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TEIM Election Watch Analysis

OCCASIONAL ANALYSIS:

**AFGHANISTAN / The price of democracy:
with each election, another institutional crisis**

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Four months after its parliamentary elections took place last 18 November 2010, the Afghan president Hamid Karzai, finally inaugurated the country's new parliament on 26 January 2011. The publication of the final results was considerably delayed due to allegations of fraud and because of investigations carried out by the Electoral Complaints Commission (ECC)¹. In the elections fraud once again reached dizzying heights. Following the invalidation of 1.3 million votes and the disqualification of more than 20 successful candidates from the final list of winners (some 81 "winners" had previously been disqualified from provisional lists)² the losing candidates, some of them allies of the Karzai government, took their complaints to the Office of the Attorney General (OAG) and the Afghan Supreme Court. The institutional confrontation between the electoral commissions on the one hand, (which stood by their own investigations, as well as the final publication of results and the early formation of Parliament), and the Karzai government on the other, pulling strings via the OAG and Supreme Court (which requested evidence of fraud to carry out its own investigation), has materialised in the form of the Special Court.

According to Afghan electoral law, the OAG must study those cases of fraud and criminal activity involving candidates referred to it by the ECC. In fact, it does not have the jurisdiction to carry out its own investigation into elections. However, given the evidence presented to it by several candidates, it decided to conduct its own investigation, with which the electoral institutions refused to cooperate. Karzai, unable to conceal his disappointment with the results and, under pressure from those he had made election promises to, only to see that he could not keep them, tried first to put pressure on the Independent Electoral Commission (IEC) and then on the ECC. Indeed, threats to IEC staff have been constant. The OAG undertook legal action against some staff members, with charges such as "defaming the nation" or "making irresponsible statements." But both the IEC and ECC stood steadfast.³ With the protests by the losing candidates unremitting, the last resort was to improvise a Special Court made up of five members, which decided shortly before the opening of the Lower House that it needed one month (until 22 February) to investigate the fraud. But the winning candidates, after three previous postponements, threatened to inaugurate parliament on their own, with or without Karzai's presence.

The international community for its part had already made clear that time was of the essence. The United Nations Assistance Mission in Afghanistan (UNAMA) decided to back the ECC's investigations, and considered the publication of the final results valid. It pushed for parliament to be formed promptly.⁴

¹ The ECC was created following the elections of 2004-2005, due to the many complaints of fraud. The ECC was meant to investigate allegations of fraud on the basis of evidence provided to it. It consists of five members, three Afghans and two foreigners, appointed by the UNAMA (The United Nations Assistance Mission in Afghanistan). The presence of foreigners was intended to ensure the neutrality of the institution.

² It is worth keeping in mind that although there were about 6,000 complaints, the ECC could only investigate those in which evidence was provided.

³ It is also worth remembering that there have been cases of fraud and institutional corruption in the IEC. However, as it has undertaken its work under threats and coercion, the overall result must be assessed positively.

⁴ It is also true that the IEC's publication of the final results, while the ECC and OAG were still carrying out investigations into fraud, could be considered a lack of respect for the work they were doing. Among the final results were the names of some candidates who were being investigated not only for fraud, but also in criminal cases. To make matters worse, the UNAMA supported the publication of the results.

Karzai, uncertain which side of the fence to come down on, ultimately opted not to complicate matters any further and assented to the opening of parliament. In recent months, he has been trying to please everyone. He assured the losing candidates that fraud would be investigated and that even now they still had a chance of winning a seat (among these 'losers', are several of his allies, some of whom are very influential). To the winning candidates, he promised that Parliament would open, without fail, on Wednesday 26 January, if they accepted the sentence of the Special Court. To this end, Karzai made them sign a document. Not all the elected members of parliament (MP's) have signed it, as some do not recognise the legality of the tribunal. The losers meanwhile are outraged, because once the MP's have sworn oath they will benefit from parliamentary immunity and cannot be prosecuted, even if they did sign the president's document - the legality of which is questionable.

In his inaugural speech, as has been usual of late the president blamed foreigners for Afghan democracy's lack of success. Karzai, after all, bears a major grudge. In the 2009 presidential elections, while he was celebrating what was practically his victory in the first round, Karzai saw the ECC nullify more than a million of his votes, making him lose his absolute majority and forcing the vote to go to a second round. He considered this an insult, especially as the votes that were cancelled were for the better part from the southern Pashtun provinces, where Karzai has his main base of support. The head of state specifically blamed the two foreign members of the ECC appointed by the UNAMA. He argued that foreign interests motivated the cancellation of the votes. To prevent the ECC intervening again, he decided on February 23 2010, to seize control of the commission by presidential decree and 'Afghanise' it. That is to say, he himself would nominate the members of the ECC, all five of whom would be Afghans.⁵ With the electoral monitoring body under his control, Karzai assumed not only that he would not have to repeat that experience, but also that he would ensure himself a favourable majority in parliament, that would give him fewer headaches than the previous House.

That said, the Wolesi Jirga (Lower House), incensed by the Executive's immoderation and constant disparagement, blocked the reform of the electoral law and stood up to the president. The parliamentarians, tired of being manipulated by powerful leaders of the House - who only pursued their own interests and alliances with Karzai - decided to rebel. They voted against the formation of his government repeatedly, galling the president. But the most positive aspect of all this, was the fact that the MP's had woken up to the fact that they did not have to accept manipulation from on high, and had realised that their vote was just as valid as anyone else's. In this sense of equality, and in the assertion of their power (bestowed on them by the Afghan people democratically), lies the seed of democracy.

For all these reasons, it is more than a little disconcerting how little attention these elections have received, compared to the excessive attention given to the presidential elections. The Wolesi Jirga can now stop being a puppet in Karzai's hands. The number of anonymous, independent candidates, who have won seats by virtue of their support at constituency level, must be taken into account.⁶ Without resting too much hope on their shoulders, the presence of

⁵ To get away with this, Karzai made the change to the electoral law at a time when the parliament was in recess and a vote on the decree could only come after the required deadline.

⁶ Without being too optimistic, an undefined percentage of these candidates are relatives of an outgoing MP, or have the backing of some powerful figure or other. The inability of a normal citizen

these fresh faces means that the Wolesi Jirga is capable of renewing itself and may begin to gain credibility. But credibility will only increase if the filters to weed out ineligible candidates are improved. If criminals, warlords, or any such kinds of powerful individuals continue to be allowed to run for office, the credibility of the elections, and therefore the legitimacy of the resulting parliament, will be zero.

to afford the expenses that candidates incur, in the absence of political parties, keeps many away from politics. Politics is thus left to drug dealers and warlords.