

PARADOX OF THE SINGLE NON-TRANSFERABLE VOTE SYSTEM: THE ELECTORAL EXPERIENCE IN AFGHANISTAN

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ABSTRACT

The electoral system can be a powerful instrument in shaping the content and practice of politics in a divided country like Afghanistan. Hence, it needs to be designed to be intricately linked to the local context. Post-Taliban administration, the country's presidential elections and the subsequent assembly elections face formidable challenges in transforming it from a war-torn fiefdom into a nation. Albeit elections and electoral mechanisms are pivotal elements to be included in the supreme law of the land, the Afghanistan constitution is silent in this regard. Despite the establishment of the Independent Election Commission of Afghanistan in order to remedy the situation, it was not as effective as expected in holding free and fair elections across the nation in successive electoral processes. In addition, the government decided to follow the single non-transferable vote system which was used from the first until last election in 2018 and this system drew various criticisms. Accordingly, this paper intends to explore the sustainability of Afghanistan's electoral mechanisms considering the nation's political system and social divisions with the special reference to the paradox of using the single non-transferable vote system. It is submitted that introducing a comprehensive legal framework governing the electoral system in the Afghanistan constitution supplemented by the details rules of that legal framework in the relevant election laws would be a way forward to achieve political stability in the nation.

Keywords: democracy, election, electoral process, electoral fraud, single non-transferable vote system, political stability.

INTRODUCTION

The electoral systems and the size of electoral constituencies are two important factors that correlate to each other. Electoral law that governs the determination of the size of a constituency is normally made by ordinary legislators in the legislative branch of a State, i.e., the parliament, the congress, the chamber, the assembly, and so on within the general principles established by the constitution of the country. Hence, the elected representatives can determine how the electoral constituencies of a geographic area, in whole or part of the country, should be divided for them in the future by enacting the electoral law. In Afghanistan, the election system used the ‘Single Non-Transferable Vote’ (SNTV) for the parliamentary and provincial elections. Under the SNTV, each voter casts one vote for a candidate but there is more than one seat to be filled in each electoral district. Those candidates with the highest vote totals fill these positions. Under this system, political parties would face challenges. For example, in a four-member district, a candidate with just over 20 per cent of the vote is guaranteed for the election. A party with 50 per cent of the vote could thus expect to win two seats since it is a four-member district. If each of the remaining candidate polls 25 per cent, this would happen. If, however, one candidate polls 40 per cent and the other 10 per cent, the second candidate may not be elected. If the party puts up three candidates, the danger of ‘vote-splitting’ makes it even less likely that the party will win two seats. Hitherto, the SNTV is used for legislative elections in Afghanistan, Pitcairn Islands, Vanuatu and in 90 of the 150 seats of Jordan’s Lower Chamber, the Senate elections in Indonesia and in 6 of the 113 seats under the Parallel system in Taiwan. The best-known application of this system was for the integration of the Japanese Lower House between 1948 and 1993.ⁱ

ELECTORAL SYSTEM IN AFGHANISTAN: ISSUES AND CHALLENGES

The 'Independent Election Commission of Afghanistan' (IEC) follows the SNTV and this system faces numerous criticisms from the election experts who are working with the electoral management body. The main reason seems to be that this system has been operating for a long time and it is a barrier against political parties growing to be a strong team against the government as the opposition. The IEC comprises of seven commissioners.ⁱⁱ The selection procedure comprises a committee and they select 27 persons from all the potential candidates who want to become commissioners.ⁱⁱⁱ The committee must select 27 persons and refer them to the President to choose 7 from the 27 persons to be the commissioners. Afghanistan must select two women for the IEC. The ethnic composition of the 'Wolesi Jirga' (WJ) (Lower House of Parliament/National Assembly) is another issue towards the progress of the electoral process. However, the selection of committee members is done by the government and thus it is more related to the government agenda than being independence.^{iv} Hence, the members of IEC used to concern more about their position rather than to serve the people and thereby the Afghanistan election management body could not gain the trust of the people concerning the election process of the country.

