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**د افغانستان د آزاد او عادلانه ټولټاکنو موسسه**

**موسسه انتخابات آزاد و عادلانه افغانستان**

**Free & Fair Election Forum of Afghanistan organization**

## **FEFA's Proposed Advisory Draft on Electoral Law**

27 Nov - 2012

## **Introduction**

Continued reform of the electoral system is a basic necessity to institutionalise democracy in countries that have passed their preliminary experiences in elections. This is aimed at enriching the legal system governing elections by making an effective use of lessons learnt by people and stakeholders in their experiences with election processes.

Support for electoral reform and extensive civil participation is important to pave the ground for free and fair elections in a country, which can increase people's sense of ownership of political processes.

The people of Afghanistan have also learnt valuable lessons from the past four electoral cycles and they need to use these lessons to further reinforce and strengthen the reform of their electoral system and enhance their sense of ownership of future elections.

The draft Electoral Law has been prepared by the Independent Election Commission, submitted by the Ministry of Interior to the Council of Ministers and is due to be sent by the Council of Ministers to the Afghan Parliament. At the same time, civil society organisations and political parties have presented alternative proposals to the relevant authorities to further reinforce the reform of the Electoral Law.

Therefore, FEFA, as a civil society organisation that has almost a decade of experience in electoral monitoring and the institutionalisation of democracy and good governance in the country, follows up its activity with regard to the reform of the electoral system by publishing a proposed Electoral Law with a view to enhancing the national discourse on the Electoral Law.

This proposal has been prepared in consultation with representatives of civil society organisations, political parties and law experts in order to facilitate the national discourse on the Electoral Law and provide the opportunity for a comparative discussion by members of the Afghan Parliament. We hope that this proposal can create opportunities for further debates and discussions among the people, civil society organisations, media and law-making authorities with a view to further enriching the Electoral Law during the legislation process.

# **Electoral Law**

## **Chapter 1**

### **General Provisions**

#### **Basis and Purpose**

##### **Article 1**

This Law has been enacted pursuant to article 33 and for the implementation of articles 61, 62, 65, 67, last paragraph of article 69 and articles 83, 84, 85, 86, 138, 140, 141 and first paragraph of article 147 of the Constitution in order to regulate the affairs related to elections in the country.

#### **Abbreviation**

##### **Article 2**

The Independent Election Commission shall hereinafter be referred to as the Commission.

#### **Terms**

##### **Article 3**

The following terms shall provide the following meanings in this Law:

1. Electoral constituency: A specific area that is entitled to one or several seats in state elected institutions based on the proportion of its population.
2. Polling centre: An area where one or several polling stations exist.
3. Polling station: A location where individuals who are eligible for voting cast their ballots.
4. Vote counting centre: A place where used votes are counted after the end of the polling stage.
5. Agents: Individuals representing parties, party coalitions or independent candidates who receive accreditation letters from the Commission to monitor the electoral process.
6. Observers: Individuals representing recognised national institutions and official foreign and international organisations who receive permission letters from the Commission to observe the electoral process.
7. List of voters: A list of names of individuals who are eligible for voting as prepared by the Commission.
8. Preliminary list of candidates: An initial registry of candidates that is put up in specific places.

9. Final list of candidates: A registry of candidates that is certified and published by the Commission with their photos and logos after the handling of challenges.
10. Party lists: A list of names of candidates of parties or party coalitions that are presented to the Commission to run for elected seats in state institutions.
11. List of parties: A registry of parties with candidates with their logos and symbols that are made available to voters at the time of voting for parties.
12. Independent candidates: Individual candidates whose names are not included in lists of political party candidates.
13. Proportional electoral system: Representation on the basis of proportion of votes per party or coalition party across the country or in one electoral constituency.
14. Electoral campaign: Efforts by political parties or independent candidates to gain and win more votes from the electorate.
15. Partial election results: Information announced by the Commission from time to time after counting votes in one or several polling centres or several electoral constituencies.
16. Preliminary election results: Information announced by the Commission after counting votes and before the announcement of final results.
17. Final election results: Information certified and published by the Commission after investigations by the Central Electoral Complaints Commission.
18. Electoral offences: Acts against the provisions of this Law and other legislative documents regarding the elections.
19. Electoral violations: Violations as defined in the Electoral Law and the instructions, procedures, codes of conduct and other documents approved by the Commission and the Central Electoral Complaints Commission that are perpetrated unintentionally or inadvertently.
20. Quarantine: Temporary removal of ballot boxes from the counting process.
21. Accreditation letter: A written document awarded by the Commission to agent institutions, representatives of candidates and political parties and mass media in order to monitor and prepare reports on the electoral process.
22. Permission letter: An official document permitting participation in the electoral process awarded by the Commission to observer institutions and media in order to observe and prepare reports on the electoral process.
23. Certificate: An official document certified by the Commission that is awarded to the winner of the elections.
24. Voter registration card: A document issued by the Commission that is distributed to establish the identity of individuals who are eligible for voting.

## The Principles of the Elections

### **Article 4**

Elections shall be conducted on the basis of free, general, secret and direct vote.

Election of candidates for *Meshrano Jirga* seats shall be conducted through provincial and district councils.

## The Principle of Equality of the Right to Vote

### **Article 5**

Eligible voters, including women and men, shall have an equal right to vote which they shall exercise without proxy.

## The Principle of Free Will

### **Article 6**

Voters and candidates shall have free will to participate in the elections. The exercise of any kinds of direct or indirect restraint on voters and candidates on grounds of language, religion, ethnicity, gender, tribal affiliation, region, residence, social status and professional position shall be prohibited.

## Co-operation of Institutions and Individuals

### **Article 7**

Governmental and non-governmental institutions, political parties, social organisations and other individuals involved in the electoral process shall have an obligation to co-operate with the Commission, Central Electoral Complaints Commission, Provincial Electoral Complaints Commissions and other commissions that are established pursuant to this Law and shall enforce the decisions these commissions make within their legal remits.

## Non-Interference of Governmental Officials in Election Affairs

### **Article 8**

Officials and staff members of governmental institutions, including the military, shall not directly or indirectly interfere in electoral affairs unless otherwise specified in this Law. The use of any governmental assets, facilities and resources for or against any candidate(s) shall be prohibited. The equal use of governmental and public resources and facilities, which is done in accordance with this Law, shall be an exception.

## Chapter 2

### Electoral Constituencies

#### Determination of Electoral Constituencies

##### **Article 9**

Electoral constituencies are determined in the following manner in order to hold presidential, *Wolesi Jirga*, provincial council, district council, village council, mayoral and municipality council elections:

(1) For presidential elections, the whole country is one electoral constituency.

(2) For *Wolesi Jirga* elections:

1. For the election of independent (individual) candidates, one or several electoral constituencies are determined in each province based on the proportion of population to the number of seats allocated for independent candidates in that province.
2. For the election of party candidates, the whole country is one electoral constituency and candidates are nominated on the basis of seats allocated to parties in each province.
3. For the election of *kuchi* representatives, the whole country is one electoral constituency.

