



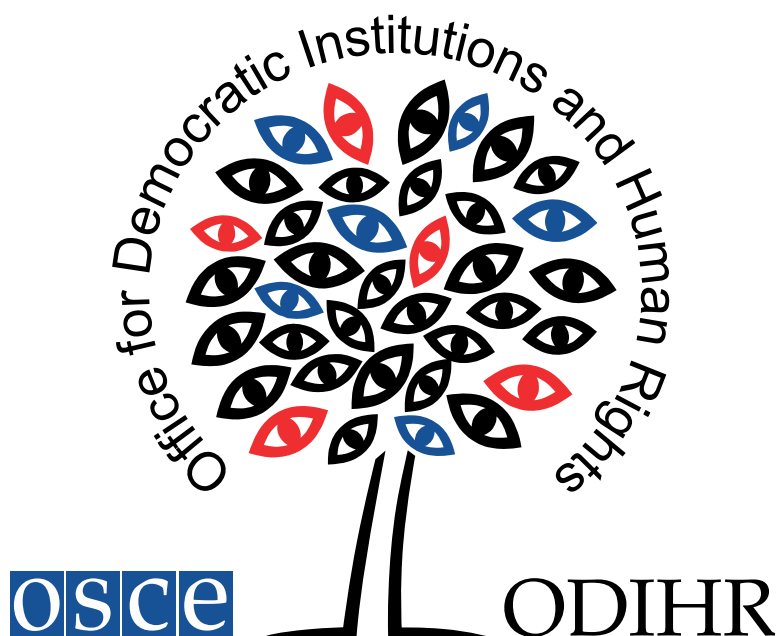
Office for Democratic Institutions and Human Rights

ISLAMIC REPUBLIC OF AFGHANISTAN

PRESIDENTIAL AND PROVINCIAL COUNCIL ELECTIONS

5 April and 14 June 2014

OSCE/ODIHR ELECTION SUPPORT TEAM REPORT



Warsaw
5 December 2014

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OSCE/ODIHR Election Support Team Report¹

I. EXECUTIVE SUMMARY

Following an invitation from the Independent Election Commission (IEC) of Afghanistan and on the basis of the OSCE Permanent Council's decision No. 1094 of 24 October 2103, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Support Team (EST) "to assist government and international efforts on the presidential and Provincial Council elections in Afghanistan scheduled for 5 April 2014", and "to prepare a report [...] on the electoral process [...] including a set of recommendations to the Government of Afghanistan for implementation as appropriate in the post-election period, with a view to enhancing the conduct of future elections and improving Afghanistan's legal framework and procedures." This is the fifth EST to be deployed by the OSCE/ODIHR to support elections in Afghanistan since the 2004 presidential election, the first one to be held following the 2001 Bonn agreement.

The OSCE/ODIHR EST was deployed to Afghanistan on 5 March 2014 and initially consisted of 15 experts drawn from 13 OSCE participating States. Following a tragic attack on the Serena Kabul Hotel, the EST continued to operate in Afghanistan with nine experts until 31 July, when it had to discontinue its presence in the country due to a shortage of funding. During its deployment, the OSCE/ODIHR EST held regular meetings with election administration authorities, candidates, political parties, citizen observers, security agencies, government officials, and the media. The OSCE/ODIHR EST also met with various international stakeholders, including international long-term technical assistance providers, the diplomatic community, and international observer organizations.

The 2014 elections were widely viewed as a key political event in the history of Afghanistan, presenting an opportunity for the peaceful transfer of power in the context of the drawdown of the international security presence.

While the electoral legal framework is comprehensive and generally conducive to the conduct of democratic elections, some constitutional provisions are not in line with international standards. The adoption of the two key election laws in 2013 was a major step forward in enhancing the electoral legal framework, as past elections were organized on the basis of presidential decrees. While the new legislation partially addressed a number of previous OSCE/ODIHR recommendations, some introduced provisions are at odds with international standards and good practice. The adoption of a number of key regulations after legal deadlines had passed prevented electoral stakeholders from being informed about the applicable rules of the electoral process in a timely manner. Moreover, proper implementation of the electoral legal framework by all electoral stakeholders, which often proved to be problematic in past elections, remains to be further strengthened.

Despite legal and organizational shortcomings, the candidate registration process was inclusive and voters enjoyed a genuine choice between distinct alternatives on election day. Apart from being subject to undue limitations based on ethnic origin and religion, prospective presidential candidates had to submit both a list of supporting signatures (or finger prints) and a financial deposit. Provincial council candidates were subject to a restrictive educational requirement, which could also

¹ The English version of this report is the only official document. Unofficial translations are available in Dari and Pashto.

disproportionally affect women. The IEC, at times, failed to provide sufficient information on the reasons for the rejection of individual candidates.

The election administration comprised the IEC, 34 provincial offices of the IEC, managers of polling centers, which comprise multiple polling stations, as well as polling station committees. While the revised electoral legal framework provides for a more inclusive and transparent appointment mechanism in line with previous OSCE/ODIHR recommendations, some electoral stakeholders expressed a degree of skepticism as to the independence of the IEC commissioners. The IEC lacked transparency in some of its operations but responded adequately to criticism and gradually improved, especially before and during the second round of the presidential election. The continuous support from the international community, the timely preparation of strategic documents, as well as the attention paid by the IEC to lessons learned from the previous elections, contributed significantly to the preparedness of the electoral administration for the 2014 elections.

The registration of voters is active and requires voters to physically appear at a voter registration center and to provide an identification document in order to obtain a voter card. Following additional distribution of voter registration cards in 2013 and 2014, nearly 21 million were in circulation among a population comprising some 13 million voters. The abundant number of voter cards in circulation, combined with the possibility of excessive ballot allocation, increases the opportunity for misconduct and decreases the ability to identify fraud when it occurs.

After a slow start due to winter weather conditions, the first round of the presidential campaign gained momentum and most candidates held well-attended indoor and outdoor rallies. By deliberately choosing candidates of different ethnic origins for vice presidents and actively campaigning as multiethnic teams, most presidential candidates attempted to reach out to voters from different ethnic communities. The tone of the campaign in general remained positive throughout the process; however, the campaign environment became more polarized and tense in the runoff. Although there were instances of ethnic stereotypes and other negative ethnic rhetoric about members of one candidate's team by members of the other occurred, they were, in general, promptly condemned by the authorities and civil society, as well as by the candidates themselves.

The Media Commission (MC) was established in December 2013 as a temporary body under the IEC to monitor the performance of media during the election period. The MC reported a lack of transparency in the recruitment of commissioners by the IEC. Furthermore, delays in staff recruitment and in the allocation of the MC budget, both processes for which the IEC was responsible, had a negative impact on the MC's ability to commence monitoring of media activities in a timely manner.

Campaign finance is regulated by the Election Law and a specific IEC regulation. The legal framework provides general requirements for ensuring the integrity and transparency of campaign financing in line with international standards, but lacks detail and does not provide an exhaustive list of irregularities and applicable sanctions. An expenditure ceiling for each of the two rounds of the presidential election was highly criticized as unrealistically low by all relevant stakeholders, including the candidates. It also reportedly led to candidates concealing expenditures and providing the IEC with inaccurate information.

The Election Law provides for citizen and international election observation. Overall, the accreditation procedure was timely and inclusive. The IEC accredited some 18,000 citizen observers for these elections, about 30 per cent of whom were women. Observer reports often noted shortcomings, but frequently lacked the necessary level of detail to allow for an objective verification of the findings. In addition, a total of 345,715 agents of candidates and political parties were accredited for the 5 April elections, with 87,346 more for the presidential runoff. According to the

IEC, more than 95 per cent of polling station election results sheets were signed by the agents of both candidates in the presidential runoff.

On both election days, the IEC faced significant challenges with efficient election planning and had to reconcile the need for an inclusive election with sufficient safeguards against the risk of fraud stemming from the circulation of ballot papers in excess numbers. The IEC received input from the Ministry of Interior on the security of possible polling center locations and, subsequently, reviewed the polling center list with key electoral stakeholders, including presidential candidates, in an attempt to reach consensus about the number of polling centers to be opened.

In a welcome step, in advance of the 2014 elections, the IEC issued a Strategy for Fraud Mitigation, which envisaged increased training of officials and staff, improvements to the chain of custody when transporting sensitive materials to and from polling stations, and checks to verify the origins of the results sheets.

Despite a high number of security incidents on both election days, and especially during the second round, as well as remaining organizational challenges, the performance of the Afghan National Security Forces on both election days was hailed by both Afghan and international stakeholders as a great success.

On both election days, inking of voters' fingers and punching of their voter cards served to prevent multiple voting. Voter card numbers were recorded in a single log for both elections; however, in the absence of a central voter registry, the effectiveness of this mechanism as a deterrent of fraud is questionable. During both rounds, the IEC received reports of ballot shortages in certain provinces and authorized its provincial staff to release contingency polling station kits including ballot papers to the affected areas. The corrective measures taken by the IEC were largely successful in both rounds and there were only few reports about disenfranchised voters. The difficulty of planning ballot allocation is, however, likely to persist in subsequent elections until there is a voter registry linking voters to specific polling stations.

In accordance with the law, the counting of votes took place in polling stations. Neither the law nor the IEC regulations legally oblige polling station chairpersons or managers of polling centers to reconcile the ballot papers before passing the results forms on to the IEC National Tally Center (NTC), which is contrary to international good practice.

Intake and tabulation procedures at the NTC appeared to be well designed and thoroughly tested in advance. The data entry process for the provincial council elections and both rounds of the presidential election proceeded smoothly. The reconciliation of the number of voters who received ballots against the total number of ballots cast was not required by the procedures and was not done routinely in the NTC process; only if the results form was questioned for some reason were these two figures compared. During the second round tabulation, the IEC abandoned this important transparency and accountability measure altogether.

The IEC is obliged by law to announce and publish preliminary and final election results, and is authorized to issue partial results. In the first round, partial results were released in a format that did not facilitate the comparison with the results taken down by observers in the polling stations. For the second round, partial results were never published.

In contrast to partial results, the release of preliminary results requires a decision by the IEC, and the results can be legally challenged by candidates. As with partial results, after the first round, the IEC only announced the number of valid votes cast for each candidate and, thus, did not account for the unused or spoiled ballots or the invalid votes. This hampered the ability of candidates and their agents

to prepare for filing possible complaints in a timely manner. The IEC delayed the announcement of preliminary results of the runoff by five days due to political developments.

During both rounds, the IEC used a set of criteria to determine which polling station results would be subject to audit and possible re-counts and invalidation. One of the runoff candidates withdrew from the electoral process, demanding the resignation of the IEC Chief Electoral Officer (CEO), as well as the application of a number of wide-ranging audit measures and invalidation criteria to the tallied results. Despite IEC's attempts to strengthen confidence in the process through additional audits, the same candidate refused to recognize the preliminary results and continued questioning the authority of the IEC. As the political crisis unfolded and the international community intervened to broker a compromise between the two presidential candidates, the IEC became increasingly sidelined. However, as the comprehensive audit commenced, the IEC gradually rose to the task and began addressing the issues at hand.

In an effort to address the criticism raised by one candidate against the electoral institutions, and following the preceding negotiations between the two candidates and their agreement mediated by the United Nations (UN) and the United States Secretary of State, the IEC decided to bring all ballot boxes to Kabul for a full examination of all ballots for signs of fraud. The comprehensive audit commenced without an agreement as to the criteria that would trigger a re-count or invalidation of polling station results. The matter was the subject of continued negotiations between the two candidates that were mediated by the UN, and an agreement was only reached some two weeks after the audit had begun. In a welcome move, the IEC opened the process of reviewing the conclusions of the comprehensive audit to candidate agents and observers, and provided for the right to appeal the decisions of the review panel to the Independent Election Complaints Commission (IECC).

The responsibility for receiving and adjudicating complaints is vested with the IECC and its provincial offices. The law gives the IECC a broad mandate and wide decision-making powers, and establishes it as a final adjudicator of electoral complaints. The establishment of the IECC as a permanent, professional body under the newly adopted legal framework was a positive development, in accordance with previous OSCE/ODIHR recommendations. The election law, however, contains a number of contradictory and inconsistent provisions with respect to, among other issues, the deadlines for challenges of the preliminary list of registered candidates and authority over the final election results. Despite significant improvements in the institutional set-up of the electoral dispute resolution system, the complaints adjudication process demonstrated the overall low institutional capacity of the IECC and the lack of training and capacity of IECC staff to undertake proper investigations at the provincial level.

On 29 September, following the conclusion of the comprehensive audit, Dr. Ghani was inaugurated as the President of Afghanistan and Dr. Abdullah assumed the post of the Chief Executive Officer of the unity government. The results of the Provincial Council elections were announced on 25 October 2014.

II. ELECTION SUPPORT TEAM OVERVIEW

A. MANDATE OVERVIEW

Following an invitation from the Independent Election Commission (IEC) of Afghanistan and on the basis of the OSCE Permanent Council's decision No. 1094 of 24 October 2103, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Support Team (EST) "to assist government and international efforts on the presidential and Provincial Council elections in Afghanistan scheduled for 5 April 2014", and "to prepare a report [...] on the electoral process [...]"

including a set of recommendations to the Government of Afghanistan for implementation as appropriate in the post-election period, with a view to enhancing the conduct of future elections and improving Afghanistan's legal framework and procedures."² This is the fifth EST to be deployed by the OSCE/ODIHR to support elections in Afghanistan since the 2004 presidential election, the first one to be held following the 2001 Bonn agreement.³

Led by Mr. Harald Jepsen, the OSCE/ODIHR EST was deployed to Afghanistan on 5 March 2014 and initially consisted of 15 experts drawn from 13 OSCE participating States. Following a tragic attack on the Serena Kabul Hotel where the EST was accommodated, the EST temporarily relocated to Istanbul on 21 March. The OSCE/ODIHR reassessed the mission and on 28 March, six team members returned to Afghanistan to resume work. The EST was reinforced by one expert in May and two additional experts in June, prior to the second round of the presidential election. The reduced presence had implications on the range of the electoral issues the OSCE/ODIHR EST was able to cover. The EST continued to operate in Afghanistan with nine experts until 31 July, when it had to discontinue its presence in the country due to a shortage of funding. Thus, the team left before the completion of the full audit of the election results, the final adjudication of complaints, and the announcement of final results. Although the OSCE/ODIHR was made aware of the details of the electoral process after 31 July, the limited information collected after the departure of the EST and included in this report could not be independently verified.

The OSCE/ODIHR EST focused its attention on providing additional expertise to supplement the technical assistance provided by other international actors and on formulating recommendations for future elections. The recommendations contained in this report supplement those made previously and are presented to the Government of Afghanistan with a view to inform preparations for the expected 2015 elections as well as the long-term electoral reform. While a number of past recommendations have been acted upon, some remain to be addressed.

B. OPERATIONAL AND SECURITY ISSUES

The OSCE Permanent Council's decision No. 1094 tasked the OSCE Secretariat, together with the OSCE/ODIHR, "to conduct consultations with the Government of Afghanistan, international military forces and international actors, including the United Nations, in order to spell out clearly in the appropriate form and put in place the necessary security arrangements." Preparations for the deployment of the EST began with a joint OSCE Secretariat and OSCE/ODIHR security assessment visit to Afghanistan from 19 to 22 November 2013, followed by an OSCE/ODIHR exploratory team visit from 6 to 9 January 2014 to assess the pre-election environment and the preparations for elections.⁴ Following the exploratory team visit, the Chairperson of the OSCE Permanent Council circulated a project proposal outlining the format, scope, duration, composition, and security arrangements for the OSCE/ODIHR EST.

A memorandum of understanding (MoU) was signed between the Government of Afghanistan and the OSCE on 7 February, establishing the modalities for the EST deployment, including security. An exchange of letters took place between the OSCE and NATO Secretaries General, defining *in extremis* support. In addition, an exchange of letters with the United Nations Special Representative of the Secretary General (UN SRSG) in Afghanistan defined the security support which the UN would provide, including relations between the OSCE/ODIHR EST and the UN Department of Safety and Security (UN DSS).

² For the full text of the PC Decision No. 1094, see: <http://www.osce.org/pc/107429>.

³ Previous OSCE/ODIHR reports on elections in Afghanistan are available at: <http://www.osce.org/odihr/elections/afghanistan/74786>.

⁴ The OSCE/ODIHR Exploratory Team report is available at <http://www.osce.org/odihr/elections/110503>.

