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Afghanistan: Elections, Constitution, and Government

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Summary

In 2004 and 2005, Afghanistan adopted a permanent constitution and elected a president and a parliament, which is emerging as a significant force in Afghan politics. However, factional and ethnic differences continue to threaten Afghanistan's fragile stability. See CRS Report RL30588, *Afghanistan: Post-War Governance, Security, and U.S. Policy*, by Kenneth Katzman.

Post-Conflict Political Transition

Afghanistan has not previously had a fully elected government, although there were parliamentary elections during the reign of King Zahir Shah, the last of which was in 1969. Presidential, parliamentary, and provincial elections, and adoption of a constitution were part of a post-Taliban transition roadmap established by a United Nations-sponsored agreement of major Afghan factions signed in Bonn, Germany on December 5, 2001, after the Taliban had fled Kabul ("Bonn Agreement").¹ The Bonn meeting formed an interim administration, led by Hamid Karzai, an ethnic Pashtun leader. Subsequently, a new constitution was approved at a "constitutional loya jirga," or traditional Afghan assembly in January 2004. The constitution sets up a strong elected presidency, but it gives substantial powers to an elected parliament, such as veto power over senior official nominees. The constitution provided for the following.²

- Presidential elections to be held by June 2004. Two vice presidents run on the same election ticket as the president, and one succeeds him in the event of the president's death. They serve a five-year term, and presidents are limited to two terms.

¹ For text, see [<http://www.un.org/News/dh/latest/afghan/afghan-agree.htm>].

² Text of constitution, see [<http://www.afghan-web.com/politics/currentconstitutionenglish.pdf>].

- A parliament consisting of (1) a 249-seat lower house (*Wolesi Jirga*, House of People), to be elected simultaneously, *if possible*, with presidential elections. Of those, ten seats are reserved for Afghanistan's *Kuchis* (nomads); and (2) a 102-seat selected upper house (*Meshrano Jirga*, House of Elders). Of the 102 seats: 34 are selected by provincial councils (one from each of the 34 provincial councils); another 34 are selected by nearly 400 district councils; and the final 34 are appointed by the President. The provincial and district councils were to be elected, simultaneously, *if possible*, with the other elections. The constitution does not stipulate other major roles for the provincial or district councils, although some believe they will be empowered to impose local taxes and provide local services.
- In the lower house, at least 68 of those elected (two per province x 34 provinces) "should" be women, giving women about 25% of the seats. The top two women vote-getters in each province earn seats. In the upper house, half of the president's 34 appointees are to be women.
- The constitution states that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam," and says that men and women have "equal rights and duties before the law." Political parties can be established so long as their charters "do not contradict the principles of Islam," and they do not have affiliations with other countries.
- The constitution does not impose Islamic law but provides for court rulings "in accord with [the Hanafi school of] Islamic law," when there is no specific provision in the Constitution or other laws on that issue.

The October 2004 Presidential Election

Karzai sought to hold presidential elections within the prescribed time frame to parry any charges that he sought to monopolize power. The Tajik minority-dominated "Northern Alliance" grouping — political rivals of Karzai — wanted simultaneous parliamentary elections to check presidential authority. However, there was an early recognition that parliamentary, provincial and district elections are complicated and would need to be held separately. In July 2003, a joint Afghan-U.N. (U.N. Assistance Mission in Afghanistan, UNAMA), elections management body, called the Joint Election Management Body (JEMB), was set up. Even though a population census had never been taken, it was estimated that there would be 10.5 million eligible voters. The voting age is 18. Registration was slowed by violence in early 2004, and holding to the June 2004 schedule was judged not feasible, but a firm presidential election date was set for October 9, 2004. The parliamentary, provincial, and district elections were postponed (initially to April-May 2005). A total of 10.5 million voters registered,³ of which about 42% were women. On May 25, 2004, Karzai signed the major election law⁴ that provided for the

³ The International Organization of Migration, on behalf of the JEMB, conducted registration of Afghan refugees in Iran and Pakistan, who were eligible to vote.

