



**EUROPEAN UNION ELECTION OBSERVATION MISSION  
ISLAMIC REPUBLIC OF AFGHANISTAN  
Presidential and Provincial Council Elections 2009**

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**PRELIMINARY STATEMENT**

**Afghan elections take place in a reasonably well-organised manner,  
amid widespread violence and intimidation**

**Kabul, 22 August 2009**

*Following an invitation from the Government of the Islamic Republic of Afghanistan and the Independent Election Commission to observe the Presidential and Provincial Council Elections on 20 August, the European Union Election Observation Mission (EU EOM) was established in Afghanistan on 2 July. The mission is led by **General Philippe Morillon**, Chief Observer and former Member of the European Parliament. The EU EOM deployed 120 analysts and observers from 22 EU Member States as well as Norway, Switzerland and Canada. The observers were deployed throughout the country to observe and assess the electoral process against international election standards and Afghan national law.*

*The EUEOM observed pre-electoral activities as well as voting operations in 28 provinces. The mission is currently observing the conclusion of counting and vote tabulation and will remain in country to observe post-election developments. This statement is preliminary; a final report will be published approximately two months after election day. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation commemorated at the United Nations in October 2005.*

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**Preliminary Conclusions**

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- The 20 August 2009 Presidential and Provincial Council Elections were the first Afghan-led elections in decades. In recent years Afghanistan has been marked by deteriorating security conditions and despite the best efforts of the Afghan authorities, notably the Independent Election Commission, the conduct of these elections was inevitably affected. The Taliban's call for a boycott of the elections was supplemented by an increasing number of attacks, resulting in civilian injuries and deaths. That the elections took place at all is a notable achievement.
- Election day was marred by a number of violent incidents, including rocket attacks and explosions targeting polling centres and government facilities throughout the country. Despite these significant deterrents, Afghan citizens came out to cast their votes. According to credible sources and reports, the participation rate was considerably higher in the North of the country and particularly low in the South.

- Voting operations were administered in a satisfactory manner with no shortages of election material. Large numbers of candidate agents were present.
- The legal framework provides a reasonable basis for the conduct of elections. The Constitution guarantees relevant civil and political human rights as well as fundamental freedoms and is generally in line with international instruments ratified by the Islamic Republic of Afghanistan. The legal and regulatory framework was however marked by some shortcomings, not least the late decision on the withdrawal of candidates, which did not provide for full and timely information to voters.
- Overall, the Independent Election Commission (IEC) functioned efficiently and technical arrangements were made according to appropriate timelines despite the considerable infrastructural and security challenges, including attacks and threats against its staff. However appointment procedures, including the selection of commissioners by the president, did not assist perceptions of the IEC's independence and there were reports from some provinces that the commission exerted pressure on its staff in a manner which raised questions about its impartiality.
- These elections were carried out without a consolidated and accurate voter register. The list produced through a Voter Register Update was not widely considered to be accurate, not least due to apparently unrealistic registration rates for women. The VRU list was not compatible with the voter register used for previous elections, which listed some 12.5 million voters. New voter cards were issued following the VRU and old voter cards remained valid. As a result, there were some 17 million cards in the country.
- The Electoral Complaints Commission (ECC) excluded 57 candidates from running in these elections, in most cases for their links to Illegal Armed Groups. The vetting process was affected by a short timeframe, a lack of political will and in some cases political interference. Nonetheless, the Demobilization and Reintegration Commission took some courageous decisions regarding the exclusion of candidates.
- The Presidential election campaign sparked a genuine countrywide debate about socio-economic and political problems. Despite some attacks presidential candidates were able to campaign in most parts of the country. However provincial council candidates experienced serious limitations on freedoms of movement and assembly, mainly as a result of intimidation, threats and direct attacks targeting candidates, election administration workers and even the electorate, a rather significant number of which resulted in deaths.
- Contrary to the Electoral Media Commission (EMC) regulations for a fair and balanced coverage of the election campaign, the media monitored by EU EOM tended to provide extensive coverage of only four main presidential candidates, giving little exposure to the other contestants in the presidential race. State media news reporting

revealed clear bias in favour of President Karzai both in terms of quantity and quality of the coverage. In a positive development, private media broadcast political debates and roundtables with presidential candidates, some of which were organised by the EMC. These roundtables gave minor presidential candidates the opportunity to present their platforms to the electorate