C. METHODOLOGY

During its deployment, OSCE/ODIHR EST held regular meetings with election administration authorities, candidates, political parties, citizen observers, security agencies, government officials, and the media. The OSCE/ODIHR EST also met with various international stakeholders, including international long-term technical assistance providers to the IEC and the Independent Electoral Complaints Commission (IECC), the UN SRSG, the diplomatic community, and international observer organizations. In addition, the team, to the extent possible, followed electoral events, including training sessions for officials, election day polling, the tallying process, and part of the audit process. The team attended press conferences, briefings, and stakeholder meetings regularly.

In the course of its work, the OSCE/ODIHR EST produced a non-paper that highlighted points for consideration and made recommendations to the process. The document was shared with the IEC, the IECC, and UNDP's Enhancing Legal and Electoral Capacity for Tomorrow (UNDP ELECT II) project staff for their consideration. Copies were also sent to other key election counterparts. Additionally, assistance and feedback to citizen observer groups were regularly provided. The OSCE/ODIHR EST did not issue any press releases, and gave no interviews or comments to the media on the electoral process.

D. ACKNOWLEDGEMENTS

The OSCE/ODIHR EST would like to thank the Government of Afghanistan, in particular the Ministries of Foreign Affairs and Interior, for its assistance and co-operation. The team also extends its gratitude to the IEC, the IECC and other Afghan authorities, at all levels, for their support and assistance. The OSCE/ODIHR EST wishes to thank the United Nations Assistance Mission in Afghanistan (UNAMA) for the productive co-operation throughout the deployment period and to extend its gratitude to the International Security Assistance Force (ISAF) that generously accommodated the EST following the attack on Kabul Serena Hotel. Assistance from the UNDP ELECT II project staff, International Foundation for Electoral Systems (IFES) and other international organizations was very much appreciated. The OSCE/ODIHR EST welcomed the exchange of opinions with the office of the Delegation of the European Union/Special Representative to Afghanistan and the EU Election Assessment Team, as well as the co-operation with other international observer and analytical missions. Finally, the OSCE/ODIHR wishes to thank the OSCE participating States for their generous financial contributions to this project.

III. POLITICAL AND SECURITY BACKGROUND

A. POLITICAL CONTEXT AND SYSTEM OF GOVERNMENT

The Islamic Republic of Afghanistan has a presidential system of government with a president elected for a maximum of two five-year terms. According to the Constitution, the president is the head of State and of the executive branch of government. The bicameral Parliament (the National Assembly) comprises a lower house (*Wolesi Jirga*) composed of 249 members directly elected for five-year terms from the 34 provinces, and an upper house (*Meshrano Jirga*) composed of 102 members.⁵ There are a total of 458 seats on the 34 provincial councils throughout the country, with

⁵ *Meshrano Jirga* is composed of members appointed by the president and those elected by the provincial and district councils. District council representatives have not yet joined *Meshrano Jirga* as district council elections are yet to be held.

councils varying in size between 9 and 33 members, based on the population of the province. Provincial council members are elected for four-year terms.

The 2014 elections were widely viewed as a key political event in the history of Afghanistan, presenting an opportunity for the peaceful transfer of power in the context of the drawdown of the international security presence. President Hamid Karzai, first elected in 2004 and subsequently re-elected in 2009, was prohibited by a constitutional term limit to stand for a third term. Presidential and provincial council elections were called for 5 April, with a potential runoff in the presidential race scheduled for 28 May. Provincial council elections, originally due to be held in 2013, were postponed by a decision of the IEC for logistical reasons to be held simultaneously with the first round of the presidential election in 2014.

The 2014 presidential and provincial council elections are the fifth since the December 2001 Bonn Agreement. The role of the international community in Afghan elections has decreased significantly over the years, and the 2014 elections were widely characterized as Afghan-led, managed, and owned.

B. SECURITY CONTEXT

The insecurity of the country remained the main challenge during the entire electoral period. It affected the electoral preparations as well as the candidates' campaigns and the personal security of their campaign teams. The Taliban issued statements prior to each election day declaring its commitment to derail the electoral process and perpetrated a series of lethal attacks on the candidates' local campaign offices, the IEC headquarters and provincial offices, and government authorities. The deteriorating security conditions also diminished the international election observation groups' presence and activities. Most international organizations pulled out non-essential staff shortly before the first round election day while other groups significantly reduced their activities due to insecurity and constant threat.

IV. LEGAL FRAMEWORK

A. CONSTITUTIONAL AND LEGAL FRAMEWORK

The presidential and provincial council elections are primarily governed by the 2004 Constitution as well as the newly adopted 2013 Election Law and 2013 Law on the Structure, Duties and Authorities of the Independent Election Commission and the Independent Electoral Complaint Commission (Structure Law). The 2009 Law on Political Parties, the 2002 Law on Gatherings, Strikes and Demonstrations, and the 2004 Media Law supplement the electoral legal framework. Additionally, a significant number of issues, including candidate registration, replacement of vice-presidential candidates, voter registration, voting and counting procedures, audit and investigation, election campaign period, and campaign finance, are governed by the legally-binding IEC regulations and procedures rather than specified in primary legislation.

It is recommended to address matters of candidate registration, conduct of campaign and campaign finance requirements, as well as transparency of results by primary legislation, in order to provide for legal certainty.

The Constitution provides for free, universal, secret, and direct elections and also guarantees fundamental freedoms of peaceful assembly, association, expression, and movement. The preamble and Article 7 of the Constitution explicitly commit the state to respect the Universal Declaration of Human Rights (UDHR) and to abide by international conventions to which Afghanistan is party. Afghanistan was among the UN Member States that adopted the UDHR in 1948 and has also ratified a number of international treaties related to elections, including the 1966 International Covenant on

Civil and Political Rights (ICCPR) and the 1966 International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).⁶ Moreover, Afghanistan has a number of international obligations and national commitments aimed at ensuring that the rights of women are protected. Aside from the provisions of the Constitution, Afghanistan is party to the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW).⁷ As a Partner for Co-operation to the OSCE, Afghanistan is not party to the body of OSCE commitments on democratic elections included in the 1990 OSCE Copenhagen Document. However, OSCE participating States called upon the Mediterranean and Asian Partners for Co-operation to “voluntarily implement the principles and commitments of the OSCE”.⁸

While the Constitution generally provides a sound legal basis for the conduct of democratic elections, some provisions are not in line with the international standards and require constitutional reform.⁹ Specifically, as highlighted in the 2009 and 2010 OSCE/ODIHR EST reports, the presidential authority to pass legislation on key issues should be given priority consideration if a constitutional reform is undertaken, as it circumvents the legislature’s prerogative to make laws and weakens principles of separation of powers. As previously noted, the Constitution also contains a provision that only Muslim citizens born of Afghan parents can be elected president, which is a discriminatory restriction at odds with the ICCPR.¹⁰

Should consideration be given to amending the Constitution, international standards for democratic elections contained in the treaties ratified by Afghanistan, as well as previous recommendations, especially with regard to suffrage rights and the presidential authority to pass election-related legislation, should be taken into account.

As none of the presidential candidates gained the majority of the valid votes cast required to win in the first round, the IEC called a runoff. The IEC announced that the runoff could not take place on the envisaged date of 28 May due to technical reasons and established 14 June as a new second round election day.¹¹ Neither the originally envisaged date, nor the eventually scheduled runoff date, were consistent with the constitutionally-mandated expiry of the presidential term on 22 May. The issue of the incumbent’s term expiration was not raised to a significant degree, and President Karzai continued to function in his official capacity after 22 May. Presidential decrees warning government officials and security authorities not to interfere in the presidential runoff election were issued on 2 July, technically after expiration of the incumbent’s mandate. Neither the Constitution nor the Election Law address the issue of a runoff outside the two-week legal deadline for it or upon expiration of the

⁶ Afghanistan ratified ICCPR and ICERD on 24 January and 5 August 1983, respectively.

⁷ Afghanistan ratified CEDAW on 18 December 1979. Adoption, in 2009, of the Law on Elimination of Violence against Women (EVAW) criminalized “all actions imposed by force against women that cause harm or damage to their body, mind, soul, reputation, or property.”

⁸ See OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century, adopted at the 2003 Maastricht Ministerial Council, available at <http://www.osce.org/mc/17504>.

⁹ It is to be recognized, however, that changing the Constitution is practically difficult, due to the need to convoke a *Loya Jirga* (Grand Council), which, in accordance with Article 111 of the Constitution, has the powers “to decide on issues related to independence, national sovereignty, territorial integrity as well as supreme national interests; amend provisions of [the] Constitution”.

¹⁰ General Comment No. 25 (1996) to Article 25 of the ICCPR by the UN Human Rights Committee, paragraph 15 reads: “Any restriction on the right to stand for election... must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.” See also *ibid* paragraph 3, which states: “No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of... religion”. Paragraph 7.5 of the 1990 OSCE Copenhagen Document contains a commitment to “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.”

¹¹ The IEC electoral timeframe is available at: <http://www.iec.org.af/component/content/article/17-english-uk/parties-candidates/148-timeline>.

presidential mandate, creating a potential for a constitutional crisis. Moreover, as the calendar for concurrent elections to a variety of bodies is not synchronized by the electoral legal framework, the IEC and IECC did not have sufficient time to process and finalize results of the provincial council elections before the presidential runoff, which raised concerns among electoral stakeholders.

The timelines for different elections should be reconciled with the constitutionally-mandated expiration of the presidential term and further modified to allow for sufficient time to handle concurrent elections and prepare for a possible runoff in a presidential race.

Also, as highlighted by a number of OSCE/ODIHR EST interlocutors, there remains a lack of clarity regarding the interpretive authority of the Constitution. Article 157 of the Constitution vests the power of “interpretation of the Constitution on the request of the President, the National Assembly, the Supreme Court, and the Executive” with the Independent Commission for Overseeing the Implementation of the Constitution (ICOIC). ICOIC members are appointed by the president and approved by the parliament.¹² At the same time, Article 121 of the Constitution vests the interpretive powers with the Supreme Court acting at the request of the Government or courts.

Legal certainty should be established in regards to which body is ultimately responsible for the interpretation of the Constitution in electoral matters. The role of the Supreme Court and the ICOIC in electoral matters should also be clarified with specific conditions for their possible intervention explicitly stated in the law.

The drafting of the new election laws commenced in 2011, soon after the previous elections, with several consultative meetings held with relevant stakeholders. Subsequently, the two chambers of parliament established a Joint Commission to resolve remaining disputes and finalize the draft of the law. The drafting process was generally inclusive with input from a number of stakeholders, including civil society representatives. The Election Law and the Structure Law were passed by the parliament in mid-2013 after a prolonged debate in both chambers and were signed by President Karzai on 17 and 20 July 2013 respectively.

The adoption of the two laws was a major step forward in enhancing the electoral legal framework, as past elections were organized on the basis of presidential decrees. The new legislation partially addressed a number of previous OSCE/ODIHR recommendations. This includes broadening the appointment mechanism of IEC commissioners and specifying that ballots cast for officially withdrawn candidates whose names remain on the ballot are counted as invalid. Importantly, the new laws established the IECC as the permanent institution for electoral dispute resolution, which was one of the long-standing OSCE/ODIHR recommendations. Overall, the electoral legal framework is comprehensive and generally conducive to the conduct of democratic elections. However, proper implementation of the electoral legal framework by all electoral stakeholders, which often proved to be problematic in past elections, remains to be further strengthened.

It is recommended that the parliament, in consultation with the electoral management bodies and other stakeholders, including citizen observer groups, initiate an evaluation of the newly-adopted electoral legal framework and its application in practice in light of the lessons learned from the 2014 elections and sufficiently in advance of the upcoming elections.

Other provisions included the introduction of restrictions on the right of voters and citizen observers to file complaints on voting, counting and tabulation, which limited the accountability of the electoral process called for by the international good practice.¹³ Furthermore, restrictions were placed on where

¹² Several OSCE/ODIHR EST interlocutors questioned the independence of the ICOIC.

¹³ Paragraph 3.3(99), p. 31, of the Code of Good Practice in Electoral Matters of the Council of Europe’s Venice

Kuchis (nomadic Afghans) could vote limiting voting to just seven provinces as opposed to the whole country, which may have disenfranchised some of them contrary to the principle of universal suffrage enshrined in the international standards.¹⁴ Despite previous recommendations, a provision regulating the election runoff in case one of the two candidates withdraws is still lacking.

The electoral legal framework should be further enhanced by addressing the identified gaps and bringing it closer in line with international standards. Legislative reforms should be undertaken well in advance of elections, through open and inclusive consultations with all election stakeholders, including political parties and civil society.

Additionally, the new Election Law reduced the number of reserved seats for women in the provincial council elections from 25 to 20 per cent, which has a negative effect on women's participation in political life.

It is recommended that the reduction in the quota for women in the provincial councils be reviewed or reconsidered with a view to further enhance the participation of women in political life.

A number of discrepancies exist between the primary legal framework and relevant regulations pertaining to the electoral dispute resolution process. Whereas the IEC and IECC regulations and procedures provide for the right of voters to submit complaints at polling stations and set deadlines for filing complaints against preliminary results, this is not provided for in the law.¹⁵

Submission of complaints by voters at polling stations as well as deadlines for filing complaints against preliminary results should be clearly specified in the law. To avoid such discrepancies, consideration could be given to updating the election law on the basis of existing practice as embodied in the corresponding regulations.

While Article 79.2 of the Election Law clearly stipulates that the IEC and the IECC are obliged to publish their regulations, procedures and guidelines at least 90 days prior to election day, both commissions adopted several key regulations after this deadline had passed. The IECC Regulation on Assessment of Validity of Votes and the IEC Regulation on Cancellation and Invalidation of the Votes as a Result of Audit and Investigation were adopted in the middle of the audit process, on 10 and 17 April 2014 respectively, in contradiction of the law. This delay did not allow candidates sufficient time to become familiar with the audit procedures and their application, which reduced transparency and accountability of the electoral process. The late adoption of the audit criteria was criticized by a number of OSCE/ODIHR EST interlocutors.

After runoff election day, the IEC commenced an unprecedented special audit process pursuant to Article 58 of the Election Law. However, a detailed IEC decision, outlining the criteria and regulating the audit of ballot boxes, recount of ballots and invalidation of votes was not adopted prior to the commencement of this process.

Enactment of the legal provisions at the last minute weakened the legitimacy and credibility of the electoral process and prevented electoral stakeholders from being informed about the applicable rules of the electoral process in a timely manner. International standards and good practice highlight that stability of the law is crucial to credibility of the electoral process.¹⁶

Commission, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023-e), states that the right to complain "must be granted as widely as possible."

¹⁴ See Paragraph 25(b) of the ICCPR. See also Paragraph 7.3 of 1990 OSCE Copenhagen Document.

¹⁵ See IEC Polling and Counting Procedures and IECC guidelines.

¹⁶ See Paragraphs 1 and 19 of General Comment No. 25 (1996) to Article 25 of the ICCPR by the UN Human Rights Committee. See also paragraph II.3 of the Code of Good Practice in Electoral Matters of the Council of

In line with international standards and good practice, electoral legislation should be enacted sufficiently prior to an election in order to allow electoral stakeholders and voters adequate time to familiarize themselves with the rules and procedures that apply to the electoral process.

B. CANDIDATE REGISTRATION

Legal requirements to stand as a candidate in presidential and provincial council elections are established in the Constitution and reiterated in Articles 13 and 15 of the Election Law, respectively. The IEC adopted a regulation on the registration of candidates to supplement these legal provisions. The regulation stipulates that a presidential candidate must submit a list of at least 100,000 supporting signatures (or finger prints) of eligible voters from a minimum of 20 provinces, with at least 2 per cent of the total number of signatures originating from each of these provinces, and a 1 million Afghani (AFN) deposit.¹⁷ The deposit is returned to a candidate in case he or she wins or receives at least ten per cent of the valid votes cast. Candidates for the two vice presidents (so-called running mates), who registered on the same ticket with the respective presidential candidates, did not have to submit any lists of supporters or financial deposits.

The requirement of both signatures and electoral deposits for presidential candidate registration may prevent legitimate candidacies. The registration requirement should be met through either the collection of signatures or payment of an electoral deposit. Although the amount of an electoral deposit should be sufficient to discourage spurious candidates, the deposit amount should be carefully calibrated not to result in the denial of suffrage rights.

Among other requirements, candidates for provincial council elections were required to provide a 12-year high-school certificate to be registered as a candidate, which is at odds with international standards.¹⁸ A high number of candidates were disqualified based on them failing to meet this educational requirement. Furthermore, the educational requirement may have affected the ability of women to stand for election disproportionately, as they traditionally have less access to education than men.¹⁹

The existing educational requirements for provincial council candidates are overly restrictive and should be reconsidered.

