

Afghan Constitution Building Exercise Taking the Case to the People

By
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Abstract: For the first time an effort is being made in Afghanistan to consult the nation on a very important national issue, namely, writing of a new constitution for the country. This paper is bringing to fore the actual questions that are asked by the Constitutional Review Commission from the people in this regard; the process itself; some of the difficulties and concerns and an expression of hope for the success of this one of a kind exercise in contemporary history of Afghanistan.

Some optimists believe the new Afghan constitution is going to solve all the ills facing the Afghan people. Well, they may have to think harder. For one thing, the unpublished but much talked about draft has a long and arduous way to go before it becomes the law of the land. The Constitutional Review Commission of 35 members established shortly after a committee of nine people came up with the first draft is working on a second draft. To do so, they have already decided to take their case to the people through an exercise unprecedented in Afghan history. While the question now is whether this new exercise could be conducted in a desirable manner, this paper is trying to explain the issues the Commission wants to take to the people regarding a new constitution for Afghanistan. It will also discuss briefly the procedures for doing so.

The Commission, in order to gain credence in Afghan history as a democratic institution, wants to ask the people about many aspects of the new constitution. These include people's views on the preamble or basic principles; religion; rights of the people; organization of the state; the parliament; the Loya Jirga; administrative make up; the judiciary; the armed forces; people's obligations; language; and additional issues. The Commission has formulated exact questions for this purpose. For the purposes of a consideration of the concerns of the Commission, I am including an English interpretation of the questions that are posed:

The Commission has explained the need for and the general contents of preambles in constitutions of the states and then asks the following two questions:

- 1) What are your proposals about the preamble of the constitution?
- 2) Should the new constitution include special values and principles of the Afghan society to guide the state and to augment peace, stability and national reconciliation?

On the issue of religion, the Commission observes that almost all Afghans are Moslems and that the Afghan constitution would be based on the principles of the sacred Islamic faith. Then it asks the people the following questions:

- 3) Majority of Afghan Moslems are followers of the Hanafite religion and a minority follows Jafary and other religions. Should the constitution officially recognize this difference or not? If yes, how?
- 4) Considering the fact that a number of Afghans are followers of religions other than Islam, in your view, how should the constitution deal with this issue especially as the constitution is expected to strengthen the national unity?

On the most important aspect of the constitution whereby it is expected to explain, support and guarantee people's rights, the Commission asks the people:

- 5) Regarding the people's rights, in your view, which rights should be supported and guaranteed?
- 6) There are groups of people such as women, the widows, the orphans, the surviving members of families of Afghan martyrs of war, the disabled and the handicapped, children and others in our society whom you may think; have not been accorded appropriate care. In your view, should the state cater to their needs through special programs? If yes, which groups do you think need such help and what kind of measures should be taken in this regard?
- 7) How can the constitution improve security for all Afghan people?
- 8) How can the constitution realize those rights that belong to the people and how to safeguard those rights?

The Commission then takes up the issue of the government structure and explains briefly that there are many different types of government such as the republican, parliamentary, monarchical etc, and asks the people about what type of government they prefer?

- 9) Should a president who would be elected directly by the people or a prime minister, who would be appointed by the parliament, lead the country?
- 10) Should Afghanistan have a combined system where the president and the prime minister share in the power? If this were the case, how should the power be divided?
- 11) What should be the role of the Father (the Baba) of the nation?
- 12) What should be the conditions for and qualities of the leader of the nation?

The Commission further takes up the issue of parliament stating that previously there were two houses of parliament in Afghanistan namely the Wolusi Jirga (the lower house) whose members were elected by the people and the Mishrano Jirga (the upper house) two thirds of whose members were elected by provincial councils and residents while one third was appointed by the king.

- 13) In your opinion, should parliament consist of two chambers or one?

- 14) How should the delegates be elected or selected so that they would be able to serve you in the best possible way?

About the Loya Jirga, the Commission wants to know from the people:

- 15) Should the constitution envision convening of Loya Jirgas to decide on important issues? If this were so, what kind of issues should the Loya Jirga consider?
- 16) How should the Loya Jirga members be elected so that they would be able to represent different groups of people of Afghanistan?

On the question of administrative make-up of the country the Commission asks:

- 17) Can the constitution provide for councils at the levels of provinces, districts (Woluswalis) and villages? If it can, then what would be the terms of reference of these councils and how would their inter-relationships and relations with the national government be regulated?
- 18) Should special measures be adopted to provide for participation or representation of women, minority groups, tribal entities or other groups at different levels of the government? If so, what measures are needed to be taken?
- 19) What kind of services such as education, health care, security, and provision of water should be taken up as a priority and delivered to you and which government organization should be made responsible for this?
- 20) How should the environment be preserved?
- 21) Are there ethical and spiritual and other special conditions necessary for election or appointment of government officials? If so, what conditions?
- 22) If you had a complaint against fraud or nepotism by a government official, is there a source you could contact? In case such a source does not exist, do you have any specific proposal for a discussion in the constitution of the issue of fraud and nepotism?
- 23) How should the new constitution guarantee the rights of the people? How can the obligations of the government envisaged in this constitution be realized?

