

# Afghanistan: An Electoral Management Body Evolves

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Although elections were held in the Kingdom of Afghanistan in the 1960s, in 1977 after the 1973 *coup d'état*, and during the Soviet occupation after 1979, they were never of an internationally recognized standard. Traditional means of choosing tribal or clan Shura leaders persisted. One scholar noted that Afghans regarded the idea of a choice by secret ballot as somewhat 'sneaky', and preferred the 'honest' expression of choice by a show of hands. During the Soviet period the universal franchise, to include women, was adopted, but was culturally controversial. During the 25-year period of fierce war, victory through the bullet rather than the ballot decided who would govern.

Following the defeat of the Taliban in late 2001, the anti-Taliban Afghan factions assembled in Bonn to agree on future stability and democratic government. The Bonn Agreement of December 2001 recognized Afghanistan's sovereignty, despite the serious 'failed state' condition of the country and the unfinished war against the Taliban and Al Qaeda, as well as the fact that powerful armed factions (warlords) were in control of many areas outside Kabul.

The Bonn Agreement mandated the UN to take the first formal step towards democracy – the registration of voters for elections in mid-2004. The UN commenced this task in February 2003. It was a structurally 'messy' arrangement. Formally the sovereign Afghan authorities were responsible for the election. In fact there was no existing Afghan institution that could manage the elections, and in particular no EMB. Nor was there a legal framework to make a credible election possible.

## The Evolution of the EMB

The evolution of an Afghan EMB is a complex process which has gone through five phases over the past three years.

- The first body charged with the functions of an EMB was a purely UN body created in early 2003 – the Electoral Component of the UN Assistance Mission in Afghanistan (UNAMA) (the UN Component).

- In mid-2003 an Interim Joint Electoral Management Body (the JEMB) was created, with both Afghan and international members. It had no operational capacity and depended upon the support of various UN and other international organizations. Its responsibility was to supervise the UN Component.
- In early 2004 the UN Component was transformed into an advisory service to an Afghan-led Secretariat responsible to the JEMB. That organization completed the preparations for and conducted the 2004 presidential election.
- In early 2005 the JEMB's Afghan commissioners were entirely replaced by a new set of Afghan nationals, and some of its international members were also replaced. The JEMB remained an interim body. Its Afghan Secretariat was replaced by an Electoral Component appointed by UNAMA and internationally managed. This organization managed the 2005 parliamentary elections.
- Finally, in late 2005 the JEMB was replaced by the Independent Election Commission (IEC), which retained some of the JEMB's Afghan members. It has an Afghan Secretariat. Provision is made for international advisers to serve both the IEC and the Secretariat.

## The Legal Framework

The evolving EMB in Afghanistan is still a work in progress. The Bonn Agreement prescribed a UN role, endorsed by the UN Security Council, but the agreement is domestic and political. It is not an international or legally binding agreement. Neither the 2004 presidential election nor the 2005 parliamentary election was a UN peacekeeping election conducted under UN rules and regulations. The sole legal authority is the Transitional Islamic State of Afghanistan (TISA) – first the interim, and now the elected president and his Cabinet.

A decree of 26 July 2003 created the Interim Afghan Electoral Commission (IAEC) and the JEMB. Until then, the absence of any Afghan body to work with the UN had implied that the initial Voter Registration Work Plan and Budget could only be designed as an entirely UN operation, based on UN standards and pay scales. The resulting 130 million US dollar (USD) draft budget (June 2003) disturbed the TISA, donors (who would bear most of this cost) and the UN, and stirred them to action. The IAEC was urgently created, notionally to employ and support the Afghan registration staff at Afghan rates of pay. This would save the donors over 30 million USD. Despite the resulting economies, a second budget/work plan, launched in August for an October 2003 start, failed for lack of funding, and a scaled-down start was only possible in December 2003. This was based on the November 2003 Decree on Registration of Voters for the 2004 Elections.

At the end of December 2003 the new constitution of Afghanistan was promulgated, with various electorally significant provisions.

To bring the fiction of Afghan election management closer to reality, and to emphasize national capacity building as an integral part of the process, the decree of 18 February 2004 on The Elements of Convening Elections during the Transitional Period introduced a new institutional and management structure. The Electoral Component and officers of UNAMA became the 'technical advisers' to the newly appointed Afghan director of the JEMB Secretariat and his national managers at central and provincial levels.

On 27 May 2004 the Afghan Cabinet finally issued a decree establishing the Election Law. The presidential election was held on 9 October 2004.

On 21 January 2005, the entire IAEC was replaced by a presidential decree appointing new commissioners. An amended Election Law was adopted in May 2005. Together with the decree on The Basics of Holding Elections during the Transitional Period, it made significant

changes. Notably, it restored greater UN control for the 2005 parliamentary elections, with the restoration of a UNAMA chief electoral officer (CEO), reporting directly to the JEMB. It abolished the post of the Afghan director of the JEMB Secretariat.

Under the May 2005 Election Law, the transitional period ended 30 days after the parliamentary elections, which took place on 9 October 2005. With these elections the JEMB completed its work and handed over to the eight-member IEC and its Secretariat. Members of the new IEC have security of tenure and a fixed term of office of three years.

