

## Transcript - William Maley - Afghanistan Elections

Let me begin by drawing your attention to Afghanistan's geography. It is a landlocked country. It is divided by a huge mountain range called the Hindu Kush which runs right down the centre of the country. Many of the mountains in the range are more than 20,000 feet tall. And what this means is that the environment itself is a challenging one in which to attempt to run an election, because not only is the geography very harsh, but the transport networks within the country, because of conflict dating back to a coup in 1978 and the Soviet invasion of the country in 1979, are also poor. Now, this has cost implications for election planning in a number of different respects. One is that it is hard to move goods cheaply around the country. But another is that the equipment that one might use to move goods and material tends to wear out fairly quickly, the roads are poor, you have to do plenty of planning in transporting goods around the country for things like flat tyres, broken axles, all the kinds of things that can confront one in an environment where you have a combination of savage geography and poor infrastructure. So that's part of the story in Afghanistan.

It is also a country which has never had a census; not once in the history of Afghanistan has there been a census. This is partly because it has more than 50 different ethnic groups. When that is the case, having a census is potentially a contentious political matter, because each group fears that some other group will prove to constitute a larger proportion of the population. Those that think they are large want to have ethnicity included as a question, those that think they are small do *not* want ethnicity included. And that has been a barrier to the gathering of census data, which in turn deprives the electoral authorities of certain kinds of baseline data that would be very useful in undertaking electoral planning. Having said that, the estimate of the Central Statistics Office is that the population is now about 34 million people. So we are not talking about a country with a small population. But of that population, about 70% is under the age of 30. And it is also a population which is not extremely well documented in terms of dates of birth. So estimating when people might reach an age making them eligible to vote can be a somewhat tricky exercise in some parts of the country.

Elections in Afghanistan are carried out pursuant to the provisions of the 2004 constitution that was adopted following the international intervention in 2001, and of an electoral law adopted pursuant to that constitution that has gone through multiple phases of amendment, most commonly by presidential decree. One of the unfortunate features of that constitution, and a feature that I want to highlight, is that the political actors who crafted it did not really have in mind the logistical and managerial problems of running an election when they decided what kind of structures to build into the Constitution. So in fact, the Constitution contains provisions for the election of a president, the election of a lower house of parliament, the election of provincial councils – there are 34 provinces in Afghanistan – and district councils as well. And so the sheer burden of conducting elections of this kind is financially very considerable. There was no particular contemplation of how they might be brought together in order to reduce costs. And a calculation was made some years ago that Afghanistan could expect, if it remains stuck to this constitutional timetable, to be having a major national election every year or every couple of years for the next 20 years. So there is not much breathing space provided as a result of the constitutional structure for electoral authorities after they finished one exercise before embarking on the next exercise. The key polls have been the presidential elections and the parliamentary elections. In fact, there has been

massive slippage in terms of the provincial and district council elections, but even so the election authorities have been stretched to the limits of their capabilities.

One of the key lessons that emerges from Afghan experience is always to think of elections not as *events*, but as processes marked by systemic complexity and interconnectedness. There were some interesting innovations when the mechanisms for electoral administration were put in place. Of course, the Afghan state had substantially collapsed in the 1980s. Following the Soviet invasion, it reached a state of utter debilitation under the Taliban between 1996 and 2001. So when the United States intervened in 2001 with its allies, there really was not a functioning state in place that could be charged with running elections; there was no administrative capacity to do anything of that sort. So for the first presidential election, which was held in 2004 just months after the adoption of the new constitution, an Independent Election Commission was appointed to be nominally the repository of national sovereignty for the purposes of the poll. But the actual running of the election was in the hands of what was called the JEMB, the Joint Electoral Management Body which had a significant degree of international input to assist at all stages of the process. The chief advisor in this particular body was Professor Reginald Austin, who had been the Chief Electoral Officer in Cambodia with UNTAC in 1993. There was a very strong ethos of capacity building within the JEMB. At the time, the expectation of the key staff was that the people who were working in the election for 2004 would continue with careers in this particular sphere of activity, and that the experience from the first election would then flow over into subsequent elections in a beneficial fashion. One other very interesting innovation which was brought in at that time was the establishment of a separate Electoral Complaints Commission, to which complaints about the running of the election by the JEMB, under the auspices of the independent Election Commission, could be taken. And the majority of the members of the Electoral Complaints Commission, voting members, were international professionals, people who themselves had no personal interest in the outcome of the election, who were seen as distant by virtue of their distinct backgrounds from the electoral process itself. And this was one reason why the first two elections in Afghanistan, the presidential election in 2004, and the parliamentary election in 2005, were really not controversial in terms of their results, because everyone knew that the ultimate determination of which votes were valid and which ones invalid would lie in the hands of people who were dispassionate in terms of their approach to their task.

