



**Afghanistan Independent Human Rights Commission
AIHRC**

**AIHRC-UNAMA
Joint Monitoring of Political Rights
Presidential and Provincial Council Elections
First Report
25 April – 12 June 2009**



**United Nations Assistance Mission in Afghanistan
UNAMA**

SUMMARY OF MAIN FINDINGS

- The nomination and challenge period took place in compliance with the electoral laws and regulations, and according to the timetable established. This was a considerable accomplishment for the Afghan institutions—notably the Independent Electoral Commission (IEC) and the Electoral Complaints Commission (ECC)—which for the first time in the post-Bonn era were responsible for organizing national elections.
- The reporting period was characterized by deteriorating security conditions in many parts of the country. Reported attacks and threats, mainly by anti-government elements and unknown perpetrators, against candidates, in particular, female candidates, as well as civic educators and election workers, highlighted ongoing security concerns that restrict the ability and/or the intention of Afghans to exercise their civil and political rights.
- Despite the deteriorating security situation, the number of candidates who decided to stand for election increased compared to the previous elections. This increase was true for both the Presidential and Provincial Council elections. The increase was particularly significant (around 20%) for women presenting themselves as Provincial Council candidates. Nonetheless, two provinces (Kandahar and Uruzgan) the allocated quota for female Provincial Council candidates was not filled.
- Cultural and structural constraints, including limited access to resources, lack of identification documents, lack of support from family members, and a general lack of acceptance of women's right to public life continued to limit women's ability to fully exercise their political rights.
- Reports of government officials allegedly threatening or harassing opposition candidates and supporters, as well as misusing state resources for campaign purposes, drew attention to the issue of government interference in the electoral process.
- The vetting and challenge process was consistent with announced procedures period, Weaknesses of the systems, as well as the limited time given to the candidates during the compliance period to defend themselves, led to perceptions that some candidates, who allegedly have links to armed groups, were not excluded from the final candidates list. Efforts were made from across the political spectrum to put pressure on the D&R Commission and ECC to change their decisions.

AIHRC UNAMA JOINT POLITICAL RIGHTS MONITORING PROJECT

The United Nations Assistance Mission in Afghanistan (UNAMA) and the Afghanistan Independent Human Rights Commission (AIHRC) are jointly monitoring the exercise of political rights of Afghan citizens during the 2009 Presidential and Provincial Council elections. This joint exercise is aimed at assessing the respect for, and protection of, those rights by key stakeholders and responsible authorities. Particular attention is being paid to the participation of women in the electoral process.

As part of the joint monitoring, UNAMA and the AIHRC are gathering information and investigating complaints on issues related to impediments to, or violations of, political rights. Resulting recommendations will be made to the relevant authorities thereby contributing to an environment which is conducive to the holding of free and fair elections.

The joint monitoring exercise is focused on four critical human rights namely freedom of expression, movement, peaceful assembly, and association as well as the three fundamental principles of non-intimidation, non-discrimination, and impartiality.

This report analyses information gathered as a result of the joint monitoring exercise. It describes the trends observed, including the types of violations and incidents that constrained the exercise of political rights of Afghan citizens between 30 April and 12 June 2009 during the Candidate Nomination and Challenge period.

Methodology

During the reporting period, observers from twenty-one UNAMA and twelve AIHRC field offices monitored the overall human rights environment in relation to the electoral process in order to evaluate the conditions under which Afghan citizens are able to exercise their political rights. Monitoring activities included:

- registering and following up on complaints submitted by Afghan citizens alleging violations of, or restrictions on, their political rights;
- monitoring the media, in particular for infringements on the right to freedom of expression;
- collecting information about trends and general perceptions of the electoral process through interviews conducted with government authorities, political parties, candidates, community and tribal elders, religious leaders, civil society, journalists, and electoral officials;
- consulting relevant stakeholders on the environment in which the electoral process is being conducted, paying particular attention to factors impeding or violating the exercise of political rights, including the full participation of women.

