

**Regional Roundtable on
Parliaments in Conflict and Post Conflict
Situations**

June 9-10, 2005

**Country Study
AFGHANISTAN**

Thusitha Dharmawardena Pilapitiya
Consultant, Support to the Establishment of the Afghan Legislature Project
United Nations Development Programme
Kabul, Afghanistan

TABLE OF CONTENTS

Executive Summary	3
Background	4
Recent Constitutional History of Afghanistan	6
The 1923 Constitution	6
The 1964 Constitution	6
The 1976 constitution	7
The 1987 Constitution	8
Taliban – Rule through decrees	8
The Current Constitution	9
Impact of Conflict on the Establishment of the Afghan Parliament	12
Lack of Human Resources	12
Financial and Economic Resources	13
Destruction of Infrastructure	13
Fragile Security Situation	14
Viable Civil Society Organizations	15
Need for Effective Media	15
Women’s Participation in Parliament and Democracy	16
Building Ownership	17
UNDP ‘Support to the Establishment of the Afghan Legislature’ (SEAL) Project	18
External Challenges	20
Internal Challenges	22
Managing Partnerships	24
The Future	25
Annex A – A Brief Political History of Afghanistan	28
Annex B – Selected Decrees during Taliban Rule	31

COUNTRY STUDY

AFGHANISTAN

The views expressed in this paper are entirely the writer's and not the views of the United Nations Development Programme. Hiroko Takagi, Frederick Lyons, and Abdel Ellah Sediqi provided valuable additions, comments and edits.

Thusitha Dharmawardena Pilapitya
Kabul, May 31, 2005

Executive Summary

The paper briefly discusses the economic, social and historic background within which the current Afghan parliament is being developed. Under the Bonn Agreement, Presidential elections were held in October 2004, and the interim President Hamid Karzai was elected. Some of the key provisions in the current constitution are compared favourably for the introduction of serious democratic processes, with the previous constitutions formulated in 1923, 1964, 1976, 1987 and the Taliban's rule through decrees. The current constitution introduces free and fair elections to a bicameral parliament, to be held on Sep 18, 2005.

There are a number of areas in which the impact of years of conflict is felt in establishing a parliamentary system in Afghanistan. The lack of human and financial resources pose serious problems. Infrastructure has been destroyed to the extent that there are no buildings to even temporarily house the parliament secretariat, and residential houses have to be rented for this purpose. The security situation is still fragile with frequent incidents between the international peace keeping forces and local armed groups, in particular the Taleban. The impact of global incidents such as the reported flushing of the Quran in Guantanamo Bay also impact on the local security situation. During the Taliban rule, Civil Society Organizations were not allowed to function, and capacity in this area though fast growing, still needs to be strengthened. The building of an effective media is a priority. Women in Afghanistan are in a particularly disadvantaged situation due to the various restrictions brought upon them by the Taliban. For a viable democracy, the participation of women is of paramount importance, and building ownership of parliament activities particularly by women is crucial.

The UNDP Support to the Establishment of the Afghan Legislature (SEAL) Project focuses on capacity building of parliamentarians and parliament staff, legislative environment, Information and Communication Technology and Public Outreach. The project has to be implemented amidst internal and external challenges, including the key task of managing partnerships not only with the Government of Afghanistan, but also with a myriad of external donors who are interested in supporting democracy in the country.

Background

Afghanistan is a land locked country with an area of 647,500 square kms., bordering Pakistan to the East and South; Iran to the West; Tajikistan, Turkmenistan and Uzbekistan to the North; and, China to the North East. Exact population figures for Afghanistan are not available but a nationwide 2003 UNCIEF/CSO MICS estimated a total population of nearly 24 million. With an estimated HDI value of 0.346, Afghanistan is ranked at 172nd out of 177 countries included in the global Human Development Report for 2004. Life Expectancy in Afghanistan is 44.5 years at birth, far lower than its neighbouring countries. Only 28.7 of Afghans over the age of 15 can read and write¹.

Map of Afghanistan



The recent history of Afghanistan under the Taliban is well documented. Taliban was a movement of religious students, appearing on the political and military scene in Afghanistan in 1994. Within two years the movement gained control over all of southern Afghanistan and, in the autumn of 1996, the Taliban took control of the capital, Kabul. The movement gives as grounds for its success its orthodoxy, sense of justice, courage, and piety. Analysts, however, agree that the Taliban's military triumphs are primarily due to Pakistani, Saudi-Arabian, and U.S. support.

