



**ELECTION
SUPPORT TEAM
to
AFGHANISTAN**

Recommendations
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Organization for Security and Co-operation in Europe

**REPORT BY OSCE ELECTION SUPPORT TEAM TO AFGHANISTAN
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Introduction

An Election Support Team (EST) was the appropriate means of providing OSCE assistance to the Afghan Presidential elections. The EST was able to engage actively with the UN, election administrators, candidates and the media, using extensive experience in observing and administering elections to improve the process. A timely public statement helped persuade candidates that their call to nullify the election was

unjustifiable. The EST suggestions helped to avoid or minimize some problems. Although the vote count is still proceeding, the EST believes that it has a good basis for the recommendations that follow.

Despite the irregularities which are still being investigated, the election was a remarkable accomplishment given the security and infrastructure problems. The EST recommends a number of measures to improve election administration in general. In addition the Team lays out a road map of steps necessary to prepare for parliamentary elections, which are supposed to be held in April/May 2005. If the newly elected President and his Government are to meet this deadline, immediate action is necessary on a number of fronts. There is no question that the parliamentary, provincial and district elections will be much more difficult to administer than the Presidential elections were.

The EST believes that the OSCE can make an important contribution to the democratic process in Afghanistan. In particular, the Team recommends that OSCE/ODIHR develop a programme to build capacity among election administrators. There are numerous talented and committed Afghans who are eager to further develop their skills. The OSCE can assist them through training programmes, enlisting their participation in election observation missions outside Afghanistan and the formation of an association of election administrators similar to those created in OSCE member states.

Afghan voters have high expectations that these elections will bring concrete benefits to their lives. The international community in general and the OSCE in particular have an obligation to see that these expectations are met.

Overview

1. OSCE Permanent Council Decision 622 mandated an Election Support Team (EST) to analyse the electoral process in Afghanistan and recommend suitable electoral and legislative improvements in advance of Parliamentary, provincial and local elections in 2005. The EST was instructed to give particular attention to aspects such as voter registration, the performance of electoral commissions, vote count and tabulation, as well as the complaint and appeal procedures.

2. The EST comprised 42 persons, with extensive cumulative experience in election administration and observation. The EST was established on 15 September and deployed 15 teams in groups of 2-4 people from 29 September on 12 October to Kabul and 7 other regional centres as well as the provincial capital of Faizabad.

3. The decision to form a “support mission” instead of a standard OSCE/ODIHR observation mission was driven in part by security issues. But this decision also enabled the Team to become more engaged in the election process than would have otherwise been the case. The Team was able, through public statements, private recommendations and participation in decision making, to support the electoral process directly. The “election support” concept may effectively be applied to other situations where full scale observation is unwarranted or inadvisable.

4. The Team’s report consists of a number of practical and organizational recommendations for the conduct of elections in general, and the forthcoming Parliamentary, provincial and district elections in particular. But the emphasis on *practical* steps should not obscure the political will that the newly elected President and his government must exercise in order to hold the scheduled elections on time in April/May 2005. These elections present even greater challenges than the Presidential Elections did. Fundamental and sometimes hard decisions must be taken immediately to set this process in motion, notably the method of election, the designation of constituencies, the formation of electoral commissions, voter registration, and legal and regulatory reform (these decisions are described in more detail in the report and summarized in a simplified work plan in Annex A). **Inaction will make postponement of parliamentary elections inevitable.**

5. In parallel, there will need to be still greater efforts to provide adequate security in what promises to be a more competitive political environment in contesting parliamentary and local elections.

6. The Presidential elections provided a national rallying cry for a fresh chapter in Afghanistan’s history. Tired of war and uncertainty, Afghan voters - women as well as men - enthusiastically seized this electoral opportunity to manifest their wish for peace and stability in their lives. For voters, their act of participation was as important as the selection of a candidate. Many braved threats to their lives as well as adverse weather to stand in long lines to vote. Contrary to some media reports of “chaos” and “turmoil” these elections were conducted in a peaceful and orderly fashion.

7. The pivotal factor in making this Presidential election a success was the commendable degree of Afghan ownership of and commitment to the process;

strong voter participation, notably among women; and solid international support, particularly in providing security on election day.

8. The shortcomings in the conduct of the Presidential elections were more organizational in nature rather than matters of premeditated dishonesty. This augurs well. Organizational problems can be overcome; dishonesty is harder to uproot.

