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د افغانستان د آزاد او عادلانه ټولټاکنو بنیاد
بنیاد انتخابات آزاد و عادلانه افغانستان
Free & Fair Election Foundation of Afghanistan

Press Release: Free and Fair Election Foundation of Afghanistan (FEFA)

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There are only seven months until the date of the parliamentary election that has been set by the Independent Election Commission (IEC) for 18 September 2010. Therefore, it is necessary to undertake special preparations now on in order to conduct free and fair elections for the scheduled Parliamentary election.

Information obtained from the media indicates that the IEC and the government of Afghanistan have decided to ratify a new electoral law. FEFA calls upon the government of Afghanistan to carry out substantive reforms in to the institution in charge of administration of the elections namely the IEC, through application of lessons learnt in the last elections, and through comprehensive consultation with civil society organizations, political parties and relevant experts. We believe only through a consultative process the electoral institutions would gain public trust.

FEFA believes that in order to pave the way for a free and fair election the following must be seriously considered:

- Reform in the method of appointing the IEC's Board of governance (policy and executive units); reform of working procedures; and reform of policies in hiring key and other important posts.
- That those staff who are directly or indirectly found by the IEC and Electoral Complaint Commission's (ECC) investigation as having being negligent and having misused their authority to facilitate fraudulent acts during the presidential acts shall be referred by the IEC for criminal investigation to the relevant judicial authorities.
- Development and improvement of a mechanism to address complaints, and violations electoral complaint commission--via establishing further solid legal foundations, guaranteeing it's independence that consists of national and international members who demonstrates prominent independency. Its also utmost important that adequate resources be allocated to this mechanism and it shall be established at least two months before the electoral process starts.

For further clarity about reforms recommended by FEFA, a summary of main recommendations from FEFA's Observation Report is also attached.

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Attachment

Recommendations

The elections of 2009 were a critical test of democratic development in Afghanistan. We proudly state that despite numerous issues and challenges faced by this process, it was another step towards democratic governance and vivid rejection of armed conflict to gain political power. It showed that Afghans are desperate for justice and fairness, which was why there were a series of debates on how to ensure the credibility of this process.

FEFA, Afghanistan's largest election observation entity observed the presidential and provincial council election of 2009. Not just this, FEFA also has the experience of observing the 2004 and 2005 Presidential and Parliamentary Elections as well as elections in other countries.

The recommendations in this report are based on our observations. These include numerous observed cases of fraud and election violations. They are also based on the perception of the Afghan people indicating towards the Afghan Independent Election Commission's lack of independence and the ever increasing insecurity which led to the coming into existence of ghost voters, multiple and underage registrations and other acts of fraud.

In addition, there existed an uneven playing field between the incumbent and other presidential contenders. The incumbent had and used resources and levers of power at his disposal, while others didn't. This happened despite Electoral Law specifically prohibiting the government from such activities. Though many of these violations were done by the incumbent and his supporters, other candidates and their supporters were also guilty of using state resources (as noted in the findings of this report).

Most importantly, the people of Afghanistan and their courage deserve to be acknowledged, admired and respected. They courageously stood up in the face of numerous challenges including threats, intimidations, violence and logistical issues and showed up in great numbers at the polling centers. They didn't lose hope in the election as a legitimate vehicle for peaceful transfer of power in spite of seven years of poor service delivery by an elected government. Their determination brought an end to the violent transfers of power in Afghanistan.

The credibility of every election process is based on four principles. For an election to be credible, it has to be general, direct, secret and free. Our observations depict a picture contrary to what the principles of election demand. This election and its conduct were in violation of all four principles of election.

Our observations indicated that the 2009 Presidential and Provincial Council elections could not be conducted in a way as to include all areas of Afghanistan and provide every single citizen with the opportunity to exercise his political right. A total of 8 districts remained out of government control thus leading to its' residents being deprived of the right to vote and participate in the election process. Therefore this election was not general.