Now, having said that, a number of decisions that were taken early in the process of establishing electoral structures in Afghanistan had long-term ramifications. One related to the nature of political power in Afghanistan. The Presidential Palace, and a seat in the parliament in Afghanistan, came to be seen as great prizes for competing political figures, on the basis that with aid pouring into the country in very large quantities at that stage, it was highly likely that people who could win elected political office would exercise some control over those resources. And this could be a way in which people who were political aspirants could enhance their own power. So the environment was a highly competitive one. At the first presidential election in 2004, Hamed Karzai, the interim president, was still popular and there was confidence about the direction in which the country was going: the presidential election was thus something of an exercise in ratification rather than a highly competitive poll. This was not the case with the 2005 parliamentary election. The Constitution provided for a legislature with two chambers, but the important elected one, the lower house, had 249 members, with 239

coming from multi member constituencies constituted by the provinces of the country, and the remainder coming from a nomad list, because Afghanistan has a significant nomadic population.

The electoral system that was chosen was an extraordinarily perverse one, the single nontransferable vote (SNTV), which up to that point had been used only in Japan, Jordan, Vanuatu and the Pitcairn Islands. And they were good reasons why this system has not been more widely used. It is because it in effect generates an almost complete breakdown in the relationship between a political orientation in an electorate and representation in the parliament. Under SNTV, if, in a province with ten seats to fill, a popular, moderate candidate wins 90 per cent of the vote, that candidate still receives only one seat; the remaining 90 per cent of seats end up being divided between candidates who in total received only 10 per cent of the vote. Furthermore, under SNTV, there is a high probability that many votes will end up being 'wasted', in the sense that they will not be cast for a successful candidate. It was actually calculated after the 2005 legislative elections that out of 6 million registered voters, 4 million were cast for voters who voted for candidates who did not succeed. Only 2 million voters from this huge population actually voted for people who ended up being chosen in the parliament. And that has led to a weak party system ever since. But it has also led to a system in which the government has sought to mobilise ethnic identity as a basis within the legislature after the parliament is elected, because it needs to bring together different members in a block so that it is easier to get legislation through the parliament. So SNTV both undermined political parties, and amplified ethnicisation within the politics of the country. No one in the Afghan government really understood that this was likely to occur; what happened was that a relatively junior official was sent to the cabinet to make a presentation on the virtues of a closed-list proportional system. Unfortunately, he was not well prepared. Members of the cabinet began to ask him questions which he couldn't answer. Someone in the cabinet then said, 'Well, if you can't understand the system, how can we expect voters to understand the system?' Not quite the right question to ask, but it seemed potent at the time! Then someone else (by some accounts President Karzai himself) simply said, 'Well, why don't we let people just put a tick against the name of the candidate they like and then add them up?' No one really thought through the ramifications of that kind of system being adopted. And it is a very good example of how what look like small decisions can actually cascade through into a whole range of areas, which then have dramatic, longer term ramifications. Afghanistan is still suffering the consequences of SNTV.

One of the problems that began to accrue in Afghanistan arose from the fact that by the time the second presidential election came around in 2009, President Karzai was much less popular than he had been in 2004. And there was a real sense in the country that the 2009 presidential election could be a lot more competitive than the 2004 election had proved to be. Now one of the features of presidential systems that can easily be overlooked is that if a president who is an incumbent loses office, that person is not the only person who loses out. They will be a whole stack of people who have tied their own political future to the survival of the incumbent. If President Karzai had lost in 2009, he would have been given a fellowship at an American university to write his memoirs or something like that. But a whole range of his associates would have fallen a very long way indeed. This meant that the incentive for fraudulent behavior at the 2009 election was vastly larger than at the 2004 election. And one of the consequences was that that was exactly what we witnessed, but something which aggravated that was to do with

personnel in the elections administration. Despite the emphasis of the first team in 2004, on capacity building, by the time the 2005 legislative election came around, the responsibility for international cooperation has shifted from the JEMB to other players with much less interest in capacity building and continuity of staffing. That then set the scene for what has become a very unhappy pattern ever since, namely substantial turnover both in the line staff within the electoral administration and also the leadership of the electoral administration. This has real implications for institutional memory, and the capacity of people to remember mistakes of the past so that they can avoid making them again in the future.