About the Judiciary the Commission states that the previous constitutions of Afghanistan included provisions according to which the independence and honesty of the judicial power was regulated. How should the future constitution of Afghanistan deal with these issues?

- 24) If the constitution were to define the behavior and characteristics of the justices what would your proposals be in this regard?
- 25) How should the judges be selected?
- 26) Do you believe in the fact that judges should be independent in their decisions so that they would not be influenced by any source? If they were to be independent, how should their independence be achieved?
- 27) Should the constitution define the relationship between the official state courts and local councils (Jirgas) through which Afghans are resolving their differences? If such a definition were required how would it help the people and how should it be made?
- 28) Do you see a need for establishment of a special court or any other special mechanism to decide on the conformity of general rules with those of the constitution?

The Commission then takes up the issue of the armed forces and states: Afghanistan needs a strong army to defend its territorial integrity, but it must be assured that the army should defend national interests and not those of persons or special groups as has been observed in the past.

- 29) Should the constitution envisage ways on the basis of which the army would work for the national interests and not the interests of special groups or a person? If so, how should this be included in the constitution?

On the issue of citizens' obligations, the Commission has come up with the following question:

- 30) What should be the obligations and duties of citizens vis-à-vis each other and toward the country?

About the question of national language or languages, the Commission wants the people to respond to the following concerns:

- 31) Which language or languages should be the country's official language or languages?
- 32) For those Afghans whose mother tongue would be other than the official language, what rights would the constitution provide and what support it would give them? What rules would the constitution decide on for the fields of education, higher education, publications, rights or publishing of programs in those languages?

Finally the Commission has given a green light to the people to bring up any other issue or question related to the constitution that should be considered by the Commission. It invites the public to freely express their views and to rest assured about such freedom.

I have brought you the areas of concern to the Constitutional Review Commission as reflected in their questions to the nation. While these questions seem to be simple and sometimes common sense, they show the profound fears and concerns of the drafters of the constitution in dealing with difficult questions of religion, language, administrative make-up of the country, armed forces and even ordinary conduct of government and government officials. The questionnaire further shows that Commission members are not fully convinced of the completeness of the first draft and or its content including the areas it has covered.

It is one of the most important and positive developments in contemporary politics of Afghanistan that an issue, as big as the constitution, is brought to the people so that they would express their views on it before it is presented for final approval to a Constitutional Loya Jirga. The very fact that this very first exercise of consulting the nation is taking place will provide grounds for further references to the nation on issues of national import. The mechanism for doing this exercise, as the exercise itself, is a new experience in Afghan group politics, is worth thorough consideration. In the conduct of the exercise, the United Nations and certain NGOs are involved. The UN has committed itself to providing for a large number of workers both national and international. NGOs and the United Nations already took up conducting of short courses in training of workers for the purpose. The first such exercise was a course given to selected community leaders including men and women, who would in their turn, travel to their districts and villages and train others. The quality of the training is yet to be assessed, but it included informing the participants about what is a constitution and which areas of social and civil life of the people is regulated by it. The educational courses have also touched on the importance of choices regarding the type of government, the country's administrative make-up, the parliament, religion, language etc.

All of this would seem to be non-political routine reference to the views of the people by non-political workers. However, since there are huge issues at stake for politicians and factions, the process cannot be free from intervention. Well-wishers of Afghanistan only hope that the intervention at this stage should be minimum and that all measures must be taken to prevent or minimize these and to ban foreign interference in the process.

But the final concern is the end result of the exercise. It seems that the first draft has opted for a system of government led by a president who would be elected directly by the people. The Constitutional Review Commission however, has included questions as to the choice of the people regarding this. It has also asked the people whether they would prefer a monarchical system. Suppose an overwhelming response to the question includes the latter choice, how would then the Commission, the transitional government, factional powers, international interests, the United Nations and others interested in Afghanistan, respond?

And a final question about the exercise is concerning the people whose opinions are asked and the Commission's ability to analyze the results of such a huge experiment. This is because on the one hand Afghanistan is still suffering from large-scale illiteracy

and not many people would be able to take part in this exercise especially considering the short time of only two months that the Commission has to finalize its work. On the other hand supposing that even if a smaller percentage of people responded to the Commissions questionnaires, (and even that, in a country of 26 million people would be a big number) does the Commission have the personnel to go through all the responses, many of which would be narrative, and come up with conclusions?

But overall, the exercise of referring to the nation on national issues is a commendable act. All Afghan lovers and intellectuals interested in Afghan affairs as well as Afghanistan's national and international well-wishers are expected to try and help the process, because it puts the determination of the fate of the people in their own hands.

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