

**AFGHANISTAN ELECTIONS:
ENDGAME OR NEW BEGINNING?**

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AFGHANISTAN ELECTIONS: ENDGAME OR NEW BEGINNING?

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Elections for Afghanistan's National Assembly and Provincial Councils are a critical opportunity to achieve a sustainable peace in a country that is still emerging from a quarter century of conflict, created and exacerbated by ethnic, sectarian, regional and linguistic divisions. A representative and functional National Assembly could prove a crucial step in stabilising Afghanistan by allowing diversity of voices in decision-making. Provincial Councils could also help extend the authority of central government by introducing legally approved layers of devolution.

But the September polls will only succeed in stabilising Afghanistan's political transition if the elections are for institutions with properly defined roles and responsibilities; if the electoral system enables a true reflection of popular will; if the election process, including registration and vote counting is properly run; and if overall security is sufficient to allow for as free and fair a contest as possible in a country which still bears the scars of civil war.

In the 2004 presidential polls, Afghans had demonstrated immense enthusiasm for the political transition despite formidable security and other challenges. Preparations for these more complex elections are, however, set against a backdrop of electoral delays and neglect for the future institutions that will emerge.

Institutions. Little groundwork has been laid for legislative or locally devolved bodies. Instead all the eggs of state have been put in the basket of one man, the chief executive, President Hamid Karzai. Indeed the political environment created over three and a half years of the transitional process must call into question the ability of the new representative bodies to have a real voice in the future of Afghanistan.

If Afghanistan is to proceed on the path to stability, President Karzai's government and the international community will have to urgently build the new legislature's capacity. Defining the roles and the responsibilities of the Provincial Councils must become a priority for the National Assembly. And just weeks before elections are due, all stakeholders must collectively strive to make the process a success.

Electoral System. Instead of empowering political parties, essential for a successful political transition, Karzai's hostility has only added to their difficulties. The new Electoral Law -- not released until May, which excludes the use of party symbols on ballot papers, has undermined nascent democratic groupings, while old jihadi networks continue to have access to power and resources. The multi-member constituency Single Non-Transferable Voting (SNTV) system also works against new political parties that are, as yet, incapable of the sophisticated strategising and discipline needed to translate popular support into electoral victories. By encouraging appeals to narrow ethnic interests rather than broad-based constituencies, the electoral system could result in the absence of workable caucuses within the new National Assembly, further raising fears about the seeds of future instability.

Election Process. This has been marred so far by the lack of strategic planning on the part of the United Nations and the Afghan government. The two parts of the process that the Bonn Agreement specifically earmarked for the UN -- a pre-poll census and a voters' registry -- have been amongst the least satisfactory. This lack of planning has held these polls captive to a tight six-month timetable. And technical needs rather than the political aspirations of the Afghan people continue to drive preparations. Ballot production and distribution have received more time than the vetting of candidates in a land where numerous unpunished atrocities have taken place. Widespread civic education, essential given the lack of democratic experience, only got underway once the electoral process had begun. Hundreds of thousands of Afghan refugees who took part in the presidential poll are likely to be disenfranchised for reasons of cost and convenience.

Despite the shortcomings of the electoral process, there are also some signs of hope. The Joint Electoral Management Body Secretariat (JEMBS), overseeing the election process, is pushing ahead with the hand it has been dealt and driving technical preparations for infinitely more complex polls at a faster pace than during the lead up to the presidential poll.

Over 5,000 candidates might make every stage of the preparations harder through sheer numbers, but these impressive numbers also demonstrate continued public interest in creating an Afghanistan where the ballot prevails, not the gun.

Tight electoral timelines place more emphasis on getting the work done, rather than capacity building. But some attention is finally being turned to the sustainability of electoral institutions and future polls. In the Electoral Complaints Commission (ECC) and Provincial Election Commissions (PECs), the country has important new electoral bodies in place.

Security. Yet heightened insecurity continues to pose one of the gravest challenges to free and fair elections. In recent months anti-government activity, particularly cross-border attacks from Pakistan, has been on the rise, and election workers have been attacked. With multiple provincial contests, these elections may well see an increase in factional violence as local power structures are challenged and, in some cases, long-term rivals put in direct competition. Much of this could take place after the announcement of results as the new political landscape creates winners and losers.

These elections thus stand as both a testing ground and incentive for a number of on-going programs to build security. These include the disarmament of both official and unofficial armed groups; the expansion of the Afghan National Army (ANA); the professionalisation of the Afghan National Police (ANP); as well as reform of the judicial system and imposition of the rule of law.

The Disarmament, Demobilisation and Reintegration (DDR) program, aimed at officially recognised armed groups, has moved some 60,000 men out of the security equation and the ANA can also be seen as an embryonic success, adding to stability on polling day and beyond. Other processes, including the disbanding of Illegal Armed Groups (IAG) have, however, lagged behind. District and provincial governors, along with local police also remain a major source of intimidation, largely because of a failure, thus far, to professionalise the police and to rid local administrations of corrupt individuals.

While electoral vetting cannot substitute for a transitional justice process, a disappointing level of prudence over political will prevailed in assessing candidate eligibility, allowing many responsible for human rights abuses to contest the polls. Both the Karzai administration and its international supporters must recognise that the pursuit of stability and an end to impunity should proceed in tandem. The government must also ensure that the backroom deal-making which allowed some commanders to keep their place on the ballot in exchange for

undertakings of ongoing disarmament is zealously followed up.

As largely trusted actors, the international security forces in Afghanistan will have to play a particularly crucial role in providing security and building trust before, during, and after the elections. However, the slow pace of extending a robust peacekeeping presence outside Kabul during the transitional period has allowed regional commanders to entrench themselves. Indeed, instability, combined with a climate of impunity, could undermine the electoral process. Building a secure environment to allow people to confidently exercise their secret vote and to react quickly to factional fighting in the run up to, during and after the polls, should be the focus of attention for both national and international military forces.

But, above all, preparations for the new representative institutions should be urgently accelerated if they are to have a real voice and not descend into chaos and paralysis. Within Afghanistan a multiplicity of voices needs to be heard in setting future development and other pressing priorities, ending the historic intolerance of political opposition.

The international community too must not regard the polls simply as a convenient exit strategy. These historic polls stand closer to the beginning than the end of Afghanistan's political transition. History has already shown the catastrophic consequences of allowing the Afghan state to wither. As the transitional period comes to an end, the Karzai government and the international community must commit themselves to ensuring that Afghanistan and its citizens can continue to follow the path of a sustainable peace.

RECOMMENDATIONS

To the Karzai Government:

1. Foster security and voter confidence by:
 - (a) taking firm, immediate action against officials involved in intimidation of candidates, electoral workers or voters; this should include the President's Office coordinating relevant ministries and electoral oversight bodies, including the JEMB, the United Nations Assistance Mission in Afghanistan (UNAMA), the Afghan Independent Human Rights Commission (AIHRC) and domestic observers such as the Free and Fair Elections Foundation of Afghanistan (FEFA), to identify offenders who should be dismissed;

- (b) instructing the Ministries of Defence and Interior to aggressively monitor ongoing candidate disarmament, turning over information on non-compliance to the Electoral Complaints Commission (ECC) through the Joint Secretariat; this should be accompanied by wider efforts at accelerating the Disbandment of Illegal Armed Groups (DIAG).
2. Better prepare for the new institutions by:
 - (a) instructing the Civil Service Commission to prioritise the training of a strong core of staff and legislative advisers for the National Assembly;
 - (b) creating liaison points within all ministries for consultation with the new National and Provincial Assemblies;
 - (c) ensuring that the Ministry of Finance builds in budget lines for the National Assembly, Provincial Council and future elections;
 - (d) committing sufficient funds for resources and capacity-building to ensure effective participation by women and minority groups; and
 - (e) building momentum for the currently undefined Provincial Councils through pre-election public consultations in the centre and regions on devolution, using the results to draft legislation and create extensive briefing papers for the new National Assembly to take the final decision.
 3. Ensure some representation for refugees through presidential appointees to the Meshrano Jirga; this should be preceded by extensive pre-election consultations by the Ministry of Refugees and Returnees.
 4. Continue the vetting process by having new members of the National Assembly and Provincial Councils sign legally binding affidavits before taking their seats, attesting that they had not been involved in any criminal activities, human rights abuses, or the narcotics trade.
 5. Develop the capacity of the Independent Election Commission (IEC) and assist it in devising the framework for future elections by:
 - (a) instituting a transparent process for the appointment of members to the IEC and Provincial Election Commissions;
 - (b) ensuring that core national and regional election staff are retained; and
 - (c) actively participating in the Post Election Strategy Group.
- To the Joint Electoral Management Body (JEMB)/Independent Election Commission (IEC):**
6. Help build greater public awareness and candidate recognition by extending the formal campaign period through the remaining two months and abolish restrictive campaign rules.
 7. Call an urgent summit on civic education, including regional representatives of the JEMBS, NGO partners and donor groups to assess progress and penetration.
 8. Ensure transparency and credibility on polling day by:
 - (a) deploying trained polling staff, well in advance;
 - (b) widely disseminating information on candidates' party affiliations and candidates who have been disqualified; and
 - (c) devising an appropriate system to select small groups of election observers and candidates' agents to accompany ballot boxes to counting centres;
 9. Immediately after the elections build momentum for future polls by:
 - (a) publishing a wide-ranging and critical lessons learned report, with particular reference to the performance of the SNTV electoral system;
 - (b) preparing for the district elections in consultation with the Ministry of Interior and the Central Statistics Office; and
 - (c) institutionalising ongoing civic awareness programs paying particular attention to areas of low female participation.
- To the Electoral Complaints Commission (ECC):**
10. Create a climate of candidate responsibility by:
 - (a) publicising electoral offences and candidate eligibility criteria along with the standard of evidence needed for such complaints to succeed, and issuing regular updates on the status of such complaints;
 - (b) disqualifying candidates where necessary.
 11. Ensure adequate resources are in place to enable proper examination of complaints, directly appealing to donors where they are not.

To the International Community:

12. Assist the election process and the institutions it will create by:
- (a) immediately filling the funding gap for the National Assembly and Provincial Council elections;
 - (b) giving firm commitments to assist with funding elections and the electoral institutions for several more cycles, while setting specific goals for capacity building, local ownership and sustainability;
 - (c) committing funds for resources and capacity building of the National and Provincial Assemblies; and
 - (d) urging the government to allow foreign funding for political parties and creating,

with the IEC, a transparent pool (with strict reporting requirements) to strengthen party activities.

13. Help foster security and confidence by:
- (a) putting formal and informal pressure on Pakistan to seal its border against militant infiltration; and
 - (b) retaining extra election-time troops until at least the end of the year.

Kabul/Brussels, 21 July 2005

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I. INTRODUCTION

Elections for Afghanistan's National Assembly (Shura-e Milli) and Provincial Councils (Shura-e Weelayati) rank among the most ambitious democratic exercises ever attempted in a post-conflict nation. On 18 September 2005, 69 separate polls will take place: two in each of the country's 34 provinces and one for the nomadic Kuchi community. Votes will be cast amid an ongoing insurgency that will aim to cause disruption. Creating a new democratic landscape where the gun and tribal loyalty have previously ruled also increases the potential for factional conflict. Yet, if properly conducted, elections can express the people's will and spread the rule of law. If given the space and resources to flourish, the representative institutions that emerge from them could contribute greatly to stability.

The National Assembly will provide a much-needed constitutional check on the executive headed by President Hamid Karzai that has held power for three and a half years under interim and transitional arrangements. It should also offer a national forum to a wide range of decision-makers. While Karzai won a clear majority in the 2004 October presidential poll,¹ a truly representative body is vital in a country still emerging from years of turmoil caused and exacerbated by ethnic, sectarian and regional divides.² Speeding up the country's lagging legislative program should be a further objective, one neglected by previous, nominal assemblies.

The importance of the Provincial Councils lies in providing a level of local democracy. This should ideally include a measure of fiscal and administrative devolution in a country with a long tradition of highly centralised powers on paper but local strongmen in reality. If given a suitable mandate, such government units could do much to empower citizens.

Under the 2001 Bonn Agreement³ the transition to democratic institutions was to be complete by June 2004 but the tight deadlines were questionable from the start.⁴ Dates for the creation of representative bodies have slipped throughout a process that has emphasised the role of the executive. These elections are now touted as the delayed culmination of the agreement, despite the indefinite postponement of district polls that are vital for creation of the National Assembly's upper house.⁵

With over three years lead-up, it is disturbing that arrangements are now being made in such haste. Implemented under a tight six-month schedule, they have become, by necessity, "just in time" elections. The Joint Electoral Management Body (JEMB) is putting each stage in place just days (sometimes not even that) before it is due. This has meant an emphasis on the technical side of the polls at the expense of political processes that would enhance the credibility of the outcome. Less time has been devoted to vetting thousands of candidates than ballot production and distribution. The difficulties have been exacerbated by Karzai's insistence on a Single Non-Transferable Voting (SNTV) system that all but neutralises political parties.

Throughout the transitional period, troubleshooting has been favoured over strategic planning. Both the United Nations Assistance Mission in Afghanistan (UNAMA) and the Karzai administration appear to have thought in terms of electoral "events". The lack of forward planning may signal trouble for both the National Assembly and the Provincial Councils as they seek their own political space.

Indeed as election day approaches, preparations for the new institutions are still insufficient. The Provincial

¹ See Crisis Group Asia Report N°88, *Afghanistan: From Presidential to Parliamentary Elections*, 23 November 2004.

² See Crisis Group Asia Report N°64, *Peacebuilding in Afghanistan*, 29 September 2003.

³ The Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, endorsed by the United Nations Security Council on 7 December 2001, commonly referred to as the Bonn Agreement.

⁴ See Crisis Group Asia Briefing N°19, *The Afghan Transitional Administration -- Prospects and Perils*, 30 July 2002.

⁵ Under Article 84 of the Constitution of Afghanistan, one member of the upper house (Meshrano Jirga) is elected from the district councils of each province, making a total of 34 district council representatives in that body.