(3) For provincial council elections, one or several electoral constituencies are determined in each province based on the proportion of population to the number of seats allocated for that province.

(4) For district council elections, the district is the electoral constituency.

(5) For village council elections, the village is the electoral constituency.

(6) For mayoral elections, the city is the electoral constituency.

(7) For municipality council elections, every *nahia* (ie city precinct) is one electoral constituency. If the city has not been divided into *nahias*, the city shall constitute the electoral constituency for the election of the members of the municipality council.

## Border Differences Related to Electoral Constituencies

### **Article 10**

1. If a difference arises over whether a village belongs to a district or a township belongs to a *nahia* or city, the matter shall be referred by the Commission to the Independent Directorate of Local Governance for decision-making.
2. The dispute contained in paragraph 1 of this article shall be addressed if it is raised 180 days prior to the polling day.

## Chapter 3

### Electorate and Candidates

#### Requirements of the Electorate

##### **Article 11**

An individual who has the right to vote in the elections shall fulfil the following requirements:

1. Completing the age of 18 on the polling day,
2. Having the citizenship of Afghanistan,
3. Not having been deprived of civil rights in accordance with the verdict of a competent court of law,
4. Being included in the Commission's list of voters.

#### Requirements of the Candidates

##### **Article 12**

(1) An individual who runs for presidential elections shall fulfil the following requirements on the day of their candidacy:

1. Having only the citizenship of Afghanistan, being Muslim and having been born of Afghan parents,
2. Being aged not below 40 years and above 75 years on the day of their candidacy,
3. Not having been convicted for perpetration of crimes against humanity, felony and/or deprivation of civil rights in accordance with the verdict of a competent court of law,
4. Having higher education.

(2) An individual who runs for National Assembly elections shall fulfil the following requirements:

1. Having the citizenship of Afghanistan or having gained the citizenship of the state of Afghanistan at least ten years before the date of their candidacy,
2. Not having been convicted for perpetration of crimes against humanity, felony and/or deprivation of civil rights in accordance with the verdict of a competent court of law,
3. Being aged not below 25 years for *Wolesi Jirga* elections and not below 35 for *Meshrano Jirga* and not above 80 years,
4. Being included in the Commission's list of voters,
5. Having higher education.



(3) An individual who runs for provincial council or district council elections shall fulfil the following requirements:

1. Fulfilling the requirements contained in sections 2, 3 and 4 of article 11 of this Law,
2. Being aged not below 25 and above 75 on the day of their candidacy,
3. Having at least a high school (12th grade) diploma.

(4) An individual who runs for village council elections shall fulfil the following requirements:

1. Fulfilling the requirements contained in sections 2, 3 and 4 of article 11 of this Law,
2. Being aged not below 20 and above 75 years on the day of their candidacy.

(5) An individual who runs for mayoral elections in provincial centres shall fulfil the following requirements:

1. Fulfilling the requirements contained in sections 2, 3 and 4 of article 11 of this Law,
2. Being aged not below 30 and above 75 on the day of their candidacy,
3. Having at least a bachelor's degree,
4. Having resided on the day of their candidacy for at least five years in the city where they are standing for elections.

(6) An individual who runs for district mayoral elections outside provincial centres or for municipality council elections shall, in addition to fulfilling the requirements contained in sections 1 and 4 of paragraph 5 of this article, have a high school (12th grade) diploma and be aged not below 22 and above 75 on the day of their candidacy.

(7) Individuals who command or belong as members to military or paramilitary structures (ie illegal armed groups) shall not participate in the elections as candidates.

1. The command or membership of individuals in military or paramilitary structures (ie illegal armed groups) shall be vetted by a separate commission comprising representatives from the Ministry of Defence, Ministry of Interior, National Directorate of Security, civil society and the United Nations under the Commission's presidency.
2. All decisions of the vetting commission shall be enforced after the approval of the Electoral Complaints Commission.
3. A candidate whose name is dropped from the list of candidates in accordance with the decision of the vetting commission shall have the right to lodge their challenge against the decision of the vetting commission in the Electoral Complaints Commission within a specific timeframe.

## Limitations for Candidacy

### **Article 13**

(1) The following individuals shall not stand as candidates for elected office as contained in article 12 of this Law before they resign from their posts:

1. The president and members of the Supreme Court and judges,
2. The Attorney-General and prosecutors,
3. Ministers, state ministers, presidential advisors, independent general-directors, presidents and members of independent commissions, deputy ministers and ministerial advisors, provincial governors and their deputies, district administrators and political representatives of the Islamic Republic of Afghanistan residing abroad,
4. Military personnel of the Ministry of Defence, Ministry of Interior, National Directorate of Security and other ministries and institutions with military structures,
5. Civil servants at grade two and above,
6. The Commission's permanent and temporary staff members.

(2) If the individuals contained in paragraph 1 of this article do not succeed in elections, they can be re-appointed to their previous posts within 20 days from the announcement of final election results.

(3) If an individual who is a candidate in an electoral constituency decides to stand as candidate in another electoral constituency, they shall have an obligation to give up their candidacy in the previous electoral constituency.

(4) No-one can stand as a candidate for more than one electoral constituency or for more than one seat at the same time.

## Polling Station

### **Article 14**

1. The voter shall vote in a polling station in an electoral constituency where their name has been included in the list of voters.

2. The Commission shall, within its possibilities, provide special polling facilities for *kuchis*, refugees, internally displaced persons, persons with disabilities, military personnel of Ministry of Defence, Ministry of Interior, National Directorate of Security and other ministries and institutions with military structures, governmental employees, the Commission's staff members and prisoners who have been deprived of their civil rights.

### Voter Registration Card

#### **Article 15**

Individuals eligible for voting shall be registered in the list of voters only on the basis of their original *tazkera* [national identity card] and voting cards shall be distributed to them in person.

### Receipt of Ballot Paper

#### **Article 16:**

The voter shall present their original *tazkera* and voter registration card to the officers of the polling station in order to confirm their identity and receive the ballot paper.

### The Form and Number of Ballot Papers

#### **Article 17**

The form and number of ballot papers shall be determined by the Commission.

## **Chapter 4**

### **Presidential Elections**

#### Election of the President

1. The candidate who wins over 50 per cent of votes in a free, general, secret and direct election shall be elected president for five years.
2. If no candidate wins over 50 per cent of the votes, there shall be a run-off election within one month from the date of the announcement of final election results. Only the two candidates who have won most votes in the first round shall stand for the run-off election. The candidate who wins most of the votes in the run-off election shall be recognised as president.
3. If votes won by several candidates in the first round are equal, the two leading candidates shall be determined by lottery and paragraph 2 of this article shall apply.
4. If votes won by the two candidates in the run-off election are equal, the winner shall be determined by lottery.
5. Lottery as contained in paragraphs 3 and 4 of this article shall be conducted in the presence of the Commission's members, representatives of parties and candidates, observers and one authorised representative from the Supreme Court, the Independent Commission for the Supervision of the Implementation of the Constitution and the Independent Human Rights Commission each.
6. If one of the candidates of the presidential elections does not accept the results of the first round on unjustifiable grounds and refuses to take part in or boycotts the run-off election, the other candidate shall be recognised as the winner.