Initially, 27 presidential candidates and 3,056 (including 323 women) provincial council candidates submitted their application documents to the IEC. After the verification process, the IEC published the final list of 11 approved presidential candidates and their respective running mates for the posts of first and second vice-presidents, along with a list of 2,713 (including 308 women) provincial council candidates.²⁰ The IEC, at times, failed to provide sufficient information on the reasons for the rejection of individual candidates, who on several occasions have learned about their status from the media.

Europe's Venice Commission, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023-e).

¹⁷ See Article 1.A of the IEC Regulation on Registration of Candidates, 23 July 2013. One million AFN is equivalent to some 13,200 EUR.

¹⁸ See General Comment 25 (1996), paragraph 15, as quoted above.

¹⁹ In rural areas, an estimated 90 per cent of women and 63 per cent of men cannot read, write or count. See National Literacy Action Plan for 2012-2015 by Literacy Department of Ministry of Education, available at <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/pdf/Afghanistan.pdf>.

²⁰ Initially, the list of presidential candidates comprised only 10 applicants. Mr. Daoud Sultanzoy was admitted to run for the office after his appeal was granted.

Implementation of legal provisions on candidate registration should be improved by increasing transparency of verification procedures and by offering detailed and timely information to prospective candidates about the results of the verification and possible deficiencies in their documentation with a view to providing a genuine opportunity for them to appeal against non-registration.

Prior to the first round, three candidates officially informed the IEC of their withdrawal from the presidential race.²¹ Therefore, eight presidential candidates finally competed in the election. While there were no women among the presidential contenders, three women were registered as presidential running mates. The withdrawals happened after the legal deadline and, as the ballots were already printed, 11 presidential candidates' names appeared on them. The election law envisages such situation stipulating that votes cast for withdrawn presidential or provincial council candidates should be considered invalid.²² Provincial council elections were contested by a total of 2,590 (including 297 women) candidates. The final lists of candidates were published on the website of the IEC but were not updated when candidates withdrew. Despite identified legal and organizational shortcomings, the candidate registration process was inclusive and voters enjoyed a genuine choice between distinct alternatives on election day.

V. ELECTION ADMINISTRATION

The election administration has three tiers, comprising the IEC, the 34 provincial offices of the IEC (PIECs), managers of polling centers, which comprise multiple polling stations, as well as polling station (PS) committees. In addition, the IEC engaged a number of district field coordinators (DFCs) recruited through the PIECs.

The 2013 Structure Law introduced a selection committee consisting of representatives from the National Assembly, the Supreme Court, the Afghan Independent Human Rights Commission, and civil society to nominate candidates for IEC and IECC commissioners, thereby providing for a more inclusive and transparent appointment mechanism in line with previous OSCE/ODIHR recommendations.²³ In accordance with the Structure Law, 9 IEC commissioners (including 2 women) were appointed by President Karzai for 6-year terms on 29 July 2013 from a short list of 27 nominees proposed by this committee.²⁴ However, as the ultimate discretion to appoint the commissioners remained with the president, some electoral stakeholders expressed a degree of skepticism as to the independence of the appointed commissioners.

Additional consideration could be given to possible mechanisms to address the lack of public confidence in the impartiality and inclusivity of the appointment mechanism of the IEC.

The chairperson, deputy, and a secretary of the IEC were elected from among IEC members. The IEC is supported by a secretariat, which is responsible for the day-to-day operations under the policy directions of the commission. The secretariat is headed by the Chief Executive Officer (CEO) who is appointed by the President for a four year term from among professionals recommended by the IEC.

²¹ Mr. Abdul Qayum Karzai, Mr. Abdul Rahim Wardak and Mr. Sardar Mohammad Nader Naeem announced their withdrawals from the presidential race on 6, 16 and 26 March respectively and submitted resignation letters to the IEC shortly before election day. Furthermore, the IECC additionally disqualified 114 provincial council candidates for failing to meet either the education or age requirements.

²² Article 47.2 of Election Law says that the votes cast for the candidates who withdrew "shall not be counted during counting of votes", which the IEC clarified to mean that such votes will be considered invalid.

²³ See, Articles 8 and 22 of the Structure Law. In the past, the president single-handedly selected and appointed the IEC commissioners.

²⁴ The selection committee was criticized for not involving a representative of election-related civil society organizations in the commissioner nominees' selection process, as envisaged by the law, following the failure of civil society organizations to reach an agreement on who would represent them on the committee.

The executive structure includes provincial electoral offices (PEOs), through which the secretariat maintains a permanent presence in all provinces. The management of the secretariat includes two deputies in administration and operational affairs, who have the responsibility for the day-to-day management and coordination of departments.

Since the end of the last election cycle in 2010, the IEC has benefited from a large-scale capacity building project financed by the international community.²⁵ The project provided both expert advice and financial support to the IEC, which allowed it to prepare and implement a Strategic Plan for 2011-2016. In a welcome step, the IEC strategic plan took into account a number of previous OSCE/ODIHR recommendations. In 2013, the international community support to the IEC was extended to cover expenses needed for the conduct of the 2014 elections in supplement to the funding provided by the Afghan government. For the 2014 elections, the IEC also prepared a comprehensive Operational Plan as well as a Fraud Mitigation Strategy.²⁶ The continuous support from the international community, the timely preparation of these documents, as well as the attention paid by the IEC to the lessons learned from the previous elections, contributed significantly to the preparedness of the electoral administration for the 2014 elections.

The international community should continue its support to further increase the capacity of the IEC, in line with its strategic plan, with particular emphasis on drawing and implementing lessons learned from the 2014 presidential and provincial council elections.

For these elections, the IEC engaged a total of 99,934 staff across the country. Where possible, the IEC recruited staff with experience from earlier elections. In a welcome step, the IEC barred some 11,000 persons from employment as temporary electoral staff due to their alleged misconduct during previous elections.

The MoI devoted special attention to the recruitment and training of female polling staff, including female searchers. Shortage of available female recruits in traditionalist areas again forced the PIECs, as a last resort, to engage and train local male elders to staff female polling stations.

The IEC and the Ministry of Interior should establish a proactive recruitment plan to hire female polling station staff and female searchers. Special emphasis should be placed on the training and retention of female workers at all levels of the election administration.

The IEC lacked transparency in some of its operations but responded adequately to criticism and gradually improved, especially before and during the second round of the presidential election. With a few exceptions related to the tallying of results, the IEC decision-making was done behind closed doors, but information was regularly provided to the public, candidate agents and observers through press conferences and special briefings and newsletters. The IEC website was regularly updated with decisions and information on the activities of the commission, but not always in a timely or comprehensive manner.

In order to maintain transparency and enhance its credibility, the IEC should open its decision-making sessions to party and candidate agents and observers and plan all its operations with a view of providing satisfactory access to observe them. Information on its decision-making and other activities should be made available to the public on its website in a timely and consistent manner.

²⁵ The international community provided technical support to the IEC through the UNDP ELECT II programme. Additionally, the IECC was supported through IFES and the United Nations Office for Project Services (UNOPS).

²⁶ Both documents, as well as the IEC Strategic Plan 2011-2016, are available on the IEC website.

A. LOGISTICS, TRAINING AND OUTREACH ACTIVITIES

The IEC printed 15,121,000 ballots for each election, distinguishing those for the two elections by color. It prepared polling center kits, polling station kits, bottles of indelible and invisible ink, UV lamps, voting screens, ballot boxes, and blue boxes for transportation of election materials. The movement of election materials for each round took not less than 30 days and was completed with the assistance of the Afghan National Security Forces (ANSF) supported by the ISAF.

A nationwide public outreach campaign included billboards, pole signs, brochures, posters, leaflets, fact sheets, pocket calendars and stickers. IEC mobile theaters visited all 34 provinces and IEC placed public service announcements on 24 television and 51 radio stations. Outreach materials, including mock ballots, sample ballots, flip charts, and manuals were distributed throughout the country by 1,450 IEC civic and voter educators. IEC also operated voter information call centers until the announcement of first round final election results on 15 May. The DFCs carried out cascade training for the polling center managers, polling station chairpersons, inkers, and ID officers; polling station chairpersons, in turn conducted trainings for ballot paper issuers, ballot box and queue controllers shortly before each election day.

Practical preparations for the presidential runoff began as soon as the indications of a possible second round were evident. The printing of the runoff ballot papers was initiated prior to the official announcement of the first round results. The IEC also determined the position of the candidates on the ballot without drawing lots as required by law, but informed the OSCE/ODIHR EST that this was done with the agreement of the runoff candidates. The IEC explained that since the distribution of ballot papers alone required more than 30 days, the legal deadlines were impossible to meet.

VI. VOTER REGISTRATION

The registration of voters is active and requires voters to physically appear at a voter registration center and to provide an identification document in order to obtain a voter card as a proof of registration. Voter registration exercises have been conducted in Afghanistan since the first post-Bonn elections in 2004, but they have not yet resulted in the development of a comprehensive central voter registry. Voter cards from all previous voter registration exercises were accepted as valid voter ID in polling stations on election day. The IEC conducted a top-up exercise of additional distribution of voter registration cards for the 2014 presidential and provincial council elections (see below) to capture new voters and those who had not been covered by previous exercises.²⁷

For the 2004 elections, 10,942,989 voters were registered to vote in a nationwide exercise conducted by the electoral management body, followed by a voter registration update in 2005. At the 2006 London Conference, the Afghan government and the international community agreed to a ‘permanent civil and voter registry with a single national identity document’, but subsequently the government opted to separate civil and voter registration.

For the purpose of the 2009 elections, IEC conducted a top up voter registration operation to update existing databases which resulted in 4,720,906 new voter registration cards issued. Photographs were added to the voter cards and were captured, along with the fingerprints, for biometric processing. Photographs on the voter cards were, however, not mandatory for women neither in 2009 nor in 2014.

After the renewed top-up voter registration exercise for the 2010 elections, the IEC estimated that the total number of voter registration cards issued since 2003 totaled more than 17 million, as compared

²⁷ See IEC Regulation on Voter Registration adopted on 22 January 2013.

to an estimated 10.5 million eligible voters.²⁸ The discrepancy between the number of voter cards issued and estimated voters opens an unwelcome potential for multiple voting and challenges the principle of equality of the vote, enshrined in the Constitution and international standards.²⁹ The inability to produce accurate pre-printed voter lists for use at polling stations is a major drawback as it also compromises operational planning, including the allocation of ballot papers needed in a geographical area. The abundant number of voter cards in circulation, combined with the possibility of excessive ballot allocation, increases the opportunity for misconduct and decreases the ability to identify fraud when it occurs.

In view of these concerns and following a voter registration feasibility study in 2012, the IEC began preparations for a new and comprehensive nationwide voter registration exercise in line with its strategic plan. However, following feedback from the international community and subsequent decisions by the Afghan government, the IEC abandoned preparations for a stand-alone voter registry.³⁰ In 2013, the IEC agreed to sign a memorandum of understanding with involved government institutions for furthering an electronic national identification card (*e-tazkira*) project.³¹ The long-term aim is a voter registry extracted from the civil registry database created by the *e-tazkira* project, and the IEC continues its dialogue with the relevant ministries to ensure the appropriate and necessary synergies are in place for this end. To date, however, the *e-tazkira* project has not resulted in the issuance of electronic ID cards to the population; the lack of political consensus about the legal framework, including with regard to a new census, appears to be the main obstacle. For the 2014 election, the voting card effectively remained the single accepted valid voter ID.

The government could consider rescinding its decision to ban a stand-alone voter registry so that the IEC can make an independent decision regarding the future voter registry options, be it either to link the voter registration with the development of a civil registry or to establish a stand-alone voter register.

In the short-term, the IEC launched a new voter card top-up exercise for the 2014 elections intended to capture four million voters. The exercise mainly targeted female, Kuchi and newly eligible voters and was conducted in three phases. The first phase began on 26 May 2013 with the opening of 41 registration centers in provincial capitals.³² The second phase commenced on 26 July with the opening of 386 registration centers in most district capitals and lasted until 10 December 2013.³³ The third phase was intended to allow non-registered eligible voters to add their names to the voter list until 72 hours prior to election day. As this phase applied to the first round election day, voters who turned 18 between the two rounds were not eligible to vote in the runoff.

The start of the 2014 registration exercise was slow due to initial lack of voter interest as well as some

²⁸ IEC presentation “Voter Registration: the Afghan Case Study” presented on 7 March 2013 at the European Commission-UNDP Thematic Workshop in Maputo, Mozambique. Copy received from the IEC.

²⁹ See Article 25 (b) of the ICCPR, as well as Paragraph 7.3 of the 1990 OSCE Copenhagen Document, which states that participating States will “guarantee universal and equal suffrage to adult citizens.”

³⁰ On 17 September 2012, the Council of Ministers decided to reject the IEC plan for a nationwide voter registration. On 2 January 2013, the Office of Administrative Affairs of the Council of Ministers clarified, among other issues, that the IEC was not to conduct an exercise aimed at retrieving and invalidating fraudulent voter cards in circulation.

³¹ In June 2013, the IEC together with the Ministry of Communication and Information Technologies, the Ministry of Interior and the Ministry of Finance began drafting a memorandum of understanding for a pilot project introducing the electronic national identification card (*e-tazkira*) for Kabul province. The parliament has still to establish the legal framework governing *e-tazkira* and the memorandum has not yet been finalized.

³² Registration centers comprised separate units for female and male registration.

³³ The IEC initially planned 399 voter registration centres. However, centres did not open in 13 districts, of which 9 in Ghazni, Nuristan, Logar, Kunar, Kapisa and Paktika provinces – due to logistical challenges, and 4 in Ghazni, Zabul and Helmand provinces due to security concerns. In remote areas, the IEC also deployed mobile registration units.

technical and organizational problems, but later gained momentum. Only a few security incidents were reported during the exercise, which notably did not claim any casualties. As a result, the IEC nearly met its targets and registered 3.8 million voters, of whom 1.32 million (34.7 per cent) were women. Thus, for the 2014 elections a total of nearly 21 million voter registration cards were in circulation among a population comprising some 13 million voters.

As previously recommended, if voter registration cards are maintained, it should be a mandatory requirement that all registrants, male and female, have photographs on their voter card as a deterrent against fraud.

VII. CAMPAIGN

A. CAMPAIGN ENVIRONMENT

The Constitution guarantees freedoms of speech, assembly and association. The Election Law determines the basic campaign regulations and defines the campaign as “activities of candidates or political parties to gain the support of voters.”³⁴ To supplement constitutional and legal provisions, the IEC adopted campaign and media regulations and developed codes of conduct for presidential and provincial council candidates and the media. All candidates were obliged by the IEC regulation to sign the code of conduct as a precondition to their registration. Campaign period lasted 60 and 30 days for the presidential and provincial council elections respectively and ended two days prior to each election day. The length of the campaign period in a second round of the presidential election is not explicitly addressed in the law.

It is recommended that the electoral legal framework is reviewed to include clear definition of the length of campaign period for possible runoff in a presidential race.

The campaign period commenced on 2 February for the presidential race and on 2 March for the provincial council elections and ended on 2 April. In addition to displaying campaign posters in the main cities, some candidates produced leaflets and conducted neighborhood meetings with voters. Most presidential candidates frequently appeared in televised debates on nationwide broadcast media.

After a slow start due to winter weather conditions, the first round presidential campaign gained momentum and most candidates held well-attended indoor and outdoor rallies. Due to the often volatile security environment, the intensity of the campaign varied significantly between urban and rural areas. While rallies were frequent and visible in the major cities, they were scarce in the villages, where candidates often limited their campaign activities to contacting tribal leaders and elders to win local voter support. Some candidates expressed concern about the timing of the election in early spring as negatively affecting their ability to reach out to voters, particularly in remote rural areas.

By deliberately choosing candidates for vice presidents of different ethnic origins and actively campaigning as multiethnic teams, most presidential candidates attempted to reach out to voters from different ethnic communities. However, asserting tribal and other affiliations, rather than differences in political platforms, continued to play a dominant role in the campaign. Most presidential candidates promised to increase employment opportunities, fight corruption, advance the peace talks and signing of the Bilateral Security Agreement (BSA).³⁵ One presidential candidate actively campaigned for the replacement of the current presidential system of government with a parliamentary system, including

³⁴ See Articles 4.16, 48-51 of the Election Law. There is no reference to citizens’ or voters’ right to campaign.

³⁵ With the conclusion of the mandate of the ISAF at the end of 2014, the United States and its partners have conditioned a smaller post-2014 training and security mission on the signing of the BSA.

the creation of the post of prime minister and a degree of decentralization of power.

As determined by the IEC decision, the campaign period for the presidential runoff began on 22 May and lasted three weeks. The two contenders limited their campaign activities to displaying posters and reaching out to potential voters and political allies through patronage and other networks. Both candidates received endorsements from the losing first round contenders and their running mates. Efforts to arrange a televised final debate between the two runoff candidates did not materialize, partly due to security concerns.

