



THE FOUNDATION FOR DEMOCRATIC ADVANCEMENT

Electoral Fairness Research

September 29, 2011

Research conducted by Mr. Stephen Garvey, FDA founder and executive director, bachelor degree in Political Science (University of British Columbia) and masters degree in Environment and Development (University of Cambridge).

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Foundation for Democratic Advancement

728 Northmount Drive NW

PO Box 94

Calgary, Alberta

Canada, T2K 1P0

info@democracychange.com

Political Background on Afghanistan

Afghanistan adopted a new Constitution on January 4, 2004, which went into effect on the same day.

The new bicameral parliament encompasses the "House of the People" (lower house, Wolesi Jirga) and the "House of the Elder" (upper house, Meshrano Jirga).

In the name of God, the Merciful, the Compassionate

Preamble

We the people of Afghanistan:

1. With firm faith in God Almighty and relying on His lawful mercy, and Believing in the Sacred religion of Islam,
2. Realizing the injustice and shortcoming of the past, and the numerous troubles imposed on our country,
3. While acknowledging the sacrifices and the historic struggles, rightful Jihad and just resistance of all people of Afghanistan, and respecting the high position of the martyrs for the freedom of Afghanistan,
4. Understanding the fact that Afghanistan is a single and united country and belongs to all ethnicities residing in this country,
5. Observing the United Nations Charter and respecting the Universal Declaration of Human Rights,
6. For consolidating national unity, safeguarding independence, national sovereignty, and territorial integrity of the country,
7. For establishing a government based on people's will and democracy,
8. For creation of a civil society free of oppression, atrocity, discrimination, and violence and based on the rule of law, social justice, protection of human rights, and dignity, and ensuring the fundamental rights and freedoms of the people,
9. For strengthening of political, social, economic, and defensive institutions of the country,
10. For ensuring a prosperous life, and sound environment for all those residing in this land,
11. And finally for regaining Afghanistan's deserving place in the international community, Have adopted this constitution in compliance with historical, cultural, and social requirements of the era, through our elected representatives in the Grand Council [*Loya Jirga*] dated 14 Jaddi 1382 in the city of Kabul.

Chapter I The State

Article 1 [Islamic Republic]

Afghanistan is an Islamic Republic, independent, unitary and indivisible state.

Article 2 [Religions]

(1) The religion of the state of the Islamic Republic of Afghanistan is the sacred religion of Islam.

(2) Followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of law.

Article 3 [Law and Religion]

In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam.

Article 4 [Sovereignty, Ethnic Groups, Citizenship]

(1) National sovereignty in Afghanistan belongs to the nation that exercises it directly or through its representatives.

(2) The nation of Afghanistan consists of all individuals who are the citizen of Afghanistan.

(3) The nation of Afghanistan is comprised of the following ethnic groups: Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pashai, Nuristani, Aymaq, Arab, Qirghiz, Qizilbash, Gujur, Brahwui and others.

(4) The word Afghan applies to every citizen of Afghanistan.

(5) No member of the nation can be deprived of his citizenship of Afghanistan.

(6) Affairs related to the citizenship and asylum are regulated by law.

Article 5 [Territorial Integrity]

Implementation of the provisions of this constitution and other laws, defending independence, national sovereignty, territorial integrity, and ensuring the security and defense capability of the country, are the basic duties of the state.

Article 6 [Purposes]

The state is obliged to create a prosperous and progressive society based on social justice, protection of human dignity, protection of human rights, realization of democracy, and to ensure national unity and equality among all ethnic groups and tribes and to provide for balanced development in all areas of the country.

Article 7 [International Law]

(1) The state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.

(2) The state prevents all types of terrorist activities, production and consumption of intoxicants (muskirat), production and smuggling of narcotics.

Article 8 [State Policy]

The state regulates the policy of the country on the basis of preserving the independence, national interests, territorial integrity, non-aggression, good neighborliness, mutual respect, and equal rights.

Article 9 [Natural Resources]

(1) Mines, underground resources are properties of the state.

(2) Protection, use, management, and mode of utilization of the public properties shall be regulated by

law.

Article 10 [Private Investments]

The State encourages and protects private capital investments and enterprises based on the market economy and guarantees their protection in accordance with the provisions of law.

Article 11 [Trade]

Affairs related to the domestic and external trade shall be regulated by law in accordance with the needs of the national economy and public interests.

Article 12 [Bank]

(1) Da Afghanistan Bank is the central and independent bank of the state.

(2) Issuance of currency, and formulation and implementation of monetary policy of the country are the mandates of the central bank in accordance with law.

(3) The central bank shall consult with the economic committee of the House of Representatives [*Wolesi Jirga*] in matters related to the printing of money.

(4) Structure and operation of this bank shall be regulated by law.

Article 13 [Economy]

The state shall formulate and implement effective programs for development of industries, growth of production, increasing of public living standards, and support to craftsmanship.

Article 14 [Farming, Housing]

(1) The state shall design and implement within its financial resources effective programs for development of agriculture and animal husbandry, improving the economic, social and living conditions of farmers, herders, settlement and living conditions of nomads.

(2) The state adopts necessary measures for housing and distribution of public estates to deserving citizens in accordance within its financial resources and the law.

Article 15 [Environment]

The state is obliged to adopt necessary measures for safeguarding forests and the environment.

Article 16 [Languages]

(1) From among the languages of Pashtu, Dari, Uzbeki, Turkmani, Baluchi, Pashai, Nuristani, Pamiri (alsana), Arab and other languages spoken in the country, Pashtu and Dari are the official languages of the state.

(2) The Turkic languages (Uzbaki and Turkmen), Baluchi, Pashai, Nuristani and Pamiri (alsana) are -- in addition to Pashto and Dari -- the third official language in areas where the majority speaks them. The practical modalities for implementation of this provision shall be specified by law.

(3) The state adopts and implements effective plans for strengthening, and developing all languages of Afghanistan.

(4) Publications and radio and television broadcasting are allowed in all languages spoken in the country.

Chapter III The President

Article 60 [Head of State, Vice Presidents]

- (1) The President is the head of state of the Islamic Republic of Afghanistan, and conducts his authorities in executive, legislative, and judiciary branches in accordance with the provisions of this Constitution.
- (2) The President shall have two Vice Presidents, one first and one second.
- (3) The candidate to the Presidency on his or her candidacy shall declare the name of the Vice Presidents to the nation.
- (4) The Vice President in the absence, resignation, and or death of the President, acts in accordance with the provisions of this constitution.

Article 61 [Direct Election]

- (1) The President is elected by receiving more than 50% of the votes cast through free, general, secret, and direct voting.
- (2) The presidential term is expired at the first of Jawza of the fifth years after the elections.
- (3) Elections for the new president are held within thirty, to sixty days before the end of the presidential term.
- (4) If none of the candidates succeeds to receive more than 50% of the votes in the first round, a run-off election shall be held within two weeks.
- (5) In this round, only two candidates with the highest number of votes will participate.
- (6) In the run-off, the candidate who gets the majority of the votes shall be elected as the President.
- (7) In case of death of one of the candidates during the first or second round, after the elections or prior to the announcement of the results of elections, new elections shall be held in accordance with the provisions of law.
- (8) The elections for the post of president shall be held under the supervision of the Independent Commission supervising of the Elections.
- (9) This Commission shall be established to supervise all elections and referendums in the country, in accordance with the provisions of law.

Article 62 [Qualifications]

- (1) Presidential candidates should possess the following qualification:
 - Should be citizen of Afghanistan, Muslim and born of Afghan parents, and should not have citizenship of another country.
 - On the day of becoming a candidate, his age should not be less than forty years.
 - Should not have been convicted of crimes against humanity, criminal act, or deprivation of the civil rights by a court.
- (2) No one can be elected as president for more than two terms.
- (3) The provision of this article is applied to the Vice Presidents as well.

Article 63 [Oath of Allegiance]

The President-elect, prior to resumption of his/her duties, performs the following oath of allegiance in the presence of members of the National Assembly and the chief justice:

"In the name of Allah, the Merciful, the Compassionate

In the name of God Almighty, in the presence of you representatives of the nation of Afghanistan,

I swear to obey and safeguard the provisions of the sacred religion of Islam, to observe the Constitution and other laws of Afghanistan and supervise their implementation; to safeguard the

independence, national sovereignty, and the territorial integrity of Afghanistan and the fundamental rights and interests of the people of Afghanistan, and with the assistance of God and the support of the nation, to make great and sincere efforts for the happiness and progress of the people of Afghanistan."

Chapter IV The Government

Article 71 [Ministers]

- (1) The government consists of the ministers who work under the Chairmanship of the President.
- (2) Ministers are appointed by the President and shall be introduced for approval to the National Assembly.

Article 72 [Qualifications]

The person who is appointed as the Minister, should have the following qualifications:

- Must have only the citizenship of Afghanistan. Should a nominee for a ministerial post also hold the citizenship of another country, the House of Representatives [*Wolesi Jirga*] shall have the right to confirm or reject his or her nomination.
- Should have higher education, work experience and, good reputation.
- **His age should not be less than thirty-five.**
- Should not have been convicted of crimes against humanity, criminal act, or deprivation of civil rights by a court.

Article 73 [Incompatibility]

- (1) The Ministers can be appointed from within and without the National Assembly.
- (2) If a member of the National Assembly is appointed as a minister, he loses his membership in the National Assembly, and is replaced by another person in accordance with the provisions of law.

Article 74 [Oath of Office]

Prior to taking office, the minister perform the following oath in the presence of the President:

"In the name of Allah, the merciful and compassionate:

I swear in the name of God Almighty to support the provisions of the sacred religion of Islam, follow the Constitution and other laws of Afghanistan, protect the rights of citizens, and safeguard the independence, territorial integrity and national unity of Afghanistan, and consider God Almighty present in performing all my responsibilities, and honestly perform the duties assigned to me."

Article 75 [Duties of the Government]

The government has the following duties.

- Execute the provision of this Constitution, other laws, and final orders of the courts.
- Protect the independence, defend the territorial integrity, and safeguard the interests and dignity of Afghanistan in the international community.
- Maintenance of public law and order and elimination of administrative corruption.
- Prepare the budget, regulate financial affairs, and protect public wealth.
- Devise and implement programs for social, cultural, economic, and technological progress.
- Report to the National Assembly at the end of the fiscal year about the tasks accomplished and about the main plans for the new fiscal year.
- Perform other duties as recognized by this Constitution and other laws to be duties of the government.

Article 83 [House of Representatives]

- (1) Members of the House of Representatives [*Wolesi Jirga*] are elected by the people through free, general, secret, and direct elections.
- (2) Their mandate ends on the 1st of Saratan of the fifth year after the elections, and the new assembly starts its work.
- (3) The election of the members of the House of Representatives [*Wolesi Jirga*] shall be held within 30 to 60 days before the expiry of the term of the House of Representatives [*Wolesi Jirga*].
- (4) The number of members of the House of Representatives [*Wolesi Jirga*], proportionate to the population of each region, shall be not more than two hundred and fifty.
- (5) Electoral constituency and other related issues shall be determined by election laws.
- (6) In the election law measures should be adopted for so the election system shall provide general and just representation for all the people of the country, and at least two female delegate should be elected from each province.

