



**CENTER ON
INTERNATIONAL
COOPERATION**



JOHN F. KENNEDY
SCHOOL OF GOVERNMENT

Implementing Women’s Representation in Afghanistan’s Electoral Law:

Options for reserved seats

Pippa Norris

Harvard University

Prepared for the Afghanistan Reconstruction Project

Center on International Cooperation, New York University

Contents

1. The Afghanistan Constitutional Requirements.....	2
2. Reserved seats for women under majoritarian elections	3
3. Reserved seats under proportional representation elections.	5
4. Examples of reserved seats for women	5
4.1 Jordan – appointment by the monarch.....	6
4.2 Bangladesh – appointment by other MPs	6
4.3 Morocco – direct elections.....	6
4.4 Pakistan – appointment by parties	7
5. Conclusions and recommendations	7
Appendix: The relevant section from the 2002 Pakistan electoral law	8
Table 1. Implementation of reserved seats for women by electoral system.....	3
Table 2: Reserved seats for women used in the lower house of parliaments worldwide.....	10

The Afghanistan Constitution specifies that women representatives must be included in both houses of the National Assembly, including in the Wolesi Jirga (the House of People) and in the Meshrano Jirga (House of Elders). The aim of this memo is to consider how the constitutional requirements for the Wolesi Jirga can best be implemented through electoral law.

1. The Afghanistan Constitutional Requirements

The relevant constitutional clauses on this issue are as follows.

Article Eighty-three Ch. 5, Art. 3

Members of the Wolesi Jirga are elected by the people through free, general, secret, and direct elections.

Their mandate ends on the 1st of Saratan of the fifth year after the elections, and the new assembly starts its work.

The number of members of the Wolesi Jirga, proportionate to the population of each region, shall be not more than two hundred and fifty.

Electoral constituency and other related issues shall be determined by election laws.

*In the election law, measures should be adopted for so the election system shall provide general and just representation for all the people of the country, and **at least two female delegates should be elected from each province.***

The Afghanistan constitution therefore specifies that the *Wolesi Jirga* shall include 64 women members (with election guaranteed through reserved seats) and up to 186 members of either sex (elected to general seats), given the current 32 provinces. The number of seats reserved for women and hence the number of general seats may change if provinces are created or merged. These numbers are used in this paper only for illustrative purposes, and they may change in the future consistent with the provisions of the constitution.

The Constitution does not specify the basic type of electoral law for the *Wolesi Jirga* or whether this system should be majoritarian, proportional, or mixed, other than to say that the number of delegates should be “proportionate to the population of each constituency” (*hawza*). The main options, each with various sub-categories, are:

- (i) *Majoritarian electoral systems using single-member plurality constituencies* (otherwise known as the “first-past-the-post” system). Under this system, Afghanistan would be divided into territorial single-member constituencies, all containing roughly equal populations. Parliamentary candidates would each run in one constituency. The candidate in each constituency who won the highest share of the vote would be elected to the *Wolesi Jirga*.
- (ii) *Proportional representation (PR) systems use multi-member constituencies*. In Afghanistan it is most likely that in such a system each province would be treated as a multimember constituency, though it is also possible to treat the entire country as a single constituency or to create smaller constituencies. Political parties or similar groups would nominate a list of parliamentary candidates in each constituency. The distribution of seats to parties would be roughly proportional to their share of the vote in each constituency, with the final distribution dependent upon the electoral formulae employed.

- (iii) *Mixed* systems combine both the above systems in simultaneous elections for the same body, using, for example, a certain number of single-member plurality districts for election to the *Wolesi Jirga* along with some multi-member constituencies under PR.¹

The practical aspects of electoral administration in Afghanistan may favor the use of PR in provincial-level multimember districts, since Afghanistan lacks a reliable population census whose results could be used to delimit equally-sized single-member constituencies. Since this matter remains to be decided, this briefing memo provides examples of how Afghan women could be guaranteed election to the *Wolesi Jirga*, as specified in Article 83, under both majoritarian and PR electoral systems.

