

ODIHR.GAL/1/14

23 January 2014



ENGLISH only

Office for Democratic Institutions and Human Rights

ISLAMIC REPUBLIC OF AFGHANISTAN

PRESIDENTIAL AND PROVINCIAL COUNCIL ELECTIONS 5 April 2014

OSCE/ODIHR EXPLORATORY TEAM REPORT

6-9 January 2014



Warsaw
23 January 2014

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**ISLAMIC REPUBLIC OF AFGHANISTAN
PRESIDENTIAL AND PROVINCIAL COUNCIL ELECTIONS 2014**

OSCE/ODIHR EXPLORATORY TEAM REPORT

I. INTRODUCTION

Following an invitation from the Independent Election Commission of Afghanistan and the OSCE Permanent Council's Decision No. 1094 from 24 October for the OSCE/ODIHR to deploy an Election Support Team (EST) to Afghanistan to assist government and international efforts on the presidential and provincial council elections scheduled for 5 April 2014, the OSCE/ODIHR sent an exploratory team from 6 to 9 January 2014. This team assessed the pre-election environment and the preparations for the elections. The exploratory team was composed of Dr. Beata Martin-Rozumiłowicz, Head of the OSCE/ODIHR Election Department, Mr. Alexander Shlyk, OSCE/ODIHR Election Adviser, Mr. Robert Podgorelec, OSCE/ODIHR Logistics and Security Officer, and Ms. Hannah Roberts, OSCE/ODIHR External Expert.

II. EXECUTIVE SUMMARY

Presidential and provincial council elections are scheduled to be held in Afghanistan on 5 April, with a possible runoff in the presidential race scheduled for 28 May 2014. The Afghan-led elections of 2014 are widely viewed as a key political event in the country's recent history, presenting an opportunity for a peaceful transfer of power and held in the context of the drawdown of the international security presence. The constructive approach of institutions, candidates and other stakeholders will be critical during the process, as certain technical and security challenges remain.

The promulgation of the two key electoral laws in 2013 is widely seen as a major step forward, given that past elections were organized on the basis of presidential decrees. A number of electoral stakeholders highlighted, however, that the effects of the legal changes remain to be seen and called for an evaluation of the newly-adopted electoral legal framework and its application in practice.

Most OSCE/ODIHR exploratory team interlocutors welcomed the early preparations already put in place by the Independent Election Commission (IEC) despite certain shortcomings and highlighted the progress made to date in comparison with previous elections. Positively, since the last elections the IEC has produced a strategic plan that takes into account a number of previous OSCE/ODIHR recommendations. While a number of introduced anti-fraud measures follow recommendations from previous elections, their effectiveness is yet to be tested in practice. The effects of the security situation on the electoral process are uncertain but will be a key element for the conduct of elections.

Eligible voters will be able to cast their ballots at any polling station nationwide for the presidential election and at any polling station in their province of residence for the provincial council elections. National and international electoral stakeholders highlighted that the voter registration system can benefit from further review with a focus on long-term development options.

The IEC announced the final list of 11 presidential and 2,713 provincial council candidates on 20 November, setting the ground for competitive elections. The election campaign is due to commence on 2 February and will last until 2 April, after which a 48-hour silence period will ensue. Concern was expressed by various interlocutors on the extent to which measures will be taken to provide for a level playing field. Electoral stakeholders welcomed the establishment of the IEC Media Commission noting that the media has expanded and play an active and vital role in the upcoming electoral process.

In line with the legal framework adopted in 2013, electoral disputes will be adjudicated by the newly-appointed permanent Independent Electoral Complaints Commission (IECC) and its provincial structures. A number of OSCE/ODIHR exploratory team interlocutors pointed out that the delayed formation of the IECC is an issue of concern, given the importance of the task it faces, the potentially high volume of complaints, and its potential role as a final arbiter. Concerns were also raised by some interlocutors about the IECC's transparency to date.

The OSCE/ODIHR exploratory team was informed that a significant number of citizen observer organizations have applied for accreditation by the IEC. A number of the OSCE/ODIHR exploratory team interlocutors expressed an opinion that various citizen observer groups may benefit from the OSCE/ODIHR EST sharing good practice of election observation with them.