It was also the case that the 2009 election was marked by industrial-scale fraud. There were 5.66 million votes allegedly cast; of these, 1.3 million were invalidated by the Electoral Complaints Commission. That's an enormous proportion. And the best estimate, from a scholarly study published in the *British Journal of Political Science*, was that around 75% of the votes that were declared invalid had been in favor of President Karzai. The effect of the invalidation of the votes was to set the scene for a 'runoff' election: the Afghan presidential system follows the French system whereby, if no single candidate gets more than 50% of the vote in the first round of voting, a runoff is held between the two candidates who did best in the first round. The effect of the invalidation of the fraudulent votes was to take Karzai below the 50% threshold and set the scene for a runoff. He was not happy. And he categorically refused to countenance any reform in the administrative system that had actually spawned 1.3 million fraudulent votes. As a result, his opponent withdrew with a certain amount of dignity from a race which he thought had become meaningless. But the next step that the President took was to move to eliminate the internationals from the Electoral Complaints Commission. Ever since then, there has been a much angrier mood in the aftermath of the declaration of results of Afghan elections because the Electoral Complaints Commission is now seen as potentially as tainted as the Independent Election Commission in producing final results for the electoral process.

The 2014 election, again, faced very substantial levels of fraud. Because of term limits, President Karzai could not stand again. The two leading candidates were the former foreign minister, Dr Abdullah, who won 45% in the first round, and the former finance minister, Dr Ghani, who won 31%. As a result, a runoff was required. There was great suspicion about what the runoff would involve. And then a series of telephone taps were leaked, most probably from the National Directorate of Security, in which one could hear the Chief Electoral Officer, Ziaulhaq Amarkhil, plotting electoral fraud with some of his buddies. They used a very crude code – make sure you take all the sheep to the mountains and ensure that they're properly stuffed. Given that ballot box stuffing has become very common in Afghanistan, it wasn't a difficult code to crack. Amarkhil was forced to resign. But it was not a glorious moment for the United Nations, because they put out a statement (which I would add can no longer be found on the UN website) which said that 'Mr. Amarkhil's long professional experience helped ensure that, during his tenure as the head of the IEC Secretariat, preparations for Afghanistan's historic presidential election were better managed and more advanced than those previously'. Now, I mention that because people sometimes think that internationals will be of value when one is trying to enhance standards of electoral integrity, but don't count on it: sometimes they can be as pathetically supine in the face of manifest and gargantuan fraud as one could possibly imagine.

Now, added to this was the problem that from 2009 onwards, the United Nations proved very supportive of the idea of indigenisation of the electoral administration, even though the scale of the fraud in 2009 suggested that it was premature, to say the least, to go down that particular path. That brings me to the 2018 election. And this was a very interesting manifestation of the interconnectedness of problems, of how one decision can cascade down into other areas of electoral administration having dramatic unintended consequences. And here they were two in particular that I want to draw to your attention.

The first was that there was a decision made to change the basis upon which the eligibility of a voter presenting at a polling station would be determined. In the earlier elections in Afghanistan, voters when registering had been presented with a voter identity card, and on attending at a polling station, they would be required to present the card which would establish their identity; the card would then be clipped in the corner, the finger of the voter would be dipped in indelible ink to prevent multiple voting, and the ballot paper would be issued. This system was seen as recognizing that a lot of people in the Afghan population are internally displaced, and that there is potentially quite a lot of population mobility between the point at which someone might register as a voter and when an election might be held, which could make it unfair to tie somebody to a particular district or area for purposes of voting. But this was also seen as potentially a source of fraud because it became clear at some stage that far more voter identity cards had been issued, probably fraudulently at the local level, than they were eligible voters within the electorate. So in 2018, a new system was used in which voters were required to register at a particular polling place. And the eligibility to vote would be determined by the presence of their name and identifying information on a list of voters to be distributed by the Independent Election Commission to the different polling places of the country.

In the picture on the screen, I've mentioned a voter in Kapisa province. This voter was actually the deputy foreign minister of Afghanistan; he had registered to vote at a polling station in a mosque 100 meters from his home in Kabul. When he went out to vote, on the morning of the election, I was with him; he is a former student of mine. The polling station, to start with, had not opened because the voters' list had not arrived and there was a large queue outside. Furthermore, when the deputy foreign minister reached the polling station, the staff could not find his name on the list. He ended up voting in his village, where everyone knew where who he was, and they were prepared to give him a ballot paper and write his name by hand on the bottom of the list of voters when he averred, and I affirmed, that he had not voted earlier in the day. There were massive problems associated with the logistics of distributing accurate lists to polling places; some polling places didn't receive their lists at all. Other polling places had large numbers of names missing from the list. In one potentially very dangerous case, there was a polling place where every name beginning with a particular letter was missing. Now, this happened to be the first letter in the name 'Ali', which is typically used by *Shiite* Muslims in Afghanistan. So if there had a district where most of the population were Shia, and most of the 'Alis' were missing, there probably would have been a riot, since the absence would have immediately been interpreted as a political move to disenfranchise members of the population.

