral cycles consists of a secretariat with regional deputies. Between cycles, the secretariat would have authority to screen, recruit, and train a cadre of commissioners and support staff for assignments when the election process formally begins.

Eventually, a permanent ECC controlled entirely by Afghans has the potential to cement local ownership and legitimacy over the complaints process. This might enable the institution to become a truly independent and integrated body capable of overseeing the electoral process.

There is sometimes a tendency to view complaints as a hindrance to the electoral process. But complaints can contribute to the integrity of the electoral process by highlighting specific problems and forcing the election commission and legislatures to rethink certain laws, regulations, and procedures. In any event, an effective, efficient complaints-adjudication process is critical to a democratic election process.

### **Announcement of Final Certified Results**

On November 24, 2010, the IEC announced the final, certified results of the September 18 Wolesi Jirga elections. At a press conference at the IEC media center, before assembled international and domestic observers and prominent members of the international community, IEC chairman Manawi, claimed success for the IEC throughout the 2010 electoral process in restoring the credibility and maintaining the independence of the commission despite enormous external pressure. The chairman also strongly asserted the IEC's sole authority to announce election results, a clear response to the willingness of other Afghan actors, especially the attorney general, to claim a significant role in managing the electoral process. The chairman asserted that the IEC made all decisions without foreign interference in the process and contended that the IEC maintained its transparency and accessibility throughout the entire process.

The chairman also announced the final certified election results for 34 of Afghanistan's 35 electoral constituencies, all provinces except Ghazni, as well as for the national Kuchi constituency. The IEC also announced that 24 candidates who had initially been announced as winners had actually lost, as the ECC had invalidated enough votes to change those overall results. In addition, the ECC disqualified three additional candidates for not officially resigning from government positions.

In reality, the announcements of November 24 did not constitute the final certified results of the 2010 election process. The chairman said that the results for Ghazni province had not been announced for "technical reasons," and the IEC assured stakeholders that the announcement for Ghazni would be forthcoming within a week. The chairman explained there had been an abnormally high number of closed polling stations and invalidated votes, both of which apparently required further investigation. He denied that there was any political reason for the delay in announcement of final certified results for Ghazni.

At the time of the announcement, however, the IEC appeared to be under intense political pressure to reverse the ECC-sanctioned results for Ghazni province, as Hazara candidates had won all 14 seats allocated to this Pashtun majority province. At the time, there was much public speculation that the president had placed intense pressure on the IEC, particularly the chairman and chief electoral officer, to annul the results and hold a new election in Ghazni. There was widespread speculation that the IEC would relent to the pressure and submit to having a new election there, a move that would have been interpreted as politically driven and would have tainted the credibility of the institution.

On December 1, the IEC announced the final certified results for Ghazni province, confirming that Hazara candidates had indeed won all 14 seats. Through a press release, the IEC announced that it had solved all technical problems related to the election results in the province and that the results were now final and certified for all of Afghanistan's 35 electoral constituencies.

### *Implications of Results*

The final, certified results for the 2010 elections reveal many interesting outcomes. Perhaps most striking is the widespread success of challengers and the failure of incumbent candidates to win re-election. Only 87 of the 249 winning candidates served in the last parliament; this means that two-thirds of the members of the new Wolesi Jirga are serving for the first time. Of the candidates named winners after the announcement of preliminary results, 23 were ultimately disqualified by the ECC.

Before and throughout the 2010 campaign period, DI observers consistently heard that the introduction of private money into Afghan politics would plague the 2010 elections. Before the start of the 2010 campaign season, DI met with a parliamentarian from Ghazni province who admitted his reluctance to stand for re-election, citing the lack of funding necessary to secure a seat in the parliament. Many of DI's observers reported that both candidates and voters supported the claim that money had come to play a prominent role in the campaign and that without sufficient funding to prove to potential constituents that you could provide for their needs immediately, candidates would not be successful. DI observers reported that candidates would fund public service projects during the campaign that they could then trumpet on the campaign trail throughout the election period.

Whether the influx of private funds into Afghan politics was ultimately responsible for the high turnover in the Wolesi Jirga is difficult to ascertain when so many votes were deemed fraudulent. The likelihood is that this was one contributing factor. Other factors likely included the inclination of Afghan voters to remove ineffectual parliamentarians from their seats, the unpredictability of the Afghan electorate, and, of course, the effect of fraud on the results.

