

AFGHAN DELEGATES CRITICIZE CONSTITUTION ASSEMBLY
Mosharekat-e Melli (in Dari & Pashto)
January 10, 2004
Kabul, Afghanistan

Dear readers,

The Constitutional Loya Jerga more or less degenerated into a state of failure and disorganization in its final days because of some disagreements of opinion and people adopting intransigent positions. In view of this, we have interviewed a number of people involved in this posturing, or in other words, their leaders, which you can read on this and the following pages. It is evident that the views of the delegates do not reflect the view of Mosharekat-e Melli.)

(Mosharekat-e Melli) What do you consider was the cause of the tension that arose in the Loya Jerga after completion of the work of the Coordination Committee?

(Loya Jerga delegate Hashmat Ghani) In the Coordination Committee, (party leaders) Ustad (Abdorrab Rasul) Sayyaf, Ayatollah Mohseni and Mr (Sebghatollah) Mojaddedi imposed their own views on delegates. The procedure was in the way that the views were collected. But, where the views could not be collected, the Coordination Committee only had the right to suggest, not to decide.

(Mosharekat-e Melli) But some Coordination Committee members claim that what they had collected and agreed on was not included in the amended text.

(Ghani)) The Coordination Committee is right because some contents were proposed by everyone, which totalled 502 proposals. In fact, that was (constitution commission chairman) Mr (Nematollah) Shahrani's mistake, because that was no easy task. It is not easy even for a law professional to understand a constitution word by word. You may have noticed in the world that one word of a law can take three volumes to interpret. It was necessary for this law to be first explained to lawyers. Besides, Mr Shahrani ought not to have been the head of this commission because he himself holds a stake (in the government, as deputy president). They should have appointed an impartial person as the head. Furthermore, the contents of the constitution should have been explained first, and then distributed to the committees. If any question still remained, they should have

clarified that.

That way, the process would have been easier. Now, considering the current situation, some reckon that the competition is between Karzai and the rest. Besides, some thought from the very outset that there was a contest here between Islam and atheism. In fact, no-one knew the real meaning of the constitution.

(Mosharekat-e Melli) What do you expect from this constitution, as an elder of the Pashtun brothers?

(Ghani)) It is true that Pashtuns respect me as one of their elders, but I am in fact the least important person among Pashtuns, and I cannot express any views without consulting with my tribe. Others who speak on behalf of Pashtuns are factional leaders, but I do not have this right to express the expectations of Pashtuns.

(Mosharekat-e Melli) In general, where can we find the origin of all these disagreements?

(Ghani)) Corruption has emerged within the Pashtuns, as there are some people among us who should have been discarded by their fathers. I do not know why they have not been cast off by our tribe so far. They are snakes in the grass as far as we are concerned. They have caused division among us, yet we sustained them because they were from our tribe, unfortunately. We know them very well. The first person among them is Ustad Sayyaf. I will keep to my words even if I am killed. I have not come to this country to feel fear. God has brought me here and will take me back one day. I have come here to render service to this nation, but not for leadership. These ministers and factional leaders have not considered what may happen if people do not support them. They should serve the nation. They are not the owners of people, so they ought to be altruistic.

(Mosharekat-e Melli) You did not mention anything about the Pashtun brothers.

(Ghani)) I am telling you what Pashtuns wish for. Pashtuns do not realize the fact that they are being set one against the other by their own Pashtuns. As you know, what could be the benefit to us in formal recognition of the Pashto language? If Pashto and Dari become official, our language improves because our Farsi (Dari)-speaking brothers will be urged to study Pashto in order to gain an official post. This is to our benefit.

Some brainless people demand that Pashto become the national language. This language has been national for 300 years, but some government rulers still did not know Pashto. Is it good if it is national or official?

Some people provoked some of us, for example, they provoked (ethnic Uzbek leader) Gen (Abdorrashid) Dostum on the issue of language. Aref Nawrozi has said that Uzbeks are now also demanding their rights from Pashtuns. Tell me, is this worth mentioning? Are Uzbeks not Afghans? Do we not have relations? Is there any Afghan who could claim he has not had any relation with other tribes in his last seven generations?

