



# **2010 Electoral Law of Afghanistan**

**Issued under Article 79 of the Constitution of Afghanistan**

**Unofficial Translation prepared by Democracy International, Inc.**

# Electoral Law of Afghanistan

## Issued under Article 79 of the Constitution of Afghanistan

### Introduction

1. On February 13<sup>th</sup> 2010, the new Electoral Law was adopted by Decision (45) of the Council of Ministers of the Islamic Republic of Afghanistan (this Electoral Law presents many changes from the 2005 electoral law).
2. On February 17<sup>1</sup>, Hamid Karzai, President of the Islamic Republic of Afghanistan, promulgated the Electoral Law by Decree (43) (with some changes in articles from the February 13<sup>th</sup> version).
3. After presenting the Decree (43) to the Wolesi Jirga (the lower house of the National Assembly) from the Minister of Justice and Minister of State for Parliamentary Affairs, it was rejected by the Wolesi Jirga on March 31<sup>st</sup> 2010 by a majority of votes.
4. On March 1<sup>st</sup>, 2010 the Electoral Law was enacted and published in the Official Gazette (1012) by the Ministry of Justice of the Islamic Republic of Afghanistan (With some additional changes in the text).
5. The unofficial translation of the law presented below corresponds to the latest version published in the Official Gazette (1012).

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<sup>1</sup> On February 17, with Afghanistan's National Assembly in recess, President Hamid Karzai issued an Article 79 presidential decree amending the Electoral Law of Afghanistan. According to Article 79, in the event of an emergency, the President of Afghanistan is permitted to issue decrees amending laws. It also affords the National Assembly the opportunity to reject these decrees. Afghanistan's lower house of the National Assembly, the Wolesi Jirga, took just that action in a near unanimous vote rejecting the Electoral Law. In order for Article 79 decrees to be nullified, however, both houses of parliament must reject them. Afghanistan's upper house, the Meshrano Jirga, has thus far chosen not to take action on the Electoral Law decree. The Wolesi Jirga has since formed a committee to work with President Karzai's office, and conceivably the Independent Election Commission, to address some of their concerns with the new law. It is now widely acknowledged that the 2010 Electoral Law decree forms the framework by which Wolesi Jirga elections will be held on September 18, 2010.

**Official Gazette, issue No. 1012, published on 10 Hoot (12) 1388/1<sup>st</sup> March 2010**

# **Ministry of Justice**

## **OFFICIAL GAZETTE**

### **Electoral Law**

**Date: 1<sup>st</sup> March, 2010**

This unofficial translation has been prepared by Democracy International, Inc.  
The Dari language version is the authoritative version of the Electoral Law.

## **Decree**

### **President of Islamic Republic of Afghanistan Promulgation of the Electoral Law**

**No:** 43

**Date:** Feb.17-2010

**Article 1:**

I hereby promulgate the Electoral Law, which is adopted by Decision (45) dated Feb. 13, 2010 of the Council of Ministers of the Islamic Republic of Afghanistan.

**Article 2:**

The Minister of Justice and Minister of State for Parliamentary Affairs, within 30 days from the date of the first sitting of the National Assembly, shall submit this Decree to the National Assembly.

**Article 3:**

This Decree shall be enacted and published in the Official Gazette.

**Hamid Karzai**

**President of Islamic Republic of Afghanistan**

# Islamic Republic of Afghanistan

## Electoral Law

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**In the Name of Allah, the Most Gracious, the Most Merciful**

# Electoral Law

## Chapter I General Provisions

### Article 1

#### Basis

This Law has been codified pursuant to the provisions of Article 33 of the Constitution of Afghanistan for the purpose of regulating electoral affairs in the country.

### Article 2

#### Terminology

Below are concepts and terms used in this law:

1. **Constituency:** The group of people that can vote or be elected belonging to an officially determined area.
2. **Agents:** Persons who are accredited by the Independent Election Commission on behalf of political parties and independent candidates for the purpose of monitoring the elections.
3. **Observers/Monitors:** National and international persons who are accredited by the Independent Election Commission for the purpose of observing elections.
4. **Electoral Campaign:** Endeavor of the Independent candidates or political parties to attract more attention and more voters' votes.
5. **Preliminary Results:** Initial election results, which are often announced by the Independent Election Commission after completion of the vote count and prior to the announcement of the final results.
6. **Final Results:** The final outcome of an election certified by the Independent Election Commission after adjudication of complaints by the Electoral Complaints Commission.
7. **Counting Center:** A location in which voting has taken place and ballots are counted.
8. **Preliminary List of Candidates:** Initial registration of candidates, which are posted in specific locations.
9. **Final List of Candidates:** Registration of candidates, which are certified and published by the Independent Election Commission after adjudication of challenges by the Electoral Complaints Commission.
10. **Quarantine:** Temporary exclusion of ballot boxes from the counting process.
11. **Credential:** An official written document provided by the Independent Election Commission to observers, candidate's agents and media agents, which allows them to observe the election process and report.

**Article 3**  
**Elections Method**

Elections will take place through free, secret, universal and direct ballot.

**Article 4**  
**Equality of Right to Vote**

- (1) Entitled Voters, both female and male, shall have equal rights of participation in the elections.
- (2) Each voter shall have one vote in the elections and shall vote in person and with no proxy.

**Article 5**  
**Respect for the Principle of Free Will**

Voters and candidates shall take part in the elections on the basis of their free will. Imposition of any kind of direct or indirect restriction on voters or candidates on the basis of language, religion, ethnicity, gender, tribal, region, or social and functional status is prohibited.

**Article 6**  
**Cooperation from Institutions and Individuals**

Governmental and non-governmental institutions, political parties, social organizations, civil society and relevant individuals shall cooperate with the Independent Election Commission (IEC), Provincial Electoral Complaints Commissions (PECC), Electoral Complaints Commission (ECC) and other commissions established pursuant to the provisions of this law and shall implement the decisions made by these bodies within the scope of their respective jurisdictions.

**Article 7**  
**Non- Interference of Governmental Officials in Electoral Affairs**

Officials and staff of the Governmental departments and local influential individuals must not directly or indirectly intervene in electoral affairs. Use of any governmental resources, facilities and properties in favour or against a candidate or candidates is not permitted. However, the provisions of this law do not apply to an equitable access of all candidates to governmental and public resources.