The high turnover does not appear to signify a successful effort on behalf of President Karzai's political coalition or other opposition coalitions. Judging from his support for subsequent investigations and apparent reluctance to permit the parliament to be seated, Karzai certainly did not appear happy with the results. Moreover, it appears that independently funded independent candidates were more successful than members of either the incumbent president's political coalition or opposition political coalitions. Where the new Wolesi Jirga stands politically, however, will not be entirely revealed until its members begin to cast votes on the president's initiatives. The fact that many of the new members have no previous political history and are relatively unknown in Afghan political circles compounds this ambiguity.

In addition to the dramatic turnover in membership of the Wolesi Jirga, there was a substantial shift in ethnic representation. Ethnic Pashtuns won approximately 35 percent of the seats, whereas, before the 2010 election, Pashtuns had controlled a majority of seats in the Wolesi Jirga. Hazaras and Tajiks won 23 and 22 percent of the seats in the Wolesi Jirga, respectively, and representatives from other ethnic backgrounds won the rest of the seats. Pashtun candidates claimed that the decline represented the effect of fraud that specifically targeted their candidacies. Other ethnic groups, including Tajiks and Hazaras, claim that the results more accurately represent the ethnic composition of the country; these groups have repeatedly claimed that Pashtuns were overrepresented in the last Wolesi Jirga, compared to their numbers in the general population, a contention supported by the country's census results.

## POSTELECTION DEVELOPMENTS

### Candidate Protests

Shortly after election day, a new organization of defeated or disqualified candidates called the Union of Afghan Parliamentary Candidates began to hold protest meetings around the country with three basic demands of the IEC and Government of Afghanistan: (1) to declare the September 18, 2010 elections illegitimate; (2) to hold new parliamentary elections using computerized national ID cards; and (3) to prosecute all individuals involved in electoral crimes in a timely and serious manner. Other groups of candidates organized outside of the umbrella of the Union of Afghan Parliamentary Candidates and staged protests throughout the country with similar demands. In general, the protests were organized and orderly.

Many candidates complained vehemently that they had not be able to witness the auditing and invalidation of ballot boxes in their constituencies and, further, that the ECC had determined it did not have jurisdiction of IEC invalidation decisions. As such, there was no course of appeal for candidates whose boxes were invalidated.

As the weeks passed, the Union of Afghan Parliamentary Candidates gained more and higher-profile members, becoming a focal point for all disaffected candidates who felt they had been unfairly cheated out of a seat in parliament. Some of the defeated candidates received encouragement from politically motivated individuals to keep pressure on the IEC and the ECC regarding the final outcome of the elections.

### Challenges to IEC and ECC Authority

Unfortunately, the announcement of final certified results for Ghazni province did not mark the end of the 2010 Wolesi Jirga election process. The next phase of the electoral process would see repeated challenges to the authority of the IEC and ECC, first from the attorney general's office and then from a special court established by presidential decree.

Various government sources placed intense pressure on both the IEC and the ECC in the post-election period. In early November, the president met with IEC and ECC officials to reportedly express concerns over the results from Ghazni province. According to Afghan officials, President Karzai believed the results from Ghazni, if announced as tallied, would undermine national unity. On November 9, ECC Spokesman Ahmad Zia Rafat publicly asserted that government officials were pressuring the ECC to alter the results so that the government's preferred candidates, who had initially lost, would be announced as winners. Through the media, Rafat asserted that the ECC had warned such officials to stop interfering in the ECC's work and stated that the ECC would not let external pressure determine the course of its work.

#### *The Attorney General*

During the first week of November, the attorney general's office announced its intention to become involved in the adjudication of candidate complaints. This announcement led the IEC and the ECC to hold press conferences and issue statements asserting its sole authority over the country's electoral affairs.

The involvement of the attorney general's office can be traced back to a November 6 ECC press release that explained that the IEC had submitted to the ECC 413 names of candidates suspected of electoral violations. The ECC asserted that it would investigate all electoral complaints but that adjudication of criminal offenses was not within its jurisdiction. Accordingly, the ECC referred the cases to the attorney general's office. The November 6 press release also explained that the ECC had requested from the IEC the names of election commission officials who committed criminal offenses so that those names could also be referred to the attorney general. Whether the ECC's decision to submit names of candidates and IEC officials to the attorney general was a result of pressure or normal adjudication is unclear. The effect of the decision, however, was to invite the full scrutiny of the attorney general on the entire electoral process.