The tone of the campaign in general remained positive throughout the process; however, the campaign environment became more polarized and tense in the runoff. Although instances of use of ethnic stereotypes and other negative ethnic rhetoric about members of one candidate's team by members of the other occurred, they were generally promptly condemned by the authorities and civil society, as well as by the candidates themselves.

Instances of illegal campaigning by government officials occurred in both rounds of the presidential election, as well as in the provincial council elections, which jeopardized the principle of fairness in the conduct of campaign.³⁶ Positively, the authorities took immediate remedial action and dismissed or sanctioned the officials involved when several such cases were brought to their attention. However, in one instance, a district police chief involved in illegal campaigning for one of the main presidential contenders in the first round was dismissed only to be reinstated in a similar position in another province prior to the second round. This rendered the sanction ineffective.

It is recommended that the authorities continue to remain sensitive to all instances of abuse of state resources, including cases of government officials' involvement in illegal campaign activities, and take prompt and effective action to address such violations should they occur.

B. THE MEDIA COMMISSION

The Media Commission (MC) is a temporary body established for each election under the IEC to monitor the performance of media during the election period. The five-member professional body was appointed by the IEC in December 2013.³⁷ Prior recommendations of the OSCE/ODIHR EST regarding media regulation during the campaign, including granting the MC representation at provincial level to better fulfill its mandate, have not been implemented. The IEC is responsible for staff recruitment and allocation of budget means to the MC and exercised significant control over these processes during the whole electoral process. The MC reported a lack of transparency in the recruitment of commissioners by the IEC and called for more emphasis on professional merits in the recruitment process. Furthermore, delays in staff appointment and in the allocation of budget means to the MC had a negative impact on the MC's ability to commence monitoring of media activities in a timely manner.

To enhance the credibility of the IEC Media Commission, it is recommended that additional measures be taken to increase transparency in the appointment of media commissioners and to ensure that, once appointed, the commission is granted more responsibility for staffing and budgetary matters.

³⁶ Paragraph 7.6 of the 1990 OSCE Copenhagen Document calls for "the necessary legal guarantees to enable them [political parties and organizations] to compete with each other on a basis of equal treatment before the law and by the authorities." Additionally, Paragraph 5.3 of the 1990 OSCE Copenhagen Document highlights "the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law."

³⁷ In compliance with the Articles 61.1 and 61.6 of the Election Law, the MC has to be established no later than 90 days before the election day and has to accomplish its work not later than 45 days after the final results have been announced.

In order to enable the MC to fulfill its mandate, the IEC approved a number of procedures for addressing media-related complaints in the electoral process. During the presidential campaign, the MC considered seven cases in total: two in the first and five in the second round. In addition, the MC settled a number of issues through informal negotiations. The MC fined 13 television stations and 1 radio station for violations of media coverage of the campaign in the first round, and 13 television stations, 5 radio stations, and 4 newspapers for similar violations in the runoff.

The enforcement of MC sanctions became an issue. Although the MC repeatedly extended deadlines for payment of fines at the request of individual media outlets, some of them nevertheless did not pay them. Although the MC warned that non-payment of fines could result in withdrawal of a license, the MC hesitated to initiate this sanctioning procedure with respect to the violators, who were all private media outlets, at its own initiative. In late September, the MC decided to refer to the prosecution for enforcing the payment of the imposed fines by the nine media outlets.³⁸

The MC also monitored contestants' expenditures on paid advertisements in the media. It covered a total of 55 media outlets based in Kabul, comprising 44 broadcast media (26 television channels and 18 radio stations), as well as 10 print publications and 1 online television station. As the MC did not have any presence beyond Kabul, its monitoring capabilities were limited, specifically with regard to regional print media. The MC produced media monitoring reports, which were published on the IEC website.³⁹ The MC used the findings of the media monitoring reports to impose sanctions on the media outlets that breached campaign silence provisions. Aside from documenting violations, publication of the MC findings reportedly also had a positive effect on media performance during the campaign.

It is recommended that the IEC take additional measures to ensure that the Media Commission is sufficiently and timely resourced to commence the activities envisaged by its mandate. Due consideration should be given to the time needed to recruit and train relevant Media Commission staff.

C. CAMPAIGN FINANCE

Campaign finance is regulated by the Election Law and the IEC Regulation on Managing Campaign Finance. The legislation provides for private funding of political parties, establishes ceilings on donations and campaign expenditures, and regulates reporting and disclosure requirements. The legal framework provides general requirements for ensuring the integrity and transparency of campaign financing in line with international standards but lacks detail and does not provide an exhaustive list of irregularities and applicable sanctions.⁴⁰ The implementation of the legal framework and oversight of campaign finance proved to be insufficient and problematic.

According to the law, the total amount of expenditures by a candidate may not exceed AFN 10 million (EUR 132,000) and AFN 50,000 (EUR 6,600) for the presidential and provincial council candidates respectively. As the law does not regulate the expenditure ceiling in case of a presidential runoff with its shorter campaign period, the expenditure ceiling for the three-week runoff campaign remained AFN 10 million, the same as for the two-month campaign for the first round of the presidential election. The expenditure ceiling was considered unrealistically low in comparison to the prices for paid political advertisement and was highly criticized by all relevant stakeholders, including the

³⁸ The nine outlets included six television stations, two radio stations and one newspaper.

³⁹ The MC reports are available on the IEC website www.iec.org.af.

⁴⁰ United Nations Convention Against Corruption, Article 7(3) states "Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties".

candidates. It also reportedly led to candidates concealing expenditures and providing the IEC with inaccurate information.

It is recommended to consider increasing campaign expenditure ceiling to an appropriate and effective level to enhance transparency of the process and minimize the risk of circumvention of campaign finance regulations.

Candidates may be financed through private donations only. Presidential candidates may receive maximum donations of AFN 50,000 from individual donors (citizens) and AFN 500,000 from political parties and non-governmental domestic legal entities. Public funding is prohibited under law, which undermines the potential of this funding mechanism as one of the means for preventing corruption, ensuring a level playing field among the candidates, removing undue reliance on private donors, and introducing incentives for women's participation in political life.⁴¹

Consideration could be given to introducing the system of public funding of candidates and political parties. Distribution of public funds should be strictly connected to compliance with campaign finance regulations, such as reporting requirements, and could be structured to provide additional incentives for women's participation in political life.

Candidates are required by law to open separate bank accounts for their electoral campaigns and submit biweekly financial reports to the IEC which is to publish them on its website. Two presidential candidates failed to submit financial reports and were subsequently fined by the IECC. No further sanctions were imposed for campaign finance violations. According to the IEC, in order to fulfil its duties, it has continuously tried to co-operate with the candidates concerning their campaign finance matters. However, financial agents of the presidential candidates refrained from presenting accurate and timely information, concealed parts of their campaign-related activities and failed to co-operate with the IEC. Election Law qualifies the use of illegal resources and funds as a violation but does not address other violations of campaign finance requirements, including refusal to submit financial reports or their late submission. Moreover, it does not clearly regulate applicable sanctions for the violation of campaign finance requirements and, thus, does not provide for an effective enforcement mechanism.

The electoral legal framework should be revised to provide an exhaustive list of campaign finance irregularities and applicable sanctions that are proportional, effective and dissuasive. Presidential candidates should carry responsibility for non-co-operation with the IEC in campaign finance matters.

The IEC Unit for Controlling Financial Affairs of the Electoral Campaigns of the Candidates is responsible for campaign finance oversight. It is the IECC, however, which is vested with the powers of enforcing adherence to the campaign finance regulations, on the basis of complaints. The law, however, does not clearly define the mandate of the IEC and other relevant stakeholders, such as the IECC, to exercise campaign finance oversight, including evaluation of the presented financial reports, and to proactively respond to violations of campaign finance regulations. The IEC faced difficulties in analyzing and evaluating financial reports of the candidates, reportedly due its limited capacity. The IEC informed the OSCE/ODIHR EST that it summarizes and makes the financial reports of candidates public and leaves it to all interested stakeholders to review the reports for accuracy and submit complaints to the IECC. However, no individuals, media, or representatives of civil society organizations officially questioned the financial reports of the candidates published on the website of the IEC.

⁴¹ See paragraphs 176-177 of the OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation, <http://www.osce.org/odihr/77812>.

It is recommended that the legal framework be revised to clearly define the mandate of the IEC in providing thorough, comprehensive and timely campaign finance oversight. Enforcement capacity of the IECC in the campaign finance matters should also be clarified.

VIII. CITIZEN AND INTERNATIONAL OBSERVATION

The Election Law provides for citizen and international election observation. Accreditation is a two-step procedure: political parties, candidates, election observer organizations, and media outlets must obtain organizational accreditation with the IEC before they submit requests for accreditation of their respective representatives. Accredited observers have “the right to participate in the electoral process in order to monitor and report on it.”⁴² Additionally, the IEC granted the right to agents of candidates and observers from national and international organizations, but notably not to the media, to be present at “open sessions” of the IEC.⁴³ Furthermore, the IEC adopted a legally-binding code of conduct for citizen and international observers.

During polling or registration of voters, the head of the respective polling or registration centre is granted the discretion to set time limits on the presence of observers, candidate agents and media representatives in the facility. Although intended as a measure to avoid overcrowding, the provision is overly restrictive and constitutes an unjustified limitation of the right of observers and agents and a potential impediment to their work. The same applies to other IEC provisions, which require candidates and political parties to co-ordinate and disclose plans for election day deployment of their agents and representatives to the IEC in advance.

The possibility of setting time limits on the presence of observers, candidate agents and representatives of political parties and media in polling and voter registration sites should be lifted. If overcrowding is an issue, consideration should be given to setting a maximum number of observers, agents or representatives allowed per sending entity in a polling station or registration centre. The provisions that require advance co-ordination and disclosure of deployment plans by candidates and political parties could be reconsidered.

Overall, the accreditation procedure was timely and inclusive. Following the completion of the first step of the accreditation process on 22 March, the IEC announced that it had accredited 68 citizen observer organizations. At the request of some of them, the IEC agreed to accept and process applications past the 29 March legal deadline for individual observer accreditation. According to the IEC, a total of 14,585 citizen observers were accredited for the presidential and provincial elections as of 4 April and up to 18,000 for the runoff. The IEC announced that observer accreditations obtained for the first round remained valid for the second round. This also applied to some 1,200 international observers from 17 entities accredited in the first round. The IEC opened a possibility for accreditation of additional observers, however, without setting a deadline for applications.⁴⁴ In both rounds, some 30 per cent of accredited observers were women.

⁴² See IEC regulation on accrediting political parties, independent candidates, observer organizations and media adopted by the IEC on 15 December 2012, Article 6.1. The right to observe all stages of tallying and announcement of results is guaranteed in Article 9 of the IEC regulation on tallying, certification and announcement of the results of 11 February.

⁴³ Regulation on participation of agents and observers of national and international observers in open meetings of the IEC, adopted by the IEC on 18 February. It appears to be the sole discretion of the IEC to determine, which of its sessions shall be considered ‘open’.

⁴⁴ The IEC allowed for additional accreditation of observers and candidate agents, at their request, during the comprehensive audit (see below).

The IEC should officially regulate the issue of validity of observer accreditation and determine deadlines for applications by and accreditation of additional observers, candidate agents and media in the event of a second round of a presidential election.

A total of 345,715 agents of candidates and political parties were accredited for the 5 April elections. Seven out of the eight presidential candidates accredited a total of 80,645 agents. Most agents, 246,740 in total, were fielded by 2,086 provincial council candidates. In addition, 30 political parties accredited 18,330 agents. Of the total number of agents deployed by candidates or political parties, about 22 per cent were women.

Prior to the presidential runoff, the IEC clarified that accreditations of the agents of unsuccessful first round contenders were no longer valid, but concurrently called on both candidates to accredit and deploy additional agents in sufficient numbers to adequately cover polling stations on election day. For this purpose, the IEC distributed 50,000 accreditation card forms to each candidate. Both candidates responded to this call, and, according to IEC, accredited a total of 87,346 candidate agents, hereof 25,427, or 29.1 per cent, women.⁴⁵ In addition, political parties deployed 21,292 representatives, of whom 4,134, or 19.4 per cent, were women. Despite the fact that presidential candidates reported difficulties in deploying agents throughout the country due to the security situation as well as financial and organizational constraints, the IEC informed the OSCE/ODIHR EST that more than 95 per cent of the polling station election results sheets were signed by the agents of both candidates in the presidential runoff.⁴⁶ There were also reports that candidate agents lacked training and that most were ill-prepared to observe and report on election day activities.

It is recommended that political parties and candidates, in co-operation with the IEC and the international community, enhance their training programmes for agents in order to better prepare them for observation and reporting on electoral processes.

Prior to the elections, several civil society organizations (CSOs) were actively engaged in the reform of the electoral legal framework and made recommendations to the text of the new election laws. They engaged in civic and voter education and arranged public debates. In addition to observing election day procedures in the polling stations, national observer groups also engaged in the long-term observation and followed the registration of candidates and the campaign. A number of CSOs deployed observers to follow the results tallying process at the National Tally Center (NTC) as well as the audits and recounts at local and central levels.

The main national citizen observer organizations included the Free and Fair Elections Forum of Afghanistan (FEFA), the Transparent Election Foundation of Afghanistan (TEFA), the Afghanistan National Participation Organization (ANPO), the New Line Organization (NLO), the Afghanistan Youth National and Social Organization (AYNSO), and the Election Watch Afghanistan (EWA). All organizations received financial and other support from the international community.

For the 2014 elections, FEFA deployed more than 9,500 observers for the first round and more than 9,000 for the runoff to cover 70 per cent of the total number of polling stations.⁴⁷ TEFA informed that they fielded 6,966 observers in the first round and 8,592 observers for the runoff. FEFA and TEFA were the only national observer groups to deploy in all 34 provinces. The aggregate figures of

⁴⁵ Dr. Abdullah accredited 42,160 agents, of which 11,763, or 27.2 per cent, were women; Dr. Ghani accredited 45,186 agents, of which 13,664, or 30.2 per cent, were women.

⁴⁶ The authenticity of agent signatures on some results sheets was contested by one of the runoff candidates at a late stage of the audit process, and the IEC on 7 September established a procedure for their review. The review took place after the OSCE/ODIHR EST left the country.

⁴⁷ Data on the number of observers and deployment are based on information provided to the OSCE/ODIHR EST by the respective observer groups.

observers claimed by these two organizations alone exceed the officially announced number of accredited citizen observers. ANPO, together with NLO, deployed 750 observers to 13 selected provinces. Besides that, ANPO had additional 950 observers deployed in Kabul under the umbrella of FEFA. AYNSO deployed 350 observers to five provinces of the Western region, while EWA, which only observed the runoff, deployed 500 observers to 16 provinces on election day.

Most organizations co-ordinated their election day deployment plans in order to ensure synergy and avoid overlapping. ANPO, AYNSO, FEFA, NLO and TEFA signed a declaration of joint principles for election day observation in which they outlined a mechanism for co-ordination and information sharing. The organizations issued a joint statement after the first round and made recommendations aimed at improving the runoff electoral process; however, no joint statement was issued following the second round. The observer co-ordination effectively only resumed in early July with a joint call on the IEC to address certain issues prior to the announcement of the preliminary results of the runoff.

Citizen observer groups could maintain the practice of election day deployment co-ordination and further enhance their sharing of information and post-election day reporting.

Several citizen observer groups exchanged findings and presented joint recommendations to the IEC and the IECC and other stakeholders on aspects of the process. On 1 June, the IEC hosted a stakeholder meeting with participation of national and international observers where calls were made for enhanced transparency and improved accessibility for observers and candidate agents to monitor the process of tallying and certification of results. The IEC informed about the changes made in this regard. In response to requests of observer groups, the IEC further promised to consider all reports brought to their attention about observers or agents who experience impediments to their work on election day. An observer request to share a list of IEC staff dismissed for misconduct during first round with the possibility to confirm their effective dismissal on second round election day was not met.

All national observer groups established call centers to collect information from their observers on election day and subsequently issued reports with their findings and conclusions. Although these reports often noted observation of shortcomings such as instances of ballot paper shortage, ballot box stuffing, proxy voting or denied access of observers, but frequently lacked the necessary level of detail to allow for an objective verification of the findings. Most observer groups did not differentiate between what was observed by their observers (first-hand information) and what was reported to them. Several reports noted the frequency of observed instances of ballot box stuffing without explaining how they defined the term or detailing what was actually observed and if any remedial action was taken. Overall, this reduced the effectiveness of their reporting.