Secondly, this election was not direct. As mentioned in this report, FEFA noted numerous cases of proxy voting. FEFA also noted cases of men obtaining voter registration cards on behalf of women, thus rendering the election not based on second principle of ideal electoral conduct.

Thirdly, the 2009 election was not secret. We have numerous instances of religious and tribal elders, officials of IEC, state authorities or representatives of candidates violating the secrecy of vote and the election conduct. In one such instance the head of the polling station of Maghlan secondary school Mawlawi Qyam U Din Keshaf, who is also an influential religious and political leader, was observed to have forced voters to show their ballot papers to him while he had thick marked Dr. Abdullah's name on the ballot paper.

And lastly, the 2009 election was not free. FEFA observers reported 200 cases of intimidation, and 238 cases of state authorities' interference only on the polling day. These cases demonstrate that the election was not free and voters were intimidated and threatened at various stages of the electoral process.

Furthermore, considering the experience of two elections, it is well understood now that we need to have a more long term approach when it comes to preparing for this process. This calls for a plan of work stretched over decades and not years only. Such a plan, for instance, will include conducting promotion of democratic values in periods of quite in between elections, developing better outreach to publicize eligibility criteria and wider plans for civic education.

A legal analysis shows that civil and political rights and fundamental freedoms are ensured by the Constitution, which is why the supreme most legal document in Afghanistan is generally in line with the

international standards of democratic conduct and ensures Government of Afghanistan's corresponding performance according to the ratified international agreements such as the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

The constitution is supported by set of laws and regulations that spread further light on means and ways of implementing these fundamental freedoms. The supporting legislation includes the Law on Assemblies, Strikes, Demonstrations adopted by Presidential Decree on 09 January 2003 and the police law published on September 22 2005, which when combined, make the framework for ensuring the freedom of assembly in line with democratic standards. Therefore, generally speaking, the legal framework is reasonable enough for the democratic conduct of the electoral process to be carried out.

There are a number of legal shortcomings however. When it is to talk of transparency of a democratic process like elections, it comes down to the degree and extent to which people, directly or through their representatives have a say in major decisions.

One of the major issues concerning the transparency of the electoral process dealt with the impartiality of the IEC as the administering entity. This issue could have been avoided had the original draft Law on the Structure, Duties and Authorities of the Independent Election Commission been promulgated, which made the approval of the Wolesi Jirga of the nominations of the Commissioners a requirement. This Law was declared unconstitutional by the Supreme Court.

The IEC came up with a late interpretation of the Article 37 (2) of the Electoral Law which authorized withdrawal of candidates after the established deadline. The decision however did not provide full and timely information for voters and therefore it could not fulfill the international standards in this regard.

Counting polls at the polling stations, while on one hand is in line with the international best practices, on the other renders voters and their right to have a secret vote vulnerable, as it is very easy to figure out how many people voted for which candidate in a small place and therefore exposes the voters to the risk of being identified as a particular candidate's supporters. Further study should be done on this issue to determine the most effective way forward.

Absence of an updated census has made reforming the electoral system for sub national councils very difficult. The SNTV election system limits opportunities for the growth of political parties as well as ends up with imbalanced representation from all districts of a province, as the major vote gainers could possibly come from the same district within a province. This situation can lead to a provincial council formed of 50% of members from one district and the rest from other two districts with the rest of the province remaining totally unrepresented.

While we acknowledge and appreciate the efforts made by the IEC in developing electoral rules of procedure and regulations, we also note several gaps in them. For instance, the regulation banning use of state resources during the electoral campaign period limits this restriction to the campaign period only, while it should cover the whole electoral period. Legally speaking no government or civil servant can use his authority in a way as to affect the election process in any way, while we observed that many candidates while holding their position participated in aid distribution, inauguration of developmental projects, and signing of agreements.