The attorney general's involvement in the electoral process was also the result of a request from the Wolesi Jirga to the Independent Commission for Overseeing the Implementation of Constitution (ICSIC) to provide a legal opinion on Article 57(2), which states that the "commission can include or permanently exclude the quarantined ballot boxes from the counting process after inspection in the presence of observers and representatives of political parties and candidates." On October 30 the ICSIC responded that the presence of observers and candidates or their representatives is required when the IEC is auditing boxes, and that IEC decisions become final only when this requirement is met; otherwise, the ECC has a duty to review the decision under the provisions of Article 63(18).

There was then a similar request to the supreme court, which responded with the same interpretation as the ICSIC, but without reference to the ECC. Following a meeting between the president and senior IEC and ECC officials, the attorney general's office requested that the IEC and the ECC assist with its investigations into candidate complaints. The complaints focused on the ECC's decision to disqualify winning candidates and allegations that the IEC manipulated the vote during the tally process in the absence of observers. Both the IEC and the ECC strongly objected to the attorney general's interference in the electoral process, stating that the attorney general has no jurisdiction over electoral issues. The attorney general's office then threatened to invoke Article 5 of the Government Employees Act to dismiss staff members of the IEC if they did not cooperate.

On November 11, the UN SRSR issued a statement supporting the independence of the IEC and the ECC and requesting other Afghan institutions to recognize the authority of the electoral institutions. On November 28, after numerous reports of attorney general raids at IEC and ECC headquarters and the arrest and indictment of several IEC and ECC officials, Democracy International issued a statement calling on all stakeholders to recognize the final certified results of the Wolesi Jirga elections and the sole authority of Afghanistan's electoral institutions to administer the country's election process and adjudicate election-related complaints.

### ***Special Court on Election Complaints***

On December 26, unsatisfied with the election outcomes announced by the IEC and ECC and endorsed by the international community, President Karzai moved to date to usurp the authority of Afghanistan's electoral institutions. Acting on the recommendation of Afghanistan's supreme court, the president announced a presidential decree to establish a special court to further investigate complaints related to the 2010 Wolesi Jirga elections, with specific focus on identifying

criminal offenses. The special court comprises five members and is led by Sadiquallah Haqiq, head of the Kabul court of appeals.

The establishment of this court showed a clear disregard for the authority of the IEC and ECC as defined in the country's electoral law. Afghanistan's constitution and electoral law do not provide for the establishment of a special court to review election results. In addition, since the presidential decree establishing the court has never been made public in the gazette, the court's authorities are not legally defined and remain ambiguous at best. Regardless, the court claims it has the authority to nullify election results, call for recounts, and order re-runs of elections.

The question of the constitutionality of the court caused consternation. The court's head, Sadiquallah Haqiq, defended the court's constitutionality, arguing that the supreme court has the authority to establish special courts. But, in a meeting with members of parliament on January 8, the Independent Commission for the Supervision of the Implementation of the Constitution declared that the special court was not constitutional and did not have authority over electoral affairs. Both the IEC and the ECC repeatedly supported the ICSIC's position and argued that no other institutions have authority over electoral affairs.

In fact, Afghanistan's constitution authorizes the establishment of a special court in certain instances. Although Articles 69, 78, and 127 permit the creation of such a court, they require specific circumstances, none of which are related to elections or electoral complaints. Article 69 calls for the creation of a special court in the event a Loya Jirga determines the necessity for the consideration of the impeachment of the president. Article 78 calls for the creation of a special court to consider a case in which a government minister has committed crimes against humanity. Article 127 calls for the establishment of a special court to consider the dismissal of the chief justice. Neither the constitution nor the electoral law mentions the possibility of establishing a special court to review electoral complaints.

Nevertheless, on January 19, 2011, the special court recommended that President Karzai delay the seating of the parliament for one month while the court completed investigations into alleged fraud conducted on behalf of winning candidates. Despite speculation that the parliament would be seated nonetheless, President Karzai announced on the following day that he would in fact accept the recommendation of the special court and delay the seating of the parliament for one month. As perhaps another symbol of his resolve to delay the seating of the parliament, President Karzai travelled to Russia where he was scheduled to remain on the day the Parliament had initially been scheduled to be sworn in. President Karzai's decision to delay the opening of parliament only complicated what had already become a constitutional crisis. The country had been operating without a parliament for several months, and the president's decision for further delay enraged hundreds of candidates waiting to take their positions in the new Wolesi Jirga.