The international community should continue to support the capacity building efforts of citizen observer groups in a co-ordinated manner, with an emphasis on application of internationally accepted observation principles, including documentation and verification of findings, as well as accurate and impartial reporting.

IX. ELECTION DAY

In line with its mandate, the OSCE/ODIHR EST focused on the longer-term electoral process without the deployment of short-term observers that would have provided the basis for a quantitative assessment of election day. The observers visited a limited number of polling stations in Kabul, although observation on election day was not conducted in a comprehensive manner.

A. POLLING CENTRE LIST

In the absence of a central voter registry, voters could not be linked to specific polling centers, but were free to choose a polling station on election day. This, combined with the absence of a reliable, updated census or other statistical population data, posed, once again, a significant challenge to efficient election planning and made the electoral process more vulnerable to fraud. The IEC had to reconcile the need for an inclusive election with sufficient safeguards against the risk for ballot box stuffing that could be enabled by the circulation of ballot papers in excess numbers. In light of this, the IEC decided to allocate 600 ballots for each kind of election to each polling station and used available population data to project the number of polling stations required. In case of ballot shortages, the IEC procedures envisaged release of contingency polling stations kits supplied to each province in advance of election day and redirection of voters to nearby polling stations with ballots available.

The list of polling centers was considered a contentious issue as closure of polling centers for security reasons in selected areas could potentially affect voter turnout and thus the election result. The non-availability of suitable premises for voting also became an issue. Despite criticism from some CSOs, the IEC again established polling centers in local health care centers and mosques.

The MoI conducted assessments of security around polling centers on a running basis, but it was the prerogative of the IEC to determine the final list of polling centers to open on election day on the basis of MoI recommendations. Furthermore, the IEC in both rounds reviewed the polling center list with key electoral stakeholders, including presidential candidates, in an attempt to reach consensus about the number of polling centers that would open on election day.

Based on the final assessment and recommendations of the MoI prior to the election, the IEC on 30 March announced that 6,423 polling centers comprising 20,795 polling stations, including 12,222 male and 8,573 female ones, would be open to serve voters on 5 April. From the initial maximum list of 6,775 polling centers, 352 were to remain closed for security reasons. The IEC published the list of polling centers on its website the same day.

Prior to the second round, the IEC revised the list of polling centers in response to criticism over the perceived ballot shortage in the first round. For this purpose, the IEC developed a formula for adding new polling stations to the existing list of polling centers and reviewed its contingency plan.⁴⁸ The IEC consulted the updated list with the runoff contestants. As a result, on 10 June, the IEC announced an increase of the number of polling stations to 23,136 for the second round, including 9,324 serving female and 13,812 male voters. Based on the updated MoI security assessment, the planned total number of polling centers in the second round was given as 6,365.

B. ELECTION DAY SECURITY

During the 5 April election day approximately 195,000 security personnel were deployed to protect

⁴⁸ In accordance with this formula, IEC established additional polling stations throughout the country proportionally by province, adjusting for locations that had reported ballot shortages in the first round.

the polling stations across the country. The performance of the ANSF was hailed by both Afghan and international stakeholders as a great success. The OSCE/ODIHR EST, however, observed challenges in a number of areas during the first round that could be remedied with relative ease and at minimum cost. In the course of the observation of a limited number of polling stations, the OSCE/ODIHR EST noted visibly exhausted police officers at traffic control points who focused their activities on international observers, and ANSF personnel at polling centers who tended to take breaks at the same time. These concerns were raised by the OSCE/ODIHR EST during meetings with personnel of the ISAF's electoral unit and with the MOI between the first and second rounds.

Static security personnel could have shifts of two hours at a maximum. Procedures should be clear, concise and effectively communicated to each member of the ANSF. Security screening should be carried out uniformly, with the aim of reducing risk.

The security provisions for the presidential election differed greatly from the first to the second round. During the first round, large numbers of Afghan National Police (ANP), Afghan National Army (ANA), and National Directorate of Security (NDS) personnel were required to be on duty for approximately 24 hours from 4 April through closing of polls and ballot counting on 5 April. In contrast, additional 205,000 reserve ANP, ANA and NDS security personnel were activated for the second round, bringing their total to some 400,000. The intent was to increase their presence as well as to improve the rotation of security personnel and thereby the security of the electoral process.

For the first round, the security provision relied on an established "Ring of Steel" method, which included concentric rings of security responsibility, whereby a one kilometer radius of the polling center was secured by the ANA supervised by the NDS, polling center perimeter – by the ANP supervised by the NDS, and the polling centers were manned by the ANP and NDS personnel. The electoral security plan was modified for the second round and on 14 June the one-kilometer radius was contracted to the immediate vicinity of the polling centers.

The number of attacks increased significantly across the country in the second round. On 5 April election day, 140 of the planned 6,423 polling centers remained closed due to insecurity. Also, at least 210 people reportedly died (including 3 IEC personnel) and at least 227 were wounded as a result of 464 attacks countrywide.⁴⁹ In comparison, on 14 June, the number of planned polling centers was 6,365 of which 193 (comprising a total of 579 polling stations) remained closed on election day for security reasons and some 570 attacks reportedly took the lives of at least 223 people, including as many as 10 IEC staff, and leaving 390 people wounded.

Unlike on previous occasions, security for the 2014 elections was the sole responsibility of the ANSF. The MoI, in close co-operation and co-ordination with the IEC and the NDS, was in charge of the security arrangements for the elections. According to OSCE/ODIHR EST interlocutors, the co-operation and co-ordination between the IEC and the ANSF lacked efficiency. ANSF commanders in the field did not co-ordinate efforts with IEC security personnel and frequently disregarded agreed procedures. The reasons why such breaches of protocol were not acted upon remained unknown.

Just prior to each election day, the MoI invited international observer groups to a briefing on election day security plan. Details provided were, however, very limited, and the method by which the authorities were to secure the elections was unclear.

Co-ordination and co-operation between the ANSF and the IEC should be improved at all levels. A clear hierarchy or chain of command should be developed for future elections. This chain of command

⁴⁹ Casualty numbers have been gleaned from various sources; the OSCE/ODIHR EST could not, however, independently verify their accuracy.

should be communicated to polling center staff, the ANSF, candidate agents, and observers throughout the country.

C. FRAUD MITIGATION EFFORTS

After each previous election the IEC implemented a number of measures to detect fraud and irregularities and consider possible measures to deter it in the future. In a welcome step, in advance of the 2014 elections, the IEC on 17 June 2013 issued a Strategy for Fraud Mitigation. The strategy envisaged increased training of officials and staff, improvements to the chain of custody when transporting sensitive materials to and from polling stations, and checks to ensure that results forms reported and received at the NTC were those assigned to the polling station. These efforts were all implemented in the 2014 elections.

The strategy noted that “the first line of protection is always the engagement and integrity of those involved in the process, including electoral management bodies, polling staff, political parties, candidates, observers, and voters themselves”.⁵⁰ In line with its strategy, the IEC made significant efforts, notably prior to the runoff election day, to enhance transparency of polling station processes and deter fraud by calling for the deployment of candidate agents and observers and by putting in place practical arrangements to allow for their accreditation in significant numbers. In addition, the IECC, supported by UNAMA and the international community, called upon candidates and their agents to make use of the right to file complaints in case of violations or fraud and use the existing formal channels for solving electoral disputes.

Judging from a number of accounts in citizen observer reports, potential violations of the secrecy of the vote, including group voting, as well as proxy multiple and underage voting occurred in a number of areas across the country. There were also a number of observer reports about such serious violations as ballot box stuffing. Especially after the first round election day, a number of video recordings circulated on social media displaying instances of unknown persons involved in mass scale marking of unused ballots pertaining to both provincial council and presidential elections. Some of these recordings were later used as evidence in support of complaints heard by the IECC.

Following the first round, the IEC dismissed several thousand IEC polling station staff and officials who were alleged to have been involved in irregularities. According to official figures, 3,300 staff were dismissed and blacklisted for future employment and 440 were replaced for underperformance. These names were added to a prior list of 11,000 blacklisted former poll workers and officials.

IEC should continue its training and evaluation of polling station personnel, and articulate a clear set of sanctions for impermissible action.

D. ELECTION DAY PROCEDURES

On both election days, polling stations were due to open for voting at 8:00 hrs. Reports about delays in the opening of polling stations, mainly due to late arrival of polling or security staff, were more frequent in the first round than in the second. Opening procedures required that polling staff checked and recorded the number of received ballot papers in the results form and checked and sealed ballot boxes prior to the beginning of polls. For the second round, the IEC amended the results form and abandoned the requirement to note the number of received ballots on the assumption that all polling stations received the requisite 600 ballots.⁵¹ Despite being justified as a measure to reduce errors in

⁵⁰ IEC Fraud Mitigation Strategy, p. 5.

⁵¹ On 1 June, the IEC adopted a Run-Off Updated Polling and Counting Procedure.

completing the results form, it was nevertheless a step away from facilitating ballot reconciliation at a polling station level.

In the absence of a polling station specific voter list, the application of both indelible and invisible ink to a voter's finger was the main deterrent against multiple voting. The IEC decided to abandon the requirement for invisible ink in the second round.⁵² The procedures also envisaged that the voting card is punched with a special punch mark unique for each election in which the voter participates. The unique voting card number of each participating voter is taken down in a voter card log. In the absence of a central registry against which it would be possible to check whether recorded voter card numbers are genuine and match a particular voter, the effectiveness of recording the voting card numbers as deterrent of fraud is questionable.

The IEC could consider requiring recording the name and signature (or a finger print) of each voter, in addition to his/her voter card number, against receipt of ballot in order to enhance the value of the polling station voter log as a deterrent against fraud and its possible use during audit and fraud investigation.

Voters were prohibited by the law to cast provincial council ballots outside the provinces indicated on their respective voter cards. However, only one voter card log is kept for each polling station. Thus, on 5 April, when both the presidential and provincial council elections were concurrently held in the same polling station, the log potentially only provided a correct reflection of the number of voters who were issued ballots for the presidential race but not of those who voted in the provincial council elections.

It is recommended that, in case of concurrent elections, a separate voter card number log is kept for each election and that the log is given the status of sensitive election material.

Early on the first round election day, the IEC and the public received reports about potential shortage of ballot papers in certain polling stations. Reportedly, initial calls came from candidates or their agents starting as early as 09:30 hours. The IEC questioned the reports of ballot shortage occurring in the morning hours as unrealistic, especially in view of the complexity of the provincial council ballot in certain provinces, and as potentially resulting from misconduct.⁵³ Later on election day polling officials also started reporting ballot paper shortage, and the IEC began implementing its contingency plan. In line with this plan, the IEC authorized its provincial staff to release contingency polling station kits including ballot papers to the affected areas. Since these were mostly located in densely populated urban centers, IEC officials were also instructed to re-direct voters to vote at neighboring polling stations.⁵⁴

On 5 April, the IEC released 548 contingency polling station kits and extended the voting by one hour. Voters standing in line at the time of closing were allowed to cast their vote and numerous press reports about queuing voters indicated that voting continued for yet another hour or more in several of the affected locations.

⁵² Although no official reason was given, the requirement to apply invisible ink for the second round was reportedly lifted as consequence of the attack on the IEC warehouse on 29 March, in which necessary equipment was damaged.

⁵³ The IEC later calculated that it would take around nine hours to process two sets of six hundred ballots, depending on the efficiency of polling staff and voters.

⁵⁴ Post-election day, the IEC conducted an analysis of ballot shortage including a mapping of locations from which reports about ballot paper shortages had been received. It appeared these were frequently located close to polling centers with available ballot papers which demonstrated that the ballot shortage problem could, to a large extent, be remedied by re-directing voters to neighboring polling stations.

After the second round election day, the IEC reported that it had supplied contingency polling station kits to 570 polling centers adding to the total number of polling stations where voting took place. Thus, taking into account that 193 polling centers remained closed, there were 6,172 polling centers with 22,828 polling stations open on second round election day. The OSCE/ODIHR EST was not aware of any reports about disenfranchisement of voters due to ballot shortage in the second round. Thus, the corrective measures taken by the IEC were largely successful in both rounds. The difficulty of planning ballot allocation is, however, likely to persist in subsequent elections until there is a voter registry linking voters to specific polling stations. As during these elections, ballot shortages can give rise to substantiated allegations of fraud, which demonstrates the importance of a transparent and consultative process of determining contingency plans in absence of the polling station specific voter lists.

E. THE VOTE COUNT IN THE POLLING STATIONS

According to the law, the counting of votes takes place in polling stations. If there is more than one polling station in the polling center, the polling center manager collates the results forms from each polling station and puts them in an envelope for forwarding to the IEC for tabulation together with the voter card number logs. The chairperson of the polling station is obliged to count valid, invalid and unused ballots and record this information in the results form. In line with the previous OSCE/ODIHR recommendation, IEC fraud mitigating plan envisaged that the chairperson applies tamper-evident adhesive tape to protect the figures on the results form and uses a tamper-evident envelope for the transfer of the completed results form to the IEC.

While the IEC's own Strategy for Fraud Mitigation calls for reconciliation of ballots in the polling station, neither the law nor the IEC regulations legally oblige the polling station chairpersons or managers of polling centers to reconcile the ballot papers before passing the results forms on to the IEC NTC. Absence of an explicit legal obligation to reconcile ballots runs contrary to international good practice.⁵⁵ In practice, as a result, result forms with counting errors are passed on to the NTC.

The Election Law should be revised to require that ballot reconciliation is documented on the polling station results form in presence of observers and candidate agents. The IEC should issue ballot reconciliation procedures and guidelines for dealing with discrepancies and provide relevant electoral officials with comprehensive training on the topic.

The IEC procedure for distribution of the three carbon copies of the completed polling station results forms envisages issuing only one copy to the contestants irrespectively of their number; candidate agents must draw lots to determine who obtains the copy. At the request of the runoff candidates, two days prior to runoff election day the IEC agreed to give both candidates a carbon copy of the completed results form, determining that the copy intended by the procedure for public display in the polling station be issued to the second contestant. Thereby, the IEC removed an important transparency measure installed to provide local voters and observers access to official information about the results in the polling station.

The IEC should ensure that voters and observers can obtain official information about voting results at the polling station level on election day by providing an adequate number of results forms to each polling station.

⁵⁵ On the importance of ballot reconciliation as a deterrent against fraud, see paragraph 32 of section 3.2.2 of the Code of Good Practices in Electoral Matters of the Council of Europe's Venice Commission available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023-e).

Overall, according to the IEC and other electoral stakeholders, the counting and processing of results forms in polling stations was much faster in the second round than in the first.

X. INTAKE AND TABULATION

In both rounds of the presidential election, the NTC in Kabul became operational two days after election day. Overall, procedures at the NTC appeared to be well designed and thoroughly tested in advance. The data entry process for the provincial council elections and both rounds of the presidential election proceeded smoothly.

Tamper evident bags (TEBs) containing results forms were packed into blue plastic boxes at provincial level for transport to the NTC. At the NTC intake, the serial number listed on a box was checked against the computer record from the province. This was done to allow for tracking the whereabouts of the sensitive material during transfer from polling centers to the NTC (chain of custody). In the first round, IEC staff checked the integrity of the blue boxes and opened the boxes irrespective of observer presence. In the second round, the IEC formalized oversight of the intake of the blue boxes and invited citizen observers and agents of both candidates to be present at their opening. After Dr. Abdullah's agents withdrew from the NTC (see below), the opening of boxes proceeded with Dr. Ghani's agents and observers present.

In both rounds, some results forms arrived at the intake in brown envelopes rather than in the TEBs.⁵⁶ In the first round, the IEC placed the contents of such envelopes aside for audit. Generally, the results forms were accepted as long as there were no indications of tampering. Prior to the second round, the issue of brown envelopes was addressed during training of the IEC officials and procedures were strengthened. In a welcome move, for the runoff the IEC conducted a session open to observers, agents and the media to scrutinize the 109 results forms that arrived in brown envelopes. While no first round numbers had been released, the OSCE/ODIHR EST was informed that the number of brown envelopes was lower in the runoff. As the IEC scrutiny revealed only insignificant differences between the results forms arriving in the TEBs and the brown envelopes, the IEC decided that the latter would be processed normally; any discrepancies in stamps or signatures, or excessive numbers of votes would be picked up in the ordinary course of processing.⁵⁷

In the next step, the NTC preparation unit matched the serial numbers of the results forms against the computer record of the serial numbers issued to that polling center. Transparent adhesive tape was applied to any results form that lacked this tape, as a protection against alteration of the results during the tabulation process. The results forms were then sent to scanning, where the operator confirmed the quality of the image and checked the serial numbers of the scanned results forms. When scanning was complete, the results forms were re-inserted in the polling station envelope and sent to the archive. After the scanning, all subsequent processing of the results forms was done from the screen image and the original paper forms were not touched.