Council elections in particular must be among the first in the world for bodies that have no defined powers or responsibilities.⁶

II. POLITICAL BACKDROP

The Bonn Agreement set timelines for creation of democratic institutions. In a phased process of political transition, a representative body, implicitly a National Assembly, was to be created by June 2004.⁷ The process took place under an Interim Administration succeeded by a Transitional Administration. This body was approved and had its powers defined by the Emergency Loya Jirga in June 2002.

The Bonn Agreement offered only skeletal guidance on the shape of temporary and permanent institutions.⁸ With deadlines already slipping, a second Loya Jirga, convened in December 2003 to approve a new constitution, spelled out future governance arrangements, including the structure and powers of the National Assembly. Provincial and district elections were added to transitional arrangements and assigned a vital role in constituting the upper house, the Meshrano Jirga.

The constitution that emerged from the 22-day Loya Jirga in January 2004 was almost entirely based on Zahir Shah's 1964 document, with "president" at places simply substituted for "king". This had not been a foregone conclusion and was the subject of heated debate. Some representatives, particularly from the Tajik-dominated north, pushed for devolution after centuries of political domination by the Pashtun-majority south. One particularly powerful bloc sought a parliamentary system in which the legislature would be more dominant.⁹ However, Karzai, then the transitional head of state and with the support of a largely Pashtun bloc and international and UN backers, secured a strong presidential system. Most negotiation took place far from the Loya Jirga tents.

Throughout the transitional period, a strong executive was deemed more important than representative bodies. President Karzai's supporters quashed a proposal for a transitional parliamentary arrangement, debated for two days at the Emergency Loya Jirga in June 2002.¹⁰ A similar suggestion, for a representative body consisting of some members elected to the Loya Jirgas, resurfaced as the constitution was put in place.

⁶ Article 137 of the Constitution of Afghanistan provides only that: "The government while preserving the principle of centralism shall delegate certain authorities to local administration units for the purpose of expediting and promoting economic, social and cultural affairs in increasing the participation of the people in the development of the nation". Article 139 adds: "The Provincial Council takes part in securing the developmental targets of the state and improving its affairs in a way stated in the law, and gives advice on important issues falling within the domain of the province. Provincial Councils perform their duties in cooperation with the provincial administrations".

⁷ Section I of the Bonn Agreement, op. cit.

⁸ See Crisis Group Asia Report N°56, *Afghanistan's Flawed Constitutional Process*, 12 June 2003, and Crisis Group Asia Briefing N°29, *Afghanistan: The Constitutional Loya Jirga*, 12 December 2003.

⁹ See Crisis Group Asia Briefing N°31, *Elections and Security in Afghanistan*, 30 March 2004.

¹⁰ Crisis Group Briefing, *The Afghan Transitional Administration*, op. cit.

In what was largely seen as a last-minute concession, the constitution had a provision that presidential and National Assembly elections should be concurrent. Few even at the time thought this was likely.¹¹ The entire slate of elections was repeatedly delayed, first from June 2004 to September, then October. Finally it was announced that the presidential vote would proceed while National Assembly, provincial and district elections were postponed to spring 2005.¹²

On 9 October 2004 the presidential election took place in an atmosphere of euphoria. Around 8 million voters queued for hours, and Karzai received around 55 per cent. There were complaints that the permanent ink used to guard against multiple voting was improperly applied and allegations of multiple voting and irregularities in counting in some areas. However the Impartial Panel of Election Experts concluded that the outcome had not been affected.¹³

There were then delays in certification, and creation of an executive took far longer than many observers had expected.¹⁴ Despite numerous appeals, preparations for the spring 2005 elections did not appear prioritised, and on 19 March, National Assembly and Provincial Council polls were shifted again, to 18 September,¹⁵ while district polls were delayed indefinitely for "technical reasons" and left for the National Assembly to consider. Only then did any real momentum start to build on preparations.

In more than three years of largely unchecked power, the Karzai administration appears not have learned from mistakes. Little in the way of physical infrastructure or political space has been prepared for the new representative institutions.¹⁶ The government has built a hostile environment for political parties, including electoral

laws and decrees that render such groupings all but obsolete.

Throughout the process Karzai has himself refused to join a party or organise an accountable political base. At the same time, more recently, he appears to have sought to anoint his own "official" leader of the loyal opposition in Younis Qanooni, the runner-up in the presidential election.¹⁷

¹¹ See Barnett Rubin's short analysis as the gathering finished, "A Brief Look at the Final Negotiations on the Constitution of Afghanistan", 4 January 2004, at <http://www.kabul-reconstructions.net/index.php?id=293>. "The transitional measures call for every effort to be made to hold the first presidential and WJ (Wolesi Jirga, lower house of the National Assembly) elections concurrently. This means they will be held separately".

¹² "Statement of the JEMB on the Date of the Elections", 9 July 2004.

¹³ See "Final Report of the Impartial Panel Concerning Afghanistan Presidential Elections 2004," 1 November 2004.

¹⁴ A new Council of Ministers was announced on 23 December 2004.

¹⁵ The JEMB Decision of 19 March 2005 said, "in view of the technical obstacles to holding the district council elections this year the date for these elections will be established once the Wolesi Jirga has resolved the outstanding issues relating to the formation, recognition and boundaries of districts".

¹⁶ As of mid-July 2005, the Provincial Councils, for instance, still lacked a legislative framework.

¹⁷ Qanooni, a former member of the interim and transitional cabinets, took 16 per cent of the vote in the presidential election. He belonged to Hezb-e Jamiat Islami Afghanistan until launching in 2005 his own party, the New Afghanistan Party (Afghanistan-e Nawin), which is now part of the twelve-party National Understanding Front (NUF) coalition announced March 2005. A presidential press release declared the coalition an "important step towards strengthening democracy".

III. ELECTION FRAMEWORK

A. PRE-ELECTION PLANNING: A TALE OF DELAYS

The legal and institutional framework of an election is not a neutral matter. The timing, electoral system and methods of implementation have significant impact on the outcome and on the make-up of democratic institutions. Before deciding them, extensive consultations should be pursued. Decisions need to be announced as far in advance as possible to familiarise potential candidates, parties and, ultimately, voters.

This has not happened for the National Assembly and Provincial Council polls. Despite warnings that the presidential election was only the first -- and technically easiest -- of four slated elections, no real planning or preparations could be seen for almost four months after Karzai's victory.

A member of the president's staff said bluntly:

There was no post-election strategy. It was not properly thought through by UNAMA, the government or the JEMB -- which was still in place. You could have kept planning things with a minimum of staff (and) used that time for training staff.¹⁸

In March 2005, Chief Electoral Officer Peter Erben, who had first visited the previous month with a small assessment team, found the headquarters still a "ghost town".¹⁹ Important processes had to start without the new Electoral Law, which had failed to materialise by May. The delays affected not just election preparations but also the stakeholders. "We received the election law two days ago; it was signed by the president ten days ago. We needed it two months ago so people could read it and we could distribute it", an NGO representative working with political parties told Crisis Group.²⁰

There were some obvious reasons for the slow start. Counting for the presidential poll and investigations into complaints had taken longer than expected. So did the appointment of the Council of Ministers. Many international staff took leave while others departed for the Iraq elections. The kidnapping of three international

electoral workers on 28 October 2004 produced fear of greater insecurity and caused a number of key staff to question their future in the country. But for polls over three years in the making, questions should have been raised about priorities as well as coordination between the bodies involved.

Indeed, a substantial cause of the near paralysis and loss of institutional knowledge was a chaotic inter-agency switch. In reaction to the confusing overlap of responsibilities between UNAMA, the UN Office for Project Services (UNOPS) and the UN Development Programme (UNDP) during the presidential poll, it was decreed that UNOPS would be the sole implementer of the 2005 polls. UNAMA remained responsible for political oversight and UNDP for donor relations and funds management.

Nearly three months, 1 January to 15 March, was designated a transitional period in which "implemental responsibilities and assets were handed over".²¹ The reshuffle of power, contracts and infrastructure included substantial personnel changes, both local and international. Many national staff had UNDP contracts that ended in November 2004 and found jobs elsewhere. A senior UN diplomat said that the staff changes were simply one of several "inevitable factors" slowing down the initial preparations.²² However an international election worker on the ground for both polls says, "It was the most stupid and damaging thing they could have done for the electoral process for this country. To change midway through is a ridiculous step".²³

B. THE LEGAL FRAMEWORK

Under the constitution, Afghanistan is to have a bicameral National Assembly as its highest legislative body. One poll on 18 September will elect directly the lower house of this body, the Wolesi Jirga (House of the People), with 249 members -- 239 from the 34 provinces and ten from the pastoralist Kuchi community. 68 seats are reserved for women. The other election is for 34 Provincial Councils, local bodies of between nine and 29 members, according to population.

The indirectly elected upper house of the National Assembly, the 102-seat Meshrano Jirga (House of Elders), will be formed after the polls. The constitution decrees

¹⁸ Crisis Group interview, Kabul, May 2005.

¹⁹ JEMB Secretariat (JEMBS) Information Meeting, Kabul, 22 June 2005.

²⁰ Crisis Group interview with Khalilulla Hekmati of the National Democratic Institute (NDI), Mazar-e Sharif, 17 May 2005.

²¹ Islamic Republic of Afghanistan, UNAMA, UNDP and JEMB, "Substantive Project Revision and Addendum to the 2004 Afghan Elections Project", March 2005.

²² Deputy Special Representative for Afghanistan Filippo Grandi, by email, 19 July 2005.

²³ Crisis Group interview, Kabul, 27 June 2005.

that one third of its representatives are to come from the Provincial Councils (each Council sending one member), another one third is to be appointed by the president, and the balance is to come from the district councils.²⁴ However, with district council elections delayed, the Meshrano Jirga is likely to be "temporarily" scaled down, with the President appointing proportionally fewer members.

The constitution says little about the exact conduct of the polls. The legal framework is found instead in the Electoral Law of May 2005, which appeared without any public consultation and superseded the legislation of a year earlier. Importantly, this law stripped out what few provisions there were for meaningful political party participation by watering down their right to nominate candidates. Parties were also deprived of the right to put their symbols on ballots.²⁵

Other changes, discussed below, included creation of the Electoral Complaints Commission (ECC), a set-aside of seats for Kuchis in the Wolesi Jirga, lower registration fees, fewer signatures needed for candidate nomination, and further definition of which officials needed to resign before running.

This framework is skeletal and has had to be supplemented by a number of presidential decrees and JEMB decisions, for example to create Provincial Election Commissions (PECs).²⁶ Such important decisions about the shape of electoral institutions should be reviewed by the new legislature, which should also codify the most important decrees into statute.

²⁴ Article 84 of the Constitution of Afghanistan. The president's appointments are to come from "among experts and experienced personalities -- including two representatives of the disabled and impaired and two representatives from the Nomads (Kuchis)".

²⁵ The repealed 2004 Electoral Law allowed parties to nominate candidates Article 20(4), and even appears to accept a political party list system for the district councils, Article 35(1). It also included provisions for ineligible candidates to be replaced by their parties, Article 21(3), and implied that party symbols would be part of the electoral system. See for example Article 30(2).

²⁶ JEMB decision, 16 March 2005. The creation of Provincial Election Commissions was recommended by both the Organisation for Security and Cooperation in Europe (OSCE) and European Union (EU) observation teams following the presidential elections. The OSCE promoted a further layer of regional commissions. The PECs consist of three local citizens in each province and report to the JEMB and the Electoral Complaints Commission. Their functions include providing regional oversight on such issues as sites for polling stations and serving as the front line for complaints.

1. Management

The JEMB remains the official oversight body for the elections, continuing a temporary merger between the Independent Election Commission (IEC) and the UNAMA Electoral Component (UEC) during the transitional period. Its nine Afghan commissioners were appointed by President Karzai and its four international members by the UN's Special Representative of the Secretary General (SRSG).

Karzai announced the appointments of the Afghan commissioners in January 2005 and they were mostly in place by February. The Afghan commissioners who had presided over the presidential elections, in what was then the Interim Election Commission, had been widely perceived as weak, and there were complaints of partiality. Their replacement was no great surprise; indeed, the assumption that they would be out of jobs may have contributed to inaction following the presidential poll. Farooq Wardak, the former head of the JEMB secretariat, went on to a senior administrative job with President Karzai's new cabinet.

The new Afghan commissioners have a higher level of professionalism, three having worked as senior election management during the presidential poll. Commission Chairman Bissmillah Bissmil's impartiality has been questioned, however, since he was formerly allied with Ismail Khan²⁷ but lately perceived as President Karzai's man.

Opposition leader Qanooni distrusts the body as a whole: "The government appointed all the commissioners without any consultation with civil society groups, community leaders, or political parties. They are all the government's people".²⁸ In the run up to the parliamentary polls, opposition groups have demanded the right to make their own appointments. This would politicise the body to an undesirable degree but a more independent and transparent system of appointment is certainly desirable.²⁹

The JEMB has also undergone a radical structural change, with its executive arm, the Joint Electoral Management Body Secretariat (JEMBS), now squarely in the driver's seat. The short timeframe and technical difficulty of these elections have placed a premium on experience, so the head of the JEMBS, the Chief Electoral

²⁷ Ismail Khan, the powerful Governor of Herat, was removed from the post in September 2004, and is currently Minister of Mines and Industry in the central government.

²⁸ Crisis Group interview with Younis Qanooni, Kabul, 22 June 2005.

²⁹ The National Assembly, once operative, will provide a check through its right to confirm members of the IEC, Article 157 of the Constitution of Afghanistan.

Officer, is a foreign appointment. He also holds a non-voting seat on the JEMB. The JEMBS aims to employ approximately 6000 Afghan and 425 international core staff in eight regional and 34 provincial offices, rising to over 100,000 on polling day itself.³⁰

2. Funding

The September polls have been "running on fumes", a senior international electoral worker complained in May.³¹ By 12 July 2005, when the final candidate list was released, only \$60 million of an estimated \$148 million budget was committed,³² with further pledges of around \$30 million outstanding and some \$16 million left over from the presidential polls.³³ Hence, two months before the vote, \$42 million has yet to be found.