The Constitution specifies that ***at least two female delegates should be elected from each province***, which suggests that reserved seats for women allocated by election need to be implemented at provincial level.

Reserved seats can be defined as those constituencies for elected office that can be contested only by women candidates, distributed either by appointment (by another body), or by direct election (by popular vote). The Constitution of Afghanistan, however, requires that all members of the *Wolesi Jirga* be directly elected.

Other measures commonly employed to insure the nomination of women parliamentary candidates, such as gender quotas implemented by law or party rules requiring inclusion of women on party lists of parliamentary candidates, would not fulfill the constitutional guarantee of election in Article 83.

Table 1 and 2 show how reserved seats for women have been implemented in several countries by appointment, indirect election, or direct election. Only the latter would satisfy the constitutional requirement in Afghanistan.

Table 1. Implementation of Reserved Seats for Women by Electoral System

	Majoritarian electoral systems	Proportional electoral systems
Gender quotas determining the distribution of male and female parliamentary candidates	Rules of the UK Labour party	Law applying to all party lists in Belgium, Argentina, and France
Reserved seats by direct election	Pakistan, Morocco, Sudan	None
Reserved seats by appointment	Bangladesh, Jordan, Tanzania	None

2. Reserved seats for women under majoritarian elections

If the electoral system for the *Wolesi Jirga* were to adopt majoritarian elections, one of the simplest ways to implement directly-elected reserved seats for women would be as follows:

- All electors would be asked to cast two simultaneous ballots in national legislative elections, one for reserved seats for women and one for general single-member constituencies.
- **Reserved seats**
 - *For the 64 reserved seats for women members of the Wolesi Jirga.* Each of the 32 provinces in Afghanistan would return two reserved seats for women.

¹ Under a “combined” or “mixed” system, as in Germany or New Zealand, some members are elected in single-member districts and others are elected through party list PR seats. Any combined system could use either of the main options of reserved seats for women discussed in this paper. In addition there are many other alternative sub-types of electoral systems. See, for example, Pippa Norris. 2004. *Electoral Engineering: Voting rules and political behavior*. Cambridge: Cambridge University Press. Chapter 2; International IDEA. *Handbook of Electoral System Design*. <http://www.idea.int/esd/publications.cfm>

- Any woman who fulfilled the general requirements for candidacy (in terms of age, legal status, residence in the province, etc.) could stand for election to the reserved seats.
- All electors would cast one ballot for one of the woman candidates standing for the reserved seats in their province.
- The two female candidates running for the reserved seats who received the highest share of the vote in each province would be declared elected members of the *Wolesi Jirga*².
- **General single-member constituencies**
 - *For the general members* of the *Wolesi Jirga*, Afghanistan would be divided into up to 186 single-member territorial constituencies that are roughly equal in population size.
 - Both men and women could stand as candidates for the general constituencies. In order to promote women's representation in general seats as well, the law could require that lists of candidates nominated within each province by each party must include a quota such as at least 20 percent of both sexes, though this is not required by the constitution.
 - All electors would cast one ballot for a candidate standing in their constituency.
 - The candidate who won the highest share of the vote in each constituency (a simple plurality of votes) would be elected to the *Wolesi Jirga*.

The advantages of this proposal are that women elected to the reserved seats would not be dependent upon nominations by the party leadership or other political groupings, so that independents could stand. Women MPs would remain directly accountable to the electorate for their record in elected office, rather than answerable to party leaders. They would represent the province as a whole, rather than particular territorial constituencies.

Other examples of how reserved seats for women candidates have been implemented through direct (popular) election in Pakistan and Morocco are described below.³

² This recommendation therefore suggests the adoption of the *Single Non-Transferable Vote* electoral system (SNTV), used in Jordan, Japan (until 1993), and for some seats in Taiwan. This system has the advantage of being easy for electors to use (they just need to mark the name of one candidate with a straightforward "X"), simple to count, and transparent in the outcome. The system would also encourage elected members to serve their provincial constituency, since individual candidates compete for popular support *within* as well as among parties. The disadvantages are that women candidates could be elected through SNTV based on a relatively small plurality of votes. Moreover the system would also favor candidates nominated by the larger parties within each province.