OVERVIEW

Overall, the nomination and challenge period, between 25 April and 12 June, took place in compliance with existing electoral laws and regulations, and within the established time-frame. This is a considerable achievement on the part of the IEC, especially given that these are the first Afghan-led elections to take place in the country in more than 30 years.

Following completion of the nomination and challenge process, there were forty-one Presidential candidates, eighty-two Vice-Presidential candidates, and 3195 Provincial Council candidates on the final list of candidates released by the Independent Electoral Commission (IEC).

Despite the lack of major incidents, the review period was characterized by growing insecurity in large parts of the country, particularly the south, east, and west. Many individuals who spoke to the monitoring teams cited poor security as the main reason for not actively engaging in the electoral process. Attacks and threats, in particular against female candidates, civic educators, and election workers, highlighted the effect of insecurity on the electoral environment.

Anti-government elements (AGEs) represented the greatest threat to the election process in general. During the reporting period, the Taliban published at least two editorials threatening those who participate in the elections “with actions befitting those legitimizing the foreign occupation of Afghanistan”. In early June a Taliban leader, Mullah Baradar, urged Afghans to boycott the elections.

One Presidential candidate and ninety Provincial Council candidates, including thirteen female candidates, voluntarily withdrew their candidacies. A few withdrawals were the result of attacks and intimidation against them by opposing nominees and their supporters, as well incidents at the hands of AGEs.

Yet, even within the deteriorating security environment, a record number of Afghan citizens are standing for both Presidential and Provincial Council elections. The increase in female candidates is of particular significance. There was a doubling from one to two female Presidential candidates; female Vice-Presidential candidates increased from two to seven. Eighty-one more women nominated themselves as Provincial Council candidates than in the previous election, representing an increase of approximately twenty percent. However, two provinces, Kandahar and Uruzgan, both failed to fulfill the allocated quota for female Provincial Council candidates.

Many organizations, including both national and international NGOs, UN and government bodies engaged in a variety of public outreach activities to encourage women to stand as candidates. The Ministry of Women’s Affairs (MoWA) established a task force to compile a list of potential female nominees. The IEC also conducted an extensive public awareness program aimed at

encouraging women to register as candidates. In Takhar and Kunduz, Provincial Governors tasked TV stations as well as local elders and religious leaders to broadcast direct appeals for more female nominations.

The Challenge and Vetting Process

The challenge process took place from 16 May to 12 June. During this period, citizens were able to challenge the eligibility of candidates according to the criteria of the electoral law. Challenges were made to the Electoral Complaints Commission (ECC).¹ During the period, 302 challenges were made (50 challenges related to Presidential and Vice-Presidential candidates and 252 to Provincial Council candidates). After evaluating each challenge, the ECC informed the IEC of its decisions on the eligibility of the candidates challenged.

The ECC was formally constituted on 26 April, 2009 and experienced some practical delays in establishing its infrastructure, in particular its provincial offices. Through an arrangement with the IEC, it was able to have a focal point within each IEC provincial office. The focal point was responsible for collecting challenges and forwarding them directly to the ECC in Kabul. The ECC was also able to accept challenges directly at its headquarters office in Kabul.

The ECC reported no significant problems with this arrangement during the challenge process as the IEC was simply acting as a conduit for transferring challenges from the provinces to the ECC Headquarters in Kabul, where the formal assessment, investigation and adjudication took place.

Challenged candidates were given at least five days from the time of notification to respond to the ECC prior to adjudication of the challenge. The ECC extended the deadline for challenged candidates—from May 21 to May 23—to ensure that candidates were given as much opportunity as possible to respond. In most cases, the ECC went beyond this deadline and took into account information submitted as late as 7 June. In many cases notification was delayed owing to difficulties in contacting the candidates, mainly because of incorrect contact information. All candidates were additionally informed through the public information campaign about the vetting process.