With the support of the European Union, the United States, Canada, and other members of the international community, UNAMA released a statement on January 21, 2011, supporting a peaceful resolution to the constitutional crisis and requesting that the seating of the parliament take place as soon as possible. The same day, representatives of the international community met with winning candidates in Kabul to hear their grievances and voice support for their effort to have the parliament seated. On January 23, the UN SRSG reiterated the position of the international community and expressed hope that the parliament would be inaugurated on January 26.

The president's decision to endorse the recommendations of the special court and thereby delay the seating of the parliament produced unanimous opposition from candidates waiting to be sworn in. In response to the president's decision, the successful candidates organized protests outside of the parliament and began to organize a swearing-in ceremony that would take place without the constitutionally mandated presence of President Karzai. Voicing their displeasure with President Karzai's decision to delay the Parliament's seating, many in the international community supported the protests and the plans to hold a swearing-in ceremony without the president.

On January 24, President Karzai asked the supreme court to issue a decision in response to a letter submitted to him from 200 winning candidates calling for the inauguration of the parliament on January 26. Even though it was unclear what President Karzai was asking the supreme court to rule on, the supreme court issued a statement the same day, which stated that the ECC has jurisdiction only over electoral complaints and reiterated that the establishment of a special court to review and adjudicate criminal offenses is consistent with Afghanistan's constitution.

The same day as the supreme court's decision, President Karzai reversed his position and endorsed the inauguration of Parliament on January 26. In his statement, the president cited the need for the special court, to continue investigating criminal offenses related to the 2010 Wolesi Jirga elections, as sanctioned by the decision of the supreme court.

On January 26 at 12:00 pm in Kabul, the second post-Taliban parliament was inaugurated, seemingly marking the end of a long and controversial electoral process, which again highlighted the weaknesses in Afghanistan's electoral system and the broad ambiguities in jurisdiction between the country's electoral institutions and its judicial branch.

The Parliament has now been seated and inaugurated with the endorsement of the president, as constitutionally mandated. Despite rumors that the president would dismiss the special court, the court remains active and at the time this report was published, had completed reviewing election results in most provinces and was still anticipating making some official announcements, potentially indicating changes to election outcomes. The continued existence of the special court undermines the independence of the Wolesi Jirga. Until the special court is dissolved and the supreme court, attorney general's office, and president of Afghanistan cease embracing investigations outside of the legal framework, the members of the Wolesi Jirga will conduct their duties with the fear that politically driven investigations could result in the loss of their seats. This consideration could weigh on the Wolesi Jirga's members as they consider President Karzai's initiatives and ultimately tarnish the impartiality of the institution.

## RECOMMENDATIONS

Afghanistan's 2010 parliamentary election process did not address the key deficiencies with the election system that observers and stakeholders have identified since the first post-Taliban election in 2004. During this time the international assistance community, Afghan stakeholders, and the international and national media have increasingly come to believe that free, fair, and credible elections cannot be held in Afghanistan without genuine and comprehensive electoral reform.

In an effort to strengthen Afghanistan's democratic process and to promote and support the dialogue that should accompany electoral reform, Democracy International offers the following recommendations for consideration and action by the Government of Afghanistan, electoral institutions, civil society, political parties, and the international community. DI's recommendations are based on its observations from throughout the 2010 electoral process and its previous work on electoral reform and democratic consolidation in Afghanistan. These recommendations take into consideration international best practices as well as the suitability and sustainability of such practices in Afghanistan.

DI has identified six general issues to be addressed, including: (1) political representation; (2) the environment for political campaigning; (3) the integrity of the electoral process; (4) the composition, powers, and functioning of the election commission; (5) the features and powers of the complaints commission; and (6) international assistance for elections. Within these categories, DI has developed 27 specific recommendations. If implemented, these recommended reforms would contribute substantially to strengthening the election system and the consolidation of democracy in Afghanistan.

### Political Representation

An election system should foster inclusive, democratic representation. Rules that ensure broad and equitable political representation are critical to achieving this goal. The recommendations included in this section aim to address imbalances in political representation and ensure broader participation in government in Afghanistan.

#### *1. Reform the Single Non-Transferable Vote (SNTV) system.*

Most election experts now agree that the SNTV system is not appropriate in the Afghan context because it permits candidates to be elected with small numbers of votes, results in relatively large numbers of votes being "wasted" on losing candidates, discourages the development of political parties, hampers diverse representation, and accentuates incentives for intimidation and fraud. Afghanistan should consider introducing a new electoral system that ensures broader representation, provides incentives for party development, and reduces opportunities for intimidation and fraud. The newly elected Wolesi Jirga should take the lead in debating and presenting a new electoral system. To ensure inclusiveness and transparency, the Wolesi Jirga should invite other key stakeholders, including civil society representatives, to participate in the development and establishment of a new system.