There were restrictions on women to participate in education, work force, or government. In the five years with Taliban control over Kabul and most of Afghanistan, the movement became infamous for brutal suppression of women, barbaric punishment, absurd bans on music, kite flying and songbirds, for the destruction of Afghanistan's cultural heritage and

¹ Afghanistan, National Development Report, 2004

massacres of prisoners of war and civilians - but it was also known for creating peace and security in the areas under control². Basic human rights were violated, and men and women were subjected to capital punishment without a proper judicial process.

Following the Taliban's refusal to hand over Osama Bin Laden who is held responsible for the terrorist attacks in New York on Sep 11, 2001, the international alliance against terrorism initiated air attacks on Taliban positions in Afghanistan on October 7 2001. Until then, the Taliban had control of the continuous war against the remaining resistance groups, who had united in what was called the Northern Alliance. The air raids led by the Americans weakened the Taliban, who lost control over the town of Mazar-i-Sharif on November 1. After that major segments of the Taliban military apparatus fell apart, and on November 13 the Northern alliance moved into Kabul after the withdrawal of the Taliban from the city. A few Taliban units held their positions in Kunduz in the north and in Kandahar in the south but were defeated.

After the fall of the Taliban in 2001, Afghanistan has been steadily moving towards democracy. Despite sporadic, isolated, guerilla type attacks by the Taliban, and some other violent incidents outside of Kabul, the Government of President Karzai is continuing to develop and democratize Afghanistan.

The Bonn agreement³ that was signed in December 2001, and the Emergency Loya Jirga (the traditional Afghan assembly in which tribal elders customarily come together to settle affairs of the nation or rally behind a cause), approved the establishment of an interim executive for a period of two years, at the end of which democratic presidential and parliamentary elections were to take place. The Bonn Agreement also mandated the Afghan Constitution Commission to develop a Constitution for the country which was approved by the Emergency Loya Jirga on January 4, 2004. Under the new constitution, Presidential elections were held in October 2004, and the interim President, Hamid Karzai, emerged the winner. Parliament elections are scheduled for September 18, 2005.

The United Nations Development Programme (UNDP) is supporting the establishment of the parliament through two specific projects, the Elections project and the Support to the Establishment of the Afghan Legislature (SEAL) project. While the elections project provides capacity building and technical assistance during the period leading up to the elections, and the actual holding of the elections, the SEAL project seeks to provide similar capacity building and technical assistance for the establishment of the parliament and its continuity during the first two years.

A brief account of Afghanistan's political history is attached as Annex A.

² <http://www.moesmus.dk/afghanistan/ie050401.html>

³ The Bonn Agreement was signed on Decr 5, 2001, forming the Afghan Interim Authority (AIA). The AIA is made up of 30 members, headed by a chairman and was inaugurated on 22 Dec 2001 with a 6 month mandate to be followed by a two-year Transitional Authority (TA), after which elections are to be held.

Recent Constitutional History of Afghanistan

In the 20th and 21st centuries, Afghanistan has formulated constitutions in 1923, 1964, 1976, 1987, 1990 and in 2004.

The 1923 Constitution

Under the 1923 constitution, royal succession through the principle of male inheritance was maintained, and by Article 5 of the Constitution, the male successor was appointed the ruler and king of all Afghanistan. The ministers of the government were all appointed by the king and their decisions became effective only after ratification by the king. A State Council was formed in the Kingdom and local councils in the provinces, to which half the members were appointed by the king, and the other half appointed by the people (Article 41). The election procedures were laid down in separate articles of the law.

The 1964 Constitution

In 1963, under King Zahir Shah, Afghanistan became a constitutional monarchy. During a period dubbed the "New Democracy," King Zahir Shah and then Prime Minister Mohammed Yousuf together with other Western-educated intellectuals in Kabul, promoted democratic changes under a new constitution that was adopted in 1964. A constitutional commission, aided by the French expert Louis Fougere, finalized the drafting of the new constitution.