In total, 56² candidates were excluded from the final list of candidates – two Presidential, one Vice-Presidential³ and 53 Provincial Council candidates

¹ The ECC is composed of five members: three international experts appointed by the Special Representative of the United Nations Secretary-General to Afghanistan, one by the Afghan Independent Human Rights Commission, and one by the Afghan Supreme Court.

² Originally the ECC announced the exclusion of 57 candidates; however, on 15 June 2009, the ECC informed the IEC that one provincial council candidate was mistakenly excluded due to a clerical error and he has subsequently been re-instated as a candidate.

³ Subsequent to the end of the challenge period, six Vice-Presidential candidates withdrew their candidacies. In cases where a Vice-Presidential candidate has resigned, the presidential candidate is allowed to present an alternative running mate. As a result, none of the replacement choices are subject to

representing 26 provinces. Of this total, 54 were disqualified for having links to illegal armed groups (Article 15.3 of the Electoral Law); and one candidate was disqualified for having both a criminal conviction (in violation of Article 62 of the Afghan Constitution) and links to illegal armed groups. One candidate was disqualified for having a second nationality in violation of Article 62 of the Constitution.

Prior to the start of the challenge period in May, the ECC released a policy on how it would determine challenges to candidates based on membership of illegal armed groups. In this policy, the ECC stated that it would rely “solely on the decision of the Disarmament & Rehabilitation Commission (D&R Commission) as to whether an individual should be excluded from the ballot on the basis of Article 15.3 of the Electoral Law.”⁴ The purpose of this policy statement was to increase the transparency of this particular process, so that all stakeholder (candidates, voters, media, observers, etc.) knew in advance how the ECC intended to handle challenges filed under Article 15(3) of the Electoral Law.

The D&R Commission is comprised of the principals of five national and international organizations: the Ministry of Interior, Ministry of Defense, National Directorate of Security, UNAMA and the International Security Assistance Force (ISAF). The D&R list used for the 2009 challenge process was created through a re-mapping exercise, authorized by Vice-Presidential Decree. The re-mapping was launched in October 2008 and was scheduled to end in December 2008; however, the process was extended until April 2009 to receive information from all 34 provinces. The outcome of the remapping depended to a some extent on the cooperation of provincial administrations as well as other members of the Commission.

According to the procedures agreed by the D&R Commission and the ECC, the D&R Commission submitted challenges against all candidates who had been determined during the remapping exercise to have verified links to illegal armed groups. Once the candidates were challenged, the ECC was responsible for notifying challenged candidates and providing at least five days to respond. The ECC relied on assistance from the Ministry of Interior to contact candidates both because it lacked provincial offices at that time and to mitigate security concerns.

When challenged candidates were contacted they were instructed to report to the provincial DIAG committees to learn what was required to comply with disarmament laws. Based on their responses, the D&R Commission submitted an official letter to the ECC on 8 June indicating which candidates were no longer affiliated with illegal armed groups. Any candidates not in full compliance by 9 June were then excluded from the ballot by the ECC.

challenges. However, the IEC stated they will review their candidacies to ensure they meet the eligibility criteria.

⁴ ECC Policy on Challenges to Candidates Who Command or are Members of Unofficial Military Forces or Armed Groups. 15 May 2009.

In some provinces (Jawzjan and Balkh), there were some delays in the provision of instructions to the provincial authorities regarding DIAG process. As a result some candidates had less time than in other provinces to appeal challenges.

Some disqualified candidates and civil society representatives asserted that the DIAG lists themselves were flawed. This generated perceptions that some candidates had been unfairly disqualified, and that other candidates with links to armed groups had not been disqualified. In some cases, significant political pressure was placed on ECC to revise their decisions. This pressure was resisted.