As an alternative, reserved seats could be distributed through the *Single Transferable Vote* system (used in Eire and Malta), where electors would mark their ballots by ranking women candidates in their order of preference (1st, 2nd, etc). The first preference votes would then be tallied and the quota would be calculated based on the number of votes cast divided by the number of seats +1. For example, if there were 100,000 electors in a province, then the quota for election would be 50,001 votes. Any candidate who met or exceeded the quota in their first preference votes would be immediately elected. If no-one had achieved the quota, then the candidate with the lowest number of first preference votes would be eliminated, and her second preferences would be distributed as a fractional percentage of one vote to the remaining candidates. This process would be repeated until two candidates had achieved the minimum quota.

The advantages of STV are that such a system would expand elector choice, it would produce more proportional results than SNTV, and it would mean that no candidate could be elected with only a small plurality of votes, for example by appealing only to a narrow segment of the electorate. Nevertheless, compared with SNTV, the ballot presents slightly more complicated electoral choices (requiring preference voting). STV would also be more difficult to administer and count, and it is slightly less transparent in the outcome.

3. Reserved seats under proportional representation elections.

If a PR electoral system were selected for the *Wolesi Jirga*, the following provisions, similar to those for majoritarian systems, could be introduced to implement Article 83 of the constitution.

- All electors would cast two simultaneous ballots in national legislative elections, one for reserved seats for women and one for general multi-member constituencies.
- **Reserved seats**
 - *For the reserved seats for women members of the Wolesi Jirga.* Each province of Afghanistan would return delegates to two seats reserved for women.
 - Any woman who fulfilled the general requirements for candidacy could stand for election in these seats.
 - All electors would cast one ballot for one of the woman candidates standing for the reserved seats in their province.
 - The two female candidates running for the reserved seats who received the highest share of the vote in each province would be elected members of the *Wolesi Jirga*.⁴
- **General multi-member constituencies**
 - *For the general members of the Wolesi Jirga,* Afghanistan under the current division of provinces would be divided into 32 multi-member provincial constituencies.
 - Parties would be invited to nominate candidates of either sex for the *general party lists of parliamentary candidates* within each province.⁵
 - For fair and balanced representation, in order to qualify, lists of candidates nominated within each province by each party must include at least 20 percent of either sex. Parties should rank women and men alternatively in order down their general lists, according to the “zippering principle,” so that both sexes have equal opportunity for election.
 - Each elector would cast one ballot indicating their preference for the general party list of candidates in their province.
 - The seats for the general party candidate list would be distributed in each provincial constituency proportionally according to each party’s share of the popular vote.

At present, no countries that hold national legislative elections under PR use direct elections for reserved seats for women, although in principle this could be implemented along the lines suggested above.

4. Examples of reserved seats for women

There are other variations in the implementation of reserved seats. By electoral law, about a dozen diverse countries have reserved a certain number of parliamentary seats for women in the lower house of the national parliament (see table 2). In India 33 percent of seats on local municipal councils are reserved for women, bringing thousands of women into local office.

Reserved seats may work *through appointment* (for example by the monarch, president, prime minister, the party leader, or parliament) or by *direct election*, as required by the constitution of Afghanistan. On

³ Reserved seats are also employed in Taiwan (with a combined electoral system incorporating SNTV and party list elections) and in Djibouti (with multimember Party Block elections).

⁴ See also note 2.