- Despite recommendations following previous elections, the Electoral Complaints Commission (ECC) was established late in the process. Nonetheless, the ECC took benchmark decisions with clear impartiality and significantly improved its regulatory and operational framework to adjudicate complaints.
- Women's civil and political rights as Afghan citizens are enshrined in the Constitution but in practice their participation as candidates, voters and administrators of the elections was severely limited. The disproportionate effects of poor security conditions, widespread cultural opposition to women in public life and a number of attacks clearly aimed at deterring women's activities all created significant obstacles.
- Civil society contributed to the transparency of the democratic process in Afghanistan and the Free and Fair Election Foundation for Afghanistan (FEFA) observed and reported on all stages of the elections. In collaboration with the UN, the Afghan Independent Human Rights Commission (AIHRC) published documentation on the respect and violations of civil and political rights during the electoral period, identifying a number of issues of concern.

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## Preliminary Findings

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### Background

The 20 August 2009 Presidential and Provincial Council Elections were the first Afghan-led elections in decades and were administered by the Independent Election Commission (IEC). The first democratic Presidential, Parliamentary and Provincial Council Elections were conducted by joint Afghan and UN efforts in 2004 and 2005 and enabled Afghan citizens to express their commitment to democratic processes. Since then, missed opportunities to reinforce key institutions and strengthen the rule of law have contributed to a degree of impunity and insecurity which has damaged faith in the effectiveness of democratic governance.

In recent years Afghanistan has been marked by deteriorating security conditions and despite the best efforts of many stakeholders, the conduct of these elections was inevitably affected. The Taliban's call on citizens to boycott the elections was supplemented by concerted attempts to disrupt the process. As polling day approached, there was an increasing number of attacks, resulting in civilian injuries and deaths. Citizens suffered serious threats and immediately prior to election day there were a number of attacks on locations identified as polling stations. In addition, several parts of the country were dominated by conflict as military operations were carried out by International Security Assistance Force (ISAF) and Afghan Security Forces.

Election day was marred by a high number of violent incidents, including rocket attacks and explosions targeting polling centres and government facilities. Despite these significant deterrents, Afghan citizens came out to cast their votes. According to credible sources, the participation rate was higher in the North of the country and particularly low in the South.

### Legal Framework

The 2009 Presidential and Provincial Council Elections are governed by the 2004 Constitution and a series of laws and decrees including the Electoral Law of 2005 and the Political Parties Law of 2003. These statutory laws are complemented by regulations and decisions issued by the Independent Election Commission (IEC). The legal and regulatory framework was improved to some extent in May 2009, with the adoption of a presidential decree on Non Interference in the Electoral Affairs of Elections and of the Rules and Regulations by the Electoral Complaints Commission (ECC). The Constitution guarantees relevant civil and political rights as well as fundamental freedoms and is generally in line

with international instruments ratified by the Islamic Republic of Afghanistan<sup>1</sup> and additional legislation further elaborates the implementation of these rights.<sup>2</sup> Overall, the legal framework provides a reasonable basis for the conduct of democratic elections in accordance with international standards. The IEC's decision to delay the elections beyond the timeframe stipulated in the Constitution was a reasonable one and in line with best practices to increase citizens' opportunity to enjoy their right to vote.<sup>3</sup>

The legal framework does have some shortcomings, including the procedure for the appointment of the IEC Commissioners. A draft law related to IEC, had it been promulgated as adopted by Parliament, could have contributed to increasing the transparency of the electoral process.<sup>4</sup> Other flaws include the lack of decisions to clarify the legal framework and a number of discrepancies between legal and regulatory provisions, such as the definition of a valid ballot paper. The IEC's late interpretation of Article 37(2) of the Electoral law authorising withdrawal of candidates after the established deadline was one such inconsistency and since the decision did not provide for full and timely information to voters, it fell short of international standards.<sup>5</sup> Lastly, although the IEC regulation which provides for conducting counting at polling stations is in line with best practices, there are some concerns that especially in smaller and more rural communities, this may have jeopardised the right to a secret vote.