Overall, the candidate challenge process was clearly not fully understood by the Afghan public, who continued to view it as a mechanism for obtaining justice for past wrongs both on an individual and collective basis. While the legal framework asserts that a conviction by an authorized court is required to deprive persons of their right to run for public office (Articles 62 and 85 of the Constitution), structural deficits and shortcomings in the administration of justice have prevented many candidates, who are believed by the public to be responsible for serious crimes, from having been investigated and prosecuted.

RIGHTS AND PRINCIPLES

This section presents documented violations of the political rights of Afghan citizens; it provides summaries of cases that were examined during the candidate nomination and challenge period which ran from 25 April to 12 June 2009. Overall, the joint monitoring teams received some 100 complaints during the reporting period. The cases referred to in the following sections are examples of the complaints that the joint teams were able to examine and substantiate.

For security reasons and to protect sources and complainants, some of the cases outlined below have no identifying characteristics.

Principle of Non-Intimidation

Violations of the principle of non-intimidation was the main obstacle to the exercise of political rights during the reporting period. These violations overwhelmingly were committed by AGEs, who have publicly threatened those who participate in the electoral process. Intimidation also occurred, however, as a result of other factors, including a political culture in which the limits of formal authority are often violated, as well as a lack of enforcement of the rule of law, exacerbated by a lack of appropriately trained law enforcement officials, especially in conflict-affected areas.

Although the severity of incidents varied from region to region, some forms of intimidation of candidates, supporters, and voters could be observed throughout the country during the reporting period. Some sixty complaints concerning intimidation were received by the joint monitoring teams of which twenty-five were followed up.

On 2 May 2009, an unknown armed man shot dead Mawlawi Gul Pacha, a well-known religious scholar in the Tagab district of Kapisa province. The motivation behind the killing is understood to be related to his intention of standing for the Provincial Council elections, which he had publicly announced two days prior to his assassination.

On 15 May 2009 in Kunduz province, alleged AGE gunmen abducted a Provincial Council candidate. He was interrogated for several hours and accused of participating in the electoral process, which his captors defined as 'anti-Islamic'.

On the same day, a Provincial Council candidate from Zurmat district of Paktia province was kidnapped by anti-government elements and held hostage for two days. According to available information, he was beaten during the captivity and the abductors ordered the candidate to leave Afghanistan. The candidate left the country following his release. This incident led to the withdrawal of another candidate from Zurmat district.

On 26 May 2009, Ghulam Yahya Mawlawai Athar, a high profile Provincial Council candidate from Ghazni province was abducted by an alleged anti-government group from either Wardak or Qalat, while traveling back to Ghazni from Kabul. On 1 June, the elders of Khwaja Omari met with the abductors, requesting the release of the candidate and offering a sheep for his release in line with local custom. On 3 June, the ANP found the body of the candidate in Syedabad district, Wardak province. Although it is difficult to identify the motive behind the killing, it is generally believed that it is connected to his candidacy.

On 28 May 2009, Sher Mohammed, a Provincial Council candidate from Khost province was killed by an improvised explosive device (IED) while driving on the Khost- Gardez road. A son of the candidate was injured in the attack. The IED was reportedly attached to the candidate's car, meaning he was specifically targeted, and therefore the motive behind the attack is likely to be related to his candidacy.

On 2 June 2009, in Kunduz, it was reported that two candidates for the Provincial Council elections decided to withdraw because of death threats they had received from anti-government elements. Similar cases have been reported in Khost, Paktya, Kapisa and Baghlan provinces.

Intimidation was not limited to candidates. Civic educators, IEC officials and in one case, an entire village received threats. In Takhar and Kapisa provinces, it was reported that civic educators and an IEC provincial official had been threatened by unidentified persons warning them to stop working for the IEC.

The Khost provincial head of the IEC reported that he had received threats, including night letters, on several occasions over the past year from anti-government elements. He was allegedly told to leave his job and to disclose information about challenges the IEC has received or else he would be targeted. He further added that as a result of those threats and an attack against his property, he was forced to move from his village to the provincial capital.