Article 84 [Senate]

- (1) Members of the Senate [*Meshrano Jirga*] are elected and appointed as follows:
- (2) From among the members of each provincial council, the respective council elects one person for a period of four years.
- (3) From among the district councils of each province, the respective councils elect one person for a period of three years.
- (4) The President from among experts and experienced personalities -- including two representatives from the disabled and impaired and two representatives from the Kochis -- appoints the remaining one-third of the members for a period of five years.
- (5) The president appoints 50% of these people from among women.
- (6) A person, who is appointed as a member of the Senate [*Meshrano Jirga*], shall relinquish his membership in the respective council, and another person replaces him in accordance with the law.

Article 85 [Qualifications]

- (1) A person who is nominated or appointed as a member of the National Assembly should have the following qualifications in addition to those considered by voters.
- (2) Should be the citizen of Afghanistan, or has obtained the citizenship of the state of Afghanistan at least ten years before becoming a candidate.
- (3) Should not have been convicted by a court for committing a crime against humanity, a crime, or sentenced of deprivation of his civil rights .
- (4) Members of House of Representatives [*Wolesi Jirga*] should be Twenty Five years old at the date of candidacy, and members of the Senate [*Meshrano Jirga*] should be Thirty Five years old at the date of candidacy or appointment.

Chapter VI Grand Council [*Loya Jirga*]

Article 110 [Composition, Participation]

- (1) Grand Council [*Loya Jirga*] is the highest manifestation of the people of Afghanistan.
- (2) Grand Council [*Loya Jirga*] consists of the following:
 - Members of the National Assembly.
 - Chairpersons of the provincial, and district councils.
- (3) The ministers, Chief Justice and members of the Supreme Court, can participate in the sessions of

the Grand Council [*Loya Jirga*] without the right to vote.

Article 111 [Powers]

Grand Council [*Loya Jirga*] is convened in the following situations:

- To take decision on the issues related to independence, national sovereignty, territorial integrity, and supreme interests of the country.
- To amend the provisions of this Constitution.
- To prosecute the President in accordance with the provisions of Article [69](#) of this Constitution.

Article 112 [Chairperson]

The Grand Council [*Loya Jirga*] in its first session elects from among its members a chairperson, a deputy-chair, and a secretary and an assistant secretary.

Political Parties Law

Article 3

The political system of the State of Afghanistan is based on the principles of democracy and pluralism of political parties.

1. Laws and regulations that pertain to the political content of the media and broadcasters before, during, and after an election

Main Research Findings:

The state disallows public and private media (including broadcasters and the press) from dishonoring and defaming of individuals, and criticizing the principles of Islam.

Outside of the election period, the state does not regulate the public and private media for political content.

There are no ownership concentrations regulations in any of the Afghan media.

Private media (including broadcast and the press) is required to get a media license from the Ministry of Information and Culture. Concessionaires, who are required for TV and Radio networks, must not have been sentenced to depravity of civil rights by a authoritative court. Concessionaires can appeal decisions.

Public media must “fairly and impartially” (or “fair and unbiased”) broadcast candidate platforms, comments, and objectives during election campaigns. Outside of the election campaign, there is no “fair and unbiased” requirement on the public media. There is no equality requirement. Public possession and properties must be used equally by all candidates or not at all.

Private media (including broadcast and the press) must publish, disseminate platforms, views, goals of candidates and parties in a fair and unbiased manner. There is no equality requirement. Outside of the election period, private media is not required to adhere to the standard of “fair and unbiased.”

The state allows all registered candidates to have access to the media.

A media commission monitors fair reporting and coverage during election campaigns and deals with complaints.

The Mass Media Code of Conduct provides guidelines for mass media. The Code states that mass media during an election campaign must disseminate “fair, balanced, accurate, and impartial” reporting that is not misleading to the public. There is no requirement for equal or complete coverage. The terms fair and balanced are subject to interpretation. Equal is only used in terms of advertisers treatment.

During an election campaign, mass media must not disseminate false information, defamatory statements, in relation to personal character or conduct of a candidate, and intended prejudicial affect on a candidate. Also, mass media must provide equal treatment to all political advertisers.

Citizens, candidates, parties etc., have a right of correction via orders from Electoral Complaints Commission and Media Commission.

Election campaigns start at least 120 days prior to the election day.

With reference to the Afghan Penal Code, an individual who is convicted of defamation will receive up to two years in prison or a fine not exceeding 20,000 Afghanis. (412.80 USD)

Research Excerpts:

Afghanistan Constitution

Article 34 [Expression, Press, Media]

- (1) Freedom of expression is inviolable.**
- (2) Every Afghan has the right to express his thought through speech, writing, or illustration or other means, by observing the provisions stated in this Constitution.**
- (3) Every Afghan has the right to print or publish topics without prior submission to the state authorities in accordance with the law.**
- (4) Directives related to printing house, radio, television, press, and other mass media, will be regulated by the law.**

The Mass Media Law of Afghanistan, 2006

Activities of Foreign Media Organizations

Article Eight:

- (1) Afghan nationals are entitled to establish mass media referred to in Article 3 according to provisions of this law.
- (2) Foreign diplomatic missions in Afghanistan can print and distribute their news bulletins according to diplomatic norms.
- (3) Branch offices of international or intergovernmental organizations can run periodical or non-periodical publications dealing with their fields of activities with the agreement of the Ministry of Youth and Culture.
- (4) Foreign NGOs established in accordance with law can run periodical and non-periodical publications within their professional fields after receiving permission from the Ministry of Youth and Culture .The publications are to be edited by Afghan Nationals.

Chapter Nine

Miscellaneous provisions

Foreign

Article Thirty-Sven:

Foreign nationals can make cinematographic films in Afghanistan provided that they get prior permission from the Ministry of Youth and Culture.

Information about Changes in Constitution

Article Thirty-Eight:

- (1) Those responsible for mass media publishing firms, organizations for training journalists, translation bureaus, printing houses, and publicity and advertising agencies are obliged to inform the Ministry of Youth and Culture about all kinds of changes in their type of activity , address and other characteristics referred to in this law or enshrined in their own constitutions.

(2) Those responsible for mass media publishing firms organizations for training journalists, translation bureaus, printing houses , and publicity and advertising agencies are obliged to inform the Ministry of Youth and Culture at the beginning of each year about the continuation or discontinuation of their activities for recording purposes of the ministry .

Obligations of Representatives of Foreign News Agencies and Media

Article Thirty-Nine:

(1) Representatives of foreign news agencies and mass media intending to operate inside Afghanistan are obliged to get work permits the Media Relations Department Ministry of Foreign Affairs of the Islamic Republic of Afghanistan and inform in writing the Ministry of Youth and Culture about the names of the related countries in question, kind of activities, duration thereof and the venue of operations.

(2) News agencies and mass media referred to in paragraph (1) of this article are obliged to observe the provisions of article 31.

Registration of Book, Pamphlet and Publisher

Article Forty:

Books or pamphlets after being published by the publisher are to be registered with the Ministry of Youth and Culture and their proprietors are obliged to send two copies each from the books and pamphlets to the Ministry of Youth and Culture and to the Public Library.

Paying Tax

Article Forty-One:

The revenues of mass media are taxable according to tax laws.

Article Thirty-One:

(1) In order to better organize the affairs of the Bakhtar Information agency, a three-person commission will be created for 4 years composed of one lawyer, one professional engineer and one journalist.

(2) The commission referred to in paragraph (1) of this article will have the following powers:

1. Proposing the appointment or dismissal of the general director of the Bakhtar Information Agency (BIA) to the president of the Republic.
2. Confirming those responsible for department of the BIA proposed by its general director.
3. Preserving the independence, impartiality and professional status of the agency.
4. Supervising the financial, administrative and dissemination affairs of the agency.
5. Preparing the budget proposal.
6. Approving the editorial objectives of the agency.
7. Submitting the annual report on activities of BIA to the Media High Council.
8. Discussing with the government, civil organizations and donors to attract assistance.
9. Supervising implementation of the dissemination policy of the agency determined by the Media High Council.

(3) Members of the BIA Commission are entitled to appropriate salaries paid from the budget of the

Ministry of Youth and Culture.

Regulation of Election Campaigns:

Use of Resources during Electoral Campaigns

Article Six:

1) To raise public awareness, Public Media (TV, radio, and print media) shall fairly and impartially broadcast and publish candidates' platforms, comments, and objectives during electoral campaigns. Moreover, the State Media shall broadcast and publish the platforms, comments and objectives of the candidates in conformity with the designated timeline of the IEC fairly and impartially.

2) No candidate shall use public possessions and properties during electoral campaigns unless an authorized authority provides equal facilities to all candidates.

Election Law:

Article 50

Fair and Neutral Publication and Dissemination of Ideas

(1) For the purpose of public information during the electoral campaign period, the mass media (radio, television, and the press) shall publish and disseminate the platforms, views and goals of the candidates in a fair and unbiased manner, in accordance with the Code of Conduct established by the Commission.

(2) Candidates shall have access, to the extent possible, to the media. For the purpose of public information during electoral campaign period, state-run media shall publish and disseminate, as agreed with Commission, the platforms, views, and goals of the candidates in a fair and unbiased manner.

(3) State-owned media shall institute, as necessary, goals, policies and procedures to ensure fair coverage of the elections and implement the provisions of sub articles (1) and (2).

Article 51

Media Commission

(1) The Commission shall establish, at least 60 days prior to the election date, a Media Commission (MC). The MC shall monitor fair reporting and coverage of the electoral campaign period and shall deal with the complaints concerning any breaches of fair reporting or coverage of political campaign, or other violations of the Mass Media Code of Conduct. Appeals, may be lodged with the Commission.

(2) The composition, responsibilities, and authorities of the MC shall be determined by the Commission.

Mass Media Code of Conduct:

MASS MEDIA CODE OF CONDUCT

Freedom of expression, including the constitutional right to receive and impart information, is a prerequisite for free and fair elections. In order to enable citizens to make informed and democratic choices, the Mass Media has a heightened responsibility to provide accurate and impartial information

to the public throughout the electoral process. For these reasons, in its coverage and reporting during election periods the Mass Media shall comply with this Code of Conduct and the Regulations issued by the Joint Electoral Management Body (JEMB), in accordance with Article S6 and 5 of the Electoral Law, and other relevant provisions of the Constitution of Afghanistan and the Law on Mass Media. The Mass Media plays an essential role in the democratic process. It is imperative that they be afforded the highest level of access to election-related events, access to information, and protection from all forms of harassment and for intimidation as reasonably possible at all stages of the electoral process. in accordance with the Law on Mass Media and any other Regulation, Procedure or Guideline issued by the JEMB.

The legal and ethical standards described in this Code of Conduct are intended to guide the activities of members of the Mass Media during the entire electoral process from beginning to end, including candidate nomination, registration, political campaigning, polling, and counting. All members of the Mass Media must obey these standards and implement them with common sense and good faith. Individuals may be sanctioned by the Media Commission for violations of this Code of Conduct.