**Article 8**  
**Abbreviation Name**

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

## **Chapter II Constituencies**

### **Article 9**

#### **Definition of Constituencies**

For the purpose of presidential, lower house of parliament (Wolesi Jirga), provincial council, district council, village council, municipalities and municipality council elections, constituencies shall be defined as follows:

1. For presidential elections, the whole of the country shall be one single constituency.
2. For Wolesi Jirga elections, each province shall be one constituency and for Nomads, the whole of the country shall be one single constituency.
3. For provincial council elections, each province shall be one constituency of the related province.
4. For district council elections, each district shall be one constituency of the related district.
5. For village council elections, each village shall be one constituency of the related village.
6. For Municipality elections, the whole of the city shall be one constituency.
7. For seats of municipalities' council elections, each [urban] district shall be one constituency.

### **Article 10**

#### **Disputes over Constituency Boundaries**

(1) Whenever disputes over dependency of a village to a district or of a town to a district or city occur, the issue shall be referred by the Commission to the Independent Directorate of Local Governance (IDLG) for a decision.

(2) Disputes listed in paragraph (1) of this Article shall be audited whenever raised (170) days prior to the elections date.

## **Chapter III Voters and Candidates**

### **Article 11**

#### **Electors Eligibility**

A person is entitled to vote in the elections if that person:

1. Is at least 18 years of age on the day of the vote;
2. Has Afghan citizenship;
3. Has not been deprived of his/her civil rights by a court's decision;
4. Is registered on a registration list as a voter by the Commission;

## **Article 12**

### **Candidate Eligibility**

(1) Individuals with the following qualifications can register as candidates for presidential elections:

- a. Shall be a citizen of Afghanistan, Muslim, born of Afghan parents and shall not be a citizen of another country;
- b. Shall not be less than forty years old on the day of candidacy;
- c. Shall not have been convicted of crimes against humanity, a criminal act, or have not been deprived of his/her civil rights by a court.

(2) Individuals with the following qualifications can register as a candidate for the National Assembly elections:

- a. Shall be a citizen of Afghanistan or shall have obtained citizenship of the State of Afghanistan at least ten years prior to registration as a candidate or appointment;
- b. Shall not have been convicted of crimes against humanity, a criminal act, or deprived of his/her civil rights by a court;
- c. Shall be at least twenty-five years of age on the day of registration as a candidate for the Wolesi Jirga (National Assembly), and thirty-five years on the day of registration as a candidate for the Meshrano Jirga (Senate);
- d. Shall have his/her name registered on the voters' registration list by the Commission.

(3) Individuals with the following qualifications can register as a candidate for provincial council and district council elections:

- a. Shall have the qualifications listed in items 2, 3 and 4 of Article 11 of this law;
- b. Is at least twenty-five years of age on day of candidacy;
- c. Shall have at least a high school degree (12<sup>th</sup> grade);
- d. Shall have a good reputation.

(4) Individuals with the following qualifications can register as a candidate for village council elections:

- a. Shall have the qualifications listed in items 2, 3 and 4 of Article 11 of this law;
- b. Shall be at least twenty-five years of age on the day of registration as a candidate;
- c. Shall be able to read and write;
- d. Shall have a good reputation.

(5) Individuals with the following qualifications can register as a candidate for mayor in the capital of provinces:

- a. Shall have the qualifications listed in items 2, 3 and 4 of Article 11 of this law;
- b. Shall be at least thirty years of age on day of registration as a candidate;

- c. Shall have at least a High School degree (12<sup>th</sup> grade);
- d. Shall have lived for not less than five years before the day of candidacy, in the city which he or she runs for election;
- e. Shall have a good reputation.

(6) Individuals who meets the qualifications listed in items (a), (b), (d) and (e) of paragraph (5) of this Article and have also graduated High School (12th grade) can register as a candidate for mayor of a district outside the capital of the province or municipal councils.

(7) Individuals who command or are members of military organizations or armed groups (unofficial military forces) cannot register as candidates to run for elections. Whether individuals meet these criteria will be investigated and confirmed by a separate commission under the presidency of the Commission, and composed of representatives of the Ministry of Defense, Ministry of Interior Affairs, and General Directorate for National Security.

### **Article 13**

#### **Disfranchisement from Candidacy**

(1) The following individuals, unless they have resigned from their positions, cannot run for elections for the posts stipulated in Article 12 of this law:

- a. Chief Justice, Members of the Supreme Court and Judges;
- b. Attorney General and Public Prosecutors;
- c. Ministers, Advisors of Ministers, Advisors of the Presidential Office, General Independent Directors, Director and Members of Independent Commissions, Deputies and Advisors of Ministries, Governors and their Deputies, District Administrators and Political Delegations of the Islamic Republic of Afghanistan in other countries;
- d. Military members of Ministries of Defense, Interior Affairs, General Directorate for National Security and other Ministries that have military organizations;
- e. Civil servants;
- f. Temporary or permanent officials of the Independent Election Commission;

(2) If the individuals listed in paragraph (1) of this Article are not elected, they shall not have the right to return to their previous positions unless re-appointed in accordance with the provision of the law.

(3) If an elected official wants to become a candidate representing another constituency he/she shall resign from their current post.

(4) No person shall register as a candidate in more than one constituency or more than one seat at the same time.

### **Article 14**

#### **Voting Sites**

(1) The voters shall vote in the constituency where he/she has been registered.

(2) The Commission, to the extent possible, shall provide special voting facilities for nomads, refugees, internally displaced people, disabled people, military members of the armed forces and Ministry of Interior, the General Directorate for National Security and all Ministries and administrations with military structures, civil servants, electoral officials and prisoners who have not been deprived of civil rights.

#### **Article 15**

##### **Voter Identification**

In order to obtain a ballot paper, the voter is required to prove his/her identity by showing their voter registration cards or the document provided by the Commission for this purpose.

#### **Article 16**

##### **Form and Number of Ballot Papers**

The Commission shall specify the form and number of ballot papers.

### **Chapter IV Presidential Elections**

#### **Article 17**

##### **Election of President**

(1) The President is elected by obtaining more than fifty percent of votes cast by voters through free, universal, secret and direct elections.

