

16 Sept 2010: 2 days to E-Day

Afghanistan *Wolesi Jirga* Elections, 18 Sept 2010

For the 2010 Afghan *Wolesi Jirga* elections, the National Democratic Institute (NDI) is conducting an observation mission and analyzing the electoral process before, during and after election day. This mission involves more than 160 international analysts and Afghan observers throughout the country. For more information, visit NDI.org and AfghanistanElectionData.org.

Electoral authorities work to improve accountability Changes in staff and rotation of provincial officers aim to limit fraud

After presiding over the 2009 elections, which were marred by widespread fraud, Afghan electoral authorities have developed measures to prevent similar irregularities. The Independent Election Commission (IEC) has focused on removing staff who may have been involved in last year's fraud and improving balloting procedures. The Electoral Complaints Commission (ECC) is charged with investigating complaints submitted prior to the certification of election results. The duty of the IEC and ECC to respond to concerns of fraud began months ago and will continue after polling.

One of the IEC's first actions was to blacklist about 6,000 of its 164,000 staff who worked on last year's presidential and provincial council polls. The IEC drew up this roster based on allegations of misconduct, which the ECC investigated last year. Some of these staff used false names to apply and receive IEC positions this year. Upon discovery of this deception, several individuals were fired.

To date, the IEC has dismissed 114 district field coordinators, and another 100 have been relocated to different districts after it was discovered that they had links to candidates, among other violations. The ECC referred five provincial election officers (PEOs) to the Ministry of Justice based on investigations of illegal practices during the 2009 elections. The PEO in Nangarhar province was imprisoned for allegedly accepting large bribes from candidates.

All 34 PEOs have been assigned to posts not within their home provinces. This effort - described by a senior IEC official as costing over \$300,000 - is intended to distance the PEOs from their local power and patronage networks, allowing them to better maintain their independence and integrity amid pressure.

The IEC does not have the power to prosecute workers who violate the Election Law. But the commission has put in place measures to allow judicial bodies to identify violators swiftly and use data for future reference. These measures include the creation of a database of contracts, photos, ID copies and certificates of all District Field Coordinators (DFCs) and voter educators.

The ECC can issue warnings, demand corrective action or impose a fine of up to 500,000 Afs (approximately \$10,000). The ECC can also order recounts, sanction the removal of candidates or blacklist violators from employment with any elections commission for up to 10 years. In addition, the ECC can ban a political party or a candidate from running in the future if his or her members or supporters commit electoral violations. The ECC can also refer a case to the relevant Afghan body for further investigation or judicial action. So far, the ECC has referred an unnamed provincial governor to the Attorney General and fined an unnamed mayor 125,000 Afghanis (~\$2,500) for interfering in the election process.

Key Modifications in ECC Regulations

NDI has reviewed the ECC Regulations adopted in July 2010 and compared them to the ECC Rules and Procedures in place for the 2009 elections. Below are some of the most significant modifications in the 2010 Regulations of the ECC.

Composition and Quorum

Following adoption of the presidential decree on elections earlier this year, the number of internationals on the ECC has been reduced from three to two, and all of the five commissioners are now appointed by the President. In the 2009 Rules of Procedure (RP 2009), quorum for deliberations and decisions is three or more commissioners, including at least one national commissioner. Revised Regulations of 2010 (R 2010) do not specify nationalities of commissioners for a quorum and do not refer to appointing bodies.

Jurisdiction

The 2010 ECC regulations state that primary jurisdiction of complaints rests with the Provincial Complaints Commissions (PECCs). PECC decisions are subject to review and appeal to the national ECC. However, according to a recent amendment (that has not

been officially posted), the ECC is not obligated to review all PECC decisions. Language requiring a national ECC review of all PECC complaints is not present in R 2010.

Impartiality

Both documents include a clause that requires commissioners to sign the ECC Code of Conduct; however, the specific clause relating to partiality has been removed from the 2010 Regulations. In RP 2009, Article 2.6 read, "The Commissioners shall fulfill their tasks in a timely, objective, impartial, and non-political manner." That clause has been removed.

Cooperation and access to information

Article 2.15 of RP 2009 states that it is the duty of "political parties, candidates, electoral observers, political party or candidate agents, and the Independent Election Commission

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Review of changes in ECC Regulations (continued from p.1)

Secretariat (IECS)” to cooperate with and assist the ECC in its work. The related clause in the R 2010 reverses the role of this duty, stating that it is the ECC’s responsibility to gain this cooperation and places no obligation on outside parties. As R 2010 states, the ECC and PECCs shall use their “best endeavors to gain and retain full assistance and cooperation from the IEC.”

