

ANALYSIS OF THE ELECTORAL
LEGAL FRAMEWORK OF AFGHANISTAN

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EXECUTIVE SUMMARY

While the current electoral legal framework proved workable during the 2004 and 2005 elections, it should be reviewed and revised to take into account the lessons learned during those elections. In addition, the current Electoral Law should be combined with the Municipal Election Law and the various election-related Presidential Decrees and Orders to create a comprehensive Electoral Code.

Revision of the electoral legal framework will raise a number of key policy issues. With this in mind, any revision of the electoral legal framework should provide an opportunity for discussion with and among key stakeholders, including the Government of Afghanistan, UNAMA and civil society groups.

I. BACKGROUND

The successful conclusion of the 2004 Presidential election and the 2005 National Assembly and Provincial Council elections represent major achievements for Afghanistan and for the Afghan electoral administration. Some credit for this success also lies with the legislative framework, which has proved workable under very difficult circumstances.

However, while the current electoral legal framework has served reasonably well, the experience of those two elections has highlighted a number of shortcomings, as was made clear in the final report of the Joint Electoral Management Body (JEMB).¹ The need for a review of the legal framework was also highlighted by the Post-Election Strategy Group, which was composed of representatives of the JEMB, the Government of Afghanistan, the United Nations Assistance Mission in Afghanistan (UNAMA) and other stakeholders.²

With the successful legislative elections behind us and no election planned, 2006 provides a valuable opportunity to review the framework with an eye to correcting the weaknesses in the current system and also to initiate, for the first time in Afghanistan's post-Taliban history, a national discussion regarding the future of the electoral system, a discussion that will help strengthen the quality and legitimacy of the electoral system.

¹ Under Article 156 of the Constitution, elections of all kinds are to be administered and supervised by an Independent Electoral Commission. However, under Chapter XI of the Electoral Law the role of the IEC was carried out during a Transitional Period by a Joint Electoral Management Body, which consisted of the IEC plus international members appointed by the Special Representative of the Secretary-General. The final report of the JEMB for the 2005 elections can be found at <http://www.jemb.org/pdf/JEMBS%20MGT%20Final%20Report%202005-12-12.pdf>.

² Its report dated September 27, 2005 can be found at <http://www.jemb.org/PESGreport.pdf>.

II. COMPONENTS OF THE LEGAL FRAMEWOK

1. *The Constitution*

The Constitution includes a number of basic provisions relating to elections, including the requirement that elections be held at defined times to fill the following offices and assemblies:

- The Presidency
- The *Meshrano Jirga* (or House of Elders, the upper house of the National Assembly)
- The *Wolesi Jirga* (or House of People, the lower house of the National Assembly)
- Provincial Councils
- District Councils
- Municipal Councils
- Mayors
- Village Councils

With the exception of the *Meshrano Jirga*, 1/3 of which is appointed by the President, with the remainder being selected by the Provincial and District Councils, the constitution does not specify the system to be used in any of the elections.

2. *The Electoral Law*

The Electoral Law governs Presidential, National Assembly, Provincial Council and District Council elections. It was drafted in early 2004 by international advisors to the Joint Electoral Management Body in consultation with the Office of the President. Prior to the 2005 National Assembly and Provincial Council elections, a number of amendments were made to the Electoral Law, chief among which was the creation of an independent Electoral Complaints Commission (ECC) to respond to allegations of fraud and other misconduct.

Owing largely to a shortage of time, neither the original version of the Electoral Law nor the amendments were subject to any public debate or input from stakeholders before they were enacted by Presidential Decree.

3. *The Municipal Election Law*

In 2003 the Interim Government of Afghanistan, pursuant to its authority under the Bonn Agreement, issued a Municipal Election Law which provides for the election of municipal councils and mayors under the supervision of an electoral management body drawn from among government ministries. However, shortly thereafter, Afghanistan

adopted the Constitution, which among other things, requires that elections be administered by an Independent Electoral Commission. For this reason, although it remains in force, the Municipal Election Law cannot be implemented in its current form.