⁴ "New Afghan Election Law Endorsed." Kabul Radio in Foreign Broadcast Information Service, (continued...)

election system to be district-based (voting for specific candidates) rather than proportional representation (voting for party slates).

In advance of the vote, Karzai engaged in substantial political bargaining to try to blunt opposition. Northern Alliance leaders, including former President Burhannuddin Rabbani (the Alliance political leader) and Defense Minister Mohammad Fahim, sought to trade support for Karzai for a future role in a coalition cabinet. Instead, Karzai chose as his running mate Ahmad Zia Masud, brother of legendary slain Alliance commander Ahmad Shah Masud, hoping to attract Tajik support. His second running mate was Hazara community (Shiite Muslims) leader Karim Khalili. The Northern Alliance fielded Education Minister Yunis Qanooni, who was the most serious challenger to Karzai. Also running was Uzbek leader Abdul Rashid Dostam, who has been part of the Northern Alliance. Aside from the above, 15 other candidates were certified to run, including Hazara leader Mohammad Mohaqiq and Dr. Masooda Jalal, the only woman who ran.

To secure the vote, the International Security Assistance Force (ISAF), the 37-nation NATO-led peacekeeping force, was reinforced by 2,500 troops, bringing its total force to 9,000. The U.S.-trained Afghan National Army (ANA), which had 15,000 at election time and now has about 29,000, performed election security missions, along with the Afghan national police (about 50,000 nationwide). Several hundred additional U.S. troops were sent for the elections to reinforce the 18,000 U.S. forces already there. International donors, including the United States, provided more than \$90 million in aid for the presidential elections. The FY2004 supplemental appropriation (H.Rept. 108-337, P.L. 108-106) provided \$69 million for “elections and governance” in Afghanistan.

On election day, there were a few minor insurgent attacks during the voting — far fewer than expected. Voter turnout was heavy - about 80% (8 million votes cast). Fears of widespread voter intimidation by factional militias were generally not realized. The vote was observed by about 400 international monitors from the Organization for Security and Cooperation in Europe (OSCE) and other groups, who mostly rebuffed allegations by 15 challenging candidates that there had been widespread fraud, including alleged failure of indelible ink to prevent multiple voting.

Results. Karzai was officially declared the winner on November 3, 2004. He received about 4.4 million votes, or 55.4% of the total, more than the 50% needed to avoid a runoff. Qanooni finished second with 1.3 million (16.3%); Mohaqiq, 935,000 (11.7%); Dostam, 800,000 (10%); and Masooda Jalal, 91,000 (1.1%). Karzai was sworn into a five-year term on December 7, 2004, with Vice President Cheney in attendance. On December 23, 2004, he announced a 27-seat cabinet that tilted somewhat more than his previous administration toward Pashtuns, particularly in the key security ministries. Most notably, Fahim was replaced as Defense Minister by his Pashtun deputy, Abdul Rahim Wardak, and Qanooni was not given a cabinet seat. To emphasize a commitment to combat narcotics trafficking, Karzai created a new Ministry of Counter-Narcotics, headed by Habibullah Qadari.

⁴ (...continued)
May 27, 2004.

Parliamentary and Provincial Elections and New Parliament

On March 21, 2005, the Afghan Independent Electoral Commission (IEC) announced that parliamentary and provincial elections would be held on September 18, 2005. District elections were postponed until 2006, because of the complexities of drawing district boundaries, meaning that these councils would not select their representatives to the upper house (Meshrano Jirga). In the interim, the 34 provincial councils would select *two* representatives — one permanent (full four-year term) and one interim, with each interim member to be replaced by a district council selectee when district councils are elected.

The election system was the “Single Non-Transferable Vote System” (SNTV). Candidates stood as individuals, not as members of a party list. Each voter cast a ballot for only one candidate for the lower house, even though there were multiple representatives per province — the number varying from 2 (Panjsher province) to 33 (Kabul province). Herat province has 17 seats; Nangahar, 14; Qandahar, Balkh, and Ghazni, 11 seats each. Each of the 34 provincial councils consists of between 9 and 29 seats (Kabul province is largest with 29). Some experts had urged that the parliamentary election be conducted by proportional representation because there would be less potential for local manipulation. That system was not adopted because of the fears of empowering political parties, which are unpopular in Afghanistan because of the *mujahedin* parties’ links to foreign governments during the anti-Soviet war. Even though the vote was not party-based, 70 parties are registered with the Ministry of Justice.