"It hasn't affected the election so far, and we can't let it affect the election", a UN worker told Crisis Group. They explained that donors had persistently failed to recognise that most money is required long before election day. For example, particularly large numbers of workers will be needed in the early stages of planning and civic awareness campaigns.³⁴ However, a donor nation representative said donors were wary because UNDP accounting had been late, slow and bureaucratic for the presidential poll.³⁵

Matters are complicated by the fact that funding needs were assessed before the July 2004 decision to split the presidential from the legislative, provincial and district polls. Approximately \$180 million was collected from donors at a time when it was envisaged that the four elections would be simultaneous.

C. POPULATION FIGURES AND SEAT ALLOCATION

For the Wolesi Jirga, the lower house of the National Assembly, the constitution directs that the "election system shall provide general and just representation for all the people of the country and based on the population".³⁶ Determination of the constituencies and number of representatives for each area was left to the electoral law, which designated the 34 provinces as the constituencies and provided that the number of representatives for each is to be decided by dividing

239 seats proportionally according to provincial population.³⁷ Population also determines how many members a Provincial Council has -- from nine for those with fewer than half a million inhabitants to 29 for those with over 3 million.³⁸

Under any electoral system an accurate determination of the population is crucial for ensuring fair representation. The Electoral Law directs the Central Statistics Office (CSO) to provide "the latest official population figures or the estimated population of each province" to the JEMB.³⁹ However, the last census was in 1979 and only about two-thirds complete. Current estimates vary widely -- 22 million by the CSO,⁴⁰ 29 million by the U.S. government.⁴¹

Under the Bonn Agreement, the UN was to carry out a census prior to any election.⁴² The UN Population Fund (UNFPA) and the CSO subsequently signed a project document, which limited the former's responsibility to providing technical expertise,⁴³ standard practice for the agency, which is not an implementing organisation.

The CSO is ill-prepared for such a project in a country devastated by years of conflict and stripped of technical and human capacity, and there have been problems from the outset. After three years, only the very beginnings of a census process are in place. A preliminary survey is almost complete but final data of a full census is only expected in 2007.⁴⁴

A pre-election census was perhaps always overly ambitious. A statistical expert points out that preparing for and conducting a census takes five to ten years even in sophisticated Western countries.⁴⁵ It might have been appropriate, therefore, to have considered alternative methods of data collection at an early date.

³⁰ Background Briefing: Wolesi Jirga and Provincial Council Elections 2005, JEMBS.

³¹ Crisis Group interview, Kabul, 5 May 2005.

³² "Substantive Project Revision and Addendum", op. cit.

³³ UNDP figures, 11 June 2005.

³⁴ Crisis Group interview, Kabul, 9 May 2005.

³⁵ Crisis Group interview, Kabul, 27 June 2005.

³⁶ Article 83 of the Constitution of Afghanistan.

³⁷ Articles 11 (a) and 20 (3) of the Electoral Law.

³⁸ *Ibid.*, Article 28.

³⁹ *Ibid.*, Article 20 (1).

⁴⁰ "Estimated Population of Afghanistan 2004-2005", Central Statistics Office, Kabul, 2005.

⁴¹ CIA World Factbook, July 2005.

⁴² "Request to the United Nations by the Participants at the UN Talks on Afghanistan...to conduct as soon as possible (i) a registration of voters in advance of the general elections that will be held upon the adoption of the new constitution by the constitutional Loya Jirga and (ii) a census of the population of Afghanistan, Bonn Agreement, op. cit., Annex III.

⁴³ UNFPA assistance to the CSO was in the form of vehicles, data processing, cartographic equipment and training of field staff. Most importantly, in view of the CSO's limitations, UNFPA agreed to provide technical expertise.

⁴⁴ Crisis Group interview with Abdul Rashid Fakhri, Deputy Minister of Economy for Statistics, Kabul, 15 June 2005.

⁴⁵ Crisis Group interview, 31 May 2005.

1. Household listings survey

The first phase of the three-phase census project, the household listing, has been underway since January 2003.⁴⁶ This seeks only the most basic information, such as the number of people living in each household and the number aged under eighteen.⁴⁷

The conduct of the poll has proved contentious.⁴⁸ "There was no transparency", was a typical complaint to Crisis Group, in this case from a Wolesi Jirga candidate in the north. "When they came to Farayab last year, I was there. They only visited a couple of houses in the village".⁴⁹ Others complained that enumerators lacked knowledge of local languages.

Deputy Minister of Economy (Statistics) Abdul Rashid Fakhri explained that CSO teams, due to cultural sensitivities in some rural areas, had to gather estimates from village elders and district administrators instead of conducting house-to-house surveys.⁵⁰ Informal questioning in five provinces, admittedly among only a few dozen people, identified only one man in Mazar-e Sharif who admitted to participating in the survey. He said he had sent the enumerator away as the data was being recorded in pencil, and he feared it would be changed later.⁵¹

For aside from the technical and logistical hurdles, the process has clearly taken on political overtones. Regions have jostled to claim a larger population -- and ultimately more Wolesi Jirga seats. Fakhri told Crisis Group some provincial governors had instructed people to inflate household size. Others caught on to the implications only later:

After we determined and got an estimate of each provincial population, we took our findings to district and provincial governors to sign a letter saying the estimates were correct. The CSO did not receive one complaint about the population estimates until some district governors and provincial governors who signed letters learned

that the population of provinces would determine Wolesi Jirga seat allocations.⁵²

Many such allegations stem from perceptions of ethnic bias. Although ethnicity is not enumerated, one or another group dominates a number of provinces, and impressions of over and under-counting can all too easily be attributed to an ethnic bias. Moreover, the extended period over which the household listing has been conducted means results could be out of date, since much refugee repatriation has taken place.

In a 26 February public statement on election preparations, the government announced that, "the Cabinet established a special committee to study options for population figures and the number of seats for Kuchis".⁵³ The formula used reportedly was based on extrapolations of the incomplete 1979 census along with some of the data from the household listings⁵⁴ but the equations used have never been made public.

One demographic expert said the final figures used for seat allocations might have inflated the capital's population by as much as 1 million. "Given that Kabul is the political nerve centre of the country, uncertainty about its population could have severe political implications".⁵⁵

Clearly a full census cannot be completed before the September elections. However, the collection of credible and transparent data should become a national priority. In an environment marked by ethnic tensions and in which perceptions -- true or false -- of under-representation risk destabilisation, information used to allocate seats must be easily defensible. Alternatives to a census should also be considered. These include an improved civil registry for issuing national identity cards. Population figures could be collected when cards are issued, and the cards could also be used at election time.

2. Seat allocation

Kabul received 33 seats, the largest number in the Wolesi Jirga. The minimum allotment of two seats each was awarded to Panjshir, Nuristan and Nimroz. JEMB chairperson Bissmillah Bissmil admits there is widespread dissatisfaction -- "the figures we received were not acceptable for the Afghan people or even for

⁴⁶ Originally expected to be finished by March 2004, fieldwork was still not complete by mid-2005.

⁴⁷ The full census is intended to yield much more detailed socio-demographic data including age, sex, and education levels, and mortality, fertility and migration rates.

⁴⁸ See Crisis Group Report, *From Presidential to Parliamentary Elections*, op. cit.

⁴⁹ Crisis Group interview with Hedayatullah Hedayat, medical lecturer in Balkh province and Wolesi Jirga candidate, Mazar-e Sharif, 17 May 2005.

⁵⁰ Crisis Group interview with Abdul Rashid Fakhri, Deputy Minister of Economy for Statistics, Kabul, 15 June 2005.

⁵¹ Crisis Group interview with NGO worker, Mazar-e Sharif, 17 May 2005.

⁵² Crisis Group interview with Abdul Rashid Fakhri, Deputy Minister of Economy for Statistics, Kabul, 15 June 2005.

⁵³ "Statement on Preparations for Parliamentary Elections", Government of Afghanistan, 26 February 2005.

⁵⁴ Crisis Group interview with Abdul Rashid Fakhri, Deputy Minister of Economy for Statistics, Kabul, 15 June 2005.

⁵⁵ Crisis Group interview, 12 June 2005.

our commission" -- but defends the process as the best in the circumstances.⁵⁶

In Bamiyan (four seats) and Balkh (eleven), homes to the Hazara and Uzbek minorities respectively, the allocations are a source of much discontent, for ethnic reasons and resentment of Kabul's domination. A candidate in Mazar-e Sharif told Crisis Group:

We believe the population of the province is 2 million and we're entitled to twenty not eleven seats...the government promised a census; we need accurate information. Unfortunately the last two years they did not take this seriously.⁵⁷

Similarly, in the Central Highlands, an area dominated by the Hazara minority, an international worker said local feeling was running high at the allocation of four seats to Bamiyan and four to the neighbouring province of Dai Kundi. "It is particularly insensitive to give the Kuchis ten seats. It looks ungenerous for the Hazara regions to get eight. This is not a good idea".⁵⁸

Complaints have not been confined to minorities. In the southern city of Kandahar (eleven seats) many Pashtuns (widely believed to be the largest ethnic group) also felt their province had been slighted. "Kandahar is a big city, I do not agree with this...this will be a big problem in parliament".⁵⁹

3. Seat allocation for Kuchis

Kuchis are the nomadic peoples of Afghanistan, though their traditional way of life has been decimated by the recent drought and years of conflict, which resulted in many migratory trails being blocked and pastoral lands seized.⁶⁰ Many for all practical purposes are now a part of the settled population. Special provision has been made for the community throughout the democratisation process, with seats set aside at the Emergency and Constitutional Loya Jirgas.

The constitution makes no reference to a non-territorial allowance for any group in the Wolesi Jirga,⁶¹ although it provides for two Kuchi representatives among the president's appointees for the Meshrano Jirga.⁶² It was the new Electoral Law of 2005 that reserved ten seats for the Kuchis in the Wolesi Jirga.⁶³ The late appearance of the provision has been controversial, with some arguing it is unconstitutional and/or ethnically motivated since nearly all Kuchis are Pashtun. A candidate in Balkh told Crisis Group:

We do not agree with allocating ten seats to the Kuchi. This was never debated during the Constitutional Loya Jirga. We discussed representation proportionally by province, not representation by ethnic group or tribe.⁶⁴

But the National Kuchi Shura considers the provision not only deserved but also inadequate, arguing that twenty to 24 seats would have been fairer.⁶⁵ With no real statistics on the community, estimates of Kuchi numbers vary widely. A recent government report estimates 2.4 million, of whom 1.4 million still take part in seasonal migrations.⁶⁶ The National Kuchi Shura puts the population as high as 7 million,⁶⁷ while other estimates are as low as 600,000.⁶⁸

Such a mobile community faces unique problems in the electoral process. Voter registration for both the presidential and parliamentary elections took place in summer, when Kuchis are on the move. Mobility and the remoteness of their settlements make it hard to relay information and materials in a timely manner. There are also difficulties in reaching registration and voting sites.

Kuchis are most stable in the winter, when they return to the same grazing areas each year. A definitive count could be best done then, perhaps linked with special registration facilities. Consideration could also be given to mobile registration centres.

⁵⁶ Crisis Group interview with Bissmillah Bissmil, Chairman of the JEMB, Kabul, 11 June 2005.

⁵⁷ Crisis Group interview with Zalmay Yunosi, Political Adviser to Balkh Governor Atta Mohammed, Mazar-e Sharif, 18 May 2005.

⁵⁸ Crisis Group interview, Central Highlands, May 2005.

⁵⁹ Crisis Group interview with Engineer Abdul Latif, Independent candidate for the Wolesi Jirga, Kandahar, 31 May 2001.

⁶⁰ See "Kuchis Losing Their Way", Institute for War and Peace Reporting, Afghan Recovery Report, No. 57, 24 April 2003 and "Afghan Nomads Feel the Cold", BBC Online, 9 May 2002.

⁶¹ Article 83 of the Constitution of Afghanistan.

⁶² *Ibid.*, Article 84.

⁶³ Article 20(2) of the Electoral Law.

⁶⁴ Crisis Group interview Zalmay Yunosi, Political Adviser to Balkh Governor Atta Mohammad, Mazar-e Sharif, 18 May 2005.

⁶⁵ Crisis Group interview with Wakil Ashdar Ahmadzai, head of the National Kuchi Shura, 14 June 2005.

⁶⁶ "National Multi-Sectoral Assessment on Kuchi (NMAK)", joint report by the Ministry of Rural Rehabilitation and Development, the Ministry of Frontier and Tribal Affairs and the Central Statistics Office, Kabul, April 2005.

⁶⁷ Crisis Group interview with Wakil Ashdar Ahmadzai, Head of the National Kuchi Shura, Kabul, 14 June 2005.

⁶⁸ "Minorities Make Themselves Heard", Institute for War and Peace Reporting, Afghan Recovery Report, 17 June 2002.

4. Reserved seats for women

The original draft constitution would have reserved the equivalent of one Wolesi Jirga seat for women in every province. A well coordinated effort by women's groups at the Constitutional Loya Jirga achieved a change to the equivalent of two seats.⁶⁹ This evoked remarkably little controversy and means that women will occupy over a quarter of the seats in the Wolesi Jirga. The constitution reserves 50 per cent of the president's allotment in the Meshrano Jirga for women -- one-sixth of that body's total. Under the 2005 Electoral Law, a quarter of the seats in the Provincial Councils are also to be reserved for women⁷⁰ although there is no such constitutional provision.

There is little expectation that women will gain many non-reserved seats. However, the high probability of a fractured Wolesi Jirga and weak party discipline suggest that women working together could form a powerful voting bloc. Female representation will in any event be high, even in comparison to Western countries with long democratic traditions such as the U.S. and France. Realistically, of course, women representatives will not all have the same agenda.