The regulation on the finances of the candidates calls on candidates to provide IEC with the Assets and Liabilities Registration form prior to the commencement of the electoral campaign period. What this regulation does not call for is publicizing those records of assets and liabilities for the public consumption, as clearly given in the Paragraph 2 of Article 50 of the Constitution. Publicizing candidate assets before the electoral campaigns and publicizing their campaign expenses afterwards would have provided the people with the opportunity to compare figures from the perspective of accountability principles. Determining a ceiling for campaign expenses is not a common practice in developed countries however in developing countries this measure has to be taken to ensure a level playing field. Likewise there should also be a ceiling determined for donor entities and individuals.

Based on its observation activities, FEFA makes the following recommendations which cover mainly three areas of political, legal and administrative. The recommendations are grouped on the basis of the target groups. These include the government of Afghanistan, the legislative organs of the country, the ECC, the IEC, the civil society organizations and the international donor community.

The set of political recommendations for the most part target the government of Afghanistan's executive and judicial organs. The legal set of recommendations target the legislative branch of the government and highlight the legal gaps that create ambiguity in the process. And the administrative recommendations are targeted at the administering body of elections, the Independent Election Commission and the Election Complaints Commission. Since the civil society organizations and the

international community are a stakeholder in all areas of this exercise, it is expected of them to pay attention to the recommendations given in all three categories.

I. To the Government of Afghanistan

1. Improving the security conditions for candidates, supporters and voters, in particular women is a critical area to ensure the proper and efficient conduct of the election. More efforts must be undertaken aimed at strengthening Afghan Security Forces.

2. Build the confidence of voters and candidates in the process through showing zero tolerance for fraud and ensuring that strict and immediate action is taken against government and security officials observed to have interfered with the election process. This action could include investigation and legal prosecution of the violators.

3. Ensure the independence of the media outlets in particular the Radio Television Afghanistan RTA as a public media channel.

4. Build public confidence in the election administration entities by conditioning commissioners to be short listed by civil society and a vote of confidence by the Parliament.

5. Review and rebuild the lists of armed illegal groups in order to facilitate the vetting process and bring more fairness into it.

6. Ensure that there is effective and efficient implementation and enforcing mechanism in place to avoid for instance abuse of state resources and authority for campaigning despite the Presidential Decree of May 2009.

7. Ensure that the opposition candidates have access to a minimum level of media, transportation, and funding to allow them to conduct a campaign, through ensuring a level playing field.

8. Deal with the difficult issues of transitional justice and judicial accountability to reduce the chances of criminals entering the electoral race.

9. Consolidate and support elected representative bodies at all levels

10. Women must be strongly supported in their aspirations to participate fully in the political processes of Afghanistan.

11. Para 6 of Article 83 of the Afghan Constitution calls for national census to be carried out, which will support building an accurate voter lists and prevent electoral offences. This is an issue of utmost importance which requires greater attention from the government as well as international stakeholders.

12. For a more successful and effective conduct of the District Council Elections, it is important to treat identification of district boundaries as a priority program of the Government in particular Ministry of Interior.

II. To the Legislative Organs

1. Research and review the electoral system of the country and recommend a system more apt to our circumstances and one that ensures greater participation and true representation of all areas in the country. We recommend replacing the Single Non-Transferable Vote (SNTV) system with a system combining the SNTV and the proportional representation system.

2. Ensure that the laws regulating the conduct of the election and the election administering entities such as the Election Law have provisions in place on the basis of which mechanisms of accountability and transparency could be developed.

3. On the basis of national and international standards, review and ensure that the rules and regulations developed by administering entities do not give rise to legal ambiguities and provide clear guidance on all issues pertaining to the conduct of the elections.

4. Specify the date of establishment of the ECC: ECC must be established early to ensure that the ECC offices are well functional and staffed before the complaints period starts.