In Afghanistan, the management of elections by IEC and their executives had numerous weaknesses. There was no reference to the assessment of the ability of IEC to manage and the IEC members did not have the minimum experience in electoral management body and have had no training.^v Thus, the paradox on the conflict between IEC and the 'Independent Electoral Complaints Commission of Afghanistan' (IECC) has become the forte of our article. The IEC did not give them any training in maintaining their neutrality and independence during the election processes. In the past government and electoral management body, there was no strong political will to reform the election commission in the country and motive to be impartial as IEC members and, in many instances, government interference in the election processes.^{vi}

The Afghanistan election cost is on a high level and they did not try to provide a way to reduce the cost to the poor country. The election processes as to the candidates, managers, and staff were not punished transparently until 2019 despite the fact that there would be some sort of

fraud. With the interference of government in the election process, each election has had less participation by people than in the previous election.^{vii} In the 2005 elections, secular ideology had some success in appealing across tribal lines in Pashtun areas, although primarily in urban areas. Eleven of the 13 members elected to the WJ who belong to or are affiliated with liberal or leftist political parties are Pashtun. The most prominent examples are former senior communist party officials like Sayed Mohammad Gulabzoi in Khost and Noorulhaq Ulomi in Kandahar, who came in first and second respectively in conservative Pashtun areas. For both of them, although the tribal support was an important element in their victories, it is also highly likely that these were supplemented by some ideological votes that crossed the tribal lines.

According to a report from Harvard University and University of Sydney in 2014, the five worst elections worldwide were, after Egypt and Mozambique, was Afghanistan which ranked the third-worst election in the world. However, Lithuania, Costa Rica, Sweden, Slovenia, and Uruguay were among the first five best elections in the world from 2012 to 2014.^{viii} Moreover, based on a research conducted by the FIFA Foundation, only 18 percent of the people had shown confidence in the IEC's function and 66 percent are not satisfied with the function of the IEC in Afghanistan.^{ix} The election observation reports that the health of the election is publicly reinforced by three factors. These factors include democracy, development, and constitutional laws that could guarantee political participation. Some examples of the numerous Election Day irregularities that were given primarily by successful WJ and PC candidates and neutral observers (i.e., not losing candidates looking for excuses) included the following events:

- (1) Intimidation by armed groups: "In Shorabak, 50 armed men occupied a polling centre and no one else could enter". (successful PC candidate)
- (2) Partisan local government officials: "The district governor of Reg said the security situation was not good so he did not open up polling centres in areas that would vote against his brother who was a candidate". (national election observer)
- (3) Partisan and corrupt JEMB staff: "Some JEMB staff have relationships with candidates and some staff are paid by the candidates". (PC candidate)
- (4) Inappropriate location of polling centres: "The brother of the governor had a polling centre in his house despite being a candidate". (WJ candidate)

- (5) Polling stations captured by candidates: “In Hazarjuft, a WJ candidate, who was a commander, took control of the polling centre for two hours. Although there were complained about it, nothing happened”. (WJ candidate)
- (6) Purchase of votes: “Agents from different candidates giving 100 or 150 Afghanis to voters in exchange for their vote”. (WJ candidate)
- (7) Multiple registration cards and multiple voting: “Lots of election cards were bought. Some were bought and used, and some were bought to prevent voters from voting for other candidates”. (successful WJ candidate)
- (8) Proxy voting using female voter cards: “The government claims 40–50 percent of women participated but no women participated out of the city. One man brought 5-10 cards of women and used them all to vote. No one stopped him because people thought he had right to do so on behalf of his female family members”. (successful WJ candidate)
- (9) Stuffing ballot boxes: “Some candidates took boxes into their houses and filled them up. For example, 32 boxes were filled in Spin Boldak. In some places, the doors of the polling center were locked while they stuffed the ballot boxes”. (successful WJ candidate)

In explaining these factors, the report notes that the long experience of holding elections often enhances democracy, deepens civil culture, and increases the capacity of electoral management institutions. Besides, economic development also increases the resources and technical capacity of specialised electoral management.^x To confirm this report, Afghanistan’s former security chief Rahmatullah Nabil during a TV debate said: “during the election in 2014, the printing of the ballot papers was moved to a house in Wazir Akbar Khan Street Kabul, ballot papers were printed only for one candidate and he became president”.^{xi} After the establishment of shared government between Ashraf Ghani and Dr. Abdullah in 2014, both signed an agreement to do electoral reform in terms of their shared government.^{xii} One of the IEC’s greatest failure has been the prevention of international intervention on mediation of the elections results.^{xiii}