For the first round, NTC personnel removed the voter card number log from the polling station envelope and entered the number of entries in it into the database. This could allow for reconciliation of the number of voters who received ballots against the total number of ballots cast. The reconciliation of the two figures was, however, not required by the procedures and was not done routinely in the NTC process; only if the results form was questioned for some reason was the voter

⁵⁶ An extra brown envelope was provided in the polling station kit. According to IEC Decision 20 of 12 June, when there is no TEB available (perhaps due to a packing error), the provincial electoral officer is to write a report to accompany the brown envelopes containing results.

⁵⁷ As reported in the 19 June IEC Daily Update.

card log figure compared to the total number of cast ballots. The OSCE/ODIHR EST was informed that the IEC in the second round decided to skip data entry of the total number of records in the voter card number log, which had a negative impact on transparency and accountability of the process.⁵⁸

It should be a procedural requirement for the NTC to record the total number of entries in the voter card number log in the database and to reconcile it with the number of ballots cast.

Data entry was done by computer operators in a double blind process by two teams of 25 operators. The computer system randomly assigned the next scanned results image in the queue to an operator in the first group. The operators viewed the image on their screen and keyed in the total number of votes for each candidate and numbers of unused, spoiled and invalid ballots. If necessary, the identity of the operator could be recovered from the log-in data. Images were distributed among operators according to an algorithm that put at the head of the queue the province that had the lowest share of polling stations entered.⁵⁹ After the first data entry, the computer assigned the same image to an operator on the second team. If there was a discrepancy in data entry by the two operators, the case went to a problem resolution team. This team also dealt routinely with other reading or recording errors.

During the first round, the IEC was criticized for not providing access to the NTC processing floor for citizen and international observers or candidate agents. Given space limitations and the large numbers of observers and agents potentially involved, the IEC restricted all observers to a viewing balcony, except for hourly tours of the processing floor.

For the runoff, the IEC changed its practice. Observers and agents were allowed free access to the intake area, the processing floor and the balcony where scanning was done. They were further allowed to look closely at forms and screen images, ask questions and take photographs.⁶⁰ The greater access appeared to work smoothly with no disruption of the tally operations and helped create confidence in the process.

The IEC should formalize by procedure its policy of free access to the NTC premises during the processing of results and the right to take photos for observers and agents, subject to limitation only to prevent interference with the NTC operations.

XI. ANNOUNCEMENT OF PARTIAL AND PRELIMINARY RESULTS

A. PARTIAL RESULTS

The IEC is obliged by law to announce and publish preliminary and final election results, and is authorized to issue partial results.⁶¹ Although not addressed by international standards, the release of partial results is generally considered an important transparency measure that may help instill public confidence in the accuracy of the tallied results. The IEC had by its own regulation committed “to display partial results according to polling station in the IEC media center and publish them through its website” during the tallying process. In practice, the IEC met its commitment only partially.

In the first round, partial results were released only as aggregated totals of the valid votes cast for

⁵⁸ The IEC informed the OSCE/ODIHR EST that since no use was made of this number to calculate a voter totals, they decided to omit this step for the runoff in the interests of saving data entry time.

⁵⁹ The algorithm was designed to prepare for the announcement of partial results which in practice is done when a certain percentage of results across all provinces had been processed.

⁶⁰ This change was announced on 13 June in a press release and posted on the IEC website. There was no IEC decision or procedure covering the matter.

⁶¹ See Structure Law, Art 14.15 and Election Law, Art 59.3, respectively.

candidates by polling center and, thus, were not disaggregated by polling station as required by the mentioned regulation. Neither was the information about invalid or spoiled ballots provided. This format did not facilitate the comparison with the results taken down by observers and candidate agents from the results forms in the polling stations.

Furthermore, partial results were not continuously released as they were tallied by the IEC, but rather in three ‘packages’ comprising a certain share of results originating from a number of provinces across the country. The ‘packaging’ of the results was not, however, premised upon a formal decision of the IEC. In practice, this gave rise to stakeholders’ concerns that the IEC was shaping the public perception of the developing results in a certain direction.

The IEC released first round partial results on 13 April (10 per cent of polling stations tallied), 20 April (49.75 per cent), and 24 April (82.59 per cent). For the second round, the IEC passed a decision on the publication of partial and preliminary results and envisaged releases upon processing of 35 per cent and 70 per cent of polling stations across all provinces. However, the release of partial results in the second round did not materialize.

As pointed out in previous OSCE/ODIHR recommendations, the IEC should release information about partial, preliminary and final results disaggregated to the polling station level and including the information about unused, invalid, spoiled and valid ballots. Consideration could be given to releasing all processed partial results at regular intervals, i.e. at the end of every second or third day during the tabulation. Introduction of relatively short time intervals between releases of partial results could be an effective measure to counter allegations of shaping the public perception of the results.

In both rounds, a number of polling places did not open to voters on election day or they did not return any results for security or other reasons. In a welcome move, the IEC released information about the number of such polling stations as part of its results reporting. The IEC also explained fluctuations of this number during tabulation by the fact that some polling centers that received contingency ballot material did not establish a separate polling station as envisaged by the procedures. Rather they reported the result of the contingency vote jointly with the result of the ordinary polling station. In the first round, the number of such polling stations with joint reporting was around 200.

B. PRELIMINARY RESULTS

In contrast to partial results, the release of preliminary results requires a decision by the IEC, and the results can be legally challenged by candidates. It is therefore critical that the results data be both complete and released in a format that allows analysis and the formulation of complaints by the candidates. In order to effectively do so, candidates need complete information from each polling station (including used, unused, valid and spoiled ballots). Furthermore, they need adequate time to analyze the released results and match them against results taken down in polling stations by candidate agents. As with partial results, the IEC only announced the number of valid votes cast for each candidate and, thus, did not account for the unused or spoiled ballots or the invalid votes. Furthermore, the preliminary results were not promptly uploaded on the IEC website following their announcement, which made it unclear from what moment the applicable timelines for filing complaints were to be counted.

The applicable deadlines for filing complaints against preliminary and final results should be calculated from the moment the detailed breakdown of the respective results is made public on the IEC website to ensure that contestants are provided with equal and sufficient time to analyze the data and prepare possible appeals against the results.

In a welcome effort to enhance transparency, the preliminary results included scanned copies of the

results forms from each polling station. While this is the ultimate check on the accuracy of data entry, individual scanned results forms are not sufficient to facilitate the data analysis necessary for a candidate to file a timely complaint. Additionally, for both rounds, candidate totals by polling station were posted in a format of non-searchable lengthy documents, which did not use the IEC's official numbering system for province, district and polling center in a consistent manner. This hampered the ability of candidates and their agents to compare results and prepare for filing possible complaints in a timely manner.

As previously recommended by the OSCE/ODIHR, election results should be released in a format that can be readily downloaded and used for data analysis.

Preliminary presidential results for the first round were issued on 26 April, and preliminary provincial council results were announced on 20 May. In consultation with the IEC, the IECC put the complaint process related to provincial council elections on hold until the presidential runoff process could be completed.

According to the IEC, first round preliminary results included a total of 6,892,816 votes cast, of which 234,674 (3.40 per cent) were invalidated in polling stations. Further 40,476 votes cast for candidates that had withdrawn were invalidated by the IEC. The IEC concurrently referred 444 polling station results to the IECC for further investigation, of which 291 were later included into the full preliminary results.⁶² The valid votes were cast for the eight competing candidates as follows: Dr. Abdullah received 2,9703,703 votes, Dr. Ghani – 2,082,417, Mr. Zalmay Rassoul – 759,540, Mr. Rasul Sayyaf – 468,340, Mr. Qutbuddin Helal – 180,859, Mr. Shafiq Sherzai – 106,673, Mr. Daoud Sultanzoy – 30,737, and Mr. Hedayat Arsala – 15,394 votes. Of the initial turnout, 36 per cent of the votes were cast in female polling stations.

For the second round of the presidential election, the IEC informed that preliminary results would be released on 2 July, but delayed the announcement. The reason for the delay was not technical, but influenced by the political developments after the runoff election day.⁶³ On 7 July, with a five day-delay the IEC announced the preliminary results of the second round.

The IEC reported that 8,109,493 ballots were cast, with 37.6 per cent of them in female polling stations. This number included 136,766 ballots (1.68 per cent) found to be invalid when counted in the polling station. Of the remaining 7,972,727 valid ballots, 25,200 were subsequently invalidated by decision of the IEC.⁶⁴ This resulted in 7,947,527 valid votes for candidates, with Dr. Ghani receiving 4,485,888 (56.44 per cent) and Dr. Abdullah 3,461,639 (43.56 per cent).

XII. DEVELOPMENTS AFTER THE SECOND ROUND ELECTION DAY

A. RESIGNATION OF THE IEC CEO

On runoff election day an incident took place in the vicinity of the IEC at Jalalabad road in Kabul involving members of the close protection detail of IEC CEO Ziaulhaq Amarkhil and members of the ANP. The police stopped a convoy of cars belonging to the IEC CEO transporting what appeared to be contingency ballots reportedly on their way to two polling stations in a Kabul district that had

⁶² The remaining 153 results referred to 91 polling stations that returned zero votes, 36 that reported results not using the official form and 26 that could not be identified or located.

⁶³ Judging from the pace of the NTC tally processes as indicated in the daily IEC updates to stakeholders, the initially scheduled 2 July deadline for the announcement of preliminary results appeared realistic.

⁶⁴ The IEC by its decision invalidated the results of 50 polling stations in 13 provinces with a total of 25,200 votes due to ballot box stuffing or coercion against voters and poll workers.

requested extra ballots. Amarkhil's bodyguards reportedly went on to threaten the police officers who kept them from leaving with the ballots suspecting an attempt to commit fraud. These accusations of fraud were backed by the Kabul Police Chief Zahir Zahir. Overall, the incident happened on the backdrop of allegations that frequently surfaced during the runoff campaign that the MoI favored one of the runoff candidates and the IEC was biased towards the other.

The IEC admitted that the procedures for releasing contingency ballot material had not been strictly followed by its Secretariat, but initially called the incident a misunderstanding and criticized the police for overstepping their powers. However, amidst growing public concern and increasing criticism from the team of Dr. Abdullah against the IEC and, in particular, its CEO for bias, the IEC agreed that a committee consisting of the IEC and MoI officials would investigate the accusations of fraud against the IEC CEO.

On 22 June, the events took a steep turn when the campaign of Dr. Abdullah released audio tapes with recordings of what they claimed demonstrated that the IEC CEO directed that ballot boxes be stuffed in Dr. Ghani's favor. The campaign team refused to disclose the source of the recordings. By this time, Dr. Abdullah had suspended working with the IEC and the IECC for several days and negotiations mediated by the international community under the auspices of UNAMA to get him back in the electoral process were ongoing.

On 23 June, the IEC called a press conference, at which Mr. Amarkhil resigned denying all accusations of fraud and explaining his resignation as an attempt to save the election and the democratic process in the country. A complaint filed with the aim to hold Mr. Amarkhil liable for instigating fraud was put on hold by the IECC that requested the complainant to submit the original audio tapes for verification of their veracity and to disclose their origins as a precondition to consider the case on its merits. Later, the campaign team of Dr. Abdullah also raised criticism against the head of the IECC for bias and called for his resignation.

B. IEC AUDITS

While the IEC had a good chain of custody of results forms returned from the polling stations, and the NTC had a well-managed data entry process, they had no way of knowing whether the data on the results forms represented actual votes cast by voters or were the result of deliberate fraud such as ballot box stuffing. For this reason, the IEC in both rounds employed audits based on various "triggers" (indicators of potential problems) to decide when to examine the contents of a ballot box.

Any trigger-driven process addresses the fraud *post-facto* as opposed to deterring it or eliminating the root causes of the fraud. Announcing triggers in advance may give those who intend to commit fraud important information as to how to evade the triggers. Announcing triggers after the polls, on the other hand, reduces transparency and may give reason to concerns that a certain candidate stands to benefit from a particular trigger. Thus, the decision process about which triggers to apply has potential to become politicized. The maximum number of votes that could be affected by any particular cut-off can be calculated, and immediately shows whether a *post hoc* trigger could potentially impact the margin between the candidates and hence change the result.

The IEC officially adopted the triggers applicable to the first round late, not until after the first round election day. The triggers included results forms neither stamped nor signed appropriately, contingency ballot kits requested by polling stations, 600 votes divided equally among candidates, ballots not folded, similar or identical tick marks, marking ballots "not according to procedure," and

disproportionate female votes.⁶⁵ A recount (without prior audit) was triggered if the computer-generated ballot sum was equal to or exceeded 606 ballots (600 plus 1 percent).⁶⁶ As a consequence, results forms with ballot sums ranging from 601 to 605 were accepted as valid. In the first round, the IEC and IECC in their combined efforts audited 1,964 polling stations results, ordered 810 recounts of ballot material and, as a result, disqualified 233,219 votes.

Two days prior to runoff election day, the IEC in its Decision No. 20 adopted a new and different set of audit measures for the second round. The new triggers identified three key features on the polling station results form of which at least two had to be present in order for the NTC to accept the form: the signature of the polling station chairperson, the signatures of the two candidate agents, the polling station stamp. Any polling station not meeting this criterion was sent for audit.

Under the terms of this decision, if a polling station's results form was properly signed and stamped, and the computed ballot total did not exceed 600, the results would not be questioned; round number results in multiples of 50s or 100s, or excessive votes cast in female polling stations that may indicate fraud were not addressed by the triggers. As a result, 299 polling stations were audited after the runoff and 65 recounted. The result was invalidation of 934 votes – 250 cast for Dr. Ghani and 684 for Dr. Abdullah.

Dr. Abdullah withdrew his agents from the national tally center on 18 June and suspended cooperation with the IEC and the IECC, questioning the IEC's election day estimates of a more than 7 million preliminary voter turnout as excessive.⁶⁷ His reaction appeared to also be influenced by the circulation of unofficial election results of unclear provenance showing a clear victory of his opponent. An exchange of letters followed in which the IEC explained how they arrived at the 7 million voter turnout and Dr. Abdullah, in turn, demanded the resignation of IEC CEO, as well as the application of a number of wide-ranging audit measures and invalidation criteria to the tallied results as a precondition for re-entering the electoral process.

In light of these developments, the IEC on 25 June publicly announced, that, as a confidence building measure, it would conduct an additional, random audit of 15 per cent of polling stations in every province. This plan, however, was not implemented. Instead, on 29 June, the IEC decided to conduct a public audit of all polling stations with 599 or more ballots cast (1,930 polling stations, or about 8 per cent of the total). This audit was additional to the original measures foreseen for the second round audit. It should be noted that the selection of the '599 plus' trigger by the IEC for the audit that began on 1 July was allegedly meant to demonstrate a politically-neutral approach of the commission.

The additional audit of 1,930 polling stations under the '599 plus' audit commenced on 1 July and resulted in the invalidation of 10,855 votes, 6,427 for Dr. Ghani and 4,428 for Dr. Abdullah. While agents of Dr. Ghani attended the processes, those of Dr. Abdullah did not. The OSCE/ODIHR EST observed the Kabul provincial audit. There was a considerable variation among the 2-person IEC audit teams in how they applied the 11-point check-list approved by the IEC for audits.⁶⁸ Some compared

⁶⁵ IEC Decision No. 2 of 12 April (audit and recount of suspicious polling centers and stations); Decision No. 3 of 15 April (results forms without stamp and signatures of polling station chairperson and agents); Decision No. 5 of 17 April (regulation on nullifying and invalidating votes as a result of audit and investigation); and Decision No. 8 of 23 April (same title as Decision No. 5).

⁶⁶ Some 40 polling stations results with 606 ballots or more were accepted in the official first round results. In the second round, the 1 per cent error margin was dropped and ballot boxes with more than 600 reported ballots were automatically subject to recount.

⁶⁷ Late in the evening on second round election day, the IEC chairperson stated that: "while final figures are yet to be ascertained, preliminary indicators suggest a turnout of more than 7 million voters", see <http://www.iec.org.af/media-section/press-releases/387-electionday-news>.

⁶⁸ The 11-point check-list was adopted as part of the IEC Decision 20 of 12 June. It included checks of the integrity of the blue boxes and their content including checks of the ballots for irregular markings.

ballots to look for series of identical markings; others did not compare markings but only looked at the ballots one at a time.

Following the completion of this audit and under immense pressure to accede to increasing and often mutually contradicting demands made by or on behalf of the two presidential candidates, the IEC released the results of the audits and subsequently announced the preliminary results of the second round to the public.⁶⁹ Dr. Abdullah, who, according to the released preliminary results, was around one million votes short of those cast for Dr. Ghani, refused to recognize the result of the audit and continued questioning the authority of the IEC.