False information

The RP 2009 clause regarding the provision of false information has been removed from the R 2010. In RP 2009, Article 3.7 stated, “The provision of false information to a PECC or to the ECC is a violation of the Electoral Law and may be sanctioned by a PECC or the ECC.” For R 2010, the clause is deleted, although providing false information remains an offence under the Electoral Law. In 2009, four people were fined for providing false information.

Confidentiality

While an overarching statement of confidentiality remains in R 2010, a number of clauses dealing with confidentiality have been reworded or removed entirely. For example, a clause in RP 2009 stating that, “Except by official order from the Supreme Court, no authority or entity can compel the ECC to disclose any documents that the ECC has custody of,” has been removed.

Also, a reference to the Office of the Public Prosecutor has been removed. In RP 2009, Article 2.7 stated that the ECC could share “any evidence which discloses a criminal offence shall be referred

by the ECC to the Office of the Public Prosecutor or other relevant legal authorities.” That clause has been removed in R 2010.

Delay of material

The clause stipulating that an IEC or PECC office that delays the transfer of material may be committing an electoral violation has been removed. Text in RP 2009 stating that, “any undue delay may be considered as interference with election materials and may constitute an electoral offence,” is no longer present in R 2010. There are two such references in RP 2009; both have been deleted.

Simultaneous employment of ECC commissioners

Language in RP 2009 stating that commissioners must not have concurrent occupations has been removed in R 2010. In RP 2009, Article 2.3 stated, “The work of the Commissioners shall be full time employment. Commissioners must suspend any other employment and conflicting responsibilities for the duration of the ECC’s mandate.” This text is not present in R 2010.

Fines

The maximum fine that can be issued by the ECC has increased from 100,000 Afs (~\$2,000) to 500,000 Afs (~\$10,000).

Highlights from NDI’s Observation Herat Province

The IEC has dismissed 12 District Field Coordinators (DFCs) in Herat due to complaints that these staff have close connections to candidates. The provincial ECC initially received complaints against 15 DFCs; after investigating and determining that the allegations were credible, the PECC sent its finding in a letter to the provincial IEC. The IEC then gave all 15 DFCs the option to switch districts. Three accepted the offer and the remaining 12 chose dismissal.

The ECC has also received complaints about tribal elders taking voting cards from villagers and promising them payment after Election Day for the use of their cards. Some voters contacted the ECC by telephone to inform them, while one person submitted a formal, written complaint. The ECC is investigating the formal complaint.

In Herat city, candidates are running energetic campaigns; less dynamic efforts are being conducted in outlying districts. In interviews with NDI observers, candidates said security concerns prevent them from campaigning in many areas, limiting the amount of campaign activity outside the city. In addition, candidates say that population density is a key factor in their campaign approach: since 25 percent of the province’s citizens live in Herat city, many candidates focus their efforts in the capital. A significant number of candidates are social activists and heads of NGOs, and are using their networks to carry out their campaigns. Many candidates are businessmen funding their own campaigns.

Spotlight: Access for the Disabled Community

Although many regulations to protect disabled voters remain in place, attention to the needs of the disabled community has lessened since the *Wolesi Jirga* elections five years ago. For the 2005 parliamentary polls, a host of programs were in place to encourage the disabled to take part in the election. This year, there are procedures in place to assist the disabled, but there has been limited public outreach on these regulations. Of the 2,536 candidates running, three are disabled. Based on an estimate by Handicap International (HI), the current figure for the disabled community in Afghanistan is approximately 840,000.

In 2005, the Joint Electoral Management Board (JEMB) adopted regulations to provide disabled persons with greater access to the electoral process, said an HI employee who worked with the JEMB. These measures included setting a five-percent hiring quota for disabled persons. JEMB reports having recruited over 8,000 disabled staff members - nearly meeting this quota. The IEC, which is overseeing this year’s elections, has no special provision for ensuring representation of the disabled among its staff.

In 2005, a robust public education program was implemented to assist disabled voters in the electoral process. This year, public education toward the disabled has not been actively pursued, according to a disabled candidate and an HI employee.

This year, similar to the procedures in place for the 2009 elections, disabled voters will be given priority in voter queues and have the right to secure assistance while casting a ballot. To prevent abuse of this practice, a person can assist only one disabled person. However, to ensure that someone is present at all times to provide such support, polling station chairpersons may assist multiple disabled voters.

NDI, which has worked in Afghanistan since 2002, is a nonprofit, nonpartisan, nongovernmental organization working to support and strengthen democratic institutions worldwide through citizen participation, openness and accountability in government. For the 2010 elections, NDI conducted seminars for over 1,700 candidates, organized training for political parties and more than 240 women candidates, and provided technical assistance to the Free and Fair Elections Foundation of Afghanistan (FEFA), the country’s largest domestic election monitoring organization. Currently, NDI is developing the capacity of candidate agents nationwide to report on election-day activities.