As witnessed in earlier WJ elections, this legislative election was duplicitous and unrepresentative. By definition, a democratic legislature serves as the voice of a country’s

population. Assessing the voting results in Kabul, the largest and most important province, can summarise the problems of the election. The leading ‘vote getter’ in the Kabul Province got a mere 2.0 percent of the vote-11,158 out of 666,478 votes cast. Twenty-six of the elected WJ legislators received less than 1 percent of the vote. Only 23.5 percent of Kabuli voters voted for a winning candidate. On top of it, the already restricted Afghan environment is further hindered by operational mismanagement by the IEC throughout the electoral process. Again, the SNTV system proved to be a disaster resulting in most Afghans voting for losing candidates and winning candidates receiving few votes. The WJ seats are limited to 250 out of which 10 seats are allocated to the Kuchi (nomads) people through a quota system. The rest of the seats are given to members who are elected by people via a confidential and direct election. Each term of the national council is five years. Women have 68 seats out of 249 seats related to the population of each province in the national assembly.

There were 2753 candidates for 249 seats of the WJ and more than 3000 candidates for 420 seats of the provincial council in 2005 parliamentary and provincial elections. The WJ and provincial elections were held at the same time. Approximately 12.5 million people registered but only 6.8 million Afghans went to the polls. In the WJ election, 12 percent of the candidates were women and the remaining 88 percent were men. According to reports, a total of 40 million ballots were printed in the UK and Australia. This election had 51 percent participation from the Afghan suffrage participating out of the total registered voters. Although the electoral law was adjusted to some extent in 2005, the SNTV was retained and did not change. The representative house elections in 2005, 2010 and 2018 used the same system. On 18 September 2005, nearly six and a half million Afghans voted in the freest and most competitive legislative elections they had ever experienced. The election vividly demonstrated that vibrant and meaningful elections can be conducted even under the most unpromising circumstances.

Nevertheless, the Afghan elections showed that designing appropriate institutions tailored to the needs of an emerging democratic society remains the greatest challenge. The SNTV system came about by a path of muddled missteps, and it was a disservice to the millions of Afghans who deserved a clear and transparent tool to craft their first democratic parliament. It limits the ability of political parties to effectively organise voters in support of a broad slate of candidates.^{xiv} Despite its shortcomings in the new-democratic country, this system is still

preferred one. It appeared in Afghanistan by chance and not under any deliberate choice or research. According to this system, the voters elect the candidates but not parties or political groups, and the candidate cannot rewrite the political reality of the ballots. It is also notified in the election law that the voters must vote a person instead of a party. In Afghanistan, the political parties are not well liked due to the terrible hallmarks left during the civil war periods.^{xv}

PARADOX OF THE SINGLE NON-TRANSFERABLE VOTE SYSTEM IN AFGHANISTAN

The SNTV system caters strong incentives for fraud as the practice of it with large district magnitudes and a lack of political parties creates a wide dispersion of votes across candidates. The vote margins separating the lowest winning candidate from the highest losing candidate are thus often small. This creates a high expected return for even small manipulation for many candidates. In contrast, electoral systems with dominant parties guarantee victory with large vote margins, and thus nonviable candidates are less likely to rig results. These strong incentives to manipulate voting were compounded by a weak election commission, which had failed to prevent widespread fraud during the 2009 presidential election.

On the other hand, the IECC, as an independent body, handles the complaints arising from the conduct of elections by the candidates or voters. It mostly depends on the international donors as it is extremely difficult to prepare the budget by the Afghanistan government in time as mentioned under the election law.^{xvi} The post-Taliban democratic reforms in Afghanistan were in part a recreation of the past. Afghanistan has had six constitutions between 1923 and 1990, and most have provided for national assemblies and elections in one form or other. Yet the degree of foreign involvement in the most recent reform process was unprecedented. The heavy foreign hands contradicted the promise of national autonomy, representation, and fair process held out by the democratisation agenda. By implicitly devaluing the institutions it sought to promote, the democratisation process has also had potentially counterproductive effects. Moreover, while promoting democratisation, Western governments simultaneously created a State so dependent on external support that it deprived the critical institution of liberal

democracy. The logical response of the national assembly has been to engage mostly in politics.^{xvii}