1. Develop a special law on the structure, duties and authorities of the ECC in order to enhance further independence of the entity from executive pressures.
2. Consider modifying the electoral law, following at least two or three additional electoral cycles and continued improvement of the electoral processes, to Afghanize the ECC, with the commissioners and staff Afghans and internationals serving as advisors.

a. Election Law

1. In accordance with the Article 83 of the Afghan Constitution, special legislative measures should be taken to ensure true, general and fair representation of all the people of Afghanistan.

2. Though the Afghan Constitution provides a reasonable framework regarding the election system, however, there is still need for a clarification of Constitutional articles through the Election Law, with the aim of ensuring that all electoral rules, regulations and rules of procedure are in accordance with the Constitution as well as standards of free and fair elections. One of the areas of focus should be the electoral calendar. FEFA believes that the electoral calendar in the Election Law should be amended in a way as to allow enough time for preparations for the next election as well as prevent unnecessary waste of resources and people disinterest in the process.

The amended law should have the IEC publish the electoral calendar at least 180 days from the election (instead of the current 120 days). While the Election Law states the duration of the work of the ECC, it does not specify the date of establishment of the entity. We recommend establishing the ECC at least two months before the start of the candidate registration so that it has sufficient time required for establishing the provincial offices, recruitment of staff, and launch and implementation of public awareness programs.

3. As FEFA noted, the timely establishment of the ECC can ensure the transparency of the election process in the country. FEFA recommends that there is need for a special law on the structure, duties and authorities of the ECC in order to enhance public confidence in the process. We further recommend that this law should include provisions that secure the independence of the ECC and block the executive pressures on the Commission.

4. There is need for added articles that support the internationally accepted principles of free and fair election such as those related to the financial affairs of candidates and abuse of state and resources during the election process as means of preparing effective grounds for a sound election process.

5. The National Assembly should consider modifying the electoral law, following at least two or three additional electoral cycles and continued improvement of the electoral processes, to Afghanize the ECC, with the commissioners and staff Afghans and internationals serving as advisors.

III. To the Independent Election Commission

1. Build an effective internal evaluation and monitoring mechanism which not only monitors and evaluates the performance of IEC staff but also renders the commission bound to its implementation thus enforcing effective checks on all phases of the electoral process.

2. While developing electoral rules and regulations, ensure that their coverage is not limited to a particular time period and is clear on this issue, thus not providing the violators the opportunity to manipulate it.

3. Right to information is a fundamental right guaranteed by the Afghan Constitution. Based on this principle, publicize the records of assets and liabilities of candidates as well as details of their campaign expenses, so to provide people and the civil society with the opportunity to compare the amounts and hold candidates accountable.

4. Ensure the neutrality of election administering staff.

5. Considering women in all plans is very important. This includes planning locations of voter registration and polling centers in areas that are accessible to women and increase in number of female staff. To simplify, what is easily accessible for women, is definitely accessible for men, but what is accessible for men is not necessarily easily accessible to women as well.

6. The election administering body needs to act in a transparent way and share information with the civil society organizations and the people at large. For instance it should clarify its use of technology for the prevention of multiple registrations. Also, IEC should use the quiet time between elections in solving the issues with regards to multiple registrations.

7. The capacity of IEC officials should be built further to avoid electoral irregularities such as under age registrations. When giving trainings to the IEC staff, it should be kept in mind that they not only need to learn operational techniques, but also know about democratic principles and values.

8. For rural areas and where institutional reach has been limited, develop an early and closely monitored recruitment plan; hold longer trainings with especially tailored materials and manuals, and involve ECC in the strict monitoring of the whole process (having the ECC monitor the process is outside their remit under the electoral law; therefore the law should be revised to ensure the ECC monitors these processes).

9. Take appropriate legal actions against the offenders and publicise the process and their names.

10. Investigate alternative ways of registering people that reside in relatively unsafe areas.

11. Raise the personnel capacity to process observer registration more smoothly and quickly. FEFA missed to observe part of the election process because of delay in registration process by IEC.