Since seats will be taken from the province's general allocation and given to the highest polling women on the general ballot, there may be resentment against those who obtain seats with far fewer votes than some male losers. There is concern this may weaken their mandate. However, in a country with minimal female participation in public life, the seat reservations are important as a critical entry point for women in the political process and governing structures. "We can't do any worse than the men have in the last 25 years", one woman told a civic educator when asked why she was a candidate.⁷¹

5. Out-of-country voting

The years of conflict mean Afghanistan has a large refugee community although exact figures are hard to pin down. The UNHCR and Pakistani government have recently undertaken a survey, yet to be made public. By recent estimates, there are 2 million Afghans in Pakistan.⁷² The Iran Bureau for Aliens and Foreign Immigrants Affairs maintains a database of registered refugees of around

850,000.⁷³ The presidential election offered last minute, out-of-country voting to those in both countries. The Cabinet said in February 2005 that for the forthcoming polls it had "decided that they [refugees] should be provided the opportunity to participate in the elections and requested the JEMB to make a presentation on the operational feasibility of it..."⁷⁴ However, little, if any, talk of doing so has been heard since.

With little written proof of previous residence, some observers believe that out-of-country voting by province would be a logistical nightmare. Cost -- an estimated \$30 million -- is also cited.⁷⁵ Yet, disenfranchising millions is not the answer. Many refugees consider they have a stake in their country but have not returned for numerous reasons, often security related. Allowing them to vote and have representation would surely have built on this connection and encouraged them to see their future at home. Creating temporary refugee constituencies for one or two elections should at least have been publicly debated. The Kuchis have, after all, received a special allowance not mentioned in the constitution.

With only two months remaining and a maximum of 250 seats mandated in the constitution -- allocations long since done -- it is difficult to devise a way for the refugees to exercise their franchise. The new National Assembly, and executive, should however undertake appropriate consultation with this large, disenfranchised community. The president's nominees for the Meshrano Jirga should also include a suitable number of representatives from this community.

⁶⁹ Article 83 of the Constitution of Afghanistan.

⁷⁰ Article 29 (1) (c) of the Electoral Law.

⁷¹ Crisis Group interview, Bamiyan, 23 May 2005.

⁷² See "Afghanistan: UN Says Most of Country Safe for Refugee Return", Radio Free Europe, 16 February 2005.

⁷³ Crisis Group interview with UNHCR staff in Kabul, 19 July 2005.

⁷⁴ "Statement on Preparations for Parliamentary Elections", *op. cit.*

⁷⁵ Crisis Group interview, Kabul, 9 May 2005.

IV. PEOPLE AND POLLS

A. THE VOTING SYSTEM: SNTV LOTTERY

The disadvantages of attempting to build a coherent legislature and stable state from a voting system in which every candidate stands as an individual are widely recognised.⁷⁶ However President Karzai, with his antipathy to political parties, scrapped a draft electoral law in 2004 that would have mandated a party list system. This was against the advice of the United Nations and international advisers -- with the exception of his most powerful backer, U.S. Ambassador Zalmay Khalilzad.⁷⁷ Over the winter months, there was substantial lobbying against the chosen SNTV system. Indeed hopes for change may have been partly responsible for the delay in electoral preparations. But nothing happened.

SNTV appears simple: each voter indicates one favoured candidate. In many single seat constituency Westminster-based systems too, each voter casts a ballot for one candidate. However real distortions arise in multi-seat constituencies. If a large proportion of the citizenry votes for one candidate, many ballots will in effect be wasted. This large group will elect a single representative, while much smaller numbers of voters will also manage to disproportionately elect favoured candidates. SNTV is particularly unsuited to a country in which political parties lack capacity and discipline. Unless parties and communities very accurately gauge the extent of electoral support before the poll and ensure that their votes are distributed evenly among the appropriate number of candidates, results will not be truly representative.⁷⁸

Mujahidin groups with established powerbases and resources supported the SNTV system. Those Afghans who associate parties with the civil war, communist rule or years of factional fighting and believe the current parties are inherently undemocratic or lack the capacity for democratic reform also supported the system. Independent Electoral Commissioner Momina Yari is one:

⁷⁶ See Crisis Group Report, *From Presidential to Parliamentary Elections*, op. cit; and Crisis Group Asia Briefing N°39, *Political Parties in Afghanistan*, 2 June 2005.

⁷⁷ Crisis Group interview with an international participant in the high-level meetings where the voting system was discussed, Kabul, 10 June 2005.

⁷⁸ According to the Afghanistan Research and Evaluation Unit (AREU) SNTV is only used in Jordan, Vanuatu, the Pitcairn Islands and (partially) Taiwan. For further discussion see Andrew Reynolds and Andrew Wilder, "Free, Fair or Flawed: Challenges for Legitimate Elections in Afghanistan," (AREU) September 2004.

The literacy rate is low, and people cannot understand the complexity of the PR system. Maybe powerful political forces would come again and control parliament. SNTV means that people can decide whom they are voting for.⁷⁹

However, it is clear from Crisis Group interviews with parties, independent candidates and voters that few really understand a system that demands a sophisticated strategy if results are truly to reflect popular will.

The disadvantages of the system in tandem with laws that favour the individual over political parties are already apparent. Over 5,000 candidates are competing for the National Assembly and Provincial Council polls.⁸⁰ Ballot production, transportation and distribution all pose major challenges for the election managers. In Kabul, where there are some 400 candidates, the ballot will be a multi-folded tabloid.

It is much too late to alter the voting system for these elections. However, the new National Assembly should make this a priority. Even several people who argued that SNTV was appropriate given the current state of political parties agreed that future change might be desirable. This included Bissmil, who told Crisis Group, "the PR [proportional representation] system is better for the long term".⁸¹

B. VOTER REGISTRATION

The eight-month voter registration exercise was in some ways one of the most disappointing features of the 2004 presidential election process.⁸² The sheer volume of voters enrolling -- 10.5 million -- was well over 100 per cent of prior estimates, no doubt demonstrating electoral enthusiasm but also showing up the minimal safeguards against multiple enrolment. This meant an estimated 500,000 to 1 million extra voter registration cards in circulation.⁸³

People were also allowed to register at any site and it was not emphasised that they had to enter their province

⁷⁹ Crisis Group interview, Kabul, 11 May 2005.

⁸⁰ The final list was announced on 12 July 2005. There are now 2,709 candidates (including 328 women) for the provincially elected Wolesi Jirga seats, 69 for the 10 Kuchi seats (7 women), and 3,027 for the Provincial Councils (including 248 women). There were 17 exclusions and 250 withdrawals from the preliminary list.

⁸¹ Crisis Group interview, Kabul, 1 June 2005.

⁸² See Crisis Group Report, *From Presidential to Parliamentary Elections*, op. cit.

⁸³ Peter Erben, JEMBS Information Meeting, Kabul, 8 June 2005.

of residence. The absence of localised voter lists created "one of the greatest Achilles heels" of the process.⁸⁴

Unlike the presidential poll this is a constituency-based elections and people must vote in the province entered on their registration card.⁸⁵ However, in Kabul alone it is estimated that 12 per cent of the population were originally registered in the wrong province, having apparently entered their place of birth or village home.⁸⁶ If a high number of voters are turned away on election day for attempting to vote in a different province to that shown on their voting card, disillusionment or even violence could result.⁸⁷

Voter rolls are usually considered a standard defence against voter fraud; their absence means that voters cannot be allotted to polling centres. And since 40 million ballots will be printed to ensure every booth has enough, there is a greater risk of ballot stuffing.

The JEMBS estimated a full-scale re-registration drive would cost around \$80 million.⁸⁸ Instead it has undertaken a much more restricted additions-and-correction exercise over four-weeks, with facilities for re-registration limited to district centres⁸⁹ and some areas that were insufficiently covered, for security or logistical reasons, in 2004.⁹⁰ Citizens who registered in the wrong province, have recently attained voting age, or did not previously register could sign up. Five in-country centres⁹¹ will also offer absentee registration until 8 September to Afghan refugees participating in UNHCR's voluntary repatriation program. An assessment of the work to date on voter registration and considering future options in tandem with the census and national identity card programs is a priority before any further elections, this should involve the UN, the Government and IEC.

C. CIVIC EDUCATION

Civic education is the backbone of a democratisation process. No election can claim to be free and fair if citizens do not understand what they are voting for, how to vote, and that their ballot is secret. In Afghanistan, with low

political awareness, a large rural population, one of the world's highest levels of illiteracy, limited mass media, and harsh social strictures on women, the importance of clearly explaining the electoral system cannot be understated.

The Bamiyan chairperson of the Co-operation Centre of Afghanistan (CCA), one of an alliance of fifteen local NGOs contracted to develop civic awareness, told Crisis Group: "50 per cent of people have no idea there is an election. The other 50 per cent might know that there will be a parliament".⁹² This was in the remote Central Highlands but a female candidate for the Wolesi Jirga in Kandahar said, "even in the city most people don't know what this parliament is. 'Are you going to replace Karzai?' they ask me".⁹³

A focus group report funded by the U.S. Agency for International Development (USAID) concluded there is little knowledge of what a National Assembly will do, of voting procedures, or even the election date, and virtually no awareness of the Provincial Council elections.⁹⁴ Even basic human rights set out in the constitution are not widely known and may impede women's ability to take part in the elections. One recent poll further found that some 87 percent of Afghans -- both men and women -- believed that wives needed their husband's permission to vote and 72 percent felt men should advise women on voting.⁹⁵

Unfortunately, civic education for the elections all but halted during the winter. Face to face awareness training continued in only a few provinces, conducted by International Foundation for Election Systems (IFES). One staff member of a donor agency told Crisis Group vital decisions about the civic education process were being awaited.⁹⁶ The JEMBS, however, blamed lack of funds.⁹⁷

Indeed, the magnitude of the job appears to have been recognised only quite late, when a decision was taken to outsource much of the campaign to local NGOs. Even then, final contracts were not signed until mid-May. This

⁸⁴ Ibid., 8 June 2005.

⁸⁵ Article 16 (1) of the Electoral Law: "(1) Voters shall vote in the constituency indicated on their voter registration card".

⁸⁶ JEMBS Information Meeting, Kabul, 8 June 2005.

⁸⁷ Ibid.

⁸⁸ Ibid., 22 June 2005.

⁸⁹ These are the district capitals but as the number and boundaries of districts remain in dispute, more neutral language was chosen.

⁹⁰ JEMBS Information Meeting, Kabul, 22 June 2005.

⁹¹ The five UNHCR centres are located in Kabul, Herat, Zaranj (Nimroz), Mohmand Dar (Nangarhar), and Daman (Kandahar).

⁹² Crisis Group interview with Sayeed Ahmed, Bamiyan chairperson of the Co-operation Centre of Afghanistan (CCA), Bamiyan, 23 May 2005.

⁹³ Crisis Group interview, Kandahar, 31 May 2005.

⁹⁴ "Formative Research for Elections Civic Education Programmes: General Focus Group Discussions in the North, West, Southeast and South of Afghanistan", Altai Consulting with the support of USAID and The Asia Foundation (Draft), 2005.

⁹⁵ Inclusive Security: Women Waging Peace, "From Rhetoric to Reality: Afghan Women on the Agenda for Peace," February 2005, p. x, available at www.womenwagingpeace.net.

⁹⁶ Crisis Group interview, Kabul, 2 July 2005.

⁹⁷ Samantha Aucock, head of Public Outreach, JEMBS, Information Meeting, 6 July 2005.

meant there were no extensive face-to-face civic education campaigns before the candidate nomination process had begun.⁹⁸ The task has also had to be limited to narrow voter education messages on procedure rather than broader discussion of democracy and the institutions that their votes will bring into being.

The Afghan Civil Society Forum (ACSF), an association of 15 NGOs, will implement most of the face-to-face program across the country, including hiring around 1,500 civic educators. Before the presidential poll, it ran nearly ten months of civic education. For these far more complex elections, it will have had only four months.

There have been difficult relationships between local NGO staff and JEMBS electoral workers in some regions, probably exacerbated by the fact that many of the latter were in place before roles were changed. They are now training and monitoring local NGO workers rather than directly overseeing programs, while the messages are prepared by the JEMBS in Kabul.

There was also early controversy about whether NGO workers involved in civic education should be defined as electoral workers and therefore required to resign if relatives were candidates. Crisis Group received several complaints that NGO workers were not impartial. Some of this might be attributed to personal rivalries but ACSF says it has taken the complaints seriously, and several members of partner NGOs have stood aside.⁹⁹

JEMBS wants face-to-face educators to cover around 60 per cent of the country with all but four districts -- restricted because of security concerns -- now being covered.¹⁰⁰ Civic education will also use radio programs and travelling theatre groups. However, many people still feel the campaign is being treated as an "add on". For example, in Kabul where the JEMBS has retained control of some face-to-face voter education, district field coordinators and civic educators share one car.

Worryingly little knowledge was displayed by nearly everyone that Crisis Group has spoken to over a two month period. "Those who are standing will join the Ministry of Interior", reckoned a potential voter in Kabul.¹⁰¹

⁹⁸ "The Public Outreach Campaign began at a time when international Public Outreach officers were still being deployed to provinces and Afghan Public Outreach officers were still being recruited. This inevitably led to a focus on mass media". "Candidate Nomination, Wolesi Jirga and Provincial Council Elections", JEMBS Report, 30 May 2005.

⁹⁹ Crisis Group interview, ACSF, Kabul, 3 July 2005.

¹⁰⁰ "Wolesi Jirga and Provincial Council Elections", JEMBS Background Briefing, 7 June 2005.

¹⁰¹ Crisis Group interview, Kabul, 14 July 2005.

D. CAMPAIGNING

The large numbers of candidates in some areas make voter familiarity and recognition all the more important. However there are immense challenges to campaigning in Afghanistan with its low literacy rate, differing levels of media penetration, large rural population and crumbling road network.

With a national constituency but remote settlements, Kuchis face particular challenges, as do women candidates. Wolesi Jirga candidate Rona Tareen in Kandahar said:

I am under a *burqa*; people cannot recognise me. Men can go to the mosque and talk in public. Women must talk to individuals. You cannot have that same large gathering.¹⁰²

Minister of Women's Affairs Masooda Jalal agrees:

Political parties are not interested in investing in women, the fundamentalists do not even believe in them. There are many problems facing women over resources; they cannot afford even campaign posters.¹⁰³

The huge drug revenues in Afghanistan¹⁰⁴ raise fears that wealthy traffickers could seek to influence the process by backing sympathetic representatives. Powerful commanders are also at an advantage. Mohammad Mohsini, a Wolesi Jirga candidate in Balkh, told Crisis Group that influential local commanders could afford huge runs of posters. "How can I, as a university teacher, compete?...Under the laws they are not required to declare sources of finance of their campaigns. Who knows where all the money is coming from?"¹⁰⁵

Article 38 of the Electoral Law called for the establishment a campaign period. The JEMBS's election timetable laid down 30 days but few regulations on exactly what this meant appeared before July 2005. Peter Dimitroff, country director of the U.S.-headquartered National Democratic Institute, which is working to build political party capacity, told Crisis Group:

Both political parties and independent candidates who wished to play within the rules are being penalised as they are waiting (for the rules) while

¹⁰² Crisis Group interview, Kandahar, 31 May 2005.