The PESG has considered the issue and produced a concept paper on municipal elections that incorporates a number of elements from the Municipal Election Law.³

4. Presidential Decrees and Orders

The President has issued a number of stand-alone Decrees and Orders to address specific election-related issues. These are:

- a) Presidential Decree No. 39 *on the Establishment of the Interim Afghan Electoral Commission* of 26 July 2003, which establishes the IEC and appointed its first members. Also defines in very general terms the role of the IEC during the 2004 election;
- b) Presidential Decree No. 40 *on the Establishment of the Joint Electoral Management Body* of 26 July 2003, which establishes the JEMB and describes its membership and powers during the 2004 general election;
- c) Presidential Decree No. 110 *on the Basics of Holding Elections During the Transitional Period* of 18 February 2004, which describes in detail the role of the Joint Electoral Management Body and its Secretariat in elections held during the Transitional period;
- d) Presidential Decree No 21 *on the Formation of the Independent Electoral Commission* of January 19, 2005, which appoints the current members of the IEC;
- e) Presidential Decree No. 23 *on the Structure and Working Procedure of the Independent Electoral Commission* of January 24 2005, which includes more detail on the operation of the IEC and appointment of members;
- f) Presidential Decree No. 24 *on Holding National Assembly, Provincial Council and District Council Elections* of 5 May 2005, which provides a detailed definition of the powers and responsibilities of the JEMB in the 2005 election. Also repeals Decree No. 110; and
- g) Order of the President *on Non-interference by Governmental Officials in Electoral Affairs* of 6 June 2005. This short administrative Order includes general prohibitions on interference and bias on the part of public officials in electoral matters.

³ Annex III to the Report of the PESG, Ibid.

5. Electoral Regulations

The Electoral Law empowers the IEC to issue Regulations as necessary to implement the provisions of the Law. During each of the two Transitional Period elections, the JEMB issued a number of Regulations dealing with the technical and procedural rules governing elections. While most of these Regulations applied only to a specific election, a few, such as the Regulations governing the procedures for the appointment of new members of elected bodies and JEMB/IEC document management and archiving procedures, were intended to have indefinite effect.

6. The Political Parties Law

The Political Parties Law sets out a basic legal framework for political parties, based on the registration of parties with the Ministry of Justice. The law allows registered parties to open bank accounts, receive contributions and membership dues, independently issue party publications, and put forward candidates for election. While it is vague on a number of key points, especially as regards the procedures for registration and the financial transparency and internal governance of parties, and leaves important details on how parties may be registered to implementing Regulations, the Political Parties Law is basically consistent with international standards.

Given that the chief benefit of registration as a political party is the right to introduce candidates in elections, and considering that the current electoral system provides no role for political parties whatsoever in the nomination of candidates, the Political Parties Law has been of limited importance to date. However, if Afghanistan moves to give political parties a role in its electoral system, the Political Parties Law will take on greater significance and may need to be reviewed to ensure that provides an adequate legal framework.

III. ANALYSIS

The following analysis focuses on a number of key issues of concern relating to the electoral legal framework. It is not a comprehensive analysis of the electoral system and does not address some important technical issues, such as voter registration, which do not relate primarily to the legal framework. In addition, no comment is made on a number of aspects of the legal framework, such the procedure for the accreditation of observers and candidate agents, which have proven to be uncontroversial.

1. Electoral System

a) Presidential Elections

The Electoral Law provides for the direct election of the President. If no candidate wins more than 50% of the voter in the first round, a run off is held between the first and second place candidates.

b) Assembly Elections

The Electoral Law provides for the Election of the *Wolesi Jirga* and Provincial and District Councils according to the Single Non Transferable Vote (SNTV) system, under which candidates run as independents in multi-member constituencies. Voters in each constituency cast a single vote for a candidate, and the candidates who receive the most votes are elected to the seats allocated to that constituency. The system reserves roughly 25% of the seats in *Wolesi Jirga* and the Provincial Councils for women candidates.