The former kings and warlords have always made attempts to introduce controversy into our historic relations.

They have never said they were the people of councils and decisions. Currently, I, as an elder of Pashtuns, run councils and take decisions. One person relinquished plans to avenge his four children because of my suggestion. No-one writes about these issues. However, if there is anything causing conflict, they are quick to write about it. They write about some area being captured or some fighting with Hazaras and Uzbeks. Yet, they have not remembered that the greatest and richest Pashtun had gone to a Hazara and said: "Dear brother, this is my request, but please accept it even if you hate it." If you request something from an Afghan, he will give you even one of his children, as we witnessed in the era of Jihad, and he will not even ask why. However, God forbid, if you order him forcefully to do something, even to go to heaven, he will not accept it.

(Mosharekat-e Melli) The groupings, anticipated from the very beginning, have escalated during the process of the Loya Jerga to such an extent that the Loya Jerga was predicted to fail. What could be the reason behind these groupings and partisanship among delegates?

(Ghani)) A number of people have created such groupings. I can only mention those of my Pashtuns. Other tribes themselves ought to expose their own contemptible children. Otherwise, this nation will not be a united nation. We have yet to learn the procedure of political dealings. This nation cannot be built without constructive competition, and this positive competition cannot be made with wickedness. No-one can be judged by his appearance or ethnic origin. You should judge someone by his logic. When we reach such a status, all problems will be resolved. For example, if a person scolds me,

all Pashtuns stand up and defend me. This is a mistake because, if what I said was wrong, I should have apologized to him.

(Mosharekat-e Melli) What is the solution?

(Ghani)) All these problems emanate from the interference of certain people. There is a rule in the world, i.e., that if someone pursues a killer and looks for evidence, he brings the person who has encouraged him and given him money to the court along with the suspect. Therefore, with the assistance of the international community, our nation should not only bring these people to court, but should bring their leaders to the court as well. In this way we will have a united nation.

(Mosharekat-e Melli) What do you think about the rights of the majority and minority?

(Ghani)) There is no majority or minority in this country because there is no political structure. We consider minorities on an ethnic basis. This is a mistake because we should consider it as based on thinking and not anything else. Do all Uzbeks, Pashtuns and so on think the same way? It is clear that this is not so. If this is one country and one government, then we are all Afghans. Minority and majority on a tribal basis do not have any value.

(Mosharekat-e Melli) What specific expectations do the Pashtuns have of this constitution?

(Ghani)) Pashtuns do not have any particular expectations. Just as with the Hazaras, Tajiks and so on, they have some dim-witted persons who are exploited. If the Pashtun brothers drive these people away from themselves and expose them, I believe that Hazaras, Uzbeks and others will act likewise. This will help the country develop. It should be kept in mind that we had democracy when the rest of the world did not, and our ancestors used to establish a united nation from among various tribes. They, furthermore, elected one person as the leader and taught him the rules of government and administration. They also told him that, if he had any problem, he could make a request of them, but not order them, because Afghans do not tolerate being ordered.

(end first interview)

(Mosharekat-e Melli) Why was there tension in the session of the Loya

Jerga after the amended text was distributed by the Coordination Committee?

(Director of weekly Payam-e Mojahed and prominent member of Jamiat-e Eslami party Hafez Mansur) The reason was the obvious interference of the government, which involved four esteemed ministers of the cabinet and including the governor of the central bank, who distorted the decisions drafted by the working committees. This damaged the relations between the government and delegates of the Loya Jerga and caused confusion.

(Mosharekat-e Melli) What were the demands of the opposition?

(Mansur) They are not an opposition. These people have some demands and their demands comprise 16 points. I personally submitted these demands to the office of UNAMA (United Nations Assistance Mission in Afghanistan), the human rights office, the secretariat of the Constitution Commission and the leadership of the Loya Jerga.

(Mosharekat-e Melli) What are the most important issues among these demands?

