

Will Suspected War Criminals Stand for Parliament?

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An apparent loophole in the election law means some of Afghanistan's worst warlords could run for the legislature.

Could Mullah Omar, the former Taliban leader who is currently believed to be in hiding somewhere on the Afghan-Pakistani border, end up as a member of parliament after the September election?

According to legal experts contacted by IWPR, that eventuality, while highly unlikely, is technically possible due to a loophole in Afghanistan's constitution.

Article 85 of the constitution bars convicted criminals from running for office, and it specifically rules out those convicted of crimes against humanity.

The problem, experts point out, is that no one has ever been brought to trial for such crimes, let alone convicted.

While Mullah Omar's name doesn't appear on the list of registered candidates, several other leading figures widely believed to have committed crimes against humanity during the years of civil war and the Taliban regime are listed.

"There is an article in the constitution, but it doesn't have any practical effect," said Qayoum Babak, a registered candidate and chief editor of *Jahan-e-Now* monthly. "Despite this article, even Mullah Omar and Gulbuddin Hekmatyar can run for parliament because they don't have any criminal records in the courts."

Mullah Omar was head of the Taliban government and an ally of Osama Bin Laden. Hekmatyar, who heads the Hizb-e-Islami faction, has also been accused of war crimes, and is presently a fugitive, leading forces allied with the Taliban against the United States-led coalition.

The Joint Electoral Management Body, JEMB, has said that anyone who committed crimes while leading an armed militia faction or who has been convicted of a crime such as drug dealing is ineligible.

But while many have been accused, no one has been tried, let alone convicted of such activities.

Babak noted that several candidates in last year's presidential election faced similar accusations yet were allowed to run for office.

Dr Abdul Malik Kamwi, a senior official with the Afghan Supreme Court, told IWPR, "For those candidates who were accused by people before the presidential elections, there was no document to prove their crimes in court, so the government didn't condemn anyone at that time."

Alam Khan Azadi, a former commander of the Jamiat-e-Islami faction in Balkh province, is among those who have been accused of war crimes but are still seeking elected office.

"He is a warlord... he led armed men, and he used to torture people," said a local man who spoke on condition of anonymity. "Now he has nominated himself as a candidate."

Many people in the provinces have already complained of coercion by former warlords who are running for parliament. These include General Abdul Rashid Dostum, whose supporters have been accused of taking voters' registration cards by force in order to make sure he meets registration requirements.

A voter in Sar-e-Pul province, who also requested anonymity for fear of his life, alleged that a local commander had killed his brother two years ago but never brought to trial. Now the man is a parliamentary candidate.

"I went to all the judicial and human rights offices asking for an inquiry, but they didn't take any steps," he said.

Candidates cannot be disqualified merely on the basis of accusations, said Abdul Hakim Murad, a member of the JEMB.

After the registration period, said Murad, which has been extended beyond the original May 19 deadline, a list of candidates will be posted in their home regions for three days. Anyone with a complaint relating to alleged crimes committed by a candidate may submit it to the board; the individual will then be investigated, and if the complaint is then accepted at a court hearing, the candidate will be disqualified, he added.

"Just as the voting process is free, so the right to criticise and complain is also free," continued Murad. "But we will admit only legal complaints."

In addition, if the ministries of the interior, defence or other security agencies ask for a candidate to be disqualified, the election board will comply, he said.

But Habibullah Rafi, a political analyst and a member of the Afghan Sciences Academy, said such safeguards are too little, too late.

"The government and the human rights organisations should have already investigated the entrance of warlords and human rights violators [to the election process] and informed the people about them," he said.

"We can expect a parliament formed out of war criminals," warned Rafi.

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Location: [Afghanistan](#)

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