One of the defining characteristics of SNTV is the limited role it provides for political parties, a characteristic that was reinforced in this case by the JEMB's decision not to show the party affiliation of candidates on the ballot.

The SNTV system has been highly controversial, with opposition politicians as well as national and international civil society groups arguing that by marginalizing political parties, SNTV impedes the development of strong representative assemblies. Critics generally have proposed some kind of party list system.

Supporters of the SNTV system, especially the President's Office, argue that a party based system is inconsistent with Afghan traditions and, given the ethnic, regional or sectarian character of virtually all of the current political parties, that a party system would divide Afghans and lead to factional strife. This position is supported by many Afghans who hold negative views towards political parties and movements based on Afghanistan's recent history of factional violence and extremist political movements.

Quite apart from its political merits, SNTV in Afghanistan has proved to be difficult and expensive to administer, and both the JEMB and the PESG have called for the electoral system to be reconsidered on that basis.

2. Electoral Management Body

Under Article 156 of the Constitution, elections of all types are the responsibility of an Independent Electoral Commission. However, as a transitional measure, the 2004 and 2005 elections were administered by the JEMB. As a result, the powers and responsibilities of the IEC have remained relatively undefined.

Presidential Decree No. 23 of 24 January 2005 provides for an IEC that discharges its roles without influence from governmental or non-governmental sources. The IEC is led by a Chairperson and a Vice-chairperson. Members are appointed for three years and are forbidden from assuming any high public office for a period of one year after ceasing to be IEC members. IEC decisions are made by a 2/3 majority of members.

Members are appointed by the President, and the President may replace any member who:

- a) is convicted of a crime by a court of law; or
- b) violates election laws and regulations, subject to a proposal by 2/3 of the members of the IEC.

Presidential Decree No. 23 does not explicitly prevent the President from removing a member for other reasons.

It also does not include a detailed description of the IEC's duties and responsibilities, such as that provided for the JEMB by Presidential Decree No. 24. As a result, the role of the IEC is defined primarily by the Electoral Law, which empowers the IEC to make various executive decisions regarding the conduct of elections, such as certifying candidate lists and the results of elections. The Electoral Law also empowers the IEC to issue Decisions and Regulations as necessary to implement its mandate.

While the independent electoral management body model is one that has been successfully applied in other transitional democracies, the structure described above suffers from a number of defects. First, it lacks in specificity, especially as regards the non-executive responsibilities of the IEC. For example, there is no mention of the IEC's role in providing advice to the government on electoral matters and preparing electoral law reform proposals. The legal framework also does not address the role of the IEC Secretariat as the executive body responsible for the conduct of elections, an oversight that could lead to confusion within the IEC regarding the role of individual Commissioners in operational matters.

A second defect in the current legal status of the IEC is a lack of protection for the IEC's independence. The legal framework does not explicitly prevent the President from replacing IEC members before the end of their terms, or insulate the IEC's financial resources from political interference.

Finally, Presidential Decree No. 23 calls for the appointment of IEC members unilaterally by the President, which is out of keeping with the checks and balances approach that characterizes the appointment of other key public offices, such as Cabinet Ministers and Supreme Court Justices, both of which appointments require ratification by the *Wolesi Jirga*. In an environment characterized by political polarization and mutual mistrust, the unilateral appointment of IEC commissioners by the President could undermine the credibility of the IEC as an unbiased administrator of elections.

Annex II to the PESG report of September 27, 2005 includes a detailed proposal for a strengthened IEC that addresses the concerns identified above and may serve as a useful starting point for any discussion of the future of the IEC.

3. Electoral Calendar

Under the Constitution, Presidential and *Wolesi Jirga* elections are to be held every 5 years, Provincial Council elections every 4 years, and District Council and local elections every 3 years.

If implemented, this schedule would result in elections in various combinations being held in 39 of the next 60 years, a prospect that appears unsustainable both politically and from the point of view of the resources available to the Afghan state. With this in mind, it seems clear that a constitutional amendment to address the issue will be necessary at some point in the future.