(Mansur) A powerful parliament, the independence of the judiciary, a provisional parliament consisting of 20 per cent of the members of the Loya Jerga, single nationality (no foreign citizenship) for the president, vice-presidents, prime minister, ministers and security officials, recognition of the identity of the ethnic peoples of Afghanistan, official recognition of the Uzbek language and Shi'i jurisprudence, and holding simultaneous elections for the presidency and parliament.

(Mosharekat-e Melli) How many of your demands have been accepted so far?

(Mansur) Only three issues are pending. All other issues have been accepted verbally. The remaining demands are the nationality of the ministers, the provisional parliament and the simultaneous elections for the presidency and parliament. Some members of the Loya Jerga even believe that the dual nationality of the ministers has created most of the tension.

(Mosharekat-e Melli) A number of the delegates did not participate in the voting on Thursday (8 January). What was the reason?

(Mansur) As a matter of fact, taking a vote for the approval of the constitution is not lawful. The constitution has to be approved on understanding and in national unity, not on the basis of majority and minority. For instance, if we would like to take a vote on Jafari jurisprudence (minority sect), it is evident that there will be not many votes in its favour. Similarly, if we run a process of voting on the Uzbek language, there will be not enough votes for that either..

The citizens of a country and their languages are not always equal. Our interpretations about political plurality are not restricted to politics. It also pertains to the cultural and political phases. These have to be recognized officially and respected. This respect should not be only in words. The position of everything should be specified in the constitution. They should be given an official presence in the community, not an unofficial presence.

(Mosharekat-e Melli) So the solution you are suggesting is that problems should be resolved through discussions and negotiations?

(Mansur) Yes.

(Mosharekat-e Melli) What do you think is the reason is for the delegates forming fronts?

(Mansur) Several issues caused the delegates to form up into groups. The most important cause was the interference of the government. The government presented a draft based on a powerful presidential system to the delegates and wanted to foist this draft on the delegates for approval.

The government is distributing money, brings in ministers and the ministers work on the delegates. On Thursday we observed that the government wanted to impose its opinions on our nation through the influence of its prominent government officials.

The people have entered the scene and want to make the decision concerning their constitution and fate by themselves. Another important issue is that the delegates on the constitution refused to sit at the discussion table with the government commission and requested that they might discuss issues with the ambassador of the United States and the representatives of the United Nations. These delegates strongly brought the legitimacy of the present government chaired by Hamed Karzai into question. When the delegates are not ready to discuss issues with the representatives of the government,

it means that people do not trust this government.

(Mosharekat-e Melli) Some of the representatives had suggested the term Islamic should be removed from the name of the Afghan state. What do you think about this?

(Mansur) There are two reasons for this. The first reason is based on my personal view and the other reason is that everyone has the right to express his opinions. Nobody has the right to insult or accuse anybody. More than 150 delegates had signed this petition. They were criticized and accused of being infidels. I believe this term is not only unwise but also unlawful. I am against the proposal, however. On the contrary, my personal view is that our system should be an Islamic republic.

(Mosharekat-e Melli) Although I understood your general analysis on the process of the sessions of the Loya Jerga during what you have said, please express your specific views in relation to the process of the Loya Jerga.

(Mansur) I would like to be brief about my opinions. Basically this Loya Jerga has been convened on the basis of Bonn Agreement. However, the government, with its political, financial, and security facilities, wanted to manipulate things in its favour and approve a document in this Loya Jerga that could guarantee the extension of the government of Hamed Karzai. They do not want to make a constitution for Afghanistan and resolve the problems of the people of Afghanistan.

In fact, they want to have a document approved by people to enable their rule to continue. This has been the inclination of the government since its establishment, and the government has spent more than 13m dollars for this purpose. The delegates of the Constitutional Loya Jerga have been pressurized in different ways. I hope that the resistance of our people and their representatives and the wishes they have which contradict the government inclinations will be approved and the costs and expenditure borne by the treasury is not wasted.

People are endeavouring to make a constitution, even if not an ideal one, but the basis of a law for our future generations. Our future generations will make changes and amendments on this foundation and establish a legal and lawful system in our country.