Principle of Impartiality⁵

During the reporting period, the joint monitoring teams received reports of incidents of state interference in the electoral process, including government officials threatening or harassing opposition candidates and their supporters, and using state resources for campaign purposes. Some 30 complaints were received by the joint monitoring teams and twenty-two were followed up.

Since mid-May, the former NDS office in Laghman province has been used as a campaign office for President Karzai. One of the deputy heads of the NDS, Dr. Abdullah Laghmani, from Laghman province, reportedly verbally threatened the leader of the Afghan Muslim Peoples' Party, Abdul Mukhtar, while on a visit to the province. In a separate incident, the Head of the district NDS office in Karghaywe district, Laghman, is alleged to have physically assaulted Mr. Mukhtar.

On 20 May 2009, the Chairman of the Provincial Council in Nuristan province reported that the Provincial Governor instigated students and teachers to stage a demonstration to demand that he (the Provincial Council Chairman) not stand for election. The Chairman claimed that the Governor opposed his candidacy due to a press conference the Chairman had held in Kabul, where he criticized the Governor for failing to take measures to address the deterioration in security in the province.

In May, Badakhshan Member of Parliament Zalmai Khan Mujadidi reportedly distributed relief items by governmental helicopter in exchange for support for President Karzai.

Principle of Non-Discrimination

⁵ The principle of impartiality, in the context of this exercise, is defined as government officials conducting their duties with "complete neutrality", including not using state resources to advance the campaign of particular candidates. Please see Article 50 of the Afghan Constitution and the May 2009 Presidential Decree on Non-interference of Government Officials in Electoral Affairs.

The monitoring teams observed a number of cases dealing with violations of the principle of non-discrimination that related to women's political rights. (See section on women's political rights below).

Freedom of Expression

During the reporting period, seven complaints were received by the joint monitoring teams of the violation of the right to freedom of expression.

On 7 May 2009, an editor of a weekly newspaper reported that he was threatened and beaten by unidentified men in relation to an article he published criticizing some political parties. According to the victim, the attackers are members of the Jamiat-i-Islami supporting the candidacy of Dr. Abdullah Abdullah. The case has been referred to the authorities, although no action is known to have been taken. According to information received, the journalist is still receiving threats.

The director of the Aayena-e-Shahr programme at RTA was reportedly prevented from broadcasting a programme on 17 May 2009. The programme, in which participants from the ECC, Parliament, and civil society, discussed election-related issues, had been previously approved by the Ministry of Information and Culture. However, the Minister reportedly informed the journalist that programs such as the one he intended to broadcast could harm the campaign of President Karzai and as a consequence permission to broadcast the program was withdrawn. Subsequently, the journalist filed a complaint with the ECC.

Freedom of Movement, Peaceful Assembly, and Association

Six complaints were received about these three rights during the reporting period. However, it should be noted that the exercise of these rights will be more pertinent during the campaign period.

Women's Political Rights

Fifteen complaints were received regarding the exercise of Afghan women's political rights. The exercise of these rights is undermined by a variety of factors and influenced by cultural and structural constraints. These include limited access to resources, lack of identification documents, lack of support from family members, and a general lack of acceptance of women's right to public life. The number of threats, harassment and intimidation incidents reported to UNAMA and AIHRC, including from the candidates' own families, indicate that attempts by women to claim public space through the electoral process are still not fully acceptable in many parts of the country. The following cases are illustrative of the intimidation and discrimination that women faced during the nomination period.

On 5 May 2009, it was reported in Takhar province that potential female Provincial Council candidates were discouraged from standing for election after night letters were distributed in Yangi Qala district. Despite these threats, nine women are running for local office.

On 11 May 2009, it was reported that a female Provincial Council candidate and well-known women's rights activist from Rustaq district in Takhar had received telephone threats ordering her to withdraw her candidacy. After the police intervened, the calls stopped.