#### Commencement of the Work of the President-Elect

##### **Article 19**

The new president shall commence their work thirty days after the announcement of final election results.

If the president-elect cannot occupy their seat or continue their job on grounds of resignation, dismissal, death or a hard-to-cure disease that obstructs the performance of duty, article 67 of the Constitution shall apply.

## Chapter 5

### ***Wolesi Jirga Elections***

#### Number of *Wolesi Jirga* Members

##### **Article 20**

*Wolesi Jirga* shall have 250 seats and its members shall be elected by voters in electoral constituencies in a free, secret, general and direct election for a legislative term of five years as follows:

1. Of all *Wolesi Jirga* seats, 140 seats shall be allocated for independent (individual) candidates, 100 for candidates of parties or party coalitions and 10 for *kuchis*.
2. For the election of independent candidates, the province is the electoral constituency and that the seat quota of each province shall be determined in proportion to the population and equal to half of the seat quota of each province.

If the number of seat quota for a province is odd, one seat more than the party quota shall be added to the quota of independent candidates in the province and the number of electoral constituencies shall equal the number of seat quota for independent candidates in the province.

3. For the election of candidates of parties or party coalitions, while the whole country is one electoral constituency, seat quota for each province shall be deducted from seat quota for independent candidates and included in the list of party candidates.
4. For the election of *kuchis*, the whole country is one electoral constituency and the voter who is included in the list of *kuchi* voters shall vote for their favourite *kuchi* candidate in assigned polling stations and centres.

#### Voting Procedure

##### **Article 21**

At the *Wolesi Jirga* elections, the voter who is included in the list of voters in a specific constituency within a province shall have the right to cast two votes: one for the list of independent candidates and one for the party closed list simultaneously in the following manner:

1. Voter marks their candidate in the list of independent candidates.
2. Voter marks their party in the list of parties.

## Establishing the Population of the Country

### **Article 22**

The Central Statistics Organisation shall have an obligation to make available for the Commission the latest official census of each province within the specified timeframe.

## Allocation of *Wolesi Jirga* Seats

### **Article 23**

The Commission shall allocate 250 seats of the *Wolesi Jirga* in the following order:

#### (1) Allocation of seats for independent candidates

1. The population of all provinces, excluding the *kuchi* population, shall be divided by the allotted 140 seats so as to determine the population quota for each seat.
2. The population of each province shall be divided by the population quota for each seat so as to determine the seat quota for each province.
3. The number of seats for each province shall equal the whole number obtained from the division done under section 2 of paragraph 1 of this article.
4. The population that remain on the basis of decimal number from some provinces shall be added and then divided by provinces to which less than two seats have been allocated as per calculation done under sections 2 and 3 of paragraph 1 of this article so that no province shall have less than two seats as its quota.
5. If the remaining population equals one or several seats in a decimal number after the aforesaid calculation, one new seat shall be added to provinces that have, in a descending order, the greatest remaining decimal numbers from divisions done under sections 2 and 3 of paragraph 1 of this article.

#### (2) Allocation of seats for parties or party coalitions

1. All votes cast for parties and party coalitions across the country shall be divided by the number 100 so as to establish the quota for one seat.
2. Seats shall be allocated for each party or party coalition on the basis of the whole number obtained from the division.
3. The surplus votes of parties or party coalitions that have won one or several seats, which remain for lack of completion of the whole number equivalent for the quota for one seat, shall be added and if the addition of the decimal numbers is equal to one or several seats, one seat shall be allocated for parties with most surplus votes in a descending order until all seats remaining from decimal numbers are allocated.
4. Seats that are distributed as per section 3 of paragraph 2 of this article shall belong to candidates affiliated with small ethnic and religious minorities contained in the list of party candidates.

(3) The Commission shall have an obligation to publish the calculation used in the allocation of the seats contained in this article.

#### Delegation of *Wolesi Jirga* Seats

##### **Article 24**

(1) In any electoral constituency in a province, seats in the quota of independent candidates shall be delegated to those candidates who win most votes in the related constituency. The Commission shall take measures to ensure that out of the seat quota for independent candidates at least one seat shall belong to women candidates in each province on an average basis.

(2) All votes cast for the list of candidates of parties or party coalitions shall be divided by the 100-seat quota for parties so as to determine the quota for one seat for parties.

1. The seats in the quota of parties shall be distributed for parties or party coalitions in proportion to the votes won by party or party coalition across the country, provided that the votes of the party or party coalition is not less than the quota for one seat.
2. For the party or party coalition that is entitled to win one or several *Wolesi Jirga* seats in proportion to its votes across the country, these seats shall be delegated, in a descending order, to the candidates contained in the list of the party.

##### **Article 25**

#### The Obligations of Parties or Party Coalitions

##### **Article 26**

Every party or party coalition that participates in the elections shall have the following obligations:

1. Present to the Independent Election Commission the list of names of only 100 eligible candidates in accordance with the written decision of the party leadership council,
2. Consider gender balance so that at least one woman candidate is included in the list of candidates from each province on an average basis,
3. Consider ethnic and religious considerations in its list of candidates,
4. Observe the quota of seats for each province in its list of candidates,
5. If one or several candidates from the party are not recognised as eligible candidates on legal grounds by the Commission, the party shall have an obligation to introduce a same number of candidates to the Commission,

6. If one of the members included in the list of parties or party coalitions refuses to take their seat for various reasons, the party or party coalition shall officially notify the Commission in a way that the member's consent is obtained,
7. Present a written commitment to and assure the Commission regarding the fact that their candidates do not run as independent candidates in the elections.

#### Limitations for Party Candidates

##### **Article 27**

1. Members of a party cannot simultaneously run independently and through the party list. If the name of a member of a party is recorded in both the party list and the list of independent candidates, the relevant party shall inform the Commission of the list it accepts. Otherwise, the relevant party shall be deprived of the right to field candidates.
3. If an independent candidate has registered in more than one electoral constituency, the name of that candidate shall be dropped from the list of candidates and they shall also be deprived of the right to stand as candidate for elected office for an additional electoral cycle.

