



## CRS Report for Congress

# Afghanistan: Government Formation and Performance

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### Summary

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

### Post-Conflict Political Transition

For the first time, Afghanistan has a fully elected government, although there were parliamentary elections during the reign of King Zahir Shah (the last were in 1969). Presidential, parliamentary, and provincial elections, and adoption of a constitution were part of a post-Taliban transition roadmap established by a United Nations-sponsored agreement of major Afghan factions signed in Bonn, Germany on December 5, 2001, after the Taliban had fled Kabul ("Bonn Agreement").<sup>1</sup> That agreement formed an interim administration led by Hamid Karzai, an ethnic Pashtun. The constitution was approved at a "constitutional *loya jirga*" (traditional Afghan assembly) in January 2004. It set up a strong elected presidency, but, at the urging of the minority-dominated "Northern Alliance" faction, it gave substantial powers to an elected parliament. It provided for:<sup>2</sup>

- Presidential elections (by June 2004); five-year term (two-term limit). Two vice presidents run on the same election ticket as the president, and one succeeds him in the event of the president's death.
- The constitution made former King Zahir Shah honorary "Father of the Nation" – a title that is not heritable. Zahir Shah died on July 23, 2007, but his death is not likely to affect stability of the current government.

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

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

- A parliament consisting of a 249-seat lower house (*Wolesi Jirga*, House of People) and a 102-seat selected upper house (*Meshrano Jirga*, House of Elders) elected simultaneously, *if possible*, with presidential elections. In the *Wolesi Jirga*, ten seats are reserved for Afghanistan's *Kuchis* (nomads), and at least 68 of those elected (two per province, with 34 provinces) "should" be women, giving women about 25% of the seats. The top two women in each province earn seats.
- For the *Meshrano Jirga*, 34 seats are selected by provincial councils (one seat from each of Afghanistan's 34 provinces); another 34 are to be selected by nearly 400 elected district councils; and the final 34 are appointed by the President. (Half of the president's 34 appointees are to be women.) The provincial and district councils were to be elected, simultaneously, *if possible*, with the other elections. No clear roles are stipulated for the provincial or district councils, but the provincial councils are playing a role in determining local development priorities. Provincial governors are appointed by the president, and Karzai is trying to replace local faction leaders with technocrats in those positions.
- The constitution, considered the most progressive in Afghan history, states that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam," and says that men and women have "equal rights and duties before the law." Political parties can be established so long as their charters "do not contradict the principles of Islam," and they do not have affiliations with other countries. The constitution does not impose Islamic law but provides for court rulings "in accord with [the Hanafi school of] Islamic law," when there is no specific provision in the Constitution or other laws on that issue.

## Presidential and Parliamentary Elections

Karzai sought to hold presidential elections by June 2004 to demonstrate that he did not seek to monopolize power. However, there was an early recognition that organizing parliamentary, provincial, and district elections was complicated and they might be delayed. In July 2003, a joint Afghan-U.N. (U.N. Assistance Mission in Afghanistan, UNAMA) elections management body, the Joint Election Management Body (JEMB), was set up. Even though no population census existed, it was estimated that 10.5 million would be eligible to vote. The voting age is 18. Registration was slowed by violence in early 2004 and the presidential election was postponed until October 9, 2004. The parliamentary, provincial, and district elections were postponed initially to April-May 2005. A total of 10.5 million voters registered, of which about 42% were women. On May 25, 2004, Karzai signed an election law providing for district-based (voting for candidates) rather than proportional representation (voting for party slates).

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

serious challenger. Also running were Uzbek faction leader Abdul Rashid Dostam, who has been part of the Northern Alliance, and 15 other candidates, including Hazara leader Mohammad Mohaqiq and Dr. Masooda Jalal, the only woman who ran.

