

Changes in the Draft Constitution of Afghanistan Introduced

by the Bureau and Reconciliation Commission of the

Constitutional Loya Jirga

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The following table summarizes the changes introduced by the Bureau and RC of the CLJ to the draft constitution as a result of the discussions in working groups and other negotiations. This is compiled on the basis of a table received from UNAMA in Kabul, though not in this form.

The left hand column contains the number of the article. Column two contains the unofficial English translation of the draft released on Nov. 3, with my own emendations in some cases. Column three contains the text as it will be submitted to the plenary of the CLJ, plus some comments.

The table below may very well contain errors.

Article

Draft of 3 Nov 2003

As modified by Bureau and RC

2

The religion of Afghanistan is the sacred religion of Islam.

Followers of other religions are free to perform their religious ceremonies within the limits of the provisions of law.

The religion of the people and the state of Afghanistan is the sacred religion of Islam.

The followers of other religions are free to follow their religions and perform their religious ceremonies within the bounds of law

3

In Afghanistan, no law can be contrary to the sacred religion of Islam and the

values of this Constitution.

In Afghanistan, no law can be contrary to the beliefs and provisions (mu'taqidat o ahkam) of the sacred religion of Islam. [part of a package deal with articles 4 (adding "woman and man") and 7 (no qualifier of adherence to international covenants)].

4

National sovereignty in Afghanistan belongs to the nation that exercises it directly or through its representatives.

The nation of Afghanistan consists of all individuals who are the citizen of Afghanistan.

The word Afghan applies to every citizen of Afghanistan.

None of the citizens of the nation shall be deprived of his Afghan citizenship.

Affairs related to the citizenship and asylum are regulated by law.

National sovereignty in Afghanistan belongs to the nation that exercises it directly or through its representatives.

The nation of Afghanistan consists of all individuals who are the citizens of Afghanistan.

The word Afghan applies to every citizen of Afghanistan, woman and man.

None of the citizens of the nation shall be deprived of citizenship of Afghanistan.

Affairs related to the citizenship and asylum are regulated by law.

7

The state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.

The state prevents all types of terrorist activities, production and smuggling

of narcotics.

The state shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.

The state prevents all types of terrorist activities and the production, consumption and smuggling of intoxicants.

10

The State encourages and protects private capital investments and enterprises based on the market economy and guarantees their protection in accordance with the provisions of law.

The phrase "market economy" is controversial and will be referred to the plenary.

12

Da Afghanistan Bank is the independent central bank of the state.

Issuance of currency, and formulation and implementation of monetary policy of the country are the mandates of the central bank in accordance with law.

Structure and operation of this bank shall be regulated by law.

Da Afghanistan Bank is the independent central bank of the state.

Printing money, based on law after approval of NA belongs to the competencies of the Central Bank.

Structure and operation of this bank shall be regulated by law.

Unclear if this is approved or referred to plenary.

20

The National Anthem of Afghanistan shall be in Pashto.

Anthem in Pashto with Allahu Akbar as a refrain, mention of all groups of

Afghanistan [in return for keeping Pashto language] and of historic and jihadi references accepted by the RC. The issue remains very divisive and will go to plenary.

49

Forced labor is forbidden.

Forced labor, in times of war, calamity, and other situations threatening lives and public welfare are exceptions to this rule.

Children shall not be subjected to forced labor.

Forced labor is forbidden.

Active participation in times of war, calamity, and other situations threatening lives and public welfare is the responsibility of each Afghan citizen.

Children shall not be subjected to forced labor.

50 (1)

The state is obliged to adopt necessary measures for creation of a strong and sound administration and realization of reforms in the administration system of the country.

The state is obliged to adopt necessary measures for creation of a strong and sound administration and realization of reforms in the administration system of the country with the approval of the national assembly.

52 (1)

The state is obliged to provide the means of preventive health care and medical treatment, and proper health facilities to all citizens of Afghanistan in accordance with the law.

The state is obliged to provide without charge [to be discussed, as there is concern whether it is possible] the means of preventive health care and medical treatment, and proper health facilities to all citizens of Afghanistan in accordance with the law.

53

The state takes necessary measures for regulating medical services and financial support to descendants of martyred, lost or disabled and handicapped individuals in accordance with law.

The state guarantees the rights of pensioners and renders necessary assistance to needy elders, women without caretakers, and needy orphans in accordance with the law.