¹⁰³ Crisis Group interview, Kabul, 15 June 2005.

¹⁰⁴ The United Nations Office on Drugs and Crime (UNDOC) estimates that opium worth some \$2.8 billion in export revenue -- a sum that would be the equivalent of 60 per cent of Afghanistan's Gross Domestic Product (GDP) -- was produced in 2004. See UNODC's "2004 Opium Survey".

¹⁰⁵ Crisis Group telephone interview, 11 July 2005.

other candidates have just started campaigning in the absence of any clear explanation of what activities are allowed.¹⁰⁶

On 7 July, a JEMB press release announced that new regulations had banned newspaper advertisements for the entire campaign, while television and radio spots could only be bought from 17 August to 15 September. Candidates could distribute leaflets, display posters and hold rallies even before the official period but approval for campaign rallies would have to be sought 48 hours in advance.¹⁰⁷ Five days later, a second press release stated that paid advertisements on television and radio were banned but newspaper advertisements were allowed throughout, although restricted to a total of four pages during the campaign period.¹⁰⁸ These shifting and restrictive guidelines have only added to the confusion.

All this means the election campaign will be far more about the projection of powerful individuals than choices between manifestos and programs. Rafiq Shahir, chairperson of the Herat Professional Council and a candidate for the Wolesi Jirga, supported the short campaign on the ground that it limits the risk of confrontation.¹⁰⁹ However Sebghatullah Sanjar, head of the Republican Party, believes that small parties and individuals needed more time. "I have always been calling for a longer campaign period. We need at least two months".¹¹⁰

Amidst all these restrictions each candidate is to receive sponsored media spots in a process overseen by the JEMB's Media Commission, but directly funded by international donors. Each candidate for the Wolesi Jirga has the choice of two five minute radio spots, or approximately half that time on television. Provincial Council candidates will be given four minutes on radio or around two minutes on television. While this is a commendable effort at creating a level playing field, if every candidate in Kabul took up the offer it would mean nearly two and a half hours a day of dedicated programming for 26 days (the campaign period minus Fridays).¹¹¹ Few voters are likely to be patient enough to follow the entire debate.

By mid-July there was still little public campaigning. Given financial and social constraints as well as local

political tradition, however, much campaigning, especially by women, is likely to be conducted behind doors or through community elders. Other candidates, such as the many women who are schoolteachers, intend to campaign through networks of former students.

¹⁰⁶ Crisis Group interview, 13 July 2005.

¹⁰⁷ In line with the Law on Gatherings, Strikes and Demonstrations adopted by Presidential Decree No. 188.

¹⁰⁸ "Advertisement Policy During the Election Campaign", JEMB Decision No. 2005-39, 11 July 2005.

¹⁰⁹ Crisis Group telephone interview, 11 July 2005.

¹¹⁰ Crisis Group telephone interview, 11 July 2005.

¹¹¹ Crisis Group interview with JEMBS staff member, 22 June 2005.

V. POLITICAL PLAYERS

A. CANDIDATE NOMINATION

When candidate nominations began on 30 April, many provincial election offices were still not fully staffed.¹¹² All available staff, and in some cases international military, were brought in to distribute materials, although policy guidelines were put in place.¹¹³ An electoral worker in Bamiyan described the process as rushed but reasonable. "If we had had two months, candidates would still have waited until the last minute. It was hard logistically but I am satisfied".¹¹⁴ The greatest drawback, as discussed above, was the absence of a prior, full-scale civic education campaign. Candidate nomination numbers show that the information about the process did get out there, although the lack of a wider program may be one of the factors responsible for the low proportion of female nominations.

Potential candidates for the Wolesi Jirga had to be over 25 and submit 300 signatures of registered voters and a 10,000 Afghani (\$200) deposit. For Provincial Councils, requirements were eighteen years old, 200 signatures and 4,000 Afghani (\$80).

Although only signatures were required, along with a voter number, Crisis Group heard numerous cases of potential candidates collecting voter registration cards, voluntarily or involuntarily. One potential candidate said he had handed over 1,000 voter registration cards to a better known figure who had decided to stand, telling him, "you deserve this more than me".¹¹⁵

The Electoral Law also required candidates to step down from a number of specified government positions.¹¹⁶ According to a joint report by the Afghan Independent Human Rights Commission (AIHRC) and UNAMA published in June, 212 government officials opted to run, with "a number of these officials yet to stand down".¹¹⁷ Indeed, at least in the initial stages electoral offices appeared confused about implementation. Crisis Group witnessed a potential candidate being asked for an attested letter of resignation from her employer in one

office but was told in another city this was not necessary until the formal campaign period.

A change in the Electoral Law meant that government officials would not necessarily get their jobs back if they ran and lost. A senior official told Crisis Group, "this was seen as a great opportunity to reform the government".¹¹⁸

In the opening weeks of the process, nominations were relatively slow. Violent protests in ten provinces over the alleged desecration of the Koran by U.S. forces resulted in some offices closing down. Hence, the original closing date of 19 May was extended for three days.¹¹⁹ It was only in the final days that the numbers swelled, with an average of 591 candidates registering daily in the final week.¹²⁰

Collective decision-making by traditional communities might have at least partially caused this pattern. A wealthy landowner in Bamiyan told Crisis Group the elders of the area had chosen him as their candidate.¹²¹ In Nawur district of Ghazni, a committee of elders met to decide on the "district" candidate from nine aspirants.¹²² Indeed, such references to collective decisions on candidates were common.

By close of the nomination process, there were 2,838 potential candidates for the 239 provincially-elected Wolesi Jirga seats, 67 for the ten Kuchi seats, and 3,198 for the 420 Provincial Council seats.¹²³

While the JEMB said it was pleased with the number of women candidates, there were only 342 for the Wolesi Jirga and 286 for the twice as numerous Provincial Council seats. There were very few female Provincial Council candidates in Nangarhar, Zabul and Uruzgan; hence seats reserved for women will remain vacant. Even Bamiyan, where the percentage of women voters in the presidential poll was impressive, had few female nominations. "There is a difference between voting and being political....Voting is just a matter of being allowed on the street", said an international observer.¹²⁴

¹¹² "With staff continually arriving during the period and infrastructure still under construction, there were significant challenges", "Candidate Nomination", JEMB Report, op. cit.

¹¹³ "Policy Guidelines for International Military Forces' Support of JEMB Public Outreach Activities", JEMB decision, 11 May 2005.

¹¹⁴ Crisis Group interview, Bamiyan, 23 May 2005.

¹¹⁵ Crisis Group interview, Kandahar, 1 June 2005.

¹¹⁶ Article 15 (1) of the Electoral Law.

¹¹⁷ "Joint Verification of Political Rights", First Report, 19 April-3 June 2005.

¹¹⁸ Crisis Group interview, Kabul, May 2005. See Article 15(2) of the Electoral Law.

¹¹⁹ The office in Nangarhar, which was at the epicentre of the violence, was given six extra days.

¹²⁰ "Candidate Nomination", JEMB Report, op. cit.

¹²¹ Crisis Group interview, Bamiyan, 22 May 2005.

¹²² Crisis Group interview with European diplomat, 27 May 2005.

¹²³ "Candidate Nomination", JEMB Report, op. cit. There were some fluctuations in the figures in the surrounding weeks, attributed to difficulties in communications with remote offices.

¹²⁴ Crisis Group interview, Bamiyan, 22 May 2005.

The higher proportion of candidates for the Wolesi Jirga may be because women courageous and politically motivated enough to stand prefer representation on the national stage. Political activism in the relatively more liberal capital provides a greater degree of physical security, and many female candidates in the provinces are in reality already Kabul-based.

Despite the Provincial Councils' lack of defined powers, a number of influential personalities seek election to them. They include President Karzai's brother, Ahmed Wali, in Kandahar and Ismail Khan allies in Herat. The motivation could be to gain democratic credentials for a local power base or to acquire a presence in the upper house, the Meshrano Jirga, which will draw a member from each Provincial Council.

B. POLITICAL PARTY MANOEUVRING

Ethnic politics and the old militia networks have largely shaped what manoeuvring there has been by parties in an electoral system that all but neutralises their role. New, small democratic groupings, in particular, are struggling to survive.¹²⁵

Seventy-three parties have registered with the Ministry of Justice. However, only four have chosen to apply since May,¹²⁶ when it became clear how little power they would have under the new Electoral Law. In the candidate nomination process, for example, nominees had to enter as individuals. Though they could choose to give a party affiliation as well, only 12 per cent did.¹²⁷

Several parties Crisis Group spoke with across the country also complained that local officials were actively working against them. In Kandahar, representatives of the Afghan Millat Party and the United National Party said former Governor Gul Agha Sherzai had openly condemned parties. "He was saying on television that all problems come from political parties", said one activist.¹²⁸ There were similar complaints in Herat.

Afghans, it is true, have mixed perceptions of the role that parties could play in stabilising society and entrenching democracy. Many associate the words *hizb* (party), *harakat* (movement) and *tehrlik* (way)

with the violent histories of former leftist and Islamist parties. Others are more supportive and recognise that no mature democracy has functioned without them.¹²⁹

Many potential candidates recognise the inherent value of collective organisation. While rejecting party platforms, a number of groups of like-minded independents are pooling their resources to help each other.¹³⁰

Many registered parties are running both "official" candidates and "independent" candidates, for insurance or expediency. The Republican Party office in Herat, for instance, told Crisis Group it had three official candidates for the Wolesi Jirga "and two running as independents, they are from a district where parties are not seen favourably and [politics] is more about personalities".¹³¹ Additionally, some independents can be expected to join parties or caucuses in the new legislature to increase their leverage.

Two main alliances have coalesced in the run-up to the polls, Qanooni's NUF and the National Democratic Front (NDF), an alliance of 14 new parties, including a number with leftist backgrounds. The weaker and more liberal of the two, the NDF, has failed thus far to demonstrate it has mastered the sophisticated tactics that will be needed to win a fair number of seats under the SNTV system.

Qanooni's NUF will likely be the only significant opposition to the Karzai government in the election and the parliament. However, it often appears little more than a vehicle for its leader's personal ambitions, and its odd mix of personalities and parties, including such rivals as Ahmad Shah Ahmadzai (Hezb-e Iqtedar-e Islam) and Mohammed Mohaqeq (Hizb-e Wahdat-e Islami Mardum-yi Afghanistan), has weakened its ability to develop a cohesive platform and true unity. According to an international official:

Mohaqeq never attends any of the NUF meetings, he sends his deputy. Given the history of [rivalry between] Engineer Ahmadzai and Hizb-e Wahdat, if Mohaqeq is perceived to be too close to someone

¹²⁵ For background on the political parties, see Crisis Group Briefing, *Political Parties in Afghanistan*, op. cit.

¹²⁶ Crisis Group telephone interview with Ministry of Justice official, 4 July 2005.

¹²⁷ Peter Erben, JEMBS International Information Meeting, 8 June 2005. That number could be reduced further by election day since a list of those claiming such affiliation was then given to the parties for approval.

¹²⁸ Crisis Group interview, Kandahar, 31 May 2005.

¹²⁹ See Crisis Group Briefing, *Political Parties in Afghanistan*, op. cit.

¹³⁰ There appear to be at least three such networks currently coalescing, including the Peaceable Deputies of Afghanistan, the Association of Independent Democrat Candidates and one as yet unnamed. An organiser of the third group told Crisis Group its network would cover 26 provinces and would try to help selected independent candidates during the campaign and on election day by, for instance, printing and distributing posters and transporting voters. Crisis Group interview, Kabul, 9 July 2005.

¹³¹ Crisis Group interview, Herat, 28 May 2005.

involved in the bitter fighting between the Hazaras and Ittihad, Mohaqeq will lose Hazara support.¹³²

NUF members are affiliated to their individual parties. While they may form a substantial body inside the National Assembly, they could as easily go their separate ways on issues of particular importance for their constituents.

Hampered by the disadvantages of the SNTV system, many parties appear in disarray. Some are inclined to allow anyone to stand in their name and decide later whom to back. When nominations closed in Bamian, for example, some parties had more candidates claiming their affiliation than there were seats. However, by running too many candidates they could split their vote and lose. Others display more discipline. The United National Party (UNP) in Kandahar put up only two candidates for the Wolesi Jirga and two for the Provincial Council. "We don't want to waste time and energy and votes if we're not going to win. We are concentrating on getting a few candidates elected", a member said.¹³³

Because the political parties have been so handicapped, it is not surprising that electoral politics is being conducted along regional and ethnic lines rather than over ideology and programs. According to Musa Muhamadi, the NDI's Senior Program Manager, "The parties are reaching out to their own ethnic community in the provinces rather than others for support. Ethnicity is a big part of their equation".¹³⁴

The Hizb-e Wahdat-e Islami leader, Vice President Karim Khalili, and Mohaqeq, notwithstanding his NUF ties, appear to be putting their differences aside in an attempt to unify the Hazara vote. According to an official from that community, "there are not any differences between Mr Khalili and Mr Mohaqeq now. There were only small problems last year that were easily solved. The Hazaras will work together for this election".¹³⁵

There also appears to be a growing rapprochement among leaders of the primarily Tajik parties. Members of Jamiat-e Islami said that former President Burhanuddin Rabbani's party, one of the country's oldest Islamic political

organisations, and Qanooni's Hizb-e Afghanistan-e Nawin were coordinating their efforts to unify the Tajik vote.¹³⁶

In the north, the major Uzbek party, Junbish-i Milli-yi Islami, has faced difficulties since its leader, Abdul Rashid Dostum, took a position in the central government. According to a political expert in Mazar-e Sharif, "there is a problem with party leaders and the politics of the party. Junbish has both former communists and mujahidin party members. Both are fighting with each other. The party could be pulling itself apart".¹³⁷ However, the Junbish can be expected to do well, given its historic influence in the north, party discipline, and links to northeastern jihadi networks.