But there was another challenge which had not been anticipated at all. With lists of this type, one would ideally 'stream' voters to different 'stations' within a polling centre, with

each station having lists of names beginning with some fraction of an alphabet – the equivalent of ‘A to G’, ‘H to M’, ‘N to S’, and ‘T to Z’.

In 2018, in each polling centre, there were at least four polling stations for male voters and at least one for female voters. What happened in 2018 was that at the very last minute, a decision was made to deploy biometric technology into polling places as an anti-fraud device. This was done in the face of enormous pressure from political parties that, because of the fraud in 2009 and 2014, had lost confidence in the integrity of the process. The IEC had no political capital left on which to draw in order to try to reinforce its position. And so the parties put pressure on the IEC to deploy biometric technology, in which they had a simple faith. This reached the point where parties were setting up demonstrations to prevent IEC offices in major cities from opening, and shots were being fired to clear the crowd. It was not a trivial problem. The government found money for the machines. But it did *not* find money for a budget line to staff the machines. So people who had originally been designated to be queue managers were taken *off* the task of managing queues, and put *on* the task of running the biometric machines. That meant that they were no designated queue managers at most polling places, even though for the first time in Afghan experience, people turning up at a polling center needed to be able to get guidance as to which queue they should join in order to get into the right polling station, the polling station where the list was held that had their names.

Well, this was not popular with voters. Because of the security situation, there was great apprehension on the part of voters about terrorist attacks on polling places. And indeed, when I was driving into Kabul on the evening of the election, there had just been a suicide bombing at a polling place in police district 17 which I had passed in the morning, and ambulances were roaring up the hill and police were directing all vehicles to go up side-streets, which was not that thrilling either. The apprehension that voters had about being in the vicinity of a polling centre for as short a time as possible was a perfectly understandable one. I know plenty of Afghans whose families went out not together, but one by one – out of fear that if there were a bombing, it could deprive children of all the adult members of their family. (We tend not to worry about this in Australia, but in places like Afghanistan, this needs to be part of electoral planning.) The result was chaos at a lot of polling stations; people were getting the head of queues and being told that they were in the wrong queue, and needed to go to the back of some other queue. This kind of management problem is serious in that it can compromise a genuine commitment to the participation of people to take part in an election, I have no doubt that a lot of people felt that they'd been around for too long for safety at the polling centres anyway, and went home without casting their votes, even though their intention had been to take part in the election,

This image is of the ballot paper for Kabul, the capital city. They were 803 names on the ballot paper, on 16 different sheets. Now, because of high levels of non-literacy in Afghanistan, there is a limited extent to which one can reduce the size of this because for each candidate, one needs to have the candidates name, a photograph of the candidate for the benefit of people who cannot read the name of the candidate, as well as a unique symbol for the candidate for people who have never seen the candidate for whom they wish to vote. (Much of the advertising by candidates before the election was actually focused on getting voters to know not the name of the candidates per se, but the symbol on the ballot paper that could be used to find the candidate.) And then of course, there had to be a box into which the mark for the chosen candidate

could be put. The result was a mountainous ballot paper, and this was not the first time this had happened. In the 2005 election. I remember seeing an angry voter in Paghman picking up the ballot paper, which in fact was a large booklet, throwing it on the ground, and stomping out in disgust because he could not find the name of the candidate for whom he wished to vote. (One nice thing did, however, happen in 2018, which shows how shrewd voters can be. There was a certain amount of vote-buying going on, in which people who were trying to buy votes would require that the person who was selling a vote take a photograph with a mobile phone of the ballot paper, showing that seller had marked the ballot as promised. In the province of Kapisa, somebody came in, dug out a tiny square of paper with a 'tick' on it, placed it very carefully on the ballot paper and then took the required photograph, after which he voted for the candidate of his choice.)

