

Campaign finance oversight in the 2009 Presidential elections in Afghanistan



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Cover picture: Campaign Finance Controllers Shah Mahmood Stanizai and Sayed Mohammad Reza Balkhi at the Independent Electoral Commission reviewing the final reports from Presidential candidates, September 2009. Photo © IFES

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Introduction

Organising elections and democratic governance in a post-conflict situation is never easy, and this is particularly so in Afghanistan, which struggles with a long history of conflict and armed groupings that do not accept the current form of civil governance.

One of the many issues that need to be addressed is the transparency of the financial affairs of political parties and electoral candidates. Electoral processes that are technically well administered can nonetheless be rendered next to meaningless if the election is de facto bought by some candidates. The regulation of political party and campaign finance is a very complicated endeavour, one which no country has yet mastered completely, in spite of attempts that have in some cases been ongoing for centuries. However, that completing something takes a long time to achieve is not an argument for not taking the first steps. It is therefore encouraging that the electoral process in Afghanistan includes regulations aimed at overseeing political party and campaign finance.

The purpose of this report is to analyse the campaign finance oversight system put in place by the IEC for the 2009 Presidential elections. It is aimed more at those interested in political finance issues overall than at people concerned with Afghani politics and elections. Subsequently, it will not provide a background to the political system in Afghanistan, nor explore the credibility of the 2009 Presidential elections as a whole.

In the interest of full transparency, it should be made clear that the author of this report is not a neutral observer of the oversight system that was put in place for the 2009 elections. I worked together with the Legal Department at the Independent Election Commission (IEC) and in particular with the Political Finance Unit (PFU) in the preparations for and reception of financial reports from Presidential candidates.¹ This work included the drafting, in cooperation with the PFU, of various documents and procedures later used by the IEC in its work. Nonetheless, this report is intended to identify both successes and shortcomings of the procedures put in place and how they were implemented. Recommendations are presented both on how the political finance regulatory system can be improved overall and suggested reforms ahead of the 2010 Wolesi Jirga elections.

Overall, while the results from the Presidential election have been much debated and indeed rejected by several candidates, the political finance oversight section of the electoral process must be deemed as successful given the circumstances, and it will lay the foundation for future improvements in coming elections. Recognition must be given to the IEC for its administration of the process and to the Presidential candidates for their willingness to participate in this experiment in campaign finance transparency in a very difficult situation.

There is no doubt however that much remains to be done before Afghanistan can be said to be safely on the road to effective oversight of the finances of electoral campaigns and political parties. Continued commitment from the IEC, political parties, candidates, media, civil society and the international community is necessary for the process to continue to develop. Ultimately, campaign finance oversight will not be credible unless the elections themselves can confidently be deemed such.

¹ This work was carried out through two visits within the framework of IFES Support to the Electoral Process Programme during April – May and September – October 2009. Special thanks are due to the IFES Legal Advisor Michael Clegg.

Background; the 2004 and 2005 Presidential and Wolesi Jirga elections

The 2009 Presidential election was not the first attempt to regulate campaign finance in Afghanistan. The Joint Election Management Body (JEMB) which administered the 2004 Presidential elections and the 2005 Wolesi Jirga (Parliamentary) elections also put in place reporting requirements for participating candidates.

In evaluating the success campaign finance oversight in the 2004 and 2005 elections, two reports are of particular interest. The first report focused on the 2004 elections and was written by Grant Kippen, who served as Chair of both the 2005 and 2009 Electoral Complaints Commissions.² Writing about the 2004 elections, Kippen noted that while regulations did exist, the electoral authorities lacked the ability to enforce them. “This meant that the JEMB/JEMBS did have responsibility for compliance and enforcement but faced limitations in fulfilling these functions due to compressed timelines, resource constraints and operational imperatives associated with conducting the presidential election”.³ In practice, compliance was therefore left to the voluntary actions by political parties and candidates who had “very little understanding of the political and electoral financing requirements or process”.⁴

In his report, Kippen presented nine recommendations for the improvement of campaign finance transparency in Afghanistan.⁵

1. Establish a political party funding mechanism that provides basic public subsidies and promotes transparency.
2. Provide in-kind or financial subsidies to candidates during the electoral campaign period.
3. Impose campaign spending limits.
4. Require political parties to file an annual statement of revenues and expenditures to the independent electoral commission.
5. Review and reform the role of the independent electoral commission under the electoral laws.
6. Ensure monitoring and enforcement capacity of the Independent Electoral Commission.
7. Establish a code of conduct for registered political parties and nominated candidates.
8. Develop a civic education program that could be delivered by the registered political parties.
9. Develop a government-wide program on civics and the role of public service within a democratic system of government.

Of these recommendations, the final two, while undoubtedly important, are more general and not directly connected to the issue of political finance oversight, and will therefore not be discussed further here. The other recommendations will be considered at relevant points throughout this report.

The second report, which focused on the 2005 elections, comes from the Free & Fair Election Foundation of Afghanistan (FEFA), one of the main domestic observer groups in the country, and it was primarily written by Mohammed Yousuf Rasheed. This report also analysed assets disclosure by elected officials and reporting by political parties and the overall impression is of vague and

² Kippen (2006). While the chapter was included in a book published in May 2006, it was written shortly before the September 2005 Wolesi Jirga and Provincial council elections.

³ Ibid p 28.

⁴ Ibid p 29. “JEMBS” stands for the Joint Electoral Management Body Secretariat.

⁵ Ibid pp 32ff.

contradictory regulations but in particular very lacklustre implementation. FEFA recommended that the Electoral Law needed to be reviewed to directly include campaign finance disclosure; that the IEC should create a special unit for this purpose which should have well established procedures and a well trained staff; and that the IEC should work to increase public awareness about the issue, which should include the publication of received reports.

For the 2005 elections, the JEMB apart from reporting requirements also introduced spending and contribution limits for participating candidates.⁶

Table 1, Spending and Contribution limits in the 2005 elections

Election	Spending limit	Contribution limit
Wolesi Jirga	750,000 Afghanis (ca USD 15,000)	50,000 Afghanis (ca USD 1,000)
Provincial council	350,000 Afghanis (ca USD 7,500)	25,000 Afghanis (ca USD 500)

The Deputy Chief Electoral Officer interviewed in the FEFA report argued that no candidates had submitted their financial reports.⁷ In fact, the JEMB Campaign Finance Regulations stated that candidates need only submit their financial records “upon request”, and the JEMB admitted in its own final report from the elections that „it was not possible to receive and review all of these expenditure records, and there were indications that many candidates did exceed their expenditure limits“.⁸ David Dennis’ 2006 report goes even further in stating that that “the IEC never requested to see the financial records of any candidates”⁹

*„In a country awash with narcotics funding and where neighbouring countries seek to exert their influence, oversight is essential“
International Crisis Group*

This is a major concern for the long-term development of democracy in Afghanistan. As the International Crisis Group concluded their analysis of campaign finance oversight in previous elections; “In a country awash with narcotics funding and where neighbouring countries seek to exert their influence, oversight is essential”¹⁰

Political finance in Afghani legislation

Political finance is often divided into political party finance and campaign finance, with the former relating to the ongoing finances of political parties (not necessarily related to elections), and the latter referring to the income and expenditure of political parties and candidates in relation to electoral campaigns. Another part of political finance (though not always included in its definition) is disclosure by elected officials. This practice is often discussed more in terms of combating corruption and avoiding conflicts of interest.

While each country has its own way of regulating these matters, it is common that political party finance is considered in an Act relating to political parties, whereas campaign finance is a topic in an Act dealing with elections, and asset disclosure is either specified in anti-corruption legislation or the

⁶ EU EOM (2005) p 20. In a political compromise that satisfied few, political parties were allowed to publically endorse individual candidates, but these endorsements were not noted on the ballots.

⁷ FEFA (2008) p 22.

⁸ JEMB Campaign Finance Regulation Article 1 (5). JEMB (2005) p 26,

⁹ Dennis (2006), p 11.

¹⁰ International Crisis Group (2009) p 4.

Constitution. This is also the case in Afghanistan, where Chapter 3 of the Political Parties Law regulates “financial matters” relating to political parties. Campaign finance is briefly addressed in the Electoral Law, in particular Article 38 which gives the IEC the mandate to “issue rules to regulate [the] electoral campaign period”. Asset disclosure by elected officials is regulated in the Constitution of Afghanistan, although in this case the regulation covers few elected officials and some that are appointed. Article 154 states that “the wealth of the President, Vice-presidents, Ministers, members of the Supreme Court as well as the Attorney General, shall be registered, reviewed and published prior to and after their term of office by an organ began”.

This report will predominantly deal with the campaign finance regulations in place for the 2009 Presidential elections, but a brief analysis of the finance regulations concerning political parties and officials is necessary to provide a complete picture of the legal framework.