(Mosharekat-e Melli) Considering the current circumstances, what will

be the result of this process?

(Mansur) I am not without hope. The approval of the constitution is not restricted to the wishes and inclinations of a number of people. The United Nations is observing the situation and its employees are working hard day and night for a fruitful conclusion of this process. In a way the reputation of the United Nations is tied in with this assembly. Those countries that provide financial assistance to Afghanistan do not want this Loya Jerga to end in futility either. I therefore hope that the Loya Jerga will have a successful conclusion.

(End of second interview)

It is worth mentioning that the issue of formal recognition of religions is not a debatable issue in the Loya Jerga at all. The solution stipulated in the draft constitution for both Jafari and Hanafi schools of thought was agreed in consensus among the delegates except for one suggestion presented in the working committee of Ustad Rabbani. However, this suggestion was refused after Qazi Aminollah Waqad turned against this proposal.

What Mr Mansur said about Jafari jurisprudence was offensive, and this issue could have a political aspect. Besides this issue, Hazara representatives were also in harmony with Mr Mansur and his supporters on several national legal issues such as the constitutional high court, amendment of the rights of the president, and disagreement on Pashto as the national language. They considered this an illegal privilege.

(Mosharekat-e Melli) What do you think the reasons are for the delay in the Loya Jerga?

(Delegate Hafizollah Nurestani) Initially the Loya Jerga progressed in a friendly, free and non-political environment. The steering commission of the Loya Jerga was selected from among people who were not familiar with management techniques. There was the lack of a leadership that could manage the process of the Loya Jerga and administer it by having a day-to-day agenda.

The chairing commission of the Loya Jerga, by having no plans and decisions to lead the Loya Jerga in a specific direction, put itself and the members of the Loya Jerga in a working vacuum. I believe it was the result of the lack of competence and ability of the chairing commission which prepared the grounds for the abuse and interference.

The delegates that came to approve a national covenant were encouraged to take different fronts. The constitution has been made into an ideological, traditional and tribal one which cannot be responsive to the future needs of our country as a national covenant.

(Mosharekat-e Melli) You mentioned that the environment of the Loya Jerga was directed towards ideological, traditional and tribal inclinations. Some of the delegates of the Loya Jerga raised the issue that ideological government and tribal factions could create problems for Afghanistan. There is also another perception that all Afghans should have a national patriotism, which means anyone living in this country should serve the country. What is your opinion on this?

(Nurestani) I completely agree with what you say. The activities and plans during the last 25 years were all based on ideological governance, which caused separation and conflict. Unfortunately, governments that were struggling against negative ideology did not believe in national unity either. They started acting individually and separately to protect their perceptions.

The forces created under the name of Jihad (holy war), despite organizing and uniting under a single line, divided into different factions on the basis of language, religion, ethnicity and tribe. Unfortunately, they failed to present a slogan to form a national structure and strategic goals for the country.

Therefore, any ideological political sovereignty has never passed the test of time successfully. No faction succeeded in leading the nation towards a national ideology, reviving the historic identity, establishing a single and centralized sovereignty and resolving the crises deriving from wars and providing the grounds for peace to be established in our country.

The only vision that could be relied on and could heal the wounds is that we adopt the national interests of the government. This will be an ideology that could furnish the grounds for Afghans to eliminate all the conflicts and disagreements prevailing among them.

(Mosharekat-e Melli) Considering the current situation and the text of the constitution deemed to be adopted in the near future, do you think that those who consider the national interests and act freely from the bounds and limits of different ideologies should continue their campaigns to make a favourable law? Or, should they be

satisfied with what is presented to them so as to break the present deadlock and end the process of the Loya Jerga? In this case, how do you foresee the future?