Although Afghanistan was still a constitutional monarchy under this constitution, a Shura or parliament was established with two houses, the Wolesi Jirga (house of the people), and the Meshrano Jirga (house of the elders). Members of the Wolesi Jirga (House of the People) were elected by the people of Afghanistan in a free, universal, secret and direct election, in accordance with the provisions of the law. For this purpose Afghanistan was divided into electoral constituencies, the number and limits of which were fixed by the law. The candidate who obtained the largest number of votes cast in his constituency, in accordance with the provisions of the law, was recognized as the representative of that constituency⁴.

Members of the Wolesi Jirga were elected for a period of four years. Under this constitution, the Shura may be dissolved by order of the King. The dissolution also included the non elected members of the Meshrano Jirga. Each House formulated its own Rules of Procedure. The Government was responsible to the Wolesi Jirga (House of the People). In addition, as per Title V, the Loya Jirga (Great Council) was to consist of members of the Shura and chairmen of provincial councils, and may be summoned by a royal proclamation. The House of the People was to have 216 elected members, and the House of the Elders 84 members, one-third elected by the people, one-third appointed by the king, and one-third elected indirectly by new provincial assemblies.

⁴ Article 43 of the 1964 constitution

A special feature of the new constitution was that no member of the royal family was allowed to become prime minister or hold any other ministerial portfolio nor become a member of the *loya jirga*, or chief justice of the Supreme Court. This is a complete reversal of the situation that prevailed before and Mohammad Yusuf became the first Afghan prime minister who was not of royal lineage. Democratic reforms in the new constitution included the guaranteeing of such individual liberties as the right of free trial in all criminal cases, freedom of speech, freedom of the press, and the right to form political parties.

Under this constitution, in 1965, and in 1969, Afghanistan held multi-party national elections for a bicameral parliament. Women took part in the voting, and four seats in the Parliament's lower house were reserved for women. Several unofficial parties fielded candidates with beliefs ranging from fundamentalist Islam to the extreme left. Turnout was very low, leading to the vocal predominance of Kabuli radicals. A group of intellectuals, that included Babrak Karmal, established The People's Democratic Party of Afghanistan (PDPA) in January 1965 and at the first nationwide elections under the new constitution, Babrak Karmal was elected to the Parliament. This first elected assembly met on October 14; eleven days later dissident leftist students, dissatisfied with the newly appointed cabinet, disrupted the meetings and rioting ensued⁵.

In the second national elections in 1969 Babrak Karmal and another PDPA member, Hafizullah Amin, both of whom would play important roles in the future Soviet intervention, were elected to the parliament. Afghan people who recollect the elections, affirm that the elections were not free and fair, and only about 10% of the population voted. Anyway, this beginning of moving in to democracy quickly deteriorated and the country moved in to internal strife.

The 1976 constitution

In 1973, while King Zahir Shah was out of the country, he was overthrown in a military coup headed by Daoud Khan and the Afghan Communist Party. Daoud Khan declared himself President, established the Republic of Afghanistan, and abolished the monarchy. In 1976, Daoud Khan developed a new constitution changing the democratic nature of the 1964 constitution. Under the new constitution, there was a Meli Jirga (House of Nationals) “50 % of whom shall be composed of farmers and workers, are nominated by the party and 50% shall be elected by the people in accordance with the provisions of the law for a period of four years through free universal, secret and direct elections. For this purpose, Afghanistan shall be divided into electoral constituencies. the number and the size of the constituencies shall be determined by law”⁶. Chapter six provided for the establishment of the Loya Jirga, with the President as its Chairman. The Loya Jirga could be summoned by the President.

Daoud failed to carry out acceptable economic and social reforms, and his 1976 constitution did not alleviate the chronic political instability that affected Afghanistan. His attempts to oust suspected opponents from his government aroused resentment. When

⁵ http://en.wikipedia.org/wiki/Afghanistan_timeline_1961-1965

⁶ Article 49, Constitution of 1976

he tried to eliminate the PDPA in Spring 1978 by arresting its leaders, a bloody coup ensued and Daoud was killed. PDPA leader Nur Mohammad Taraki declared the establishment of the Democratic Republic of Afghanistan and announced himself as President, with Babrak Karmal as deputy Prime Minister. Hafizullah Amin also had a major role in the new government. Internal strife continued and before any elections could be held, the Soviet Union invaded Afghanistan in 1979.

