

جمهوری اسلامی افغانستان  
کمیسیون خاص اصلاحات انتخاباتی



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**Islamic Republic of Afghanistan  
Special Electoral Reforms Commission**

**Final Reform Recommendations**

**Kabul  
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The Special Electoral Reform Commission (SERC) began the second (final) phase of its work on 7<sup>th</sup> September 2015, based on the presidential decree number (83) dated 6 September 2015; especially taking into account its paragraphs 3 and 4. For the purpose of fulfilling the assigned duties in the best manner, the Commission conducted new rounds of consultative meetings and seminars with the different strata of the community, among them were representatives of people, civil society organizations, national and international experts and lawyers, Jihadi leaders, and the political elites and leadership of the political parties; and thus focused its attention to the topics mentioned below:

- A. Further study and research of the legal, technical and practical aspects and dimensions of the three specific areas from the first recommendation package, that were based on the above mentioned decree from the office of the president referred back to this Commission for further study and research; that included: **1-** Electoral systems, **2-** Electoral constituencies and **3-** Transparency Committee.
- B. Develop and prepare the second (final) package of recommendations for the purpose of realization of fundamental reform in the manner and structure of the electoral system in the country, in the short term and mid-term, in accordance with the provisions of the decree number (40) dated 16 July 2015 from the Office of the President and the feedbacks received from the political parties, civil society organizations, political elites and members of the National Assembly of Afghanistan.
- C. Drafting and preparing the long term reform recommendations package, with regard to making some amendments in some of the elections related articles of the Constitution of Afghanistan.

Hence, the recommendations of the Special Electoral Reforms Commission in the 3 specific areas mentioned above are provided as below:

## **A: Study of the Legal and Practical Aspects of the 3 Areas of the Recommendation Package:**

### **1. Electoral System**

Considering the demands of our countrymen, electoral commitments by the leaders of the National Unity Government (NUG), failure of the current SNTV system, high level of wasted votes under this system (as in 2005 and 2010 parliamentary elections when the elected members were representing only 38 to 40 percent of the voters, while more than 60 percent of total votes were wasted), improving working condition and enhancing the productivity of the Wolesi Jirga (Lower House). The Commission, at the first phase of its work had recommended the Parallel System to the leadership of the National Unity Government. This recommendation was referred back to the Commission, by the office of the president for further study and research. During the review and further study of this recommendation, though the Commission found it as having no technical or legal problems. Finally it reached to the conclusion that may be some of the concerns raised by some people, with regard to this system would have been as below:

- 1 Weakening of the geographical representation (provincial)
- 2 Weakening of the ethnic balance established in the Wolesi Jirga,
- 3 Existence of the points of view that allocation of seats to the political parties, may be in contradiction with some provisions of the constitution.

The Commission does not agree with the above mentioned considerations, especially with the third point at all. But, in order to create further consensus and alignment among the different strata of people in the community; following a thorough review and study of this matter and taking into consideration the inputs from the national and international experts, it reached to the conclusion that it shall recommend the Multiple Dimensional Representation (MDR) system, which on the one hand can respond to the objections mentioned above; while on the other hand, it has times less disadvantages as compared to the Single Non-Transferable Vote (SNTV) system, and is more consistent with the legal and practical contexts of our country as well.

### **What is Multi-Dimensional Representation (MDR) System?**

The MDR is a comprehensive, inclusive and consensus making system, and can respond to majority of the requests and demands in this area. In this system the geographical, political,

gender, and personal dimensions of representation have been given due attention; and based on it the political parties, coalition of political parties, coalition of individual candidates and independent candidates all are provided with the opportunity of competition and participation. The MDR system has been a successful and useful system, and so far has been implemented successfully in a number of countries. Although none of the electoral systems can guarantee, prevention of fraud during the process, but taken into consideration some of the characteristics of this system, this system has some comparative advantage over other systems in this area.