However, while the need for reform is clear, a constitutional amendment on the issue is unlikely in the near future, both because of the difficulty of achieving the necessary degree of consensus to satisfy the amendment criteria and the widespread perception that any movement to amend the constitution with regard to the election calendar would open the door to calls for other, more significant amendments.

Nevertheless, the IEC and its international partners must regard revision of the electoral calendar as a key long-term goal. The PESG has established 2010 as the target for amendment of the electoral calendar. If even that modest goal is to be met, the work of building consensus around the need for reform must begin as soon as possible.

4. Electoral Campaign Regulation

Under the Electoral Law, the IEC has broad authority to regulate the conduct of the electoral campaign. Pursuant to this authority, the JEMB issued a *Regulation on the*

Electoral Campaign during both the 2004 and 2005 elections, which established a campaign silence period during the 48 hours preceding the commencement of polling, as well as general rules governing rallies and other campaign events and the display of campaign posters and materials.

One point of concern relating to the electoral campaign concerns the use of public facilities and resources by or on behalf of the campaigns of political candidates. In the Afghan context, the potential for misuse of resources such as public buildings and vehicles is considerable, especially in rural areas where usable buildings and vehicles may be scarce. This concern is addressed in part by the Presidential Order of 6 June 2005 *on Non-interference by Governmental Officials in Electoral Affairs*. However, that Order deals with the problem only in the most general of terms. It also does not include any provision for enforcement. Finally, the Order makes no provision for the legitimate use of some public facilities, such as public squares and schools, in electoral campaigns.

The use of public resources during electoral campaigns is an important issue that requires more thorough regulation.

5. Electoral Complaints and Disputes

Amendments to the Electoral Law enacted in 2005 established an independent ECC with broad jurisdiction to hear complaints related to violations of the electoral law and the power to order remedial action, impose fines and disqualify electoral candidates.

While the introduction of the ECC was necessary and widely supported after the inadequate response to allegations of fraud during the 2004 elections, the performance of the ECC in its first election was somewhat disappointing. The ECC did not have a dedicated field structure to meet with complainants, investigate complaints or follow up on decisions. Instead it relied on the Provincial Election Commissions, which were made responsible for dealing with complaints in the first instance, and on the JEMB field structure. As a result, observer groups and others complained that the ECC was unresponsive and that decisions were often not issued until months after the initial complaint was filed. In other cases, the ability of the ECC to respond to complaints at all was limited by a lack of information.

In light of this outcome, some thought must be given to whether the robust independent ECC contemplated in the Electoral Law is viable. The resource level necessary for the ECC to put a credible complaint response mechanism on the ground throughout the country may be more than is sustainable, especially once donor support for elections begins to draw down.

As an alternative to the expansive ECC established in the current Electoral Law, it might make sense to redraw the mandate of the ECC to allow it to focus on a more manageable set of core responsibilities, including hearing appeals from decisions of the IEC and investigating allegations of serious electoral misconduct. This core ECC could be

complimented by a more robust internal complaints and anti-fraud mechanism within the IEC.

6. Electoral Districts

Under the Electoral Law, each province constitutes an electoral district for *Wolesi Jirga* and Provincial Council elections. In addition, the Electoral law establishes a single at large constituency for the election of 10 representatives of the *Kuchi* (nomad) population. While the creation of new provinces in recent years has created some controversy, the boundaries of the provinces are fairly well defined and their use as electoral districts seems sensible.

The situation is more complicated with respect to local Districts, each of which is required under the Constitution to elect a District Council. In many cases, District boundaries are disputed, and such disputes often involve ethnic or regional loyalties. Chapter III of the Electoral Law gives the Ministry of the Interior the responsibility to resolve such disputes. However, the law does not specify a date by which the Ministry must provide the IEC with the boundary data to be used in an election.