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

Recommendations

Election Administration

10. A number of organisational steps must be taken before the Parliamentary elections in order to improve election procedures and resolve a more demanding set of issues.

a) **Interim Afghan Election Commission.** A new IAEC should be appointed by the President soon after the new government is formed. The new IAEC should replace the Afghan members of the current JEMB. UNAMA should recommend criteria for membership on the IAEC in consultation with representatives of Afghan civil society. These criteria should include age, education, and experience in relevant professions. Current Afghan members of the JEMB should be eligible for reappointment to the IAEC, the membership of which should not exceed seven. Consideration should be given to appointing exceptionally able Afghan election administrators to the IAEC.

b) **Integration of the new JEMB and JEMB Secretariat.** The head of the JEMB secretariat should be appointed by the new JEMB in consultation with UNAMA, not by the President as is now the case. These two bodies should be co-located in the same compound. Procedures should be adopted so that the Secretariat would prepare JEMB meetings and implement their decisions. JEMB meetings should be open to interested stakeholders and their premises should be large enough to permit this. Past JEMB decisions should be reviewed for relevance; those remaining in effect should be published in a single volume. The JEMB spokesman should keep the public fully informed of JEMB decisions.

c) **Regional and Provincial election commissions** must be created to support parliamentary and local elections. District election officers should be nominated in each district to deal with registration issues. Appointments to these commissions should be made by the new JEMB using the same criteria as for IAEC members. Subordinate election commissions should be structured so that they can make decisions on issues such as candidate registration and complaints and appeals.

- (i) **Single chain of command.** At present there is a parallel structure of election management through UNAMA and the JEMB, which leads to confusion and lack of accountability. The new JEMB/IAEC structure will have the legal responsibility for managing elections. It can only develop the capacity to do so if given the responsibility in practice. Within the JEMB structure, it appears that Afghan nationals and internationals often fill the same roles. Clear lines of responsibility should be established.
- (ii) **JEMB complaints and appeals regulations and procedures** must be completely overhauled so as to provide a credible and prompt means of resolving complaints, with due process and transparency. One approach to this would be to create an Interim Complaints and Appeals Commission, headed by an international with a legal/judicial background and including Afghans with legal/judicial backgrounds. The Commission should have a strong investigative staff, which could be deployed to investigate complaints made to regional or provincial election commissions.
- (iii) **Training.** The cascading method of training used in the Presidential elections led to confusion and misunderstanding, as evidenced by the inking problem. All election personnel should be trained by qualified trainers.
- (iv) The Presidential election was marred by late decision-making on crucial issues, such as campaign rules and media regulations. **Strict deadlines** must be established and observed for future elections.

Supreme Court

11. Reform of the Supreme Court in accordance with the Constitution and its transitional provisions is a necessary step in the democratization process of Afghanistan. Reform should not be delayed further, not least because of the role of the courts in interpreting election laws and regulations and reviewing decisions of administrative bodies in accordance with the division of powers enshrined in the Constitution. The current Supreme Court breached this division of powers in seeking to intervene without any Constitutional or statutory authority in the course of the Presidential elections.

Campaign Issues

12. **Finance issues.** The campaign finance regulations were issued only on 5 September, just days before the Presidential election campaign began. There was no real effort to make candidates aware of them or to enforce them. The regulations, which apply only to the Presidential election, are too demanding for a parliamentary election involving thousands of candidates, and there is no institution with the capacity to oversee them.

Media Issues.

13. Reporting and editorial coverage on electronic media showed a significant imbalance for certain candidates during the last electoral campaign.

The JEMB-established media commission had no proper regulatory function as it lacked the power to directly apply sanctions. The new JEMB should revise the Mass Media Campaign Code of Conduct to allow for the media commission to directly apply fines. No paid political advertisements should be allowed, and there should be a requirement that access to the media for candidates during the forthcoming elections should be on a fair and equitable basis. To monitor and regulate these functions, the media commission should establish sub-commissions in all provinces. An advocacy component of the media commission should be created to train political parties and candidates on how to gain access to the media

Parliamentary Elections¹

14. The OSCE Team doubts that it will be possible to adhere to the timetable for parliamentary, provincial and district elections in April-May. There would however be strong political objections to postponement. The Team urges an all-out effort to meet the May deadline. This will require that the following steps be taken beginning as soon as the new government is formed:

Operational Plan. UNAMA must adopt a detailed operational plan, including a firm timeline and budget estimates, on the basis of which a cost estimate can be prepared and donor funds sought. This plan can only be produced *after* decisions on a number of urgent issues, notably :