(Nurestani) I am sure that the drafted constitution was better, was more national and encompassed the entire aspects for Afghans. Unfortunately, some interfered and made the issues into those of ideology, tradition and local loyalty. Besides, none of the political circles in the Loya Jerga represent the nation. They have not thought about the approval of a national constitution by consensus. I think the present law, if agreed on, will not be an accountable and responsive constitution. It will be a constitution comprising specific visions that are merely there to put the nation and the government under pressure and make the government act according to their visions which they have included in the constitution. That is why we say this law is not responsible. Nor is it democratic and national, because the national and democratic elements are mixed up with those of tradition and ideology.

We hope that, in order to establish civil foundations in society, those who aspire to democracy will primarily struggle to collect the arms in the country, put an end to local and regional domination of warlords and create a peaceful and proper climate for the Afghan nation to live in so that the nation could appoint their best individuals as their political representatives to the parliament without fears and hazards.

(Mosharekat-e Melli) In fact, the situation is conducive to campaigns. However, Article No 59 is worrying, because it stipulates that no-one can abuse the freedoms given in the constitution against territorial integrity, independence, and national unity and sovereignty. Do you not think this general article could be a means for the authorities to subdue campaigns launched for freedom and rights?

(Nurestani) I believe that ratifying a constitution and including the nation's demands and wishes in it is not tantamount to achieving the goals and enhancing the living conditions of the people. It is important to know the sources responsible for carrying out and implementing the law. What is their vision about the nation? How do they value the constitution? How much do they struggle for national unity and national sovereignty? What is their consideration regarding national integrity? All these issues depend on the authorities. If the implementing authorities of a democratic constitution do not

consider the constitution democratic and do not consider the national interests of the country, there will be no use in it. I believe that, despite a democratic constitution, the worst totalitarianism may prevail. The past experience has shown that revolutionary forces have caused division in Afghanistan, which has been the worst kind of ideological dictatorship. After their victory, the worst tragedies and dictatorship were imposed on our people under the guise of the sacred name of Islam.

Furthermore, the Taleban, referred to as heavenly angels for rescuing Afghanistan, imposed the worst dictatorship on the country under the guise of the sacred religion of Islam. It is evident that, if we do not have democracy present in the democratic foundations established for a civil society, and if we do not have political parties prevailing in civil society that are not based on religious, language, tribal, etc, ideology, but are based on national interests, I believe that no-one will guarantee that authority may not lead to dictatorship.

(End of third interview)

(Mosharekat-e Melli) The constitution will be soon ratified. How effectively will this constitution lead us towards national harmony and national interests or in other words towards a patriotic nationalism and not towards ideological inclinations?

(Kabul delegate Abdolkabir Ranjber) I believe from the legal point of view a constitution in every country is a national covenant and a document which should meet the interests of all the citizens of a country regardless of their tribes, languages, and religions. The constitution must be a document which effectively unites all the Afghan people. The constitution must have this characteristic otherwise there will be a lot of problems in the future.

(Mosharekat-e Melli) What do you think were the reasons and factors behind tensions in the Loya Jerga?

(Ranjber) I believe the reasons are quite clear. I am very disappointed with the Loya Jerga's work because it is not very constructive. I think there were three reasons for this.

First, there were no specific criteria for (election of) the Loya Jerga delegates. Therefore, there was no good legal understanding of this document. Most delegates did not understand the importance of

every facet of the issue. Consequently, a very superficial approach was adopted towards the constitution. Even the issues that came up were not major or basic ones to negotiate on. They discussed very minor issues which did not have any legal and national basis. We have repeatedly said that the document called the constitution a civil rights document. Its standard should not be debased, neither should political, factional and ideological approaches be adopted towards the constitution. But we did debase its standard to a very low level. Those present at the Loya Jerga purposely or inadvertently did so. We did even worse to the constitution and brought it to a tribal, local and linguistic level which creates dissention among people. Yet the constitution must be an important document for national unity and harmony among Afghan people and citizens, but the Loya Jerga in 21 days drove us away from this goal and led us astray. I am very sad that unfortunately the situation came to a head and there was even heated argument between the Loya Jerga delegates, which is a tragedy indeed and I saw it myself. I am extremely aggrieved at this.

However, I hope we can hold a Loya Jerga after a period of time in the future in a true democratic atmosphere, where true delegates of the nation could participate and I hope we will have removed these shortcomings by then.