Some of the advantages of the MDR system are as below:

- 1 Geographic (Provincial) representation is maintained.
- 2 The ethnic balance currently existing in the Wolesi Jirga will not be undermined
- 3 Political parties will have the opportunity to compete in the election using lists of candidates.
- 4 By providing a list of their candidates, the individual independent candidates can also benefit the same advantages as that of the political parties.
- 5 There will be no quota for allocation of seats to political parties.
- 6 The level of wasted votes will decrease; and thus, majority of voters will have their representatives in the Wolesi Jirga.
- 7 The next Wolesi Jirga will get rid of fragmentation and incoherence, by having coherent representatives within like-minded parliamentary groups; and as a result, their work effectiveness will be improved.
- 8 Public trust towards the electoral process and legislature of the country will be restored and strengthened.
- 9 The responsible participation of political parties in the election will strengthen the monitoring over electoral operations, which will provide further transparency and decrease the level of electoral fraud and violations in elections.
- 10 Seats will be allocated based on votes obtained by lists.
- 11 Competition through lists, will encourage unity and consensus among electoral candidates, and finally;

12 The MDR system is simple from the executive point of view, and thus can be very easily implemented. Having a single ballot paper and a single vote for each eligible voter, is the thing ensuring simplicity of this system.

**Therefore- in this phase, two electoral systems are proposed as follows:**

**Firstly, The Multi-Dimensional Representation Electoral System** as described above (details given in the attached detailed report).

**Secondly, the Parallel Electoral System** (which was proposed in the first package of reform recommendations) in which a number of Wolesi Jirga seats are allocated to parties in a single nation-wide constituency through elections with Fixed Lists and proportional mathematical formulas, and the rest of seats are allocated to independent candidates through elections with majoritarian mathematical formulas. The threshold for the inclusion of the party list or coalition of political parties in the electoral race, shall be garnering at least two percent of the votes cast in favor of the political parties (details given in the attached detailed report).

The Commission believes that details of these two systems shall make the decision-making easier for the leadership of the National Unity Government with regard to changing the electoral system.

## **2. Electoral Constituency**

Every electoral system has its own customized electoral constituencies. In fact every system defines size of its electoral constituencies to some extent. However, since the topic of electoral constituencies was part of the instances from the first package of recommendations, which was referred back to the Commission, the matter was thoroughly reviewed. Effectiveness and usefulness of any electoral system depends to a greater extent on the electoral constituencies and either of the two recommended electoral systems with larger constituencies will have greater advantage and effectiveness. Given this consideration, the Commission has determined appropriate the following sequence regarding the electoral constituencies:

**2.1 In the Parallel Electoral System**, the electoral constituencies for Wolesi Jirga election are determined as follows:

- For party candidates, the whole country, a single electoral constituency.
- For *Kuchi* candidates, each of the seven regional electoral constituencies, as one constituency.
- For *Hindu* and *Sikh* candidates, the whole country shall be a single electoral constituency.
- For independent candidates, the province as one constituency,

**2.2 In the Multi-Dimensional Representation Electoral System**, electoral constituencies for Wolesi Jirga elections are determined as follows:

- For *Kuchi* candidates, each of the seven electoral regions, as one constituency.
- For *Hindu* and *Sikh* candidates, the whole country, a single electoral constituency.
- For List candidates and independent individual candidates; the electoral constituency is mainly the province.

**2.3** Where necessary, certain provinces may be divided to smaller constituencies, based on the population and women quota, in a manner that each electoral constituency shall have at least five seats.

**2.4** Taking into consideration the demographic changes (births, mortalities and internal displacement of people), it is necessary that electoral constituencies and allocation of seats to each constituency is revised after each (10) years.

### **3. Electoral bodies:**

Although the Special Electoral Reform Commission in the first phase of its work proposed certain reforms in this respect and were approved by the government. But, as article (156) of the constitution stipulates that “administering and supervising” of any kind of elections and referral to the general public opinion in the country are duties of the Independent Election Commission; thus the Commission recommends that a working relationship shall be established in between the Independent Election Commission and the Electoral Complaints Commission, which shall be including conduct of joint meetings of both the commissions to be chaired by the Chairman of the Independent Election Commission, in the following areas:

- Preparation and approval of the electoral calendar;

- In the event that the Independent Election Commission is not satisfied or has difference of opinion with a decision made by the Central Electoral Complaints Commission or in the event of any other disputes between the two commissions, with regard to the election results.
- In case of objection or complaint against a member or members of the electoral commissions for getting bribe and or involvement in organized fraud;
- With regard to any other issues or topics deemed necessary by either of the two commissions.
- In such joint meetings, a unified decision shall be adopted and implemented.