The Presidential Election uses a majority two round system, while elections to the Provincial Councils in 34 single constituency provinces are governed by the Single Non Transferable Vote (SNTV) election system. As such, all candidates can either register as individuals or be endorsed by a political party. Alongside some provisions of the Political Parties Law, the SNTV system limits opportunities and incentives for the development of political parties. The Electoral Law guarantees women at least one quarter of the seats in each Provincial Council.

### **Electoral Administration**

The 2009 Presidential and Provincial Council Elections were administered by the Independent Election Commission (IEC), as provided-for by article 156 of the Constitution. In accordance with the UN Security Council Resolution 1806 (2008) and in cooperation with UN Assistance Mission to Afghanistan, the UN Development Programme's Electoral and

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<sup>1</sup> These include the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

<sup>2</sup> Additional legislation includes the Law on Assemblies, Strikes, and Demonstrations adopted by Presidential Decree on 09 January 2003 and the police law published on September 22 2005, which together provide a framework for guaranteeing the freedom of assembly in accordance with democratic standards.

<sup>3</sup> Article 61 of the Constitution stipulates that presidential elections be held every five years, 30-60 days prior to the end of the presidential term, which was on the 1<sup>st</sup> of Jawza (22 May 2009). However the IEC took into consideration factors including the security situation, limited accessibility to several mountainous regions of the country in April and May due to weather conditions and the limited timeframe to carry out operational aspects of the elections.

<sup>4</sup> The draft Law on the Structure, Duties and Authorities of the Independent Election Commission provides for the nomination of Commissioners to be approved by the Wolesi Jirga. This provision was reportedly declared unconstitutional by the Supreme Court.

<sup>5</sup> The IEC issued its decision 46-2009 dated 30 July 2009 in a press release of 3 August 2009.

Legal Capacity for Tomorrow (ELECT) project led international support to the IEC, through technical assistance and capacity building initiatives.

The IEC should be particularly commended for its work given the climate of fear imposed on many of its staff members, who worked under enormous security constraints, were exposed to threats to their own physical safety, and in some cases were even the victims of kidnappings and targeted killings.

Overall, the IEC has functioned efficiently and technical arrangements were made according to appropriate timelines despite the considerable infrastructural and security challenges. The IEC deployed over 140,000 polling staff for 26,983 polling stations, of which 14,829 were for male voters, 11,029 for women and 1756 were polling stations for Kuchis (nomads), in 6519<sup>6</sup> polling centres across the country. The last available figures indicated that 36 per cent of recruited polling station staff were women.<sup>7</sup>

For the first time there was provision for Special Needs voting, allowing hospitalised citizens, army personnel and prisoners to cast their votes. The EU EOM welcomes this initiative in accordance with the principle of universal suffrage.

Unfortunately, security constraints severely affected the last stages of preparations. It was always known that in some areas it would not be possible to secure polling centre locations and in a volatile context the final list of polling centres was not produced until just before polling day. While the conditions dictating changes were beyond the IEC's control, the fact that the list was not made available to the public reduced the planning ability of national and international observers. Finally, nearly 800 polling centres were cancelled.

Perceptions of the IEC's independence were not assisted by existing appointment procedures, including the selection of commissioners by the President. Furthermore, there were reports from some provinces that the IEC exerted pressure on its staff in a manner which raised questions about the commission's impartiality. Although the EU EOM has generally received periodic and reliable information from the IEC, there have been exceptions. Particularly in the later stages of preparations, the commission did not consistently facilitate access to information required for effective observation of election administration.

As a result of IEC instructions, votes cast for withdrawn candidates would be counted as valid at polling stations but as invalid at the Tally Centre, which would produce two different sets of results forms for each polling station, clearly against best practices for transparent counting procedures.

The establishment of a gender unit at the IEC was a positive measure but the expansion of its structure and remit beyond the public outreach department less than three months before the elections limited its ability to implement practical measures in a timely manner.

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<sup>6</sup> 309 additional PCs did not open on E-day. Finally 6,210 PCs were open to serve the voters.

<sup>7</sup> Three days before polling day, the IEC had recruited 120,462 people to work in polling stations, of whom 77,121 were men and 43,341 were women.

## **Voter Registration**

These elections were carried out without a consolidated and accurate voter register. An exercise originally intended to produce a new voter register was abandoned<sup>8</sup> and a Voter Register Update (VRU) was carried out between October 2008 and February 2009<sup>9</sup>, through which 4,720,906 people were registered across the country.<sup>10</sup> The VRU list was not compatible with the voter register used for previous elections, which listed some 12.5 million voters. New voter cards were issued following the VRU and old voter cards remained valid. As a result, there were some 17 million cards in the country.