Members of the Mass Media:

1. Shall enjoy the fundamental right of freedom of expression, association, assembly, and movement so as to participate in the registration, political campaign, and election processes.
2. Shall comply with the Constitution, the Law on Mass Media, all electoral laws, and all other laws of Afghanistan, including Regulations, and Procedures issued by the JEMB and the JEMB Secretariat.
3. Shall not broadcast or print any information likely to incite violence, or provoke hatred, or discrimination on the basis of race, ethnicity, language regional origins, class, gender, and religion in connection with the election and other electoral activities.
- 4. Shall seek the truth and provide fair, balanced, accurate and impartial reporting that is not misleading to the public.**
5. Shall ensure that information on the electoral process is widely disseminated.
- 6. Shall not knowingly publish, broadcast, distribute any matter or thing in relation to the electoral process which the person knows to be false or does not believe to be true and which is intended to mislead or deceive a person in relation to the free exercise of his electoral right.**
- 7. Shall not knowingly publish, broadcast, distribute any defamatory statement in relation to the personal character or conduct of a candidate in the election and intended to prejudicial affect the prospects of that candidate at the election.**
- 8. Shall provide equitable treatment to all political advertisers.**
- 9. Shall report facts and figures, and clearly distinguish between facts and rumors.**
- 10. Shall label opinions as opinions.**
11. Shall avoid conflicts of interest or the perception of conflict of interest.
- 12. Shall not accept or demand gifts, special treatment or favors from nominated candidates, politicians, political parties, and their agents in exchange for coverage.**
- 13. Shall correct in a prompt and prominent manner all errors of fact, as well as error of omission, and provide a right of reply to any individual or group that is the subject of an allegation.**
- 14. Shall comply with orders of the Electoral Complaints Commission and the Media Commission, including orders to broadcast and print a correction or retraction.**

[Code of Conduct does not establish broad and balanced electoral coverage. Only focuses on

reporting.]

Law on Mass Media:

Chapter One

General Provisions

Article One:

This Law has been enacted in accordance with Article 34m of the Constitution and Article 19" of the International Covenant of Human Rights for ensuring the protection of freedom of thought and speech and for regulating the activities of mass media in the country.

Article Two:

The aims of this law are as follows:

- 1. Promote and support the right of freedom of thought and speech, defend the rights of journalists and ensure the ground for their free operation.**
- 2. Promote and develop free, independent and pluralistic media.**
- 3. Provide suitable environment for free expression of views and feelings of citizens through speech, writing, drawing, picture, recording, acting, movement and other scientific, artistic, literary as well as printing and broadcasting.**
- 4. Observe the right of freedom of speech and media as enshrined in international human rights convention, taking into account the true religion of Islam.**
- 5. To support the sound development process of mass media and enable it to become an effective means for promoting the culture in the country and reflect the public opinion honestly and usefully.**

Article Three:

The following terms of this law shall mean as follows:

1. Media: Means or instrument of dissemination of information using the following tools:

0 Visual: drawings, picture, postcard and poster.

v Audio-video (Broadcast): radio, television, cable network, picture mobile.

Information: Information and Press Agencies

Press: pictures and letters printed in a way conveying a meaning or picture and includes all mass media such as daily newspaper, gazette, magazine, booklet, book, preaching outlet as well speech and statement.

Mass Media is divided into the following categories in this law:

State-run mass media: The media that belong to the government offices and are funded and equipped by them.

Organizational mass media: The media that belongs to political, economical, social and cultural organizations and are funded and equipped by them.

Journalist: is a professional person whose job is to seek, obtain and publish information through news media.

Printing House: Economical, technical and incorporeal organization in which daily newspapers, magazines, books, newspapers, books, gazettes, announcements, posters and postcards are published.

Printer: Real or incorporeal person who, by ownership or representation, is the actual in charge of printing house affairs.

Publisher: Real or incorporeal person who is authorized to print and publish nonperiodic works.

Concessionaire Real or incorporeal persons who are engaged in printing and publishing of periodic

print media and establishing radio, television, cable network, news agency and print house.

Editor-in-chief: is a person who is the actual in-charge of managing the affairs related to the media stated in paragraph 8 of this article.

Publishing: is a process through which the message of print, broadcast as well as audio and video media is conveyed to the public.

Radio: is an audio mass media instrument.

Television: is an audio—video (broadcast) mass media instrument.

Cable Network: is a mass media of audio-video (broadcast), which broadcasts different international information, educational, cultural and entertainment programs to the public through satellite connection.

Chapter Two

Rights and Obligations

Article Four:

- 1. Every person has the right to freedom of thought and speech. This right includes seeking, obtaining and dissemination of information and views without interference and restraints by government officials, including freedom of expression and broadcast, dissemination and seeking of information.**
- 2. The government shall support and strengthen the freedom of mass media. No real or incorporeal person including the government and government officials can interdict, prohibit, censor or limit the activities of mass media or interfere in the affairs of mass media through other means. The Media Evaluation Commission enshrined in Article 42 of this law is an exception to this provision.**

Article Five:

Every person has the right to seek and obtain information. The government shall provide the information sought by citizens, except the information sought is a military secret that its disclosure endangers the national security and interests.

Article Six:

1. Journalists shall come under legal protection while carrying out their professional activities including publishing reports and critique views.
2. Journalists shall have the right to avoid disclosing their source of information, or otherwise an authoritative court issues an order thereof.

Article Seven:

To defend their class interests the journalists and other members of mass media can establish independent associations according to provisions of this law.

Article Eight:

- 1. According to the article (3) of this law the citizens of the country can establish means of mass media.**
- 2. Foreign political agencies, international organizations and their representatives in Afghanistan can print and publish news bulletin, according to diplomatic norms and after obtaining the permission of ministry of information and culture.**

Chapter Three

Print Media

Article Nine:

1. The citizen of the country, political parties, registered national organizations and foreign emigrants can, according to this law and without prior permission, establish print media. Newspaper, periodic publication, and other print media can be established without previous permission.

2. The publications whose circulation is less than (200) number shall not be subject to the provision of article (13) and (28) of this law and shall not need to obtain prior permission and registration.

Article Ten:

The founder of a print media, upon registration, shall be obliged to provide the following information to the Ministry of Information and Culture:

- (1) Complete identification details and residence address of the applicant.**
- (2) The name and the place/ location of the publication.**
- (3) The language in which the publication is published.**
- (4) The source of funding and the amount of budget.**

Article Eleven:

Print media shall have its name, specified address, location of printing, the name of concessionaire, editor-in-chief and the date of publication.

Article Twelve:

The identity and the signature of author shall have to exist in the original version.

Article Thirteen:

According to the provision of this law, every print media shall have a concessionaire and an editor-in-chief.

Chapter Four

Printing House

Article Fourteen:

Citizens, political parties and government offices shall have the right to establish printing houses, provided that it has obtained the permission of the Ministry of Information and Culture.

Article Fifteen:

In view of the provisions of Article 24 of this law, the applicant of license for establishing printing house shall present the following information to Ministry of Information and Culture:

1. Full identity and residential domicile.
2. Name and location of the printing press.
3. Language that is used for printing.
4. Type, kind of machinery and printing equipment.
5. Source and amount of budget invested in the establishment of the printing house.

Article Sixteen:

The transfer of the printing house ownership is permissible. The person to whom the ownership is transferred shall re-adhere to directives stated in article 24 of this law.

Article Seventeen:

Without a concessionaire and editor-in-chief, operation of printing house shall not be permissible.

Article Eighteen:

Citizens, political parties, and social organizations that do not have their own printing house, shall have the right to use private and state-run printing house in accordance with financial and accounting regulations of the concerned printing house.

Chapter Five

Audio -Visual (Broadcast) Media

Article Nineteen:

Citizens, political parties, social organizations and other state-run and private organizations shall have the right to establish audio - visual media in accordance with the provision of this law.

Article Twenty:

The National Commission of Radio & Television Broadcast, which shall be comprised of five members, shall be established for better regulating of audio and visual media. Chairperson and members of the National Commission of Radio & Television Broadcast shall be appointed by the President for a period of two years, the commission's tenure can be extended as required.

Article Twenty-One:

(1) The National Commission of Radio & Television Broadcast shall have the following duties and authorities:

Issuance of license and allocation of frequency to radio and television systems in accordance with the already set out standards.

Issuance of professional guidance to political parties as for using radio and television.

Issuance of essential guidance to owners of the electronic media in consultation with the media directors and civil society.

Monitoring the observation of the provisions of this law by mass media.

Determine broadcasting policy of the state-run radios and televisions.

(2) The National Commission of Radio & Television Broadcast is an independent entity and shall report to the President of its activities.

Article Twenty-Two:

The applicant of audio and visual mass media (Radio and Television) license shall be bound to provide the following information to the National Commission of Radio & Television Broadcast, in order to acquire the license.

- 1. Full identity and residential domicile.**
- 2. Name and the activity location of the audio and visual media.**
- 3. Type of the audio-visual media.**
- 4. Publications goals and objectives.**
- 5. Source and the amount of budget.**
- 6. Quantity and quality of machinery and equipment.**

Article Twenty-Three:

Every audio - visual media shall have a concessionaire and an editor-in-chief in accordance with the provision of this law.

Chapter Six

Conditions and the obligations of the concessionaire

Article Twenty-Four

The concessionaire of a mass media shall meet the following conditions:

- 1. Hold citizenship ID of the country.**
- 2. Have completed 18 years of age.**
- 3. Have not been sentenced to depravity from civil rights by an authoritative court.**

Article Twenty-Five;

1. The concessionaire of audio - visual media and print media shall be bound to register the media in accordance with the provisions enshrined in this law.
2. If the publication has started prior to registration, the concessionaire shall be bound to register the media within one week, in accordance with the provisions of this law.

Article Twenty-Six:

If the concessionaire believes that the decision of the Ministry of Information and Culture regarding the rejection of issuance of license is in violation of the provision of law, shall refer the case to Media Evaluation Commission, if still not satisfied, the concessionaire can appeal to a court.

Article Twenty Seven:

1. The transfer of the ownership of a publication, mass media, and transfer of copyright shall be permissible. The person to whom the ownership or the right has been transferred shall be bound to re-adhere to the provisions of articles 24 and 28 of this law.
2. The right to establish publication organ and media and the right to print and publish shall lie with the concessionaire. If the right is transferred to anybody else, the provision of article 24 and 28 of this law shall re-apply.

Article Twenty-Eight:

The editor-in-chief of a media shall be held responsible for its publication.

Chapter Seven

The conditions and obligations of Editor-in-chief

Article Twenty-Nine:

The editor-in-chief shall meet the following requirements:

1. Hold Afghanistan citizenship ID card.
 2. Have completed eighteen years of age.
 3. Hold certificate of professional education, or at least three year of experience in journalism.
 4. Have not been sentenced to depravity of civil rights by an authoritative court.
- Being not an official civil servant, unless it is a state-owned publication.

Article Thirty:

The editor-in-chief shall balance the right of the critic and criticized individual in the relevant media.

Chapter Eight

Prohibited publications

The publication of the following matters shall not be allowed in the mass media:

- 1. The matters contrary to principles of Islam and offensive to other religions and sects.**
- 2. The matters leading to dishonoring and defamation of individuals.**

Chapter Nine:

Penal provisions

Article Thirty-Two:

The concessionaire shall be held accountable in case of violation of the provisions of this law.