(2) If none of the candidates obtains more than 50 percent of the votes cast in the first round, a runoff election shall be held within two weeks from the date of the announcement of the final results of the first round of the elections. In the second round, only the two candidates who obtained the most votes in the first round will participate. In case of equality of votes amongst more than two candidates, those two candidates who fulfill the highest qualifications shall be selected as candidates for the runoff by a committee composed of two members of the Supreme Court, two members of the Commission under chairmanship of the Chief Justice, within (48) hours.

In the runoff election, the candidate who receives the majority of votes shall be recognized as the president. If the two candidates receive equal votes in the second round of the election, within (48) hours the candidate who fulfills the highest qualifications shall be selected as winner of the elections by a committee composed of two members of the Supreme Court and two members of the Commission under the chairmanship of the Chief Justice.

(3) If a presidential candidate dies during the first or second round of the elections, or after polling and prior to the announcement of election results, the election shall be held again in accordance with the provisions of this law.

(4) If one of the candidates during the second round of the elections does not participate or boycotts the elections, the other candidate, in accordance with the provisions of this law, shall be declared as the winner.

#### **Article 18**

##### **Commencement of the Work of the President**

The elected president commences his/her mandate thirty days after the announcement of the election result.

### **Chapter V Wolesi Jirga Elections**

#### **Article 19**

##### **Number of Seats for Wolesi Jirga**

The Wolesi Jirga shall have 249 seats. Of the allocated seats, 10 seats are reserved for nomads, and 239 seats are allocated for the provinces in proportion to population. On average, out of the total number of seats in each province at least two female members shall be elected to the Wolesi Jirga.

#### **Article 20**

##### **Allocation of Seats**

- (1) The commission shall allocate (239) seats to the provinces in the following manner:
  - a. The total population of the provinces is divided by the total number of seats to be allocated to the provinces (239) to determine the seat allocation quota;
  - b. The population of each province is divided by the seat allocation quota to determine the seats for each province;
  - c. Each province is allocated a number of seats equal to the whole number from the division under item (b);
  - d. Seats not allocated under (c) of this paragraph are allocated in declining order of the decimal remainder from the division in (b);
  - e. If as a result of this calculation one or more provinces receive fewer than two seats, they shall be allocated two seats;
  - f. The total number of seats and population figures of provinces allocated additional seats under (e) of this paragraph is excluded from the total number of seats (239) and the total population figures of provinces. For the remaining provinces a new seat allocation quota is calculated and the allocation of seats to these provinces is repeated as in (b) through (f).
- (2) The Commission shall publish the calculations used in the allocation of seats under this article.

## **Article 21**

### **Confirmation of the Population of the Country**

(1) The Central Statistics Office shall provide at a time specified by the Commission, the latest official population figures of each province to the Commission.

## **Article 22**

### **Awarding of Provincial Seats**

(1) In each province, seats shall be awarded to the candidates who receive the most votes. The allocated seats for women are exempted from this provision.

(2) If two candidates receive the same number of votes, a committee composed of one member from the Supreme Court, as a chairperson, and two members from the Commission shall determine the winning candidate within a maximum period of 15 days taking into consideration the superiority of the eligibility criteria.

(3) If an elected candidate is not able to take up his/her seat, abandons for some reason, dies, resigns, is dismissed from his/her seat, suffers a disability, or becomes affected during the term of the Wolesi Jirga in a manner that prevents him/her from permanently performing his/her duty, the seat shall, according to the prepared list of the Commission, be given to the candidate with the next highest vote total of the same gender for the remaining period if the term of the Wolesi Jirga lasts at least one more year. If a candidate of the same gender does not exist, the candidate that has the next highest vote total, regardless of gender, shall be awarded the vacant seat.

(4) If an elected nomad candidate is not able to take up his/her seat, abandons for some reason, dies, resigns, is dismissed from his/her seat, suffers a disability, or becomes affected during the term of the Wolesi Jirga in a manner that prevents him/her from permanently performing his/her duty, the seat shall, according to the prepared list of the Commission, be given to the candidate with the next highest vote total of the same gender for the remaining period if the term of the Wolesi Jirga lasts at least one more year. If a candidate of the same gender does not exist, the candidate that has the next highest vote total, regardless of gender, shall be awarded the vacant seat.

## **Article 23**

### **Allocation of Seats to Female Candidates**

(1) In order to determine the minimum number of female candidates to represent each province, the Commission shall develop procedures and formulae, based on the population of each province, to determine the number of female candidates to represent each province in accordance with the requirements of Article 83 of the Constitution of Afghanistan, according to which the number of female representatives shall be at least twice the number of existing provinces of the country.

(2) The candidates who receive the most votes in each constituency shall be awarded seats in accordance with paragraph (1) of this article. Once the representation requirements are met, the remaining seats shall be awarded according to Article 20 of this Law.

(3) If there are not enough female candidates on the list to fill the seat(s) allocated to women in a particular constituency, the Commission, in accordance with procedures stipulated in paragraph (1), will adopt specific measures to prevent allocated seats to women (from the same gender) from remaining empty.

## **Chapter VI**

### **Meshrano Jirga (Upper House of Parliament)**

#### **Article 24**

##### **Composition of Meshrano Jirga**

The number of members of the Meshrano Jirga shall be thrice the number of the provinces of the country. One third of these shall be elected from and by the provincial councils, for a four-year term, one third shall be elected from and by the district councils, for a three-year term and one third shall be appointed by the President from amongst experts and personalities, according to the provisions of this law for a five-year term.

#### **Article 25**

##### **Election of Provincial Council Representatives**

(1) Within 15 days of its establishment, in accordance with the provisions of this law, each provincial council shall elect one of its members as a member of the Meshrano Jirga.

(2) Elections to the Meshrano Jirga shall be chaired by the chairperson of the provincial council. If the chairperson of the provincial council is a candidate, the vice chairperson shall preside over the elections. If the vice chairperson is also a candidate, the eldest member of the council who is not a candidate shall preside over the elections.

(3) The quorum for holding elections stipulated on paragraph (2) of this Article requires the presence of at least two thirds of the members of the provincial council. If a candidate receives more than half of the votes from the present members, he/she shall be recognized as a member of the Meshrano Jirga. If no candidate receives more than half of the votes, a second round of elections shall be held between the two candidates who receive the most votes, after which, the candidate receiving the most votes shall be declared as the winning candidate.