When used in conjunction with an accurate voter register, voter cards can function as a safeguard against multiple or proxy voting. The issuance of voter cards without an accurate register inevitably raised questions about whether a correct number had been issued. The EU EOM has received consistent reports about individuals owning several voter cards and voter cards being bought and sold, in some cases quite openly. There were also accounts of individuals obtaining women's voter cards by deception. All of these reports support contentions that there were more cards in circulation than there were genuine voters.

Although the Voter Register Update was well-intentioned and required enormous efforts to implement in precarious security conditions, the resulting 'register' is not widely considered to be sufficiently accurate. The clearest signal of doubt lay in the figures for women's registration. Given what is known about restrictions on women's freedom of movement in many parts of Afghanistan, it is expected that their realistic participation rate would be lower than 50%. In fact, in some of the provinces in which women are most restricted, the proportion of women in the registry was over 60 per cent.<sup>11</sup> While some women were genuinely registered in accordance with procedures, it seems clear that others were registered by proxy. In the case of the highest figures of women voters, it is possible that a number of those apparently registered are in fact 'ghost voters.'

## **Registration of candidates**

The final list of candidates published by the IEC named 41 contenders for the presidential election, 82 vice-presidential candidates and 3195 candidates for the 420 seats of the provincial councils. At the end of the campaign period, the IEC announced that seven presidential candidates had officially withdrawn from the race. A number of provincial council candidates also withdrew as threats and attacks increased prior to election day.

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<sup>8</sup> A joint Civil and Voter Register was envisaged but due to time constraints and a political decision to de-link the civil and voter register processes, the IEC decided to undertake only an update to try and reach citizens who did not yet have voter cards.

<sup>9</sup> On request by the local communities mobile teams were conducting voter registration until July 2009

<sup>10</sup> IECs press release of 12 July 2009.

<sup>11</sup> For example, in Logar, 72% of registered voters were women, in Paktia 64% and in Khost 65%.

The IEC limited the first phase of the candidate nomination process to the registration of individuals who had submitted the required nomination papers, including sworn statements that they complied with the legal eligibility criteria and there was no mechanism to check the accuracy of the information provided prior to registering prospective candidates on the preliminary list of candidates. As a result, checking for any failures to comply with the legal requirements for nomination, including the vetting of candidates for links to Illegal Armed Groups (IAG), could only be addressed during the challenge period, which placed a heavy burden on the Electoral Complaints Commission (ECC).<sup>12</sup>

The ECC received 302 challenges to candidate nominations during the allocated period,<sup>13</sup> of which 50 were related to presidential and vice-presidential candidates and 252 to provincial council candidates. Following deliberations, the ECC excluded 57 candidates: three presidential, one vice presidential and 54 provincial council nominations. One exclusion was on the grounds of dual nationality and 56 for candidates' links to Illegal Armed Groups. Challenges on this last ground were introduced by the Demobilization and Reintegration Commission (DRC), after it updated the data on IAGs and individuals connected to them, together with the Disbandment of Illegal Armed Group Program (DIAG)<sup>14</sup> and with the technical support of the Joint Secretariat.<sup>15</sup>

The EU EOM commends the DRC, which took courageous decisions regarding the exclusion of certain candidates in the face of serious pressure from several quarters. The inclusivity and impartiality of the vetting process suffered from a lack of political will and support, and in at least four southern provinces of the country this extended to interference from local authorities or leaders. The lack of a wide-reaching public communication campaign and limited transparency, alongside the registration of controversial individuals as candidates, created mistrust of the process among Afghans. Candidates had the right to contest their alleged links to Illegal Armed Groups or to disarm in order for their status to be reconsidered. However the narrow timeframe for appealing against decisions significantly limited the impact of the vetting as a sustainable incentive for disarmament of prospective candidates.

## **Campaign Environment**

The Presidential election campaign sparked a genuine countrywide debate about socio-economic problems, and presidential candidates addressed the electorate with similar

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<sup>12</sup> On 15 May the ECC published a policy paper where it stated that it would rely on Demobilization and Reintegration Commission (DRC) regarding the vetting. This decision was partly motivated by the late establishment of the ECC as well as the complexity and specificity of conducting an in-depth vetting process.