Article Thirty-Three:

1. The real or incorporeal persons that embark on establishing mass media in the Afghan territory, neglecting the provisions of this law shall be sentenced to cash fine

2. Should the founder or convener of the mass-media be a real person, shall be cash fined in the following order:

Q Television: fifteen thousands (15,000) Afghanis. ~ Radio: ten thousands (10,000) Afghanis. 0 Information Agency: ten thousands (10, 000) Afghanis.

3. Should the founder or the convener of the mass-media be an incorporeal person, shall be cash-fined in the following order:

. Television: seventeen thousand (17,000) Afghanis.

. Radio: twelve thousand (12, 000) Afghanis.

. Cable Network: thirty-four thousand (34, 000) Afghanis.

. Information Agency: twelve thousand (12, 000) Afghanis.

Article Thirty-Four:

1. The editor-in-chief can avoid disclosing the name of the author. In this case, the responsibility arising from the publication of the subject is directed towards the editor-in-chief.

2. Critic articles with fictitious name of the author shall be allowed to be published in periodicals. The responsibility arising from the article or work lies with the editor-in-chief provided he knows the writer by name and identity.

Article Thirty-Five:

1. The author shall be prosecuted as the perpetrator of the offense if he/she is found guilty according to the provisions of this law, while the editor-in-chief shall be regarded as the accomplice.

2. Should the author is unknown; the responsibility resulted from the publication of the work lies only with the editor-in-chief.

Article Thirty-Six:

If the author is sentenced to cash-fine, he/she shall be obliged to pay the amount during the course of one month from the date of sentence, according to the provisions of the law.

Article Thirty-Seven:

Citizens of foreign countries shall be allowed to make cinematography films, on condition of prior permission of Ministry of Information and Culture.

Article Thirty-Eight:

The activities of the mass medias shall be regulated in a constitution covering objectives, duties, authorities, structure and financial affairs.

Article Thirty-Nine:

The Ministry of Information and culture is obliged to ensure facilities required for the free operation of local and foreign mass media.

Article Forty:

The concessionaire and editor-in-chief of the media who have begun their activities prior to the enforcement of this law shall have to adhere to its provisions, within two months of its enforcement date.

EU Election Observation Mission 2005:**The Media Commission**

The Electoral Law, Art.51, establishes a Media Commission that should be operational no later than 60 days before the Election Day in order to monitor the coverage of the candidates during the official campaign period. The Commission also has a mandate to assess complaints about media coverage and breaches of the Media Code of Conduct issued by it. Its overall composition and responsibilities are determined by the JEMB. JEMB, Decision No. 44 of 19 July, 2005 appointed five Media Commissioners - three Afghan nationals and two internationals.

2. Laws and regulations that pertain to the influence of political candidates and parties before, during, and after an election

Main Research Findings:

To be registered, political parties must conform to the principles of Islam and be national in identity. Also, political parties must have at least 700 members, and have no funds from foreign sources.

President elected by receiving 50 percent or more of the vote. If no candidate receives 50 percent or more, a run off of the two candidates takes place. The candidate with the majority of the votes wins the presidency.

Presidential, ministers, parliamentarians from both the Wolesi Jirga and Meshrano Jirga can have no convictions of crimes against humanity, criminal act, deprivation of civil rights by a court.

Presidential candidates must be at least 40 years old.

Ministers must be at least 35 years old.

Wolesi Jirga candidates must be at least 25 years old.

Meshrano Jirga appointments must be at least 35 years old.

Wolesi Jirga has 249 seats according to the Election Law. The seats are in proportion to population of each region.

The state reserves 10 seats for Nomads.

The state guarantees at least 2 seats for a province.

The 239 seats in Wolesi Jirga are awarded based on first-past-the-post.

The number of women seats in Wolesi Jirga will be twice the number of provinces. There are 34 provinces in Afghanistan. 64 seats reserved for women candidates. If there are not enough women candidates to fill seats, then they will remain vacant.

Two-thirds of the Meshrano Jirga seats are appointed by the district councils.

One-third of the Meshrano Jirga seats appointed by the President. 50 percent must be women, and two must be disabled and impaired, and two must be from Kochis.

Through detailed laws, the state disallows any form of government interference in the electoral process.

Parties and candidates are entitled to make electoral complaints, including ineligibility of candidates. Complaints must be submitted within 72 hours of violation. For ineligibility complaints, they must be submitted within 7 days of display of the electoral lists.

For registration, candidates must have the following voter support:

Presidential candidates need at least 10,000 supporters.

Wolesi Jirga candidates need at least 300 supporters.
Nomads needs at least 300 supporters.

Electoral Finances:

Political parties' organization and financial resources are to be made public. There are no provisions to make this reality.

Citizens donations to candidates and/or parties are capped at 2 million Afghanis (4128 USD) per year.

The Electoral Law mentions public electoral subsidies, but no specifics are mentioned.

Electoral fees for candidates:

(According to the World Factbook, in 2010, the Afghanistan GDP per capita is 900 USD, the unemployment rate is 35 percent including those individuals living below the poverty line, and the mean graduate pay is .56 cent per hour.)

Presidential candidates must pay the state 50,000 Afghanis (1032 USD), and will be refunded if the candidate attains at least 15 percent of the vote in the first round.

Wolesi Jirga candidates must pay the state 10,000 Afghanis (200.64 USD), and will be refunded if the candidate attains at least 2 percent of the vote.

The state disallows Afghans from use of foreign and illegal funds in electoral campaigns.

Violation of the Electoral Law cannot exceed a fine of 10,000 Afghanis (200.64 USD).

In the Electoral Law, there are no concrete mechanisms for monitoring candidate and party finances.

The Joint Electoral Management Body (JEMB) can impose electoral regulation based on the Electoral Law and Constitution. In 2005, the JEMB established limits for electoral donations and spending, and provisions for candidates and parties to keep record of their finances. However, there were no mechanisms to police candidate and party finances, and the Independent Electoral Commission never requested to see the financial records of any candidate.

Mass Media:

The state disallows public and private media (including broadcasters and the press) from dishonoring and defaming of individuals, and criticizing the principles of Islam.

Outside of the election period, the state does not regulate the public and private media for political content.

There are no ownership concentrations regulations in any of the Afghan media.

Private media (including broadcast and the press) is required to get a media license from the Ministry

of Information and Culture. Concessionaires, who are required for TV and Radio networks, must not have been sentenced to depravity of civil rights by a authoritative court. Concessionaires can appeal decisions.

Public media must “fairly and impartially” (or “fair and unbiased”) broadcast candidate platforms, comments, and objectives during election campaigns. Outside of the election campaign, there is no “fair and unbiased” requirement on the public media. There is no equality requirement. Public possession and properties must be used equally by all candidates or not at all.

Private media (including broadcast and the press) must publish, disseminate platforms, views, goals of candidates and parties in a fair and unbiased manner. There is no equality requirement. Outside of the election period, private media is not required to adhere to the standard of “fair and unbiased.”

The state allows all registered candidates to have access to the media.

A media commission monitors fair reporting and coverage during election campaigns and deals with complaints.

The Mass Media Code of Conduct provides guidelines for mass media. The Code states that mass media during an election campaign must disseminate “fair, balanced, accurate, and impartial” reporting that is not misleading to the public. There is no requirement for equal or complete coverage. The terms fair and balanced are subject to interpretation. Equal is only used in terms of advertisers treatment.

During an election campaign, mass media must not disseminate false information, defamatory statements, in relation to personal character or conduct of a candidate, and intended prejudicial affect on a candidate. Also, mass media must provide equal treatment to all political advertisers.

With reference to the Afghan Penal Code, an individual who is convicted of defamation will receive up to two years in prison or a fine not exceeding 20,000 Afghanis. (412.80 USD)

Research Excerpts:

Afghanistan Constitution:

Article 35 [Organizations, Parties]

- (1) The citizens of Afghanistan have the right to form social organizations for the purpose of securing material or spiritual aims in accordance with the provisions of the law.
- (2) The citizens of Afghanistan have the right to form political parties in accordance with the provisions of the law, provided that:
 - **The program and charter of the party are not contrary to the principles of sacred religion of Islam, and the provisions and values of this Constitution.**
 - The organizational structure, and financial sources of the party are made public.
 - The party does not have military or paramilitary aims and structures.
 - **The party should have no affiliation to a foreign political party or sources.**
- (3) Formation and functioning of a party based on ethnicity, language, Islamic school of thought (mazhab-i fiqhi) and region is not permissible.**
- (4) A party set up in accordance with provisions of the law shall not be dissolved without lawful reasons

and the decision of an authorized court.

Chapter III The President

Article 60 [Head of State, Vice Presidents]

- (1) The President is the head of state of the Islamic Republic of Afghanistan, and conducts his authorities in executive, legislative, and judiciary branches in accordance with the provisions of this Constitution.
- (2) The President shall have two Vice Presidents, one first and one second.
- (3) The candidate to the Presidency on his or her candidacy shall declare the name of the Vice Presidents to the nation.
- (4) The Vice President in the absence, resignation, and or death of the President, acts in accordance with the provisions of this constitution.

Article 61 [Direct Election]

- (1) The President is elected by receiving more than 50% of the votes cast through free, general, secret, and direct voting.**
- (2) The presidential term is expired at the first of Jawza of the fifth years after the elections.**
- (3) Elections for the new president are held within thirty, to sixty days before the end of the presidential term.**
- (4) If none of the candidates succeeds to receive more than 50% of the votes in the first round, a run-off election shall be held within two weeks.**
- (5) In this round, only two candidates with the highest number of votes will participate.**
- (6) In the run-off, the candidate who gets the majority of the votes shall be elected as the President.
- (7) In case of death of one of the candidates during the first or second round, after the elections or prior to the announcement of the results of elections, new elections shall be held in accordance with the provisions of law.
- (8) The elections for the post of president shall be held under the supervision of the Independent Commission supervising of the Elections.
- (9) This Commission shall be established to supervise all elections and referendums in the country, in accordance with the provisions of law.

Article 62 [Qualifications]

- (1) Presidential candidates should possess the following qualification:**
 - Should be citizen of Afghanistan, Muslim and born of Afghan parents, and should not have citizenship of another country.**
 - On the day of becoming a candidate, his age should not be less than forty years.**
 - Should not have been convicted of crimes against humanity, criminal act, or deprivation of the civil rights by a court.**
- (2) No one can be elected as president for more than two terms.**
- (3) The provision of this article is applied to the Vice Presidents as well.**

Chapter IV The Government

Article 71 [Ministers]

- (1) The government consists of the ministers who work under the Chairmanship of the President.
- (2) Ministers are appointed by the President and shall be introduced for approval to the National Assembly.

Article 72 [Qualifications]

The person who is appointed as the Minister, should have the following qualifications:

- Must have only the citizenship of Afghanistan. Should a nominee for a ministerial post also hold the citizenship of another country, the House of Representatives [*Wolesi Jirga*] shall have the right to confirm or reject his or her nomination.
- Should have higher education, work experience and, good reputation.
- **His age should not be less than thirty-five.**
- Should not have been convicted of crimes against humanity, criminal act, or deprivation of civil rights by a court.

Article 73 [Incompatibility]

(1) The Ministers can be appointed from within and without the National Assembly.

(2) If a member of the National Assembly is appointed as a minister, he loses his membership in the National Assembly, and is replaced by another person in accordance with the provisions of law.

