



## CRS Report for Congress

# Afghanistan: Government Formation and Performance

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### Summary

Post-Taliban Afghanistan has adopted a constitution and elected a president and a parliament; that body is emerging as a significant force in Afghan politics. However, the Afghan government's limited writ throughout the country and its perceived corruption have contributed to an increase in Taliban violence. See CRS Report RL30588, *Afghanistan: Post-War Governance, Security, and U.S. Policy*, by Kenneth Katzman.

### Post-Conflict Political Transition

For the first time, Afghanistan has a fully elected government, although there were parliamentary elections during the reign of King Zahir Shah (the last were 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").<sup>1</sup> That agreement formed an interim administration led by Hamid Karzai, an ethnic Pashtun. The constitution was approved at a "constitutional *loya jirga*" (traditional Afghan assembly) in January 2004. It set up a strong elected presidency, but, at the urging of the minority-dominated "Northern Alliance" faction, it gave substantial powers to an elected parliament, such as veto power over cabinet selections. It also provided for:<sup>2</sup>

- Presidential elections (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.

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

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

- A parliament consisting of a 249-seat lower house (*Wolesi Jirga*, House of People) and a 102-seat selected upper house (*Meshrano Jirga*, House of Elders) elected simultaneously, *if possible*, with presidential elections. In the *Wolesi Jirga*, ten seats are reserved for Afghanistan's *Kuchis* (nomads), and at least 68 of those elected (two per province, with 34 provinces) "should" be women, giving women about 25% of the seats. The top two women in each province earn seats.
- For the *Meshrano Jirga*, 34 seats are selected by provincial councils (one from each of Afghanistan's 34 provinces); another 34 are to be selected by nearly 400 elected district councils; and the final 34 are appointed by the President. (Half of the president's 34 appointees are to be women.) The provincial and district councils were to be elected, simultaneously, *if possible*, with the other elections. No clear roles are stipulated for the provincial or district councils, but the provincial councils are playing a role in determining local development priorities. Provincial governors are appointed by the president, and Karzai is trying to replace local faction leaders with qualified technocrats in those positions.
- 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.

## Presidential and Parliamentary Elections

Karzai sought to hold presidential elections by the June 2004 deadline to demonstrate that he did not seek to monopolize power. However, there was an early recognition that organizing parliamentary, provincial, and district elections would be complicated and might be delayed. In July 2003, a joint Afghan-U.N. (U.N. Assistance Mission in Afghanistan, UNAMA) elections management body, the Joint Election Management Body (JEMB), was set up. Even though a population census had never been taken, it was estimated that 10.5 million would be eligible to vote. The voting age is 18. Registration was slowed by violence in early 2004 and the presidential election was postponed until October 9, 2004. The parliamentary, provincial, and district elections were postponed initially to April-May 2005. A total of 10.5 million voters registered, of which about 42% were women. On May 25, 2004, Karzai signed an election law providing for district-based (voting for candidates) rather than proportional representation (voting for party slates).

In advance of the vote, Karzai engaged in substantial political bargaining with the Northern Alliance to try to blunt opposition. No agreement was reached, and Karzai chose as his running mates Ahmad Zia Masud, brother of legendary slain Alliance commander Ahmad Shah Masud, and Hazara (Shiite Muslims) leader Karim Khalili. The Northern Alliance fielded Education Minister Yunis Qanooni, who instantly became the most serious challenger. Also running were Uzbek faction leader Abdul Rashid Dostam,

who has been part of the Northern Alliance, and 15 other candidates, including Hazara leader Mohammad Mohaqiq and Dr. Masooda Jalal, the only woman who ran.

Amid light violence, voter turnout was heavy (8 million votes cast, or about 80%). The vote was observed by about 400 international monitors, who mostly rebuffed allegations by 15 challenging candidates that there had been widespread fraud. Karzai was declared the winner on November 3, 2004, with about 4.4 million votes (55.4%), more than the 50% needed to avoid a runoff. Qanooni was 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. In December 2004, he named a 27-seat cabinet that tilted more heavily toward Pashtuns, particularly in the key security ministries. Fahim was replaced as Defense Minister by his Pashtun deputy, Abdul Rahim Wardak. Qanooni was not given a cabinet seat. Karzai also created a Ministry of Counter-Narcotics, headed by Habibullah Qaderi. International donors provided more than \$90 million in aid for the presidential elections, of which about \$40 million came from the United States (P.L. 108-106, FY2004 supplemental appropriation).

**Parliamentary and Provincial Elections.** The Afghan Independent Electoral Commission (IEC) subsequently announced parliamentary and provincial elections for September 18, 2005. District elections were postponed indefinitely because of the complexities of drawing district boundaries, meaning that these councils would not select their representatives to the *Meshrano Jirga*. In the interim, the 34 provincial councils would select *two* representatives — one permanent (full four-year term) and one interim. Each interim member is to be replaced by a district council selectee when the district councils are elected. The election system was the “Single Non-Transferable Vote System” (SNTV) in which candidates stand 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 varied from 2 (Panjsher province) to 33 (Kabul province). Herat province has 17 representatives; 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 elections 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.