12. Consult the civil society organizations and other entities while making plans and developing procedures.

a. A New Law on the Structure and Authorities of the IEC

1. There is need for a special law governing the structure and authorities of the IEC. Such a law should focus on bringing about legal guarantees aimed at ensuring structural and budgetary independence of the IEC, neutral performance during the election process and required administrative capacity. For improved development of this law, it is important to develop the draft of such a law in close

consultation with key stakeholders, including civil society, political parties, candidates, voters, and legal experts.

2. Conditions, standards and processes of recruitment as well as duration of employment of IEC senior officials should be developed in such a way as to ensure their independence of action. As observed during the 2009 elections, the current process of recruitment by the President has been one of the main for questions to be raised about the independence and neutrality of the IEC. To address this problem and ensure further effectiveness, we recommend that civil society, as a third neutral party should be given a significant role to play. We suggest a process whereby civil society organizations in consultation with Parliament Committee for civil society should come up with a list of qualified candidates and present it to the President, who should be bound to select from the very list. President's selection should be then presented to the Parliament for vote of confidence. In case the Parliament issues a vote of no confidence, then the President should remain bound to choose from the list given by the civil society organizations. A mechanism would have to be developed for determining which civil society groups are involved in this process.(May those civil society organizations who are involved in electoral processes).

3. This law should oblige the IEC to the provision of timely information to the general public, observer organizations, candidate agents and political party representatives in order to ensure further effectiveness. Such information may cover details, figures and locations of polling centers and polling stations, sensitive material, number of male and female local officials, etc. FEFA believes that provision of timely information to the public can increase their confidence in the process. Therefore it is of significance importance that IEC develops mechanisms aimed at provision of timely information regarding closed polling stations, polling stations facing problems that could affect the smooth running of the process, or regarding the procedure of keeping and transferring of sensitive election material that were not used.

4. FEFA believes that there is need for more focused attention to the legal capacity of the IEC, which if strengthened, could help strengthen other regulations and rules of procedures, not only rendering them more effective, but also prevent the possible instances of contradiction between election rules, basic principles of election process and regulations that IEC is bound to develop. It should be further emphasized upon that in order to ensure effectiveness and executive capacity of such legislations, it is important to develop them in close consultation with the civil society organizations.

5. FEFA believes that the IEC should consider reviewing its entire set of policies in particular its policy with regards to the recruitment of permanent staff through a consultative process involving national and international observer organizations, civil society and political parties.

b. The following regulations should be amended on priority basis

1. FEFA recommends that all electoral rules and regulations be reviewed and amended through close consultation with the civil society from the beginning of the process and should be approved so as to restrict any entity's rights, including the IEC to introduce changes in it once the electoral calendar period has begun. Preventing frequent changing of electoral rules and regulations will enhance public confidence in the process and provide greater opportunities of public information dissemination. The experience of the 2009 election showed that timely provision of information on election rules and regulations or changing them can seriously affect their implementation.

2. The regulation on candidate expenses should be reviewed and amended. Imposing limitations on the amount of donations given to the candidates can ensure equal opportunities for all candidates, while imposing limitations on candidate expenses during the campaign period can facilitate monitoring of candidate expense reports, thus leading to increased transparency in the process. Obliging candidates to opening and running a single account for all election financial resources can also facilitate this process.

In order to ensure increased public confidence in the process, it is critical to not only keep record of candidate assets and expenses, but also share those details with general public.

This regulation should add further clarification with regards to the position of government officials such as members of parliament who act in support of a particular candidate.

3. The conditions of candidacy should be reviewed and changed in a way as to prevent huge numbers of candidates with little chance of success as well as to prevent the candidacy of incompetent individuals. Reforms in this area may include increasing the required number of signatures or thumbprints of persons residing in the constituency supporting the candidate's appearance may be increased.