(4) If two candidates received equal votes, a committee composed of one member of the Supreme Court as a chairperson, two members of the Commission, taking into consideration the superiority of fulfilling the criteria, shall determine the winning candidate within 20 days.

(5) If the elected candidate is not able to take up his/her seat, abandons for some reason, dies, resigns, is dismissed from his/her seat, suffers a disability, or becomes affected during the term of the Provincial Council in a manner which prevents him/her from permanently performing his/her duties, the related Provincial Council will elect another person from its members, in accordance with the provisions of this law, if the period of the mentioned council remains in effect for at least one more year.

## **Article 26**

### **Elections of Representatives of the District Council of the Provinces**

(1) Within 5 days from the establishment of the District Councils, the Commission shall provide each Provincial Council with a list of the persons elected to the District Councils in its respective province, in order to elect from all members of District Councils one of their members to the Meshrano Jirga.

(2) The Chairperson of the Provincial Council is responsible for convening the members of the District Councils in the province for elections within 15 days of the establishment of the respective District Councils at a venue which is as accessible as possible for all members of the District Councils in the province.

(3) The quorum for holding elections shall require the presence of at least two thirds of the members of the District Councils. If a candidate receives more than half of the present members' votes, he/she shall be recognized as the elected member of the aforementioned council in the Meshrano Jirga. In case none of the candidates receive more than half of the votes, a run-off election must be conducted between the two candidates who received the most votes. In such case, the candidate who receives the majority of votes in this round shall be recognized as a member of the Meshrano Jirga.

(4) If two candidates receive equal votes, a committee composed of one member of the Supreme Court (as a chairperson) and two members of the Commission as members, taking into consideration superiority of fulfilling the criteria stipulated for the candidates, shall determine the winning candidate within 20 days.

(5) If the elected candidate is not able to take, or abandons, dies, resigns or dismisses his/her seat, or suffers a disability which prevents him/her from permanently performing his/her duty, the related District Council will elect another person from its members if the mandate of the mentioned council remains in effect for at least one more year in accordance with the provisions of this law.

## **Chapter VII**

### **Elections of the Provincial Council Members**

#### **Article 27**

##### **Provincial Councils**

There shall be a provincial council in every province elected through free, secret, universal, and direct elections by the voters of the same province.

#### **Article 28**

##### **Allocation of Seats for Provincial Councils**

(1) Seats of the Provincial Council shall be allocated on the basis of the population of each province in the following manner:

- a. Provinces with less than 500,000 inhabitants: 9 members;
- b. Provinces with more than 500,000 - 1,000,000 inhabitants: 15 members;
- c. Provinces with more than 1,000,000 - 2,000,000 inhabitants: 19 members;
- d. Provinces with more than 2,000,000 - 3,000,000 inhabitants: 23 members; and
- e. Provinces with more than 3,000,000 inhabitants: 29 members.

(2) In the provinces where nomad movements take place, depending on their population, a certain number of seats shall be allocated to nomads in the Provincial Councils.

#### **Article 29**

##### **Provincial Council Membership**

(1) The candidates that receive the most votes in their respective provinces shall be recognized as members of the Provincial Council;

(2) At least one quarter of seats in each Provincial Council shall be allocated to female candidates. In the first place, one quarter of seats in each provincial council shall be allocated to women candidates of each province who receive the most votes. The remaining seats shall be allocated in accordance with clause (1) of this Article.

(3) If candidates receive equal numbers of votes, the winning candidate shall be selected within 20 days by a Committee composed of the head of the Appeals Court in the respective province (as chairperson), the responsible person of the provincial commission and a representative of the Independent Human Rights Commission of Afghanistan as members, taking into consideration the superiority of eligibility criteria.

(4) In accordance with the provisions of Article 25 of this law, if an elected candidate is selected as member of the Meshrano Jirga or abandons, dies, resigns, dismisses his/her seat, or suffers a disability which prevents him/her from permanently performing his/her duty, the seat shall be awarded to the candidate of the same gender who has received the next highest vote total according to the prepared list of the Commission, if the term of the mentioned council remains in

effect for at least one more year. If a candidate of same gender does not exist, the candidate with the next highest vote total, regardless of gender shall be given the vacant seat.

(5) If there are not enough women on the candidate list to fill the seats allocated to women in accordance with this article's provisions, the Commission shall take measures to prevent the seats allocated to women from remaining vacant.

## **Chapter VIII**

### **Elections of the District Council Members**

#### **Article 30**

##### **District Council**

Each district shall have a council and its members shall be elected through free, universal, secret and direct election by the voters of the same district.

#### **Article 31**

##### **Allocation of Seats to District Councils**

(1) District Council seats shall be allocated proportionally considering the population of each district in the following manner:

- a. Districts with less than 20,000 inhabitants: 5 members;
- b. Districts with more than 20,000 - 40,000 inhabitants: 7 members;
- c. Districts with more than 40,000 - 60,000 inhabitants: 9 members;
- d. Districts with more than 60,000 - 80,000 inhabitants: 11 members;
- e. Districts with more than 80,000 - 100,000 inhabitants: 13 members;
- f. Districts with more than 100,000 inhabitants: 15 members.

(2) In the districts where nomad movements take place, depending on their population a specified number of seats in the same district council shall be allocated to nomads.

#### **Article 32**

##### **District Councils Membership**

(1) The candidates who receive the most votes in their constituency district shall be recognized as members of the respective District Council.

(2) If candidates receive equal numbers of votes, the winning candidate shall be elected within (20) days by a committee composed of the Head of the Appeals Court of the respective province (as chairperson), a representative of the provincial election commission, and a representative of the Independent Human Rights Commission of Afghanistan as members, taking into consideration the superiority of eligibility criteria.

(3) According to the provisions in Article 26 of this Law, if an elected candidate is selected as member of the Meshrano Jirga or is not able to occupy the seat, or abandons, dies, resigns, is

dismissed from his/her seat, or suffers a disability which prevents him/her from permanently performing his/her duty, in the district council, the seat shall be awarded to the next candidate of the same gender (male or female) who received the most votes provided that the mandate of the mentioned council remains in effect for at least one more year.