#### Counting the Votes of *Wolesi Jirga* Candidates

##### **Article 28**

1. The initial counting of votes for independent candidates shall be conducted in each polling station and the final counting shall be conducted in the centre of the electoral constituency.
2. The initial counting of votes for the list of party candidates shall be conducted in provincial centres and the final counting of votes shall be conducted in Kabul on a whole-of-the-country basis.
3. The initial counting of *kuchi* votes shall be conducted in provincial centres and the final counting shall be conducted in Kabul on a whole-of-the-country basis.
4. If the votes of two or several candidates who should be recognised to have won the last seat in the quota for independent candidates are equal, the winner shall be determined by lottery in the presence of the Commission's field officers, representatives of parties and candidates, observers and one authorised representative from the provincial court of appeal and provincial office of the Independent Human Rights Commission each.
5. If the votes of two or several parties who should be recognised to have won the last seat in the quota for parties are equal, the winner shall be determined by lottery in the presence of the Commission's members, party agents, observers and one authorised



representative from the Supreme Court, the Independent Commission for the Supervision of the Implementation of the Constitution and the Independent Human Rights Commission each.

6. If the votes of two or several parties who should be recognised to have won the last seat in the quota for *kuchis* are equal, the winner shall be determined by lottery in the presence of the Commission's members, party agents, observers and one authorised representative from the Supreme Court, the Independent Commission for the Supervision of the Implementation of the Constitution and the Independent Human Rights Commission each.

7. If an elected member of *Wolesi Jirga* cannot occupy their seat or leaves their seat vacant for various reasons or dies or resigns or is dismissed or becomes disabled in a way that this permanently obstructs the performance of their duty, their seat shall be delegated by the Commission to the independent candidate or the party candidate who has most votes on the list of independent candidates or on the list of party candidates available to the Commission, provided that at least one year remains to the end of the term of *Wolesi Jirga*.

If the elected member is suspiciously killed, their seat shall remain vacant.

## Chapter 6

### ***Meshrano Jirga***

#### The Composition of *Meshrano Jirga*

##### **Article 29**

The number of members of *Meshrano Jirga* shall be three times the number of the country's provinces. Of all members, one-third shall be elected from among the members of provincial councils by these councils for four years, one-third shall be elected from among the members of district councils by these councils for three years and the remaining one-third shall be selected by the president from along informed and experienced personalities including two representatives from persons with disabilities, two representatives from *kuchis* and two representatives from Hindu and Sikh religious minority groups for five years, provided that fifty per cent of the latter one-third are women.

#### The Election of Provincial Council Representatives for *Meshrano Jirga*

##### **Article 30**

1. The provincial council, within 15 days from its establishment, shall elect one of its members as a *Meshrano Jirga* member in accordance with the provisions of this Law.
2. Elections shall be conducted under the presidency of the head of the provincial council. If the head of the provincial council is a candidate themselves, their deputy shall preside over the elections. If their deputy is a candidate themselves, one of the members of the council, who is not a candidate and elder to all others, shall preside the elections.
3. At least two-thirds of the members of the provincial council shall constitute the quorum for elections under paragraph 2 of this article. Any candidate who wins more than half of the votes of the members present shall be recognised as the member of *Meshrano Jirga*. If no candidate wins more than half of the votes, a run-off election shall be held between the two candidates with most votes. Any candidate who wins most votes shall be recognised as the winner.
4. If the votes of the two candidates are equal, the winner shall be determined by lottery in the presence of the provincial council members and agents from parties and candidates.
5. If the elected member cannot occupy their seat or leaves their seat vacant for various reasons or dies or resigns or is dismissed or becomes disabled in a way that this permanently obstructs the performance of their duty, the relevant provincial council shall elect another candidate from among its members in accordance with the

provisions of this article, provided that at least one year remains to the end of the term of the council.

#### The Election of District Council Representatives for *Meshrano Jirga*

##### **Article 31**

1. The Commission, within five days from the establishment of district councils, shall send the list of elected members of these councils to the relevant provincial council so that out of all members of the relevant district councils one is elected as *Meshrano Jirga* member.

2. The head of the provincial council shall be responsible to summon members of district councils to the province so that, within fifteen days from the establishment of district councils, elections can be held in a place where all members of district councils can gather.

3. At least two-thirds of members of district councils shall constitute the quorum for the elections. Any candidate who wins more than half of the votes of the members present shall be recognised as the member of *Meshrano Jirga*. If no candidate wins more than half of the votes, a run-off election shall be held between the two candidates with most votes. Any candidate who wins most votes shall be recognised as the winner.

4. If the votes of the two candidates are equal, the winner shall be determined by lottery in the presence of the forum of district councils and agents from parties and candidates.

5. If the elected member cannot occupy their seat or leaves their seat vacant for various reasons or dies or resigns or is dismissed or becomes disabled in a way that this permanently obstructs the performance of their duty, the relevant district councils shall elect another candidate from among their members in accordance with the provisions of this article, provided that at least one year remains to the end of the term of the councils.

## **Chapter 7**

### **Provincial Council Elections**

#### Provincial Council

##### **Article 32**

Every province shall have a council whose members shall be elected in a free, secret, general and direct vote for four years by voters in electoral constituencies in that province.

#### The Number of Provincial Council Seats

##### **Article 33**

(1) Provincial council seats shall be determined proportional to the number of population in each province in the following order:

1. For the province with a population of less than five hundred thousand people, ten members,
2. For the province with a population of five hundred thousand to one million people, 15 members,
3. For the province with a population of one to two million people, 20 members,
4. For the province with a population of two to three million people, 25 members,
5. For the province with a population of three to four million people, 30 members,
6. For the province with a population of over four million people, 33 members.

#### Electoral Constituencies

##### **Article 34**

1. The number of electoral constituencies in each province shall equal the quota for each province in accordance with article 33 of this Law.

#### Voting Procedure

##### **Article 35**

Every individual included in the list of voters in the relevant constituency shall have one vote that is cast for an independent candidate in the following way:

1. The voter shall mark their favourite candidate in the list of candidates.

#### The Delegation of Provincial Council Seats

##### **Article 36**

1. The quota of seats for candidates in the provinces shall belong to those candidates who win most votes in the constituencies. The Commission shall take measures to ensure that women receive at least one-eighth of provincial council seats.

#### Limitations for Candidates

##### **Article 37**

If an independent candidate registers as a candidate in more than one electoral constituency, their name shall be removed from the list of candidates and they shall be deprived of the right to stand as candidate for elected office for an additional electoral cycle.

#### Counting the Votes of Provincial Council Candidates

##### **Article 38**

1. The initial counting of votes for candidates shall be conducted in each polling centre. The final counting shall be conducted in the relevant electoral constituencies.

2. If the votes of two or several candidates who should be recognised as the winner of the last seat in the quota for candidates in a province are equal, the winner shall be determined by lottery in the presence of the Commission's field officers, candidate agents, observers and one authorised representative from the provincial court of appeal and the provincial office of the Independent Human Rights Commission each.

3. If an elected member of the provincial council is elected as a member of *Meshrano Jirga* as per article 30 of this Law or cannot occupy their seat or leaves their seat vacant for various reasons or dies or resigns or is dismissed or becomes disabled in a way that this permanently obstructs the performance of their duty, their seat shall be delegated by the Commission to the candidate who has most votes on the descending list of candidates, provided that at least one year remains to the end of the term of the provincial council.