Political party finance

It should first be noted that political parties play a very limited role in Afghani politics and elections. The sitting President, most his major competitors in the 2009 elections and (at least nominally) all Members of Parliament are independent.

Article 14 of the Political Parties Act establishes the main principle that “the funds and expenses of political parties shall be public and transparent”. The act then enumerates the allowed sources of income for political parties (Article 15(1)), namely;

- Membership contributions
- Donations from Afghan natural persons up to two million Afghani per year
- Income from party’s movable and immovable property (such property has to be registered with the Ministry of Finance, Article 16(3))
- Subsidies by the government in relation to elections
- Other contributions by members

Elsewhere in the Political Parties Act (Article 6(6)), it is stated specifically that political parties may not receive funds from foreign sources. An issue that needs to be addressed is whether “other contributions by members” are subject to the two million Afghani threshold. It is also stated that all income shall be deposited in a bank account and registered with “relevant offices” Article 15(2).

The Act also states that party leaders bear financial responsibility for their parties and that one or more person in each person shall be its authorised representatives in financial matters (Article 16(1&2)). Finally, the use of state resources to benefit any political party may also be said to be banned through Article 24, which states that governmental organs and their officials shall not favour or disadvantage any political party. Somewhat surprisingly, this however only relates to “financial and commercial governmental organs”.

Overall, the regulation of political finance in Afghanistan must be described as incomplete.¹¹ While disclosure is provided for, the Political Parties Act leaves very significant gaps in how this should be enforced, and no agency is given the authority to regulate the issue further. In addition, political parties are not required to report on their expenses, which is often seen as a natural complement to income reporting.

¹¹ This opinion was shared in Dennis (2006) p 6.

Equally troubling is the almost complete lack of implementation of these regulations. In the 2007 FEFA report mentioned above, the Ministry of Justice was identified as the institution in charge of overseeing the finances of political parties (more specifically the Directorate of Regulation and Review of the Registration of Civil Society and Political Parties). However, the Ministry had at that time not created any procedures or manuals for financial reporting, nor provided the registered political parties with forms for reporting. While an interviewee at the Ministry argued that 78 out of 95 political parties had submitted reports and that these were available to the public, little seems to be known about these reports, and there are no sanctions in force for non-compliance.¹² Neither was any scrutiny carried out of received reports. FEFA recommended that the responsibilities of different institutions should be clarified, that training sessions should be provided to political parties and that mechanisms for complaints and enforcement should be created.

As the main focus of this report is on the regulation of campaign finance, no investigations have been carried out whether the situation regarding the oversight of political party finance has developed since 2007. Anecdotal evidence however indicates that few if any improvements have been made during the last few years. No public funding seems to have been provided to political parties, and it seems that Kippen's first and fourth recommendations about ensuring the provision of public subsidies and transparency in party finance have not been addressed.

Asset disclosure by officials

As mentioned above, the Constitution of Afghanistan specifies that the "President, Vice-presidents, Ministers, members of the Supreme Court as well as the Attorney General" should report on their assets before taking office and at the end of their mandate period. The Constitution however did not provide any details, nor did it specify what institution would be in charge of this disclosure system. The issue was the subject of the legislative decree number one, dated 9 December 2004, which extended the reporting obligations to include "Members of the cabinet, Chief of justice and the members of the Supreme Court and other judges, Attorney general and the deputies, advisors to the Ministries, Ambassadors, Directors and members of the Independent Commissions ,the deputy Ministers, Commanders of the military and independent departments, Head of the Military forces departments, Heads of the Police, National and boundary security, Provincial governors, District governors and the Directors of the Civil service departments".¹³

Unfortunately, the Decree only mentioned that these persons should report on their finances „to the President's office“ (Article 4). The FEFA study found that no institution had been created to receive or review these reports. It was claimed that most officials had submitted their reports and that the information would be available to the public. However, FEFA was even denied their request to see a blank reporting form.

„The information the President disclosed... may not serve to increase the credibility of the asset disclosure system „

It does not seem that the system for disclosing the assets of government officials in Afghanistan is working especially well. President Karzai did publically declare his income and assets in March 2009, but in doing so made no reference to this being a Constitutional obligation. Instead he mentioned a new registry to be created for all government employees. The information the President disclosed, stating that he earned less than USD500 a month, owned no house or vehicle, and had only USD

¹² FEFA (2008) pp 27ff.

¹³ Presidential Decree number 1, dated 9 December 2004, Preamble.

10,000 in a foreign bank account since Mujahideen days, may not serve to increase the credibility of the asset disclosure system.¹⁴

Campaign finance

If political party finance is insufficiently addressed in the Political Parties Act, the situation is even worse regarding the financing of electoral campaigns. The 2005 Electoral Act admittedly gives candidates access to public media (Article 50 (2)) and it makes vote buying, the use of illegal funds and the use of foreign funds “for the purpose of influencing the electoral process” into electoral offences (Article 53 e, o & p), but these are also the only aspects of campaign finance that are dealt with in the law. There are no disclosure requirements for candidates or political parties, no limits on contributions or spending, no provisions for public funding and not even an explicit ban on using state resources for the electoral campaigns. Implicitly, the Electoral Act leaves the responsibility of regulating campaign finance issues to the IEC through a general reference in Article 38 giving the Commission the mandate to “issue rules to regulate electoral campaign period”.

One way of indirectly regulating campaign finance is to designate an official campaign period before which no campaign activities are allowed. This can help to reduce campaign spending overall and also to reduce the advantages of wealthy candidates over those with fewer resources. In line with Article 38 mentioned above, the IEC decided that the campaign period would run from June 16 until the legally stipulated 48 hours before the start of polling.

Additional regulations were provided through the May 2009 Presidential decree „On Non interference in the Electoral Affairs of Elections 1388 (2009)“. In particular, the first Article declares that officials in government institutions must;

„4 Refrain from misusing the government resources and facilities in favor or against any candidate.

5 Refrain from collection, misshaping of the posters or other electoral campaign materials and resources of the candidates.“

Admittedly, the decree is somewhat vague regarding sanctions, stating only that violators should be “taken under legal custody and face judicial pursuit” (Article 2).

The IEC Regulation on Political Campaign Finance Disclosure

Because campaign finance is so incompletely regulated in the Electoral Law, the Independent Electoral Commission provided detailed information about the enforcement of campaign finance disclosure through the “Regulation on Political Campaign Finance Disclosure”, which was passed on 25 March 2009 and which exclusively relates to the Presidential elections. Apart from disclosure and recording requirement, the Regulation also introduces limits to who can make contributions to electoral campaigns.

In contrast to previous elections, no contribution or spending limits were applied for Presidential candidates. While I was not involved in this decision, I do support it. The reason is that there is no point in introducing limits on contributions or spending unless an effective disclosure system is in place, since otherwise there is simply no way of knowing if the limits are adhered to. Introducing

¹⁴ Reuters (2009).

regulations that not only are not enforced but which cannot conceivably *be* enforced only threatens to undermine the credibility of the campaign finance regulatory system. When reasonably effective monitoring of the candidates' income and spending has been achieved can the issue of contribution and spending limits be debated anew. In this regard then, the new regulatory framework does not adhere to the Kippen's third recommendation.

To facilitate effective oversight of the Presidential candidates' campaign finances, the Regulation required candidates to inform the Commission about the campaign's bank account (Articles 6 and 7). The bank account should be used for all transactions exceeding 5,000 Afghanis, around USD 100 (all contributions above that amount should be deposited into the account and all expenses paid from it). Candidates also had to officially nominate a financial agent to manage their campaign finances. However, the candidate remained legally responsible for the financial management of the campaign and for compliance with the disclosure requirements.

Income

The Regulation contains what is generally considered the strictest limit of who can make campaign contributions by limiting it to natural persons registered to vote in the election. Companies, corporations and organisations are thereby banned from contributing together with all parts of the government and foreigners (banned indirectly as they cannot be registered as voters). In the definition of income is also included the provision of goods and services for free or at a reduced rate (in-kind contributions), as well as loans.

However, candidates can also receive funds from political parties, and as noted above parties have a somewhat wider range of allowable sources of income (though still excluding foreign and corporate funding). In theory, this opens a significant loophole in that wealthy benefactors can channel their contributions through political parties and as such *de facto* avoid disclosure. In practice however, no candidate in the 2009 Presidential elections listed contributions from a political parties among his or her income.

While there is no explicit ban on anonymous donations, the Regulation requires the candidate to issue a receipt to all who contribute more than 5,000 Afghanis (around USD 100) to the campaign (retaining a copy for reporting purposes, see below). Smaller contributions should be noted in the candidate's contribution logbook.

Expenditure

The definition of campaign expenditure includes "any payment made for any goods, property, assets, services and facilities to be used in an electoral campaign" (Regulation Article 1). There are no bans or limits on expenditure, though as mentioned above the Electoral Act proscribes vote buying. Similar to contributions, the candidate must retain a receipt for expenses above 5,000 Afghanis and note smaller expenses in an expenses logbook.