⁵ If party lists are “closed,” electors would cast their ballot for their preferred party. Parties would determine the rank order of candidates within their lists and the highest ranked candidates would be elected to the legislature. If party lists are “open,” then electors could also express an optional preferential vote for candidates within each party list.

balance, direct election has many advantages. Direct elections provide the fairest and most democratic process for determining membership of parliament. Direct elections also insure that women MPs entering parliament through reserved seats would have as much legitimacy and popular support as other members elected through general seats. The powers of patronage through appointment may also be abused by leaders for partisan advantage and may undermine the independence of appointed women members. Illustrations of the pros and cons of these methods are given below.

4.1 Jordan – appointment by the monarch

In *Jordan*, a change in the election law in 2001 reserved 6 out of 110 seats in the lower house of the National Assembly for women. Jordanian legislative elections use the Single Non-Transferable Vote system where each elector has one vote cast for an individual candidate in multimember districts. Those candidates with the highest vote total in each district are elected.

In the June 2003 elections, when no women succeeded in being directly elected under this system, the king appointed the six female candidates who won the highest proportion of votes in their constituencies. Appointed women members currently comprise 5 percent of the members of the Jordanian parliament.

4.2 Bangladesh – appointment by other MPs

For many years a system of reserved seats for women was used in Bangladesh. Under this system, 300 members were directly elected to parliament (the *Jatiyo Sangsad*) from single-member districts. These constituency MPs then chose the women members of parliament selected for the 30 reserved seats.

There have been a number of important criticisms concerning the implementation of this policy in Bangladesh.⁶ The process of indirect elections, in particular, meant that the women who entered parliament via the reserved seat were drawn from the majority party, reinforcing the power of the government. Women recruited through reserved seats may have lacked the legitimacy conferred by winning democratic elections. The indirect election may have given them visibility but may also have undermined their status and influence, if others regarded them as “second-class” representatives. In addition, the provision of reserved seats can function as a “glass-ceiling,” if party leaders rely only on this route and become reluctant to nominate women candidates to run in the directly-elected constituencies. So far, the proportion of women who have been directly elected to parliament in Bangladesh has never risen over 2.5 percent.

This quota system was first introduced into Bangladesh by the 1972 Constitution and then expanded in 1978. The constitutional provision lapsed in 1987, but it was re-incorporated into the constitution in 1990. In the 1996 election, seven women won seats in direct elections (including the leaders of the two main political parties), in addition to the thirty women who entered through reserved seats. This provision also lapsed in April 2001, so that the parliament elected in October 2001 did not use any reserved seats for women. The issue of the most appropriate reforms that could strengthen women’s representation in Bangladesh continues to be debated by parties, activists, and the women’s movement.

For these reasons it seems preferable to implement reserved seats through *direct elections*. This process can be illustrated through recent elections in Morocco and Pakistan.⁷

4.3 Morocco – direct elections

In *Morocco*, of 325 seats elected by a first-past-the post system, 295 seats are filled from single-member constituencies and 30 seats directly elected from a women-only national constituency. The women candidates with the highest share of the popular vote in the national constituency are elected to parliament.

In the 2002 election, five women won from single-member constituencies in addition to the 30 reserved seats, making a total of 35 women out of 325 MPs, or 10.8 percent of seats occupied by women. This is the

⁶ See Najma Chowdhury. 2002, “The Implementation of Quotas: Bangladesh Experience — Dependence and Marginality in Politics.” International IDEA Regional Workshop on the Implementation of Quotas. http://www.idea.int/quota/CS/CS_Bangladesh.pdf

⁷ A useful series of case studies in different regions is being developed by International IDEA in conjunction with the University of Stockholm. For details see. www.quotaproject.org.

highest proportion among Arab states and the comparable figure for the proportion of women in the previous parliament was 0.6 percent.

4.4 Pakistan – appointment by parties

In *Pakistan*, under the Conduct of General Elections Order, 2002, seats are reserved for women in both the lower house of the parliament (60 of 342 seats, or 17 percent) and in the provincial assemblies (also 17 percent). Thirty three percent of the seats in lower-level councils (union, Tehsil, municipality, and district) are also reserved for women, leading to the inclusion of over 40,000 women in elected office.⁸ The use of reserved seats for women and for minority communities has a long history in Pakistan, dating back to the 1956 electoral law. The use of reserved seats at local level has been found to lead to the inclusion of more women from poorer backgrounds and younger women, compared with the background of those who usually enter elected office.