The Central Electoral Complaints Commission without being its functional independence concerning addressing electoral objections and complaints and decisions made in that regard compromised; shall present its work reports to the Chairman of the Independent Election Commission.

#### **Provincial Electoral Complaints Commission**

The Provincial Electoral Complaints Commission shall comprise of 3 members, which shall be formed one month before the day of registration. In its composition, one male and one female representative are introduced by the Central Electoral Complaints Commission and one person is introduced by the Independent Human Rights Commission. The Provincial Electoral Complaints Commission shall function in accordance with the procedure adopted by the Central Complaints Commission; and conclude their work one month after the announcement of the final election results.

#### **4. The Special Electoral Court**

One of the matters referred back to the Electoral Reforms Commission by the government was the matter of the Transparency Committee. The Commission, following extensive discussion and assessment about the matter and consultation with various authorities, including high ranking officials of the judiciary, and considering that addressing conflicts, identifying crime and issuing verdict regarding a perpetrator is only the authority of the courts, identified the court-specific system and recommends the structure of the Special Electoral Court instead of the Transparency Committee, with the duties and authorities as below:

- 1- addressing criminal allegations resulting from elections against members of the electoral commission and the Chief Electoral Officer (CEO) of the Secretariat of the Independent Election Commission;
- 2- Addressing other criminal allegations resulting from elections against other stakeholders e.g. candidates and high ranking government officials, employees of the Independent Election Commission and the Electoral Complaints Commission, monitors, observers, media and voters. Decision of the Special Electoral Court shall have no impact on the election results.
- 3- Addressing objection of the presidential candidate in case he/she is not satisfied with the decision of the Central Electoral Complaints Commission. In this case, the candidate filing objection, after communication of the decision of the Electoral Complaints Commission, shall lodge objection in the Special Electoral Court to that decision within certain duration to be specified by the legal documents. If no objection is filed within the specified period of time, decision of the Central Electoral Complaints Commission shall be deemed final.

#### **Timeframe for Addressing of Cases by the Court**

The Special Electoral Court shall in case of the objection of a presidential candidate, announce its final decision within one week time, while in other instances within a maximum period of three months.

Decision of the Special Electoral Court in the case of the objection of a presidential election shall be one-phased; while in other instances shall proceed in accordance to the principle of legal proceedings in the judiciary system of Afghanistan.

#### **Establishment of the Special Electoral Court**

It is recommended that for the purpose of better ensuring of justice, the Special Electoral Court shall be established in the permanent organizational framework of the judiciary pillar of the Islamic Republic of Afghanistan. The Special Electoral Court shall in its structure have the primary and appellant courts.

#### **5- Special Electoral Prosecution Office**

For the purpose of legal prosecution of perpetrators of electoral crimes, falling within the jurisdiction of the special electoral court, the Special Electoral Prosecution Office shall be established in accordance with the provisions of the law.

#### **6- The Media Commission**

For the purpose of proper monitoring of the reporting and fair and unbiased broadcasting of the electoral campaigns and an exquisite addressing of violations related to objectives, policies and

procedures of the Media Commission of the Independent Election Commission, the Media Commission shall be established as a permanent unit in the organizational framework of the Independent Election Commission.

This Commission shall have 3 members including a woman and its members shall be appointed by the Independent Election Commission for a term of four years, while taking into consideration the participatory composition.

Requirements for the membership of the Media Commission are given below:

- 6.1 At least Bachelor degree in Journalism with a minimum of 3 years of work experience.
- 6.2 Bachelor degree in other areas with 5 years' work experience; while in case of higher education than that, 3 years of work experience in media management affairs.

#### **7. Apportionment of Duties and Responsibilities among the Members of the IEC**

It would be better that members of the Independent Election Commission shall besides performing their policy making and management role at the higher level, also take other responsibilities in other areas of the organization as well.