Article 74 [Oath of Office]

Prior to taking office, the minister perform the following oath in the presence of the President:

"In the name of Allah, the merciful and compassionate:

I swear in the name of God Almighty to support the provisions of the sacred religion of Islam, follow the Constitution and other laws of Afghanistan, protect the rights of citizens, and safeguard the independence, territorial integrity and national unity of Afghanistan, and consider God Almighty present in performing all my responsibilities, and honestly perform the duties assigned to me."

Article 75 [Duties of the Government]

The government has the following duties.

- Execute the provision of this Constitution, other laws, and final orders of the courts.
- Protect the independence, defend the territorial integrity, and safeguard the interests and dignity of Afghanistan in the international community.
- Maintenance of public law and order and elimination of administrative corruption.
- Prepare the budget, regulate financial affairs, and protect public wealth.
- Devise and implement programs for social, cultural, economic, and technological progress.
- Report to the National Assembly at the end of the fiscal year about the tasks accomplished and about the main plans for the new fiscal year.
- Perform other duties as recognized by this Constitution and other laws to be duties of the government.

Article 83 [House of Representatives]

(1) Members of the House of Representatives [*Wolesi Jirga*] are elected by the people through free, general, secret, and direct elections.

(2) Their mandate ends on the 1st of Saratan of the fifth year after the elections, and the new assembly starts its work.

(3) The election of the members of the House of Representatives [*Wolesi Jirga*] shall be held within 30 to 60 days before the expiry of the term of the House of Representatives [*Wolesi Jirga*].

(4) The number of members of the House of Representatives [*Wolesi Jirga*], proportionate to the population of each region, shall be not more than two hundred and fifty.

(5) Electoral constituency and other related issues shall be determined by election laws.

(6) In the election law measures should be adopted for so the election system shall provide general and just representation for all the people of the country, and at least two female delegate should be elected from each province.

Article 84 [Senate]

(1) Members of the Senate [*Meshrano Jirga*] are elected and appointed as follows:

(2) From among the members of each provincial council, the respective council elects one person for a period of four years.

(3) From among the district councils of each province, the respective councils elect one person for a period of three years.

(4) The President from among experts and experienced personalities -- including two representatives from the disabled and impaired and two representatives from the Kochis -- appoints the remaining one-third of the members for a period of five years.

(5) The president appoints 50% of these people from among women.

(6) A person, who is appointed as a member of the Senate [*Meshrano Jirga*], shall relinquish his membership in the respective council, and another person replaces him in accordance with the law.

Article 85 [Qualifications]

(1) A person who is nominated or appointed as a member of the National Assembly should have the following qualifications in addition to those considered by voters.

(2) Should be the citizen of Afghanistan, or has obtained the citizenship of the state of Afghanistan at least ten years before becoming a candidate.

(3) Should not have been convicted by a court for committing a crime against humanity, a crime, or sentenced of deprivation of his civil rights .

(4) Members of House of Representatives [*Wolesi Jirga*] should be Twenty Five years old at the date of candidacy, and members of the Senate [*Meshrano Jirga*] should be Thirty Five years old at the date of candidacy or appointment.

Article 153 [Party Incompatibility]

Judges, Attorneys, and Officers of the Armed Forces and Police, and members of the National Security, cannot be members of political parties during their terms of office.

Decrees on Non-interference in Electoral Affairs:

Article1:

The officials of the government institutions, including the Ministers, Directors of the Independent Directorates, Deputy Ministers, Judges, Attorneys, Heads of the government institutions, Governors, Deputy Governors, and all officials of the Ministry of Defense, Ministry of Interior, General Directorate of National Security, are obliged to observe the following points during the conduct of elections:

1 Noninterference in the electoral process, except where predicted in the law.

2 Refrain from actions that influence the voters to unveil whom have they voted for them to vote to a specific candidate or committing any action that can interrupt the principle of free, confidential and direct voting.

3 Noninterference in the meetings, preparation of meetings, gatherings, peaceful rallies during the electoral process.

4 Refrain from misusing the government resources and facilities in favor of any candidate. Refrain from collection, misshaping of the posters or other electoral campaign materials and

resources of the candidates.

6 Ensure the security of the candidates and voters,

7 Restrain from designation or termination of individuals on government positions for the purpose of electoral campaigning.

Article2:

In case of violation of the provisions of this decree, the offender shall be taken under legal custody and face judicial pursuit.

Article3:

The UN agency, its relevant organizations and the international community are requested to avoid any interference prior and after the electoral process, that can jeopardize their impartiality.

Political Parties Law

Article 3

The political system of the State of Afghanistan is based on the principles of democracy and pluralism of political parties.

Chapter two

Establishment and registration of political parties

Article 4

Afghan citizens of voting age can freely establish a political party, irrespective of their ethnicity, race, language, tribe, sex, religion, education, occupation, lineage, assets and place of residence.

Article 5

Political parties can function freely on the basis of the provisions of this law, and have equal rights and obligations before the law.

Article 6

Political parties shall not:

1. pursue objectives that are opposed to the principles of the holy religion Islam;
2. use force, or threaten with, or propagate, the use of force;
3. incite to ethnic, racial, religious or regional discrimination;
4. create a real danger to the rights and freedom of individuals or intentionally disrupt public order and security
5. have military organizations or affiliations with armed forces
6. receive funds from foreign sources.

Article 7

The headquarters and any regional offices of a political party shall be located in Afghanistan. The government shall ensure the security and safety of the political party's offices.

Article 8

1. All political parties shall be registered with the Ministry of Justice.
2. The procedure for establishing and registering political parties shall be regulated by separate regulation.

Article 9

The Ministry of Justice may refuse the registration of political parties which:

- (a) do not fulfill the requirement of Article 6**
- (b) have fewer than 700 members at the time of registration**
- (c) wish to register under the name of a political party that has already been registered.**

Article 10

If the Ministry of Justice rejects the registration of a political party, the applicant shall have the right to appeal to the relevant court

Article 11

A political party may officially start its activities after being registered by the Ministry of Justice.

Article 12

A registered political party shall enjoy the following rights:

- **Independent political activity;**
- **Permanent or temporary political alliance or coalition with other political parties;**
- **Open and free expression of opinions, both in writing and verbally, on political, social, economical and cultural issues, and peaceful assembly;**
- **Establishing an independent publication organ;**
- **Access to the media at the expense of the political party;**
- **Introducing candidates at all elections;**
- **Other rights in accordance with the aims and duties of a political party as indicated in its constitution.**

Article 13

1. Afghan citizens who have completed the age of 18 and have the right to vote can acquire membership of a political party.
2. A person shall not be member of more than one political party at a time.
3. Judges, prosecutors, leading cadres of the armed forces, officers, non-commissioned officers,

other military personnel, police officers, and personnel of national security, shall not be members of a political party during their tenure of office.

Chapter three

Financial matters

Article 14

The funds and expenses of political parties shall be public and transparent.

Article 15

(1) Political parties may receive income from the following sources:

- (a) Membership contributions
- (b) Donations by Afghan natural persons up to two million Afghanis per year
- (c) Income from a party's movable and immovable property
- (d) Subsidies by the government in connection with elections
- (e) Other contributions by members

(2) Political parties shall register all their income with relevant offices and deposit it in a bank account.

Article 16

1. The leadership of the political party shall bear financial responsibility during its tenure.
2. In order to carry out its financial affairs, the leadership of the political party shall appoint one or more authorized representatives and introduce their signatures to the relevant bank.
3. The movable and immovable property of political parties shall be registered in the office of the party and in the Ministry of Finance through legalized documents.

Chapter four

Dissolution of a political party

Article 17

The dissolution of a political party shall not be ordered unless:

1. the party uses force, or threatens with the use of force or uses force to overthrow the legal order of the country, or the party has a military organization or affiliations with armed forces,
2. lawful measures taken to prevent the situations mentioned in sub- item 1 of this Article are not effective,
3. the party acts against the articles of the Constitution and/or this law.

Regulation of Election Campaigns:

Electoral Campaign Period

Article Three:

The commission, considering article 46 of the Electoral Law, shall specify and publicize the start and end of the Electoral Campaign Period **at least 120 days ahead of E-day.**

Conditions related to Electoral Campaigns

Article Four:

- 1) Within the time limits set by the commission, predicted legal conditions and considering the concerned code of conduct, political parties and candidates can conduct electoral campaigns by organizing rallies, propagandizing through mass media (audio and video) and other legal means.**
- 2) Political parties, candidates and their supporters neither can interfere in other political parties or candidates' electoral campaigns nor disturb their activities.**
- 3) Candidates and political parties shall not involve armed forces personnel, such as Ministries of Defense and Interior and General Directorate of National Security troops in their electoral campaign activities while they are in military uniform or on duty.
- 4) Political parties and candidates can not invite any foreign nationals to participate in electoral campaigns' activities.**
- 5) Participation or non participation of individuals in electoral campaigns is not mandatory.

Use of Resources during Electoral Campaigns

Article Six:

- 1) To raise public awareness, Public Media (TV, radio, and print media) shall fairly and impartially broadcast and publish candidates' platforms, comments, and objectives during electoral campaigns. Moreover, the State Media shall broadcast and publish the platforms, comments and objectives of the candidates in conformity with the designated time line of the IEC fairly and impartially.
- 2) No candidate shall use public possessions and properties during electoral campaigns unless an authorized authority provides equal facilities to all candidates.

Nonintervention of Government Departments' Officials in Electoral Campaigns' Affairs

Article Seven:

Government Departments' Officials shall observe the following points during electoral campaigns:

- 1- Avoiding intervening directly or indirectly in favor of or against a certain party or candidate while on duty.
- 2- Avoiding intervening in meetings, gatherings, and peaceful rallies.
- 3- Avoiding preferential behavior, such as explicit criticism against or support for a candidate.
- 4- Avoiding using government facilities in favor of or against a candidate.
- 5- Avoiding removing or destroying posters and other publicity means of candidates.

The details of the mentioned issues in the enclosed policy document with this regulation have already been stated.

Ending the Electoral Campaign Period

Article Eight:

Electoral Campaign Period comes to an end 48 hours ahead of polling day. Candidates, political parties, and their supporters cannot continue their campaigns or distribute electoral campaign materials after

ending the Electoral Campaign Period.

Electoral Campaign Materials

Article Nine:

1) Candidates, Political Parties, and their supporters are obliged to observe the followings during the Electoral Campaign Period:

a) Candidates shall not take any step towards the Electoral Campaign by making use of the media and arranging rallies before the date officially announced by the commission.

Electoral Challenges and Complaints Regulation

This regulation has been approved by the Independent Election Commission (hereafter called the Commission) based on the authority given by Article 66 of the Electoral Law to organize challenge and complaint related affairs during the various phases of the election process.

Application

Article 1:

This regulation organizes the challenge and complaint related affairs in the following elections:

1. Presidential Elections
2. Wolesi Jirga Elections
3. Provincial Council Elections
4. District Council Elections
5. Village Council Elections
6. Mayor Elections
7. Municipal Assembly Elections

Right of Challenge and Complaint

Article 2:

The following people may challenge the eligibility of candidates or file their complaints related to violations stated in Article 4 of this regulation.