<sup>13</sup> Challenges to nominations could be made between 16 and 21 May 2009.

<sup>14</sup> Acting on the basis of Presidential Decree No. 50 dated 1383/4/24 (15 July 2004) and No. 23 dated 1384/3/16 (6 June 2005) and Article (14.2) of Firearms, Ammunition & Explosive Law, the Demobilization and Reintegration Commission applied its own procedures and definition of Illegal Armed Group throughout the process.

<sup>15</sup> The Joint Secretariat includes the Afghan Ministry of Defence, Ministry of Interior, National Defence Security, ISAF and UNAMA representatives.



messages, promising to tackle insecurity, establish peace and stability through national reconciliation, quell rampant corruption and to improve the country's economy.

However, campaigning took place in an environment characterised by serious limitations on freedoms of movement and assembly caused by ongoing military operations, particularly in the South, and an increasing number of attacks by the Taliban, aimed at disrupting the elections and deterring participation. Although there were 19 recorded attacks on presidential candidates and campaigners, most presidential candidates were able to campaign in almost all provinces. With fewer resources and security support, provincial council candidates faced more serious security problems and in a number of cases, they limited their campaigns to the capitals of provinces and districts. Women provincial council candidates were especially affected by intimidation and a number were not able to campaign at all.

Instances of intimidation, threats and direct attacks were reported throughout the campaign period, targeting candidates, election administration workers and even the electorate. Reported violent incidents included 23 attacks on provincial council candidates, including at least three killings. Fourteen election workers were reported killed and six were abducted. Although most cases of threats and all of the most serious reported attacks were linked to insurgent attempts to disrupt the elections,<sup>16</sup> citizens also suffered from instances of intimidation from influential local leaders, as did some provincial council candidates.

Despite a decree explicitly prohibiting government employees from expressing partiality, a number of state officials clearly supported President Karzai,<sup>17</sup> while others backed Dr. Abdullah.<sup>18</sup> There were credible reports that President Karzai and his vice-presidential candidates misused state resources, including the resources of the Afghan National Army and Police. The use of public resources, funds originating from illegal activities or foreign sources was prohibited but there were no mechanisms to enforce this regulation.

There were significant disparities in financial and logistical campaign resources. The Regulation on Campaign Finance Disclosure did not set a limit on campaign expenditure, but did oblige candidates to provide the IEC with information on their campaign finances. However there were no mechanisms to systematically check the figures. Nevertheless the publication of the campaign assets of presidential candidates allowed complaints to the ECC in cases of challenges to the published amounts.

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<sup>16</sup> In earlier stages of the campaign, the most common form of threats were night calls and threatening letters, particularly in Ghost, Wardak, Logar, Laghman, Kunar, Nangahar, Paktika and Paktiya. Insurgents also broadcast intimidatory messages through radio stations such as The Voice of Sharia or Radio Nangahar, which are located in the areas out of governmental control including some districts of Kunar and Nangahar provinces. Closer to polling day, there were widespread reports that the Taliban told citizens they would cut off ink-marked fingers which would indicate they had voted.

<sup>17</sup> President Karzai was actively supported by, among the others, the Governor of the Nangahar Province, the IEC Chairperson in Kandahar and the Director of the Independent Directorate of Local Governance (IDLG). Lower rank employees of state administration were also found to have openly supported the President.

<sup>18</sup> The Governor of Balkh Province, Mr. Mohammed Atta or the Governor of Panshir Province Haji Bahlol all declared their support for Dr. Abdullah.

## Media Environment

The media landscape in Afghanistan is made up of state and private entities and in the last seven years has witnessed remarkable growth. Presently, there are around 20 private television stations and 100 private radio stations, as well as seven news agencies. Radio is the most important medium across the country, followed by television.

Journalists' reporting is seriously hampered by the deterioration of security conditions and limited access to information from authorities. There are consistent reports that, particularly in the provinces, critical journalists face intimidation and pressure, resulting in an environment of fear and self-censorship.<sup>19</sup>

During the electoral period, the Electoral Media Commission (EMC) has the mandate to assess complaints about media coverage and breaches of the Codes of Conduct,<sup>20</sup> and the commission published decisions on media complaints and presented media monitoring findings at weekly press conferences. However, lack of sanctioning powers, its temporary mandate and its tense relationship with the Ministry of Information and Culture seriously limited the EMC's ability to act as an effective regulatory body.