## Chapter 8

### District Council Elections

#### District Council

##### **Article 39**

Every district shall have a council whose members shall be elected in a free, secret, general and direct vote for three years by voters in that district.

#### Allocation of District Council Seats

##### **Article 40**

(1) District council seats shall be determined proportional to the number of population in each district in the following order:

1. For the district with a population of less than twenty thousand people, five members,
2. For the district with a population of twenty to forty thousand people, seven members,
3. For the district with a population of forty to sixty thousand people, nine members,
4. For the district with a population of sixty to eighty thousand people, eleven members,
5. For the district with a population of eighty to one hundred thousand people, 13 members,
6. For the district with a population of over one hundred thousand people, 15 members.

#### Membership of District Councils

##### **Article 41**

1. Candidates who win most votes in the district shall be recognised as members of the district council.

2. If the votes of two or several candidates who should be recognised as the winner of the last seat in the quota of the district council are equal, the winner shall be determined by lottery in the presence of the Commission's field officers, candidate agents, observers and one authorised representative from the district primary court and the Independent Human Rights Commission each.

3. If an elected member of the district council is elected as a member of *Meshrano Jirga* as per article 31 of this Law or cannot occupy their seat or leaves their seat vacant for various reasons or dies or resigns or is dismissed or becomes disabled in a way that this

permanently obstructs the performance of their duty, their seat shall belong to the candidate who has most votes on the descending list of candidates, provided that at least eight months remain to the end of the term of the council.

## **Chapter 9**

### **Village Council Elections**

#### Village Council

##### **Article 42**

Every village shall have a council whose members shall be elected in a free, secret and direct vote for two years by voters in that village.

#### Allocation of Village Council Seats

##### **Article 43**

Village council seats shall be determined proportional to the number of population in each village in the following order:

1. For the village with a population of one to three hundred people, three members,
2. For the village with a population of three to five hundred people, five members,
3. For the village with a population of five to seven hundred people, seven members,
4. For the village with a population of seven hundred to one thousand people, nine members,
5. For the village with a population of over one thousand people, 11 members.

#### Membership of Village Councils

##### **Article 44**

1. Candidates who win most votes in the village council elections shall be recognised as members of the village council.
2. If the votes of two or several candidates who should be recognised as the winner of the last seat in the quota of the village council are equal, the winner shall be determined by lottery in the presence of the Commission's field officers, party and candidate agents, observers and one authorised representative from the district primary court.
3. If an elected member of the village council cannot occupy their seat or leaves their seat vacant for various reasons or dies or resigns or is dismissed or becomes disabled in a way that this permanently obstructs the performance of their duty, their seat shall belong to the candidate who has most votes on the descending list of candidates, provided that at least six months remain to the end of the term of the council.



## **Chapter 10**

### **Mayoral Elections**

#### Procedure for Mayoral Elections

##### **Article 45**

1. One mayor shall be elected for every city. The mayor shall be elected in a free, general, secret and direct vote and the candidate who wins over 50 per cent of the votes of voters in the city shall be elected as mayor for four years.

2. If none of the candidates wins over 50 per cent of votes in the first round, the run-off election shall be held within two weeks from the announcement of final election results and only the two candidates who have won most votes shall stand in the run-off election.

3. If the votes won by more than two leading candidates for Kabul Municipality are equal, the two candidates with the best qualifications for the run-off election shall be determined, within 48 hours, by a committee comprising one member of the Commission as head and one representative from the Supreme Court, Independent Commission for the Supervision of the Implementation of the Constitution and the Independent Human Rights Commission each as members.

4. If the votes of the two candidates for Kabul Municipality are equal in the run-off election, the winning candidate shall be determined by lottery in the presence of the committee mentioned in paragraph 3 of this article.

5. If the votes won by more than two leading candidates for municipalities in provincial centres, districts and other municipalities are equal, the two candidates with the best qualifications for the run-off election shall be determined, within 48 hours, by a committee comprising the Commission's provincial president as head and one authorised representative from the provincial court of appeal and the provincial office of the Independent Human Rights Commission each as members. The candidate obtaining most votes in the run-off election shall be recognised as the winner.

6. If the votes of the two candidates for municipalities in provincial centres, districts or other cities are equal in the run-off election, the winner shall be determined by lottery in the presence of the committee mentioned in paragraph 5 of this article.

7. The elected candidate shall begin their work within ten days from the announcement of final election results.

8. No individual shall be elected as mayor for more than two consecutive terms.

## Mayoral Appointments

### **Article 46**

1. If the elected mayor of Kabul city cannot occupy their seat or leaves their seat vacant for various reasons or dies or resigns or is dismissed or becomes disabled in a way that this permanently obstructs the performance of their duty, the Commission shall appoint the next candidate with most votes as mayor for the remaining term.
2. If an elected mayor in the centre of another province or district or city cannot occupy their seat or leaves their seat vacant for various reasons or dies or resigns or is dismissed or becomes disabled in a way that this permanently obstructs the performance of their duty, the Commission shall appoint the next candidate with most votes as mayor for the remaining term.
3. If there are no other candidates in the list of candidates or the eligible candidate is absent or disagrees, there shall be re-election in accordance with the provisions of this Law.

## Chapter 11

### Municipality Council Elections

#### Municipality Council

##### **Article 47**

The mayor who has been specified by the Independent Directorate of Local Governance shall have a council whose members shall be elected in a free, general, secret and direct vote for four years by eligible voters in the related municipality.

#### Number of Seats

##### **Article 48**

1. Municipality council shall at least have three seats.
2. For the municipality that has not been divided into *nahias*, its council shall have three to four seats depending on the number of population and the provision of urban services.
3. For the council of the municipality that has been divided by the Independent Directorate of Local Governance into less than three *nahias*, the whole city shall be the electoral constituency for electing representatives for the seats.
4. For the council of the municipality that has more than two *nahias*, one member shall be elected from each *nahia*.
5. The number of seats in Kabul municipality council shall be determined by the Commission depending on the number of *nahias* and on the basis of the information from the Independent Directorate of Local Governance.

#### Allocation of Seats

##### **Article 49**

1. For the municipality that has more than two *nahias*, every *nahia* shall be accepted as one constituency from where one member shall be elected in the municipality council. Eligible voters who reside and have registered in the constituency shall have the right to vote in that constituency.
2. For the municipality that has not been divided into *nahias* or it has less than three *nahias*, the whole municipality area shall be recognised as one single constituency. Eligible voters who reside and have registered in the constituency shall have the right to vote.

3. For municipality council elections, the candidate obtaining most votes shall be recognised as the winner.

4. If the votes of two or several candidates who should be recognised as the winner of the last seat in the quota for the municipality council are equal, the winner shall be determined by lottery in the presence of the Commission's field officers, party and candidate agents, observers and one authorised representative from the provincial court of appeal and the provincial office of the Independent Human Rights Commission each.