Disclosure

The Regulation outlines two types of financial disclosure by candidates; reporting on assets before the elections and on campaign contributions and spending afterwards (as we will see below, the IEC later decided to add biweekly income and expense reports during the campaign period). Article 2 of the Regulation requires Presidential candidates to submit reports on their "monetary and physical" assets both in and outside Afghanistan, as long as the value of the assets exceeded 100,000 Afghanis (around USD 2,000). The IEC passed an "Information Document" that expanded on Article 2, stating

that “home necessities being used in daily life, such as jewelleries, carpets, dishes, decorative items, books, paintings, sculptures and any other items similar to them” were excluded from the reporting requirements, but that debts (liabilities) should be recorded. More importantly, the document noted that the reports would be kept confidential by the Commission and provided to a court or the Electoral Complaints Commission upon request. The reasoning behind this decision was that given the current situation in Afghanistan, making the asset declarations public would provide criminals with too much information about possible targets.

The post-election reporting requirements (Article 8) covered income in cash and in-kind, with contributions above 5,000 Afghanis reported individually as described above. The receipts for all larger contributions and the logbook for the smaller ones should also be provided. Each candidate must also report individually on all expenses above 5,000 Afghanis including receipts and provide a logbook noting expenses below that amount.

One issue not addressed in the Regulation concerns candidates who formally withdraw before election day. It was not stated whether such candidates should to submit financial reports after the elections. This was to become an issue in the Presidential elections as twelve of the 41 candidates withdrew from the race before the elections were held.

Finally, the regulation noted that all information submitted by the candidates after the elections would be made public. The one exception was the identity of anyone who in total contributed less than 50,000 Afghanis (around USD 1,000) to an election campaign. This decision was the result of a compromise between the electorate’s right to know who funds the election campaigns and the acknowledgement that it should be possible to make modest contributions without having to risk retribution or harassment. This is an argument against publicising the name or contributors used by in particular opposition politicians in many countries.

Preparations for Campaign Finance oversight in the 2009 Presidential elections

Establishment of a Political Finance Unit

In late April 2009, the IEC established a small political finance unit within the legal department. Two staff members, one legal and one financial controller were hired to work exclusively with the preparations for and reception of financial reports from the Presidential candidates. The unit was lead by the Acting Head of the IEC legal department and received technical and legal advice from IFES staff.

The intention with the unit was to ensure the monitoring and enforcement capacity within the IEC that Kippen called for in his sixth recommendation. While the exact capacity requirement for an endeavour of this kind can be discussed, my judgement is that these three people are sufficient to implement a system of receiving financial reports from the Presidential candidates. It does admittedly not allow for in-depth auditing of the received reports. However, given that this is de facto the first time that financial reporting requirements are enforced in Afghanistan, it must be accepted that many of the submitted reports may not be of such quality as to allow for detailed auditing anyway. To some extent, the disclosure process for these elections should be seen as test of a process which it will take many

“To some extent, the disclosure process for these elections should be seen as test of a process which it will take many electoral cycles to perfect”

electoral cycles to perfect.¹⁵

The unit is intended to function until the end of 2009, to allow for the review and publication of the post-election financial reports. Before ending its work, the PFU should provide the IEC with a detailed report including recommendations for future reforms, not least in the light of the upcoming 2010 Wolesi Jirga elections.

Creation of candidate manual and reporting forms

The writing of manuals and reporting forms started in April 2009. A nine-page manual was produced in Pashto, Dari and English and provided to all Presidential candidates in May 2006. The PFU also produced eight forms for the information to be submitted.

Table 2, Disclosure forms in the 2009 elections

Form	Form title	Explanation	Regulation reference
CF01	Appointment of Financial Agent and Designated Account for Candidate Election Campaign	Gives details on the financial agent and bank account for the election campaign	7(2), 6(2)
CF02	Candidates Assets & Liabilities Registration Form	Report on candidate's assets & liabilities before election	2(1)
CF03	Itemized contributions	Post-election report on contributions	8(1,A)
CF04	Contributions In-kind	Post-election report on contributions in-kind	8(1,A)
CF05	Contributions below 5,000 Afghanis	Consolidated post-election report on smaller contributions	8(1,A,5)
CF06	Itemized Expenses	Post-election report on expenses	8(1,B)
CF07	Expenses below 5,000 Afghanis	Consolidated post-election report on smaller expenses	8(1,B,5)
CF08	Campaign Finance Balance	Explanation of surplus or deficit actions	8(1,C-D)

Additional reporting requirements decided by the IEC

In early June the IEC Commissioners decided to add additional reporting requirements for Presidential candidates, outside the Regulation on Political Campaign Finance Disclosure but under the Commission's mandate as established in Article 38 of the Electoral Law. On June 18, the IEC Commissioners decided that candidates should also be required to submit bi-weekly reports during the campaigning period regarding their campaign contributions and expenditure (this became known as Decision 35).

Such reporting requirements had been considered at an earlier stage but it was then doubted (wrongly as it would turn out) whether the Presidential candidates would have the capacity to provide such reports during the ongoing campaign. In all, Presidential candidates were obliged to submit four biweekly reports, with the reporting period for the first starting on June 16 (the first day of the campaign) and the last report ending on August 17 (three days before polling day). It was

¹⁵ Admittedly, if global experience over the last few decades has taught us anything it is that perfection is never attained in financial disclosure processes. However, well functioning processes in countries where they have been used for a long time have managed to unearth many scandals, and arguably led to increased financial transparency.

decided to use the forms for income (cash and in-kind) and expenditure that had been prepared for the post-election disclosure process.

The main purpose of these reports was to provide timely information to the Afghani public about the contributions and expenditure during the campaign. The needs for timely publication of received report also led the PFU to prepare the reports for publication directly without scrutinising the received information (which it also had no direct mandate to do). In a few obvious cases, comments were however made regarding individual reports as these were published on the IEC website (first in Pashto and Dari and after translation a few days later in English).

Interaction between the IEC and candidates and financial agents

The draft PFU working procedures called for the creation of a Campaign Finance Working Group consisting of the PFU and the financial agents of all Presidential candidates. The notion was that the group would meet regularly to “allow for open communication between the PFU and the agents, giving the PFU the opportunity to train and provide information to the agents on a regular basis, and giving the agents a chance of directing questions and comments directly to the IEC”.¹⁶

For various reasons, the group was not formed, but the PFU did meet the financial agents twice before the elections in order to clarify any aspects of the disclosure requirements that were unclear to the agents or their candidates. The first meeting was before the deadline of the first biweekly report, and the second was held shortly before the elections with a focus on the post-election disclosure requirements. The PFU also met individual agents on several occasions when these requested assistance.

Another way of encouraging compliance with reporting procedures would be to use a Code of Conduct, as recommended in Kippen’s seventh recommendation. The IEC did produce such a document in 2008, though it is unclear how much the political parties were consulted (and no candidates could have been involved since the document is dated in 2008, before the candidate nomination process). The Code of Conduct is largely silent on issues relating to money in the election campaign (notably it does not refer to vote-buying), but does require political parties and candidates not to receive illegal funding.¹⁷

The UN also issued a document, alternatively referred to as a Code of Conduct and as “Essential Guidelines”. This document does mention vote buying, but as it was not issued by an Afghan authority but by the UN SRSG, its status as a legally or morally binding document is unclear. It is the opinion of the author that Codes of Conduct are very rarely meaningful unless they are the product of in-depth consultations with those who are supposed to be bound by its regulations. Furthermore, the banning in a Code of Conduct of activities that are already prohibited by law seldom adds much to compliance.

Outreach

As competitive elections have not been a common phenomenon in Afghani history, public awareness of potential abuses in relation to campaign finance may be less than elsewhere. The media therefore has an important role in monitoring the use of money and bringing violations to the attention of the electorate. The political finance regulator and media can in this regard benefit significantly from close interactions. Journalists can use the formal reports provided by candidates as a starting point for

¹⁶ IEC (2009b) p 4.

their investigations, and being able to show that a candidate has submitted inaccurate reports could be the basis for interesting news stories capturing the public's attention.

The draft working procedure for the PFU recommended that the IEC should hold several press conferences to publicise the campaign finance disclosure system that had been put in place. For various reasons this did not happen, but the IEC did issue a press release in June after the deadline for the assets and liabilities disclosure, and the issue was also mentioned in a press release issued at the conclusion of the electoral campaign in August. After the elections, the Commission brought attention to the final reports by candidates in a press release published on 14 October.

As it was not part of my work, and since I understand neither Dari nor Pashto, I cannot say with any degree of certainty to what extent that the disclosure by Presidential candidates, or the sanctions against non-compliance (see further below) was reported by Afghani news outlets. Discussions with IFES staff working with media however indicate that much more can be done to encourage media attention to campaign finance issues in future elections.