7. Campaign Contributions and Expenditures

Although the Electoral Law does not address the issue of campaign finances, the JEMB issued Regulations establishing limits on campaign spending and donations to candidates during both the 2004 and 2005 elections. The 2005 Regulation required candidates to keep records of donations and expenditures and to make such records available to the IEC upon request. However, no mechanism for policing the spending and contribution limits was put in place and the IEC never requested to see the financial records of any candidates.

Given the importance of campaign finance regulation, it would be preferable for the issue to be dealt with in the Electoral Law rather than an implementing Regulation. At the same time, care should be taken to tailor any system of financial regulation to the Afghan reality. In a country in which 80% of the population is illiterate and financial record keeping of any kind is uncommon, it may not be realistic to move quickly to introduce a strict system of financial controls and disclosure requirements.

8. Ballot Access and the “Commanders” Problem

Articles 14 and 15 of the Electoral Law establish the eligibility criteria for electoral candidates, including signature requirements and the payment of nomination deposits. Although the criteria set out in those articles are unhelpfully divided into “eligibility” and “requirements”, they are generally in keeping with international standards. However, one major concern relating to ballot access arises out of Article 15(3), which prohibits

“individuals who command or are members of unofficial military” groups standing as candidates.

In a society that has suffered through years of violent disorder and serious human rights abuses at the hands of warlords, the impulse to prohibit the “commanders”, as they are known, from participating in public life is understandable. Unfortunately, in the absence of some kind of formal transitional justice process, it is unclear how a person may be proven to be (or not to be) a commander. Neither the IEC nor the ECC is in a position to investigate and decide on the status of alleged commanders, especially given the potential hazards involved in such an exercise. And Afghanistan’s fragile criminal justice system certainly has no capacity to take on such a task.

Despite this lack of institutional capacity, the IEC, the government of Afghanistan and the international community faced considerable pressure from domestic and international sources to prevent the worst of the commanders from participating in the elections.

During the 2005 election, the issue was addressed by the *ad hoc* Joint Secretariat of the Disarmament and Reintegration Commission (JSDRC), which included representatives of UNAMA, the Government of Afghanistan and Coalition military forces. The JSDRC produced a list of would-be candidates that it judged to be members or commanders of illegal armed groups, which it provided to the ECC. The ECC then sent letters to these candidates, informing them of the JSDRC’s determination and inviting them to establish their eligibility, either by proving that they were not commanders or members of armed groups or by cooperating with the Disbandment of Illegal Armed Groups (DIAG) process. In the end, the majority of candidates identified by the JSDRC chose to cooperate with the DIAG, and only a handful of them were excluded from the ballot.

While this approach arguably represents the best possible response to a difficult problem, and one that has made a significant contribution to the disarmament process, it did put the ECC in the unfortunate position of implementing a political, as opposed to judicial, exclusion policy in the absence of a clear legal mandate to do so.

If a similar candidate vetting process is to be applied in future elections, the transparency and legitimacy of the process should be strengthened by addressing the matter openly through legislation. In particular, the Electoral Law, or another legislative instrument, should authorize the IEC to implement the decisions of the JSDRC or another competent authority with regard to the eligibility of alleged members or commanders of illegal armed groups to stand as candidates.

9. Replacement of Elected Members and the “Assassination Clause”

The replacement of members of the *Wolesi Jirga* and Provincial Councils is governed by Articles 21(4) and 29(2) of the Electoral Law, respectively. Under those articles, an elected member who is unable to take or continue to hold his or her seat is replaced by

the unelected candidate of the same gender who received the most votes in the relevant election. These provisions have been dubbed the “assassination clause” owing to the obvious incentive they create for losing candidates to assassinate winning candidates. The urgency of this problem was highlighted by the murder of a winning candidate in Laghman province shortly after the results of the certification of the results of the 2005 election

In an attempt to address the issue, in December 2005 the President issued a decree amending the Electoral Law to provide for by-elections when elected members die of unnatural causes. Unfortunately, the amendment does not specify who is to determine whether a candidate’s death was natural.