In order to vote in the presidential election, one must be “an Afghan citizen, be at least 18 years of age on election day, hold a valid national ID card (Tazkira) and not have been deprived from his/her civil rights by the law or by a competent court. Accordingly, the constitution and electoral law of the Afghanistan IEC is independent, and this model is more beneficial for post-crisis countries like Afghanistan because passing the political crisis and authoritarian system, could make for distrust and doubt on the current groups or parties. The 2016 Electoral Law states that voting is a right for Afghan refugees and diplomatic personnel living outside the country. In the 2005 elections, voting centers for refugees were established in Pakistan and Iran, which enabled displaced Afghan citizens to cast their ballots. Since it is the first parliamentary election, the IEC has decided that this service will not be available for these citizens due to financial and logistical constraints. When independent panels are formed in a situation where there is dispersion or division of political forces and the elites also agree to support impartial election. For instance, in two countries such as Costa Rica and Uruguay, the electoral management bodies became known as the fourth branch of government and can make regulations, directions, and reviews of regulations that are binding on the electoral processes and their decisions cannot be reviewed by any other branches of State such as executive, legislative, or judiciary. They also have executive powers to call and conduct elections in the countries, to certify or nullify election results, and to resolve electoral disputes.^{xviii} The President is the head of State and the commander-in-chief of the armed forces of Afghanistan, executing his authorities in the executive, legislative and judicial fields in accordance with the provisions of the Constitution. The President can call for a referendum on national, political, social and economic issues. Notably the President can also convene the Loya Jirga - a national grand assembly of representatives from the various ethnic, religious and tribal communities in Afghanistan;^{xix} proclaim and terminate a State of emergency with the endorsement of the National Assembly; and appoint Supreme Court justices with the endorsement of the House of People.

In recent years, changes in the political balance of power in some countries have affected the use of independent bodies as a result of mistrust of officials holding powerful election positions

which have undermined political and social development, and the spread of democratic norms. These countries include Mexico, Ghana, South Africa, Ukraine, Indonesia, Tunisia, Iraq and Afghanistan. The complexity and specialist skills necessary for electoral management require that an institution or institutions be responsible for electoral activities. Such bodies have a variety of shapes and sizes, with a wide range of titles to match, such as the Election Commission, the Department of Elections, the Electoral Council, the Election Unit or the Electoral Board. The term EMB has been coined to refer to the body or bodies responsible for electoral management, regardless of the wider institutional framework in place. An EMB is an organisation or body that has the sole purpose of, and is legally responsible for, managing some or all the elements that are essential for the conduct of elections and direct democracy instruments - such as referendums, citizens' initiatives and recall votes - if those are part of the legal framework. These essential (or core) elements include: determining who is eligible to vote; receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates); conducting polling; counting the votes; and tabulating the votes, etc.^{xx}

Mexico was the country to begin with the 'Electoral Management Body' (EMB) and had passed a long journey to achieve an independent EMB. The first step towards the EMB reform was the passing of the new electoral law in 1990 and the setting up of the Federal Electoral Institution (IFE) which has observed electoral processes throughout Mexico. The next important step taken before the presidential election in 1994 was eliminating the roll of electors of the president as it to be determined by IFE members thereby enhancing the independence of IFE's members, control and supervision on the parties' budget including but not limited to campaign and civic education, and defining the role of electoral advisors.^{xxi} In 1996, the election court in the context of judiciary joined with the Supreme Court and the selection of election court judges became under the Supreme Court authority while before the election court's judges selected by the government and approved of the legislature.^{xxii} However, the human rights and the non-government organisation (NGO) activities in Mexico increased the electoral reform and in 2000 presidential election. For the first time in decades, one of the candidates, Mr. Vicente Fox, won the presidential election was not even a member of the PIR. As a result, Mexico's Freedom House rating moved from 'partially free' to 'full free'.