Compliance with disclosure requirements

There were some practical difficulties with the campaign finance oversight system as outlined in the IEC Regulation. Many candidates changed their financial agents, often more than once, without informing the Commission. In communication with PFU staff, candidates and agents would sometimes accuse each other of mismanagement and failure to cooperate. Equally, most candidates reported having problems adhering to the regulations regarding the campaign bank accounts. As the banking sector does not penetrate all parts of Afghanistan, it could mean that contributions made would have to be transported to the nearest large town in cash, deposited into the campaign account only to be withdrawn again for expenditure. These issues need to be addressed for future elections.

In short, Presidential candidates in the 2009 elections had to submit reports at seven separate occasions (sometimes consisting of a number of forms). These reports are summarised in the table below.

Table 3, Summary of reporting requirements

Item to be reported	Deadline	Reference
Financial agent	4 June 2009	Regulation Article 7
Campaign bank account bank and reference number	14 June 2009	Regulation Article 6
Assets & liabilities of candidate	20 June 2009	Regulation Article 2
Bi-weekly income and expense reports during campaign	29 June, 19 July, 4 August, 18 August	IEC Decision No. 35
Post-election report (income, expenditure and surplus/deficit of campaign account)	20 September 2009	Regulation Article 8

Overall, compliance with the pre-election reports was very high. All candidates provided the names of their financial agent and information on their campaign bank account. As the deadline for the assets and liabilities reports passed, all but four of the candidates had complied. Instead of applying sanctions at this early stage in the process, the IEC issued a press release three days later identifying

those who had not complied and stating that the cases would be referred to the ECC.¹⁸ Before the commission could do so however, all four candidates submitted their reports.

The IEC Commissioners' decision on the biweekly reports was effectively taken retrospectively, as the reporting first period was calculated two days before the decision was taken. It is a general rule in political finance disclosure design that those due to report must be informed in a reasonable time in advance.¹⁹ It was subsequently not surprising that only 1/3 of the candidates submitted the first report in time. The IEC rightly decided not to refer non-complying cases to the ECC, and as candidates subsequently submitted reports covering this period, the compliance level for the first reporting period reached 85%.

The final reports were in accordance with the IEC Regulation (Article 8(1)) due 30 days after the elections, or September 30. As this date occurred during Eid ul (al) Fitr, it was postponed until September 26. At that date, 17 reports had been received. This would be 41% of the candidates, but we should here take into account the significant number of candidates who withdrew before election day. As this issue was not addressed in the Regulation, it is unreasonable to expect that candidates who withdrew their candidature would submit final reports (see further below). Subtracting these 12 candidates means that 48% of the candidates had submitted at that point.

For various reasons, mainly the ongoing work with the post-election audit and recounts, the decision of the IEC to publish the names of non-complying candidates (in line with Article 9(2) of the Regulation) and to refer these cases to the ECC was delayed until October 3. The Commissioners then decided to extend the final deadline for final reports by ten to 15 days, a decision that was immediately implemented by the IEC Secretariat which fixed the deadline to October 13. This also allowed the PFU to ask for clarifications from candidates that had submitted final reports, but where there were discrepancies between the biweekly and final reports.

Table 4, Compliance levels

Report	Submitted on time	Submitted
Financial agent	90%	100%
Campaign bank account	90%	100%
Assets & Liabilities	90%	100%
1 st report (June 16 to 28)	34%	85%
2 nd report (June 29 to July 17)	80%	93%
3 rd report (July 18 to August 1)	73%	80%
4 th report (August 2 to Aug 17)	83%	83%
Final report	56%	56%
Average compliance	75%	88%

¹⁸ Independent Electoral Commission Press Release on Non-Registration of Presidential Candidate's Assets in 2009 Elections. Two out of the four candidates would later fail to submit biweekly financial reports (this is discussed further below). See http://www.iec.org.af/assets/PDF/PressRelease/non_registration_assets_liability17%2006%202009.pdf

¹⁹ Overall, the IEC nonetheless performed significantly better in this regard than the JEMB, which in 2004 issued its campaign finance regulation on 48 hours prior to the start of the campaign. Kippen (2006) p 29.

[The average compliance level of 91%] "is an impressive achievement given that this was the first time in Afghani history that campaign finance regulations were implemented with any degree of seriousness."

While a number of reports were submitted late, the average compliance rate of 88% is an impressive achievement given that this was the first time in Afghani history that campaign finance regulations were implemented with any degree of seriousness.

To some extent this answers the concerns expressed in the pre-election report by the International Crisis Group. Their report noted the various reporting requirements, and stated that "The effectiveness of such rules lies in their enforcement, and sanctions are weak... the IEC's ability to oversee such measures is also uncertain."²⁰

The EU Election Observation Mission grudgingly commended the IEC for putting in place a system that "did oblige candidates to provide the IEC with information on their campaign finances. However there were no mechanisms to systematically check the figures. Nevertheless the publication of the campaign assets of presidential candidates allowed complaints to the ECC in cases of challenges to the published amounts".²¹

Sanctions against non-compliance

The regulatory framework for campaign finance oversight in Afghanistan includes two avenues for sanctions against non-compliance. The first is through the IEC Regulation on Political Campaign Finance Disclosure, where Article 11 states that a candidate who fails to submit a financial report "may not be a candidate under any subsequent election" until the candidate submits the report or provides a satisfactory reason for this failure. It is however unclear whether this provision could be applied given that the eligibility and disqualification criteria for elected positions are stated in the Constitution of Afghanistan without any reference to the IEC. The Commission has also not attempted to enforce this sanction, even though at least one candidate failed to submit any of the four biweekly reports due during the campaign period.

The second avenue for sanctioning non-compliance goes through Article 53 of the Electoral Law, which makes it an electoral offence to ignore an order from the IEC, ECC or the Media Commission (MC). Since the candidate disclosure requirements were included in the Regulation on Political Campaign Finance Disclosure, failing to comply thereby constitutes an electoral offence. The body in charge of applying such sanctions is the ECC, with penalties ranging from a warning to fines not exceeding 100,000 Afghanis (around USD 2,000) and the removal of a candidate from the list of candidates.²² A candidate who has been declared elected cannot lose his seat through a decision by the ECC, but the Commission can block election results from being certified until all complaints have been adjudicated.

The ECC received a number of complaints relating to campaign finance violations. In fact, of the 88 complaints relating to the campaign period that the ECC ruled upon, 23 related to political finance

²⁰ International Crisis Group (2009) p 4f. The overall concerns of the ICG regarding the need for increased oversight is however entirely correct.

²¹ EU EOM (2009) p 9.

²² Electoral Law Article 54.

violations.²³ Subsequently the Commission fined 14 out of the 41 Presidential candidates for failing to submit their biweekly financial reports on their income and expenses during the electoral campaign (or for submitting their reports after the deadline).²⁴ The main purpose with the sanctions was the encourage compliance with the succeeding reporting requirements. As the table below shows, with the exception of one case, the candidates did submit the following reports on time if they did not withdraw (there is no particular reason to believe that the sanctions they were given by the ECC was the cause for their withdrawal).²⁵ Overall, we must note that the Presidential election had 41 candidates, and not all of these can be seen as serious contenders. This is underscored by the large share of the sanctioned candidates who withdrew from the elections.

Table 5, ECC sanctions against non-submission of reports

Candidate	Report missing	Reason provided	Fine (AFG)	Complied subsequently?
Abdul Gafur Zuri	2 nd	Too busy campaigning	5,000	Yes
Abdul Hasib Aryan	2 nd	Financial advisor sick	5,000	Yes
Abdul Majid Samim	2 nd	Close relative killed in suicide attack	20,000	withdrew
Gul Ahmad Yama	2 nd	Staff member failed to report, had no expenses	20,000	Yes
Ghulam Mohammed Regei ²⁶	2 nd	No reason provided	5,000	Yes (later withdrew)
Nasrullah Baryalay Arsalai ²⁷	2 nd	Did not have time to report	20,000	withdrew
Mohameed Nasir Anis	2 nd	IEC twice rejected incomplete reports	5,000	Yes (later withdrew)
Bashir Ahmad Beijan	2 nd	Had no expenses to report	5,000	No (see below)
Bashir Ahmad Beijan	3 rd	No reason provided	20,000	Yes
Abdul Latif Pedram	3 rd	Claims he did submit report (IEC denied this)	20,000	Yes
Baz Mohammad Kofi	3 rd	No reason provided	20,000	withdrew
Hidayat Amin Arsala	3 rd	No reason provided	20,000	withdrew
Mawlana Abdul Qadir Jmami Ghori	3 rd	Vice-Presidential candidate was to submit, but failed to do so	20,000	Yes
Mawlawi Mohammed Sayed Hashimi	3 rd	No reason provided	20,000	withdrew
Mohammed Yasin Safi	3 rd	Provided report four days after deadline	5,000	Yes (later withdrew)

²³ This number is however dwarfed by the 2,384 complaints that the ECC received in relation to the polling and counting processes. A complete list of campaign finance related complaints dealt with by the IEC can be found in the appendices.