5. If an elected member cannot occupy their seat or leaves their seat vacant for various reasons during the term of the municipality council or dies or resigns or is dismissed or becomes disabled in a way that this permanently obstructs the performance of their duty, the Commission shall appoint the next candidate with most votes for the duration of the remaining term, provided that at least one year remains to the end of the term of the council.

## Chapter 12

### The Holding of the Elections

#### The Date of the Elections

##### **Article 50**

1. The Commission shall announce the date for the holding of the elections at least 140 days earlier than the timeline set in the Constitution.
2. The Commission shall clearly publish the electoral calendar at least 120 days earlier than the date specified in the Constitution.

#### List of Voters

##### **Article 51**

The Commission shall certify the list of eligible voters 15 days earlier than the polling day and publicise it in the specified places for public scrutiny.

#### Candidacy Application

##### **Article 52**

(1) Individuals who stand as independent candidates and parties who field their representatives in electoral constituencies as per this Law shall have an obligation to present to the Commission written candidacy applications for registration within the timeframe set by the Commission.

(2) The application of an independent candidate shall include the following:

1. Name and specific address,
2. Copy of certified educational documents as per the provisions of this Law,
3. Information on conviction, age, movable and immovable property, previous and current residence, latest employment and other conditions as set forth in the Law,
4. Copy of voter registration card or any other document that can be ascertained by the Commission,
5. Copy of national identity card,
6. List of names, number of voter registration cards and of national identity cards and fingerprints of individuals in the relevant electoral constituency who are eligible for voting and have confirmed the candidacy of the individual in question in ballot papers as follows:
  - For candidates in presidential elections, ten thousand people with at least two per cent of them from 18 provinces,

- For candidates in *Wolesi Jirga* elections, one thousand people including residents and *kuchis*,
  - For candidates in provincial council elections, two to six hundred people depending on the number of population,
  - For candidates in district council elections, one to three hundred people depending on the number of population,
  - For candidates in village council elections, twenty people,
  - For candidates in mayoral elections, one to three hundred people depending on the number of population and delivery of urban services,
  - For candidates in municipality council elections, one to two hundred people depending on the number of population.
7. Affidavit or certificate of fulfilment of requirements contained in paragraph 7 of article 12 and paragraphs 1 and 3 of article 13 of this Law,
  8. If the candidate was fined by the Electoral Complaints Commission in a previous electoral cycle, the presentation of the document certifying its payment,
  9. A candidate in presidential elections shall simultaneously introduce their running mates to the Commission.

(3) The application for the registration of the list of party candidates shall include the following:

1. Name of party and address of its central office,
2. List of party candidates including names, information on fathers, information on grandfathers, number of national identity cards, previous and current residence, age, number of voter registration cards, educational degrees and latest employment.

(4) Independent candidates shall have an obligation to pay deposits as follows:

1. For a candidate in presidential elections, Afs1m. The money shall be refunded to the candidate if they win the elections or obtain at least ten per cent of votes in the first round of the elections,
2. For a candidate in *Wolesi Jirga* elections, Afs30,000. The money shall be refunded to the candidate if they win the elections or obtain at least three per cent of votes in the relevant electoral constituency,
3. For a candidate in provincial council elections, Afs20,000. The money shall be refunded to the candidate if they win the elections or obtain at least two and a half per cent of votes in the relevant electoral constituency,
4. For a candidate in district council elections, Afs10,000. The money shall be refunded to the candidate if they win the elections or obtain at least two per cent of votes in the relevant electoral constituency,
5. For a candidate in village council elections, Afs5,000. The money shall be refunded to the candidate if they win the elections or obtain at least one and a half per cent of votes in the relevant electoral constituency,

6. For a candidate in Kabul mayoral elections, Afs100,000, for a candidate in mayoral elections in provincial centres with a population of over eight hundred thousand people, Afs80,000, for a candidate in municipalities in other provincial centres and districts, Afs50,000. The money shall be refunded to the candidate if they win the elections or obtain at least five per cent of votes in the relevant electoral constituency.
7. For a candidate in municipality council elections, Afs10,000. The money shall be refunded to the candidate if they win the elections or obtain at least two per cent of votes in the relevant electoral constituency.

(5) Individuals who fail to fulfil the requirements contained in paragraphs 2 and 4 of this article cannot stand as candidates in the elections.

(6) The Commission shall have an obligation to transfer to the government's bank account the deposits of the candidates who have failed to win the legal percentage of votes contained in paragraph 4 of this article.

#### List of Candidates

#### **Article 53**

1. The Commission shall have an obligation to publish the initial list of candidates, including independent and party candidates, at the earliest time after the end of the candidacy period.
2. The Commission shall have an obligation to determine and publicise the period of time during which challenges to the initial list of candidates can be made. The challenges shall be addressed by the Central and Provincial Electoral Complaints Commissions in accordance with the relevant regulation.
3. The Commission shall have an obligation to publish the final list of candidates after the Central Electoral Complaints Commission has addressed and adjudicated all challenges.
4. The Commission shall have an obligation to put up the final list of independent and party candidates in the relevant polling centres in every electoral constituency.

#### Withdrawal of Candidacy

#### **Article 54**

1. If an independent or party candidate withdraws from their candidacy, they shall have an obligation to submit a written notification to this effect to the Commission before the date set by the Commission in the electoral calendar.

2. If an independent candidate withdraws from their candidacy or dies after the date set by the Commission in the electoral calendar or their name is dropped by the Central Electoral Complaints Commission from the list of candidates, their votes shall not be tabulated in the counting process.
3. If a party withdraws its participation in the elections after the date set by the Commission in the electoral calendar, its votes shall be equally divided by the other parties who take part in the electoral process.
4. The Commission shall have an obligation to transfer the deposits made by candidates under paragraph 2 of this article, excluding cases of the death of the candidate, to the government's bank account.



## Electoral Campaign

### **Article 55**

1. Each independent or party candidate can spend their legal financial resources, at least its value twice the number of eligible voters in the relevant electoral constituency, on their electoral campaign.
2. Limits and regulations placed on legal and natural persons' support of candidates and political parties is set in accordance to the limitations imposed on candidates and political parties' campaign spending shall be specified in electoral constituencies.
3. The Commission shall regulate electoral campaign spending of independent and party candidates in a separate instruction as per paragraph 1 and 2 of this article.
4. The Commission shall determine the electoral campaign period. This period shall end 48 hours prior to the polling day.
5. The Commission, the Media Commission and the Central and Provincial Electoral Complaints Commissions shall be responsible to monitor the observance of the provisions contained in paragraphs 1, 2 and 3 of this article and of the Instruction on the Control of Financial Resources and Electoral Campaign, in co-ordination with the country's security institutions.

## Establishment of Polling Centres and Preparation of Electoral Materials

### **Article 56**

1. The Commission shall establish polling centres across the country and pave the way for the participation of voters in these centres so as to facilitate their access to the electoral process.
2. The Commission shall regulate and prepare ballot boxes, ballot papers, polling booths, stamps and other necessary materials and shall take other measures with a view to facilitating the polling process.

