

THE CONSTITUTION-MAKING PROCESS IN AFGHANISTAN

prepared by

**The Secretariat of the Constitutional Commission
of Afghanistan**

10 March 2003

TABLE OF CONTENTS

<i>Chapters</i>	<i>Page</i>
1. Overview of Constitution-Making Exercise	2
2. Role of Constitutional Commission	4
3. Role of Secretariat	5
4. Public Education	7
5. Public Consultation Process	7
6. Constitutional Loya Jirga	8
7. Assistance of the United Nations	9
8. Timeline/Workplan	10

OVERVIEW OF CONSTITUTION-MAKING EXERCISE

The constitution-making exercise in Afghanistan is an important step forward in the nation-building process. The people of Afghanistan are weary of war and hunger for peace. This process of making the constitution will actively involve the people of Afghanistan for the first time in the creation of their shared roadmap towards peace -- their future constitution. The Islamic Transitional State of Afghanistan (ITSA) is committed to a constitution-making exercise that will engage all segments of Afghan society, strengthen a sense of national identity, and aim for a consensual document acceptable to all Afghans. This commitment to an inclusive process adheres to the principles of the Bonn Agreement, most notably “the right of the people of Afghanistan to freely determine their own political future in accordance with the principles of Islam, democracy, pluralism and social justice.”

The Bonn Agreement stipulates that a new constitution shall be adopted by a Constitutional Loya Jirga (CLJ), which must be convened within eighteen months of the establishment of the Transitional Authority. The Agreement states that a Constitutional Commission (“Commission”) shall be established by the Transitional Authority with the assistance of the United Nations. It is also agreed that “free and fair elections” to choose a “fully representative government” must be held no later than two years from the date of the convening of the Emergency Loya Jirga (which was convened on 9 June 2002). Given that the elections must be held under the new constitution, the constitution must be in place before the elections. Hence, the process of making a constitution for Afghanistan is critical to the success of the Bonn Agreement.

The constitution-making exercise will be accomplished through three constitution-making organs. These three organs are:

- the Drafting Commission (“Drafting Commission”);
- the Constitutional Commission (“Commission”); and
- the Constitutional Loya Jirga (“CLJ”).

A Secretariat will support the functions of each of the three constitution-making bodies. The Secretariat has been providing the Drafting Commission with the necessary administrative and logistical support and will expand to support the Constitutional Commission. The international community, with the United Nations in the lead, will coordinate closely with the Secretariat and each constitution-making organ to ensure that each step in the process has the necessary support, both material and technical, to successfully complete the constitution-making process.

The Constitutional Drafting Commission

The President appointed the nine members of the Drafting Commission on October 5, 2002 and selected Vice-President Prof. Naematullah Shahrani to serve as Chair. The responsibility of the Drafting Commission is to produce a preliminary draft of the constitution. This preliminary draft will serve as a set of recommendations to the Commission on constitutional arrangements. The Drafting Commission will submit the preliminary draft of the constitution to the Commission on the day of its inauguration along with a report that explains its recommendations for the format of the future constitution.

The Constitutional Commission

The Commission will consist of approximately 30 commissioners appointed by the President after broad consultations. The President will also appoint the Chair of the Commission from among the commissioners. The primary responsibilities of the Commission are to consult widely with the people of Afghanistan and produce a Draft Constitution by 30 August 2003 for submission to the Constitutional Loya Jirga in October. The Commission's functions will include:

- preparing and publishing the Draft Constitution;
- facilitating and promoting public information on the constitution-making process during the entire period of its work;
- conducting public consultations in each province of Afghanistan, and among Afghan refugees in Iran and Pakistan and, where possible, other countries, to solicit the views of Afghans regarding their national aspirations;
- receiving written submissions from individuals and groups of Afghans within and outside the country wishing to contribute to the constitutional process;
- conducting or commissioning studies concerning options for the Draft Constitution;
- preparing a report analyzing the views of Afghans gathered during public consultations and making the report available to the public; and
- educating the public on the Draft Constitution by returning to all of the provinces of Afghanistan and to the refugee populations in Iran and Pakistan.