1. All eligible voters
2. Agents of political parties, candidates and .

Challenges

Article 3:

1) A challenge includes presenting an official document relating to the ineligibility of a candidate on the preliminary list of candidates within the time limits prescribed by the Commission.

2) A challenge on the ineligibility of a candidate on the preliminary list of candidates is to be presented to the Electoral Complaint Commission (ECC). Following the rules of procedure of ECC, the Electoral Complaint Commission shall verify the challenges presented to it and if it decides that the candidate must be deleted from the list, ECC shall officially notify the Commission within the prescribed period.

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Complaints

Article 4:

1) A complaint includes presenting an official document about a violation prescribed in Article 63 of the Electoral Law, or the regulations or Codes of Conduct approved by the Commission.

2) A complaint must be officially recorded and presented to the Electoral Complaint Commission within 72 hours after the violation occurred.

Assistance to the Electoral Complaint Commission

Article 5:

Electoral staff, both in the capital and provinces, must assist the ECC with verifying the challenges and complaints on a legal basis.

Electoral Complaint Commission

Article 6:

Other matters concerning the investigation of challenges and complaints by the ECC shall be organized according to the rules of procedures issued by ECC.

Regulation of Registration of Candidates:

Challenges

Article 6:

1) A political party's agent, a candidate and any Afghan citizen eligible to vote may challenge the eligibility of candidates included in the preliminary list, after the list is displayed.

2) The challenge must be entered on a challenge form and be submitted to the Electoral Complaint Commission within (7) days after the first display of the preliminary list.

3) The Electoral Complaint Commission shall take the final decision on the issue after evaluating and reviewing the challenge.

Electoral Decisions of Complaint Commission

Article 7:

1) The Electoral Complaint Commission shall make its decision based on the documents submitted to it regarding the eligibility or ineligibility of a candidate included in the preliminary list,

2) The Electoral Complaint Commission shall submit its final decision to the Commission regarding the challenges, by the end of the challenge period.

Election law:

Article 10

Recruitment Restrictions

(1) The recruitment of officials of political parties and election candidates as electoral officials is disallowed.

(2) Electoral officials while in office cannot stand for elections.

(3) A father, grandfather, descendant up to the third generation, mother, grandmother, brother, sister, spouse, uncle, aunt, father-in-law, and mother-in-law of a candidate shall not have the right to work as an electoral official in the constituency in which the concerned candidate is running.

Article 15

Candidacy Requirements

(1) The following individuals shall not be qualified to candidate themselves for presidential, national assembly, provincial, or district council elections, unless they have resigned from their positions at the time of filing their nomination papers:

- a) Chief Justice, Members of the Supreme Court and Judges;
- b) Attorney General and Public Prosecutors;
- c) Ministers and their Deputies, Governors and their Deputies, and District Administrators;
- d) Mayors and Nahia Administrators;
- e) Members of Ministry of Defense, Ministry of Interior, and the General Directorate for National Security;
- f) General Directors and Directors of Ministerial Departments and Government Offices at the Central and Provincial Level; and
- g) Electoral Officials.

(2) If the individuals listed in sub-article (1) are not elected, they shall not have the right to return to their previous positions unless they are reappointed.

(3) Individuals who practically command or are members of unofficial military forces or armed groups shall not be qualified to candidate themselves for the elections.

(4) No person shall candidate himself or herself in more than one constituency at the same time.

Chapter VI

National Assembly Elections

Part One

Wolesi Jirga

Article 19

Number of Seats

The Wolesi Jirga shall have 249 seats.

Article 20

Allocation of Provincial Seats

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

(2) Of all the allocated seats, 10 seats shall be allocated to nomads.

(3) The commission shall allocate seats to provinces in the following manner:

- a. The total population of provinces is divided by the total number of seats to be allocated to provinces (239) to determine the seat allocation quota;
- b. The population of each province is divided by the seat allocation quota;
- c. Initially provinces are allocated a number of seats equal to the whole number from the division under (b);
- d. Seats not allocated under (c), 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) 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).
- (4) The Commission shall publish the calculations used in the allocation of seats under this article.

Article 21

Awarding of Provincial Seats to Candidates

- (1) Subject to the provision of article 22 of this Law, Provincial seats shall be awarded to candidates on the basis of the number of votes they have received.
- (2) In each province, seats shall be awarded to the most voted candidates.
- (3) No candidate shall be awarded more than one seat.
- (4) If a candidate is not able to take, or abandons, his or her seat during the term of the Wolesi Jirga, the vacant seat shall belong to the next most voted candidate from the same gender.

Article 22

Allocation of Seats to Female Candidates

- (1) 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, according to which the number of female representatives shall be at least twice the number of existing provinces of the country.
- (2) The most voted female candidates in each constituency shall be awarded seats in accordance with sub-article (1) of this article. Once the representation requirements are met, the remaining seats shall be awarded according to article 21 of this Law.
- (3) If there are not enough female candidates on the list of candidates to fill the seat(s) allocated to women in a particular constituency, the seat(s) in question shall remain vacant until the next intended Wolesi Jirga elections.

Chapter VIII

Conduct of the Elections

Article 33

Election Date

- (1) The Commission shall announce the election date at least 140 days in advance.
- (2) The Commission shall prepare and publish, at least 120 days prior to the scheduled election date, an electoral calendar clearly showing all appointed dates of the elections.

- b. The candidate's voter registration card or other proof of voter registration;
- c. Names, registration card numbers, and signatures or thumbprints of persons residing in the constituency supporting the candidate's appearance on the

ballot as follows:

- i. 10,000 to nominate for Presidential candidates;**
- ii. 300 to nominate for Wolesi Jirga candidates;**
- iii. 200 to nominate for Provincial Council candidates; and**
- iv. 100 to nominate for District Council candidates;**
- v. In the case of the Nomad Constituency, the candidate must present names, registration card numbers, and signatures or thumbprints of 300 persons registered as nomads supporting the candidate's appearance on the ballot;**

d. Sworn statement attesting to the candidate's Eligibility and Qualifications, committing to uphold the Code of Conduct, confirming their resignation from any of the positions set out in Article 15(1), if applicable, confirming that they do not command, or belong to, unofficial military forces or armed groups, and confirming that they have not been convicted of crimes against humanity, or any other crime, or have been deprived of civil rights by a court;

e. Presidential candidates shall submit the names of two vice-presidential candidates; and

f. Candidates shall file a deposit for their candidacy as set out below.

(3) The filing deposit for a Presidential candidate shall be Afghanis 50,000, which deposit shall be refunded if the candidate is elected or receives at least 15 % of the valid votes cast in the first round of the election.

(4) The filing deposit for a Wolesi Jirga candidate shall be Afghanis 10,000, which deposit shall be refunded if the candidate is elected or receives at least 2 % of the valid votes cast in the respective constituency.

(7) The Commission shall establish, by Regulation, procedures for the submission of candidate nominations.

Article 50

Fair and Neutral Publication and Dissemination of Ideas

(1) For the purpose of public information during the electoral campaign period, the mass media (radio, television, and the press) shall publish and disseminate the platforms, views and goals of the candidates in a fair and unbiased manner, in accordance with the Code of Conduct established by the Commission.

(2) Candidates shall have access, to the extent possible, to the media. For the purpose of public information during electoral campaign period, state-run media shall publish and disseminate, as agreed with Commission, the platforms, views, and goals of the candidates in a fair and unbiased manner.

(3) State-owned media shall institute, as necessary, goals, policies and procedures to ensure fair coverage of the elections and implement the provisions of sub articles (1) and (2).

Article 51

Media Commission

(1) The Commission shall establish, at least 60 days prior to the election date, a Media Commission (MC). The MC shall monitor fair reporting and coverage of the electoral campaign period and shall deal with the complaints concerning any

breaches of fair reporting or coverage of political campaign, or other violations of the Mass Media Code of Conduct. Appeals, may be lodged with the Commission.
(2) The composition, responsibilities, and authorities of the MC shall be determined by the Commission.

Chapter IX

Electoral Complaints and Offences

Article 52

Electoral Complaints Commission

(1) In order to deal with electoral offences, complaints and challenges, an Electoral Complaints Commission (ECC) shall be established with the following composition:

- a. One member appointed by the Supreme Court;
- b. One member appointed by the Afghan Independent Human Rights Commission; and
- c. Three International members appointed by the Special Representative of the Secretary General in Afghanistan.

(2) The ECC shall elect one of its members as the Chairperson of the ECC.

(3) The ECC shall have the jurisdiction to consider and adjudicate the following:

- a. Complaints relating to electoral offences, including violations of the law in the conduct of the electoral process, provided that the complaint has been received prior to the certification of the results of the election; and
- b. Challenges to the list of candidates or to the eligibility or qualifications of a candidate raised during the electoral process.

(4) The ECC shall develop and implement its own procedures for considering and adjudicating complaints.

(5) The ECC may consider matters otherwise within its jurisdiction on its own initiative and in the absence of a formal complaint or challenge.

(6) Decisions of the ECC shall be final.

(7) The ECC shall discontinue its work no later than 30 days following the certification of results.

(8) In order to deal with complaints arising in the provinces, the ECC may delegate its authority to commissions at provincial level, which commissions shall consider complaints within their jurisdiction and in accordance with the procedures established by the ECC.

Article 53

Electoral Offences

The following acts shall constitute Electoral Offences:

- a. Providing false information to the Commission, any commission established by the Commission, or the Electoral Complaints Commission;
- b. Threatening, intimidating or attacking the dignity of a voter or candidate or a journalist covering the election 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;
- g. Voting or attempting to vote using a forged or altered card or the card of another person;
- h. Changing, replacing, stealing, or destroying electoral documents without legal authorization;
- i. Manufacturing false voter registration cards, ballots, or official forms;
- j. Obtaining a voter registration card under false pretences;
- k. Attempting to vote more than once in an election;
- l. Interfering with election materials or ballot boxes without due authority;
- m. Interfering with electoral officials in the performance of their duties;
- n. Violating the Code of Conduct for Political Parties, Candidates and Agents, or the Code of Conduct for 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. Inciting or provoking other persons to commit an Electoral Offence;
- r. Violating provisions of this Law or other legal instrument governing the electoral process; and
- s. Failing to comply with any order of the Commission, the ECC, or the MC.

Article 54**Sanctions and Penalties**

(1) Taking into consideration the circumstances, the ECC may, if it determines that an Electoral Offence has occurred:

- a. Issue a warning to, or order, the offending individual or organization, to take remedial action;
- b. Impose a fine not to exceed 100,000 Afghanis;
- c. Prior to the certification of results, order a recount of ballots, or a repeat of the voting;
- d. Remove a candidate from the candidates list, if there are justified reasons;
- e. Invalidate ballot papers not meeting the conditions for validity, or order the count or recount of a ballot paper or a group of ballot papers; and
- f. Prohibit an offending individual from serving in the Commission or its Secretariat for a period not exceeding 10 years.

(2) The ECC may impose sanctions on a political party or candidate for Electoral Offences committed by its members or supporters. In imposing such a sanction the ECC shall take into consideration any evidence demonstrating that the political party or candidate made reasonable efforts to prevent its members and supporters from committing Electoral Offences.