²⁴ The decisions are available at www.ecc.org.af.

²⁵ Data on candidate withdrawals as provided by the IEC.

²⁶ In this case (docket number A-09-01-0045) the ECC also criticised the IEC for refusing to receive the reports which the candidate attempted to submit four days after the deadline, arguing that it denied "the public timely access to the candidate's financial information, which should be avoided in the future." Accordingly, when another candidate attempted to make his submission four days after the deadline for the following biweekly report, the IEC did receive it (but the candidate was still fined for non-compliance).

²⁷ The ECC fined the candidate an additional 50,000 Afghans for refusing to accept the Commission's authority to sanction him and calling it an "unloaded gun" (disrespecting the ECC is an electoral offence in itself).

While the complainant is not identified in the ECC decisions, in most or all of the cases below the complaint was made by the IEC as candidates failed to comply with its regulations. It should be noted that no complaints were submitted in relation to the large number of candidates that failed to submit the first biweekly reports on time. The IEC most likely chose not to make complaints in these cases given the limited time that the candidates had been provided to comply.²⁸ The ECC does not motivate the size of the fine imposed in its decision, but an analysis of all cases reveals that the larger fine was imposed in cases where the report had still not been submitted by the time the decision was made.²⁹

Importantly, the ECC applied sanctions not only against non-compliance with the formal reporting requirements as described above, but also against actual misuse of funds during the electoral campaign. These cases are described below under the heading “indications of financial mismanagement in the electoral campaign”.

Reported financial transactions

As has been mentioned above, all candidates presented reports before the beginning of the campaign, but for security reasons the information in these reports has not been made public. All but one of the 41 Presidential candidates submitted at least one of the biweekly reports, giving at least some (official) information about their finances. The compliance level with the post-election disclosure requirements was slightly lower, but as the pre-election reporting periods together covered effectively the entire campaign, the jointly give an almost complete picture of the official contributions and expenditure by the Presidential candidates (we must of course acknowledge that not all may have been entirely forthcoming in their reporting).

Twelve candidates reported that they did not receive any contributions before the campaign, whereas for the others the reported amounts varied from 53,500 Afghanis (around USD 1,070) to 102,500,000 Afghanis (around USD 2,030,000), with the highest amount being recorded by incumbent President Karzai. The other main contender, Abdullah Abdullah recorded just over 45 million Afghanis or around USD 900,000.

As the table below shows, President Karzai also ran the most expensive campaign by a considerable margin, in fact outspending all others by nearly 300%. The below table shows the spending and income of the top ten candidates in each category. The (*) mark indicates that the candidate withdrew from the election before election day.

²⁸ Neither were any complaints made regarding the (significantly smaller) number of candidates who did not submit the fourth (and last) biweekly report. At the time of writing it is not clear if the IEC will seek sanctions against the candidates who did not submit their final reports. These include both Hamed Karzai and Dr. Abdullah Abdullah.

²⁹ This is with the exception of Bashir Ahmad Beijan, who was fined 20,000 when he reoffended by also submitting the third biweekly report late.

Table 6, Candidate spending and contributions

Top 10 ranking by spending		Top 10 ranking by income	
	Afghanis		Afghanis
Hamed Karzai	98,045,840	Hamed Karzai	102,500,000
Sayed Jalal Karim	37,000,000	Dr. Abdullah Abdullah	45,616,250
Ashraf Ghani Ahmadzai	31,852,360	Mirwais Yasini	26,150,000
Mohammad Yasin Safi*	26,943,010	Ashraf Ghani Ahmadzai	24,661,360
Dr. Frozan Fana	26,620,440	Motasim Billah Mazhabi	14,556,554
Dr. Abdullah Abdullah	23,611,009	Dr. Frozan Fana	9,080,200
Mirwais Yasini	21,344,437	Hidayat Amin Arsala*	4,730,000
Motasim Billah Mazhabi	14,776,668	Mulla Ghulam Mohammad Rigi*	4,496,000
Hidayat Amin Arsala*	11,948,925	Mohammad Akbar Oria	3,842,200
Alhaj Abdul Ghafor Zori	10,365,500	Haji Rahim Jan Shinzad	3,480,000

The table also illustrates that some candidates reportedly spent significant amounts on the campaign without receiving corresponding contributions. The prime example is Sayed Jalal Karim, who disclosed expenditure of 37,000,000 Afghanis (around USD 740,000) but who reportedly did not receive any contributions at all. Naturally, this may simply be the result of wanting to protect the identity of the candidate's benefactors. However, there are some indications that certain candidates did incur more expenditure than they could handle. One such case concerns Bismillah Shir, who reported a deficit in his accounts of nearly 10,000,000 Afghanis (around USD 200,000). He was faced with three complaints to the ECC that he had not paid his campaign manager,

Indications of financial mismanagement in the electoral campaign

In analysing campaign finance, not least in countries where regulations have recently been introduced, it is necessary to carefully distinguish the financial transactions reported to the government regulatory institution from how money was *actually* used in the campaign. It would be naive to imagine that submitted reports would be fully complete, or that a newly created agency would be able to effectively prevent abuses, in particular where politicians do not hesitate to use state resources in their campaign.

In its preliminary statement regarding the 2009 elections, the European Union Election Observation Mission (EU EOM) noted that;

“Despite a decree explicitly prohibiting government employees from expressing partiality, a number of state officials clearly supported President Karzai, while others backed Dr. Abdullah. There were credible reports that President Karzai and his vice-presidential candidates misused state resources, including the resources of the Afghan National Army and Police. The use of public resources, funds originating from illegal activities or foreign sources was prohibited but there were no mechanisms to enforce this regulation.”³⁰

The last sentence is not entirely accurate. As the EU EOM noted elsewhere in the report, the ECC had the mandate to act on enforce the political finance regulation, and did so on a number of occasions, although this did not prevent or penalise all abuses. In each case where the ECC issued sanctions for

³⁰ EU EOM (2009) p 9.

campaign finance complaints (not concerning non-compliance with the formal reporting requirements) the violations concerned the abuse of state resources.

Perhaps most spectacularly, the ECC fined Mohammed Kariri Khalili, vice-Presidential candidate on the ticket of incumbent President Hamid Karzai for using three Ministry of Defence helicopters for campaigning purposes.³¹ In another case, the Karzai campaign and the Ministry of Education in Badakhshan were each warned and fined 30,000 Afghanis (around USD 600) for using tents donated by UNICEF for campaigning purposes. The Baghlan President of Radio and TV in Afghanistan (RTA) was also sanctioned for placing a picture of President Karzai in an RTA vehicle. On the other hand, a complaint that President Karzai himself had generally misused government funds to benefit his election campaign was dismissed by the ECC as the complainant did not provide any supporting evidence.

A final case illustrates the precarious environment in Afghanistan today, and the difficulties that this poses for effective campaign finance oversight. A complaint that an individual was selling voter ID cards was dismissed as the ECC had not been able to contact the respondent because he (likely) lived in a district that “has been infiltrated by the Taliban and is unsafe”.³²

“Perhaps most spectacularly, the ECC fined Mohammed Kariri Khalili, vice-Presidential candidate on the ticket of incumbent President Hamid Karzai for using three Ministry of Defence helicopters for campaigning purposes”

Some complaints that were not directly related to campaign finance are also enlightening. For example, the Commission dismissed a case where a private individual was claimed to have campaigned before the start of the official campaigning period. The ECC found that “the electoral law does not specifically prohibit individuals unaffiliated with a particular candidate or party from advocating their electoral preferences”, and that the person in question had not been supported by the campaign.³³ This seems to be a slightly different interpretation from another case where a campaign was fined because it had used posters containing the picture of a person who had not given her approval. The ECC found that even though it had not been showed that the campaign was itself responsible for the poster, “it is still responsible for the actions of its supporters”.³⁴ Another case where a candidate was alleged to have misused donor funds was dismissed since the action did not constitute an electoral offence (though the case was referred to the Attorney General).

The IEC had limited capacity to review the reports submitted during the 2009 Presidential campaign, largely focusing on the consistency between different reports submitted by the same candidates. At the time of writing, the review process is still ongoing, so it is not possible to foresee the final outcome or the extent that the IEC will seek sanctions against candidates for inaccuracies in the submitted reports. It is however clear that the review function of the IEC needs for be strengthened in future elections. Nonetheless, it must also be acknowledged that no regulator can hope to achieve complete enforcement of campaign finance transparency requirements the first time that such requirements are applied.

³¹ The candidate was given the largest fine in a campaign finance related complaint; 75,000 Afghanis or around USD 1,500. Another case where President Karzai himself was alleged to have used government helicopters for campaigning was dismissed as the complainant failed to provide evidence supporting the claim.

³² Docket number A-09-00-0033.

³³ Docket number A-09-28-0002.

