



## 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 and sometimes challenger to President Hamid Karzai. However, the government's limited writ and its perceived corruption are helping sustain a Taliban insurgency. 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, ("Bonn Agreement"),<sup>1</sup> after the Taliban had fallen. The 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. Considered the most progressive in Afghan history, the Constitution<sup>2</sup> states that men and women have "equal rights" before the law, while also stating that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam." Political parties can be established so long as their charters "do not contradict the principles of Islam," and they do not have foreign affiliations – there are now over 90 registered parties. The constitution did not impose Islamic law but provides for court rulings "in accord with the Hanafi (Sunni) school of Islamic law," when there is no specific provision in the Constitution or other laws (Chapter 7, Article 15). It also provided for:

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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>].

- Presidential elections by June 2004, for a five-year term and a 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. Provincial and district councils, as well as the parliament, are to be elected simultaneously, *if possible*. 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, with mixed success, to replace local faction leaders with technocrats in those positions.
- The parliament is to consist of a 249-seat lower house (*Wolesi Jirga*, House of People) and a 102-seat selected upper house (*Meshrano Jirga*, House of Elders). In the *Wolesi Jirga*, ten seats are reserved for Afghanistan's *Kuchis* (nomads), and at least 68 of those elected "should" be women (the top two female candidates per province, with 34 provinces), giving women about 25% of the seats. In 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.)
- Former King Zahir Shah to be honorary "Father of the Nation" — a title that is not heritable. Zahir Shah died on July 23, 2007, but his death has not affected stability of the current government.

## Presidential and Parliamentary Elections

Karzai sought to hold presidential elections by June 2004 to demonstrate that he did not seek to monopolize power. 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. However, organizing parliamentary, provincial, and district elections was complicated, particularly in light of ongoing violence that slowed registration of about 10.5 million voters (42% were women; voting age is 18), and the elections were postponed until October 9, 2004. The parliamentary, provincial, and district elections were postponed until 2005. On May 25, 2004, Karzai signed an election law providing for district-based (voting for candidates) rather than proportional representation (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 became the most serious challenger. Also running were Uzbek faction leader Abdul Rashid Dostam, who had 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 in on December 7, 2004, with Vice President Cheney in attendance. In December 2004, he named a 27-seat cabinet that began tilting toward Pashtuns, particularly in the key security ministries. Northern Alliance military commander Mohammad 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 possibly also because international assessments of the counter-narcotics effort have shown virtually no progress. 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.** An 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 eventually replaced by a district council selectee. The election system was “Single Non-Transferable Vote System”— candidates stand as individuals, not as part of a party list. Each voter cast a ballot for only one candidate, even though the number of representatives per province varied from 2 (Panjshir 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 has 29). Some had argued that using proportional representation would reduce the potential for local manipulation, but that system was not adopted because it benefits 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, began to take the lead (replacing Kabul ministry employees) in formulating reconstruction spending priorities for their provinces.

For the *Wolesi Jirga*, 2,815 candidates (including 347 women) competed, and there were 3,185 candidates (including 279 women) for the provincial councils. During June - July 2005, over 2 million additional voters registered, bringing the total voters 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 total of about 40 candidates were eventually barred from running or from taking office. 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. About 15 people were killed in election day violence, including a French soldier. Concerns expressed by election observers (OSCE and the European Union) about apparent fraud (mostly proxy votings), 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 it 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 Ministry of Finance.

**Parliamentary Factions and Relations With Karzai.**<sup>4</sup> As expected, many seats went to personalities and factions prominent in Afghanistan’s past struggles. The parliament appears to be roughly divided into pro-Karzai, opposition and “independent” deputies. Karzai himself has not formed a party, but about 40 parliamentarians are former members of the Hizb-e-Islam party of anti-U.S. former *mujahedin* leader Gulbuddin Hikmatyar, and they support Karzai. A key supporter is Abd-i-Rab Rasul Sayyaf (Kabul Province), a prominent Islamic conservative *mujahedin* party leader who was defeated for the speakership. Other pro-Karzai parliamentarians include elder brother Qayyum and cousin Jamil Karzai, both from Qandahar Province; a relative by marriage, Aref Nurzai, is one of two deputy speakers. Karzai also generally count on the support of former militia leaders and Taliban government members; the latter group includes Mullah Abdul Salam (“Mullah Rocketi”), from Zabol Province. 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. Among pro-Karzai former militia leaders are 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, and 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 “opposition” is showing increasing strength, coupled with its frustration at its failure to exert more influence on Karzai’s decisions. It is led by Yunus Qanooni, the *Wolesi Jirga* speaker (who might again compete for president in 2009), and Northern Alliance political leader and pre-Taliban Afghan president Burhanuddin Rabbani. On April 3, 2007, Qanooni and Rabbani formed a new party, the “National Front,” composed of the Northern Alliance (including Dostam and the Hazaras); both of Karzai’s vice presidents; second deputy speaker Kawzia Kofi (a Tajik woman from Rabbani’s home province of Badakhshan), 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 who now chairs parliament’s defense committee. The National Front seeks to amend the constitution to give more

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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.

power to parliament and to directly elect governors and mayors. Fearing growing Pashtun domination, the bloc opposed Karzai's September 2007 offer of negotiations with Taliban members. The Taliban has refused talks until there is withdrawal of all international forces, a new constitution, and imposition of Islamic law.