The Commission will ensure broad participation of women in the constitutional-making process. The Constitutional Drafting Commission consists of nine members including two women. The representation of women will increase in the soon to be established Commission. The women commissioners will lead, where possible, consultations with women in light of culture sensitivities in some areas. The Commission will also educate the public through their regional and provincial staff to inform women and other groups about the need for women's involvement in the process. The staff will also identify suitable venues, times and ways of meeting and/or communicating with the Commission.

The Commission will be working closely with the Ministry of Women Affairs, which together with UNIFEM, is collecting inputs, holding seminars and other public education programs about the constitutional rights of women. Further, the Commission will liaise with the women civil society organizations that will put at the disposal of the Commission a broad network of their grass root organizations. Gender balance is also a priority for the selection of the regional consultation teams.

The Constitutional Loya Jirga

The CLJ shall be the most representative body assembled in Afghanistan for the purpose of agreeing on the constitution. Its role will be to review and adopt the constitution. The CLJ

shall be convened in October and complete its work by 25 October 2003. The constitution will then be published and widely disseminated.

ROLE OF CONSTITUTIONAL COMMISSION

The Commission will be inaugurated in April 2003. The commissioners will have high-level academic credentials in various fields and will represent the regional, ethnic, gender and other diversity of the country. They will seek to represent the aspirations of the people and strive to develop national consensus on critical issues.

The work plan of the Commission and Secretariat shall be divided into the following phases, some of which may operate concurrently:

- **Organizational Phase**, during which the Commission will adopt its rules of procedure and work plan and form thematic committees;
- **Public Education Phase**, which will be coordinated by the Secretariat and will inform the public about the work of the Commission and the constitution-making process;
- **Research and Expert Consultation Phase**, during which the Commissioners will research and consult with relevant experts on constitutional options for the Constitution and recommendations from the Constitutional Drafting Commission;
- **Public Consultation Phase**, which will be coordinated by the Secretariat, during which the Commissioners will travel to each province and outside the country, as appropriate, to solicit the views of the public; and the public may submit to the Commission proposals for the Constitution;
- **Report Writing Phase**, during which the Commissioners, with the assistance of the Secretariat, will analyze the views expressed during the Consultation period;
- **Drafting and Finalization Phase**, during which the Commission will prepare and agree upon the Draft Constitution and accompanying report, present it to the President; and
- **Publication and dissemination of the Draft Constitution**, during which the Secretariat will publish and disseminate the Draft Constitution and the commissioners will explain the Draft Constitution to the public.

The Commission will be consulting Afghan and international experts as it explores options for various constitutional issues. In preparation for the Commission's role in researching and exploring constitutional issues, UNAMA's Constitutional Commission Support Unit has consulted with the Constitutional Drafting Commission and has commissioned options papers by experts on constitutional issues. Senior constitutional experts, both Afghan and international, will also be available to the Commission to discuss the various constitutional models.

One of the principal tasks of the Commission is to consult broadly with the public and key stakeholders. The Commission will travel to each province in Afghanistan and to Iran, Pakistan and, where possible, other countries to consult with Afghan refugees. In addition, all Afghan citizens both inside and outside the country will be invited to send the Commission proposals and recommendations for the Draft Constitution.

After public consultation, the Commission will complete the Draft Constitution by August 30, present it to the President and publish it for distribution to the public.

The commissioners will then travel back to each province in Afghanistan during September to educate the public on the contents of the Draft Constitution and explain how the public's concerns and recommendations were incorporated into the Draft or balanced with other interests.

ROLE OF SECRETARIAT

The Secretariat will provide support services to the Drafting Commission, the Commission and the Constitutional Loya Jirga. An effective and resourceful Secretariat is critical to adhering to the timetable for the constitution-making exercise.