## ***2. Reconsider the Kuchi quota.***

The current quotas to ensure Kuchi representation in the parliament and provincial councils are hard to justify. There is resentment because the election system does not provide similar quotas for other ethnic groups, and not all Kuchis are economically and socially disadvantaged. When drafting a new electoral law, the Wolesi Jirga should review the value of the Kuchi quota and consider removing it. If the quota is maintained, the regulations should be reviewed to clarify whether seats reserved for Kuchis are included in calculations to determine the total number of seats reserved for women.

## ***3. Maintain quotas for female representation.***

The quota for women has been an extremely successful mechanism for motivating women to participate in the political process and ensuring that women are represented in government. Although some argue that quotas result in weaker mandates for female representatives, this is not a reason to abandon this critical protective measure for women's representation. Quotas ensure that women will be represented in a male-dominated society and motivate women to participate not only as candidates but also as supporters and voters. Ideally, female quotas would not be necessary in Afghan elections, but in reality they remain an important tool to ensure inclusive representation.

## ***4. Pursue serious constituency delimitation.***

To both improve Afghanistan's election system and provide for better national and local level government planning, the authorities should delimit boundaries for new parliamentary and district constituencies. Constituency delimitation will make it easier to develop an effective voter registration system, to make certain kinds of reforms to the electoral system, and to hold local elections. Delimitation should occur at the lowest level possible to enable more detailed planning for future electoral and governing processes. The Wolesi Jirga should work in partnership with the Ministry of Interior, the Central Statics Office, and the international community to tackle this problem.

## **The Campaign Environment**

The campaign environment and the regulations that govern it are critically important to a successful election process. This is even more apparent in a country such as Afghanistan, where a contentious campaign period fueled grievances and sustained postelection controversy in 2009 and 2010. The following recommendations present options for strengthening the integrity and equity of Afghanistan's campaign environment.

## ***5. Establish a clear and transparent candidate-vetting process.***

The candidate-vetting process for the 2010 elections was extremely contentious. A thorough review of the candidate-vetting process should be conducted with the goal of introducing a system that has clear lines of authority and well-defined and transparent processes. There are four key steps to improving the candidate vetting process:

- a. The law should designate a sole authority to determine if candidates have links to illegally armed groups.
- b. Sources used to determine links to illegally armed groups should be well defined and transparent.
- c. Candidates should only be required to tender their resignation from government positions to run for office. Although a resignation should be irrevocable, it should not have to be formally accepted for the candidate to be eligible.
- d. The candidate qualification and vetting process should begin earlier so it can be completed before the finalization of ballot papers.

**6. *Refine candidate-qualification requirements.***

Candidate-qualification requirements should be refined. In particular, the required number of signatures on candidacy petitions should be increased, and the signature-verification process should be well defined and transparent. This will serve to reduce the number of candidates, narrow the wide range of vote spreads, and increase the share of votes for successful candidates.

**7. *Amend the political party law to facilitate party registration and ballot access.***

The Wolesi Jirga should launch an inclusive and comprehensive review of Afghanistan's political parties law, with special focus on party registration. The Wolesi Jirga should consider requiring the IEC to recognize those political parties registered with the Ministry of Interior. Candidates should be permitted to register with affiliation to any party registered with the Ministry of Interior and thus appear on the ballot with proper party affiliation.

**8. *Reinforce the prohibition on the use of state resources in campaigning.***

The use of state resources in campaigning continued to be a problem in the 2010 elections and therefore should be a priority for reform. The IEC should issue directives with clearly defined sanctions for specific violations. The IEC and ECC should act swiftly to punish offenders and when appropriate invalidate candidates who violate such regulations.

**9. *Further develop financial reporting requirements.***

The IEC was moderately successful in soliciting financial reports from candidates in 2010. Although candidates were required to submit financial reports, the deadline for submission was too close to election day for candidates and civil society organizations to take advantage of the increased transparency. The Wolesi Jirga should address the issue of financial reporting and consider defining the specific authority of the IEC to regulate it. Phased reporting should be considered so that the financial activity of campaigns can face public scrutiny.

**10. *Introduce vote tracking and reporting systems in Afghan legislative bodies.***

Vote tracking and reporting systems should be introduced in the Wolesi Jirga, Meshrano Jirga, and provincial councils. Such systems will increase accountability to constituents, facilitate the

evolution of identifiable voting blocs and natural political alliances, and provide civil society with a crucial tracking system that can fuel advocacy.