The state takes necessary measures for regulating medical services and financial support to descendants of martyred, lost or disabled and handicapped individuals in accordance with law.

The state guarantees the rights of pensioners and renders necessary assistance to needy elders, women without caretakers, and needy orphans in accordance with the law.

Plus new paragraph on martyrs and disabled.

60

The President is the head of the state of the Islamic Republic of Afghanistan, and conducts his authorities in executive, legislative, and judiciary branches in accordance with the provisions of this Constitution.

The President is responsible to the nation.

The President shall have one Vice President.

The President on his candidacy shall declare the name of the Vice President to the nation.

The Vice President in the absence, resignation, and or death of the President, acts in accordance with the provisions of this constitution.

The President is the head of the state of the Islamic Republic of Afghanistan, and conducts his authorities in executive, legislative, and judiciary branches in accordance with the provisions of this Constitution.

Para. (2) modified, transferred to 69.]

The President shall have one Vice President.

The President on his candidacy shall declare the name of the Vice Presidential candidate to the nation.

The Vice President in the absence, resignation, and or death of the President, acts in accordance with the provisions of this constitution.

61

On presidency, elections.

Technical change on death of a presidential candidate.

62

Presidential candidates should possess the following qualifications:

1- Should be citizen of Afghanistan, Muslim and born of Afghan parents, and should not have citizenship of another country.

2- On the day of becoming a candidate, his age should not be less than forty years.

3- Should not have been convicted of crimes against humanity, criminal act, or deprivation of the civil rights by a court.

No one can be elected as president for more than two terms.

The provision of this article is applied to the Vice President as well.

Presidential candidates should possess the following qualifications:

1- Should be citizen of Afghanistan, Muslim and born of Afghan parents, should not have a non-Afghan spouse, and should not have citizenship of another country.

2- On the day of becoming a candidate, his age should not be less than forty years.

3- Should not have been convicted of crimes against humanity, criminal act, or deprivation of the civil rights by a court.

No one can be elected as president for more than two terms.

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63

Oath of office.

Word "khudavand" (God in Persian) replaced by "Allah" (God in Arabic).

64

The power and duties of the President are as follows:

- 1- Supervising the implementation of the Constitution.
- 2- Determining the fundamental policies of the state.
- 3- Being the Commander-in-Chief of the armed forces of Afghanistan.
- 4- Declaration of war and ceasefire with the approval of the National Assembly.
- 5- Taking the required decision during defending of territorial integrity and protecting of the independence.
- 6- Sending contingents of the armed forces to foreign countries with the confirmation of the National Assembly.
- 7- Convening Loya Jirga except in a situation stated in Article Sixty-eight of this Constitution.
- 8- Declaring the state of emergency and ending it with the confirmation of the National Assembly.
- 9- Inaugurating the National Assembly and the Loya Jirga.
- 10- Accepting resignation of the Vice President.
- 11- Appointing of Ministers and the Attorney General with the approval of the Wolesi Jirga, and acceptance of their dismissal and resignation.
- 12- Appointing the head and members of the Supreme Court with the approval of

the Wolesi Jirga.

13- Appointment, retirement and acceptance of resignation and dismissal of judges, officers of the armed forces, police, national security, and high-ranking officials in accordance with the law.

14- Appointment of heads of diplomatic missions of Afghanistan in foreign countries and international organizations.

15- Accepting the credentials of diplomatic missions in Afghanistan.

16- Signing of laws and legislative decrees.

17- Issuing credential letter for the conclusion of bi-lateral and international treaties in accordance with the provisions of law.

18- Reducing and pardoning penalties in accordance with law.

19- Issuing medals, and honorary titles in accordance with the provision of law.

20- Appointment of the Governor of De Afghanistan Central Bank with the approval of the Wolesi Jirga.

21- The establishment of commissions for the improvement of the administrative condition of the country, in accordance with law.

22- Exercising other authorities in accordance with the provisions of this Constitution.

Note: in the following the term "confirmation" (ta'yin) is everywhere replaced with "approval" (taswib), as delegates felt that the latter made clear the power of the NA to reject. The translation does not always reflect this clearly.

The power and duties of the President are as follows:

1- Power of supervising the implementation of the Constitution now to be shared with or transferred to Constitutional High Office (Diwan-i Ali-yi Qanun-i Asasi) – see article 121. New article(s) to be drafted.

2- Determining the fundamental policies of the state.

3- Being the Commander-in-Chief of the armed forces of Afghanistan.