For the second phase of the process, the functions of the Secretariat will include:

- Providing information to the commissioners, if required, prior to the inauguration of the Commission, in consultation with the chairperson;
- managing the finances of the Commission;
- procuring resources for the Commission;
- preparing financial, progress and operational reports as required by the Commission and the United Nations;
- supervising the functions and day-to-day operations of the Secretariat;
- sending timely notices of all meetings of the Commission and ensure minutes of such meetings are accurately recorded;
- ensuring that Commissioners have access to the minutes of the Commission;
- establishing departments of the Secretariat to facilitate the work of the Commission;
- establishing regional or provincial offices to facilitate the work of the Commission;
- ensuring that the decisions of the Commission are followed up and implemented;
- providing adequate services for all committees of the Commission;

- keeping custody of all records and property of the Commission;
- establishing hiring, terms of employment and discipline procedures for staff of the Secretariat; and
- recruiting such number of staff for the Secretariat as may be needed, in consultation with the Commission and the United Nations and through a transparent hiring process which shall ensure fair gender and ethnic representation and be conducted through competitive interviews.

The Secretariat will hire administrative staff to support the Commission and also establish the following departments to facilitate the work of the Commission:

- ***Press Office and Media Monitoring*** – will provide two full time staff to arrange press conferences for the chairperson of the Commission who shall serve as the spokesperson. This office will also provide regular press releases and monitor the media to report to the spokesperson and advise him or her about a media strategy to ensure accurate information is provided to the press and public.
- ***Public Education*** – the staff of this department will coordinate the public education/information campaign on the constitution-making process and partner with the media and civil society to widely disseminate information to the public. The public consultation staff in the regions and provinces will use this information to inform the public prior to the public consultation process. This department will also be responsible for producing copies of both the draft and adopted constitution and summaries of the constitution that will explain the contents of the constitution in simple terms.
- ***Research, Reporting, and Documentation*** – this department will respond to research requests, create a small resource library and gather materials, document all minutes of meetings and plenary sessions, and analyze and compile the reports from the public consultation process. The rapporteurs hired for this department will service the thematic committees of the Commission and also the public consultation process.
- ***Public Consultations*** – the Kabul office will coordinate the process and eight regional offices will be established to facilitate the consultation process in the regions and provinces.

The Secretariat will develop capacity building plans for all of the departments to ensure that staff are able to effectively conduct their work. The regional and provincial staff for the public consultation process will be brought to Kabul for training to effectively organize and conduct the consultation process. The public consultation staff will also participate in creating a security strategy specific to the conditions of their respective regions or provinces. Workshops to educate journalists about the constitutional process will also be held to promote the provision of accurate information to the public about the process.

PUBLIC EDUCATION

The role of public education is critical to ensure that the public has accurate information about the constitution-making exercise and their role in the process. The Public Education Department (PE Department) will coordinate the Public Education Campaign (Campaign) on the constitution-making process, which will cover the following information:

- Information about what is a constitution, how a constitution can impact the daily lives of the Afghan people and key constitutional issues;
- A history of the constitution-making process in Afghanistan;
- The Bonn Agreement and current structure of government;
- A description of the current constitution-making process; and
- The importance of public participation in the process.

The program will accommodate and reach to the extent possible the diversity of the people of Afghanistan including socio-economic status, ethnicity, age, religion, gender, learning, people with disabilities and the disadvantaged.

The campaign will help towards conduct meaningful public consultations. Members of the public consultation teams in the regions and provinces will use this information to inform the public prior to the public consultation process.

The PE Department of the Secretariat is also coordinating with the civil society organizations and other groups to implement the program and will provide them material and recommended means of delivering the curriculum.

The PE Department will also be assisting the Commission in writing summaries of the Draft Constitution and the Constitution as adopted by the CLJ. These booklets will explain the main features of the constitution in simple terms and will serve as tools for educating the public on the Draft constitution. They will be also used to brief delegates of the CLJ before they debate and ratify the Constitution. After the CLJ adopts the Constitution another summary will be made of this Constitution and copies made available to the public. The media and civil society will develop programs to disseminate the constitution and ensure that the public understands the basic content of the constitution.