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

EU Election Observation Mission 2005:

The Media Commission

The Electoral Law, Art.51, establishes a Media Commission that should be operational no later than 60 days before the Election Day in order to monitor the coverage of the candidates during the official

campaign period. The Commission also has a mandate to assess complaints about media coverage and breaches of the Media Code of Conduct issued by it. Its overall composition and responsibilities are determined by the JEMB. JEMB, Decision No. 44 of 19 July, 2005 appointed five Media Commissioners - three Afghan nationals and two internationals.

3. Laws and regulations on electoral finance

Main Research Findings:

According to the World Factbook, in 2010, the Afghanistan GDP per capita is 900 USD, the unemployment rate is 35 percent including those individuals living below the poverty line, and the mean graduate pay is .56 cent per hour.

Political parties' organization and financial resources are to be made public. There are no provisions to make this reality.

Citizens donations to candidates and/or parties are capped at 2 million Afghanis (4128 USD) per year.

The Electoral Law mentions public electoral subsidies, but no specifics are mentioned.

Electoral fees for candidates:

Presidential candidates must pay the state 50,000 Afghanis (1032 USD), and will be refunded if the candidate attains at least 15 percent of the vote in the first round.

Wolesi Jirga candidates must pay the state 10,000 Afghanis (200.64 USD), and will be refunded if the candidate attains at least 2 percent of the vote.

The state disallows Afghans from use of foreign and illegal funds in electoral campaigns.

Violation of the Electoral Law cannot exceed a fine of 10,000 Afghanis (200.64 USD).

Mass media as an individual entity can be fined as follows:

TV: 15,000 Afghanis (309.6 USD)

Radio: 10,000 Afghanis (200.64 USD)

Info Agency: 10,000 Afghanis (200.64 USD)

Mass media as a corporation can be fined as follows:

TV: 17,000 Afghanis (350.88 USD)

Radio: 12,000 Afghanis (274.68 USD)

Info Agency: 12,000 Afghanis (274.68 USD)

Cable network: 34,000 Afghanis (701.76 USD)

In the Electoral Law, there are no concrete mechanisms for monitoring candidate and party finances.

The Joint Electoral Management Body (JEMB) can impose electoral regulation based on the Electoral Law and Constitution. In 2005, the JEMB established limits for electoral donations and spending, and provisions for candidates and parties to keep record of their finances. However, there were no mechanisms to police candidate and party finances, and the Independent Electoral Commission never

requested to see the financial records of any candidate.

There are no limits on third-party electoral spending which is independent of a candidate or party.

There are no restrictions on donations from legal entities, except for the 2 million Afghanis (4128 USD) cap per year per donor.

There are no tax deductions for candidate and party donations.

Research Excerpts:

Election Law:

Chapter three Financial matters

Article 14

The funds and expenses of political parties shall be public and transparent.

Article 15

(1) Political parties may receive income from the following sources:

- (a) Membership contributions**
- (b) Donations by Afghan natural persons up to two million Afghanis per year**
- (c) Income from a party's movable and immovable property**
- (d) Subsidies by the government in connection with elections**
- (e) Other contributions by members**

(2) Political parties shall register all their income with relevant offices and deposit it in a bank account.

Article 16

- 4. The leadership of the political party shall bear financial responsibility during its tenure.
- 5. In order to carry out its financial affairs, the leadership of the political party shall appoint one or more authorized representatives and introduce their signatures to the relevant bank.
- 6. The movable and immovable property of political parties shall be registered in the office of the party and in the Ministry of Finance through legalized documents.

f. Candidates shall file a deposit for their candidacy as set out below.

(3) The filing deposit for a Presidential candidate shall be Afghanis 50,000, which deposit shall be refunded if the candidate is elected or receives at least 15 % of the valid votes cast in the first round of the election.

(4) The filing deposit for a Wolesi Jirga candidate shall be Afghanis 10,000, which

deposit shall be refunded if the candidate is elected or receives at least 2 % of the valid votes cast in the respective constituency.

(7) The Commission shall establish, by Regulation, procedures for the submission of candidate nominations.

Chapter IX

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Article 52

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- b. One member appointed by the Afghan Independent Human Rights Commission; and
- c. Three International members appointed by the Special Representative of the Secretary General in Afghanistan.

(2) The ECC shall elect one of its members as the Chairperson of the ECC.

(3) The ECC shall have the jurisdiction to consider and adjudicate the following:

- a. Complaints relating to electoral offences, including violations of the law in the conduct of the electoral process, provided that the complaint has been received prior to the certification of the results of the election; and
- b. Challenges to the list of candidates or to the eligibility or qualifications of a candidate raised during the electoral process.

(4) The ECC shall develop and implement its own procedures for considering and adjudicating complaints.

(5) The ECC may consider matters otherwise within its jurisdiction on its own initiative and in the absence of a formal complaint or challenge.

(6) Decisions of the ECC shall be final.

(7) The ECC shall discontinue its work no later than 30 days following the certification of results.

(8) In order to deal with complaints arising in the provinces, the ECC may delegate its authority to commissions at provincial level, which commissions shall consider complaints within their jurisdiction and in accordance with the procedures established by the ECC.

Article 53

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The following acts shall constitute Electoral Offences:

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- b. Threatening, intimidating or attacking the dignity of a voter or candidate or a journalist covering the election 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;
- g. Voting or attempting to vote using a forged or altered card or the card of another person;
- h. Changing, replacing, stealing, or destroying electoral documents without legal authorization;
- i. Manufacturing false voter registration cards, ballots, or official forms;
- j. Obtaining a voter registration card under false pretences;
- k. Attempting to vote more than once in an election;
- l. Interfering with election materials or ballot boxes without due authority;
- m. Interfering with electoral officials in the performance of their duties;
- n. Violating the Code of Conduct for Political Parties, Candidates and Agents, or the Code of Conduct for 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. Inciting or provoking other persons to commit an Electoral Offence;
- r. Violating provisions of this Law or other legal instrument governing the electoral process; and
- s. Failing to comply with any order of the Commission, the ECC, or the MC.

Article 54

Sanctions and Penalties

(1) Taking into consideration the circumstances, the ECC may, if it determines that an Electoral Offence has occurred:

- a. Issue a warning to, or order, the offending individual or organization, to take remedial action;
- b. Impose a fine not to exceed 100,000 Afghanis;**
- c. Prior to the certification of results, order a recount of ballots, or a repeat of the voting;
- d. Remove a candidate from the candidates list, if there are justified reasons;
- e. Invalidate ballot papers not meeting the conditions for validity, or order the count or recount of a ballot paper or a group of ballot papers; and
- f. Prohibit an offending individual from serving in the Commission or its Secretariat for a period not exceeding 10 years.

(2) The ECC may impose sanctions on a political party or candidate for Electoral Offences committed by its members or supporters. In imposing such a sanction the ECC shall take into consideration any evidence demonstrating that the political party or candidate made reasonable efforts to prevent its members and supporters from committing Electoral Offences.

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

Law on Mass Media:

Article Thirty-Three:

1. The real or incorporeal persons that embark on establishing mass media in the Afghan territory, neglecting the provisions of this law shall be sentenced to cash fine

2. Should the founder or convener of the mass-media be a real person, shall be cash fined in the following order:

Q Television: fifteen thousands (15,000) Afghanis. ~ Radio: ten thousands (10,000) Afghanis.

Information Agency: ten thousands (10, 000) Afghanis.

3. Should the founder or the convener of the mass-media be an incorporeal person, shall be cash-fined in the following order:

. Television: seventeen thousand (17,000) Afghanis.

. Radio: twelve thousand (12, 000) Afghanis.

. Cable Network: thirty-four thousand (34, 000) Afghanis.

. Information Agency: twelve thousand (12, 000) Afghanis.

Ennis, David, “Analysis of the Electoral Legal Framework of Afghanistan”, IFES Legal Advisor, February 28, 2006:

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.

4. Laws and regulations on voter say

Main Research Findings:

Afghan voters have the constitutional right to freedom of speech, assembly, and demonstration, within adherence to the principles of Islam and no defamatory and dishonorable statements against individuals. (With reference to the Afghan Penal Code, an individual who is convicted of defamation will receive up to two years in prison or a fine not exceeding 20,000 Afghanis. (412.80 USD))

Afghan adult citizens have the right to vote and run as candidates.

Voters must be at least 18 years old and not be deprived of civil or political rights by court.

Afghan citizens have free education up to the level of bachelor degree.

Only the President can call a referendum, unlike Bolivia for example, in which citizens can call referendums provided they have enough public support.

Electoral campaigns are at least 120 days and end 48 hours before the election day.

Afghan citizens have the right to electoral complaints provided they are submitted within 72 hours of the violation, and in the case of ineligible candidates, within 7 days of the display of candidate lists.

Mobile electoral units will be used to register prisoners who have not been deprived of political rights.

The state will make special efforts to establish registration stations which are accessible to women and the disabled.

The Independent Electoral Commission may provide special voting locations for nomads, refugees, internally displaced persons, handicapped, and disabled, members of the Armed Forces, civil servants, and electoral officials.

The Independent Electoral Commission may provide facilities for the registration of Afghan refugees in Iran and Pakistan.

Electoral offenses included threats to voters, impediment of voters, and bribery of voters.

Voters are entitled to seek and obtain information from government, except information which compromises national security.

The state imposes a cap on electoral donations at 2 million Afghanis (4128 USD) per year for each donor. (According to the World Factbook, in 2010, the Afghanistan GDP per capita is 900 USD, the unemployment rate is 35 percent including those individuals living below the poverty line, and the mean graduate pay is .56 cent per hour.)

There are no restrictions on donations from legal entities.

The public and private mass media is only regulated for “fair and unbiased” electoral content during the election period.

There are no concrete mechanisms to monitor candidate and party finances and make them public.

There are no spending limits on third party electoral spending which is independent of a candidate or party.

Research Excerpts:

Afghanistan Constitution:

Chapter II Fundamental Rights and Duties of Citizens

Article 22 [Equality]

- (1) Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited.
- (2) The citizens of Afghanistan -- whether man or woman -- have equal rights and duties before the law.

Article 23 [Life]

Life is a gift of God and a natural right of human beings. No one shall be deprived of this right except by the provision of law.

Article 24 [Liberty, Human Dignity]

- (1) Liberty is the natural right of human beings. This right has no limits unless affecting the rights of others or public interests, which are regulated by law.
- (2) Liberty and dignity of human beings are inviolable.
- (3) The state has the duty to respect and protect the liberty and dignity of human beings.

Article 33 [Electoral Rights]

- (1) The citizens of Afghanistan have the right to elect and be elected.**
- (2) Law regulates the conditions and means to exercise this right.**

Article 34 [Expression, Press, Media]

- (1) Freedom of expression is inviolable.
- (2) Every Afghan has the right to express his thought through speech, writing, or illustration or other means, by observing the provisions stated in this Constitution.
- (3) Every Afghan has the right to print or publish topics without prior submission to the state authorities in accordance with the law.
- (4) Directives related to printing house, radio, television, press, and other mass media, will be regulated by the law.

Article 36 [Demonstration]

The citizens of Afghanistan have the right to un-armed demonstrations, for legitimate peaceful purposes.

Article 37 [Confidentiality of Communication]

- (1) Confidentiality and freedom of correspondence and communication whether in the form of letters or

through telephone, telegraph and other means, are immune from invasion.