All OSCE/ODIHR exploratory team interlocutors expressed support for the deployment of the OSCE/ODIHR EST. They pointed out that the OSCE/ODIHR EST could place particular emphasis on reviewing the electoral legal framework and its application in practice, the work of the election administration, long-term priorities in the sphere of voter registration development, the resolution of electoral disputes, citizen observation, regulation of media coverage of campaign, as well as the counting and tabulation of votes.

Based on the findings of the exploratory team and in accordance with PC decision 1094, the OSCE/ODIHR recommends a 15-member EST to start deploying in the beginning of February in order to follow the early stages of the electoral process.

III. FINDINGS

A. BACKGROUND

Presidential and provincial council elections are scheduled to be held on 5 April, with a possible runoff in the presidential race scheduled for 28 May 2014. The Afghan-led elections of 2014 are widely viewed as a key political event in the recent history of the country, presenting an opportunity for a peaceful power transfer and held in the context of the drawdown of the international security presence. President Hamid Karzai, first elected in 2004 and subsequently re-elected in 2009, cannot stand for a third term due to the constitutional limitation on terms in office. Provincial council elections were due to be held in 2013 but were postponed to 2014 for logistical reasons. The constructive approach of institutions, candidates and other stakeholders will be critical during the process, as certain technical and security challenges remain.

The OSCE/ODIHR has previously deployed Election Support Teams (ESTs) to Afghanistan in 2004, 2005, 2009 and 2010.¹ In 2010, the OSCE/ODIHR EST focused its attention on consolidating previously identified recommendations and proposed to the Afghan and international electoral stakeholders a way forward to implement a long-term electoral reform in the country. Many of these recommendations have been acted upon, although some also remain to be implemented in the future.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The legal framework for elections in Afghanistan is comprised of the 2004 Constitution that provides for the free, universal, secret and direct elections, the recently-promulgated Election Law and Law on

¹ See <http://www.osce.org/odihr/elections/afghanistan/74786> for all previous OSCE/ODIHR election-related reports on Afghanistan.

the Structure, Duties and Authorities of the Independent Election Commission and the Independent Electoral Complaints Commission (Structure Law). The two laws were passed by both houses of parliament in mid-2013 after a prolonged debate and were signed by President Karzai on 17 and 20 July 2013 respectively. Interlocutors of the OSCE/ODIHR exploratory team considered promulgation of the two laws as a major step forward, given that past elections were organized on the basis of presidential decrees. Various electoral stakeholders commented on some continued shortcomings in the legislation, highlighting that the effects of the legal amendments remain to be seen and called for an evaluation of the newly-adopted electoral legal framework and its application in practice.

A number of the OSCE/ODIHR exploratory team interlocutors pointed out that the adopted laws need to be supplemented by regulations and decisions of the electoral management bodies to provide needed clarity on specific topics. The Independent Election Commission (IEC) has already adopted regulations and decisions regarding such issues as candidate registration and replacement of vice presidential candidates, voter registration, recruitment of temporary election staff, voting and counting procedures, campaign finance, etc. Once adopted by the IEC, regulations and decisions are published on its website,² which was widely seen by the OSCE/ODIHR exploratory team interlocutors as a positive step towards transparency of the legal framework. The legal framework is further supplemented by the Presidential Decrees on Codes of Conduct for security forces and government officials.

The president is directly elected by popular vote for a five-year term by the absolute majority of the votes cast. In case no candidate receives more than half of the votes in the first round, a second round is held between the two candidates who received the highest number of votes within two weeks from the date results of the first round are proclaimed. The IEC has announced that it plans to organize a possible second round of the presidential election on 28 May. Provincial councils are elected by popular vote for four-year terms by a plurality of the votes cast. The number of seats on provincial councils is determined on the basis of the population in the given province, as provided for by the Election Law, although collection of such data remains problematic.

C. ELECTION ADMINISTRATION

The upcoming elections will be administered by a three-tier election administration comprising the IEC, 34 provincial offices of the IEC, as well as the polling station committees. Additionally, IEC is recruiting district field coordinators (DFCs) through its provincial offices. In accordance with the Structure Law, nine IEC commissioners were appointed by President Karzai for six-year terms from a short list proposed by a selection committee.³ A number of OSCE/ODIHR exploratory team interlocutors expressed their regret that a civil society representative did not take part in the selection committee, although provided for by the law. The new commissioners were appointed on 29 July 2013. Since the last elections the IEC has produced a strategic plan that takes into account a number of previous OSCE/ODIHR recommendations.