The media monitored by the EU EOM tended to provide extensive coverage of the four main presidential candidates,<sup>21</sup> while giving little exposure to the other contestants. State-owned media provided the largest amount of airtime about candidates to Hamid Karzai: Radio Television Afghanistan (RTA) TV allocated 68 per cent of its political news coverage to Hamid Karzai, while Dr. Abdullah Abdullah, Mr Ashraf Ghani Ahmadzai and Mirwais Yasini received 11 per cent, 7 per cent and 2 per cent respectively. RTA Radio allocated 72 per cent of its political news coverage to Hamid Karzai, just 11 per cent, to Dr. Abdullah Abdullah, and 3 per cent each to Mr Ashraf Ghani Ahmadzai and Mirwais Yasini. The political coverage dedicated to the President was mainly neutral or positive in tone.

Under the still unpublished Media Law, state-run Radio and Television Afghanistan (RTA) would be defined as a public broadcasting service, entailing a particular responsibility for balanced reporting. In this respect, the EUEOM is concerned about the Supreme Court's decision to remove the draft law's requirement for Parliament's approval of the head of the RTA.<sup>22</sup>

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<sup>19</sup> Reports by Reporters Sans Frontières, Afghanistan Media Watch and Amnesty International name government officials, the security apparatus and insurgents (Taliban and other) as the main intimidators.

<sup>20</sup> Based on provisions of the Electoral Law, the IEC adopted the *Code of Conduct for Media* and the EMC issued a *Code of Conduct for State-Run Media* in order to maintain justice, balance and equal access for all presidential candidates.

<sup>21</sup> Hamid Karzai, Dr. Abdullah Abdullah, Ashraf Ghani Ahmadzai, Mirwais Yasini.

<sup>22</sup> The draft Media law has already been passed twice by Parliament, which should have triggered its automatic publication in August 2008. It has been extensively delayed because of the government's conflicting interpretation of the Constitution in relation to articles 13 and 41, which refer to the appointment of the chairman of RTA and the composition of the High Media Council.

In a positive development, private media broadcast political debates and roundtables with presidential candidates, some of which were organised by the EMC. These roundtables gave minor presidential candidates the opportunity to present their platforms to the electorate.

During prime time hours, voter information and civic education were given poor coverage by monitored media, both in terms of time and quality. State television was particularly poor in this respect, while private Radio Killid and state Radio Afghanistan were the exceptions to the trend.

The print media covered the campaign providing a range of opinions on the electoral process. State-owned newspapers dedicated space only to the main contestants and their activities, failing to provide fair coverage to most presidential candidates. Monitoring revealed clear bias in favour of the incumbent President, both in terms of space and tone of the coverage. Hewad newspaper devoted 76 per cent of its political space to Hamid Karzai and Anis newspaper 78 per cent.

Women received almost no coverage in news reporting and topics concerning women's rights were virtually never featured in the electoral campaign.

On 19 August the Afghan National Security Council banned reporting of any violent incidents during polling day. The government explained these instructions were issued to ensure national interest and national security in the country during Election Day. National and international media associations condemned this act as a violation of freedom of expression and the Afghan citizens' fundamental right to have access to information. However many of journalists chose to continue reporting all news and on Election Day 15 national and international journalists were threatened and detained in Kabul following their attempts to report on attacks which took place in the morning.

### **Complaints**

The Electoral Complaints Commission (ECC) is the competent body for adjudication of complaints about electoral offenses, including complaints about results. Any person or organisation that has a legitimate interest in the electoral process, including voters or observers can file a complaint. The ECC may also launch investigations on its own initiative.

<sup>23</sup>

Despite recommendations following the 2005 elections, the ECC was established at a very late stage of the process,<sup>24</sup> mainly as a result of regrettable administrative delays. This prevented its 34 provincial subdivisions from being fully operational during the candidate nomination period and part of the campaign period and delayed adjudication of complaints throughout the electoral period. Public outreach activities on the role of the ECC were also

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<sup>23</sup> Article 52 of the Electoral Law provides for the establishment of the ECC in order to deal with electoral offences, complaints and challenges. Of the five ECC commissioners, one was appointed by the Supreme Court, one by the Afghan Independent Human Rights Commission and three by the Special Representative of the UN Secretary General in Afghanistan.