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. Three provinces (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, bringing the total to about 12.5 million. An Electoral Complaints Commission (ECC) initially disqualified 208 candidates for alleged ties to illegal militias; some disarmed, others withdrew their candidacies. A final list disqualified only 11, although another 28 were later disqualified mostly for alleged links to armed groups.

Turnout was lower than expected (about 57%, 6.8 million voters), which was widely attributed to high voter illiteracy and confusion over the large numbers of candidates per ballot. No major attacks on polling centers were reported, but about 15 people were killed

in election day violence, including a French soldier. Election observers (OSCE and the European Union) expressed concerns about apparent fraud (mostly proxy voting in some districts), and JEMB investigations of the complaints delayed publication of final results until November 12, 2005.<sup>3</sup> The election cost about \$159 million, all of which came from international donors; the U.S. contribution was \$44.9 million (P.L. 109-13, FY2005 supplemental appropriation).

Both houses were inaugurated on December 19, 2005, with Vice President Cheney attending. Assisting the members is a staff of about 275 Afghans, reporting to a “secretariat.” Staff was hired a year before parliament convened, helping limit factional influence, and they and the members received training from the U.N. Development Program and the State University of New York (SUNY) under an \$8 million contract with USAID. There are 18 oversight committees; each committee has two staff members. There is a small research group and a small library. The parliament’s budget is controlled by the government (Ministry of Finance).

**Parliamentary Factions.**<sup>4</sup> The results confirmed expectations that many seats would go to prominent personalities and factional groupings. Although Karzai has not formed a party, observers say that his supporters are a slight majority of the parliament. Others say the parliament is roughly equally divided into pro-Karzai, opposition, and “independent” deputies. Among the pro-Karzai parliamentarians is his elder brother, Qayyum (Qandahar Province). About 40 pro-Karzai parliamentarians are former members of the Hizb-e-Islam party of anti-U.S. former *mujahedin* leader Gulbuddin Hikmatyar. This support may have contributed to a statement by Hikmatyar in March 2007 that he might consider negotiating a settlement with Karzai. Also often supporting Karzai in parliament are reputed militia leaders and former moderate Taliban government members. One former militia leader is Hazrat Ali (Nangarhar Province), who had gained fame for directing the Afghan component of the assault on the Al Qaeda redoubt at Tora Bora during the U.S.-led war. Another is Pacha Khan Zadran, from Paktia Province who, by some accounts, helped Osama bin Laden escape Tora Bora during the U.S. offensive. Of the former Taliban, Mullah Abdul Salam (“Mullah Rocketi”) holds a parliament seat from Zabol province, and Mohammad Islam Mohammadi, who ran Bamiyan Province during the Taliban’s destruction of the large Buddha statues there in early 2001, won from Samangan province. Mohammadi was assassinated by unknown gunmen on January 27, 2007. (The Taliban-era Foreign Minister Wakil Mutawwakil ran but did not win a seat, nor did the former enforcer of the Taliban’s puritanical restrictions, Maulvi Qalamuddin.) Of the two deputy lower house speakers, first deputy Aref Nurzai is related by marriage to the Karzai clan. The other, Kawzia Kofi, a Tajik woman from Rabbani’s province (Badakhshan), is generally considered a Karzai opponent.

The two main “opposition” leaders are Yunus Qanooni, potentially a presidential candidate again in 2009, and Northern Alliance political leader and former Afghan president (pre-Taliban) Burhanuddin Rabbani. They engineered Qanooni’s selection as speaker in December 2005, beating back a challenge from Abd-i-Rab Rasul Sayyaf (Kabul Province), a prominent Islamic conservative *mujahedin* party leader who was

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<sup>3</sup> Results are available at [<http://www.jemb.org/>].

<sup>4</sup> 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.

tacitly backed by Karzai. On April 3, 2007, Qanooni and Rabbani formed a new political party, the “National United Front,” composed of the Northern Alliance (including Dostam and the Hazaras); both of Karzai’s vice presidents; and some ex-Communist leaders, such as the feared Soviet-era Interior Minister, Sayed Muhammad Gulabzoi, a parliamentarian from Khost Province; and Nur ul-Haq Ulumi, an ex-Communist military leader now parliament’s defense committee chairman. The new party seeks to amend the constitution to give more power to parliament and to directly elect governors and mayors. Fearing growing Pashtun domination, the bloc also opposes Karzai’s announced negotiations with Taliban members — negotiations that Karzai says are the key to establishing peace in southern Afghanistan. To date, 90 parties have registered with the Ministry of Justice.

Among the “independent” Afghans in the lower house are the 30-year-old Malalai Joya (Farah Province), an outspoken women’s rights advocate who has emerged as a leading critic of major faction leaders; Ms. Fauzia Gailani (Herat Province) and Ms. Shukria Barekzai, editor of *Woman Mirror* magazine. A vocal intellectual is Mr. Ramazan Bashardost, a former Karzai minister who champions parliamentary powers. 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 major factions discussed earlier. Some traditionalists in parliament oppose the independents; in May 2007 parliament voted to suspend Joya for criticizing “warlords.”