In any case, it is questionable whether by-elections are an appropriate means of filling vacancies under the SNTV system, which uses large multi-member electoral districts. In the case mentioned above, it is unlikely that the supporters of the deceased member, who received only 7.3% of the vote in the general election, would be decisive in a by-election. Instead the replacement is likely to be determined by the preference of the voters who elected the first or second most successful candidates in the general election. A by-election would be even less likely to elect a replacement whose views or allegiances were similar to those of a murdered candidate from an ethnic or religious minority.

It should also be noted that the cost of holding a by-election in large electoral districts would be much higher than a by-election in a single member district. Kabul province, for example, has well over 4 million residents, making any by-election in the province a major electoral operation.

However, while by-elections may not be a desirable means of filling vacancies, there does not seem to be any alternative under the SNTV system that respects the will of the voters while avoiding the perverse incentive mentioned above.

It may be that the only satisfactory solution to this problem is a succession rule based on criteria other than vote totals. One possibility might be to give another elected body the responsibility of selecting replacement members from among the unsuccessful candidates in the relevant election, taking into account the gender, religious and community support for the deceased candidate. Another option might be to simply let vacant seats lie empty until the next election.

10. Media Coverage of the Electoral Campaign

Mass media coverage of elections is regulated by Article 50 of the Electoral Law, which requires media to cover the election in a “fair and unbiased manner”, and in accordance with a Code of Conduct issued by the IEC.

Article 50 also imposes a particular obligation on state-run media to publish and disseminate the platforms, view and goals of candidates in a manner agreed with the IEC.

Unfortunately, Article 50 does not specify that state-media have an obligation to broadcast such information free of charge. In fact, during the 2005 elections, state-run media were paid to broadcast candidate advertisements as part of the sponsored advertising program. The JEMB also paid the state-run media to disseminate election-related public service announcements during both the 2004 and 2005 elections.

As the Afghan state assumes financial responsibility for elections, it may be desirable to establish more clearly the obligation of the state-run media to publish and broadcast election-related information as directed by the IEC free of charge.

Article 51 of the Electoral Law requires the IEC to establish a Media Commission to supervise media coverage in each election and to hear complaints regarding violations of the Mass Media Code of Conduct. However, the Electoral Law gives the Media Commission no power to sanction violators, leaving the Commission with no recourse but issuing critical public decisions and requesting violators to publish retractions and clarifications.

In spite of its weak mandate and lack of enforcement power, the Media Commission enjoyed considerable success in ensuring compliance with the Mass Media Code of Conduct during the 2005 election. As the Media Commission's final report⁴ makes clear, this success was due both to the generally cooperative attitude of the media and to the creation of a donor-funded sponsored advertisement program, which gave media organizations a financial incentive to comply with the rules.

The Media Commission's Final Report recommends that oversight of media coverage of elections be handed over to a permanent media regulator as soon as one capable of effectively playing the role is established. Until that time, the powers of the Media Commission should be strengthened to ensure that it is able to fulfill its mandate.

⁴ The English language version of the Final Report of the 2005 Media Commission can be found at http://www.jemb.org/pdf/JEMBS_LGL_MC_Final_Report_2005-11-18_Eng.pdf.