In the south, President Karzai is continuing efforts to gain Pashtun support, relying on relatives and tribal networks in his native province of Kandahar. Three Karzais are running, and there appears to be good coordination. Ahmad Wali and Qayoom, the president's brothers, are candidates in Kandahar for the Provincial Council and Wolesi Jirga respectively. The president's nephew, Jamil, leader of the National Youth Party of Afghanistan, is contesting a Wolesi Jirga seat in Kabul. His party has substantial support in the south, and Jamil said, "if my uncle asks my party to support him, of course we will".¹³⁸

Recent appointments of provincial governors linked to Rabbani and Abd al-Rabb al-Rasul Sayyaf could also be part of Karzai's electoral strategy.¹³⁹ An Afghan official said, "these appointments are the result of a deal between the President, Rabbani and Sayyaf to make Rabbani speaker of the parliament, and Shinwari [would continue] as head of the judiciary".¹⁴⁰ A political analyst speculated:

He [President Karzai] needs Sayyaf's support because he is the only strong Pashtun leader in Afghanistan that can counter the Taliban's influence in the south, and Sayyaf has good relations with the mujahidin and other Muslim countries, like the Arab ones. Also it was Sayyaf who convinced Rabbani to support Karzai in the presidential election.¹⁴¹

¹³² Crisis Group interview with an international official, Kabul, 2 July 2005.

¹³³ Crisis Group interview, Kandahar, 1 June 2005.

¹³⁴ Crisis Group interview with Musa Muhamadi, NDI, Senior Program Manager, Kabul, 3 July 2005.

¹³⁵ Crisis Group interview with Sarwar Danish, Kabul, 21 June 2005.

¹³⁶ Crisis Group interview with Zalmai Yunoosi, Mazar-e Sharif, 24 June 2005.

¹³⁷ Crisis Group interview with a local political expert, Mazar-e Sharif, 24 June 2005.

¹³⁸ Crisis Group interview, Kabul, 30 June 2005.

¹³⁹ Former Taliban minister and current Zabul governor Mullah Khel Mohammad, Kandahar governor Asadullah Khan and Ghazni governor Haji Sher Alem all have close ties with Sayyaf's Ittihad-e Islami.

¹⁴⁰ Crisis Group interview with Afghan official, Kabul, 22 June 2005.

¹⁴¹ Crisis Group interview with Afghan political analyst, Kabul, 2 July 2005.

C. VETTING

For nearly a quarter of a century, armed groups in Afghanistan have committed numerous atrocities. In recent years the international community handed power back to many leaders of these groups in the belief that stability took precedence over justice and could be achieved without it.¹⁴² Little progress has been made in terms of instituting a transitional justice process. While candidate vetting could never substitute for this, preventing those with the most blood on their hands from seeking democratic legitimacy may have proved a start. A formal process of vetting candidates for the September elections was instituted but it has many shortcomings, due to the limited timeframe and even more so to its terms of reference.

Article 85 (2) of the constitution specifies that candidates "should not have been convicted by a court for committing a crime against humanity, a crime, or sentenced to deprivation of his/her civic rights".¹⁴³ This provision has undermined the entire process. During the years of conflict, and even now, the judicial system has been largely inactive, and even where there were judgements, few records remain. No one in Afghanistan has ever been convicted of a crime against humanity.

The AIHRC and various European groups pushed for candidates to sign a legal affidavit attesting they had not been involved in criminal activities, human rights abuses or the narcotics trade. It was felt this could be used to expel a legislator against whom evidence later came to light. An AIHRC commissioner said the organisation had even drafted a statement, which was initially well received but subsequently ignored.¹⁴⁴

Chief Electoral Officer Peter Erben argues that such affidavits could have undermined due process by resulting in "mock trials", and would have been too time-consuming.

¹⁴² For more information on specific commanders, see "Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity", Human Rights Watch (HRW) Report, 5 July 2005. It focuses on the period between 1992 and 1993 when Kabul was the subject of intense fighting between Afghan factions, a period HRW argues has "specific relevance to the present. Many of the main commanders and political faction leaders implicated in the crimes detailed in this report are now officials in the Afghan government...others may be actively seeking such positions".

¹⁴³ Additionally, Article 13 (c) of the Electoral Law specifies that any potential candidate must not have been "deprived of his/her civil or political rights by a court of competent jurisdiction".

¹⁴⁴ Crisis Group interview with Nader Nadery, AIHRC, Kabul, 30 June 2005.

"A flood of complaints would have clogged the system".¹⁴⁵ Grant Kippen of the Electoral Complaints Commission says the ECC had to work with the hand it was dealt. "This is not a criminal court or transitional justice body. Such responsibilities are the jurisdiction of other bodies in this country, and it would be irresponsible of the ECC to overstep its responsibilities".¹⁴⁶

The ECC instituted a formal six day period for candidate challenges after releasing a preliminary list of those standing. After a three-week adjudication, 233 prospective candidates were provisionally disqualified, with five days to file a response. The final list of candidates was announced on 12 July. The quick work was driven by the larger electoral timeframe, specifically the pressing need to print ballot papers. However this ultimately worked to undermine the credibility and transparency of the entire process.

Article 15 (3) of the Electoral Law states: "Individuals who practically command or are members of unofficial military forces or armed groups shall not be qualified to candidate themselves for the elections". This provision has been the main focus of the vetting process -- behind closed doors. The Joint Secretariat of the Disarmament and Reintegration Commission¹⁴⁷ was requested to advise the ECC on individuals with ties to armed groups, a focus that a senior UN official argued was all the more justified because such individuals would also often be involved in other illegal behaviour. "The internal assessment was that many of the same prominent commanders were also involved in drugs [and] were a threat to the political process and a threat to the community".¹⁴⁸ Most importantly it was felt that enough reliable information had been collected through the Disarmament, Demobilisation and Reintegration (DDR) process to make clear judgements on this.

The Joint Secretariat, led by Vice President Khalili, cross-checked the candidates list with a database of 1,800 armed groups collated by the Afghan New Beginnings Programme (ANBP) and with other sources of information. 255 individuals¹⁴⁹ were then told by the JEMB they would be disqualified unless

¹⁴⁵ Peter Erben, International Stakeholders Information Meeting, Kabul, 8 June 2005.

¹⁴⁶ ECC press conference announcing final candidate list, Kabul, 13 July 2005.

¹⁴⁷ The Joint Secretariat of the Disarmament and Reintegration Commission consists of the Ministry of Defence, the Ministry of Interior, the National Security Directorate, the UN, and international military forces.

¹⁴⁸ Crisis Group interview, Kabul, 9 June 2005.

¹⁴⁹ Crisis Group interviews, Kabul, June 2005.

they turned in a specified amount of weapons at special collection points.¹⁵⁰

On 12 July, when the final list of candidates was announced, only seventeen had been dropped, five because they had invalid or insufficient numbers of signatures to support their nomination; one for failing to resign from a specified public position; and eleven -- all low-level district commanders -- for links with armed groups.¹⁵¹ While it was not publicly acknowledged, Crisis Group was told that because there was not time to be more thorough, many who were provisionally excluded were let back on the candidate list with "undertakings" of future compliance.¹⁵²

No serious attempt seems to have been made to bar candidates with links to the narcotics trade as mandated in Article 53 (o) of the Electoral Law that bans "making use of funds originating from illegal activities".

That the exercise was driven by a non-transparent internal process has brought the credibility of the system into question. None of the most prominent commanders or political party leaders with links to armed groups were called to account by the Joint Secretariat. Most, it is true, have been through the formal DDR process but many of them are known to retain arms or links to armed groups.

Complaints Commissioner Janie Sitton described as "prudent" giving a second chance to candidates who had asserted that they had disarmed at the time of their nomination:

As a commission we do not believe that providing an opportunity to disarm or resign undermines the election process because the choice that is presented to voters will be candidates who meet the candidate criteria. It also serves the larger public purpose of encouraging disarmament and moving people into the political process.¹⁵³

¹⁵⁰ Crisis Group interview with Miles Robertson, ANBP DIAG Planning Adviser, Kabul, 13 June 2005. Crisis Group was told that around 7,000 weapons had so far been handed over, over half by people who had not been officially targeted. Crisis Group telephone interview, Kabul, 13 July 2005.

¹⁵¹ Crisis Group telephone interview, Kabul, 13 July 2005.

¹⁵² Crisis Group interviews, Kabul, 12 July 2005.

¹⁵³ Electoral Complaints Commission press conference to announce provisional results, 2 July 2005.

VI. SAFEGUARDING THE VOTE

Providing security to candidates, voters and election staff will be significantly more difficult than during the presidential poll in which just eighteen people sought one post. The September elections face interlinked security challenges, including disarming both official and unofficial militias, combating anti-government extremists, and clamping down on the narcotics trade. The sheer volume of weaponry still at large means a high potential for violence and intimidation. As a politician told Crisis Group in Herat, "they have collected the heavy weapons in the capitals but there are still Kalashnikovs and small arms in the districts. One Kalashnikov is enough to influence people".¹⁵⁴

A success of the last three years has been the creation of a new Afghan National Army (ANA),¹⁵⁵ which has received relatively generous resources and international attention, particularly from the U.S. However, other important areas of security sector reform have lagged behind. These include professionalising the Afghan National Police (ANP) and reforming the judiciary, as well as expanding more rapidly the International Security Assistance Force (ISAF) outside Kabul and disarming illegal armed groups. An Afghan security analyst warned: "If good security is not in place in time at important dates ahead of this election, we will see a lot of violence".¹⁵⁶

A. EXTREMIST VIOLENCE

During the run-up to the presidential poll, thirteen local election workers were killed; soon after the results were announced, three international election workers were kidnapped, although later released unharmed. How much violence in the country is directly related to the Wolesi Jirga and Provincial Council elections is hard to determine but free and fair elections are threatened by the general deterioration of the security environment witnessed over the spring and summer of 2005.

A resurgent Taliban and other anti-government elements threaten to deter candidates and intimidate voters primarily in the eastern and southern provinces. Growing numbers of attacks on coalition and Afghan forces, the assassinations of four pro-government clerics and a suicide attack on a mosque in Kandahar are destabilising border regions.

¹⁵⁴ Crisis Group interview, Herat, 28 May 2005.

¹⁵⁵ The ANA now has 31,000 troops, 6,000 of whom are in training. The ultimate target is 70,000. See "Facts to Follow", Operation Enduring Freedom, 30 June 2005.

¹⁵⁶ Crisis Group interview with Afghan security analyst, Panjshir, 15 April 2005.

Following the first mullah's killing, pamphlets were distributed threatening a similar fate to anyone involved in the election.¹⁵⁷

Hundreds have died in clashes between security forces and anti-government rebels in the last three months. On 22 June, presidential spokesperson Jawed Ludin told a press conference that the recent attacks, including the suicide bombing in Kandahar, had been carried out by cross-border infiltrators. "Some senior members of the Taliban, including some who are involved in killings and are considered terrorists, are in Pakistan".¹⁵⁸

Noting the effectiveness of a clampdown by Pakistan before the 2004 election, UN envoy Jean Arnault said pointedly: "We welcome recent high-level contacts between the Afghan and Pakistani governments in this respect".¹⁵⁹

Heightened insecurity threatens not just polling day but also electoral preparations, including voter registration, civic education and monitoring, all of which are essential for a credible process. By mid-July, three national election workers had already died.

B. DOMESTIC INTIMIDATION

The slow pace of security sector reform is likely to haunt both the elections and their results, allowing the rule of the gun to continue to undermine Afghanistan's political transition. The centre's authority over the periphery has always been limited, and decades of civil war have consolidated the fiefdoms of local strongmen. Much of the violence in the country today is related to battles between such warlords for territory, power, and resources. Elections threaten their power base, and Scott Carnie, JEMB Security Manager, says:

Security for the presidential elections was geared more toward preventing extremism, whereas the security preparations for this election are focused on violence resulting from factionalism, primarily in the north, northeast and the west. The potential for factional violence is greater this year because the elections are going to impact the regional power brokers.¹⁶⁰

A major concern expressed by candidates is interference by the security forces themselves, particularly local governors and police chiefs.¹⁶¹ Typical was a candidate in Balkh who told Crisis Group the police chief approached him the day he filed his nomination papers. "Others can be more easily intimidated than me. It is a concern".¹⁶² An employer in Kabul said one of her female staff members, a candidate in Kandahar, was receiving death threats from conservative community leaders.¹⁶³ Political rivals were also attempting to use the international coalition forces against candidates. In Uruzgan, an Afghan Millat candidate was detained for several days by U.S. troops after his political rivals accused him of belonging to the Taliban.¹⁶⁴ Pressure from human rights groups resulted in his release with just two days left to file his papers.

A zero-tolerance policy should be adopted against officials involved in intimidating voters, candidates or electoral staff. The President's Office should set up a pre-election liaison, coordinating between various ministries and electoral oversight bodies, including the JEMB, UNAMA, the AIHRC and domestic observers such as the Free and Fair Elections Foundation of Afghanistan (FEFA), to identify guilty officials who should be dismissed from service.

Some expect a pre-election lull as local strongmen try to demonstrate democratic credentials. "Now they are showing their intention to join the process. They are trying to show their civilian face", said an international official in the northern region.¹⁶⁵ But violence may come from the many powerbrokers who choose to remain outside the electoral system or will feel they have no stake in it if they lose. The same international official expressed fears about the election's aftermath if key opposition leaders, for instance from the north, fail to gain a powerful voice in the National Assembly: "...will they accept it? It could send the country into chaos".¹⁶⁶

None of this, of course should deter authorities from taking on potential spoilers. The tendency to justify ongoing impunity in terms of stability has undermined the rule of law for too long. The pursuit of stability and the rule of law must always proceed in tandem.