³⁴ Docket number A-09-00-0096.

Recommended reforms for the 2010 Parliamentary elections

Given the relative success of the campaign finance disclosure system in the 2009 Presidential election, the momentum must be maintained by utilising a similar system for the upcoming Wolesi Jirga elections. Indeed, the JEMB recommended in its final report after the 2005 Parliamentary elections that “More should be done in future elections to monitor the campaign expenditures of candidates, possibly including a system of random checking of recorded campaign incomes and expenditures for candidates.”³⁵

The Afghani Parliament has two houses. The Lower House or Wolesi Jirga has 249 seats directly elected through a Single Non-Transferable Vote (SNTV) system with two to 33 seats per constituency.³⁶ Mesharano Jirga or the House of Elders includes 34 representatives from the Provincial Councils and 34 members appointed by the President. Another 34 should have represented the District Councils, but since these have not been elected themselves, these seats were also filled by the Provincial Councils. It is possible but not certain that District Council elections will be held in 2010.

The Wolesi Jirga elections should in accordance with Article 83 of the Afghani Constitution be held between April 22 and May 22, 2010. There is however a possibility that these elections will need to be postponed for practical reasons.

Adjusting the regulatory system

Naturally, campaign finance regulations need to be adjusted to the type of elections to which they refer. There were 2,707 candidates in the 2005 Wolesi Jirga elections, as compared to the 41 Presidential candidates in 2009. The number of candidates in the District Council elections is likely to be even higher. If we assume that the number of candidates in the 2010 elections will be roughly similar to that in 2004, it becomes clear that the IEC will need increased capacity to monitor the financial reports for these elections. Also, while the Presidential candidates were requested to submit reports a total of seven times (including a total of 28 forms), it is unlikely that many or most Wolesi Jirga candidates would have the capacity to comply with such demanding requirements.

While it is possible that District Council elections will be held at the same time as the Wolesi Jirga elections, it would be impossible for the IEC to implement effective campaign finance oversight for these elections. The principle on focusing on only some elections was established through the decision to only focus on the Presidential and not the Provincial council elections in 2009. In time, disclosure requirements should be used for all elections in Afghanistan, but a gradual introduction over several election cycles is advisable.

The key factors to be taken into account when adjusting the campaign finance regulations are;

- Estimated number of candidates
- Estimated number of reports submitted
- Anticipated educational level of candidates

³⁵ JEMB (2005) p 26.

³⁶ While there have been several attempts to modify the electoral system used in the 2005 elections, which among other things meant that 68% of the votes went to losing candidates, it now seems unlikely that any changes will take effect before the next elections.

- Geographical spread of candidates

Therefore, it is recommended that only two reports should be required for the 2010 elections, one before the start of the campaigning period and one after the end of the electoral process. It is strongly suggested that the pre-election reports are received during the candidate nomination process. It would be very difficult for the IEC to arrange another opportunity to receive what is likely to be several thousand reports. Information about the reporting requirements should be communicated together with the general information about the nomination process. The received reports are transported to IEC headquarters in Kabul together with the nomination documentation.

Table 7, Suggested reporting structure for 2010 elections

Deadline	Items to be included in report
At nomination	Assets and liabilities (measured two weeks before the start of the nomination period)
After election day	Income and expenditure during period starting two weeks before the campaign until one week after the elections. Assets and liabilities (measured one week after the elections)

The post-election reports should be received by the 34 provincial IEC offices. The staff in these offices should receive basic training in the disclosure requirements, so that they can immediately reject submissions that are evidently incomplete or inaccurate. Naturally, the IEC PFU will need to make a selection of the received reports to be analysed, based on previously decided criteria.

While it may be suitable not to publicise the pre-election asset report for the same security reason as for the Presidential elections, the post-election reports should be made public through the IEC website and through other channels. Given the large number of reports expected, the IEC will need to temporarily increase the PFU staff capacity after the two report deadlines (in particular after the elections to allow for timely publication of the reports).

It is also recommended that the thresholds and exclusions from reporting and publication used in 2009 are maintained for the 2010 elections, namely;

“elected Members of Parliament should also be obliged to submit reports on their assets and liabilities as part of the assets disclosure system outlined in the Afghanistan Constitution”

- Asset disclosure only of assets at an individual current market value of above 100,000 Afghanis
- No receipts needed for contributions and expenses below 5,000 Afghanis
- The IEC will not publish the identity of individuals who have made campaign contributions of less than 50,000 Afghanis

While not directly related to campaign finance, elected Members of Parliament should also be obliged to submit reports on their assets and liabilities as part of the assets disclosure system outlined in the Afghanistan Constitution. Article 154 of the Constitution only requires ministers (and the President and some other high-ranking officials) to submit reports on their assets at the beginning and end of their time in office. Ministers may but do not have to be selected from the ranks of elected

MPs (Constitution Article 73).³⁷ However, nothing hinders Parliament from passing legislation that extends these reporting requirements to Wolesi and Meshrano Jirga members. This would increase Afghanistan's compliance with Article 50 of its Constitution and with Article 8 (5) of the UN Convention against Corruption. Such reports would in line with the existing (though largely unenforced) system for assets disclosure be received by the Ministry of Justice, in accordance with the Presidential decree 1 of 2004.³⁸ It is unlikely that we will see any developments in this regard during 2010.

Recommendations

The analysis of the campaign finance oversight system in the 2009 Presidential elections in Afghanistan invites a series of recommendations for future reforms. These are based on the author's observations during the process, written sources and especially on conversations with stakeholders including the PFU staff. The recommendations are all aimed to assist the country in living up to its international commitment through the UN Convention against Corruption, which states that all countries should consider legislative and administrative measures to "enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties".³⁹

1. Campaign finance disclosure should be regulated through electoral legislation

The number of submitted complaints concerning campaign finance violations shows the significance of this issue in the electoral process. The importance of regulating the financing of electoral campaigns dictates that the issue should be regulated through electoral legislation rather than through IEC Regulations.⁴⁰ This will increase the status of such activities and will make the system less vulnerable in case the IEC should in the future attempt to enforce it in a biased manner. The revised law should also clarify the roles of the IEC and ECC in overseeing campaign finance, as noted in Kippen's fifth recommendation.

Unfortunately, the draft electoral law before the Afghani Parliament does not include any regulations on campaign finance. This would be a lost opportunity to enhance transparency in how campaigns are funded in the country. As it seems clear that the law will not be passed before the 2010 elections, there may however still be opportunities to rectify this omission.

2. Compliance with reporting obligations should be a requirement for candidacy and for taking office

In future elections, submitting assets and liabilities reports should be part of the requirements for becoming a candidate, thereby ensuring total compliance among candidates.⁴¹ International experience also shows that making compliance a requirement for taking up an elected post can be a very effective way to ensure that successful candidates submit their reports.⁴² Such a requirement

³⁷ If an MP becomes a Minister, (s)he has to resign from Parliament, and the seat will be filled by the next most voted candidate of the same gender for Wolesi Jirga, whereas a vacated Meshrano Jirga seat is filled through a decision by the provincial council in question. Electoral Law 21 (4) and 24 (4).

³⁸ The decree expands the number of officials required to submit assets reports, and therefore opens for further extension to include Members of Parliament.

³⁹ Afghanistan became a party to the UN Convention against Corruption on 15 August 2008.

⁴⁰ See also Dennis (2006) p 11.

⁴¹ Such a system was used with significant success in the 2005 elections in Liberia.

⁴² The legislation may need to use wording requiring good faith attempts by the candidate to comply, to avoid overzealous or biased political finance regulator from using such a rule to block certain candidates for trivial omissions in their submissions.

would be in line with the existing obligations on behalf of elected officials to report on their assets (see recommendation nine).

3. The ECC should commence its work earlier, and should increase its efforts to inform the public about its right to complain about campaign finance violations.

The current system where the IEC receives and analyses financial reports from candidates whereas complaints are guided to the ECC has several advantages. It reduces the burden of both institutions and clarifies the role of expertise of each. However, just as the IEC needs to get better at publicising received financial information and the regulatory framework around campaign finance, the ECC should at an early stage inform the public about what constitutes campaign finance violations, and how such infringements can be reported to the Commission for effective sanctions.