Karzai has fewer critics in the *Meshrano Jirga* because of his bloc of 34 appointments, but that body lacks the oversight powers of the *Wolesi Jirga*. After making his appointments to that body, he supported an ally, Sibghatullah Mojadeddi as Speaker, helping him narrowly win that post. The deputy speaker is Hamid Gaylani, member of a pro-Karzai family with five members in parliament. Karzai also appointed Northern Alliance military leader Muhammad Fahim; he has now joined the new opposition party discussed above. Other appointments included alleged drug trafficker and former Helmand governor Sher Mohammad Akhund, and former Taliban religious affairs deputy minister Arsala Rahmani. There is one Hindu.

## **Government-Parliament Relations and Performance<sup>5</sup>**

The parliamentary elections were considered a major milestone that gave the Afghan government additional legitimacy. Parliament has challenged Karzai on several issues, in some cases blocking his perceived attempts to appease Islamic conservatives, but at other times favoring conservatives. Signaling some criticism of the international military presence in Afghanistan, immediately after it was seated, parliament called for the dismantling of (mostly U.S.-run) “security barriers” in Kabul. After a spate of civilian casualties caused by U.S. operations that precipitated criticism from Karzai himself, in May 2007 the *Meshrano Jirga* passed a resolution calling for international forces to consult with Afghan authorities before conducting military operations, for negotiations with Taliban fighters, and for a timetable for withdrawal of international forces. Observers do not expect the motion to become law. Parliamentary opposition contributed to Karzai’s apparent dropping of a July 2006 proposal to revive a “Ministry of Supporting

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<sup>5</sup> Some information in this section is from the State Department reports on human rights in Afghanistan for 2006. March 6, 2007, at [<http://www.state.gov/g/drl/rls/hrrpt/2006/78868.htm>].

Virtue and Discouraging Vice,” a ministry that was used by the Taliban to commit major human rights abuses. Karzai said the ministry would focus on advice and public relations to encourage Islamic behavior. Another significant vote came in February 2007, when both houses passed a law giving amnesty to so-called “warlords,” the faction leaders who participated in the two decades of anti-Soviet and then civil war. Despite demonstrations in Kabul by 25,000 Afghans supporting the resolution, Karzai returned a modified draft giving victims of these commanders the right to seek justice for any abuses. The new version was passed and has become law.

Karzai had mixed success achieving approval of his appointments. In February 2006, the Qanooni/Rabbani faction succeeded in requiring Karzai’s cabinet to be approved individually, rather than *en bloc*, increasing the opposition’s leverage over the nominations. However, Karzai rallied his followers and all but five of his 25 nominees (announced March 22, 2006) were confirmed. (Three ministers were declared confirmed after receiving plurality votes.) Among those confirmed was Dr. Rangeen Dadfar Spanta, a Pashtun who replaced the well known Northern Alliance figure Dr. Abdullah. All five of Karzai’s replacement nominees were approved on August 7, 2006, including the nominee for Minister of Women’s Affairs Husn Banu Ghazanfar, professor at Kabul University. However, the defeat of his first nominee, a woman, left the cabinet with no women. In May 2006, the *Wolesi Jirga* voted down six of Karzai’s appointments to the nine-member Supreme Court, the highest judicial body, including his reappointment of the 73-year-old Islamic conservative Fazl Hadi Shinwari as chief justice. Parliament approved his new choices in July 2006, all of whom are trained in modern jurisprudence. The new chief justice is 69-year-old U.S.-educated Abdul Salam Azimi, who has fired or jailed eight corrupt judges and set up a system of standards of accountability, instilling some confidence in the justice sector. In May 2007, the parliament voted no confidence against Foreign Minister Rangeen Spanta and Minister for Refugee Affairs Akbar Akbar for failing to prevent Iran from expelling 50,000 Afghan refugees over a one-month period. Karzai accepted the dismissal of Akbar but stayed Spanta’s dismissal because refugee affairs are not his ministry’s prime jurisdiction.

The building of institutions has not shielded Karzai from criticism for indulging faction leaders with appointments and control over companies (such as the state airline, Ariana) and for tolerating corruption. In August 2006, 60 parliamentarians signed a letter criticizing the poor performance of the government, which many experts believe at least partly responsible for the upsurge of Taliban violence in 2006. U.S. reports credit Karzai’s government with progress on human rights and democracy, including formation of an anti-corruption commission, monitoring the security forces for human rights abuses, and providing these forces with human rights training. Still, some critics say that there is some backsliding, as evidenced by the government’s backing of a new press law moving through parliament that would, according to its current version under consideration, strengthen government control of the press and prohibit coverage seen as “un-Islamic” or “endangering national stability, security, or sovereignty.” Supporters of the legislation say that Afghan media, which now has six independent television channels and dozens of radio stations and newspapers, often level charges against officials without evidence or substantiation and offend conservative viewers.