The candidate should not only swear on nonexistence of relations with Illegally Armed Groups and no-conviction on crimes against humanity, but also swear on and confirm no-conviction in cases of fraud

and corruption. This could be very effective now as we have national strategy on anti-corruption and there are special anti-corruption courts to process such cases.

c. Voter Registration

1. For the voter registration in 2009 the manual system was used, which not only failed the IEC in developing an accurate and transparent list of voters, but also provided greater opportunity for election offences. We suggest that the computerized voter registration (CVR) system piloted in the year 2007 in Yakawlang of Bamyan Province, Bati Kot of Nangarhar Province and Nahia 10th of Kabul Province and welcomed by the people should be used in future elections, at least for the election 2014. This system which is being used in many countries throughout the world, can lead to a more accurate voters' list and thus create greater transparency. This system can also prevent election offences such as multiple voting, proxy voting and underage voting.

d. Election Media Commission

FEFA believes that the EMC plays a significant role in monitoring and controlling media in particular state media. EMC can enhance the effectiveness of its role if the EMC has the authority to sanction media channels as well as their management.

IV. To the Election Complaints Commission

1. Develop a better public outreach mechanism and conduct a public awareness campaign in order to have a more open and well understood complaints process; this will also include simplifying the complaints form.

2. Ensure the neutrality of the ECC staff to build public confidence in the process.

3. Make decisions public, have greater media presence and develop readiness to give information to public, civil society organizations and media as and when required.

4. Publicize the process of adjudication of complaints and its findings.

5. Paragraph 5 of Article 52 of the Election Law gives due authority to the ECC to take initiative and address issues that fall within its bounds of authority. This leads to greater expectations from ECC in taking initiative of action in future in order to ensure greater transparency.

6. Also, the Commission should build its capacity to review and process complaints against electoral offences effectively and actively refer violators to prosecution agencies.

7. We further believe that the funding sources as well as technical support providers of ECC should be separate from funding sources of IEC in order to ensure greater independence of ECC.

a. Election Complaints Mechanism

1. There are two separate lists that detail out different kinds of Electoral Offences and Sanctions and Penalties. What is missing is an accurate identification of severity of these offences and their categorization on these bases with corresponding sanctions and penalties. Such categorization could not only facilitate the work of the commission and speed up the process of addressing electoral offences, but also help those committing such offences predict the consequences of their act.

V. To the Civil Society Organizations

1. Support the IEC and ECC through developing better coordination and cooperation with them
2. Conduct extensive civic education especially amongst youth, women and rural populations.
3. Develop better coordination at the civil society level as to make doing joint programs easy.

VI. To the International Donor Community

1. Ensure election security by ensuring greater coordination between the ISAF forces and the Afghan Security Forces.
2. Support the strengthening of the Afghan Security Forces.
3. Ensure neutrality, demonstrate it, and abstain from interfering or giving unnecessary political statements.

4. Support the civil society organizations and election observation organizations and build their capacity in order to strengthen their presence and role in election observation and running advocacy programs aimed at amending election laws.

Avoid seasonal approach towards election processes in Afghanistan. Only a long term commitment of the international community can help build a sustainable civil society enabled to play a better role in election monitoring and public awareness.

For those international organizations that support electoral processes, it is important for civil society support programs to be distinct from election administering entities' support program in order to increase effectiveness and reduce possible conflicts of interest.

5. Support the vetting process through contributing to the information on the illegal armed groups.

6. Support the development of political parties, and national and local representative bodies.

7. Support initiatives aimed at enhancing women and youth participation in the electoral processes.

8. Maintain pressure on government and electoral institutions to uphold standards and speak out against violations.

9. Support programs of voter education and civic education implemented by the Afghan government and the civil society organizations.

10. Pay special attention to efforts aimed at building the capacity of female election observers and increasing their numbers.

11. International observer organizations should develop their plans in cooperation and coordination with national observer organizations, so that during this process of mutual cooperation, on one hand,

the capacity of national observer entities is built and on the other, the observation capacity of international observers is enhanced through greater presence of national observers.