

A NEW CONSTITUTION FOR THE ISLAMIC REPUBLIC OF AFGHANISTAN

1. A 502-member Constitutional *Loya Jirga* (Grand Council) met in Kabul on 14 December 2003, after an ominous 2-day delay, to debate a new Constitution for Afghanistan, the last having been promulgated under the monarchy in 1964. After 22 days of intense debate, hasty adjournments, and occasional walkouts that threatened to derail the process, the 162-article constitution was finally ratified on 4 January 2004, by a majority of the members.

HIGHLIGHTS OF THE CONSTITUTION

2. A number of changes from the draft version of the Constitution highlight the provisions made at the *Loya Jirga* to recognize the pluralist nature of Afghan society. With the monarchy abolished, a system was needed that meets the needs of all population groups. The Constitution provides a legal framework for nation building, on which different ethnic/factional leaders who have often defied Kabul signed off. It meets a key requirement of the Bonn Agreement that Afghanistan adopt a constitution within 18 months of the establishment of the Transitional Authority.

3. The *Loya Jirga* was chaired by former President Sibghatullah Mujaddadi. The United Nations (UN) Special Representative Lakhdar Brahimi and the United States Ambassador Zalmay Khalilzad also played key roles in facilitating discussions and reaching consensus. The 502 delegates (30% women) were divided into 10 committees to discuss different issues. Among the most critical were

- (i) the structure of government (central or federal),
- (ii) the presidential powers,
- (iii) the national languages,
- (iv) the role of Islam in the constitution, and
- (v) the rights and duties of citizens.

4. Under the new Constitution, the country will be called the Islamic Republic of Afghanistan, with a centralized rather than federal government structure and with a strong presidential system. The President will be directly elected for a 5-year term by winning more than 50% of the votes and will have two vice presidents, who must be declared at the time of election. The presidency will be supported by an upper house, called *Da Meshrano Jirga* (House of Elders), and lower house, called *Da Wolesi Jirga* (House of People). One notable change from the draft version is that two women delegates from each of the 32 provinces will be represented in the lower house, which is twice the number allotted in the draft version.

5. President Karzai, an ethnic Pashtun, and the only serious contender for the presidential elections, had earlier warned that he would not stand for election if the President's powers were weakened. However, a strong presidential system was vehemently opposed by other groups, led by former President Burhanuddin Rabbani, General Abdul Rashid Dostum (an ethnic Uzbek), conservative Abu Sayyaf, and the Tajik-dominated anti-soviet mujahideen formerly led by Ahmad Shah Masood, who demanded a strong parliamentary system. In the end, the *Loya Jirga* added some checks on presidential powers, giving *Da Wolesi Jirga* the right to approve senior government appointments, such as the attorney general and the central bank governor.

6. Former King Mohammed Zahir Shah was accorded the title of "Father of the Nation" for his lifetime.

7. The Constitution paves the way for presidential elections in June 2004. However, with less than 250,000 or about 1% of people registered to vote so far (only one fifth of these are women), elections are likely to be delayed until September 2004. The security of both voters and UN staff engaged in the electoral process is a key issue. Parliamentary elections are currently scheduled for December 2004, but there were demands from the opposition that both elections be held simultaneously, to avoid possible presidential interference in the parliamentary elections. On the other hand, there is talk of the June elections being only for the President and of parliamentary elections being deferred. In any case, the importance of ensuring that elections are free and fair cannot be underestimated.

8. The Constitution also calls for the rule of civil law, but with the provision that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam." Followers of other faiths will be free to worship, and to perform religious ceremonies. Under the new Constitution, the Supreme Court will have considerable powers and therefore must be run professionally and honestly. At present, religious conservatives lead the Supreme Court. A key threat to human security is the continuing abuse of powers by regional warlords and commanders, none of whom have yet been tried for their crimes.

9. Women's groups have expressed overall satisfaction with the Constitution and succeeded in changing the wording to reflect "men" and "women" separately, thus granting them equal duties and rights as men. Women were allocated 25% of the seats in the lower house but felt the Constitution did not meet their demand of prohibiting young girls from being forced into marriages, a major social problem that runs contrary to Islam.

10. Education up to high school (grades 1-12) is free and health care is to be provided by the Government.

11. A serious contentious issue that emerged during the final days of the *Loya Jirga* was the question of "official" languages. Delegates from Hazara, Tajik, Turkmen, and Uzbek minorities had demanded that their languages be given official status, while the Pashtuns opposed this as creating the seeds of a federalist state. The language issue in particular reflected the more serious problem of ethnic divisions across the country, dominated by Pashtuns, who make up 40% of the country's multi-ethnic population, and have traditionally been the country's rulers. The minorities were part of the Northern Alliance that helped remove the Pashtun-dominated Taliban from power in 2001 and now want recognition for their languages and a powerful presence in the Government past the forthcoming elections. In the end, *Dari* and *Pashto* were declared official national languages, with minority languages being given "official" status in areas where a majority spoke them. The National Anthem will, however, continue to be in *Pashto*.

12. Other demands of dissenting groups included removal of a clause that allowed dual citizenship for top officials. *Da Wolessi Jirga*, when elected, will vote on whether to approve the appointment of ministers who hold dual citizenships.

NEXT STEPS

13. A new commission will be established to monitor the implementation of the Constitution, most importantly the upcoming elections. However, a key concern remains the successful disarmament and demilitarization of ex-combatants across the country to allow free and fair elections to be conducted. Security threats have led to reduction and in some cases suspension of reconstruction work in recent months, particularly in the southern and eastern parts of the country. While the Security Council has passed a resolution authorizing expansion of the North Atlantic Treaty Organization (NATO) led International Security Assistance Force (ISAF) beyond Kabul, member countries have been slow in committing additional troops.