The 1987 Constitution

The next constitution of Afghanistan was promulgated in 1987 towards the end of the Soviet occupation. Under Chapter six, there was provision made for a National Assembly consisting of two houses, the House of Representatives and the Senate.⁷ Article Seventy Nine stated that the members of the House of Representatives shall be elected from electoral constituencies having equal population, for a legislative term of five years. 2/3rds of the members of the senate were elected and the remaining 1/3rd appointed by the President. Chapter Four provided for the establishment of a Loya Jirga under the Chairmanship of the President. Before the constitution could be implemented, it was amended in 1990 under the leadership of President Najibullah. This constitution also provided for the National Assembly, and a Loya Jirga.

Taliban – Rule through decrees

After bitter civil war, the Taliban took over control of Afghanistan in 1996. The Taliban ruled through decrees which purported to follow Islamic tradition. These were not systematically codified and not much is known about how these were decided, nor about the Taliban leaders, in particular about the 38-year-old Muslim cleric, Mullah Mohammed Omar, who headed the Taliban ruling council from the conservative southern city of Kandahar. Mullah Omar is a former guerrilla commander in the war against the Russians, but he has refused to meet foreigners during the Taliban rule. He is now believed to be living as a fugitive in the Kandahar area.

Taliban decrees ranged across the gamut of everyday life. Kite flying and marble playing, traditional pastimes among Afghan children, were banned, as were music and dancing. Men were ordered to pray at their neighborhood mosques five times a day. A strict dress code required women to be shrouded from head to toe and men to abandon Western suits. Other decrees have called for death by stoning for adulterers and amputation of hands and feet for thieves⁸. Some examples of detailed decrees affecting especially women's lives are included in Annex B. These and other economic policies of the Taliban antagonized the international community leaving Afghanistan isolated and unable to participate in the global economy.

In 2001, after the defeat of the Taliban, the Afghan Constitution Commission mandated by the Bonn Agreement, developed a new constitution that was approved by the Loya Jirga in January, 2004.

⁷ Article 78, Constitution of 1987

⁸ Burns, John F. of New York Times, Pulitzer Prize Winner, 1997

The Current Constitution

Under the new constitution, Afghanistan has adopted a presidential system of government. Article Sixty-One Ch. 3, declares that the President will be elected by receiving more than 50% of the votes cast through free, general, secret, and direct voting. The term of office is for five years and elections for the new president should be held within thirty to sixty days before the end of the presidential term. The elections for the post of president is to be held under the supervision of the Independent Commission supervising of the Elections. The president has two vice presidents, who are nominated by presidential candidates when standing for election. The President is responsible to the nation and the lower house, or Wolesi Jirga. The president will appoint ministers, the attorney general and central bank governor with the approval of the Wolesi Jirga.

Under Article Seventy-one Ch. 4, the government consists of ministers who work under the Chairmanship of the President. Ministers are appointed by the President and have to obtain approval by the National Assembly. Article Eighty-one Ch. 5. decrees that the National Assembly of the Islamic Republic of Afghanistan ‘is the highest legislative organ and the manifestation of the will of its people and represents the whole nation’.

The National Assembly consists of two houses: Wolesi Jirga (the House of People) and Meshrano Jirga. (House of Elders) and no one can become member of both houses simultaneously. The Wolesi Jirga, the more powerful house, consists of 249 delegates directly elected through a system of proportional representation. Members are elected by district and serve for five years. At least 25% of the candidates must be women. The Wolesi Jirga has the primary responsibility for making and ratifying laws and approving the actions of the president.

Article Eighty-four Ch. 5, requires the 102 Members of the Meshrano Jirga to be elected and appointed as follows: “From among the members of each provincial council, the respective council elects one person for a period of four years. From among the district councils of each province, the respective councils elect one person for a period of three years. The President from among experts and experienced personalities – including two representatives from the disabled and impaired and two representatives from the Kuchis – appoints the remaining one-third of the members for a period of five years”. A person, who is appointed as a member of the Meshrano Jirga, is required to relinquish his membership in the respective council, and another person replaces him in accordance with the law. 50% of the 1/3rd members to be appointed by the President to the Meshrano will be women.