PUBLIC CONSULTATION PROCESS

The constitutional commissioners will conduct the public consultations (consultations) to ascertain the aspirations, views and recommendations of the Afghans before finalizing a draft of the constitution for submission to the CLJ. The consultations will cover over a two-month period and the commissioners will travel to all 32 provinces and to Iran, Pakistan and, where possible, other countries to consult Afghan refugees. In addition to meeting with the public and key figures of the society, the public will be encouraged to submit written memorandum recommending proposals for the Draft Constitution. The commissioners will strive to place those aspirations within a constitutional framework.

The consultations will be designed to promote genuine consultation between the Commission and the public and at the same time minimize manipulation by special interest groups. Consultations will be held in public meetings, where possible. To maximize participation and allow in-depth discussions, the commissioners will have separate meetings with homogeneous groups. These groups will include community and tribal elders, ulema, women, members of the ELJ, businesspersons, university professors, professionals, youth and Afghan members of NGOs and intergovernmental agencies. As needed and where possible, other groups will be also consulted.

The commissioners will form eight (8) national mobile consultation teams to cover each region and all provinces, with one team remaining in the city of Kabul; members of the Kabul team will also travel to Iran and Pakistan. The Secretariat will establish 8 regional offices and the Coordinator of each regional office will appoint a staff member in each of the provinces to facilitate the public consultation meetings with commissioners. These provincial staff will travel to the districts to educate the public on the process and schedule meetings with the commissioners and ensure wide geographic participation.

Each regional office will have sufficient staff and adequate communication tools to be able to keep in regular contact with the Commission/Secretariat in Kabul. Regional UNAMA offices will provide support to these offices as requested and to the extent possible. The regional offices will also be used as bases to disseminate information about the constitution and will remain in place throughout the process. Each office will have a Public Education Officer who will provide information on the constitutional process throughout the constitution-making exercise. After the Commission drafts the constitution, the Commission consultation teams will return to the provinces to explain the constitution and the regional offices will again facilitate that process in September.

The commissioners will meet with relevant government officials to facilitate secure consultations and to also seek their views for the Draft Constitution. In addition, the commissioners who will remain in the capital will consult with a wider variety of stakeholders, including academia, economists, ministry officials and others.

Two rapporteurs for each Commission team will be trained to take accurate minutes and each session will be audio-taped to ensure the minutes are accurate. A team of analysts will be based in Kabul to organize the reports as they come in from the provinces. The report will help the Commission promote the national aspirations of the people of Afghanistan and attempt to resolve divisions and tensions through compromises before the meeting of the CLJ.

CONSTITUTIONAL LOYA JIRGA

The role of the CLJ is to adopt the constitution and to confer legitimacy on it. The CLJ will convene in October 2003, and will review and adopt the Constitution. Discussions are underway to determine the specific mechanisms and processes to be used for electing and selecting representatives of the CLJ as well as the mechanisms for conducting the CLJ. In line with traditions of Loya Jirgas, the CLJ will be a grand representative meeting made up of all sectors of Afghan society and will deliberate upon and adopt the new constitution. To

ensure their active participation in the deliberations, delegates will participate in a week-long orientation to inform them about the contents of the Draft Constitution and rules of procedures of the CLJ. The CLJ will provide a further opportunity to build consensus on vital national issues and on controversies which might arise during the public consultations after the publication of the Draft Constitution. The Secretariat will provide administrative support for the CLJ.

ASSISTANCE OF THE UNITED NATIONS

According to the Bonn Agreement and at the request of ITSA, the United Nations is providing support to the constitutional process in Afghanistan. In this regard, UNAMA and UNDP have developed a joint support project for the three constitution-making organs – the Drafting Commission, the Constitutional Commission and the Constitutional Loya Jirga – and the Secretariat. According to the project document, UNAMA has the primary responsibility for coordinating international technical and financial support to 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.