¹⁵⁷ Crisis Group interviews with political parties and an Afghan security analyst in Kandahar, 1 June 2005.

¹⁵⁸ Andrew North, "Afghanistan's Patience Wears Thin", 22 June 2005.

¹⁵⁹ Statement, 26 June 2005.

¹⁶⁰ Crisis Group interview with Scott Carnie, JEMB Security Manager, Kabul, 14 July 2005.

¹⁶¹ "Joint Verification of Political Rights", op. cit. The report lists Badakhshan, Jalalabad, Kandahar, Bamiyan, Daikundi, Mazar-e Sharif, Jowzjan, Farayab, Takhar and Herat as areas requiring special attention because a number of candidates retain links to armed groups.

¹⁶² Crisis Group interview, Mazar-e Sharif, 18 May 2005.

¹⁶³ Crisis Group interview, Kabul, July 2005.

¹⁶⁴ Crisis Group interviews, Kandahar, 31 May 2005 and 1 June 2005.

¹⁶⁵ Crisis Group interview, May 2005.

¹⁶⁶ Ibid.

More effective security throughout the country remains a necessary element in stabilisation. To prevent spoilers from undermining the political transition, the international community must retain additional troops deployed for the polling period until at least the end of the year. Efforts to disband illegal armed groups should be accelerated as should the strengthening of the ANA and ANP. Particular attention should be paid to ensure security measures and election monitoring give women the confidence to vote in remote and conservative provinces. There should also be extra provision for the security of female candidates and later the members of the new bodies to ensure full participation.

C. DISARMAMENT AND ELECTIONS

DDR has had a positive impact on the democratic political process. Around 60,000 fighters have now been disarmed. While imperfect, this progress has undoubtedly enhanced political space, since thousands of armed men no longer have to be factored into the security equation.¹⁶⁷ But because the DDR process was mandated to disarm only the formally recognised armed groups on the government payroll, other militias, now termed Illegal Armed Groups, still pose a significant threat. After numerous delays, a new disarmament program, Disbandment of Illegal Armed Groups (DIAG), is only now set to start in the provinces of Farayab and Nangarhar.

Elections have proved "pressure points" for disarmament. Much of the demobilisation in the north, for instance, was driven by the presidential poll. The September elections are being used in the same way to gain momentum for DIAG, although delays at the Joint Secretariat have meant that the focus has been narrowed to the candidates. "The original thinking on DIAG was to take the biggest spoilers out", a European diplomat said, adding that it was the "failing of the international community" that this was not pushed earlier to secure the environment as a whole.¹⁶⁸

Offering targeted candidates a final chance to hand over weapons or lose their place on the ballot has been used to kick-start the DIAG program and has, as noted, brought in significant amounts of arms. But however successful this program, the security challenges for these elections are considerably more complex than they were in 2004. Aside from the multiple countrywide processes leading up to the vote, significantly more staff and polling locations have to be guarded. There is also high probability of an extended counting period, post-election challenges, and threats from losing candidates and groups.

Although rivalries among ministries and national caveats within the NATO force still complicate matters, there has been more emphasis this year on security coordination drawing together the national army and police, the National Security Directorate (NSD), coalition forces and ISAF. Like the presidential election, there will be three rings of security around an estimated 400 registration centres, 5,000 polling stations and 34 provincial counting centres. The ANP will provide initial protection. The second concentric circle will be formed by the ANA. ISAF and the coalition forces will offer a third layer of support when needed.¹⁶⁹

Some 20,100 international coalition forces are in Afghanistan, mainly in the south and east. ISAF under NATO lead has 8,000 troops concentrated in Kabul and the north and recently has begun moving into the west. ISAF forces are tasked with peacekeeping, in contrast to the coalition forces, which have mainly a counter-terrorism mandate. For the elections, NATO plans on deploying an additional 2,000 troops in Mazar-e Sharif, Herat, and Kabul. However, this is only for one month before and one month after. Due to the high possibility of post-election violence, additional troops should be retained until at least the end of the year.

The lack of professionalism of the 50,000-strong ANP remains a matter of grave concern. One international security expert involved in elections preparation told Crisis Group, "Although the ANP and other police forces have doubled their numbers in the past year, this does not necessarily mean that they are up to the task. It really is a question of quantity versus quality".¹⁷⁰ With positions remaining the subject of patronage rather than professional qualifications, many local police forces are closely associated with commanders, governors and/or district administrators. They can easily become the source of a threat rather than its antidote.

A further concern is the use of tribal or other unofficial militias to augment security in some areas that lack sufficient official security forces or are considered too unsafe for their deployment. Carnie says JEMB is carefully considering options: "We are still discussing this. For example, if the Kuchi were to provide their own security in their areas and at their polling stations, it might give the impression of...parallel elections, something we'd like to avoid".¹⁷¹

¹⁶⁷ For a discussion on DDR and the DIAG program, see Crisis Group Asia Briefing N°35, *Afghanistan: Getting Disarmament Back on Track*, 23 February 2005.

¹⁶⁸ Crisis Group interview, Kabul, 26, June 2005.

¹⁶⁹ Crisis Group interview with ISAF official, Kabul, 15 June 2005.

¹⁷⁰ Crisis Group interview with international security expert, Kabul, 3 July 2005.

¹⁷¹ Crisis Group interview with ISAF official, Kabul, 15 June 2005.

D. ELECTORAL FRAUD

Public education campaigns will emphasise that the ultimate safeguard against electoral fraud is, of course, voter honesty. However, persons seeking to cheat are likely to be savvier this time, having already observed the system at work, so extra awareness is vital. Moreover, the absence of allocation of voters to polling booths and the printing of 40 million ballots to ensure every centre has enough increase the scope for multiple voting or ballot box stuffing.

1. At the polling booth

Ink marking the fingers of those who voted will once again be the only electoral guard against multiple voting. During the presidential polls, complaints arose when what was supposedly irremovable ink was easily washed off in many areas. Often this was because the wrong ink was applied by poorly trained staff. For the September polls, no donated ink will be used, and there are plans to purchase the strongest possible mix. Voters will have to dip their fingers up to the knuckle before voting. The JEMB believes this can be done so as to ensure that the ink is dry by the time a voter marks the ballot but it acknowledges there are bound to be some spoiled votes from inky papers.¹⁷² Staff training with the appropriate marking equipment is also supposed to be better this year. That said, circumvention could still be fairly easy by those in the know. Creation of a voter list remains a priority for the future.

In 2004 little documentation was conducted at polling stations with registers to list voter card numbers largely returned unused. There will be increased emphasis on paperwork at booths as a further guard against fraud. The chairperson of each polling booth is to receive a full day's training in the required forms.¹⁷³ With over 100,000 staff hired for the polling day it is essential to ensure that this training percolates down.

2. Vote count

The vote count is also a period that lends itself to fraud. During the presidential polls, it took place at eight regional centres, often distant from the polling stations. This time counting will be done at the lower provincial level. Qanooni's alliance prefers the even lower district level -- something the Organization for Security and Co-operation in Europe (OSCE) also routinely promotes for reasons of transparency and to counter ballot stuffing. However, any advantages in transparency are outweighed

by considerations of security, the risk of intimidation of local electoral officials, and concern that in remote and sparsely populated areas the secrecy of the ballot could be compromised.¹⁷⁴

Regulations on how the count will be conducted have yet to be released. These should include opportunities for observers and political agents to accompany the ballot boxes.

3. Observation and monitoring

As of mid-July, only two international groups (including Crisis Group) had formally enrolled as observer entities.¹⁷⁵ However, European Union and OSCE teams are expected, the former with up to 100 members. Other groups including the Asian Network for Free Elections (ANFREL) are assessing the situation.

Nine local entities, consisting of 300 individuals, have so far signed up as observers. The registration of political party agents only got underway with the release of the final candidate lists on 12 July. For the presidential election with eighteen candidates, 75,000 agent badges were given out. The numbers in September will likely be larger, although the criteria were tightened after complaints were received of inappropriate and sometimes intimidating behaviour by agents and/or observers during the previous election.

The largest local observer mission is likely to be run by the Free and Fair Elections Foundation of Afghanistan (FEFA). Having covered 32 per cent of the polling centres with 2,300 observers for the presidential election, it aims to cover 65 per cent this time, in partnership with other civil society groups. "Funding is the biggest challenge so far", said Nader Nadery, who, as well as being an AIHRC commissioner, is FEFA chairperson. Donors have pledged only about 25 per cent of FEFA's budget.¹⁷⁶

For Nadery, the most important lesson from the presidential polls was the need for coordination between observer missions and to build a relationship with the JEMB. While FEFA will not have a formal relationship with the complaints commission, he said, "[we] will share our public documents and recommendations with relevant bodies including the ECC; then we will follow up whether they will implement our recommendations".¹⁷⁷

¹⁷² JEMBS Information Meeting, Kabul, 8 June 2005.

¹⁷³ Crisis Group interview with head of training and capacity building, JEMBS, 22 June 2005.

¹⁷⁴ JEMBS Information Meeting, 8 June 2005.

¹⁷⁵ All figures on observer and agent numbers, except those for FEFA, come from Crisis Group telephone interview with JEMBS Senior Observation Facilitation Officer, 11 July 2005.

¹⁷⁶ Crisis Group interview, Kabul, 11 July 2005.

¹⁷⁷ Ibid.

E. COMPLAINTS AND APPEALS

The need for a formal complaints body was widely cited after the presidential election in which an Impartial Panel of Election Experts was hastily assembled amid allegations of voting irregularities.¹⁷⁸ The Election Complaints Commission provides a stand-alone quasi-judicial body with three international and two national members (one appointee each from the Supreme Court and the AIHRC). This will be the final body to adjudicate complaints related to the process, including candidate eligibility and procedure. It will cease to exist 30 days after the certification of results.

Importantly, the ECC's role extends throughout the electoral process. While the formal time for candidate eligibility challenges is over, those found to have broken the rules could still be disqualified.¹⁷⁹ There should be no more second chances.

The ECC is further charged with judging complaints about the process itself. Where it determines that an offence has taken place, it can impose sanctions, ranging from a fine of up to the equivalent of \$2,000 or disqualification. These can also be applied to candidates and political parties whose supporters commit offences in their name.¹⁸⁰

There should be an extensive public awareness campaign prior to the election to explain complaints criteria to the general public, candidates, agents, political parties and observers. If the ECC is to play its role fully, it must receive adequate resources. A body consisting of five commissioners, one senior legal adviser, one senior investigator, eight complaints officers, six legal officer, two external affairs officers and four translators will be hard pressed to deal with the volume of complaints that are likely to peak on election day.

The ECC has already been criticised in some quarters. "A separate Complaints Commission undermines the JEMB, it undercuts authority and trust", a senior international electoral worker told Crisis Group.¹⁸¹ But, as one of the commissioners pointed out, complaints

may actually relate to the JEMB's own conduct.¹⁸² The Supreme Court is an unreformed, distrusted actor and not a viable alternative.

As part of their dual role, the Provincial Election Commissions will also provide background and advice to the ECC. While not even "just in time" for the critical candidate eligibility stage, the formation of the PECs is a step forward in building electoral institutions for the longer term. They should be retained and given further training and suitable resources so they can make a valuable local contribution to future polls.

¹⁷⁸ See Crisis Group Asia Report, *From Presidential to Parliamentary Elections*, op. cit.

¹⁷⁹ As the ballots are currently being printed it will be too late to remove candidates disqualified after July 12 from the voting papers. This raises fears that they might still receive a large number of votes. It is therefore essential that civic awareness messages explain this process and that the names of those disqualified are disseminated widely both before and during polling day.

¹⁸⁰ Article 54 of the Electoral Law.

¹⁸¹ Crisis Group interview, Kabul, 5 June 2005.

¹⁸² Crisis Group interview, Kabul, 10 June 2005.

VII. POST-ELECTION PREPARATIONS

A. PLANNING FOR THE NEW INSTITUTIONS

Elections under SNTV could prove largely a lottery. Indeed most Afghans will probably only understand the full implications of the choice of system when results are announced. Chaotic days characterised the openings of both Loya Jirgas,¹⁸³ and it is essential that proper groundwork for the new institutions be laid now. Inexperienced representatives will need resources to deal with steep learning curves and a packed agenda.

Years of war and successive regimes have laid waste to the human capital and institutions of the country. Very few members of the National Assembly or their staff will have previous legislative experience, while Provincial Councils are to be formed for the first time. Many representatives can be expected to be illiterate and inexperienced in public life.

1. National Assembly

The Indian government has talked of building a new National Assembly building although a formal pledge is yet to be signed or a site agreed. In the interim, the Ministry of Housing is renovating the former parliamentary buildings for August occupancy.¹⁸⁴ There is talk that the tents used at the Loya Jirga may be required for a short while. The temporary accommodations anticipated to be needed for four years would provide minimal space for the two houses to meet, as well as a five-storey building for commissions.¹⁸⁵

As yet there is no office space for the members and support staff. However, with many illiterate representatives and a cultural context in which individual rooms are unusual, this would appear less of an immediate priority than rooms for meetings, conferences and leaders. Overnight accommodations, particularly for women members, are also needed. Accommodation allowances and overall remuneration are still being discussed. They should be

generous enough to limit the scope for outside money to influence the representatives. A register of financial interests might be a start toward promoting a culture of accountability.

Eight heads of departments for what will become the Secretariat of the National Assembly were recruited in September 2004. Another 120 civil servants were hired to serve under them in May 2005. However, even with an estimated 275 support staff (and an additional 135 contract staff such as cooks and cleaners)¹⁸⁶ in place when the National Assembly opens, only minimal services will be available for the 351 representatives.¹⁸⁷ The Civil Service Commission must prioritise the training of National Assembly staff as well as trained legislative advisers but this would require adequate funds.

As yet, the government has allocated little money for the National Assembly or its staff to function effectively.¹⁸⁸ When interviewed in June the Secretariat had no operational budget, and none of the staff had received salaries. "We are working for democracy", Secretary General Azizzullah Lodin told Crisis Group.¹⁸⁹ Outside the clean but spartan offices, were just three staff cars, on loan from the UN.¹⁹⁰ While the Ministry of Finance must build in budget lines for the National Assembly and Provincial Councils, the government will need substantial external funding.