A female Provincial Council candidate from Dai Kundi reported to the monitoring teams that, since the nomination of a former IAG commander from her home district, she has been receiving threats from his supporters.

On 28 May 2009 a female Provincial Council candidate from Baghlan reported that she had received death threats from an anti-government group and that, as a result, she would not be returning to her district to campaign. She subsequently relocated to Kabul. Her case has been reported to the police and NDS who have advised the candidate to wear a *burqa*.

On 8 June 2009, a female Provincial Council candidate from Takhar province reported that she had been subjected to ongoing intimidation by her brother-in-law but that she had refused to withdraw her candidacy. The candidate alleges that the intimidation is due to the fact that her family members are supporting her brother-in-law who is also a Provincial Council candidate and that he has connections with a local criminal gang.

CONCLUSIONS AND RECOMMENDATIONS

Although the candidate nomination and challenge period had limitations, as highlighted in the rights and principles section above, overall its implementation was in accordance with Afghan electoral laws and regulations. The increase of both Presidential and Provincial Council candidates compared to the previous electoral cycle indicates that Afghan voters will have a diversity of choice on polling day.

At the same time insecurity will have impact on the overall ability of candidates to actively campaign and, by extension, on the ability of voters to make informed choices.

Targeted attacks and acts of intimidation against candidates, supporters, electoral officials, and voters alike, are likely to have an impact on the ability or the intention of Afghan citizens to exercise their political rights during the rest of the electoral process. Statements by the Taliban threatening those who participate in the elections may be backed up, as in the previous electoral cycle, with violent acts intended to frighten people from voting.

In addition, the level of attacks and intimidation against candidates, election staff, civic educators and community leaders, poses a real threat to the election process, with the southeast and south being the areas of greatest concern.

Another issue that will need to be closely monitored throughout the rest of the electoral process is that of state interference. Acts ranging from voters being urged to vote for a particular candidate to threatening or harassing opposition supporters, to using state resources for campaign purposes, represents a threat to the credibility of the elections and hence the right to have one's vote count.

There were several reported incidents undermining the right to freedom of expression. These have impacted the media's ability in some areas to gather and relay information to voters. The role of the media during the campaign period will be more important than it was in the challenge and vetting process. State media, in particular, has an important role to play in providing access to all candidates but also in informing voters of where and how to vote.

The following recommendations cover the rest of the 2009 electoral process, and in particular the campaign period:

- National and international security forces must take concerted action against security threats. While the June 2009 Joint Directive of ANSF and ISAF, outlining their respective roles in providing electoral security, is encouraging, much more will have to be done so that the police and security forces work closely to address the security challenges ahead, especially with regard to the establishment of the provincial Operations Coordination Centres (OCC) comprised of the IEC, ANA, ANP, NDS and ISAF.
- Government officials should widely disseminate and implement the 2009 Presidential Decree on Non-Interference of Government Officials in the Electoral Process and undertake all necessary measures to reprimand and penalize those officials who were found to be interfering in the electoral process. It is important that Government officials, when carrying out their functions, not only act impartially but are perceived by the public to act impartially.
- Government authorities should take further measures to encourage women's full participation in the electoral process. This should include the following:
 - a) a broad, comprehensive public education program, targeting community leaders, elders, religious leaders, as well as women, to raise awareness of the right of women to participate fully in the electoral process;
 - b) the adoption of specific measures to address the unique security challenges that female candidate and voters face and to implement the necessary corrective action;

- c) the dissemination of special directives as well as training for police, on the particular security needs of female candidates.
- The IEC, media, community leaders, civil society representatives, candidates, and political parties should participate in a broad civic education campaign. This will facilitate dissemination of information to the Afghan electorate about the electoral process, including the role of the IEC, the ECC (including its complaint procedures), the universality of the right to vote, the procedures protecting that right, and, especially, the secrecy of the ballot.