- 4- Declaration of war and ceasefire with the approval of the National Assembly.
- 5- Taking the required decision during defending of territorial integrity and protecting of the independence.
- 6- Sending contingents of the armed forces to foreign countries with the approval of the National Assembly.
- 7- Convening Loya Jirga except in a situation stated in Article Sixty-eight of this Constitution.
- 8- Declaring the state of emergency and ending it with the approval of the National Assembly.
- 9- Inaugurating the National Assembly and the Loya Jirga.
- 10- Accepting resignation of the Vice President.
- 11- Appointing of Ministers, the Attorney General, the President of Da Afghanistan Bank, and the head of the National Directorate of Security with the approval of the Wolesi Jirga with the approval of the National Assembly and the dismissal and acceptance of resignation from these posts.
- 12- Appointing the head and members of the Supreme Court with the approval of the Wolesi Jirga.
- 13- Appointment, retirement and acceptance of resignation and dismissal of judges, officers of the armed forces, police, national security, and high-ranking officials in accordance with the law.
- 14- Appointment of heads of diplomatic missions of Afghanistan in foreign countries and international organizations.
- 15- Accepting the credentials of diplomatic missions in Afghanistan.
- 16- Signing of laws and legislative decrees.
- 17- Issuing credential letter for the conclusion of bi-lateral and international treaties in accordance with the provisions of law.
- 18- Reducing and pardoning penalties in accordance with law.
- 19- Issuing medals, and honorary titles in accordance with the provision of law.

20- The establishment of commissions for the improvement of the administrative condition of the country, in accordance with law.

Exercising other authorities in accordance with the provisions of this Constitution.

69

Accusations of crime against humanity, national treason or crime can be leveled against the President by one third of the members of the Wolesi Jirga.

If two third of the Wolesi Jirga votes for charges to be brought forth, the Wolesi jirga shall convene a Loya Jirga within one month.

If the Loya Jirga approve the accusation by a two-thirds majority of votes the President is then dismissed, and the case is referred to a special court.

The special court is composed of three members of the Wolesi Jirga, and three members of the Supreme Court appointed by the Loya Jirga and the Chair of the Meshrano Jirga.

The lawsuit is conducted by a person appointed by the Loya Jirga.

In this situation, the provisions of Article 67 of this Constitution are applied.

The President is responsible to the nation and its representatives.

Accusations of crime against humanity, national treason or crime can be leveled against the President by one third of the members of the Wolesi Jirga.

If two third of the Wolesi Jirga votes for charges to be brought forth, the Wolesi jirga shall convene a Loya Jirga within one month.

If the Loya Jirga approve the accusation by a two-thirds majority of votes the President is then dismissed, and the case is referred to a special court.

The special court is composed of three members of the Wolesi Jirga, and three members of the Supreme Court appointed by the Loya Jirga and the Chair of the Meshrano Jirga.

The lawsuit is conducted by a person appointed by the Loya Jirga.

In this situation, the provisions of Article 67 of this Constitution are

applied.

72

The person who is appointed as the Minister, should have the following qualifications:

- 1- Should be the citizen of Afghanistan.
- 2- Should have higher education, work experience and, good reputation.
- 3- His age should not be less than thirty-five.
- 4- Should not have been convicted of crimes against humanity, criminal act, or deprivation of the civil rights by a court.

Whether ministers may have dual citizenship or may have spouses who are not Afghan or not Muslim is referred to the plenary. Note: Ashraf Ghani has US and Afghan citizenship and is married to a Lebanese Christian, so this might be considered overkill – BRR. Interestingly, there is no move to require that ministers be Muslim, only that they have Muslim spouses, but there are no non-Muslim ministers to get rid of.

83

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 election of the members of the Wolesi Jirga shall be held within 30 to 60 days before the expiry of the term of the Wolesi Jirga.

The number of members of the Wolesi Jirga, proportionate to the population of each region, shall be between two hundred and twenty, and 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 one female delegate should be elected from each province.

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The number of members of the Wolesi Jirga, proportionate to the population of each region, shall be under 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 one female delegate should be elected from each province.

[proposal
to increase to two women per province referred to plenary.]

121

On powers of judicial review of the Supreme Court.

Deleted in favor of the new draft on the Constitutional Court (see 64 [1]).

156

Status of the Father of the Nation.

Referred to plenary. Most of RC against it.

158

Transitional provisions, including decrees for elections.

Presidential and parliamentary elections must be held concurrently.