## Ballot Boxes

### **Article 57**

The Commission shall perform the following duties to regulate ballot boxes:

1. Preparing and providing ballot boxes and other necessary materials that can be safely sealed and stamped,
2. Determining the procedure of marking ballot boxes,
3. Determining the procedure of sealing, stamping, maintaining and opening ballot boxes,

## Ballot Papers

The Commission shall perform the following duties with regard to ballot papers:

1. Preparing ballot papers,
2. Allocating marks or logos for independent and party candidates and attaching them in the appropriate space,
3. Determining the language for use in ballot papers,
4. Providing a procedure according to which voters can mark ballot papers,
5. The list of candidates in ballot papers and distribution of electoral logos for independent and party candidates shall be determined by the Commission through lottery,
6. The political affiliation of independent candidates to political parties can be specified in ballot papers,
7. Providing a procedure for counting ballot papers.

## Agents and Observers

### **Article 59**

The Commission shall define the rights and duties of agents, observers and mass media representatives in accordance with internationally accepted principles and the country's objective circumstances and prepare and distribute letters of accreditation and of permission to them.

## Removal of Promotional Materials

### **Article 60**

The Commission shall, within 48 hours to the polling day, order the removal of promotional materials that have been put up and displayed in 100 metres to/from polling centres.

## Prohibition of Arms in Polling Centres

### **Article 62**

No one shall carry firearms or other weapons within 500 metres to/from polling centres. The possession of weapons by security authorities as permitted by the Ministry of Interior shall be excluded from this provision.

## Start and End of Polling

### **Article 63**

1. Polling shall start and end in polling centres according to the timetable prepared, regulated and announced by the Commission.

2. Polling shall be conducted according to a procedure prepared and regulated by the Commission.

3. If a riot, violent incident, storm, flood or other unexpected incidents occur in polling centres and stations that make it impossible for polling to be conducted, the head of the polling centre shall have an obligation to order the halt of polling and notify the Commission of their decision at the earliest time.

4. The head of the polling centre shall have an obligation to allow voters waiting in the queue to vote before they announce the halt of polling according to the time set under paragraph 1 of this article.

5. The Commission can extend polling in all electoral constituencies for a maximum period of two hours.

#### Challenges against Polling

##### **Article 64**

1. Representatives of independent candidates and political parties can challenge a voter's right to vote before that voter casts their vote in a polling centre.

2. The head of the polling centre shall have an obligation to decide whether to accept or reject the challenge made under paragraph 1 of this article and record reasons for such acceptance or rejection in the official document on polling day.

#### The Seal of Ballot Boxes

##### **Article 65**

1. When a ballot box is filled or polling ends, the head of the polling centre shall seal that ballot box pursuant to the relevant procedure and in the presence of agents of parties and independent candidates and observers and shall allow the agents to sign in the ballot box and record the number of the seal.

2. The head of the polling centre shall submit ballot boxes and ballot paper packages to the vote counting centre under the instruction of the Commission.

#### Vote Counting

##### **Article 66**

Vote counting shall be conducted in polling centres or electoral constituencies, unless otherwise determined by the Commission due to security, technical or climatic conditions.

## Quarantining Ballot Boxes

### **Article 67**

1. If there are complaints or clear indications about fraud with regard to ballot boxes, the Commission can quarantine the boxes.
2. The Commission shall have an obligation to investigate quarantined ballot boxes in the presence of the Electoral Complaints Commission's officials, agents and representatives of political parties and candidates and to include in or permanently exclude the boxes from the counting process in accordance with the results of the investigation and the agreement of the Electoral Complaints Commission.

## Presentation and Certification of Results

### **Article 68**

1. The Commission or the Central Electoral Complaints Commission can, before the certification of results, order a partial or total re-count of ballot papers or a re-conduct of polling in an electoral constituency if the principles of a free, general, secret and direct election have been undermined.
2. The Commission shall have an obligation to announce and publish final election results after vote counting procedures have been completed and all complaints about voting and vote counting have been addressed by the Electoral Complaints Commission.
3. Election results are final and applicable upon certification by the Commission.

## Broadcasting and Publishing the Thoughts and Opinions of Candidates

### **Article 69**

1. In order to provide public awareness during the electoral campaign, televisions, radios, newspapers, magazines and other mass media can broadcast and publish the platforms, opinions and goals of independent candidates and parties in accordance with the procedure developed by the Commission.
2. In order to provide public awareness during electoral campaign, governmental mass media shall have an obligation to broadcast and publish, in agreement with the Commission, the opinions, goals and platforms of independent candidates and parties in a fair and impartial manner.
3. Governmental mass media shall have an obligation to develop, in case of necessity, goals, policies and procedures for a fair and impartial publication about independent candidates and parties and for implementing the provisions contained in paragraphs 1 and 2 of this article.

## Media Commission

### **Article 70**

(1) The Commission shall have an obligation to establish a Media Commission at least 60 days before the polling day. The Media Commission shall monitor fair reporting and publication related to electoral campaign and shall address complaints about violations of fair reporting and publication related to electoral campaign or other violations of the goals, policies and procedures pertaining to mass media. Every individual can lodge their challenge and complaint in the Media Commission.

(2) The Commission shall regulate the mandate and duties of the Media Commission.

(3) The Media Commission shall take one of the following measures depending on the circumstances if violations of provisions contained in article 59 of this Law occur:

1. Issuing warning to the violator and demanding rectification of the violation,
2. Setting a fine depending on the circumstances up to Afs500,000,
3. Referring the violator, whether a real or legal entity, to the relevant authorities for prosecution.

(4) The Media Commission shall, after performing all assigned duties, be dissolved within 45 days from the announcement of final election results and its responsibilities shall be delegated to the Commission.

## Chapter 13

### Electoral Offences

#### Offence

#### **Article 71**

Offence in this Law shall indicate the following acts:

1. Presenting wrong and unreal information to the Commission, Electoral Complaints Commission and other election-related commissions,
2. Registering for more than one time in a constituency without presenting prior information,
3. Deceiving in registration, acquisition of voter card or other electoral documents,
4. Possessing more than one voter registration card or any other voter card that has been determined and distributed by the Commission,
5. Voting or attempting to vote by using another person's document and card or a forged document and card,
6. Voting or attempting to vote more than one time in an election, unless otherwise specified in this Law,
7. Changing, replacing and manipulating electoral documents without legal authorisation,
8. Burning, eliminating or stealing electoral documents in order to conceal the truth,
9. Hiding electoral documents in order to conceal the truth,
10. Using and keeping lists, voter registration cards, ballot papers, forms and other electoral documents by irresponsible individuals,
11. Using the symbols, colours, slogans and other signs related to independent candidates or parties in polling station or centre,
12. Using the symbol and other signs related to the Commission, Electoral Complaints Commission and governmental institutions in promotional materials,
13. Interfering in electoral materials and equipment or ballot boxes without legal authorisation,
14. Preventing the participation of eligible voters in the elections,
15. Disrupting the work of electoral officials,
16. Violating the code of conduct of candidates, agents, observers and electoral personnel,
17. Violating the code of conduct for media,
18. Creating hurdles in the access of individuals, independent candidates and parties to information and creating illegal and unprincipled constraints for journalists and observers who report election-related events,
19. Using facilities and funds from illegal sources,
20. Using foreign financial facilities to influence the electoral process,

21. Giving money to candidates and political parties and using legal financial resources in contrary to the mandates stated in article 55 of this Law and the relevant instruction,
22. Intimidating, outraging and exerting psychological pressure on voters, independent candidates, political parties, agents, observers, electoral personnel and others involved in the elections,
23. Inciting or provoking individuals to perpetrate offences,
24. Committing election-related fraud,
25. Offering or accepting bribes,
26. Not complying with the provisions of this Law, bylaws, procedures, instructions and decisions of the Commission, Electoral Complaints Commission and the Media Commission.