(Mosharekat-e Melli) There is an opinion among the Loya Jerga delegates which is unfortunately taken lightly by the Loya Jerga leadership. According to this opinion the government and the state should not be ideological, since many of the country's citizens would be caused trouble if they were. In other words, ideology will become a tool in the hands of powerful people and the state to curb inclination towards liberty and to asking for one's rights.

Do you think this opinion is in accordance with democracy and the desires for national unity?

(Ranjber) I agree with you. These ideologies are generally rejected in the modern world regardless of their kind. This is because ideology means a set of strict and unchangeable ideas to be imposed and accepted blindly. This is the concept of ideology which is used as a tool to get power.

(Mosharekat-e Melli) You say ideology has pros and cons. It accepts a group and rejects the other groups opposed to the ideology. This leads the system towards partisanship. Consequently, there a particular party dominates and rejects others.

(Ranjber) When the issues are addressed ideologically, there certainly are pros and cons. You force out from the scene those who disagree with you. Those who support you are given office without merit because you consider them your friends. I believe political parties should not adopt ideological behaviour because this does not yield positive results. Taking into account the circumstances in today's modern world, even social associations do not raise ideological issues.

A characteristic of democracy is difference of opinion. Different views are expressed and a very sound package is made from these different views. If there is no difference of opinion, the situation becomes ideological and leads to the domination of a doctrine and belief and other constructive ideas cannot be suggested and flourish.

(Mosharekat-e Melli) Article No 59 says no-one can exploit the rights and freedoms to threaten national sovereignty... (Ellipsis as published). Will this not lead to a situation when the authorities crush every kind of freedom and freedom of speech and anyone who asks for his rights under the pretext of violation of national unity?

(Ranjber) I totally agree with you and I have noticed this aspect. I had drawn attention to this article and other articles similar to it. I said this will pave the way for those at the helm of affairs to have their own interpretation of this article. They can misuse it politically or on a factional basis. There should be no article in the constitution that can be interpreted in different ways because this will provide opportunity for those in power to exploit the article against the rights and freedoms of individuals.

(Mosharekat-e Melli) Will there be any way for the intellectuals and thinkers to combat misinterpretation and exploitation of Article No 59 and other similar articles?

(Ranjber) The document given to us by the constitution commission had many other shortcomings in addition to the Article No 59. For instance, the articles that speak about the limits of Shari'ah (Islamic law) or the limits of the sacred religion of Islam will lead to a situation whereby, if you say anything at all, they will say it is excluded by Shari'ah, or they will accuse you of becoming a non-Muslim.

I suggest a solution and I declare it bravely. I believe there is no

other alternative. The suggestion is that all the Afghan intellectuals should unite, regardless of their previous affiliation, after the Loya Jerga. They should establish a third force on a democratic basis for creation of a civilized society. The world is also anticipating such a movement. If this force got power in the parliament through free and democratic elections, there would be no exploitation of the articles of the constitution.

(Mosharekat-e Melli) Advocates of social groups (Dari: Qeshrigeria) are trying to set religion above the law in Article No 130. However, law must be prior to religion. If the law does not answer problems then other ways should be sought. What is your opinion as a lawyer?

(Ranjber) I believe there is no matter of the primacy of religion or the law in this case, because religion or doctrines are personal or individual issues. But the constitution is a legal and civil document that organizes legal and social life. The constitution is not an issue of doctrine or belief so we do not link it with a religion or a school of thought. Therefore, I believe we should not raise the issue of the primacy of religion in the constitution.

If we make the constitution a strong legal and civil document and if this constitution ensures justice, then it has indeed met the terms of Islam and Shari'ah. Citizens in a country are certainly followers of different doctrines and schools of thought. There may even be non-Muslims like Hindus and Sikhs. Therefore, if we make a civilized country and society, we should not violate the rights of individuals. We should not confine all the issues within the framework of a school of thought or religion because this harms Islam and depicts it as weak in the eyes of public.

Hence, we should separate these boundaries from each other.