If a candidate of the same gender does not exist, the seat shall be awarded to the candidate with the most votes on the list, irrespective of gender.

## **Chapter IX**

### **Election of Village Council Members**

#### **Article 33**

##### **Village council**

Each village has a Council, whose members shall be elected by voters of the same village through free, universal, secret and direct ballot.

#### **Article 34**

##### **Allocation of Seat to Village Councils**

(1) The number of seats in the Village Council shall be allocated proportionally considering the population of each village in the following manner:

- a. Village with 100 - 300 inhabitants: (3) members;
- b. Village with more than 300 - 500 inhabitants: (5) members;
- c. Village with more than 500 - 700 inhabitants: (7) members;
- d. Village with more than 700 - 1000 inhabitants: (9) members;
- e. Village with more than 1000 inhabitants: (11) members.

(2) In the villages where nomad movements take place, depending on their population a specified number of seats shall be allocated to them in the village council of the same village.

#### **Article 35**

##### **Village Council Membership**

(1) The candidates who receive the most votes in the village council elections shall be recognized members of the respective village council. If two candidates receive an equal number of votes, the entitled person shall be elected within (48) hours by a committee composed of the Head of the Primary Court of the respective district (as chairperson), the responsible person of the provincial election commission, and a representative of the Independent Human Rights Commission of Afghanistan as members, taking into account the superiority of eligibility criteria.

If an elected candidate is unable to take up his/her seat or abandons, dies, resigns, is dismissed from his/her seat, or suffers a disability which prevents him/her from permanently performing his/her duty, the seat shall be awarded to the candidate with the next highest vote total, according

to the prepared list of the Commission, if the tenure of the mentioned council remains at least for one year.

## **Chapter X Mayoral Elections**

### **Article 36**

#### **Mayoral Election System**

(1) One Mayor shall be elected for each municipality. The Mayor is elected for a term of 4 years through free, universal, secret and direct elections by obtaining more than 50% of votes cast by voters of the same city.

(2) In the event that none of the candidates obtain a majority of more than 50 percent of the votes in the first round, a runoff shall be held within two weeks after the announcement of election results and in this round only the two candidates who acquired the most votes in the first round shall participate. In the second round, the candidate who obtained the most votes shall be announced as the winner.

(3) If candidates of Kabul municipality receive equal number of votes in the first round of the election, a committee composed of one member of the Supreme Court (as chairperson), and two members of the Commission as members, taking into consideration the superiority of eligibility criteria, shall elect two candidates for the second round within (48) hours.

(4) If two candidates receive the same number of votes in the second round for the post of Kabul mayor, the winning candidate shall be chosen within (48) hours by a committee composed of one member of the Supreme Court (as chairperson) and two members of the Commission as members taking into consideration the superiority of the eligibility criteria.

The candidate who receives the majority of votes in the runoff election shall be declared the winner of the election.

(5) If more than two candidates in provincial capitals, districts or other municipalities receive equal numbers of votes which represent the majority in the first round, a committee composed of the head of the Appeals Court (as chairperson), the responsible person of the provincial election commission and a representative of the Afghan Independent Human Rights Commission as members shall assign within (48) hours the two candidates taking into consideration the superiority of the eligibility criteria.

(6) If more than two candidates of the municipality of provincial capitals, districts or other cities receive equal votes in the second round, a committee composed of the head of the Appeals Court of the respective province (as chairperson), the responsible person of the provincial election commission and a representative of the Afghan Independent Human Rights Commission as members shall elect the winning candidate within (48) hours taking into account the highest

qualification. The candidate who receives the majority of votes in the runoff elections shall be declared the winner of the elections.

(7) The elected candidate shall assume his/her duties within 10 days after the announcement of the election results.

(8) No one can be elected as a Mayor of a city for more than two successive terms.

### **Article 37**

#### **Appointment of New Mayor**

(1) Whenever the elected mayor of Kabul city is not able to take up his/her seat or for any reason, or he/she abandons, dies, resigns or dismisses the responsibilities of his/seat, suffers a disability during the term of the mayoralty which permanently prevents him/her from performing his/her duty, a committee composed of one member of the Supreme Court (as chairperson) and two members of the Commission shall select the candidate who received the most votes on the candidates list for the remainder of the term.

(2) Whenever the elected mayor of the capital, other provinces or districts, and cities is not able to occupy his/her seat or for any reason leaves, dies, resigns, is dismissed from the municipality, or is disabled in a way which hampers him/her from performing his/her duty during the tenure of the mayoralty, a committee consisting of the head of the Appeals Court of the related province (as chairperson), the provincial representative of the Commission and a representative of the Afghanistan Independent Human Rights Commission, shall select the candidate who acquired the second largest number of votes after the elected mayor from the candidates to serve the rest of the term as a new mayor. In case there is no candidate in the candidates' list or because of absence or disagreement of the entitled candidate, a new election shall be held according to the provisions of this law.

## **Chapter XI Municipal Council Elections**

### **Article 38**

#### **Municipal Councils**

A municipality, as defined by the Independent Directorate of Local Governance (IDLG), has a council whose members are elected in a free, universal, secret and direct election by eligible voters of the relevant municipality for a duration of four years.

### **Article 39**

#### **Number of seats**

(1) A municipal council has at least 3 seats.

(2) Where a municipality is divided across two districts by the Independent Directorate of Local Governance (IDLG), each district is a constituency for elections of each one of its seats. For the third seat the whole city is one constituency.

(3) For a municipal council which has more than two districts, one individual shall be elected from each.

(4) For a municipality which is not divided into districts, its council has 3 to 5 seats in general, taking into consideration the population and civil services.

(5) The number of seats assigned to the municipal council by the commission shall be based on the information provided by the Independent Directorate of the Local Governance.

(6) Taking into consideration the number of districts, the number of seats for Kabul municipality Council shall be assigned by the Commission based on the information provided by Kabul Municipality.

#### **Article 40**

##### **Allocation of Seats**

(1) For a municipality, which is divided into districts, each district is accepted as a constituency and from each of them one member shall be elected to the municipal council. Eligible registered voters who live in the same district have the right to vote in the same constituency.

(2) For a municipality which is not divided into districts, the whole boundaries of the municipality shall be considered as one constituency. Eligible registered voters of the same municipality have the right to vote in the same constituency.