## Institutional and Operational Issues

The JEMB headed the management system for both the 2004 presidential and the 2005 parliamentary elections, supervising the Secretariat. For the presidential election, the Secretariat was headed by its Afghan director. For the parliamentary election, the Secretariat was run by the CEO, appointed by the Special Representative of the (UN) Secretary-General (SRSG).

The operational structure established for the 2004 presidential election remained as complex during the 2005 parliamentary elections. The JEMB's practical tasks, relating to Afghan staff recruitment and pay, the development of electoral infrastructure and the procurement and support of transport, relied for both elections on the United Nations Office for Project Services (UNOPS). Neither the JEMB nor its Secretariat had either the independent capacity or ministerial support for such tasks. Until December 2004, a United Nations Development Programme (UNDP) Project Office provided financial mobilization/accounting and personnel management for the JEMB, the Secretariat, and the UNAMA Electoral Component.

Although the JEMB asserted its independence, it also paid considerable attention to the views of both the government and the SRSG's office. The international members, appointed by the SRSG, were on occasions given explicit instructions by the SRSG's office. The principle of independence was thus not entrenched or uniformly respected during the presidential election.

Before the 2004 presidential election, the JEMB Secretariat and the UN Component responded to the security situation by taking the initiative and setting up a Security Unit. This was an unusual initiative for an election administration, but provided essential close liaison with the Coalition, the Afghan security forces and the International Security Assistance Force (ISAF) units.

For the presidential election, a separate structure was established to undertake the out-of-country registration and voting for Afghan refugees in Pakistan and Iran. Once the JEMB decided (very late) to provide this service, it was delegated to the International Organization for Migration (IOM), the only body with experience relevant to conducting this massive task.

## Powers and Functions

The JEMB had a standard range of EMB powers and functions: to prepare and conduct the voter registration, the nomination and screening of candidates (a politically delicate task), the polling and the counting, and the announcement of the results. The Ministry of Interior (MOI), not the JEMB, was responsible for the delimitation of electoral districts, but the JEMB allocated parliamentary seats to provinces on the basis of the MOI's information and managed the awarding of seats to candidates, including the reserved seats for women.

A separate Media Commission, reporting to the JEMB, was established in both election laws to ensure fair access to the public mass media, and this has worked reasonably effectively.

In response to comments on the 2004 presidential election, the 2005 Election Law provided for a separate, election-related Complaints Commission.

## **Financing**

As indicated, both the presidential and the parliamentary elections were almost entirely funded by the voluntary contributions of international donors. Since UNAMA was not a peacekeeping mission, there was virtually no UN funding provided, despite the official role of the UN in the operation and its considerable UN content. A UN, UNDP and JEMB Post Election Strategy Group has recommended that the IEC should be state-funded but should manage its budget independently. The legislation which established the new (post-Bonn) IEC has not provided for the mechanism by which future elections will be financed. However, policy statements have been made suggesting that it will be state-funded. Given that some well-paid staff are still in place from the internationally-funded Bonn process, they are likely to demand better than normal government pay, and sustainability may become a problem. In 2006, international NGOs such as the International Foundation for Election Systems (IFES), the National Democratic Institute (NDI) and the Asia Foundation appeared to be ready to continue their support for international advisers to the IEC, but such commitments could clearly not be indefinite.

## **Professionalism**

Special efforts were made during 2003/2004 to provide training for the IAEC members and enable them to observe their peers in operation. Following the appointment after February 2004 of the Afghan director of the JEMB Secretariat, Afghan managers at national and provincial level were appointed as counterparts to the UN Electoral Component's international staff already in place. This sought to introduce them to specific electoral tasks, and expose them to a range of international standards of professional practice. The return to an essentially UN management system for the parliamentary election in 2005 ended this practice. Consequently, a fresh capacity-building programme would be required to create a professional Afghan electoral body. Afghan officers given electoral responsibilities generally displayed sound understanding and a commitment to professionalism.

## **Relations with Other Institutions**

The transitional process was marked by the electoral administration's massive interaction with and dependence on other organizations, international and national. Many of the former, including the European Union, the Organization for Security and Co-operation in Europe (OSCE), the IFES, the NDI and the International Republican Institute (IRI) of the USA, as well as the US-funded Asia Foundation, played significant roles in supporting the process. Donors' diplomatic representatives, aware of their 'investment' (real or promised) were, unusually, regular visitors and enquirers at the JEMB Secretariat.

## Sustainability

Afghans involved in the process, including the government, showed a serious commitment to the ideal of the independence of the EMB. The interim nature of the IAEC may be viewed either as having somewhat undermined this or as having provided a serious training and testing ground and a base of demand for the new Independent Electoral Commission. The regional example of the Indian Election Commission provides an important and admired model. Funding is likely to be the key issue for sustainability, especially as the current election system implies considerable electoral costs.

## Electoral Reform

The JEMB, with its Secretariat of national and international staff, played an important role in preparing and drafting the Election Law and related decrees. This role has been formally given to the new IEC by the 2005 Election Law. If the IEC is to play a structured role in this field with the legislature in the future, these provisions may need to be further institutionalized.