In the 2002 general elections for the National Assembly, Pakistani citizens voted for a legislative candidate in each of the 272 single-member districts by the first-past-the-post system. The total share of the vote won by each party was calculated for each province. Then the sixty reserved seats for women in the National Assembly were divided among the parties according to their total share of the vote won in each province. The parties nominate which women candidates enter the National Assembly through reserved seats, which critics suggest may undermine the independence and legitimacy of these women members.

In the general elections of 2002, 12 women won seats in the national parliament from generally contested seats, in addition to the 60 reserved seats, making for a total representation of 72 women out of 342 seats, or 21.1 percent.

5. Conclusions and recommendations

Overall at a minimum any electoral system for Afghanistan needs to meet the general requirements that ensure democratic legitimacy. They should be free of violence, intimidation, bribery, vote-rigging, irregularities, fraud, and partisan manipulation. Contests should provide a choice of candidates and parties. Elections should use fair, honest, efficient, and transparent processes from voter registration to the final vote count. And members of the *Wolesi Jirga* should reflect the society from which they are drawn.

Reserved seats in each province are designed to make sure that women have a voice in the future of Afghanistan. If women are appointed to reserved seats, by party leaders or other bodies, then this process may give some women visibility without real power. Where reserved seats use direct elections, however, women members of parliament are likely to maintain their independence and have full legitimacy derived from democratic processes of selection.

⁸ See Socorro L. Reyes. 2002. "Quotas in Pakistan: A Case Study," International IDEA Regional Workshop on the Implementation of Quotas. http://www.idea.int/quota/CS/CS_Pakistan.pdf

Appendix: The relevant section from the 2002 Pakistan electoral law

Number of Seats in National Assembly.

(1) There shall be three hundred and forty-two seats of the members in the National Assembly, including seats reserved for women and non-Muslims.

(2) The seats in the National Assembly referred to in clause (1), except as provided in clause (3), are allocated to each Province, the Federally Administered Tribal Areas and the Federal Capital as under:—

	General Seats	Women	Total
Baluchistan	14	3	17
Federally Administered Tribal Areas	12	—	12
Federal Capital	2	—	2
The North-West Frontier Province	35	8	43
Punjab	148	35	183
Sindh	61	14	75
Total :	272	60	332

(3) In addition to the number of seats referred to in clause (2), there shall be in the National Assembly ten seats reserved for non-Muslims as defined in Article 260 of the Constitution.

(4) For the purpose of election to the National Assembly,—

(a) the constituencies for the election on general seats shall be single member territorial constituencies; (b) the members to fill the general seats in the National Assembly shall be elected by direct and free vote;

(c) each Province shall be a single constituency for all seats reserved for women which are allocated to the respective Provinces under clause (2);

(d) the constituency for all seats reserved for non-Muslims shall be the whole country;

(e) the members to fill seats reserved for women which are allocated to a Province under clause (2) shall be elected through proportional representation system of political parties' lists of candidates specified in Article 8F on the basis of total number of general seats won by each political party in the National Assembly;

(f) the members to fill seats reserved for non-Muslims under clause (3) shall be elected through proportional representation system of political parties' lists of candidates specified in Article 8F on the basis of total number of general seats won by each political party in the National Assembly; and

(g) a political party securing less than five per centum of the total number of general seats in the National Assembly shall not be entitled to any seat reserved for women or non-Muslims.]