The IEC was subject to wide-spread criticism, which adversely affected the perception of its independence and limited its decision-making abilities. As the political crisis unfolded and the international community intervened to broker a compromise between the two presidential candidates, the IEC became increasingly sidelined, which was additionally amplified by the impact of the sudden resignation of its CEO. However, as the comprehensive audit commenced, the IEC gradually rose to the task and began addressing the issues at hand.

C. THE COMPREHENSIVE AUDIT

In an effort to address the criticism raised by Dr. Abdullah and his campaign team against the electoral institutions, the IEC on 14 July decided to bring all ballot boxes to Kabul for a full examination of all ballots for signs of fraud. The corresponding IEC Decision No. 27 ordering the comprehensive audit directly referred to the preceding negotiations between the two candidates and their agreement mediated by the UN and the United States Secretary of State and stipulated that all polling stations must be audited in the manner suggested by the UN in consultation with both candidates.⁷⁰

In the following days, ballot boxes were transported by ISAF to the IEC warehouses in Kabul where they were opened and audited in the presence of candidate agents as well as citizen and international observers.⁷¹ The audit process lasted with varying intensity from 17 July to 15 September, at times interrupted by disagreements or scuffles over applicable procedures and disputed ballots, and subsequent temporary withdrawals of agents by one or another candidate. The IEC later adopted a code of conduct for candidate agents in an attempt to regulate their behavior during the comprehensive audit.

The audit commenced without an agreement as to the criteria that would trigger a recount or invalidation of polling stations. On 15 July, the IEC confirmed the use in the audit of a slightly expanded version of its 11-criteria checklist, supplemented by 5 provisions proposed by the UN and agreed to by the candidates.⁷² The supplement included provisions to check for series of identical markings on the ballots done by the same hand, to match the number of ballots against the number of records in the log of voting card numbers, and criteria to identify ballot boxes that required special scrutiny. In practice, determining whether particular ballot markings were indeed identical became a contentious issue, as it was clear which candidate would lose from the ensuing invalidation.

⁶⁹ IEC Decision no. 26 of 5 July on “Review of the Audit Results of the 1,930 Audit”.

⁷⁰ The technical framework agreed by the two candidates for the comprehensive audit was not published but appeared to be part of a larger agreement of mainly political nature addressing issues such as formation of a unity government, reform of the presidential system of governance, and constitutional reform.

⁷¹ Also the transportation of the ballot boxes from the entire country was observed by candidate agents and observers. The IEC subsequently informed that not all ballot boxes from the 22,778 polling stations included into the preliminary results could be found and retrieved from the provinces.

⁷² IEC Decision no. 30 of 15 July, “Criteria for 100 Per Cent Audit of All Polling Stations”. These criteria were later augmented by the IEC audit procedure clarification of 8 August.

The main disagreement between the candidates was whether to opt for invalidation of an entire ballot box if a number or share of ballots in it was found to be fraudulent or to only invalidate the ballots found to be fraudulent. The matter was the subject of continued negotiations between the two candidates that were mediated by the UN, and an agreement was only reached on 30 July, some two weeks after the audit had begun. The corresponding IEC decision is explicit and comprehensive in defining the criteria and circumstances that would trigger a recount, a partial or a complete invalidation of polling station results.⁷³ It further determines that all decisions with regard to the audit process, including the calling of recounts or invalidation of votes must be taken in open sessions in the presence of candidates, agents and observers.

The data entry of the audit result check-lists and recount results forms stemming from the audit process was done at the NTC and formed the basis of IEC's decision-making. In preparation for this, the IEC decided to sort the results in four categories (one containing what the IEC considered valid results, one – invalid, one – partially invalid, and one – for recount). For each round of decision-making, the IEC further ensured that they considered a balance of different provinces and strongholds of the respective candidates.

On 30 August, the campaign team of Dr. Abdullah sent a letter to the IEC, in which they claimed tampering with completed results forms including the presence of identical signatures on results sheets across a number of specified polling stations and falsification of candidate agents' signatures, requesting their disqualification from the results. In response to the letter, the IEC established a review panel comprising senior IEC staff and UN electoral advisors and adopted a detailed procedure for addressing and verifying the listed claims. Again, in a welcome move, the IEC opened the process of reviewing the conclusions of the comprehensive audit to candidate agents and observers, and provided for the right to appeal the decisions of the review panel to the IECC.

The IEC in this manner continued to openly address requests and claims from the candidate camps in an effort to conclude the comprehensive audit and proceed to the announcement of the final election results. It held nine open decision-making sessions on audit results of ballots, open to candidate agents, citizen and international observers, media representatives and UN advisors, and working in accordance with the agreed criteria.⁷⁴

As a measure to increase transparency and accountability, prior to the start of any audit, the IEC should announce criteria for invalidation of individual ballots and consequences for entire ballot boxes, in the form of a regulation, and specify which entity has authority to render a decision in a contested case.

For all audits, any new polling station result replaced the original one in the database. The OSCE/ODIHR EST was informed that for the comprehensive audit, this practice would be followed as well. This prevented comparison of preliminary and audit figures at a polling station level, which could give valuable indications whether changes in results originated from human error or deliberate fraud and allow for a basic quality check of the reconciliation work done in the polling stations. This could inform future IEC planning, design of procedures and forms and training.

In order to promote transparency, the IEC could separately post both original results and those amended by any audit. This could provide an opportunity for in-depth analysis of the extent and possible causes of inconsistencies or fraud and assist in designing responses to the discovered problems in future elections.

⁷³ IEC Decision no. 33 of 30 July, "Criteria for Recount and Nullification of Votes for the Audit of All Run-off Polling Stations".

⁷⁴ All decisions are reported in detail on the IEC website: <http://www.iec.org.af/runoff-audit>.

XIII. COMPLAINTS AND APPEALS

A. LEGAL AND ORGANIZATIONAL FRAMEWORK

The responsibility for receiving and adjudicating complaints is vested with the IECC and its provincial offices (PIECCs). According to the law, voters can file complaints about the preliminary list of candidates. Also, depending on the nature of the alleged violation, complaints can be filed by candidates, political parties and their agents. According to the Election Law and the IECC's procedures, the PIECCs in each of the 34 provinces are the primary bodies for complaints adjudication. PIECC's decisions can be subsequently appealed to the IECC. The law gives the IECC a broad mandate and wide decision-making powers.

The establishment of the IECC as a permanent, professional body under the newly adopted legal framework was a positive development, in accordance with previous OSCE/ODIHR recommendations. IECC commissioners were appointed in mid-September 2013. The subsequent recruitment of the IECC staff was considerably delayed, which did not allow the PIECCs to be fully operational during candidate nomination and the beginning of the campaign period. This has negatively impacted the efficiency of the resolution of appeals against the preliminary list of registered candidates for provincial council elections. By the end of March, all IECC provincial offices but four had assumed their duties.

According to the law, the IECC can initiate cases at its own discretion in absence of an objection or complaint if it is informed of any infringement of law, occurrence of fraud or a violation. Moreover, in exceptional circumstances, including security reasons and occurrence of incidents, which may disrupt the adjudication process, the IECC is also granted the right to serve as the first adjudicator.⁷⁵ This set-up is at odds with international standards and good practice which provide for effective means of redress and an ability to appeal first-instance administrative decisions.⁷⁶

In order to fully ensure the right to an effective remedy as enshrined in international standards, consideration could be given to amending the electoral legislation to provide for a clear supervisory role of the judiciary over the decisions of the IECC.

The Election Law specifies penalties applicable to such electoral offences as providing false information to an electoral body, threats, intimidation or attacks on voters or candidates, and offering or receiving a payment or other benefit for the purpose of influencing the electoral process. Further offences provided for in the law include being in possession of more than one voter registration card, using funds originating from illegal activities or of foreign origin or any other violations of codes of conduct or regulations issued by the IEC or the IECC.

Candidate agents are vested with a wide scope of rights. They have the right to lodge an objection or file a complaint, whereas national citizen observer groups are only entitled to submit a report with the

⁷⁵ Election Law, Article 66. 1 and Structure Law, Article 26.8. Additionally, exceptional circumstances are listed in Article 31 of IECC Procedure on Filing and Adjudicating Electoral Challenges and Complaints.

⁷⁶ ICCPR, Article 2, paragraph 3 (b) states that, "To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy." See paragraph 5.10 of the 1990 OSCE Copenhagen Document, which states: "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity"; and Section II.3.3 of the Code of Good Practice in Electoral Matters of the Council of Europe's Venice Commission.

finding of their observations and cannot file official complaints. The absence of the possibility to file complaints against violations on electoral matters is a limitation of the access to effective legal redress and undermines the credibility of the process. At the same time, international observers are vested with the right to file complaints with the IECC.

The election law could be amended to grant accredited citizen observers and observer groups the right to file complaints on electoral violations, decisions and actions of election commissions, including on unlawful conduct during campaigning, and against the election results.

While the election law establishes the respective responsibilities of the IEC and the IECC, it contains a number of contradictory and inconsistent provisions with respect to, among other issues, the authority over challenges to the preliminary list of registered candidates and the final election results.

The Election Law, the IEC Regulation on Candidate Registration, as well as the IECC Procedure on Filing and Adjudicating Electoral Challenges and Complaints regulate the issue of candidate registration, but also provide three different deadlines for the submission of relevant complaints: 48 hours, 8-day period and 2 weeks, respectively. The existence of three different deadlines highlights not only the legal discrepancies but also the need to improve co-ordination between the two commissions. Moreover, the MoU between the IEC and the IECC, a crucial document aimed at strengthening the co-operation and outlining the working relationship between the commissions, was only signed on 4 April 2014, long after the beginning of the electoral process.

According to Article 66.5 of Election Law and Article 26.12 of the Structure Law, decisions of the IECC are final and not subject to appeal. However, Article 59 of the Election Law and the IEC/IECC MoU allow the IEC to challenge an IECC decision regarding final election results. The IECC has to submit a written clarification to the IEC within 24 hours. The law remains unclear to what extent the IECC's clarification is legally-binding with regard to final election results.

It is recommended to revise the legal framework in order to define respective mandates and responsibilities of various election administration bodies, unequivocally spell out the deadlines applicable to challenging the preliminary lists of candidates, and clearly attribute the authority over the final election results.

The IECC carried out a number of outreach activities, including training and lessons learned exercises for their legal and provincial co-ordination staff. However, a joint co-ordination meeting held on the eve of the runoff between the IEC and the IECC led both commissions to acknowledge the need for improved co-ordination, and detected a low level of training and preparedness of their respective provincial staff. The joint meeting report pointed to several problems including the fact that PIECC staff frequently lacked understanding of basic legal terms and that they were uncertain about who was eligible to file complaints on election day and how to correctly fill in the complaints form.

To strengthen confidence in the electoral process, the IECC should further expand its financial and human resources and conduct capacity-building activities to proactively deal with relevant complaints and appeals. Both the IECC and the IEC could consider introducing a comprehensive and co-ordinated training strategy for their provincial level staff before the 2015 parliamentary elections.

B. ADJUDICATION OF COMPLAINTS

After the IEC published the preliminary list of candidates, a total of 329 complaints were filed (316 by men and 13 by women) against provincial council candidates; additional 10 cases concerning presidential candidates were considered at IECC's initiative. The IECC decided to continue the examination of 2,212 provincial council candidates' credentials *ex officio*, in accordance with Article

64 of the Election Law, and finalized the list on 19 March, beyond the IEC operational timeframe and well after the beginning of the campaign period. The IECC received and heard a total number of 3,004 cases before election day mostly related to candidate eligibility; most were dismissed.⁷⁷

Furthermore, the IECC received 2,133 complaints related to the first round election day. According to the IECC Procedure on Filing and Adjudicating Electoral Challenges and Complaints, all complaints are categorized to A, B, C and D cases.⁷⁸ Out of the total number of complaints, 921 were listed by the IECC as category A, directly affecting the election results. Out of the total number of registered complaints, 463 were filed against presidential candidates, 528 against provincial council candidates, and 1,142 against IEC officials.

After the IEC announced preliminary results of the first round presidential race on 26 April, a total of 121 complaints were accepted against them, the vast majority filed by Dr. Abdullah's team. In most of the cases, the IECC did not provide information regarding the complainant, reportedly due to security concerns. This circumvented the transparency of the process. Most complaints concerned ballot box stuffing, violation of observers' rights, coercion of voters, campaigning on election day, and proxy voting.

Although PIECCs are the primary bodies for complaints adjudication, in the first round of elections the IECC reviewed most of the cases initially filed with the PIECCs. PIECCs routinely referred the cases to the central level without undertaking any investigation of their own.

The IECC should further intensify its public outreach to continuously inform all relevant stakeholders on the importance of utilizing the mechanism of filing official complaints. This should be a long-term exercise beginning well before candidate nomination and targeting political parties, candidates, observers, as well as voters.

In total, the IECC conducted six open sessions from 4 to 9 May and dealt with 891 category A complaints, including 64 appeals against decisions of the PIECCs and 121 complaints against preliminary results. Most complaints lacked sufficient evidence or the evidence provided was at times inconclusive or unrelated to the claim, and, therefore, led to the rejection of the corresponding complaint.

Although the IECC reviewed complaints in hearings open to stakeholders and the media, all final decisions were taken behind closed doors and were not made public contrary to Article 47 of the IECC procedure for filing and adjudicating electoral challenges and complaints, and in circumvention of international standards and good practice which require transparency in the decision-making process to allow voters to be assured that their rights have been respected.⁷⁹ The IECC claimed it had no right to publicly announce the outcome of the complaints adjudication, as the IEC is the body legally responsible for the announcement of final results. For the first round, the IEC approved the IECC's final decisions without requesting additional clarifications and subsequently announced the final election results.

The law should require full transparency from the IECC in its proceedings and decisions. Public announcement of IECC decisions and their timely publication should be clearly prescribed by the law

⁷⁷ See IECC statistics at: http://www.iecc.org.af/en/index.php?option=com_k2&view=item&layout=item&id=81.

⁷⁸ Categorization of electoral cases is clarified in the IECC Manual for Adjudication of Complaints. "A" cases directly affect election results, "B" cases can potentially lead to sanctions, "C" cases potentially do not meet the requirements for a valid complaint, and "D" cases are outside of IECC's jurisdiction.

⁷⁹ ICCPR, Article 14.1 stipulates that "any judgment rendered in a suit at law shall be made public". See also CDL Guidelines, II, 3.3.

and adhered to in order for the electoral dispute resolution process to fully meet international standards.

Overall, as a result of the investigation and adjudication of complaints, 525 polling station results were invalidated by the IEC and additional 331 polling station results were invalidated by the IECC. The IEC posted the result sheets of only 365 of the initially invalidated 525 polling stations when referring them to the IECC for adjudication, thus effectively depriving relevant stakeholders of the possibility to examine and file complaints regarding the remaining 160 polling stations within the legal deadlines.

To allow for the submission of complaints on invalidation of election results within the legal deadlines, the IEC should publish the results sheets for all polling stations where results were invalidated without delay and in a readable, user-friendly format.

The IECC received 2,918 complaints regarding provincial council elections – 1,283 of them on polling and counting and 1,635 on preliminary results – and reviewed them in 6 open sessions. According to Article 63.5 of the Election Law, the IECC may not delay the adjudication of complaints and appeals filed at the PIECC level for more than a month after the election day. The IECC began the adjudication of complaints in the provincial council elections on 31 May, but has not finalized it by the legal deadline. Results of the adjudication were still pending at the time of the EST departure.⁸⁰

Additional efforts should be made to ensure adjudication of all complaints within the legal deadlines. The law should clarify the period of final adjudication of complaints filed directly to the IECC at the central level and provide for reasonable expeditious adjudication within the electoral period.

Prior to the presidential runoff, the IECC registered 11 campaign-related complaints, which were dismissed. For the second round, the IECC received 2,735 election day-related complaints, with 724 qualified as A category cases. A total of 991 complaints were filed against the IEC staff, 507 against government officials, police and local authorities, and 1,237 against the two candidates.

The IECC received complaints registered by the IEC at the polling station level on election day from 4 provinces out of 34. The IEC delayed submitting these complaints and the IECC therefore decided not to accept any further complaints in order to meet the ten-day adjudication deadline. This decision was later overturned. In a positive development from the first round of election, the IECC forwarded complaints filed at the central level to relevant provincial offices, providing for the right to appeal for the parties involved.