IV. RECOMMENDATIONS

1. The IEC should undertake a thorough review and revision of the Electoral Law, taking into account of the lessons learned during the first two elections. The revision should combine the Electoral Law, the Municipal Election Law and the various election-related Presidential Decrees into a comprehensive draft Electoral Code.
2. The IEC should initiate and lead a discussion of the key policy issues relating to the electoral framework involving relevant stakeholders, including the Government of Afghanistan, UNAMA and civil society. Outcomes of this discussion should be taken into account in preparing the draft Electoral Code. Issues to be discussed should include, but not be limited to:
 - a) the electoral system to be applied in assembly elections;
 - b) the structure of the IEC and its powers and responsibilities;
 - c) the system to be applied in municipal elections; and
 - d) mechanisms for dealing with electoral complaints and appeals.
3. The draft Electoral Code should include detailed provisions that strengthen the role and independence of the IEC based on the recommendations in Annex II of the PESG Report of September 27, 2005.
4. The draft Electoral Code should give the legislature a role in the appointment of IEC members, either by submitting a list of nominees to the President for appointment or by ratifying appointees proposed by the President.
5. The draft Electoral Code should expressly establish the IEC's power to regulate, administer and certify the results of Provincial and District Council elections to the *Meshrano Jirga*.
6. The Presidential Order *on Non-interference by Governmental Officials in Electoral Affairs* of 6 June 2005 should be repealed and more thorough provisions on the subject included in the draft Electoral Code. Such provisions should include a ban on the use of any public resources or facilities in support of or against any candidate, except on an equitable basis.
7. If the SNTV system is retained, the provisions in the Electoral Law relating to the replacement of members should be amended. The following approach should be considered as an alternative:
 - a) Replacement *Wolesi Jirga* members should be chosen by the Provincial Council representing the province from which the outgoing member was elected from among the ten unelected candidates who received the most votes in the previous election; and

- b) Provincial Council seats that become vacant because of the elevation of a member to the *Meshrano Jirga* should be filled by the unelected candidate of the same gender with the most votes in the previous election. Provincial Council seats that become vacant for any other reason should be left vacant.
8. The IEC and its international partners should work to raise awareness and foster discussion of the electoral calendar problem and the need for a constitutional amendment to resolve it.
9. The draft Electoral Code should expressly empower the IEC to establish campaign spending and contribution limits, and to require financial record keeping and disclosure from candidates.
10. The issue of candidates with dual citizenship caused considerable confusion during the 2005 elections. The draft Electoral Code should specify that Afghan citizens who have acquired a second citizenship are permitted to stand for election to any assembly in Afghanistan.
11. During the 2005 election, the JEMB issued a Regulation establishing procedures for the resolution of ties by means of a lottery. An issue of such importance should be addressed in the draft Electoral Code rather than a Regulation.
12. The following specific amendments should be made to provisions of the existing Electoral Law:
- a) Article 10 should specify which IEC employees qualify as “Electoral Officials” for the purpose of the recruitment restriction in that Article;
 - b) Article 12 should specify that the Ministry of the Interior will provide the IEC with the boundary data to be used in establishing constituencies for an election a specified number of days before the election and that such data will be used, regardless of subsequent changes, in the election;
 - c) Article 14 should include a separate provision establishing the eligibility criteria for candidates in Provincial Council, District Council and local elections. The current Article 14 mistakenly refers to the criteria set out in the Constitution, which apply only to National Assembly candidates;
 - d) Article 15 should be amended to give judges and public prosecutors the opportunity to return to their jobs within a certain period of time after an election if they are not elected. The current law acts as a powerful disincentive to such people becoming candidates;

- e) Article 24 should specify a 2/3 quorum for Provincial Council *Meshrano Jirga* elections (following the corresponding provision for District Councils in Article 25(3));
- f) Article 34, which requires the display of the voters list 30 days prior to an election, should be amended to take into account the fact that IEC is not currently using a voters list. At present the IEC uses voter registration cards to establish eligibility to vote, rather than the list of registered voters, which is unacceptably flawed. Display of this flawed list of voters would serve no purpose and would likely confuse voters and candidates. Under these circumstances, display of the list should be optional until a reliable list is developed;
- g) Article 38(1) should be amended to clarify that the silence period starts 48 hours prior to the commencement of polling and continues throughout Election Day until the last polling centre closes;
- h) Articles 50 should be amended to describe in more detail the responsibilities of print and broadcast media, including state run media, with regard to election coverage. The obligation of state-run media to disseminate election-related public service announcements free of charge should be made explicit;
- i) Article 51 should be amended to give the Media Commission the ability to impose modest fines and require organizations to print retractions or corrections; and
- j) Articles 39, 40, 41, 43, and 47 govern a number of technical or operational details relating to the conduct of elections. These Articles should be deleted to simplify the Electoral Law and give the IEC the flexibility to change its approach to these issues when necessary by Regulation, rather than having to amend the Law itself.