

## **The Management of the Constitution-Making Process in Afghanistan**

The constitution-making process in Afghanistan is one of the three major elements of the Bonn Agreement of December 2001, which includes:

- 1) Establishment of an Interim Government.
- 2) Holding of an Emergency Loya Jirga to establish a Transitional Government.
- 3) Drafting of a new Constitution for Afghanistan, in light of which elections will be held and an elected Government will be established.

The first two elements have already been successfully implemented and the Afghan nation, with the support of the international community, is now in the process of transforming the third element into reality.

The constitution-making process will be accomplished through three distinct stages by three separate organs as follows:

- Drafting of the constitution by the Constitutional Drafting Commission.
- Reviewing the draft and its completion by the Constitutional Review Commission and
- Approval of the constitution by the Constitutional Loya Jirga.

The three organs involved in the constitutional-making process are described below.

### **A. The Constitutional Drafting Commission (“CDC”)**

A nine-member Constitutional Drafting Commission (“CDC”) was appointed by the President of the Transitional Islamic State of Afghanistan on October 5, 2002. As a sign of respect and national unity, His Majesty Mohammed Zahir, designated as Father of the Nation by the members of the Emergency Loya Jirga in June 2002, formally inaugurated the CDC on November 03, 2002.

Following its inauguration, the CDC formulated its by-laws and structured itself into three committees. These committees included the Research Committee, Drafting Committee and Writing Committee. Members of the CDC thoroughly studied the past six constitutions of Afghanistan, constitutions of other Muslim countries, constitutions of other post-conflict countries, and constitutions of developed countries. The CDC also consulted with Afghan and international legal experts, relevant state institutions, Afghan civil society organizations, Afghan women’s organizations, Afghan organizations for the disabled, and other relevant individuals and institutions. After this period of analysis and discussion, the CDC completed its preliminary draft constitution, which was presented to the President of the Transitional Islamic State of Afghanistan on March 31, 2003.

### **B. The Constitutional Review Commission (“CRC”)**

The second stage of the constitution-making process commenced with the appointment of a 35-member Constitutional Review Commission (“CRC”) by the President of the Islamic Transitional State of Afghanistan on April 24, 2003, after a three month period of consultation. Again, as a sign of respect and national unity, the Father of the Nation formally inaugurated the CRC on April 26, 2003.

The CRC is comprised of Afghan legal experts, tribal elders, religious scholars, highly-educated individuals with a wide range of experience and specialization in various fields, including economics, social science and international relations, as well as other representatives of the diverse segments of Afghan society. The primary responsibility of the CRC is to review, analyze and discuss all provisions of the preliminary Constitutional draft, suggest necessary amendments, and submit a completed draft by August 30, 2003 for submission to the Constitutional Loya Jirga in October.

The CRC also has the following responsibilities:

- Conducting further research and consultations with experts on various issues.
- Developing questionnaires to be used during the public consultation process.
- Assisting the Secretariat in raising public awareness and education of the constitution.
- Conducting public consultation in all 32 provinces of Afghanistan and in four refugee camps in Iran and Pakistan.
- Producing the final draft after the views of the Afghan people have been taken into account.

In order to proceed in an efficient manner and to fulfil its responsibilities, the CRC has developed working procedures and has structured itself into the following bodies:

1. Four Committees, each consisting of eight or nine members, who select a Chairperson based upon the input of the Chairperson of the Commission and one member as their representative. Each committee is supported by one Rapporteur.
2. An Executive Board, consisting of 9 members, comprised of the Chairperson of the CRC, Chairperson of each of the four committees, and one representative elected by the members of each committee.
3. A General Assembly consisting of all 35 members of the CRC.

The preliminary draft has been studied and debated separately and independently by all four committees. Changes and recommendations agreed upon in each committee have been noted by the Rapporteurs. The Chairperson of each committee will then present its committee's proposed changes in the preliminary draft to the Executive Board for further analysis. The Executive Board will discuss each committee's proposed changes and will compile and refine the changes for presentation to the General Assembly. The General Assembly will discuss and debate the changes and make final decisions regarding their incorporation into the draft.

The CRC shall present its completed draft constitution to the President of the Transitional Islamic State of Afghanistan by September 30, 2003, who will then submit it to the Constitutional Loya Jirga on October 01, 2003.

### **C. The Constitutional Loya Jirga ("CLJ")**

The CLJ is a traditional national representative body suitable for the purpose of adopting the new constitution of Afghanistan. The mechanism for its establishment and convening will be decided upon by the President of the Transitional Islamic State of Afghanistan.