- (i) **Simultaneous elections.** A decision must be made on whether it is currently feasible to hold parliamentary, provincial and district elections at the same time.
- (ii) **Voter registration.** Immediately following the announcement of the final results of the Presidential elections, a decision must be taken on how to create voter lists for constituencies. Voter lists can be prepared using data collected during the voter registration period, supplemented by information collected at polling stations throughout the country. Registrars should be appointed for each district, and a renewed registration drive should be started. Collective incentives, such as small scale development projects for communities which accurately verify voters lists, would motivate voters to see if their names are on the list in the district where they intend to vote. Changes to district voter lists must be reflected on a central data base to avoid duplicate registration.
- (iii) **Designation of constituencies.** A Presidential decree on electoral district boundaries must be issued 120 days prior to Parliamentary, provincial and district elections.² In order to prepare such a decree, a clear instruction must be issued by the Ministry of Interior which will enable the drawing of boundaries. International advisers might help with this process, drawing on experience in other countries.

¹ It is important to bear in mind that only the lower house of Parliament (Wolesi Jirga) is directly elected. The upper house (Meshrano Jirga) is indirectly elected/appointed. Therefore the Parliament cannot be fully formed until provincial and local bodies have been elected.

² Article 11 of Electoral Law

- (iv) **Out of Country Voting.** For budgetary and other purposes, an early decision must be made as to whether to allow Afghans abroad – whether in Iran, Pakistan or elsewhere – to vote in the parliamentary elections. The OSCE Team strongly recommends *against* this, in part because of the problems associated with assigning out of country voters to parliamentary constituencies.
- (v) **Method of Election to Parliament.** It is the unanimous verdict of international elections experts that the single non-transferable vote system chosen for the parliamentary election is impractical and inappropriate. This decision should be re-examined by the new government, UNAMA and the new JEMB. The OSCE Team recommends a hybrid system similar to that in use in other transitional countries. A certain percentage of the seats should be elected, using the party list proportional representation system from a single nation wide constituency, with the remainder elected from multiple member constituencies using a “first past the post” system. The Constitutionally required representation of women can be assured by insisting that there be women in designated positions at the top of party lists. In the view of the Team, this change would be consistent with the election law, and can be accomplished by Presidential decree.

15. In addition to these immediate operational issues, **other steps** must be planned for and taken:

- (i) **Population figures** for constituencies must be provided by the Central Statistical Office. This can be done based on extrapolation from samples which have already been obtained, but these figures must be provided immediately after the formation of a new government. On this basis, decisions can be made about how many seats should be assigned to each multiple member constituency.
- (ii) **Vetting of Candidates.** As there will literally be thousands of candidates in this election, the vetting process must be decentralized to the provincial level, with an appeals process to higher levels. The legal requirement that vetting be completed within one week must be extended, but a clear deadline must be set. If a hybrid multiple member constituency/party list system is chosen, the JEMB must decide which parties are eligible to run depending on whether they meet eligibility criteria. In the absence of a practical alternative the requirement that candidates demonstrate support by presenting copies of voter cards should be retained.
- (iii) **Voter and Civic Education.** It will be much harder to explain the complex parliamentary and local election process to the voter than was the case for the Presidential elections. The educational campaign cannot begin until basic decisions, for example about voter registration or the electoral system, have been made. A minimum of four months intensive work is required to prepare the electorate for parliamentary and local elections. The use of radio for voter education should be increased. In addition, the population in general has little understanding of the role of Parliament or

of local councils. Civic education should be built into school curricula. Voter and civic education programmes should be based on sociological research.

- (iv) **Capacity Rebuilding.** Following the Presidential elections it will be necessary to rebuild capacity because of the departure of many internationals and Afghan staff. The Team sees a role for the OSCE in the effort to rebuild capacity by directly working and training key Afghan individuals who had demonstrated ability in the course of the Presidential elections.
- (v) **Women in Politics.** More should be done to increase the participation of women in the political process and educate them about voting. Judging by their enthusiasm during the Presidential elections, they will be a receptive audience. They can be reached through the public health system, midwives, vaccination programmes and religious leaders. More training should be done in places where women traditionally gather, such as market places.
- (vi) **Political party development.** Whether or not a system involving party lists is chosen, serious effort should go into building parties with a multi-ethnic base which could marginalize warlords and sectarianism. It appears that some segments of the public, at least, are sympathetic to a multi-ethnic approach, but the effort to build parties on such a basis will require both resources and time. If a hybrid party list /multiple member constituency system is introduced, parties can be expected to coalesce to compete for the party list seats.
- (vii) **Mentoring the parliamentary process.** In the past, individual countries involved in rebuilding Afghanistan have stepped forward to take a lead role in certain sectors of society. A country with an active parliamentary outreach programme would be candidate for this role.
- (viii) **Training Domestic Observers and Party/Candidate agents.** A more robust and better trained body of domestic observers and candidate/party agents should be prepared for the Parliamentary elections.
- (ix) **Vote Counting System.** A decentralized count system must be devised, budgeted for and planned. Ideally, vote counting should be carried out at the polling stations or polling centres. If this is not feasible because of concerns about the secrecy of the vote, counting centres should be located at the district or, if absolutely necessary, provincial level.