In February 2006, the opposition succeeded in requiring Karzai's cabinet to be approved individually, rather than *en bloc*, increasing opposition leverage over the nominations. However, Karzai rallied his followers and all but 5 of his 25 nominees were confirmed. (Three were declared confirmed after receiving plurality votes.) All five replacement nominees were approved on August 7, 2006, including for Minister of Women's Affairs Husn Banu Ghazanfar, a male professor at Kabul University. The defeat of a female nominee for that job left the cabinet with no women. In May 2006, the opposition compelled 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.

In May 2007, the National Front bloc achieved a majority to oust Karzai ally Rangin Spanta as Foreign Minister; some members of the National Front are currently threatening to boycott parliament because Karzai did not allow Spanta to be removed. He filed a Supreme Court case that Spanta should remain, on the grounds that his ouster was related to a refugee issue (Iran's expulsion of 100,000 Afghan refugees back to Afghanistan), not a foreign policy issue, and the Court has, to date, supported Karzai. Karzai did not block a similar vote of no confidence against Minister for Refugee Affairs Akbar Akbar for the same issue. On November 27, 2007 Qanooni led an opposition "walkout" of parliament, accusing Karzai of ignoring a parliamentary vote to suspend officials in Baghlan Province for allegedly failing to fully investigate the November 6 suicide bombing in the province that killed 6 parliamentarians and more than 60 others, mostly children. An internal UNAMA report said that jittery guards may have caused some of the deaths through random firing after the bombing.

Among the "independent" Afghans in the *Wolesi Jirga* 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 controversial Karzai appointments to the body included alleged drug trafficker and former Helmand governor Sher Mohammad Akhund, and former Taliban religious affairs deputy minister Arsala Rahmani. There is one Hindu. This body, too, has been vocal; in May 2007, after

a spate of civilian casualties caused by U.S. operations that precipitated criticism from Karzai himself, it passed a resolution calling for international forces to consult with Afghan authorities before conducting military operations.

## **Government Performance<sup>5</sup>**

The building of institutions has not shielded Karzai from criticism for indulging faction leaders with appointments and tolerating corruption. U.N. observers – and apparently a National Security Council internal assessment reported by the Washington Post on November 25, 2007 – say that building government capacity is proceeding very slowly; contributing to the resilience of the Taliban insurgency. Two key figures attempting to address the corruption issue are Supreme Court chief justice Abdul Salam Azimi, a 69-year-old U.S.-educated official who has fired or jailed eight corrupt judges and set up standards of accountability, instilling some confidence in the national justice sector. Karzai also has formed an anti-corruption commission and his appointment in September 2006 of a key anti-corruption figure, Attorney General Abdul Jabbar Sabit, has been widely praised. Contributing to U.S. and outside pessimism on Afghanistan is the failure to make progress on drug trafficking. Karzai, who appoints provincial governors, has tried to appoint governors who are vigilant against drug trafficking, although to limited effect as yet, with the exception of the northern provinces.

On human rights issues, the parliament has compelled both progress and setbacks. Parliament's views 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 abuses. On the other hand, in February 2007 both houses passed a law giving amnesty to the so-called "warlords." Karzai altered the draft to give victims the right to seek justice for any abuses; the modified version became law in May 2007. Each house has passed different versions of new laws that would allow for censorship of media programs that are offensive to Islam or Afghanistan's conservative traditions. Supporters of such legislation, now being arbitrated between the two houses by a joint commission, say that Afghan media, which now has many independent outlets, often level unsubstantiated charges against officials and offend conservative viewers.

U.S. reports credit Karzai's government with progress on human rights and democracy, including monitoring the security forces for human rights abuses, and providing them with human rights training. However, minority religions, including Christians, Sikhs, Hindus, and Baha'i's, often face discrimination; the Supreme Court declared the Baha'i faith to be a form of blasphemy in May 2007. Others note 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). The United States has spent \$526 million (2002-2008, including 2008 request) to build democracy and rule of law, and assist the elections. A revised request for FY2008 supplemental funding includes \$100 million to assist with the presidential and parliamentary elections planned for 2009.

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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 [<http://www.state.gov/g/drl/rls/hrrpt/2006/78868.htm>]; and the International Religious Freedom Report, released September 14, 2007. [<http://www.state.gov/g/drl/irf/2007/90225.htm>]