## **Integrity of the Electoral Process**

Eliminating opportunities for fraud and manipulation in an electoral system is a difficult undertaking, a problem only exacerbated by widespread insecurity. Nevertheless, steps must be taken to improve electoral process in Afghanistan. Serious reform is needed to overcome perceptions of manipulation and fraud.

### ***11. Develop an effective and sustainable voter registration system.***

The lack of a voter register that can serve as an effective deterrent to electoral manipulation and build confidence among Afghan and international stakeholders remains a key challenge to building the integrity of Afghanistan's election system. To build a sustainable voter registration system that results in a usable voter list, DI recommends the adoption of a continuous voter registration process that ensures comprehensiveness, accuracy, and reliability. As many stakeholders have recommended in the past, this process could be linked to a civil registry, which the Government of Afghanistan appears to be pursuing through the Ministry of Justice.

To achieve inclusiveness, all eligible voters must have equal access to registration procedures. To achieve accuracy, the system must have features that ensure the maintenance of complete and updated information. Although a biometric system might be the most successful way to deter fraud, it would also be the most costly. The government should investigate less costly options to effectively deter fraud.

Upon introduction of a new system, all currently issued voter cards should be invalidated. National elections should not be held in Afghanistan until the country can introduce a new voter registration system.

### ***12. Carefully review voting, counting, and tallying procedures and introduce innovations to reduce the likelihood of manipulation.***

A review of the voting, counting, and tallying procedures should be conducted to introduce changes that reduce the chance of manipulation. Better training for polling officials for future election cycles is also essential. Reforms should include:

- a. ***Setting hard deadlines for the delivery of election materials*** to the provincial offices that take into account the different circumstances of different regions. To avoid attempts at, as well as the perception of, manipulation, all sensitive materials retrieved after the deadline should be subject to special review or audit measures.
- b. ***Increasing transparency regarding invalidations***. Authorities should provide detailed explanations in a timely fashion for why votes were excluded or invalidated in particular polling stations or centers.

- c. *Publicizing the specific triggers used to detect fraud at the beginning of the tally process* and subjecting particular polling stations or centers to special review. Review and audit processes should be defined publicly and conducted transparently.
- d. *Setting a deadline for announcing polling station closures.* Ambiguity from the IEC regarding whether given polling stations were open or closed on election day breeds skepticism from candidates and voters. Setting a deadline will demand a higher level of transparency from the IEC.
- e. *Establishing a threshold for the annulment of an election in a particular jurisdiction*, considering the number of polling stations or centers that did not open or a particular percentage of invalidated ballots.
- f. *Releasing turnout figures only on the basis of hard data* and a well-defined and transparent calculation process.

**13. Develop participatory mechanisms to include diverse stakeholders in critical election planning processes, such as constituency delimitation and voter registration.**

Relevant institutions should develop public calendars for election-planning processes. Interested national stakeholders should be invited via public announcements to participate in planning meetings as observers and be allowed to provide public comment. Preliminary decisions resulting from planning meetings should be announced publicly and a formal process should be established to accept and consider public comment. Officials should genuinely consider such public comments in making final decisions.

## **Composition, Powers, and Functioning of the IEC**

This section presents recommendations to promote the independence and impartiality of the Independent Election Commission and improve its organization and effectiveness, including its regulatory power.

**14. Adopt an inclusive mechanism for appointing high-ranking IEC officials.**

Skepticism regarding the impartiality and independence of the IEC will persist until a more participatory mechanism is adopted for appointing high-ranking IEC officials, such as the chairman and chief electoral officer. The appointment process must institutionalize independence from the executive. Different options should be considered, including providing for confirmation of appointments by the Wolesi Jirga. The current electoral law calls for the president to consider the opinions of other actors and institutions. The law, however, does not create an appointment process that ensures independence and impartiality. This must be pursued.

**15. Strengthen the fiscal autonomy of the IEC.**

The independence of the IEC relies on complete budgetary and financial autonomy. Thus, this should be ensured when reforming the electoral law.

***16. Review the authority of the IEC and ensure its clarity in the law.***

The authority of the IEC over the organization, conduct, and oversight of elections must be clarified in all relevant Afghan laws. During the 2010 election process, the executive branch demonstrated its willingness to question the authority of the IEC and ECC over electoral matters. The constitution and electoral law should further clarify the sole authority of the IEC over election issues.