Security

16. It is important that Afghan and international authorities not become complacent because the level of violence during the Presidential elections was lower than expected. In fact many attacks were averted at the last minute thanks to exceptionally heavy and effective security measures and a high standard of performance by the Afghan police and MoI, ANA, ISAF and CFC-A. The Parliamentary elections will be

inherently more dangerous because there is more at stake, particularly for warlords and local “commanders”.

17. Disarmament, demobilization and reintegration (DDR) should be continued and accelerated. One such method is to insist on compliance with provisions of the election law forbidding ties between candidates and parties with unofficial military forces. The practice of accepting hollow assurances as evidence of implementation must be stopped.

18. Expansion and training of the ANA must be continued and accelerated before the parliamentary elections. The Afghan National Police remain inadequately trained and poorly equipped. New units must be created in those areas where it became necessary to co-opt local militias to supplement the police force.

Immediate Legal and Regulatory Issues

19. The Team’s mandate includes the requirement to make recommendations for improving the legal framework for elections. There are a number of ways in which the Afghanistan’s electoral law should be amended in order to bring it in closer conformity with international standards and best practices. However the Team believes that major changes in the electoral law should await the election of a new Parliament, and that in the meantime Presidential decrees and JEMB regulations can be used to prepare for Parliamentary, provincial and district elections.

20. The following issues should be regulated by Presidential decree:

- (i) The date for parliamentary elections, with or without simultaneous provincial and district elections.
- (ii) The method of electing members of Parliament, including the method by which the representation of women will be ensured.
- (iii) The establishment of electoral district boundaries.
- (iv) The appointment of new members of the IAEC according to agreed criteria, definition of the relationship between the new JEMB and the JEMB Secretariat; authorization for the new JEMB to:
 - a) create a complaints and appeals sub commission;
 - b) decide on re-counting or re-running elections in the case of serious irregularities;
 - c) revoke candidate registration for serious offences during the electoral campaign;
 - d) appoint regional and provincial election commissions.

21. The newly appointed JEMB must make decisions:

- (i) Specifying the grounds for recounting or re-running elections.
- (ii) Establishing a credible and transparent complaints and appeals procedure at all levels. Complaints should be made to the lowest level commissions,

which should dismiss frivolous complaints unsupported by evidence. Strict deadlines should be met. Inaction by commissions within the specified time should be considered a negative decision subject to appeal. Decisions of subordinate commissions must be subject to appeal to higher level commissions. As a temporary measure pending legislation empowering courts to review JEMB decisions, the Interim Complaints and Appeals Commission described above could hear appeals to JEMB decisions.

- (iii) Appointing regional and provincial election commissions and specifying their powers, e.g. to approve candidate registration at their respective levels. The legal requirement that vetting be completed within one week must be extended, but a clear deadline must be set.³
- (iv) Reopening voter registration, creating district voter registrars, and setting forth procedures for creating voter lists. This decision should specify that voters who will reach the age of 18 by the date of the election should be registered.
- (v) Specifying that election commissions at all levels can make decisions by simple majority vote if consensus is not obtainable.
- (vi) Clearly defining criteria for candidate eligibility. The decision should specify grounds for revoking candidate registration due to serious offences committed during the electoral campaign. Such a decision must have clear deadlines for decision making and appeal. It should also regulate the question of candidate withdrawal before the election, making clear that votes cast for one candidate may not be passed on to another.
- (vii) Setting out procedures and criteria for allocating government funds to support electoral campaigns by political parties and independent candidates as provided for in Article 15 of the Law on Political Parties.
- (viii) Revising the Mass Media Campaign Code of Conduct, creating a more transparent process for the appointment of media commissioners and giving the commission the power to directly apply sanctions against offending media outlets.

Postponement of the Parliamentary Elections

22. If the above requirements cannot be met in time, the parliamentary elections will have to be postponed, probably until the autumn of 2005. In that case, it will be necessary to create an interim consultative body to which the President is accountable. Consultations on the nature of that body should begin now, so that if postponement is necessary there will be a consensus on how to bridge the gap.