4. Sanctions should include larger fines

While the importance of severe sanctions should not to be overstressed, the maximum fine of 100,000 Afghani (around USD 2,000) that the ECC can currently impose for electoral offences is inadequate, not least since campaign finance violations are unlikely to attract sanctions close to this maximum.⁴³ The Commission should have the ability to impose larger fines in cases where this is judged to reduce the risk of reoffending. This requires a change of the Electoral Law, which is very unlikely to happen before the 2010 elections (at least unless the elections are postponed).⁴⁴

5. Public funding for electoral candidates should be considered

Anecdotal evidence indicates that funding from the undoubtedly significant opium trade in Afghanistan is being used in electoral campaigns. Observer reports have also noted that there “were significant disparities in financial and logistical campaign resources” between candidates.⁴⁵ While the provision of public funding cannot hope to solve these and other problems completely, there is reason to believe that modest amounts of public funding combined with strict disclosure requirements could have a beneficial effect on the campaigning environment in future elections.⁴⁶ As Kippen emphasised in the 2006, such a system could help to reduce “concerns over funding from illegal sources, either international or domestic” (see also Kippen’s second recommendation).⁴⁷

6. Additional focus needs to be placed on targeting the abuse of state resources in elections

A number of reports including successful complaints to the ECC tell of the abuse of state resources in the campaign. This is a significant problem that can undermine the credibility of the electoral and in the long run the entire democratic system. Not only do such practices threaten the fairness and credibility of elections, it also represents a waste of government resources that Afghanistan can ill afford. While combating the abuse of state resources is a difficult and time-consuming task, attentive monitoring by independent and capable institutions including the IEC and ECC can go a long way in gradually reducing such practices.

⁴³ As noted above, the largest sanction against a campaign finance related violation in the 2009 elections was 75,000 Afghani or around USD 1,500.

⁴⁴ Given the slow process of changing electoral legislation in Afghanistan, it would be preferable not to include specific amounts in the new electoral law.

⁴⁵ EU EOM (2009) p 9.

⁴⁶ For further information on this issue, see Ohman (2009).

⁴⁷ Kippen (2006) p 30.

7. The IEC needs to increase its interaction with stakeholders to ensure increased compliance with reporting requirements and public awareness of the importance of transparency

While the compliance level in the 2009 elections was impressive, the increased number of candidates in the Wolesi Jirga elections will require increased communication with potential and actual candidates. In the future, disclosure requirements should be introduced also for Provincial and District Council elections, and the reporting structures will need to be extended in order to cover various loopholes. The IEC will need to interact with stakeholders to ensure that these disclosure requirements are suitable and enforceable (as Kippen pointed out regarding the 2004 elections, “Nominated candidates and the parties may have adhered more fully to reporting requirements if they had been consulted during the drafting of the campaign finance regulation⁴⁸). Also, the Commission will need to devote significant efforts to ensuring that all candidates are aware and able to comply fully.

8. Afghani civil society and media needs to place more attention to issues relating to campaign finance

While the IEC and ECC both have crucial roles to play in increasing transparency in political finance in Afghanistan, experience from around the world strongly suggests that no government institution can achieve this on its own. Without vigilant media and an engaged civil society, sufficient pressure can never be put on electoral contestants to openly declare their financial transactions or to abide by relevant restrictions. Journalists must investigate and expose abuses and scandals relating to money in politics, and civil society groups should work to increase popular awareness of these issues and whenever possible establish their own financial monitoring of political parties, elected officials and candidates.

9. The regulations of political party finance and asset disclosure of elected officials need to be refined and enforced

While political parties in Afghanistan are not particularly active, the existing mechanisms for overseeing their financial activities are incomplete and are seldom enforced. Support to party institutionalisation processes could bring more vigorous political parties with time. Introducing direct public funding to the parties at this point in time would however most likely prove a waste of resources. The existing asset disclosure requirements need to be widened to increase elected officials at all levels, including Wolesi Jirga, Provincial and District Council members. These requirements must also be enforced properly, and the submitted reports reviewed for accuracy. With time, this will become an important tool in preventing and detecting corruption and conflicts of interest among elected officials.

⁴⁸ Kippen (2006) p 36.

Conclusions

Unfortunately, it seems unlikely that the 2009 Presidential elections will be remembered as a significant step forward in the democratic development of Afghanistan. Significant indications of fraud have put the credibility of the elections in doubt, and several opposition candidates have refused to accept the official results presented by the IEC.

In the midst of these discouraging developments, it should be noted that in the area of campaign finance oversight, the elections did see clear advances. While the quality of disclosed information varied significantly and the scrutiny of submitted reports was fairly superficial, it is important not to expect too much as political finance oversight mechanisms are introduced. This is a process where significant progress often takes decades rather than years. With the exception of the post-election reports, compliance with the disclosure requirements in the Presidential elections was at a level seldom seen the first time a similar system is enforced by a political finance regulator.

The task now is to build on these advances by ensuring that a suitable disclosure system is put in place for the 2010 Parliamentary elections. This system must be adjusted to the number of expected candidates as well as to their accessibility and ability to comply with financial reporting requirements. There is no need for despair – countries in similar situations to Afghanistan have successfully implemented disclosure systems in similar elections. It does however require early planning, dialogue between all stakeholders, and a will to make the role of money in politics more transparent.

[Building campaign finance transparency] “is a process where significant progress often takes decades rather than years”

Sources

- Dennis, David (2006) *Analysis of the Electoral Legal Framework in Afghanistan*. IFES, Washington.
- EU EOM (2005) *Afghanistan, Parliamentary and Provincial Council Elections, 18 September 2005, Final Report*. European Union Election Observation Mission.
- EU EOM (2009) *Islamic Republic of Afghanistan, Presidential and Provincial Council Elections 2009, Preliminary Statement, Afghan elections take place in a reasonably well-organised manner, amid widespread violence and intimidation*. European Union Election Observation Mission, 22 August 2009.
- FEFA (2008) *The Transparency of Political Wealth*. The Free and Fair Election Foundation in Afghanistan, March 2008.
- Independent Electoral Commission (2009a) *Regulation on Political Campaign Finance Disclosure*. IEC Regulation approved 25 March 2009.
- Independent Electoral Commission (2009b) *Working procedures for the Political Finance Unit within the Legal Department*. Unpublished, IEC.
- International Crisis Group (2009) *Afghanistan's Election Challenges*. Asia Report Number 171, 24 June 2009. ICG.
- JEMB (2005) *Final Report, National Assembly and Provincial Elections 2005*. Joint Electoral Management Body, December 2005.
- Kippen, Grant (2006) "Afghanistan" in Fischer, Jeff & Walecki, Marcin & Carlson, Jeffrey (eds) *Political Finance in Post-Conflict Societies*. IFES Center for Transitional and Post-Conflict Governance, Washington.
- Ohman, Magnus (2009) "Public Funding of Political Parties and Election Campaigns" in Ohman, Magnus & Zainulbhai, Hani (eds) *Global Experiences in Political Finance Regulation*. IFES, Washington.
- Reuters (2009) *Karzai declares assets to offset corruption smear*. Available at <http://www.reuters.com/article/asiaCrisis/idUSISL24821>. Published 26/03/2009, Accessed 04/10/2009.

Appendices

Abbreviations

abbreviation	meaning	Comment
ECC	Electoral Complaints Commission	Commission established by the Electoral Law, independent also from the IEC
EU EOM	European Union Election Observation Mission	
FEFA	Free and Fair Election Foundation of Afghanistan	Afghani NGO
IEC	Independent Election Commission	Commission administering the 2009 and 2010 elections
IFES	International Foundation for Electoral Systems	
JEMB	Joint Election Management Body	Institution that administered the 2004 Presidential and 2005 Wolesi Jirga and Provincial Council elections
JEMBS	Joint Election Management Body Secretariat	
MC	Media Commission	
PFU	Political Finance Unit	Within the legal department of the IEC
RTA	Radio and TV in Afghanistan	
SRSG	Special Representative of the (UN) Secretary General	