The role of the CLJ will be to review the draft constitution, discuss proposed changes and amendments, and to adopt the new constitution. The CLJ shall be convened on October 01,

2003 and shall adopt the new constitution by 25 October 2003. The new constitution will then be published and widely disseminated.

### **Role of the Secretariat**

In order to support this constitutional-making process in Afghanistan, a Secretariat has been established. The Secretariat has provided, and will continue to provide, technical, administrative, logistical, financial, and social support services to the CDC, the CRC and the CLJ. An effective and resourceful Secretariat is critical to achieving the objectives of the constitution-making process by adhering to established timetables, making the process people-oriented, maintaining a high quality and degree of accountability and transparency throughout the process, and accurately recording the entire process for future reference.

The Secretariat consists of three major units: a) Technical and Academic Unit; b) Administrative Unit; and c) Public Education and Public Consultation Unit. For all these units, the Secretariat has hired 50 professional and 30 auxiliary staff members in its central office and 90 professional and 48 support staff to support the process in the regional offices. An organogram is attached for detailed information.

The Secretariat has developed capacity building plans for all of the its units to ensure that staff members are able to effectively conduct their work. In order to develop the capacity of the regional and provincial staff for the public education and consultation processes, staff members were brought to Kabul for training to effectively organize and conduct the public education process and facilitate public consultations.

The Secretariat also includes a Press Office and Media Monitoring office to organize press conferences for the Commission, publish bi-weekly newsletters regarding the Commission's work, and maintain working relationships with media outlets. This office also drafts press releases to ensure that accurate information is provided to the press and public.

#### **A) Technical and Academic Unit**

A Deputy to the Director of the Secretariat supervises and coordinates the sections of Technical and Academic Unit that includes the following sections.

1. **Research, Reporting, and Documentation-** The main responsibilities of this section are:

- Responding to research requests and gathering materials.
- Documenting all minutes of meetings and plenary sessions.
- Analyzing and compiling the reports from the public consultation process.
- Recording the entire constitution-making process for future reference in reports.

2. **Library-** The main responsibilities of this section are:

- Maintaining a small library to make available all research materials, relevant books, and option papers submitted to the CDC and CRC by various legal experts.
- Collecting and collating all materials produced by the Secretariat for future reference.

3. **Translation-** The main responsibilities of this section are:

- Translating all external resources that are made available by the Commission's researchers and of option papers submitted to the Commission by experts, into both Pashto and Dari.
- Translating relevant material produced by the Commission and its Secretariat in English for use by the international community.

4. **Data Processing-** The main responsibility of this section is:

- Processing data in order to record the constitution-making process and people's views so that the information can be analyzed and incorporated in the draft constitution.

## **B) Administrative Support Unit**

A Deputy to the Director of the Secretariat supervises and coordinates the work of the Administrative Support Unit. The following sections have been established to provide timely and quality support to the process.

1. **Administrative/Human Resources-** The main responsibilities of the Administrative/Human Resources section are:

- Managing and supervising of support staff.
- Organizing meetings, workshops and conferences.
- Ensuring proper maintenance & expenditure of office supplies.
- Drafting correspondence.
- Overall management of recruitment process, according on the personnel policy.
- Keeping attendance and personnel record files.

2. **Logistics-** The main responsibilities of the Logistics section are:

- Preparing all records related to supplies and distributing supplies.
- Maintaining updated inventory lists to better meet the Commission's and donors' requirements.
- Preparing and administering a proper procurement plan.
- Managing transportation for the central and regional offices with the support of the Administrative Unit.

3. **Information and Communication Technology (ICT)-** The main responsibilities of the section are:

- Overseeing the distribution, installation, and maintenance of computers and computer-related equipment in the office and providing support to the users.
- Maintaining internet and intranet connections of the Commission's central and regional offices.
- Developing and maintaining the Commission's website.
- Maintaining a server for the organization of emails, files, and communication services.
- Ensuring the regular backup of the Commission's data of the commission.

4. **Finance** – The main responsibilities of the Finance section are:
  - Developing and implementing financial management policies based upon the principles of full transparency and accountability.
  - Financial management of the Commission’s central and regional offices.
  - Developing and controlling an operational budget.
  - Financial reporting to the Commission, United Nations, and relevant donors, complying with each party’s requirements.