#### **8. Independent Election Commission CEO's Position**

The position of the Commission's CEO is equal to that of the IEC commissioners (Out of Grade), this has resulted in the fact that the incumbent of this position does not count himself accountable to the Commission. During the past elections, role of the Commission's CEO has been mostly under criticism; therefore it is recommended that the position of the Commission's CEO shall be at the "Above the Grade" level; and that he shall be made respondent and fully accountable to the Commission, for all the performances of the Secretariat.

### **B: Short-term and Long-term Recommendations**

#### **1. Electoral Violations and Crimes**

During the past elections in the country, there were always complaints of widespread electoral violations and frauds, but no electoral criminal was ever prosecuted or tried. The Special Electoral Reforms Commission believes that one of the main reasons in this respect has been that the electoral crimes were not clearly specified or stipulated in the laws.

For this reason, the Special Electoral Reform Commission has separated cases of negligence and small electoral violations from the electoral crimes, and recommended criminal punishment for the electoral crimes so that after this, the electoral criminals could be legally prosecuted ( list of electoral crimes and proposed punishments is provided in the annex)



## **2. Electoral Costs**

Based on the provisions of the constitution, seven elections with different cycles (five year, four year and three year) should be held in Afghanistan within the period of each five years. This results in a high financial burden on the budget of the country. Therefore the Commission proposes a cut-down in the cost of the election operations and the electoral campaign costs. Some of the instances need an amendment in the articles of the constitution of Afghanistan, which can be categorized under the long-term reforms.

But, for the time being until amendment of the constitution of the country, the Commission recommends the following for the purpose of decreasing the electoral costs.

### **A- Operational Costs of Elections**

1. Utilize services of the government staff on the Elections- Day;
2. Preparation of the Electoral material within the country, to the extent possible;

### **B- Electoral Campaign Costs**

1. Determining a specific ceiling for the electoral campaigning, based on the area, geographic structure of the constituency, and number of the eligible voters in each of the constituencies.
2. Usage of a bank account for the purpose of financial expenditures and related reporting.

## **3. Use of Technology in Elections**

Although, use of technology also can't resolve all the problems related to elections, but it's use in elections can result in some facilities and transparency in the process. Based on the studies and research that the Special Electoral Reform Commission carried out in this regard, use of technology in elections may result in following advantages:

- 3.1** Will prevent multiple registrations of voters to a great extent;
- 3.2** Will avoid multiple voting to a great extent;
- 3.3** Process of transferring data from polling centers to the Commission's headquarter will be conducted safely and with due speed;
- 3.4** Vote counting will be conducted quickly;
- 3.5** Need for electoral staff will be reduced;
- 3.6** Taking into consideration the experiences of the countries conducting electronic voting; per voter cost will be many times lower than the costs of past election in our country;
- 3.7** Election results can be announced within shorter period of time.

Taking into account the points mentioned above, it is recommended that the Independent Election Commission while taking into consideration all the relevant aspects to this matter e.g. purchase of the relevant machines and their maintenance, public outreach/awareness, training of the electoral personnel for conducting electronic voting and the infrastructure of the country, shall thoroughly study feasibility of realization of the voter registration through electronic mechanism, and later shall use technology for all the processes of the electoral processes in the long-term.

#### 4. Refugees' Rights in Elections

Participation in election is one of the fundamental rights of all citizens of the country; thus Afghan refugees living abroad shall also have the right to vote. Despite of all the challenges in this area, the Commission while taking into consideration the feedbacks received with regard to refugees, recommends to the government, that given the circumstances and conditions, in the light of the provisions of the paragraph (5) of the article 5 of the elections law, give due attention to this matter.

**5. The Commission** once again reiterates on practical implementation of the first package of reform recommendations, especially the invalidation of the existing voting cards and issuance of the Electronic Tazkeras.