Due to the developing political crisis, Dr. Abdullah withdrew his agents from the IECC open sessions on complaints and publicly refused to participate in the complaints consideration process, citing a lack of trust in the electoral management bodies. However, the IECC held five open sessions, in the course of which they considered Dr. Abdullah's statement as a general appeal against the PIEC and PIECC decisions, and subsequently re-examined all 2,576 cases filed at the provincial level. Out of 2,735 complaints, most were dismissed, 9 resulted in warnings and 25 in fines.

The existing legal framework for the adjudication of complaints and the jurisdiction of the bodies involved should be respected by all the participants of the electoral process, including election contestants.

Candidates had 24 hours to submit complaints with the IECC against the preliminary results, issued by the IEC on 7 July. Only Dr. Ghani did so. Adjudication of complaints related to election day as well as

⁸⁰ As of 29 September, the IECC passed decisions for only 9 provinces out of 34.

preliminary results was then put on hold due to the audits carried out by the IEC.

The IECC informed the OSCE/ODIHR EST that it issued 389 decisions on complaints related to the IEC comprehensive audit. Of these, 360 complaints, or 92.5 per cent of their total number, were upheld and 29, or 7.5 per cent, were reversed. Moreover, the IECC ruled to dismiss all complaints filed against the preliminary results of the runoff, arguing that the initiation of the comprehensive audit made these complaints void.

Despite significant improvements in the institutional set-up of the electoral dispute resolution system, the complaints adjudication process demonstrated the overall low institutional capacity of the IECC and the lack of training and capacity of IECC staff to undertake proper investigations at the provincial level. The process was at times hectic and formalistic, with no proper investigation carried out by the IECC and little time provided for the presentation of evidence and arguments. The manner in which the IECC dealt with election complaints left some stakeholders without effective consideration of their claims, contrary to Article 8 of the UDHR.⁸¹

The IECC should avoid an overly formalistic approach to handling election-related complaints. In particular, the IECC should duly consider the substance of all claims, and thoroughly assess all relevant evidence. The IECC and the PIECCs should take a more pro-active role in gathering evidence to substantiate complaints and co-operate more closely with the IEC and the PIECs in this respect. In order to better ensure due process and effective remedy to complainants, consideration could be given to providing additional training for the IECC central and provincial staff on case management, judicial administration, and law enforcement investigatory techniques.

XIV. ANNOUNCEMENT AND PUBLICATION OF FINAL RESULTS

The IEC regulation on the announcement and publication of results is silent on the requirements for publishing the final election results; it only states that the final election results shall be made public on the website of the IEC. There is no requirement that the publication of final results must occur concurrently with their announcement. For the first round, final presidential results were announced by the IEC on 15 May, but only uploaded on the IEC website in the beginning of June.

On 21 September, the IEC chairperson Yusuf Nuristani declared Dr. Ghani winner of the 2014 presidential election. The IEC chairperson deemed the comprehensive audit inconclusive stating that “although the audit was credible and unprecedented in scope, it nevertheless could not find all the fraud claimed by both sides.”⁸² Also no specific final election result was disclosed. On 29 September, Dr. Ghani was inaugurated as the President of Afghanistan and Dr. Abdullah assumed the post of the Chief Executive Officer of the unity government.

The results of Provincial Council elections were announced on 25 October 2014.

XV. RECOMMENDATIONS

The following recommendations are offered for consideration by the authorities, political parties and civil society of Afghanistan, in further support of their efforts to conduct elections fully in line with international standards for democratic elections. These recommendations should be read in

⁸¹ Article 8 of UDHR states that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

⁸² UNDP ELECT II Update 17-29 September.

conjunction with past OSCE/ODIHR recommendations that remain to be addressed. The OSCE/ODIHR stands ready to assist the authorities of Afghanistan to further improve the electoral process and in following up on the recommendations contained in this and previous reports.

A. PRIORITY SHORT-TERM RECOMMENDATIONS:

Short-term recommendations address those aspects of the electoral process that can be improved before the expected 2015 parliamentary elections. Possible ways of follow-up to these recommendations include revision of the regulations, decisions and guidelines of the IEC and the IECC, as well as introducing changes to the practical implementation of the existing legal framework. Regulations, procedures and guidelines of the IEC and the IECC should be adopted in a consultative manner to avoid overlapping jurisdiction and strengthen co-operation between the IEC and the IECC.

1. It is recommended that the parliament, in consultation with the electoral management bodies and other stakeholders, including citizen observer groups, initiate an evaluation of the newly-adopted electoral legal framework and its application in practice in light of the lessons learned from the 2014 elections and sufficiently in advance of the upcoming elections.
2. In line with international standards and good practice, electoral legislation should be enacted sufficiently prior to an election in order to allow electoral stakeholders and voters adequate time to familiarize themselves with the rules and procedures that apply to the electoral process.
3. Implementation of legal provisions on candidate registration should be improved by increasing transparency of verification procedures and by offering detailed and timely information to prospective candidates about the results of the verification and possible deficiencies in their documentation, with a view to providing a genuine opportunity for them to appeal against non-registration.
4. The international community should continue its support to further increase the capacity of the IEC, in line with its strategic plan, with particular emphasis on drawing and implementing lessons learned from the 2014 presidential and provincial council elections.
5. The IEC and the Ministry of Interior should establish a proactive recruitment plan to hire female polling station staff and female searchers. Special emphasis should be placed on the training and retention of female workers at all levels of the election administration.
6. In order to maintain transparency and enhance its credibility, the IEC should open its decision-making sessions to party and candidate agents and observers and plan all its operations with a view of providing satisfactory access to observe them. Information on its decision-making and other activities should be made available to the public on its website in a timely and consistent manner.
7. It is recommended that the authorities continue to remain sensitive to all instances of abuse of state resources, including cases of government officials' involvement in illegal campaign activities, and take prompt and effective action to address such violations should they occur.
8. To enhance the credibility of the IEC Media Commission, it is recommended that additional measures be taken to increase transparency in the appointment of media commissioners and to ensure that, once appointed, the commission is granted more responsibility for staffing and budgetary matters.

9. It is recommended that the IEC take additional measures to ensure that the Media Commission is sufficiently and timely resourced to commence the activities envisaged by its mandate. Due consideration should be given to the time needed to recruit and train relevant Media Commission staff.
10. It is recommended that the legal framework be revised to clearly define the mandate of the IEC in providing thorough, comprehensive and timely campaign finance oversight. Enforcement capacity of the IECC in the campaign finance matters should also be clarified.
11. The possibility of setting time limits on the presence of observers, candidate agents and representatives of political parties and media in polling and voter registration sites should be lifted. If overcrowding is an issue, consideration should be given to setting a maximum number of observers, agents or representatives allowed per sending entity in a polling station or registration centre. The provisions that require advance co-ordination and disclosure of deployment plans by candidates and political parties could be reconsidered.
12. It is recommended that political parties and candidates, in co-operation with the IEC and the international community, enhance their training programmes for agents in order to better prepare them for observation and reporting on electoral processes.
13. Citizen observer groups could maintain the practice of election day deployment co-ordination and further enhance their sharing of information and post-election day reporting.
14. The international community should continue to support the capacity building efforts of citizen observer groups in a co-ordinated manner with an emphasis on their application of internationally accepted observation principles, including documentation and verification of findings, as well as accurate and impartial reporting.
15. Static security personnel could have shifts of two hours at a maximum. Procedures should be clear, concise and effectively communicated to each member of the ANSF. Security screening should be carried out uniformly, with the aim of reducing risk.
16. Co-ordination and co-operation between the ANSF and the IEC should be improved at all levels. A clear hierarchy or chain of command should be developed for future elections. This chain of command should be communicated to polling center staff, the ANSF, candidate agents, and observers throughout the country.
17. IEC should continue its training and evaluation of polling station personnel, and articulate a clear set of sanctions for impermissible action.
18. The IEC could consider requiring recording the name and signature (or a finger print) of each voter, in addition to his/her voter card number, against receipt of ballot in order to enhance the value of the polling station voter log as a deterrent against fraud and its possible use during audit and fraud investigation.
19. It is recommended that, in case of concurrent elections, a separate voter card number log is kept for each election and that the log is given the status of sensitive election material.
20. The Election Law should be revised to require that ballot reconciliation is documented on the polling station results form in presence of observers and candidate agents. The IEC should issue ballot reconciliation procedures and guidelines for dealing with discrepancies and provide relevant electoral officials with comprehensive training on the topic.

21. The IEC should ensure that voters and observers can obtain official information about voting results at the polling station level on election day by providing an adequate number of results forms to each polling station.
22. It should be a procedural requirement for the NTC to record the total number of entries in the voter card number log in the database and to reconcile it with the number of ballots cast.
23. IEC should formalize by procedure its policy of free access to the NTC premises during the processing of results and the right to take photos for observers and agents, subject to limitation only to prevent interference with the NTC operations.
24. As pointed out in previous OSCE/ODIHR recommendations, the IEC should release information about partial, preliminary and final results disaggregated to the polling station level and including the information about unused, invalid, spoiled and valid ballots. Consideration should be given to releasing all processed partial results at regular intervals, i.e. at the end of every second or third day during the tabulation. Introduction of relatively short time intervals between releases of partial results could be an effective measure to counter allegations of shaping the public perception of the results.
25. The applicable deadlines for filing complaints against preliminary and final results should be calculated from the moment the detailed breakdown of the respective results is made public on the IEC website to ensure that contestants are provided with equal and sufficient time to analyze the data and prepare possible appeals against the results.
26. As previously recommended by the OSCE/ODIHR, election results should be released in a format that can be readily downloaded and used for data analysis.
27. As a measure to increase transparency and accountability, prior to the start of any audit, the IEC should announce criteria for invalidation of individual ballots and consequences for entire ballot boxes, in the form of a regulation, and specify which entity has authority to render a decision in a contested case.
28. In order to promote transparency the IEC could separately post both original results and those amended by any audit. This could provide an opportunity for in-depth analysis of the extent and possible causes of inconsistencies or fraud and assist in designing responses to the discovered problems in future elections.
29. To strengthen confidence in the electoral process, the IECC should further expand its financial and human resources and conduct capacity-building activities to proactively deal with relevant complaints and appeals. Both the IECC and the IEC could consider introducing a comprehensive and co-ordinated training strategy for their provincial level staff before the 2015 parliamentary elections.
30. IECC should further intensify its public outreach to continuously inform all relevant stakeholders on the importance of utilizing the mechanism of filing official complaints. This should be a long-term exercise beginning well before candidate nomination and targeting political parties, candidates, observers, as well as voters.
31. To allow for the submission of complaints on invalidation of election results within the legal deadlines, the IEC should publish the results sheets for all polling stations where results were invalidated without delay and in a readable, user-friendly format.

32. The law should require full transparency from the IECC in its proceedings and decisions. Public announcement of IECC decisions and their timely publication should be clearly prescribed by the law and adhered to in order for the electoral dispute resolution process to fully meet the international standards.
33. Additional efforts should be made to ensure adjudication of all complaints within the legal deadlines. The law should clarify the period of final adjudication of complaints filed directly to the IECC at the central level and provide for reasonable expeditious adjudication within the electoral period.
34. The existing legal framework for the adjudication of complaints and the jurisdiction of the bodies involved should be respected by all the participants of the electoral process, including election contestants.
35. The IECC should avoid an overly formalistic approach to handling election-related complaints. In particular, the IECC should duly consider the substance of all claims, and thoroughly assess all relevant evidence. The IECC and the PIECCs should take a more pro-active role in gathering evidence to substantiate complaints and co-operate more closely with the IEC and the PIECs in this respect. In order to better ensure due process and effective remedy to complainants, consideration could be given to providing additional training for the IECC central and provincial staff on case management, judicial administration, and law enforcement investigatory techniques.

B. LONG-TERM RECOMMENDATIONS:

Long-term recommendations outline possible improvements that can be introduced in the course of a comprehensive electoral reform, including through constitutional amendments and review of the current electoral legislation.

1. The electoral legal framework should be further enhanced by addressing identified gaps and bringing it closer in line with international standards. Legislative reforms should be undertaken well in advance of elections, through open and inclusive consultations with all election stakeholders, including political parties and civil society.
2. Submission of complaints by voters at polling stations as well as deadlines for filing complaints against preliminary results should be clearly specified in the law. To avoid such discrepancies, consideration could be given to updating the election law on the basis of existing practice as embodied in the corresponding regulations.
3. It is recommended to address matters of candidate registration, conduct of campaign and campaign finance requirements, as well as transparency of results by primary legislation, in order to provide for legal certainty.
4. Should consideration be given to amending the Constitution, international standards for democratic elections contained in the treaties ratified by Afghanistan, as well as previous recommendations, especially with regard to suffrage rights and the presidential authority to pass election-related legislation, should be taken into account.
5. The timelines for different elections should be reconciled with the constitutionally-mandated expiration of the presidential term and further modified to allow for sufficient time to handle concurrent elections and prepare for a possible runoff in a presidential race.

6. Legal certainty should be established in regards to which body is ultimately responsible for the interpretation of the Constitution in electoral matters. The role of the Supreme Court and the ICOIC in electoral matters should also be clarified with specific conditions for their possible intervention explicitly stated in the law.
7. Additional consideration could be given to possible mechanisms to address the lack of public confidence in the impartiality and inclusivity of the appointment mechanism of the IEC.
8. It is recommended that the reduction in the quota for women in the provincial councils be reviewed or reconsidered with a view to further enhance the participation of women in political life.
9. The requirement of both signatures and electoral deposits for presidential candidate registration may prevent legitimate candidacies. The registration requirement should be met through either the collection of signatures or payment of an electoral deposit. Although the amount of an electoral deposit should be sufficient to discourage spurious candidates, the deposit amount should be carefully calibrated not to result in the denial of suffrage rights.
10. The existing educational requirements for provincial council candidates are overly restrictive and should be reconsidered.
11. The government could consider rescinding its decision to ban a stand-alone voter registry so that the IEC can make an independent decision regarding the future voter registry options, be it either to link the voter registration with the development of a civil registry or to establish a stand-alone voter register.
12. As previously recommended, if voter registration cards are maintained, it should be a mandatory requirement that all registrants, male and female, have photographs on their voter card as a deterrent against fraud.
13. It is recommended that the electoral legal framework be reviewed to include clear definition of the length of campaign period for possible runoff in a presidential race.
14. Consideration could be given to introducing the system of public funding of candidates and political parties. Distribution of public funds should be strictly connected to compliance with campaign finance regulations, such as reporting requirements, and could be structured to provide additional incentives for women's participation in political life.
15. It is recommended to consider increasing campaign expenditure ceiling to an appropriate and effective level to enhance transparency of the process and minimize the risk of circumvention of campaign finance regulations.
16. The IEC should officially regulate the issue of validity of observer accreditation and determine deadlines for the application and accreditation of additional observers, candidate agents and media in the event of a second round of the presidential election.
17. The electoral legal framework should be revised to provide an exhaustive list of campaign finance irregularities and applicable sanctions that are proportional, effective and dissuasive. Presidential candidates should carry responsibility for non-co-operation with the IEC in campaign finance matters.

18. In order to fully ensure the right to an effective remedy as enshrined in international standards, consideration could be given to amending the electoral legislation to provide for a clear supervisory role of the judiciary over the decisions of the IECC.
19. The election law could be amended to grant accredited citizen observers and observer groups the right to file complaints on electoral violations, decisions and actions of election commissions, including on unlawful conduct during campaigning, and against the election results.
20. It is recommended to revise the legal framework in order to define respective mandates and responsibilities of various election administration bodies, unequivocally spell out the deadlines applicable to challenging preliminary lists of candidates, and clearly attribute the authority over final election results.

ANNEX 1: RESULTS OF PRESIDENTIAL ELECTION

First round final certified results

Candidate	Total Votes Received	Percentage
Dr. Abdullah Abdullah	2,972,141	45.00 %
Dr. Mohammad Ashraf Ghani Ahmadzai	2,084,547	31.56 %
Mr. Zalmay Rassoul	750,997	11.37 %
Mr. Rasul Sayyaf	465,207	7.04 %
Mr. Qutbuddin Helal	181,827	2.75 %
Mr. Shafiq Sherzai	103,636	1.57 %
Mr. Daoud Sultanzoy	30,685	0.46 %
Mr. Hedayat Arsala	15,506	0.23 %
Total	6,604,546	

Source: www.iec.org.af

Second round full preliminary results

Candidate	Total Votes Received	Percentage
Dr. Mohammad Ashraf Ghani Ahmadzai	4,485,888	56.44 %
Dr. Abdullah Abdullah	3,461,639	43.56 %
Total	7,947,527	

Source: www.iec.org.af

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of election observation. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's democratization activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect human rights and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of tolerance and non-discrimination, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on Roma and Sinti. It promotes capacity building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All OSCE/ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).