<sup>24</sup> The ECC was inaugurated on 26 April 2009 subsequent to the start of the candidate nomination period.

consequently limited in some areas, hampering the commission's ability to counter the public's lack of confidence in the system. In some areas of the country complainants were reluctant to submit written testimonies because of fear of reprisals, as evidenced by the low number of registered complaints from parts of the country that were suffering some of the higher rates of violations such as intimidation. The physical location and atmosphere in some offices were not always conducive to maintaining confidentiality. These factors, coupled with the lack of female staff at times made it particularly difficult for women to avail themselves of the complaints process.<sup>25</sup>

Notwithstanding its constraints, the ECC was able to significantly improve its regulatory and operational framework to adjudicate complaints compared to previous elections. In addition to their rules of procedures, the ECC developed sound complementary guidelines. The resulting framework enabled increased initiative for Provincial Election Campaign Commissions (PECCs) alongside ongoing capacity-building, while guaranteeing a central overview to ensure compliance with legal provisions. The ECC also carried out well-designed training sessions on investigation of irregularities during polling and counting, all based on a comprehensive methodology. These initiatives greatly enhanced the ECC's preparation for handling complaints lodged about alleged offenses during voting and counting processes.

Although it was unable to address all complaints in a timely fashion, the ECC demonstrated impartiality and respect for due process in the decisions that it did issue and all published decisions appeared sufficiently documented.

Before election day, the ECC issued decisions on 181 of the 467 lodged complaints, a number of which related to campaign material disputes, use of public resources or interference of officials in electoral affairs. Presidential and vice-presidential candidates or their campaign teams were implicated in 118 complaints. The ECC dismissed 151 complaints due to a lack of legal grounds or because of complainants' failure to satisfy evidential requirements.<sup>26</sup> The ECC ruled on the removal of IEC officials in one case. As well as two decisions disqualifying provincial council candidates for holding governmental positions, the ECC sanctioned campaign-related offenses including attacks to the dignity of one female presidential candidate, non-compliance of the presidential candidates' duty to disclose their campaign assets, campaigning activities of government officials in favour of the incumbent President and the use of public resources for campaigning purposes. The most significant decisions in this last category were against the team of Dr Abdullah Abdullah and vice-presidential candidate Mr. Khalili. The ECC sometimes launched investigations on its own initiative, when there were indications of possible serious offenses.

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<sup>25</sup> Only 21 women lodged a complaint during the campaign period.

<sup>26</sup> Complaints required detailed personal statements and evidence which were not always provided due to the candidates' and the electorate's poor knowledge of the legal framework of elections and judicial mechanisms.

## Women's Participation

Women's civil and political rights as Afghan citizens are enshrined in the Constitution but in practice their participation as candidates, voters and administrators of the elections was severely limited. Widespread cultural opposition to women in public life created cumulative obstacles for women: their poor representation in key institutions and their more limited access to education and resources stymied their ability to participate and many women who did participate found themselves the target of campaigns against them. The lack of personal security which affected citizens in much of the country disproportionately affected women and consolidated the opinions of many families and communities that it was not appropriate for women to be active outside the home.

Two of the 41 Presidential candidates were women and 333 women ran for seats on the provincial councils, constituting 10% of candidates. This was a slight increase in the national average<sup>27</sup> but in close to half of the country's provinces, the proportion of women candidates decreased.<sup>28</sup> The quota system ensuring a minimum 25% of representation by women in provincial councils remains a necessary provision in a context where there is no semblance of a level-playing field for men and women.

Women's freedoms of movement, association and expression were restricted to an even greater degree than men's and their political participation was specifically targeted in several parts of the country.<sup>29</sup> In provinces such as Ghazni and Kandahar, women candidates reported that they could not campaign at all due to fears for their safety, while in most parts of the country women carried out only low-profile campaigns close to home. In response to women's security needs, the Ministry of Interior launched a programme to provide a bodyguard to each woman provincial council candidate but implementation of the programme was so limited that few candidates were able to benefit.