In total, the IEC plans to establish approximately 7,000 polling centres that will comprise multiple polling stations (each preparing for 600 voters), including separate facilities for male and female

² See <http://iec.org.af/2012-06-21-06-19-20/regulations-procedures> for the full list of the regulations and decisions adopted by the IEC.

³ According to the Structure Law, the selection committee is to be comprised of the Chairpersons of *Wolesi Jirga* and *Meshrano Jirga* (lower and upper houses of Parliament, respectively), Chief Justice of the Supreme Court, Head of the Independent Commission for Oversight of the Implementation of the Constitution, Head of the Afghan Independent Human Rights Commission, and a representative of the election-related civil society organizations.

voters. Polling stations for *Kuchi* (nomadic) voters will be established where appropriate. Additionally, the Election Law envisages establishment of separate polling stations for military personnel and eligible voters serving prison sentences, as well as for refugees and diplomatic personnel abroad.

The IEC informed the OSCE/ODIHR exploratory team that the establishment of polling centres and opening of polling stations will depend on a security assessment prepared by the Ministry of Interior (MoI). The security assessment, released on 11 January with a slight delay, detailed that 414 polling centres, or approximately 6 per cent of the total number, will not be open on 5 April due to security concerns. Some members of the parliament and representatives of the citizen non-partisan observer group Transparent Election Foundation of Afghanistan (TEFA) expressed certain doubts over this security assessment. The OSCE/ODIHR exploratory team was also informed that co-ordination units of the security forces (including the MoI and Afghan Nationals Security Forces) have been established at the provincial level, which is a positive development. As pointed out by all electoral stakeholders, the effects of the security situation on the electoral process are uncertain but will be a key element for the conduct of elections.

In line with the Election Law, albeit with a delay, the IEC Media Commission was established in early December 2013. The Media Commission is comprised of five members and is tasked with establishing and supervising the application of the regulations for campaign media coverage. Electoral stakeholders welcomed the establishment of this commission noting that the media has expanded and play an active and vital role in the upcoming electoral process.

The OSCE/ODIHR exploratory team was informed that the IEC has introduced fraud mitigation mechanisms into its operational planning, a step that was positively regarded by the electoral stakeholders. These measures include: stronger means for ballot protection, each voter having two of their fingers inked, application of the tamper-evident tape on the results protocols, and barring approximately 11,000 people from employment as temporary election staff due to their alleged engagement in misconduct during previous elections. While a number of introduced anti-fraud measures follow the recommendations from the previous elections, their effectiveness is yet to be tested. There was an expectation amongst stakeholders that attempts at fraud will be made and therefore the full implementation of anti-fraud measures will be critical.

While being an Afghan-led body, the IEC is supported by the international community through the UNDP Enhancing Legal and Electoral Capacity for Tomorrow II (UNDP/ELECT II) project. All interlocutors of the OSCE/ODIHR exploratory team welcomed the early preparations already put in place by the election management bodies and highlighted the progress made to date in comparison with the previous elections, despite the certain shortcomings they noted.

D. VOTER REGISTRATION

Eligible voters will be able to cast their ballots at any polling station nationwide for the presidential election or at any polling station in their province of residence for the provincial council elections. As in previous years, voters are not linked to specific addresses or polling stations. This makes election planning difficult, as there is a risk of stations being under-prepared for a large number of voters, and increases the risk of multiple voting (with ink being the main deterrent). While consideration was given over the past several years to linking voter and civil registration, in the run up to the 2014 elections voter registration was updated by issuing voter cards to new eligible voters. The OSCE/ODIHR exploratory team was informed that this update effort resulted in approximately 3.5 million new voter registration cards being issued, including about 35 per cent of them to women. As

there are no reliable mechanisms to ensure that no voter holds more than one voter registration card, a number of OSCE/ODIHR exploratory team interlocutors voiced their concern that multiple registration continues to pose a threat to the integrity of the process. Representatives of the Afghan national and international electoral stakeholders welcomed previous efforts of the OSCE/ODIHR ESTs to look into the voter registration system and highlighted that this area can benefit from further review with a focus on long-term development options.