(2) The state does not have the right to inspect personal correspondence and communication unless authorized by the provisions of law.

Article 43 [Education]

(1) Education is the right of all citizens of Afghanistan, which shall be provided up to the level of the B.A. (lisâns), free of charge by the state.

(2) The state is obliged to devise and implement effective programs for a balanced expansion of education all over Afghanistan, and to provide compulsory intermediate level education.

(3) The state is also required to provide the opportunity to teach native languages in the areas where they are spoken.

Article 44 [Education for Women and Nomads, Illiteracy]

The state shall devise and implement effective programs for balancing and promoting of education for women, improving of education of nomads and elimination of illiteracy in the country.

Article 45 [Unified Educational Curriculum]

The state shall devise and implement a unified educational curriculum based on the provisions of the sacred religion of Islam, national culture, and in accordance with academic principles, and develops the curriculum of religious subjects on the basis of the Islamic sects existing in Afghanistan.

Article 46 [Higher Education, Schools]

(1) Establishing and operating of higher, general and vocational education are the duties of the state.

(2) The citizens of Afghanistan also can establish higher, general, and vocational private educational institutions and literacy courses with the permission of the state.

(3) The state can also permit foreign persons to set up higher, general and vocational educational private institutes in accordance with the law.

(4) The conditions for admission to state higher education institutions and other related matters to be regulated by the law.

Article 65 [Call for Referendum]

(1) The President can call for a referendum on important national, political, social or economic issues.

(2) Call for referendum shall not be contrary to the provisions of this constitution or for the amendment of it.

Regulation of Electoral Campaign:

Ending the Electoral Campaign Period

Article Eight:

Electoral Campaign Period comes to an end 48 hours ahead of polling day. Candidates, political parties,

and their supporters cannot continue their campaigns or distribute electoral campaign materials after ending the Electoral Campaign Period.

Electoral Campaign Materials

Article Nine:

1) Candidates, Political Parties, and their supporters are obliged to observe the followings during the Electoral Campaign Period:

a) Candidates shall not take any step towards the Electoral Campaign by making use of the media and arranging rallies before the date officially announced by the commission.

Electoral Challenges and Complaints Regulation

This regulation has been approved by the Independent Election Commission (hereafter called the Commission) based on the authority given by Article 66 of the Electoral Law to organize challenge and complaint related affairs during the various phases of the election process.

Application

Article 1:

This regulation organizes the challenge and complaint related affairs in the following elections:

1. Presidential Elections
2. Wolesi Jirga Elections
3. Provincial Council Elections
4. District Council Elections
5. Village Council Elections
6. Mayor Elections
7. Municipal Assembly Elections

Right of Challenge and Complaint

Article 2:

The following people may challenge the eligibility of candidates or file their complaints related to violations stated in Article 4 of this regulation.

1. All eligible voters
2. Agents of political parties, candidates and .

Challenges

Article 3:

- 1) A challenge includes presenting an official document relating to the ineligibility of a candidate on the preliminary list of candidates within the time limits prescribed by the Commission.
- 2) A challenge on the ineligibility of a candidate on the preliminary list of candidates is to be presented to the Electoral Complaint Commission (ECC). Following the rules of procedure of ECC, the Electoral Complaint Commission shall verify the challenges presented to it and if it decides that the candidate must be deleted from the list, ECC shall officially notify the Commission within the prescribed period.

Approval Date: 24.03.2010 Page 2 of 2

Complaints

Article 4:

- 1) A complaint includes presenting an official document about a violation prescribed in Article 63 of the Electoral Law, or the regulations or Codes of Conduct approved by the Commission.
- 2) A complaint must be officially recorded and presented to the Electoral Complaint Commission within 72 hours after the violation occurred.

Assistance to the Electoral Complaint Commission

Article 5:

Electoral staff, both in the capital and provinces, must assist the ECC with verifying the challenges and complaints on a legal basis.

Electoral Complaint Commission

Article 6:

Other matters concerning the investigation of challenges and complaints by the ECC shall be organized according to the rules of procedures issued by ECC.

Regulation of Registration of Candidates:

Challenges

Article 6:

1) A political party's agent, a candidate and any Afghan citizen eligible to vote may challenge the eligibility of candidates included in the preliminary list, after the list is displayed.

2) The challenge must be entered on a challenge form and be submitted to the Electoral Complaint Commission within (7) days after the first display of the preliminary list.

3) The Electoral Complaint Commission shall take the final decision on the issue after evaluating and reviewing the challenge.

Electoral Decisions of Complaint Commission

Article 7:

1) The Electoral Complaint Commission shall make its decision based on the documents submitted to it regarding the eligibility or ineligibility of a candidate included in the preliminary list,

2) The Electoral Complaint Commission shall submit its final decision to the Commission regarding the challenges, by the end of the challenge period.

Regulation of Voter Registration:

Time and Places

Article 2:

(1) The start and end date for voter registration shall be publicly announced by the Commission at least 10 days prior to the beginning of the process.

(2) To register voters, at least one voter registration center shall be established in each province.

(3) Given its possibilities, the Commission shall establish mobile teams to register those prisoners who have not been deprived from their political rights by a court.

(4) The Commission shall determine the voter registration stations and publicly announce it at least 7 days prior to the start of the process.

(5) IEC would make its especial efforts to establish registration stations in those places where women and people with disabilities can reach them.

Article eight:

(1) Citizens eligible to vote and agents may challenge a person's eligibility to register as a voter.

(2) The designated supervisor of the voter registration station, after contacting the person against whom the challenge was made, on the basis of evidence of both sides, may decide whether to accept or reject the challenge.

Complaints

Article 9:

(1) Citizens eligible to vote and agents may file a written complaint with the ECC if any violation of electoral law or documents approved by the Commission or Secretariat happens or if not satisfied with the decision made by the supervisor about the challenge.

Election law:

Article 2

Election Method

Elections shall be through free, universal, secret, and direct ballot.

Article 3

Principle of Equality in Elections

Voters shall have equal rights of participation in the elections.

Article 4

Voting System

Each voter shall have one vote in the elections and shall vote only on his or her own behalf.

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, religious, ethnic, gender, tribal, geographical, or social status is prohibited.

Article 13

Voter Eligibility

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

- a. is at least 18 years of age on the day of the election;
- b. has Afghan citizenship at the time of registration;
- c. has not been deprived from his or her civil or political rights by a court of competent jurisdiction; and
- d. has been registered as a voter by the Commission.

Article 16

Voting Location

(1) Voters shall vote in the constituency indicated on their voter registration card.

(2) The Commission may, on an exceptional basis, provide special facilities for nomads, refugees, internally displaced people, the handicapped and the disabled, members of the armed forces, civil servants and electoral officials.

Article 17

Voter Identification

(1) Voters shall, prior to receiving the ballot paper, prove their identity by showing their voter registration cards.

(2) The Commission may, on an exceptional basis, provide facilities for the registration of Afghan refugees in Iran and Pakistan.

Article 43

Removal of Campaign Materials

The Commission shall have the authority to order the removal of campaign materials displayed within 100 meters of polling centres on election date.

Article 44

Prohibition of Carrying Arms at Polling Centres

No person shall carry any weapon or any instrument capable of use as a weapon, 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.

(5) The Commission may provide facilities necessary for the voting of the disabled and the handicapped.

Article 46

Objections Concerning Voting

(1) Before a voter has been handed a ballot paper, an accredited agent of a candidate 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 such objection and shall note the particulars of the objection and his or her reason for rejecting or accepting the objection in an official record.

Chapter IX

Electoral Complaints and Offences

Article 52

Electoral Complaints Commission

(1) In order to deal with electoral offences, complaints and challenges, an Electoral Complaints Commission (ECC) shall be established with the following composition:

- a. One member appointed by the Supreme Court;
- b. One member appointed by the Afghan Independent Human Rights Commission; and
- c. Three International members appointed by the Special Representative of the Secretary General in Afghanistan.

(2) The ECC shall elect one of its members as the Chairperson of the ECC.

- (3) The ECC shall have the jurisdiction to consider and adjudicate the following:
- a. Complaints relating to electoral offences, including violations of the law in the conduct of the electoral process, provided that the complaint has been received prior to the certification of the results of the election; and
 - b. Challenges to the list of candidates or to the eligibility or qualifications of a candidate raised during the electoral process.
- (4) The ECC shall develop and implement its own procedures for considering and adjudicating complaints.
- (5) The ECC may consider matters otherwise within its jurisdiction on its own initiative and in the absence of a formal complaint or challenge.
- (6) Decisions of the ECC shall be final.
- (7) The ECC shall discontinue its work no later than 30 days following the certification of results.
- (8) In order to deal with complaints arising in the provinces, the ECC may delegate its authority to commissions at provincial level, which commissions shall consider complaints within their jurisdiction and in accordance with the procedures established by the ECC.

Article 53

Electoral Offences

The following acts shall constitute Electoral Offences:

- a. Providing false information to the Commission, any commission established by the Commission, or the Electoral Complaints Commission;
- b. Threatening, intimidating or attacking the dignity of a voter or candidate or a journalist covering the election 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;
- g. Voting or attempting to vote using a forged or altered card or the card of another person;
- h. Changing, replacing, stealing, or destroying electoral documents without legal authorization;
- i. Manufacturing false voter registration cards, ballots, or official forms;
- j. Obtaining a voter registration card under false pretences;
- k. Attempting to vote more than once in an election;
- l. Interfering with election materials or ballot boxes without due authority;
- m. Interfering with electoral officials in the performance of their duties;
- n. Violating the Code of Conduct for Political Parties, Candidates and Agents, or the Code of Conduct for 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. Inciting or provoking other persons to commit an Electoral Offence;
- r. Violating provisions of this Law or other legal instrument governing the

electoral process; and

s. Failing to comply with any order of the Commission, the ECC, or the MC.

Article 54

Sanctions and Penalties

(1) Taking into consideration the circumstances, the ECC may, if it determines that an Electoral Offence has occurred:

- a. Issue a warning to, or order, the offending individual or organization, to take remedial action;
- b. Impose a fine not to exceed 100,000 Afghani;
- c. Prior to the certification of results, order a recount of ballots, or a repeat of the voting;
- d. Remove a candidate from the candidates list, if there are justified reasons;
- e. Invalidate ballot papers not meeting the conditions for validity, or order the count or recount of a ballot paper or a group of ballot papers; and
- f. Prohibit an offending individual from serving in the Commission or its Secretariat for a period not exceeding 10 years.

(2) The ECC may impose sanctions on a political party or candidate for Electoral Offences committed by its members or supporters. In imposing such a sanction the ECC shall take into consideration any evidence demonstrating that the political party or candidate made reasonable efforts to prevent its members and supporters from committing Electoral Offences.

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

Law on Mass Media:

Article Five:

Every person has the right to seek and obtain information. The government shall provide the information sought by citizens, except the information sought is a military secret that its disclosure endangers the national security and interests.

Regulation of Political Parties:

Article 13

4. Afghan citizens who have completed the age of 18 and have the right to vote can acquire membership of a political party.
5. A person shall not be member of more than one political party at a time.
6. **Judges, prosecutors, leading cadres of the armed forces, officers, non-commissioned officers, other military personnel, police officers, and personnel of national security, shall not be members of a political party during their tenure of office.**