I have supplied you with a sheet which has the results from Kabul for the election last year. And I want to draw a couple of things to your attention first. The election was on 20 October last year; the results for Kabul were finally certified on 15 May this year. In the meantime, the entire IEC and the entire ECC had been fired and replaced by new people. *Seven months* it took to get the results from the capital. Now, one of the reasons for that was that there were a lot of irregularities. The Electoral Complaints Commission had initially put out a decree invalidating the entire election for the capital. This led to a massive dispute between the Independent Election Commission and the Electoral Complaints Commission, which ended up with everyone being fired and new people appointed. The other thing I wanted to draw your attention was the following. They were 33 seats to be filled in Kabul. Of these, 24 were for male candidates. The remaining nine were for female candidates because one of the strengths of the Afghanistan constitution is that it has a specific quota for the election of women members of the Wolesi Jirga, which has meant that about 25% of the members ever since the 2005 election have been women.

There were problems in the election not just in terms of people missing entirely from the list, but also in terms of data entry. At one of the polling stations I attended, there was an old gentleman had walked about six kilometers to get to the polling place. On the voters' list, there were four items to be included: the name of the voter, the name of the voter's father, the name of the voter's grandfather, and then the number of the voter's identity card, which is called a *taskera* in Afghanistan. In the case of this elderly voter, his name was correct. His father's name was correct. His grandfather's name was correct. But there was a one-digit error in the *taskera* number, which was plainly a data entry problem. But he was refused the right to vote. And he was very upset about it.

There had been a provision in the electoral law for the display of provisional lists of voters one week before the election so that people could check to see that all their details were accurate. How valuable that is is debatable, but that was in the law. But because of the failure to provide lists on time, the pre-election display simply didn't happen. So people were discovering for the first time when they turned up in polling places that there was a problem. And there was no provisional voting system of the kind that exists, for example, in Australia, where if there is an error in the roll, a person can fill out a ballot paper, which is then isolated from the main ballot, but has the potential to be inserted if it is established that the person was in fact eligible to vote. There was no such provision in Afghanistan. A reported provision for the 2019 presidential election would allow the name of such a voter to be manually entered into the list. But of course,

that opens the door to other problems. If you have somebody who is genuinely not entitled to vote, his or her name shouldn't be on the list.

This image on the screen is of the printer for one of the biometric machines that was used in Afghanistan; it was connected wirelessly to a data collection facility which could take the fingerprints of a voter and take an image of the voter that would be encrypted, and take a photograph of the voter number on the *taskera*. The notion was that these would be printed up by this little printer and attached to the back of the ballot paper as a mechanism to prevent multiple voting; that one would need to be *physically present* at a polling place and accessing this machine in order for a vote to be included. Now, one can debate the value of that – somebody calculated that one could actually (by moving one's fingers around) get 45 different ballot papers before the system would run into difficulties. And it was not connected to a real-time central database by which potentially a warning flag could go up to signal that somebody had already voted. So its value is debatable. The lesson here is that one needs to be very, very, very careful about seeing high tech in a low-tech country as the solution for any kind of problem. I wouldn't say that you cannot *ever* use biometric technology, but you need to be *hyper* alert to the limitations of what it can actually deliver in the context of the electoral environment. If there is a highly fraught election where everyone is looking for a basis upon which they can impugn an outcome that they don't like, then this is an extraordinarily weak link in the system. And there's one final point on which I'd like to conclude; it comes back to the theme of finance and cost that has underpinned our discussions over the last couple of days.

The money you spend on one thing is money you don't have available to spend on another thing, opportunity cost. So if you spend a lot of money on biometric technology, for example, you are in trouble if the result is that you are economising unduly on things like training and integrity, management and auditing within your staff. Frankly, I think that if you have a crooked staff or staff who've been intimidated by warlords or government in the countryside, there is no technology that is going to protect you against the insidious effects of that kind of pressure. And money that's being spent on machines might be much better be spent on finding ways of insulating polling staff from pressures that they illegitimately face from the powerful and the wealthy and the well-armed.

And this brings me to my final point, beware of donors who want to fund the *wrong things*. It is commonly the case in a country like Afghanistan that you will find donors who are much more willing to fund a school building where you can put a nice plaque on the side than they are to train the teachers who will make it a school rather than just a collection of bricks and mortar. The same applies in the area of electoral administration; there are certain basics that you have to have funded. But there are other kinds of areas where the opportunity cost of going high tech can be very severe, at the expense of nurturing a cohort of genuinely professional staff who will become the custodians of the positive culture of a positive organization. And if that is sacrificed in favor of a bit of equipment that can be carried away in a little old lady's handbag, then something has gone terribly wrong with a planning process. Thank you very much.

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*This transcript has been lightly edited to enhance readability and clarity without changing the sense of the points made by the discussant.*

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