Report compliance by Presidential candidates

Candidate Name	Reports received before the election							Final report (as of 13 Oct)	% submitted
	financial agent			biweekly report 1	biweekly report 2	biweekly report 3	biweekly report 4		
Haji Rahim Jan Shinzad	yes		100%	yes	yes	yes	yes		100%
Mohammad Yasin Safi	yes		86%	with 2nd	yes	NO	yes		86%
Mohammad Sarwar Ahmadzai	yes	yes	100%	yes	yes	yes	yes	yes	100%
Eng. Moin-ul-din Ulfati	yes	yes	88%	NO	yes	yes	yes	yes	88%
Dr. Habib Mangal	yes	yes	88%	NO	yes	yes	Yes	yes	88%
Zabih-U-llah Ghazi Noristani	yes	yes	88%	yes	yes	Yes	NO	yes	88%
Sayed Jalal Karim	yes	yes	75%	with 2nd	yes	NO	NO	yes	75%
Mirwais Yasini	yes	yes	100%	with 2nd	yes	yes	yes	yes	100%
Bismillah Shir	yes		100%	yes	yes	yes	yes		100%
Bashir Ahmad Bizhan	LATE	yes	88%	yes	NO	with 4th	yes	yes	88%
Motasim Billah Mazhabi	yes	yes	100%	yes	yes	yes	yes	yes	100%
Ashraf Ghani Ahmadzai	yes	yes	88%	NO	yes	yes	yes	yes	88%
Abdul Latif Pedram	yes		86%	with 2nd	yes	NO	yes		86%
Shahnawaz Tanai	yes	yes	100%	yes	yes	yes	yes	yes	100%
Dr. Mohammad Nasir Anis	yes		100%	with 3rd	with 3rd	yes	yes		100%
Mulla Abdul Salam Rakity	yes	yes	100%	yes	yes	with 4th	yes	yes	100%
Zia-ul-haq Hafizi	yes		100%	with 2nd	yes	yes	yes		100%
Mohammad Akbar Oria	yes	yes	100%	with 2nd	yes	yes	yes	yes	100%
Baz Mohammad Kofi	yes		86%	with 2nd	yes	NO	yes		86%
Sangin Mohammad Rahmani	yes	yes	100%	with 3rd	yes	yes	yes	yes	100%
Mahbob-U-lah Koshani	yes	yes	100%	with 2nd	yes	yes	yes	yes	100%
Mohammad Hakim Torsan	LATE	yes	100%	yes	yes	yes	yes	yes	100%
Abdul Hasib Arian	yes	yes	100%	yes	with 3rd	yes	yes	yes	100%
Mulla Ghulam Mohammad Rigi	yes		100%	with 3rd	yes	yes	yes		100%
Ramazan Bashardost	yes	yes	88%	yes	NO	yes	yes	yes	88%
Mawlawi Mohammad Sayed Hashimi	yes		86%	with 2nd	yes	NO	yes		86%
Abdul Majid Samim	LATE		86%	with 3rd	with 3rd	yes	NO		86%
Nasrullah Baryalai Arsalai	yes		57%	NO	NO	yes	NO		57%
Alhaj Shah Mahmood Popal	yes		100%	with 2nd	yes	yes	yes		100%
Mrs. Shahla Ata	LATE	yes	100%	with 2nd	yes	with 4th	yes	yes	100%
Dr. Ghulam Farooq Nijrabi	yes		86%	with 2nd	yes	yes	NO		86%
Alhaj Abdul Ghafor Zori	yes	yes	100%	yes	with 3rd	yes	yes	yes	100%
Mohammad Hashim Tawfiqi	yes	yes	100%	yes	yes	yes	yes	yes	100%
Haji Hasan Ali Sultani	yes		86%	NO	yes	yes	yes		86%
Hamed Karzai	yes		100%	with 2nd	yes	yes	yes		100%
Mawlana Abdul Qadir Imami Ghorri	yes	yes	88%	with 2nd	yes	NO	yes	yes	88%
Dr. Abdullah Abdullah	yes		100%	yes	yes	yes	yes		100%
Dr. Frozan Fana	yes	yes	100%	with 2nd	yes	yes	yes	yes	100%
Abdul Jabar Sabit	yes		86%	NO	yes	yes	yes		86%
Hidayat Amin Arsala	yes	yes	88%	with 2nd	yes	NO	yes	yes	88%
Gul Ahmmad Yama	yes		71%	NO	NO	yes	yes		71%
Level of compliance (%)	100%	56%	88%	83%	90%	83%	90%	56%	88%

Campaign finance related complaints received by the Electoral Complaints Commission

docket number	respondent	complaint	ECC comment	decision	warning	fine	other
A-09-01-0048	Abdul Gafur Zuri	2nd report missing	said too busy campaigning outside Kabul, submitted 7 days after informed missed deadline	sanction	yes	5,000	
A-09-01-0044	Abdul Hasib Aryan	2nd report missing	said financial advisor sick, submitted 7 days after informed missed deadline	sanction	yes	5,000	
A-09-00-0024	Abdul Kareem Shaheen	Respondent, President Radio & TV Afgh. in Baghlan, placed photo of Karzai on RTA vehicle	found had broken ban on using "government facilities in favor or against any candidate"	sanction	yes	no	ordered to remove all pictures
A-09-01-0078	Abdul Latif Pedram	3rd report missing	claims it was submitted, the IEC stays no	sanction	yes	20,000	
A-09-01-0046	Abdul Majid Samim	2nd report missing	said close relative killed in suicide bomb attack (but did not request extension from the IEC)	sanction	yes	20,000	
A-09-01-0050	Bashir Ahmad Beijan	2nd report missing	did not report since had no expenses (no excuse) did submit report after deadline	sanction	yes	5,000	
A-09-01-0079	Bashir Ahmad Beijan	3rd report missing	admit submitted report after deadline	sanction	yes	20,000	fine due to second offence
A-09-01-0071	Baz Mohammad Kofi	3rd report missing	did not provide reason for non-compliance	sanction	yes	20,000	
A-09-01-0045	Ghulam Mohammed Regei	2nd report missing	tried to submit 4 days after deadline, rejected by IEC	sanction	yes	5,000	ECC criticised ECC for denying "the public timely access to the candidate's financial information"
A-09-01-0049	Gul Ahmad Yama	2nd report missing	said staff member missed submitting, and had no expenditure	sanction	yes	20,000	
A-09-00-0033	Haji Rozuddin	selling voter ID cards	could not verify claim as respondent live in district that "has been infiltrated by the Taliban and is unsafe"	dismissed	n/a	n/a	
A-09-28-0001	Hamid Karzai	misusing government funds for the benefit of his campaign	Complainant provided no evidence in support of claim	dismissed	n/a	n/a	
A-09-01-0021	Hamid Karzai	used government helicopter for campaign trip	Complainant provided no evidence in support of claim	dismissed	n/a	n/a	
A-09-01-0077	Hidayat Amin Arsala	3rd report missing	Apparently no comment from respondent	sanction	yes	20,000	

doCKET number	respondent	complaint	ECC comment	decision	warning	fine	other
A-09-01-0037	Karzai campaign in Badakhshan, Ministry of Education in Badakhshan	Used UNICEF-donated tents for campaign purposes	Ministry of Education in B admits to providing the tents, ordered by Ministry in Kabul, responsible person could not be contacted. That action inappropriate should have been "obvious" to all parties	sanction	yes	30,000 each	
A-09-01-0080	Mawlana Abdul Qadir Jmami Ghorl	3rd report missing	Vice-presidential candidate was supposed to submit, but did not	sanction	yes	20,000	
A-09-01-0072	Mawlawi Mohammed Sayed Hashimi	3rd report missing	no response from respondent	sanction	yes	20,000	
A-09-01-0075	Mohammed Yasin Safi	3rd report missing	respondent submitted report 4 days after deadline	sanction	yes	5,000	
A-09-01-0047	Mohammed Nasir Anis	2nd report missing	IEC twice rejected submissions as report was incomplete, final submission after deadline	sanction	yes	5,000	
A-09-00-016 & 25	Mohammed Karim Khalili	Vice-Presidential candidate for Karzai used 3 Ministry of Defence helicopters for campaigning	Claimed he has the authority to use helicopters for this purpose	sanction	yes	75,000	
A-09-01-0081	Mullah Abdul Salam Rocketi	3rd report missing	No able to contact respondent	sanction	yes	20,000	
A-09-01-0043	Nasrullah Baryalay Arsalai	2nd report missing	Stated that he did not have time to report, and called the ECC an "unloaded gun" powerless to sanction him	sanction	yes	20,000	Also given an additional sanction of 50,000 for disrespecting the ECC
A-09-01-0074	Sayed Jalal Karim	3rd report missing	no response from respondent	sanction	yes	20,000	

About IFES

The International Foundation for Electoral Systems (IFES) is an independent, non-governmental organization providing professional support to electoral democracy. Through field work, applied research and advocacy, we strive to promote citizen participation, transparency, and accountability in political life and civil society. Since its founding in 1987, IFES has worked in more than 100 countries - from developing democracies such as Liberia, to mature democracies such as the United States.

As our name makes clear, what we add to the democracy agenda is our strength in electoral work. However, we define elections broadly, often using the term "elections plus" to describe the whole gamut of activities needed to make them genuine and representative. These include:

- Electoral law design
- Party & candidate registration
- Political finance reform
- Boundary delimitation
- E-day operations
- Disputes resolution
- Media development
- Inclusion of marginalized groups
- Civic and voter education
- Commission & poll worker training
- Results tabulation & transmission

IFES has worked in Afghanistan since 2002, supporting electoral law development, voter registration, election administration, poll worker training, capacity building, media monitoring, results reporting, elections logistics and civic education.

About the author

Dr Magnus Ohman is the IFES Political Finance Advisor. He has written about political party and campaign finance issues since the late 1990s, with focus on public funding systems and sustainable solutions. He has worked with political finance initiatives in a series of countries including Afghanistan, Indonesia, Liberia and Nigeria and he has recently conducted analyses of political finance regulatory systems in Sudan and Lebanon. He is the co-author of the political finance module in the BRIDGE curriculum, which is the industry standard on trainings in elections, democracy and governance.

Dr Ohman served as IFES Country Director in Sierra Leone 2007 – 2008, where he among other things assisted the setting up of the first ever political finance disclosure system in that country. He holds a PhD in Political Science from the University of Uppsala, Sweden.

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