Amid light violence, voter turnout was heavy (8 million votes cast, or about 80%). The vote was observed by about 400 international monitors, who mostly rebuffed allegations by 15 challenging candidates that there had been widespread fraud. Karzai was declared the winner on November 3, 2004, with about 4.4 million votes (55.4%), more than the 50% needed to avoid a runoff. Qanooni was second with 1.3 million (16.3%); Mohaqiq, 935,000 (11.7%); Dostam, 800,000 (10%); and Masooda Jalal, 91,000 (1.1%). Karzai was sworn into a five-year term on December 7, 2004, with Vice President Cheney in attendance. In December 2004, he named a 27-seat cabinet that tilted more heavily toward Pashtuns, particularly in the key security ministries. Fahim was replaced as Defense Minister by his Pashtun deputy, Abdul Rahim Wardak. Qanooni was not given a cabinet seat. Karzai also created a Ministry of Counter-Narcotics, headed by Habibullah Qaderi, although Qaderi resigned in July 2007 partly because of family issues but possibly also because international assessments show virtually no progress in the several year U.S.-Afghan counter-narcotics effort. International donors provided more than \$90 million in aid for the presidential elections, of which about \$40 million came from the United States (P.L. 108-106, FY2004 supplemental appropriation).

**Parliamentary and Provincial Elections.** The Afghan Independent Electoral Commission (AIEC) subsequently announced parliamentary and provincial elections for September 18, 2005. District elections were postponed indefinitely because of the complexities of drawing district boundaries, meaning that these councils would not select their representatives to the *Meshrano Jirga*. In the interim, the 34 provincial councils would select *two* representatives — one permanent (full four-year term) and one interim (to be replaced by a district council selectee when those councils are elected). The election system was the “Single Non-Transferable Vote System” (SNTV) — candidates stand as individuals, not members of a party list. Each voter cast a ballot for only one candidate, even though there were multiple representatives per province; the number varied from 2 (Panjsher province) to 33 (Kabul province). Herat province has 17 representatives; Nangahar, 14; Qandahar, Balkh, and Ghazni, 11 seats each. Each of the 34 provincial councils consists of between 9 and 29 seats (Kabul province is largest with 29). Some experts had urged that the parliamentary elections be conducted by proportional representation — reducing the potential for local manipulation — but that system was not adopted for fear of empowering political parties, which are unpopular in Afghanistan because of *mujahedin* parties’ links to Pakistan during the anti-Soviet war. Some believe that the system enabled some provincial councils to be disproportionately weighted toward large districts within each province — an issue that is increasingly salient as the provincial councils, in August 2007, begin to take the lead (replacing Kabul ministry employees) in formulating reconstruction spending priorities for their provinces.

There were a total of 2,815 candidates (including 347 women) for the lower house and 3,185 candidates (including 279 women) for the provincial councils. During June 25-July 21, over 2 million additional voters registered, bringing the total to about 12.5 million. An Electoral Complaints Commission (ECC) initially disqualified 208 candidates for alleged ties to illegal militias; some disarmed, others withdrew their candidacies. A final list disqualified only 11, although another 28 were later disqualified mostly for alleged links to armed groups.

Turnout was lower than expected (about 57%, 6.8 million voters), which was widely attributed to high voter illiteracy and confusion over the large numbers of candidates per ballot. No major attacks on polling centers were reported, but about 15 people were killed in election day violence, including a French soldier. Election observers (OSCE and the European Union) expressed concerns about apparent fraud (mostly proxy voting in some districts), and JEMB investigations of the complaints delayed publication of final results until November 12, 2005.<sup>3</sup> The election cost about \$159 million, all of which came from international donors; the U.S. contribution was \$44.9 million (P.L. 109-13, FY2005 supplemental appropriation).

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

**Parliamentary Factions.**<sup>4</sup> As expected, many seats went to prominent personalities and factional groupings. Although Karzai has not formed a party, observers say that his supporters are a slight majority of the parliament. Others say the parliament is roughly equally divided into pro-Karzai, opposition, and “independent” deputies. About 40 pro-Karzai parliamentarians are former members of the Hizb-e-Islam party of anti-U.S. former *mujahedin* leader Gulbuddin Hikmatyar. Among the pro-Karzai parliamentarians are several family members, including elder brother Qayyum and cousin Jamil Karzai, both from Qandahar Province. A relative by marriage, Aref Nurzai, is one of two deputy speakers. Other pro-Karzai deputies include reputed militia leaders and former Taliban government members; the latter group includes Mullah Abdul Salam (“Mullah Rocketi”), from Zabol Province. Another former Taliban, Mohammad Islam Mohammadi, who ran Bamiyan Province during the Taliban’s destruction of the large Buddha statues there in early 2001, was assassinated by unknown gunmen on January 27, 2007. One pro-Karzai former militia leader is Hazrat Ali (Nangarhar Province), who had gained fame for directing the Afghan component of the assault on the Al Qaeda redoubt at Tora Bora during the U.S.-led war. Another is Pacha Khan Zadran, from Paktia Province who, by some accounts, helped Osama bin Laden escape Tora Bora during the U.S. offensive. The Taliban-era Foreign Minister, Wakil Mutawwakil, ran but was not elected, nor was Taliban behavior restrictions enforcer, Maulvi Qalamuddin.