E. CANDIDATE REGISTRATION AND THE CAMPAIGN

A total of 27 presidential candidates, with 2 vice-presidential candidates each, as well as 3,056 provincial council candidates, submitted registration documents to the IEC before the 6 October 2013 legal deadline. Following the review of registration documents, the IEC decreased the list of presidential candidates to 10 tickets and of the provincial council candidates to 2,677, having found improper documents and violations such as dual nationality and a lack of required academic qualifications (university degree for presidential candidates and a high-school diploma for the provincial council). Following appeals to the IECC, the IEC announced the final list of 11 presidential and 2,713 provincial council candidates on 20 November, setting the ground for competitive elections.

The election campaign is due to commence on 2 February and will last until 2 April, after which a 48-hour silence period will ensue. Concern was expressed by various interlocutors of the OSCE/ODIHR exploratory team on the extent to which measures will be taken to provide for a level playing field. Interlocutors welcomed the initiative by President Karzai who brought all the presidential candidates together on 5 January to discuss the upcoming process and his apparent commitment to the process.

The IECC informed the OSCE/ODIHR exploratory team that it will continue to look into the eligibility of candidates until election day on the basis of challenges and complaints it receives directly and the media reports it becomes aware of. In particular, the IECC submitted a list of presidential and vice-presidential candidates who had allegedly committed crimes to the Attorney General's office in early January. While the nature of the alleged crimes and the names of the presidential and vice-presidential candidates in question were not publicised, the Attorney General on 13 January dropped the investigations due to insufficiency of evidence. The IECC also requested that education qualifications of all provincial council candidates be reviewed against the database maintained by the Ministry of Education. A number of OSCE/ODIHR exploratory team interlocutors commented on the proactive approach of the IECC, but pointed out that possible disqualification of candidates until late in the electoral process may be problematic.

F. COMPLAINTS AND APPEALS

In line with the legal framework adopted in 2013, electoral disputes will be adjudicated by the newly-appointed IECC and its provincial structures. In line with the previous recommendations, including by OSCE/ODIHR ESTs, the legal framework provides for the IECC to be a permanent body. President Karzai appointed five commissioners to the IECC from among the nominees proposed by the selection committee that also included a representative of the civil society. The IECC instantaneously commenced its work and is currently in the process of hiring staff, establishing provincial offices, and adopting key regulations and decisions for its work.

Complaints regarding voting and counting may be submitted by candidates and their agents to the provincial complaints commissions during voting or within 48 hours of election day. Decisions of the provincial complaints commissions may be appealed within 72 hours after publication to the IECC who will have up to one month to consider them and issue a final decision. The IECC can issue

warnings and charge monetary fines against those found guilty of violating the electoral legislation. It can also invalidate votes cast for a specific candidate if s/he is found guilty of electoral offences outlined in the Election Law.⁴ In such instances, and in contrast to previous elections, only votes cast for that candidate in a polling station or centre of concern will be invalidated.

A number of OSCE/ODIHR exploratory team interlocutors pointed out that the relatively late formation of the IECC is an issue of concern, given the importance of the task it faces, the potentially high volume of complaints, and its potential role as a final arbiter. Concerns were also raised by some interlocutors about the IECC's transparency to date. For example, disqualified candidates were reportedly not informed of the reason for their rejection. Some of these interlocutors, including several presidential candidates, noted that the IECC has to demonstrate its political neutrality while welcoming the steps already made to provide for its effectiveness and impartiality.

G. CITIZEN OBSERVERS

The OSCE/ODIHR exploratory team was informed that a significant number of citizen observer organizations have applied for accreditation from the IEC. The Free and Fair Election Foundation of Afghanistan (FEFA) appears to be the most numerous as it plans to deploy up to 10,000 citizen observers on election day throughout the country. A number of OSCE/ODIHR exploratory team interlocutors expressed an opinion that various citizen observer groups may benefit from the OSCE/ODIHR EST sharing good practice of election observation with them.