There were a total of 2,815 candidates (including 347 women) for the lower house and 3,185 candidates (including 279 women) for the provincial councils. Out of Afghanistan’s 34 provinces, three (Nangahar, Uruzgan, and Zabol) did not have enough female candidates for the provincial elections to ensure at least 25% female representation; these seats remain vacant until the next election. During June 25-July 21, over 2 million additional voters registered (those who came of age since the last election or were not originally counted), bringing the total to about 12.5 million, and campaigning began on August 17. The OSCE and the European Union sent observer missions. An Electoral Complaints Commission (ECC) initially disqualified 208 candidates for alleged ties to illegal militias; some disarmed, others withdrew their candidacies. A final list of candidates was published on July 12, with only 11 disqualified, although the ECC later disqualified another 28, mostly for alleged links to armed groups. The September 2005 elections cost about \$159 million, all of which came from international donors. The United States contributed about \$40 million (from FY2004 and FY2005 supplemental appropriations (P.L. 108-106 and P.L. 109-13)).

Prior to the election, observers feared that recently stepped up Taliban and associated insurgent violence in Afghanistan could disrupt the elections, even though Taliban “spokespersons” said polling places would not be targeted. Seven candidates and four election workers were killed before the election (and one after). Other experts perceived the main threat to the election as local militia leaders and narcotics traffickers who might try to influence the voting. Security measures were similar to those put in place for the presidential elections; the Afghan national police and the ANA took the lead in guarding the 6,200 polling centers, with U.S. and international forces ready to assist.

In the September 18 vote, no major attacks on polling centers were reported, although about 15 people were killed (including a French soldier). However, turnout was lower than expected — about 57% (about 6.8 million voters), which observers tended to attribute to voter confusion over the large numbers of candidates on each ballot and high voter illiteracy, even though candidates were identified on the ballot with symbols and photographs. Observers did express concerns about apparent fraud (mostly proxy voting in some districts), and JEMB investigations of balloting complaints delayed publication of final results until November 12, 2005.⁵

Results and New Parliament.⁶ The results largely confirmed expectations that many seats would go to prominent national and local personalities and factional groupings. Although Karzai himself did not form a party, observers say that Karzai supporters are about 60% of the parliament. Successful pro-Karzai candidates include his elder brother, Qayyum (Qandahar Province). About 40 members of parliament belong to the Hizb-e-Islam party of anti-U.S. former *mujahedin* leader Gulbuddin Hikmatyar, but these parliamentarians have renounced violence and are said to support Karzai.

An “opposition” bloc is the 14-party, pro-Northern Alliance “National Understanding Front,” led by Yunus Qanooni and former president Rabbani. Qanooni, who is believed to be positioning himself for another presidential run, won a lower house seat from Kabul province and was selected lower house Speaker on December 21. Both Qanooni and Rabbani say they want to work cooperatively with Karzai’s government, but they appear to be assembling a formidable parliamentary bloc. This grouping succeeded in February 2006 in achieving a parliament vote to review Karzai’s cabinet individually (rather than *en bloc*), significantly increasing parliament’s leverage over Karzai’s choices. The opposition grouping also accounted for Qanooni’s selection as speaker, beating back a challenge from Abd-i-Rab Rasul Sayyaf, a prominent *mujahedin* party leader who won a seat from Kabul Province and was backed by Karzai. Sayyaf, an orthodox Islamic conservative who reportedly retains a militia, also was endorsed by former Karzai presidential challenger, Hazara leader Mohammad Mohaqiq, who won a seat from Kabul. Two deputy lower house speakers were selected on December 22: the first deputy is Aref Nurzai (a relative by marriage to the Karzai clan); the other is Kawzia Kofi, a Tajik woman from Rabbani’s home province of Badakhshan. Some believe Karzai needs to develop a party structure or grouping to better organize his supporters in parliament.