#### C: Some Recommendations with Regard to Amendment of the Constitution

The basis of election in our country is provided in the constitution. The constitution not only has enshrined the election as a fundamental pillar of democracy and way of expressing the will of people of Afghanistan, but in numerous instances it has provided the required guidance on the forms and nature of the elections as well. Improving the electoral system of the country to a large extent depends on making some amendments to some of the articles of the constitution. The Special Electoral Reform Commission (SERC) has carefully conducted a comprehensive review of the electoral articles of the constitution, and after assessing and receiving feedbacks from the relevant experts, recommends the amendment of the following articles as a long term reform:

- 1- In the article (61) of the constitution (first day of Jawza i.e. 22 May) is specified as the end date for the term of office of the president of the country, for which presidential elections shall be conducted 30 to 60 days before the mentioned date. But taking into consideration the climatic conditions in some of the provinces, month of Hamal (March/April) is not well suited for conducting the presidential elections. Therefore, it is recommended that this date shall be amended to a more suited time.
- 2- In the last paragraph of this article, it is stated that if one of the candidates dies during the counting and before announcement of the result, new elections shall be held according to the law. This situation will bear high costs and can prolong the process as well. The Commission is recommending that this article should be amended as follows:

In case one of the candidates dies during the counting and before announcement of the election results, depending on the circumstances, the following steps should be taken:

First- if the deceased candidate was the winner of the election, he/ she has the status of a president and the first vice president, shall assume authorities and duties in accordance with article sixty six of the constitution, and new elections shall be held within three months in accordance with the article sixty seven of the constitution.

Second- in case the deceased candidate was one the two candidates who have gone to the second round, the election shall be held in accordance with the article 61 of the constitution.

Third- in case the deceased candidate was neither a winner nor he/ she was one the two leading candidates on the second round, no new election are to be held.

The issue of withdrawal of one of the two candidates at the second round, should be stipulated in this article and a proper solution to this issue should be provided.

- 3- Article 83 of the constitution, with regard to the date of first of Saratan (21 June) as the first day of inauguration of work of the new Wolesi Jirga, for which the elections need to be conducted two months before that. Since Sawar (April/ May) is not well suited for elections in some of the provinces due to climatic problems, therefore it is recommended that this date shall be amended to a well suited season of the year.
- 4- Article (84) of the constitution about the composition of Meshrano Jirga is enshrined in a way that residents of cities (about 30 percent of the population) do not have proper representation in the Meshrano Jirga. Therefore it is recommended that representation of urban population in Meshrano Jirga should be ensured in a fair manner.
- 5- The "Elections credentials" mentioned in article (86), is vague. This article requires revision and amendment.
- 6- Article (87) of the constitution on electing the Chairperson of the Meshrano Jirga is vague, problematic and requires revision.
- 7- According to the article (110) of the constitution, the members of Loya Jirga consist of members of National Assembly, and Chairpersons of the Provincial and District Councils. This issue has caused lack of balance among representatives of people especially the urban population and women and particularly in Kabul city. Therefor the Commission recommends that necessary measures should be taken in order to ensure fair representation of urban population including the women.

- 8- Article (138) of the constitution with regard to the provincial council elections shall be reviewed in a way, so that its members shall be elected indirectly through the district and the municipality councils.
- 9- Based on the figures provided by the Central Statistics Office there are forty five thousand villages in the country, constituting 70% population of the country. On the other hand, conducting secret and direct elections in this number of the constituencies in accordance to the provisions of the article (140) of the constitution, while taking into consideration the financial, security and logistical problems, will face many challenges. The Commission recommends that simpler ways and approaches shall be considered by the Loya Jirga for the implementation of this article.
- 10- Article (156) of the constitution, has obliged the Independent Election Commission to “administer” and “supervise” every kind of election as well as referral to general public opinion. But the issue of dealing with complaints and challenges is not stipulated in this article. Therefore the Commission recommends that this should be stipulated and in order to strengthen greater validity and transparency of the election process, the issues of addressing electoral crimes and challenges to IEC decisions, and the one phase decisions of the Special Electoral Court, should be enshrined in the law.
- 11- In case the Wolesi Jirga and presidential elections cannot be held within the period specified in the law, due to any reasons other than state of emergency, necessary legal measures should be taken in order to avoid a gap in its legitimacy.

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