(3) For the election of members of the municipal council, the candidate who obtains the most votes shall be recognized as the winner. If two candidates receive an equal number of votes, a committee composed of the head of the Appeals Court of the related province (as chairperson), a provincial representative of the commission, and a representative of the Afghan Independent Human Rights Commission shall elect within (48) hours the deserving person taking into consideration the superiority of eligibility criteria.

(4) If the elected candidate is not able to take his seat, or abandons the seat for some reason, dies, resigns, is dismissed from his/her seat, or suffers a disability during the term of the municipal council which prevents him/her from permanently performing his/her duties, a committee consisting of the head of the Appeals Court of the related province (as chairperson), a provincial representative of the election commission, and a representative of the Afghan Independent Human Rights Commission, shall select the candidate from the candidate list who acquired the next largest number of votes after the elected members to serve the rest of the term as a new member.

## **Chapter XII Elections**

### **Article 41**

#### **Election Date**

- (1) The Commission shall announce the election date at least (140) days before the election.
- (2) The Commission shall clearly publish the date of elections at least (120) days prior to the date planned for elections.

### **Article 42**

#### **List of the Voters**

The commission will certify the list of voters who can participate in elections and will provide it to the public for consideration in specified stations within (15) days prior to commencement of elections.

### **Article 43**

#### **Candidacy Application**

- (1) Individuals who want to nominate themselves for the electoral posts described in this law have to present their candidacy applications within the timeframe specified by the commission.
- (2) Candidacy applications shall include the following items:
  - a. Name and clear address of the person;
  - b. Certified educational documents in accordance with the provisions of this law;
  - c. Information regarding conviction, age, fixed and liquid capital and other conditions mentioned in this law;
  - d. Voter registration card or other document that can be certified by the Commission;
  - e. The name of people, their registration card numbers, or other documents that could be certified by the Commission and signatures or thumbprints of persons residing in the constituency supporting the candidate's appearance (nomination) on the ballot are as follows:
    - i. 100,000 persons to nominate presidential candidates, at least two percent of people from a minimum of 18 provinces.
    - ii. 1,000 persons to nominate Wolesi Jirga candidates .
    - iii. 1,000 persons to nominate nomads as Wolesi Jirga candidates 1000.
    - iv. 200-600 persons to nominate Provincial Council Candidates, depending on the population of the province.
    - v. 100-300 persons to nominate District Council Candidates, depending on the population of the district.
    - vi. 20 persons to nominate Village Council candidates.
    - vii. 300-2000 persons to nominate Municipality candidates, depending on the population of cities and the requirements of civil services.

- 100-250 persons to nominate Municipal Council candidates, depending on the population.
- f. Official declaration and certification of the conditions mentioned in paragraph (7) of Article 12 and paragraphs (1, 3) of Article 13 of this Law.
- g. In case the candidate has been fined by ECC in previous elections, he/she should present the document that proves payment.

(3) The presidential candidates should present the names of both vice-presidents simultaneously with their nomination to the commission.

(4) The candidates have to deposit money for their nomination in the following order:

- a. Presidential candidates must deposit Afghani 2,500,000; this amount shall be refunded if the candidate is elected or receives at least 10% of the valid votes cast in the first round of the election;
- b. Wolesi Jirga candidates shall deposit Afghani 30,000; this amount shall be refunded if the candidate is elected or receives at least 3% of the valid votes cast in the respective constituency;
- c. Provincial Council candidate shall deposit Afghani 20,000; this amount shall be refunded if the candidate is elected or receives at least 2.5% of the valid votes cast in the respective constituency;
- d. District Council candidates shall deposit Afghani 10,000; this amount shall be refunded if the candidate is elected or receives at least 2 % of the valid votes cast in the respective constituency;
- e. Village Council candidate shall deposit Afghani 5,000; this amount shall be refunded if the candidate is elected or receives at least 1.5% of the valid votes cast in the respective constituency;
- f. Municipality candidates of first grade provinces shall deposit Afghani 100,000, Municipality candidates of second grade provinces shall deposit Afghani 50,000, Municipality candidate of third grade provinces shall deposit Afghani 25,000, and the rest of the Municipality candidates shall deposit Afghani 15,000; the amount shall be refunded if the municipality candidate for first grade provinces is elected or receives at least 10%, if the Municipality candidate of second grade provinces receives at least 7%, and rest of the Municipality candidates receive at least 5% of the valid votes cast in the respective constituency;
- g. Municipality Council candidates shall deposit Afghani 10,000, this amount shall be refunded if the candidate is elected or receives at least 2% of the valid votes cast in the respective constituency.

(5) The individuals who have not fulfilled the provisions listed in paragraphs (2 and 4) of this Article and the rest of the conditions approved by the commission shall not participate as candidates in the election.

(6) The commission shall transfer the deposit of candidates who failed to receive the percentage of the valid votes listed in paragraph (4) of this Article to the government's bank account.

#### **Article 44**

##### **List of the Candidates**

(1) Upon the closing of the nomination period, the Commission shall publish as soon as possible, a preliminary list of candidates.

(2) The Commission shall determine and publicize a period during which challenges and complaints related to the candidate list can be made. The Electoral Complaints Commission (ECC) in accordance with its own procedures shall adjudicate these challenges and complaints.

(3) The commission shall publish the final list of candidates (considering the decisions of Electoral Complaints Commission) after the central Electoral Complaints Commission (ECC) has adjudicated all complaints and appeals.

(4) The Commission shall post the final list of candidates at polling centers on the election date.

#### **Article 45**

##### **Withdrawal of the Candidates**

(1) If a candidate withdraws his/her candidacy, the candidate shall notify the Commission in writing about his/her intent prior to a date specified by the Commission in the electoral calendar.

(2) If a candidate withdraws his or her candidacy or dies after the date specified by the Commission in the electoral calendar or if his/her name is excluded from the candidate's list by the Electoral Complaints Commission (ECC), the votes cast in his/her favor shall not be counted in the counting process.

(3) The commission shall transfer the deposit of candidates listed in paragraph (2) of this article to the government's bank account, which is not refundable except if a candidate dies.