The contextual assessments which show that a realistic participation rate for women is significantly lower than 50 per cent<sup>30</sup> highlight the extent to which cumulative obstacles effectively disenfranchise a large proportion of Afghan women. Difficulties in recruiting sufficient numbers of women as polling station staff and security searchers resulted in an additional deterrent to women voters, as did the location and relocation of some polling stations for security reasons. Cultural and security considerations made it difficult to eliminate the illegal practice of men voting on women's behalf. Proxy voting of this kind

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<sup>27</sup>In the 2004 presidential elections there was one woman candidate and in the 2005 provincial council elections, 242 women ran for the election, constituting 8% of the candidates.

<sup>28</sup> The proportion of women candidates decreased in 14 of the 34 provinces, including Kabul, Kapisa, Parwan, Balkh, Baghlan, Kunduz, Takhar and Ghor. Both the proportion and the number of women standing for election decreased in Bamyan, Laghman, Kandahar, Ghazni, Badakshan and Herat. A number of these drops are in places where in the last year there have been attacks on schools against women in public life, including assassinations.

<sup>29</sup> Women candidates reported pressure to withdraw and campaigns against them by religious and community leaders in Laghman, Jawzjan, Sar-e-Pul and Herat. Women candidates have also suffered threats and attacks in Kabul, Takhar and Herat.

<sup>30</sup> See Voter Register

effectively disenfranchises women as well as creating a space to exploit women's participation rights to carry out fraudulent practices.

The promulgation of the Shi'a Personal Status Law shortly before polling day gave credence to complaints that women's rights in Afghanistan are bartered for political ends. Although reviewed, the new law still contains a raft of severely discriminatory provisions in direct contravention of the Constitution's guarantee of equal rights for women and its respect for fundamental rights to life and liberty for all citizens.

### **Civil Society**

Afghan civil society contributed to the transparency of the democratic process in Afghanistan. According to the IEC some 212,000<sup>31</sup> members of civil society organizations and candidate agents were accredited to observe the elections. The Free and Fair Election Foundation for Afghanistan (FEFA) deployed observers at provincial level during the voter registration and campaign periods and published regular statements on the election process. On Election day FEFA deployed over 7,000 observers to 249 districts of the 364 in all the 34 provinces. Despite FEFA's deployment and observation being seriously hampered by the security concerns, their observers performed a valuable contribution to the electoral process.

In collaboration with the UN, the Afghan Independent Human Rights Commission (AIHRC) led a project monitoring the enjoyment of civil and political rights during the electoral process and releasing several evidence-based reports. The AIHRC is also one of the numerous civil society organisations which carry out programmes to raise citizens' awareness of human rights, through seminars, workshops and the media. Many of the most useful long-term programmes targeted men and women with limited access to education, conveying information on rights with reference to both Sharia Law and international instruments.

Voter information campaigns aimed to reach all sectors of society but severe security constraints in some parts of the country, sheer inaccessibility and in some cases insufficient women to impart the information all limited the number of citizens who could be adequately informed.

### **Voting and Counting**

The opening of polling stations took place in a calm and peaceful manner in the polling stations observed by the EU EOM, without major incidents of intimidation and overall the EU EOM observers assessed the process as satisfactory.

The voting was well administered by the polling staff of the polling stations observed by the EU EOM; in their majority, domestic observers were present as well as an overwhelming presence of presidential candidate agents. The timely distribution of election material resulted

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<sup>31</sup> 169,567 candidate agents for provincial councils, 92,897 agents for presidential election, 6,998 political party agents, 1,250 international observers, 9228 domestic observers, 1,247 journalists, national and international, and 203 special guests were accredited. The total number of accreditations is 281,390.

in no observed shortages on Election Day. Closing started according to the foreseen schedule. However, the news of the extra voting hour accorded by the IEC often reached PSs once voting had ended and when the ballot boxes were fully sealed, adding a considerable amount of confusion to the process.

The IEC decided to carry out the counting at polling stations versus the previous regional and provincial centralised count. In the majority of the cases observed by the EU EOM, counting was carried out in a generally impartial and transparent manner, in the presence of candidate agents and observers and assessed as satisfactory.

The retrieval of results is currently underway, and the EU EOM will continue in country to observe the tallying, the complaints and the publication of officials results.

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*This preliminary statement is available in English, Dari and Pashtu but only the English version is official.*