#### **C) Public Education and Public Consultation Unit (“PE/PC”)**

The role of public education as a pre-requisite for public consultation is critical to ensure that the public has accurate information and understanding about the constitution-making process. The public education campaign aims to assist Afghans in understanding the importance their views have in the constitution-making process and the impact the constitution will have on their family and social lives. Once the Afghan people understand the importance their views have on this process and the impact of the constitution on their lives, they are more likely to take part in the public consultation process. This will enrich the constitution-making process and will build the public support needed to build respect for the new constitution.

One of the major goals of this constitution-making process is meaningful involvement of the people of Afghanistan in deciding their own future and having a stake in the process. Towards that goal, the public education campaign (PEC) will seek to accommodate and reach, to the extent possible, the diversity of the people of Afghanistan irrespective of socio-economic status, ethnicity, age, religion, gender, education, or disability.

The commission is determined to conduct consultations with the Afghan people regarding the constitution in a structured way. This structure includes a Public Education Department (“PED”) in the Commission’s central office, with branches in all 12 regional offices (8 inside Afghanistan, 2 in Iran and 2 in Pakistan), in order to conduct and coordinate the Public Education Campaign (“PEC”). The structure of the PED includes a PE/PC Coordinator, a PE/PC Officer, both supported by a group of Rapporteurs based in the central office. The unit is responsible for devising a PE strategy, developing materials, and coordinating its implementation among the various regional offices of the Secretariat and civil society organizations that are willing to support the process.

The Public Education and Public Consultation Unit is comprised of two sections, one for Public Education and one for Public Consultation.

1. **Public Education** – The main responsibilities of the Public Education section are:
  - Coordinating the public education/information campaign on the constitution-making process.
  - Partnering with Afghan media and civil society to widely disseminate information to the public.
  - Providing information to the public consultation staff in the regions and provinces, who then inform the public prior to the public consultation process.
  - Producing copies of the draft and adopted constitution, as well as summaries of both, in order to explain the contents of the constitution in simple terms.
  - Providing booklets that will be used to brief delegates of the CLJ before they debate and ratify the Constitution.

2. **Public Consultation** – The main responsibilities of the Public Consultation section, coordinated through the central office, are:
- Coordinating the process among the eight regional offices established within the country and four outside the country to facilitate the consultation process in the regions, provinces and refugee camps.
  - Developing a questionnaire to be used during public consultation.
  - Compiling a data bank based upon completed questionnaires in order to facilitate accuracy in gathering public opinion and for future analysis.

The period of public consultation will take place over a two-month period during which the Commissioners will travel to all 32 provinces in Afghanistan, refugee camps in Iran, and Pakistan and, where possible, other countries in which Afghan refugees reside. The Commissioners will form ten (10) mobile consultation teams to cover these areas.

The public consultation process will be designed to promote genuine consultation between the Commission and the public, and at the same time, to minimize manipulation by special interest groups. Consultations will be held in open public meetings, where possible. To maximize participation and allow in-depth discussions, the Commissioners will have separate meetings with various groups. These groups will include, but are not limited to, community and tribal elders, religious scholars, women's organizations, members of the Emergency Loya Jirga, businesspersons, university professors, professionals, youth and Afghan members of nongovernmental and intergovernmental agencies. As needed and where possible, other groups will be also consulted.

In order to facilitate this process, regional UNAMA offices are providing support to these offices as requested by the Secretariat. The regional offices of the secretariat will also disseminate information about the constitution and will remain in place throughout the process. Following the Commission's drafting of the constitution, the Commission's consultation teams will return to the provinces in September to explain the constitution; and the regional offices will again facilitate that process.

### **Assistance of the United Nations with the Constitution-Making Process in Afghanistan**

According to the Bonn Agreement and at the request of Transitional Islamic State of Afghanistan, the United Nations is providing support to the constitution-making process in Afghanistan. The international community, with the United Nations in the lead, is closely coordinating its activities with the Secretariat and each constitution-making organ for the purpose of making sure that each step in the process has the necessary support, both material and technical, on the path of successfully completing the constitution-making process.

In this regard, UNAMA and UNDP have developed a joint support project for the three constitution-making organs, namely the CDC, CRC, and CLJ, as well as the Secretariat. UNAMA with the agreement of the Transitional Islamic State of Afghanistan and the Secretariat, has the primary responsibility for coordinating international technical and financial support for the Project. UNDP has and will continue to assist the constitutional process by providing financial management, administrative and operational support. UNAMA, in particular its Constitutional Support Unit, as well as UNDP, will regularly update the international partners about the progress and needs of the Commission and facilitate the best means to provide support for it.

The aspirations of the Afghan people will be reflected in the new constitution of Afghanistan through this structured process of analysis, discussion and consultations.

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