### Remedial Measures and Punishments

#### **Article 72**

(1) Provincial Electoral Complaints Commissions shall, depending on the circumstances, take one of the following measures if an electoral violation occurs and is established:

1. Recommending, warning and ordering a remedial measure for the individual, party, institution or office that has perpetrated the violation,
2. Setting a fine of Afs50,000.

(2) The decisions of Provincial Electoral Complaints Commissions under paragraph 1 of this article shall be final.

(3) Central and Provincial Electoral Complaints Commissions shall, depending on the circumstances, take one or several of the following measures if a violation under article 83 of this Law occurs and is established:

1. Setting a fine in light of the nature of the elections and the anticipated outcomes of the offence up to Afs1m,
2. Ordering a re-conduct of polling or re-count in specific polling centres before the certification and announcement of final election results,
3. Invalidating up to one-third of ballot papers that lack the necessary qualifications for an independent candidate or party.

(4) Provincial Electoral Complaints Commissions shall, along with its reasons, refer to the Central Electoral Complaints Commission cases that do not fall into their direct remits. In other cases, they shall document their decisions and announce them to the violators as decisions in the first instance.

(5) The Central Electoral Complaints Commission can drop the name of a candidate from the list of independent or party candidates if one of the following circumstances and cases occur:

1. Widespread fraud (invalidation of over one-third of ballot papers cast for a candidate or a party),
2. Using deceptive or coercive methods that seriously limit the liberty of and injure an electoral staff member or a rival candidate,
3. Acquiring electoral materials in such a way that others cannot use them in accordance with the provisions of the law,
4. Intimidating the electoral process so as to influence outcomes,
5. Using firearms or other weapons in order to extract advantages or disrupt the electoral process,
6. Existence of substantiating evidence on offering bribes so as to influence electoral outcomes,
7. Substantiation of existence of the candidate's first-grade relatives in the leadership of the Commission, its Secretariat and the Central Electoral Complaints Commission or availability of the candidate's first-grade relatives in a province in the leadership of the Provincial Independent Election Commission, its Secretariat or the Provincial Electoral Complaints Commission and its Secretariat in that province,
8. Substantiation of the ineligibility of the candidate in accordance with the requirements set out in the Constitution and this Law,
9. The decision of the Central Electoral Complaints Commission about dropping the name of an independent candidate or a party candidate from the list of candidates shall be final.
10. Investigation of complaints about violations during the electoral process that result in a conflict of interests in the Commission and its performance.

### Criminal Cases

#### **Article 73**

(1) The following acts by or against those involved in the electoral process shall be recognised as crime:

1. Violent acts committed by using firearms or other weapons for or against an individual or individuals,
2. Threats against an individual's or individuals' bodily integrity, honour and property,
3. Violent mob movements that result in violence and disruption of social order and electoral process,
4. Preventing the participation of eligible voters, candidates, agents, observers and media in the electoral process by using physical force or weapons,



5. Burning or eliminating *en masse* electoral documents without legal authorisation or stealing them *en masse*,
6. Misusing military equipment, clothing and insignia from the army, police and national security in order to intimidate or influence voters, candidates, agents and observers in favour of a specific candidate or party.

(2) If the perpetration of an act contained in paragraph 1 of this article and sections 1-6 of paragraph 5 of article 84 of this Law is established, the Central Electoral Complaints Commission, in addition to taking disciplinary measures, shall refer the alleged perpetrator to the Attorney-General's Office for prosecution.

(3) If crime other than the cases set forth in paragraph 2 of this article occurs in the electoral process, the Commission and the Central Electoral Complaints Commission shall introduce and refer the matter and the alleged perpetrator to the competent justice authorities.

(4) Disciplinary and punitive measures in response to violations committed by electoral officials and personnel and the officials and personnel of the Electoral Complaints Commissions shall be regulated in separate bylaws by the Commission and the Central Electoral Complaints Commission.

## Chapter 14

### Miscellaneous Provisions

#### Postponing the Elections

##### **Article 74**

1. If unfavourable security conditions or unexpected natural and social incidents occur that make it impossible to hold elections within the constitutional timeframe in an electoral constituency in a province or undermine the legitimacy of the elections, the Commission can, in agreement with the Central Electoral Complaints Commission, decide to postpone the elections until conditions are ready and it shall announce its decision after approval by the Independent Commission for the Supervision of the Implementation of the Constitution.

2. If elections are postponed pursuant to paragraph 1 of this article, occupants of elected seats under this Law shall continue their duties until elections are held and its results are announced.

#### Suspending the Elections

##### **Article 75**

If circumstances contained in article 86 of this Law are limited to one or several electoral constituencies, the Commission shall, in agreement with the Central Electoral Complaints Commission, suspend the holding of the elections until the circumstances improve or are addressed.

#### Undetermined Timeframes

##### **Article 76**

If legal timeframes have not been set for holding an election, the Commission shall determine and announce the date for holding the election after circumstances mentioned in articles 86 and 87 of this Law are addressed.

#### The Condition of the Residence of Members

##### **Article 77**

Members of provincial, district, village and municipality councils shall reside in their relevant electoral constituencies. If their residence changes to an area outside the relevant electoral constituency, their membership shall be rescinded. The Commission shall introduce the candidate with most votes after the last winner of the elections as the replacement.

#### Referendum

**Article 78**

1. Decision to hold a referendum shall constitutionally be made by the president.
2. The Commission shall be notified of the president's decision three months before a referendum.
3. The Commission shall have an obligation to take the necessary measures to develop and implement the referendum within the specified timeframe.
4. The *modus operandi* (method of operation) for holding a referendum shall be regulated by the commission in separate procedures depending on the type of the referendum.

**Entry into Force****Article 79**

This Law shall enter into force upon endorsement and shall be published in the Official Gazette. The Electoral Law published in the Official Gazette's issue 1012 of 10 Hout 1388 and other provisions that contravene this Law shall be nullified upon entry into force of this Law.