³ Article 45 of Electoral Law

Analysis of Longer Term Legal and Regulatory Issues

23. The Team has commissioned a study of legal and regulatory reforms which a newly elected Parliament might consider. That study has been provided to the JEMB.

ANNEX A
WORK PLAN

Level I activities in various areas can begin and proceed simultaneously. Levels II and III tasks cannot begin until one or more Level I tasks have been completed.

LEVEL I

Time Frame	Issue	Action by
E – 180	ESSENTIAL BASIC DECISIONS - Decide whether to hold all 3 levels in a single election - Determine system of Parliamentary representation (i.e. SNTV vs. combination of party lists and multi-member districts)	President, JEMB President
E – 180	STRUCTURAL/ORGANISATIONAL - Appoint JEMB/IAEC - Set clear lines of authority, responsibility, accountability and reporting among JEMB, JEMBS and provincial and district election commissions - Set up joint office location for all national bodies - Develop multi-level complaint and challenge procedures	President UNAMA, JEMB UNAMA JEMB
E – 180	VOTER EDUCATION - Plan for voter education programmes	JEMBS
E – 160	LEGAL - Issue election regulation - Issue rules for candidate eligibility and disqualification	JEMB JEMB

E – 150	OPERATIONAL PLAN - Develop operational plan including timeline and budget	UNAMA, UNDP
E – 150	VOTER REGISTRATION - Determine scope and detail	JEMB
E – 150	FINANCIAL - Development of preliminary budget - Planning for funding	JEMBS, JEMB UNAMA, UNDP
E – 130	DESIGNATION OF CONSTITUENCIES - Determination of population distribution - Decree setting forth constituency boundaries	Central Statistical Office Presidential decree

LEVEL II

	STRUCTURAL/ORGANISATIONAL	
E – 120	- Appoint local and provincial election commissions	JEMB
E – 150	- Staff the JEMB Secretariat	JEMB
E – 120	- Review past JEMB decisions, codify and publish those to be retained; identify additional topics to be addressed	JEMB
E – 120	- Set deadlines for key decisions	JEMB
E – 100	- Establish decentralized vote count system	JEMBS
E – 130	DESIGNATION OF CONSTITUENCIES - Allocation of seats according to population	JEMB
E – 120	LOGISTICS - Develop equipment lists and begin procurement	JEMBS

E – 120	SECURITY - Continue with DDR; building up ANA and ANP - Develop nationwide and local security plans	ISAF, CFC – A, Min. of Defence ANA, Min. of Defence, CFC – A
E – 120	VOTER REGISTRATION - Verify existing registration and reopen new registration to include returnees and others – assign to specific constituencies, possibly even specific PCs - Establish district voting registrars	JEMB JEMB
E - 120	VOTER EDUCATION - Build on experience to introduce concepts of parliament and local elections - Emphasis on women	JEMBS, NGOs JEMBS, NGOs
	FINANCIAL	
E - 120	- Finalize budget	UNDP, UNAMA, JEMBS
E - 100	- Finalize donor commitments	UNDP
E – 100	LEGAL - Set procedures and criteria regarding state subsidies for political parties	JEMB

LEVEL III

	STRUCTURAL/ORGANISATIONAL	
E – 100	- Appoint and train provincial and district election commissions	JEMBS
E – 90	- Appoint and train PC and PS officials	JEMBS
E – 60	- Establish provincial counting centres, appoint and train counting teams	JEMBS

E – 90	CANDIDATE FILING - Vet non-party list candidates - Registration of party lists	JEMB JEMB
E – 90	MEDIA - Revise Mass Media Campaign Code of Conduct - Appoint members of a new media commission	JEMB JEMB
E – 60	VOTER EDUCATION - Training of domestic observers; and party and candidate agents	JEMBS
E – 14	LOGISTICS - Packing, verification and deployment of supplies	JEMBS
	LEGAL - Monitoring of candidate eligibility – use of sanctions as required	JEMB

Glossary

ANA	Afghan National Army
CFC-A	Coalition Forces Command – Afghanistan
DDR	Disarmament, demobilization and reintegration
EST	Election Support Team
IAEC	Interim Afghan Election Commission
ISAF	International Security Assistance Force
JEMB	Joint Election Management Body
JEMBS	Joint Election Management Body Secretariat
Meshrano Jirga	Upper House of Parliament
MoI	Ministry of Interior
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PC	Polling centre
PS	Polling station
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
Wolesi Jirga	Lower House of Parliament