TIMELINE/WORKPLAN

1-28 February

- Secretariat expands office to support the Commission. The Secretary will hire staff to create a Press and Media Monitoring Unit, Public Education Unit, Public Consultation Unit, and Researching, Reporting, and Documentation Unit as well as providing for financial and administrative staff. With the support of UN regional offices, the Secretary will also hire staff for 8 regional offices which will facilitate the public consultation process.
- With the support of technical assistance, the Secretary will develop a capacity building/training plan for staff as well as office procedures. The capacity building of the staff will not only benefit the constitutional process but also the electoral process and future parliament because the skills developed will transfer to these other critical processes. The Secretariat will ensure that hiring practices result in a diverse staff, including ethnically and seeking a fair representation of both men and women.
- Secretariat prepares for the establishment of the Constitutional Commission, including identification of building, procurement of resources, preparation for inauguration of Commission and orientation workshop for commissioners on their rules of procedure, the phases of the process and constitutional framework.
- Secretariat completes logistical arrangements for commissioners based outside of Kabul to travel to the capital and secure housing and transportation to the Commission. Also, the Commission's meeting room for the commissioners and observers is prepared with adequate facilities for the effective working of the Commission.

1-30 March

- A Public Education Unit that will partner with media, civil society, and other organizations to launch public education campaign that will provide information about the process and prepare the public for the public consultation process. The Secretariat will seek to inform as many Afghans as possible about the process.
- In the first half of March the Drafting Commission will complete work on the creation of a Preliminary Draft of the Constitution and a report explaining each of the important titles or areas of the Preliminary Draft. The report will be immediately available in Dari and Pashtu for distribution to the Constitutional Commission.
- The Research, Reporting, and Documentation Unit begins analyzing and collating proposals for the Draft Constitution and entering information into a database and framework which will also be used to analyze and collate the information from the public consultation process when the information begins arriving in the central office by mid-April. The translators in this unit also strengthen their ability to translate

technical legal terms and assists in translating material for public consultation database.

1- 30 April

- Process of appointing or selecting the commissioners takes place and ensures the most able and representative body possible. A chairperson is selected.
- A decree is adopted which establishes the CLJ and preparations will begin, including the drafting of the rules of procedure.
- Constitutional Commission is sworn-in and agrees to the rules of procedure, the phases of their work, and constitutional issues. The Commission also reviews the Preliminary Draft and report from the Drafting Commission and options papers prepared by experts on key issues.
- Secretariat will establish a Press and Media Monitoring Unit to assist the Chairperson/Spokesperson of the Commission to liaison with the press.
- The Secretariat completes hiring of regional office staff to facilitate the public consultation process. The staff is trained in Kabul and returns to the regions establishing offices to prepare for the public consultation process in April.
- Secretariat finalizes public education strategy and material.
- Secretariat launches public education campaign with the support of the civil society organizations, media, and government and non-government institutions.
- Commission convening facilitation workshops for preparation of the Commissioners and the Secretariat staff for the public consultation sessions.

1 May – 30 June

- Public consultation process in all regions and provinces of Afghanistan, and with Afghan refugees in Iran, Pakistan and, where possible, other countries.
- Rapporteurs (minute-takers) document consultation process and provide groups and stakeholders with copies of transcripts to ensure they feel that their views were adequately recorded. The sessions are tape recorded but not video taped for reasons of privacy.
- The minutes of consultation meetings are taken as needed on an on-going bases, analysed and collated into the database.
- Public consultation process completed by end of June.

1 July – 30 August

- The Commission finalizes a report analysing the views of the public as expressed during the consultation process.
- Based on the public consultations, discussions with key stakeholders, and the preliminary draft of the constitution, the committees of the Commission finalize their recommendations and provide them to the plenary to agree upon.
- Plenary reviews and agrees upon the Draft and accompanying report.
- The Draft will be available in both official languages and distributed.
- A summary of the Draft is prepared which explains the main features of the draft, with illustrations of structure of government in easy to understand terms.

September

- The Commission and Public Education Unit begin educating public about The Draft by returning to all provinces and Iran and Pakistan and also through the media.
- Finalize preparations for CLJ.
- A 4/5 day orientation for the delegates to the CLJ is held to explain the rules of procedure and to review the Draft and report.

October

- Holding of the CLJ for adoption of the constitution.

November - December

- Core staff of Secretariat will remain in place and assist in conducting public awareness campaigns on the new constitution.