#### **Article 46**

##### **Electoral Campaigns**

(1) The Commission shall establish an official electoral campaign period. This period shall end (48) hours before the polling.

#### **Article 47**

##### **Setting up Polling Centers and Provision of Electoral Materials**

(1) The Commission shall establish polling centers across the country and shall facilitate voter participation in such a manner that all the voters could access these centers easily during the election process.

(2) The Commission shall furnish ballot boxes, ballot papers, voting compartments, seals and other required materials, and shall adopt such other arrangements to facilitate voting.

## **Article 48**

### **Ballot Boxes**

The Commission shall undertake the following tasks to arrange the ballot boxes:

- a. Specify the design and material of ballot boxes, ensuring that each ballot box can be securely closed and sealed, and their procurement;
- b. Specify the manner in which ballot boxes are to be marked and identified; and
- c. Specify the manner in which ballot boxes are to be closed, secured, opened, sealed, and unsealed.

## **Article 49**

### **Ballot Papers**

(1) The Commission shall undertake the following tasks in relation to the ballot papers:

- a. Provision of ballot papers;
- b. Assign symbols and drawings to candidates and their location on the proper place in the ballot;
- c. Determine the language to be used on ballot papers;
- d. Establish the method by which voters will mark the ballot papers;
- e. Adopt a procedure for the counting of ballot papers.

2) The candidate list on the ballot papers and assigning electoral symbols for the candidates shall be chosen through lottery by the Commission.

(3) The political affiliation of candidates with the political parties can be mentioned on the ballot paper.

## **Article 50**

### **Observers and Agents**

The Commission shall specify the rights and duties of agents, observers and representatives of the media and shall arrange and distribute credentials to them.

## **Article 51**

### **Removal of Campaign Materials**

The Commission shall order the removal of campaign materials placed within 100 meters of polling centers (48) hours prior to the polling.

## **Article 52**

### **Prohibition of Carrying Arms in Polling Stations**

No one shall carry any firearm or sharp weapons, at or within 500 meters of any polling centre. The carrying of weapons by security officials authorized by the Ministry of Interior shall be exempted from this provision.

## **Article 53**

### **Commencement and Closing of Polling**

(1) Voting at all polling centers shall start and end according to the schedule arranged and published by the Commission.

(2) Voting shall be conducted in accordance with the Procedures adopted and issued by the Commission.

(3) The Chairperson of a polling centre may order a suspension of polling when incidents such as riot, violence, storm, flood, or any other sudden occurrence, which makes the proper conduct of polling impossible. The Chairperson of the polling centre shall immediately inform the Secretariat of any such decision.

(4) The Chairperson of a polling centre shall mark the end of the queue of voters at closing time as per paragraph (1) of this article and shall permit every voter who is in the queue to cast his/her vote at that time.

(5) The Commission may extend the period of voting at a maximum of two hours in all polling centers.

## **Article 54**

### **Objection Concerning Voting**

(1) Before a voter has been handed a ballot paper, an accredited agent of a candidate or political party may object to that voter being entitled to vote or to vote at the polling centre concerned.

(2) The Chairperson of the polling centre shall determine whether to accept or reject objections listed in paragraph (1) of this Article and register his/her reasons for rejecting or accepting the objection on Election Day in an official record.

## **Article 55**

### **Sealing of Ballot Boxes**

(1) As soon as the ballot box is full or voting has ended, the Chairperson of the polling centre, in the presence of accredited candidate agents, shall seal the box in the prescribed manner and allow the accredited Agents to sign on the ballot box and record the number of the seals.

(2) The Chairperson of the polling centre shall deliver the ballot boxes and bundles of ballots to the Counting Centre in accordance with the Commission's instructions.

## **Article 56**

### **Vote Counting**

The ballots should be counted in polling stations, except if the commission adopts other decisions considering the security, technical challenges or weather conditions.

## **Article 57**

### **Quarantine of Ballot Boxes**

(1) The Commission can quarantine the aforementioned boxes if complaints are raised or if signs of tampering are found regarding the ballot boxes.

(2) The commission can include or permanently exclude the quarantined ballot boxes from the counting process after inspection in the presence of observers and representatives of political parties and candidates.

## **Article 58**

### **Presentation and Certification of Results**

(1) Prior to the certification of results, if the principles of the (free, universal, secret and direct) election are flawed, the Commission or the ECC HQ can order a recount of some or all of the ballots in a counting centre, or a repeat of the voting in constituency.

(2) The Commission shall announce and publish the certified election results, once all counting procedures have been completed and after all complaints concerning polling and counting have been adjudicated by the central Electoral Complaints Commission.

The results of the election are final and binding (implementable) once they have been certified by the Commission.

## **Article 59**

### **Publication and Dissemination of Ideas and Opinions of Candidates**

(1) For the purpose of public information during the electoral campaign period, radio, television, press, newspapers and the rest of the mass media shall publish and disseminate the platforms, views and goals of the candidates in accordance with the procedures established by the Commission.

(2) During the electoral campaign period, state owned media shall publish and disseminate the platforms, views, and goals of the candidates in a fair and unbiased manner for the purpose of public information, as agreed with the Commission.

(3) State owned mass media should set up goals, policies and procedures to ensure the fair and impartial coverage of the candidates' plans as necessary and implement the provisions of paragraphs (1) and (2) of this Article.

## **Article 60**

### **Media Commission**

(1) The Commission is responsible for establishing a Media Commission (MC) at least 60 days prior to the election date. The MC should monitor fair reporting and coverage of the electoral campaign and shall deal with complaints about violations of fair reporting or coverage of political campaigns, or other violations according to procedures of Mass Media. Anyone can present his/her complaints and objections to the Media Commission.

- (2) The responsibilities and powers of the MC shall be determined by the Commission.
- (3) The Media Commission can adopt one of the following measures, if it determines that a violation has occurred from the provisions listed in Article (59) of this law:
- a. Issue a warning or order the violator to take remedial actions;
  - b. Impose a fine of 500,000 according to circumstances;
  - c. Refer and introduce the real or alleged violators for judicial prosecution to the appropriate authorities.
- (4) The Media Commission shall be dissolved after accomplishing all given assignments by the Commission within maximum of (45) days after the announcement of the election results, and its responsibilities should be referred to the Commission.