In Tunisia, after the dismissal of the President Zine El Abidine Ben Ali in 2011, the country began institutional reforms. Post Arab Spring, a newly established political coalition, Quartet, designed a road map for the political progress and launched a national dialogue which led to the approval of the new constitution and appointment of the independent high authority for election in 2014. In October 2014, the representatives were elected for a four-year term to the new parliament called 'Assembly of Representatives of the People'. This high authority for election later formed as a permanent commission composed of seven persons including a president of the commission, two judges, one lawyer, a university lecturer, a specialist in engineering, communication, and public finance, and a notary.^{xxiii} In 2015, it managed to organise three fair elections and earned citizen confidence before becoming the best EMB model in the region. Tunisia shows a simple model of Islamist endeavor as the Tunisian uprising was the first of the Arab Spring and the country was also the first to choose an electoral system and to hold elections. Its system is also the simple where members of the constituent assembly were elected from 33 districts, 27 in Tunisia and six more for expatriate voters in Europe, the Middle East, and elsewhere. Seats were apportioned to districts according to population. After votes are tallied, seats are awarded to candidates according to their position on the list. The electoral law included a gender quota requiring that each list should include equal numbers of men and women, or as close as possible.

The Afghanistan constitution establishes an independent commission that is tasked to deal with challenges with the terrorist attacks during the elections but unlike the IEC that works to create a free and fair electoral system.^{xxiv} The 2009 election was mired in controversy by fraud. Until 2013, all elections laws were promulgated through the presidential decrees. It appears that there was no dialogue or lack of effort form a public consensus. That year, Afghanistan parliament approved two laws that supported EMB's impartiality but much more remains to be done. The 2014 Presidential Election was followed by an extraordinary audit of the vote as overseen by the United Nations (UN); and this audit shows fraud from both who went on to runoff election.^{xxv} Finally, both finalist presidential candidates created a national unity government with shared power.^{xxvi}

Again, the legislative election was delayed by a few years by the Afghan EMB. In 2016, the selection committee lead by the Afghanistan President selected seven commissioners for the

IEC and five members for IECC.^{xxvii} In 2018, President Ashraf Ghani appointed new commissioners and heads of secretariats for both electoral commissions, i.e., the IEC and the IECC. This followed the amendment of the election law where all the old electoral commissioners were dismissed and new electoral officers voted in by the presidential candidates. The commissioners' first job will be trying to sort out parliamentary election results for the 15 provinces which are still pending. They also had to prepare for the all-important presidential poll. Article 13(2) of the amended law provides that all presidential candidates should be present to complete the quorum for voting. Nevertheless, in 2019, the list of candidates published by the president's office showed that four out of the 18 presidential candidates would be absent for various reasons.

In addition, approximately 27 percent of seats are reserved for women - two from each province - in the WJ and 17 percent of seats are reserved for women in the 'Mishrano Jirga' (MJ) (House of Elders). The electoral law provides that 25 percent of seats in provincial councils must be reserved for women.^{xxviii} However, the president's decree was broadly criticized as undemocratic and the WJ voted to reject it. Vetoing a presidential decree requires the approval of both the MJ and WJ of parliament in Afghanistan. However, the MJ refused to consider the rejection of the decree. As such, the decree remained in force and served as the electoral legal framework for the 2010 WJ's elections.^{xxix} Hence, it can be observed there are still much to reform in the Afghanistan electoral system and it is necessary to look beyond the current SNTV system in order to reflect wills of the people in each and every election to come in the future.

CONCLUSION

The Afghanistan constitution is silent about the electoral system which is much needed especially in countries emerging from a crisis or, more precisely, transitioning from a traditional to a modern form of government. In this situation, for the electoral system to be useful, it should spell out who should have the authority to select a system forth to be beneficial. Initially, it was expected to design and approve the electoral system with the advice of different political groups, civil society, and other experts but the government signed some electoral laws without discussion or advice of other people not included in the executive power in 2004 and 2010. Afghanistan political parties and civil society strongly demanded electoral reform ever

since the first parliament established in 2005. Specifically, the Afghanistan government decided to apply the SNTV system which was used from the first until last election in 2018 and faced various criticisms. It is obvious that the current electoral system needs legal, administrative and political reforms in order to achieve free and fair election result with international standard.^{xxx} Although it would be easier said than done,^{xxxi} it is necessary to include a legal framework for the electoral system in the Afghanistan constitution supplemented by the details rules of that legal framework in the relevant election laws. Otherwise, the paradox of the electoral system and its implications on Afghanistan would be long lasting.

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