Introducing further texture is the presence of reputed militia leaders, former officials of the Communist regime that led Afghanistan during the era of Soviet occupation, and of Taliban era figures who renounced violence and were permitted to run. The feared Soviet-era Interior Minister, Sayed Muhammad Gulabzoi, won a seat from Khost Province. Shanawaz Tanai, who was the Soviet-era Defense Minister, lost. Of the former Taliban figures, Abdul Salam Rocketi (“Mullah Rocketi”), won from Zabol province, and Mohammad Islam Mohammadi, who ran Bamiyan Province during the Taliban rule and who cooperated with the Taliban’s destruction of the large Buddha statues in Bamiyan in early 2001, won from Samangan province. Some accounts say that at least another six elected members were Taliban officials or military commanders. The Taliban-era

⁵ Results are available at [<http://www.jemb.org/>].

⁶ Some of the information in this section is taken from author participation in a House Democracy Assistance Commission assessment visit to Afghanistan during February 26-March 2, 2006.

Foreign Minister Wakil Mutawwakil lost, as did the former enforcer of the Taliban's puritanical restrictions, Maulvi Qalamuddin. Another reputed militia leader who won a seat is Hazrat Ali (Nangarhar Province), who had gained fame for directing the Afghan component of the assault on the Al Qaeda redoubt in the Tora Bora mountains during the U.S.-led war. Another elected member is Pacha Khan Zadran, a local leader from Paktia Province who, by some accounts, helped Osama bin Laden escape from Tora Bora during the U.S. offensive there. However, a prevailing view in Kabul is that all faction leaders are now committed to peaceful debate in parliament rather than violence.

A number of unaffiliated, well-educated Afghans also won, including several prominent women. They include 27-year-old Malalai Joya (Farah Province), an outspoken women's rights advocate who is emerging as a leading government critic in the new parliament. Other prominent women who won are Fauzia Gailani, who came in first in conservative Herat Province, and Shukria Barekzai, editor of *Woman Mirror* magazine. One of the few intellectuals elected was Ramazan Bashardost, a male former Karzai government minister. The U.S.-based International Republican Institute (IRI) is working to organize and train the estimated 93 lower house "independents;" the National Democratic Institute (NDI) is assisting the more established parliamentary factions.

In the upper house, Karzai has fewer critics. After making his 34 appointments to that body (including the mandated 17 women), he was able to engineer the appointment of his ally, Sibghatullah Mojadeddi (who heads a reconciliation and amnesty commission) as its Speaker. Mojadeddi defeated a university chancellor, Bakhtar Aminzay, for that post. Karzai also appointed Fahim (see above) to the body, representing a further effort to coopt the Northern Alliance leaders; reputed drug trafficker Sher Mohammad Akhund, the governor of Helmand Province; and former Taliban religious affairs deputy minister Arsala Rahmani. The deputy speaker is Hamid Gaylani, a generally pro-Karzai family that has five members in the parliament (both houses).

After a one-week training session, both houses were inaugurated on December 19, with Vice President Cheney attending. Assisting the members is a staff of about 275 Afghans, reporting to a parliament "secretariat." Staff was hired a year before parliament convened, and they and the members are receiving assistance and training from the U.N. Development Program and the State University of New York (SUNY) under an \$8 million contract with USAID. It has formed 18 committees to oversee governmental functions; each committee has two staff members. The parliament has a small research group and a relatively small library. The parliament's budget is controlled by the government (Ministry of Finance).

Implications. The completion of the series of elections is considered a major milestone that has given the Afghan government additional strength and legitimacy. On the other hand, the new parliament has already begun to slow government decision-making and cause Karzai to proceed somewhat more cautiously in his close relationship with the United States. Parliament's immediate call for the dismantling of (mostly U.S.-run) "security barriers" in Kabul, coupled with the decision to confirm cabinet appointments individually, could be viewed as early challenges to Karzai.