The two main “opposition” leaders are Yunus Qanooni, potentially a presidential candidate again in 2009, and Northern Alliance political leader and former Afghan president (pre-Taliban) Burhanuddin Rabbani. They engineered Qanooni’s selection as speaker in December 2005, beating back a challenge from Abd-i-Rab Rasul Sayyaf (Kabul Province), a prominent Islamic conservative *mujahedin* party leader who was tacitly backed by Karzai. On April 3, 2007, Qanooni and Rabbani formed a new political

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

<sup>4</sup> Some of the information in this section is taken from author participation in a House Democracy Assistance Commission assessment visit to Afghanistan during February 26-March 2, 2006.

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

Among the “independent” Afghans in the lower house are several women and intellectuals, including 32-year-old Malalai Joya (Farah Province), an outspoken women’s rights advocate and leading critic of major faction leaders (in May 2007 parliament voted to suspend her for this criticism); Ms. Fauzia Gailani (Herat Province); Ms. Shukria Barezai, editor of *Woman Mirror* magazine; and Mr. Ramazan Bashardost, a former Karzai minister who champions parliamentary powers. The U.S.-based International Republican Institute (IRI) is working to organize and train the estimated 93 lower house “independents”; the National Democratic Institute (NDI) is assisting the major factions discussed earlier. Some traditionalists in parliament oppose the independents;

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

## Government Decisionmaking and Performance<sup>5</sup>

The parliamentary elections were considered a major milestone that gave the Afghan government additional legitimacy. Parliament has challenged Karzai on several issues, in some cases blocking his perceived attempts to satisfy Islamic conservatives. Signaling some criticism of the international military presence in Afghanistan, immediately after it was seated, parliament called for the dismantling of (mostly U.S.-run) “security barriers” in Kabul. After a spate of civilian casualties caused by U.S. operations that precipitated criticism from Karzai himself, in May 2007 the *Meshrano Jirga* passed a resolution calling for international forces to consult with Afghan authorities before conducting military operations, as well as for a timetable for withdrawal of international forces. Parliamentary opposition contributed to Karzai’s dropping of a July 2006 proposal to revive, although in a far more circumscribed form, a “Ministry of Supporting Virtue and Discouraging Vice,” a ministry that was used by the Taliban to commit major human rights abuses. Another significant vote came in February 2007, when both houses passed

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

a law giving official amnesty to the so-called “warlords.” Despite demonstrations in Kabul by 25,000 Afghans supporting the resolution, Karzai returned a modified draft giving victims of these commanders the right to seek justice for any abuses. The new version became law in May 2007.

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

The building of institutions has not shielded Karzai from criticism for indulging faction leaders with appointments and tolerating corruption. At other times, Karzai has removed critics and opponents; in July 2007 he fired Kapisa Province governor Abdul Sattar Murad for saying there was a “vacuum of authority” that helps the Taliban insurgency. Over the past year, Karzai, who appoints provincial governors, has shuffled some governors who are perceived as insufficiently vigilant against drug trafficking, although to little effect as yet on those issues.

U.S. reports credit Karzai’s government with progress on human rights and democracy, including formation of an anti-corruption commission, monitoring the security forces for human rights abuses, and providing these forces with human rights training. To help achieve progress, the United States has spent \$526 million (2002-2008, including 2008 request) to build democracy and rule of law, and assist the elections. Still, some critics say that there is backsliding, such as the government’s backing of a new press law that strengthens the government’s ability to censor content. Supporters of the legislation say that Afghan media, which now has six independent television channels and dozens of radio stations and newspapers, often level charges against officials without substantiation and offend conservative viewers. Others note inattention to women’s issues in parliament and lack of action to prevent sexual trafficking (Afghanistan is placed in Tier 2 in the State Department’s June 12, 2007 Trafficking in Persons report).