Additionally, a number of presidential candidates that the OSCE/ODIHR exploratory team met with expressed their interest in accrediting significant numbers of agents for election day. Some of them also expressed concern with regard to the alleged intention of the IEC to accredit agents to specific polling stations, explaining that this may limit the extent of their observation of election day proceedings. There was recognition that it will be particularly hard to find female observers and agents in some parts of the country.

IV. CONCLUSIONS AND RECOMMENDATIONS

All of the OSCE/ODIHR exploratory team interlocutors expressed support for deployment of the OSCE/ODIHR EST. They pointed out that the OSCE/ODIHR EST could place particular emphasis on reviewing the electoral legal framework and its application in practice, the work of the election administration, long-term priorities in the sphere of voter registration development, the resolution of electoral disputes, citizen observation, regulation of media coverage of campaign, as well as the counting and tabulation of votes.

As mandated by the Decision of the OSCE Permanent Council, the OSCE/ODIHR EST will "assist government and international efforts on the presidential and Provincial Council elections." The EST will focus on the key priority areas identified by the OSCE/ODIHR exploratory team and will "prepare a report, to be distributed to participating States, on the electoral process, based on its findings, including a set of recommendations to the Government of Afghanistan for implementation as appropriate in the post-election period." Based on the findings of the exploratory team and in accordance with PC decision 1094, the OSCE/ODIHR recommends a 15-member EST to start deploying in the beginning of February in order to follow the early stages of the electoral process.

⁴ See Art.65 of the Election Law for details.

ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs

Bashir Ahmad Shukran, Deputy Director for Security Cooperation

Ghulam Rabani Nezrabi, Security Cooperation Desk and Focal point for NATO and OSCE

Independent Election Commission

Zia-ul-Haq Amarkhil, Chief Electoral Officer

Independent Electoral Complaints Commission

Mohammad Ali Stegh, Head of Secretariat

Walid Akbar Sarwary, Technical and Operations Director

Media Commission of the Independent Election Commission

Farida Nekzad, Head

Hashmatollah Radfar, Deputy Head

Presidential Candidates

Dr. Abdullah Abdullah

Dr. Ashraf Ghani Ahmadzai

Eng. Qutbuddin Hilal

Sardar Mohammad Nader Naeem

Dr. Zalmay Rassoul

Daoud Sultanzy

Dr. Hashmat Safi, Head of Youth Affairs of Abdul Qayum Karzai campaign

Hassain Sanjari, Regional Manager of Abdul Qayum Karzai campaign

Civil Society

Nader Nadery, Chairperson, FEFA

International Community

Ján Kubiš, Special Representative of the UN Secretary-General, Head of United Nations Assistance Mission in Afghanistan (UNAMA)

Joanna Nathan, Special Assistant to the Special Representative of the UN Secretary-General

Andreas Lovold, Political Affairs/Electoral Officer, UNAMA

Alfred Grannas, Deputy Head, EU Delegation to Afghanistan

Ulrich Steinle, Deputy Head of Operations, EU Delegation to Afghanistan

Jonas Grans, Political Adviser, EU Delegation to Afghanistan

Luis Castellar Maymó, Attaché, EU Delegation to Afghanistan

Lee Litzenberger, Deputy NATO Senior Civilian Representative

Brigadier Craig Lawrence, Director of Election Support Cell, ISAF

Ruth Baird, Political Advisor to the NATO Senior Civilian Representative

Carson Relitz Rocker, Internal Politics Unit Chief, US Embassy in Kabul

Rebecca Dockery, Division Chief, Regional Security Office, US Embassy in Kabul

Belma Azra Ejupovic, Elections and Political Processes Team Lead, USAID Afghanistan

Jessica H. Zaman, Director, Office of Democracy and Governance, USAID Afghanistan

Sarah Cooper, Election and Transition Coordinator, USAID Afghanistan

Oskar Lehner, Senior Technical Advisor, UNDP/ELECT II

Vasu Mohan, Deputy Director Europe and Asia, IFES

Katherine Ellena, Program Manager Afghanistan and Pakistan, IFES

Typhaine Roblot, IFES Legal Procedures Advisor to the IECC

Glibert Sembrano, IFES Training Advisor to the IECC

Christine Roehrs, Analyst, Afghanistan Analysts Network