***17. Examine opportunities to transfer responsibilities to IEC provincial offices.***

The IEC should explore opportunities to transfer greater responsibility from the national headquarters to its provincial offices. The IEC should conduct a thorough examination of transferable activities to identify what authority would be more practically vested in provincial offices. For instance, the IEC should consider decentralizing polling-center planning and the recruitment of temporary staff members. Additional authority and responsibility should be transferred for future provincial and local level elections.

## **Features and Powers of the ECC**

In addition to the IEC, the Electoral Complaints Commission is also responsible for ensuring transparent and credible elections in Afghanistan. The ECC has been crucial in providing candidates and voters with an official venue to air electoral grievances. These recommendations present options for strengthening Afghanistan's electoral complaints process.

***18. Adopt a new mechanism for the appointment of ECC and PECC commissioners.***

As with the appointment of high-ranking IEC officials, ECC officials should not be appointed solely by the president. To ensure independence and impartiality, the appointment process should include mandatory consultation with a wide range of electoral stakeholders. Candidates for ECC commissioners should be presented by a selection committee that includes representatives from the president's office, the supreme court, and Afghanistan's Independent Human Rights Commission. The appointment of ECC commissioners should be subject to parliamentary approval and the appointment of PECC commissioners should be the responsibility of ECC commissioners.

***19. End practices of having international commissioners sit on the ECC for future elections.***

Contingent on the introduction of an appointment process that ensures greater independence and impartiality, future complaints commissions should not include international appointees. The 2010 election process demonstrated that Afghan commissioners could, in fact, resist internal political pressure. The ECC should be given the opportunity to exist solely under Afghan leadership.

***20. Address the shortcomings of a temporary ECC.***

Dissolving the ECC at the conclusion of each election process has forced the body, when reconstituted, to focus more on operational preparations and less on technical application in the

lead up to election day. Although hile a permanent ECC may not be necessary or feasible, constituting the body earlier or perhaps maintaining a smaller, operationally focused organization between elections should be considered.

***21. Add an ECC media deputy to manage ECC press conferences, press releases, and engagement with domestic and international media.***

The ECC should appoint a deputy of media relations who can serve as a reliable point of contact for domestic and international media and more actively manage the ECC's media operations. This position would provide stability for a critical function within the ECC.

***22. Encourage media responsibility.***

The media should be encouraged to report more responsibly on the election process, particularly on candidate complaints during the postelection process. The media should be fully educated on the complaints and adjudication process and have full access to a list of pending complaints to verify against candidate's public complaints in the media.

***23. Clarify ECC jurisdiction over IEC decisions.***

The IEC and ECC cooperated better in 2010 than in 2009. Ambiguity persisted, however, in the ECC's jurisdiction over specific IEC decisions. The electoral law should be reviewed, and specific clauses should be introduced clarifying the jurisdiction of the ECC over IEC decisions. Candidates should be permitted to appeal the decisions of the IEC to the ECC.

## **International Assistance for Elections**

By reducing its footprint regarding electoral institutions, the international community has correctly trended toward increasing respect for Afghan sovereignty over electoral affairs. DI supports the increasing transfer of responsibility over electoral management but also believes there is still a significant need for international assistance to support Afghan electoral processes. This final set of recommendations addresses this need.

***24. Support additional domestic observation groups and build their capacity to engage in broader advocacy.***

Civil society is vital to the development of democracy in any country, and it is especially important in an emerging democracy such as Afghanistan. FEFA has played a remarkable role in Afghanistan's electoral processes, but the international community should support additional domestic observation groups to increase checks and balances on objectivity and promote additional confidence.

In addition, the international community should assist domestic observer groups to develop a broader advocacy capacity so they can play a more active role in the political process between electoral cycles. Government institutions should encourage the participation of domestic observer groups in an electoral reform process.

***25. Continue supporting the IEC and the ECC.***

The IEC and the ECC cannot perform their duties without financial support from the international community. The need for budgetary support will persist for both the management of future electoral process and critical activities between electoral cycles, including voter registration. The international community should continue to provide financial and technical assistance to Afghanistan electoral institutions. Robust accountability mechanisms linked to specific benchmarks should accompany funding and technical assistance. All assistance should be subject to periodic external evaluations.

***26. Provide support for additional election-security training for the Afghan National Security Forces.***

ISAF has provided critical support for Afghan elections since the fall of the Taliban. It is unlikely, however, that ISAF will have the resources to provide the same level of support for future electoral processes. As such, the international community should provide assistance to the Afghan National Security Forces for additional election-security training.