¹[6. Number of seats in the Provincial Assemblies.—

(1) Each Provincial Assembly shall consist of general seats and seats reserved for women and non-Muslims as herein below specified:—

	General seats	Women	Non-Muslims	Total
Baluchistan	51	11	3	65
North-West Frontier Province	99	22	3	124
The Punjab	297	66	8	371
Sind	130	29	9	168
Total :	577	128	23	728

(2) For the purpose of election to a Provincial Assembly,—

(a) the constituencies for the general seats shall be single member territorial constituencies;

(b) members to fill the general seats shall be elected by direct and free vote;

(c) each Province shall be a single constituency for all seats reserved for women and non-Muslims which are allocated to the respective Provinces under clause (1);

(d) the members to fill seats reserved for women and non-Muslims allocated to a Province under clause (1) shall be elected through proportional representation system of political parties' lists of candidates specified in Article 8F on the basis of total number of general seats won by each political party in the Provincial Assembly; and

(e) a political party securing less than five per centum of the total number of general seats in the Provincial Assembly shall not be entitled to any seat reserved for women or non-Muslims.]

8F. Party lists for reserved seats, etc.—

(1) For the purpose of election to seats reserved for women and non-Muslims in the National Assembly and Provincial Assemblies, the political parties contesting election for such seats shall within the period fixed by the Election Commission for submission of nomination papers, file separate lists of their candidates in order of priority for seats reserved for women and non-Muslims with the Chief Election Commissioner or, as he may direct, with the Provincial Election Commissioner, who shall forthwith cause such lists to be published for information of the public at large.

(2) The parties' lists referred to in clause (1) may contain as many names of additional candidates as a political party may deem necessary for contesting seats reserved for women and non-Muslims to provide for any disqualification of candidates during scrutiny of nomination papers or for filling of any vacant seat during the terms of National Assembly and Provincial Assemblies, as the case may be.

(3) Where a seat reserved for women or non-Muslims in the National Assembly or a Provincial Assembly falls vacant for death, resignation or disqualification of a member, it shall be filled in by the next person in order of precedent from the party's list of the candidate submitted to the Election Commission under clause (1).

(4) Every candidate contesting election on a seat reserved for women or non-Muslims shall, alongwith the nomination papers and other relevant documents, submit to the Returning Officer appointed by the Election Commission in this behalf—

(a) a copy of the party list of the candidate's political party for such seats;

(b) declarations and statements as required by law or rules in support of the nomination; and

(c) the fee required under any law for the time being in force for filing nomination papers.

Table 2: Reserved seats for women used in the lower house of parliaments worldwide

	Election	Selection method	Total number of MPs in the lower house	Number of seats reserved for women	% Of seats reserved for women
APPOINTED BY ANOTHER BODY					
Tanzania	2000	Appointed	295	48	16.2
Zimbabwe	2000	Appointed	274	37	13.5
Botswana	1999	Appointed	44	2	4.5
Jordan	2003	Appointed	120	6	5.5
Lesotho	1998	Appointed	80	3	3.8
Bangladesh	2001	Appointed	300	30	10.0
Uganda	2001	Appointed	292	56	19.1
DIRECT ELECTION					
Pakistan	2002	FPTP (i)	357	60	16.8
Sudan	2000	FPTP (i)	360	35	9.7
Morocco	2002	FPTP (i)	325	30	9.2
Taiwan	1996	Combined-independent (SNTV and closed PR list) (iii)	334	Varies	Varies
Djibouti	2003	Party Block (ii)	65	7	10.7

Notes: *Reserved seats* in the lower house of the national parliament are defined as those seats that by law can only be filled by women, either by appointment, indirect election, or direct election. (i) FPTP First-past-the-post (with single-member districts and plurality election). (ii) The Party Block electoral system uses plurality elections in multi-member districts. (iii) The combined-independent electoral system uses both Single Non-Transferable Vote and PR party list in parallel.

Sources: The Electoral Institute of Southern Africa (EISA) www.eisa.org.za; Elections Around the World. www.electionworld.org; International IDEA www.IDEA.int; Pippa Norris. 2004. *Electoral Engineering: Voting rules and political behavior*. Cambridge: Cambridge University Press.