### **Chapter XIII**

#### **Electoral Complaints and Offences**

#### **Article 61**

##### **Electoral Complaints Commission**

(1) In order to deal with electoral offences, challenges and complaints, management of the Provincial Electoral Complaints Commissions and scrutiny of their decisions, an Electoral Complaints Commission (ECC) HQ shall be established, at least 120 days prior to the election date, by the president in consultation with the head of the Wolesi Jirga, the Meshrano Jirga and the head of the Supreme Court (Chief Justice).

#### **Article 62**

##### **Jurisdiction of the ECC HQ and PECCs**

- (1) The central and provincial Electoral Complaints Commissions shall have the following jurisdictions:
- a. Adjudication of challenges to the list of candidates and voters and to the eligibility or qualifications of a candidate that might arise during the electoral process;
  - b. Adjudication of complaints due to electoral offences, provided that the complaint has been received prior to the certification of the results of the election.
- (2) The ECC and PECCs can consider issues within their jurisdiction on their own initiative and in the absence of a formal complaint or challenge.
- (3) The ECC shall adjudicate electoral complaints in accordance with procedures developed and implemented by the ECC HQ.
- (4) If a complainant is unsatisfied with a decision of the PECC, the ECC HQ shall review the decisions of the PECCs.

(5) The PECC is the preliminary authority to adjudicate electoral complaints. In exceptional circumstances, the ECC HQ may adjudicate electoral complaints as a preliminary authority.

(6) Decisions of the ECC HQ concerning adjudication of challenges and complaints shall be final.

(7) The ECC HQ and PECCs shall discontinue their work no later than two months following the certification of election results, and after dissolution, its responsibilities shall be referred to the Independent Election Commission.

(8) The ECC HQ and PECCs shall have secretariats.

### **Article 63**

#### **Electoral Offences**

The following acts shall constitute Electoral Offences:

- a. Providing false information to the Commission and its related commissions;
- b. Threatening, intimidating or attacking the dignity of a voter, candidate, permanent or temporary election staff or a journalist covering the election or using force against them in any way;
- c. Impeding anyone, including accredited observers and agents, from participating in the electoral process;
- d. Committing fraud in voting or vote counting;
- e. Offering or receiving a payment or other benefit for the purpose of influencing the electoral process;
- f. Possessing, or attempting to obtain, more than one voter registration card as a voter, or other certified documents from the Commission;
- g. Voting or attempting to vote using a fraudulent, forged or altered card or the card of another person;
- h. Changing, replacing, stealing, or destroying electoral documents without legal authorization;
- i. Duplicating, using and retaining false voter registration cards, or other documents certified by the commission, ballots, or official forms;
- j. Obtaining a voter registration card or other documents certified by the commission in a fraudulent way.
- k. Attempting to vote more than once in an election;
- l. Interfering with election materials or ballot boxes without having the due authority;
- m. Disturbing electoral officials in the performance of their duties;
- n. Violating the Code of Conduct of the Candidates, their Agents, or Electoral Officials;
- o. Making use of funds originating from illegal activities;
- p. Making use of foreign funds for the purpose of influencing the electoral process;
- q. Instigating or provoking other persons to commit an Electoral Offence;
- r. Violating the provisions of Law or rules and procedures governing the electoral process;

- s. Nonobservance of procedures of the Commission, Electoral Complaints Commissions Head Quarters, Provincial Electoral Complaints Commissions, or the Media Commission.
- t. Using any kind of symbol, color, motto and other signs assigned to a candidate by other candidates or candidates' representatives in polling stations.
- u. Other violations specified in rules and procedures

## **Article 64**

### **Sanctions and Penalties**

(1) In case a violation is verified or confirmed, the Electoral Complaints Commission Head Quarters and Provincial Electoral Complaints Commissions can adopt one of the following measures:

- a. Issue a warning to, or order, the offending individual or organization, to take remedial action;
- b. Impose a fine, taking into consideration the circumstances, up to 500,000 Afghanis;
- c. Adopting a decision on re-conducting of elections/recounting votes prior to the certification of results;
- d. Remove a candidate from the candidates list, if there are justified reasons;
- e. Invalidate ballot papers not meeting the necessary conditions, or order the count or recount of one or more ballot papers; and
- f. Prohibit an offending individual from serving in all commissions for a period of up to 10 years.

(2) The ECC and PECC can impose sanctions against a political party or a candidate, in case its members or supporters have committed any electoral violations. Imposing of sanctions will be considered valid when there is proper evidence, documents and proof of violations committed.

(3) In addition to imposing the above sanctions and fines, the ECC HQ and PECCs can refer the offender to the Public Prosecution Office if it has evidence that the offender has perpetrated a criminal act.

(4) Implementation of decisions taken by ECC and PECC based on sanctions and fines is the responsibility of related ECCs, the Commission and the government.

## **Chapter XIV Miscellaneous Provisions**

### **Article 65**

#### **Postponement or Suspension of Elections**

(1) If security or other unpredictable events make the holding of the elections impossible or threaten the legitimacy of the election then the Commission can postpone the elections until the conditions improve.

(2) If the situations mentioned in paragraph (1) of this Article are limited to one or few polling stations, the Commission can delay or postpone the election process in the mentioned stations until the existing problems are resolved.

(3) If the election results are declared invalid in one polling station, the commission can order to re-hold elections in the mentioned station.

(4) The presidential elections, while observing the provisions of the Constitution of Afghanistan, shall obey the provisions set forth in paragraphs (1, 2 and 3) of this Article.

(5) If the elections are delayed according to provisions mentioned in paragraph (1) of this article, the mentioned members involved in the elections shall continue their jobs until the holding and announcing of the election results.

## **Article 66**

### **Arrangement of Rules and Regulations**

The commission can adopt separate rules, procedures and guidance for the purpose of implementing the provisions of this law in a better way.

## **Article 67**

### **Enforcement**

This law shall enter into force and be published in the Official Gazette after promulgation; with its enforcement the Electoral Law published in the Official Gazette number (850) on 27 April, 2005 with amendment of paragraph (3) of Article 27 and excess of its items (4) and (5) published in the Official Gazette number 874 on 25 Jan, 2006 and Municipalities Electoral Law for municipalities published in the Official Gazette number 814 on 20 Jan, 2004 is revoked.