A parliamentary taskforce has been meeting regularly to coordinate international and national efforts. These include the two-year \$15 million French-led, UNDP-backed Support to the Establishment of the Afghan Legislature (SEAL) project and the USAID-backed Afghanistan Parliament Assistance Project. These have concentrated on training staff, including taking the eight heads of departments to France to visit government institutions and several weeks of training in Kabul.

Work has also gone into preparing possible drafts of the new bodies' procedural rules, while other groups and missions have hosted visits of candidates to foreign

¹⁸³ See Crisis Group Briefing, *The Afghan Transitional Administration*, op. cit.

¹⁸⁴ Crisis Group interview with Deputy Secretary General of the National Assembly of Afghanistan, Mohammad Kazim Malwan, Kabul, 13 June 2005.

¹⁸⁵ Article 88 of the Constitution of Afghanistan: "Each house of the National Assembly sets up commissions to study the topics under discussion in accordance with its internal regulations". Article 89 of the Constitution of Afghanistan: "The Wolesi Jirga has the authority to set up a special commission if one third of its members put forward a proposal to inquire about and study government actions".

¹⁸⁶ Crisis Group interview with Deputy Secretary General of the National Assembly of Afghanistan, Mohammad Kazim Malwan, Kabul, 13 June 2005.

¹⁸⁷ Again, the anticipated high rate of illiteracy among the new representatives suggests that many will require considerable staff assistance if they are to participate fully in the work of the legislature.

¹⁸⁸ Several UN staffers told Crisis Group that the Ministry of Finance has set aside \$5.1 million for parliamentary salaries and support for the financial year until March 2006. Repeated contact with the Ministry of Finance failed to confirm this.

¹⁸⁹ Crisis Group interview, Kabul, 13 June 2005.

¹⁹⁰ Crisis Group interview, Dr Azizzullah Lodin, Secretary General of the National Assembly, Kabul, 13 June 2005.

legislatures. Many projects can only be designed, however, when the new members themselves can articulate their needs. Sustainability should be taken into account when any project is designed, avoiding reliance on resources and systems that Afghanistan would be unable to support by itself.

2. Provincial Councils

There appears to be no forward planning on resources or operating procedures for these institutions. Certainly no government action is visible. A staff member at one donor agency commented that it was hard to plan for bodies that no one knows will ever actually meet.¹⁹¹

B. GETTING DOWN TO WORK

Under the constitution, both houses of the National Assembly must elect chairpersons and two deputy chairpersons as soon as the legislative session opens.¹⁹² Rules of procedure must also be agreed before any real proceedings can begin. Draft rules of procedure are being circulated. However, functioning caucuses are likely required to get agreement. President Karzai should reach out to possible future leaders and make serious efforts to build consensus. Since Ramadan, the Muslim month of fasting, is likely to coincide with announcement of election results and hinder serious work for a time, pre-election groundwork is all the more essential.

1. National Assembly

The three functions of a standard legislature are present in the 2004 constitution: law making; oversight of the executive; and constituent representation. However, the current emphasis on taking "the general welfare and supreme interests of all people of Afghanistan" into account,¹⁹³ which is motivated by the country's history of factionalised conflict, could cause the third of these to be formally downplayed.

The oversight function was dominant in National Assemblies between 1963 and 1973 under similar constitutional arrangements. This resulted in paralysis of the legislative program and virtually no constituent representation. A lecturer in law at Balkh University who is also a Wolesi Jirga candidate fears the new institutions will provide little more than opportunities for score-

settling. "Most candidates think of parliament as a forum to air disputes and forget about its legislative role".¹⁹⁴

Contentious issues suppressed by procedural slights of hands or backroom deals during the negotiations in Bonn and the two subsequent Loya Jirgas are likely to re-emerge, such as whether cabinet ministers may hold dual citizenship. Appointments of the ministers, the Attorney General, the Governor of the Central Bank and the head of the National Security Directorate are all subject to Wolesi Jirga "confirmation"¹⁹⁵ and could become early battlegrounds.

Despite the presidential constitutional structure, the legislature has considerable powers. One third of its members can carry a proposal to inquire into government actions.¹⁹⁶ Only 20 per cent of the Wolesi Jirga is needed to "interpellate" a minister, and if the response is not satisfactory, a vote of no confidence can be taken to remove the official.¹⁹⁷ With a two-thirds majority, the lower house can bring into force legislation that the president refuses to sign.¹⁹⁸

As Afghanistan's "highest legislative organ",¹⁹⁹ the National Assembly is also the starting point for any law.²⁰⁰ This includes reviewing all presidential decrees to date.²⁰¹ The new body will hopefully move forward with a lagging legislative program. Since few members will have any legislative experience, however, expert advice and staff with drafting skills will be essential. Work should begin now on creating ministry liaison points to deal with the new bodies on their areas of specialisation and ensure the smooth passage of legislation.

Women in the legislature are likely to be handicapped by conservative social norms and to ensure they are to have a real voice, they must be allocated appropriate places in the commissions, the smaller bodies where much of the real policy formulation is likely, at least to the extent that it is not done in backroom deals by powerful blocs.

2. Provincial Councils

The duties of the Provincial Councils -- beyond electing members to the Meshrano Jirga -- are still a mystery. A member of the president's staff denied any malign motive

¹⁹¹ Crisis Group interview, Kabul, 2 July 2005.

¹⁹² Article 87 of the Constitution of Afghanistan.

¹⁹³ Ibid, Article 81.

¹⁹⁴ Crisis Group interview with Mohsini, Lecturer at Faculty of Law and Political Science, Balkh University and Wolesi Jirga candidate, 18 May 2005.

¹⁹⁵ Article 64 of the Constitution of Afghanistan.

¹⁹⁶ Ibid, Article 89.

¹⁹⁷ Ibid, Article 92.

¹⁹⁸ Ibid, Article 94.

¹⁹⁹ Ibid, Article 81.

²⁰⁰ Ibid, Article 97.

²⁰¹ Ibid, Article 161.

for the inaction. "It [Provincial Council law] was not passed because they [the Cabinet] were simply overwhelmed, there was no hidden purpose".²⁰²

Drafts documenting the possible powers of the councils have been circulating in the capital for months now although no effort at public consultation has been made. The executive is apparently tilting towards minimal advisory powers with no true fiscal, administrative or political authority.²⁰³ This would set the scene for power struggles between democratically-elected provincial bodies with four-year mandates and centrally appointed provincial governors.²⁰⁴

A political vacuum can be dangerous, particularly in a multi-ethnic, multi-regional country still emerging from years of civil war. At this late stage, the most desirable course might be to leave the matter for representatives in the new National Assembly to decide. However, debate among stakeholders should start now, and the subject should be treated urgently.

3. Future local government structures

Local governance structures as a whole need serious consideration and rationalisation. There are not only the delayed district councils to consider but also municipality councils²⁰⁵ and separate elections for mayors are also envisaged.²⁰⁶ These units of local government will emerge among a plethora of competing institutions, some traditional, others ghosts of previous regimes, and an ever-burgeoning number of new grassroots initiatives.²⁰⁷

Many local community bodies have been set up by international organisations seeking to offer alternatives to narcotics production. Some control substantial budgets, and each has its own degree of true community representation. In the absence of effective coordination, either between such bodies or at higher levels, projects overlap or have regional gaps. As an international official in the Central Highlands said, "bottom-up development has problems if it is spending without coordination. Then it actually becomes counter-productive".²⁰⁸

With the National Assembly having the authority to create, modify or abrogate administrative units,²⁰⁹ rationalising the chains of command and coordination between the new and old bodies and defining the mandate of local government institutions must be a top priority, at least before the next round of elections. The tendency in Afghanistan to create highly centralised structures has not paid dividends, and if the political transition is to be sustained, it will require the effective devolution of meaningful political, administrative, and fiscal powers.

C. FUTURE ELECTIONS

The September elections do not involve the light international footprint envisaged in the Bonn Agreement. Conducting such a technically difficult exercise in such a short timeframe to an acceptable standard requires heavy-duty boots -- international election experts and donor funding at a level that would be impossible to sustain locally. However, given likely donor fatigue and the sheer effort that elections demand of an administration and population with many other problems, there cannot be an endless cycle of such polls. A strategic approach and local ownership need to come to the fore. Planning should focus on institutionalising democracy rather than simply running a series of disjointed electoral exercises.

Most essential is to retain electoral institutions and personnel with proven worth in both the centre and the regions. There is also an urgent need to rationalise the election timetable. These matters should have been examined years ago but they are at least now being scrutinised by the Post-Election Strategy Group (PESG) established by UNAMA and the IEC.

International commitments to continue helping with the democratisation process are essential. Downsizing international staff would have the biggest impact on lowering costs and raising local ownership. While Afghan counterparts have been recruited to shadow important members of the international electoral team this year, the tight timelines have necessarily meant an emphasis on getting the work done rather than capacity building. The most urgent post-election step is to ensure that the best local election administrators and staff are not lost. Members of the IEC have contracts that last only until the end of 2005. The performance of each commissioner should be examined in a transparent manner after the election so that either new contracts can be issued quickly or they can be replaced in a timely manner. The PECs and core national staff should be treated similarly.

²⁰² Crisis Group interview, Kabul, May 2005.

²⁰³ Crisis Group interview with member of presidential staff, Kabul, 14 June 2005.

²⁰⁴ Not that the governors have real powers either; nearly all financial decisions are taken by line ministries in Kabul.

²⁰⁵ Article 141 of the Constitution of Afghanistan.

²⁰⁶ Ibid.

²⁰⁷ For in-depth discussion of such issues, see Sarah Lister, "Caught in Confusion: Local Government Structures in Afghanistan", Briefing Paper, Afghanistan Research and Evaluation Unit, March 2005.

²⁰⁸ Crisis Group interview with international official, Central Highlands, 22 May 2005.

²⁰⁹ Article 90 (4) of the Constitution of Afghanistan.

On a wider scale, the whole role of election institutions needs to be examined and questions asked such as whether electoral institutions should evolve into a powerful, transparent and truly independent "fourth wing" of government, or whether the ECC should evolve into a more formalised Electoral Court.

The next elections should be for district councils. Continuing disputes over boundaries and even how many districts should exist suggest they will be controversial. Concerns, discussed above, about the lack of population data will come to the fore, as will ethnic, linguistic and religious grievances. These elections are needed, among other reasons, to ensure that the Meshrano Jirga is fully constituted. They should proceed, however, only after a wider rationalisation of local government structures. Municipal and mayoral elections have yet to receive even a modicum of attention.

Presidential, Wolesi Jirga, Provincial Council and District Council polls are on five-year, five-year, four-year and three-year cycles respectively, so in future different sets of elections will be concurrent. Consideration might be given to rationalising this complicated calendar.

VIII. CONCLUSION

Elections in a country with one of the world's lowest development indices, no extended tradition of universal franchise, and almost a quarter century of conflict in its immediate past are unlikely to be perfect. One senior election worker candidly estimates that the September polls will be "acceptable and credible" rather than "free and fair".²¹⁰ With many of the biggest security challenges and electoral trials yet to be met, even that should not be assumed.

While electoral preparations are now on schedule for 18 September, a lack of overall strategic direction with numerous delays throughout the transitional process unfortunately means that many aspects of "best electoral practice" including ongoing civic education programs, across-the-board vetting and voter lists have been neglected.

Attention has been necessarily focused on creating a legal framework for the state and elections. It is now urgent to address the mandate, functioning and infrastructure of the representative bodies that are about to emerge from the voting. It is essential for Afghanistan's stability that the new institutions have the political space to flourish. Past experience shows that neglecting or attempting to suppress democratic institutions and political parties simply opens the way for extremist elements.

State-building also needs attention. This means creating and supporting an accountable, transparent administration capable of offering security and services to citizens. The political momentum that can be expected to flow from the elections and the institutions themselves should be used to drive reforms especially in the judicial, economic and security sectors. For such reforms to succeed, however, the new democratic bodies will have to be prepared to confront entrenched powers.

Meaningful political and fiscal devolution to the regions is also necessary to drive development. The euphoria of the presidential election quickly subsided as people realised little had changed. Continuing to neglect areas other than the central political institutions may ultimately undermine the political transition itself. It is essential that all stakeholders, including the international ones, regard these elections not as an end point for disengagement but merely another small step towards stabilising a very fragile polity.

Kabul/Brussels, 21 July 2005

²¹⁰ Crisis Group interview, Kabul, 12 May 2005.

APPENDIX A

MAP OF AFGHANISTAN



APPENDIX B

GLOSSARY

AIHRC	Afghan Independent Human Rights Commission
Alim	Islamic cleric, singular of ulema
ANA	Afghan National Army
ANP	Afghan National Police
Bonn Agreement	The Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, endorsed by the United Nations Security Council on 7 December 2001
DDR	Disarmament, Demobilisation and Reintegration
DIAG	Disbandment Illegal Armed Groups
ECC	Election Complaints Commission
FEFA	Free and Fair Elections Foundation of Afghanistan
Harakat	Movement
Hazara	Minority ethnic group in Afghanistan, largely concentrated in the Central Highlands
Hizb	Party
IEC	Independent Election Commission
ISAF	International Security Assistance Force
JEMB	Joint Election Management Body
Jirga	Council
Kuchi	Nomadic peoples of Afghanistan, mostly Pashtuns
Loya Jirga	Grand Council
Meshrano Jirga	Upper house of the National Assembly
NUF	National Understanding Front, the main opposition coalition, headed by Younis Qanooni
OSCE	Organisation for Security and Cooperation in Europe
Pashtun	Largest ethnic group in Afghanistan
PEC	Provincial Election Commission
Shura-e Milli	Afghanistan's National Assembly
Shura-e Weelayati	Provincial Council
SNTV	Single Non-Transferable Voting
Ulema	Islamic clergy
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Program
UNFPA	United Nations Population Fund
UNOPS	United Nations Office for Project Services
USAID	United States Agency for International Development
Uzbek	Minority ethnic group in Afghanistan
Wolesi Jirga	Lower house of the National Assembly