***27. Develop a long-term, coordinated assistance strategy to support the development of Afghan democracy.***

Greater coordination is needed to support Afghan democratic processes. A long-term capacity-building strategy should be developed to assist electoral institutions and facilitate civil society engagement in elections and political processes. The international community must strive to work more collaboratively in this regard. Lack of coordination has been counterproductive and has led to crowding out particular areas of assistance and specific domestic organizations.

## TOWARD DEMOCRATIC ELECTIONS IN AFGHANISTAN

Afghanistan's 2010 parliamentary election process symbolized the country's ongoing struggle to establish the democratic foundation necessary for stabilization in the post-Taliban era. Compared to the 2009 elections, the conduct of the electoral process up to and including election day was much improved. The postelection period, however, again highlighted the deficiencies in the electoral legal framework that governs the administration of Afghan elections and the willingness of political actors to take advantage of such weaknesses.

Despite the lack of independence from the government of Afghanistan, without a reliable voter register, and in the face of profound security challenges, Afghanistan's electoral institutions still managed to achieve positive outcomes. Based on the strength of its leadership, the Independent Election Commission showed the citizens of Afghanistan that it could, in fact, administer an election in an independent and impartial fashion. Although the credibility of the election was certainly tarnished by the level of fraud, the IEC should be recognized for having improved so drastically upon its performance from 2009 and under the difficult circumstances this election was held.

Throughout the electoral process, the IEC resisted pressure to make decisions based on the preferred political outcomes of some rather than relying on the technical considerations that should drive its decision making. After election day, for example, election officials were actually threatened with arrest if they did not alter the results. Through its resolve, the IEC demonstrated that it is possible for an independent Afghan institution to resist executive branch pressure.

Like the IEC, the ECC performed its duties admirably. As was the case in 2009, the 2010 ECC played a pivotal role in contributing to the integrity of the electoral process, only this time with greater Afghan influence. Although the 2010 ECC benefited greatly from the experience of its international members, it was the resolve of its Afghan commissioners and employees in resisting external political pressure that ensured the integrity of the complaints adjudication process. If the courage of these individuals is any indication, Afghans can rest assured that future oversight institutions will perform effectively even without international representation.

Of course, as described in this report, Afghanistan's 2010 elections process suffered from considerable administrative error, and the IEC and ECC did make mistakes throughout the process. Moreover, allegations of fraud, both founded and unfounded, continued to plague the process. Much work remains to strengthen the systems and processes by which Afghanistan administers elections. These systems, which the country's electoral institutions are responsible for developing and implementing, have so far failed to prevent widespread fraud from tainting the credibility of elections.

The unchecked strength of Afghanistan's executive continues to act as a source of instability, and the widespread fraud that marked the 2009 election process has helped fuel a culture of political corruption in which candidates and their supporters judge fraud to be a reasonable electoral strategy. Fraud again plagued the parliamentary elections in 2010.

The government of Afghanistan's counterproductive influence on the country's democratic consolidation continued in 2010. After showing positive signs that it was beginning to take seriously

the importance of independent and impartial electoral institutions, the government seemingly abandoned its conviction when it became apparent that the outcome of the 2010 election was not politically favorable to some of its most important constituents. The willingness of the government to endorse the circumventing of the country's legitimate electoral institutions in favor of an ad-hoc, extra-legal committee does not bode well for the future of Afghan democracy. If democracy is to take hold in Afghanistan, the government must become a vocal advocate not an active adversary.

The international community has often met the willingness of the government to disregard democratic principles with a troubling apathy. Although the international community did speak out in support of the electoral institutions throughout the 2010 process, its general apathy as the Karzai administration changed the electoral law in early 2010 set up many of the problems that ensued. Unfortunately, the international community has been too complacent with the current administration, often ceding to the administration's desire to legislate through presidential decree as opposed to recognizing the importance of a robust legislative process. The international community must be more outspoken in its support for checks and balances.

Despite the clear and present threats to Afghan democracy, a genuine democratic spirit exists in the country. In the face of widespread insecurity and direct threats, millions of Afghans risked their lives to participate in the 2010 elections. The country's electoral institutions resisted interference and worked to bring about a reasonable electoral process. This provides a significant foundation for the beginning of a true democratic reform effort that can address the problems that continue to plague the country's fledgling democracy. Only with such reform can the democratic principles so many Afghans share be truly institutionalized and the aspirations of millions of Afghans, who strive for peace, stability, and a real democracy, be realized.

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