The constitution divides Afghanistan into 32 provinces. Article One Hundred and thirty eight Ch. 8, of the constitution declares that Members of the provincial council are elected in proportion to the population by free, direct, secret ballot, by the residents of the province for a period of four years in accordance with the law. The provincial council elects one of its members as Chairman.

In order to organize activities involving people and provide them with the opportunity to actively participate in the local administration, councils are set up in districts and villages in accordance with the provisions of the law. Members of these councils are elected by the local people through, free, general, secret and direct elections for a period of three years. The participation of nomads in these councils is regulated by law.

In addition, under Article One Hundred and forty one Ch. 8, Municipalities shall be set up in order to administer city affairs. The mayor and members of the municipal councils are elected by free, general, secret, and direct elections. The affairs related to municipalities will be regulated by law.

An analysis of the Afghan constitutions indicates that the 1964 constitution has some similarities with the current Constitution. However, the earlier experience with democracy failed. The current constitution grants considerable power to the parliament, including the right to dismiss Government ministers on an individual basis. It also includes many provisions for representation of different sectors of society, so that all Afghans feel represented.

There is also no control by the King, who has been granted the Title Father of the Nation with the privileges granted by the Emergency Loya Jirga of 1381 (2002) to His Majesty Mohammad Zahir Former King of Afghanistan are preserved for him during his lifetime, in accordance with the provisions of this constitution by Article One Hundred fifty eight Ch. 12.

Although the current constitution creates a strong parliamentary system, the President has strong powers under Article Sixty-Four Ch. 3 to, among other powers, supervise the implementation of the Constitution; determine the fundamental policies of the state with the approval of the National Assembly; be the Command-in-Chief of the armed forces of Afghanistan; declare war and ceasefire with the approval of the National Assembly, convene Loya Jirga except in a situation stated in Article Sixty-eight⁹ of this Constitution; declare the state of emergency and ending it with the approval of the National Assembly; inaugurating the National Assembly and the Loya Jirga; accept resignation of the Vice President; appoint Ministers with the approval of the Wolesi Jirga, and acceptance of their dismissal and resignation; appoint the head and members of the Supreme Court with the approval of the Wolesi Jirga; and signing of laws and legislative decrees.

The constitution can also be described as overly ambitious with complicated electoral process. The government selected Single Non Transferable Vote¹⁰ (SNTV) which was not recommended by electoral experts as very few countries now use it. For example, SNTV was once used, but is no longer used to elect the parliaments of Japan and South

⁹ In case of resignation and or death of one of the Vice President, another person shall replace him by the proposal of the President and approval of the Wolesi Jirga.

¹⁰ For example, three seats to be filled, five candidates: Habiba, Mahroufa, Tahera, Mohamed, and Hamid. 100 Voters choose Habiba, 1500 voters choose Mahroufa, 700 voters choose Tahera, 8000 voters choose Mohamed, and 1300 voters choose Hamid. Mahroufa, Mohamed and Hamid are the winners.

Korea. However, it is still used in Puerto Rico, Jordan, Nauru and Taiwan. The political party system in Afghanistan is in its infancy with regard to democracy, and people will vote for candidates based on their personalities. The lack of a party system in this instance is better, since candidates do not have to run against people from their own party. In this sense, SNTV also assumes some characteristics of proportional voting and also tactical voting because a voter does not want to waste his/her SNTV on a candidate who is not likely to win¹¹.

There is also a lack of clarity about the role of the Provincial Councils. Difficulties are currently being encountered with provincial council candidates as both the national elections and the provincial council elections are to be held at the same time. Each province will have its own democratically elected council of nine to 29 members, depending on population size, to work with the Provincial Governor. The Provincial Governor reports to the Ministry of Interior although the Governor is appointed by the President. The Provincial Council will take part in the development and improvement of the province and advise the provincial administration on related issues. It will act with the cooperation of the provincial administration¹². The Government of Afghanistan is currently studying these anomalies. A local governance mission was fielded to clarify this but political decision making has been slow. There will be no District Council elections in 2005 primarily because there is still no agreement on the number and boundaries of districts, or their populations (which are required for seat allocation).

Although under the current constitution, there is provision for a strong presidency, the execution of most powers as listed in the preceding paragraph need the approval of the National Assembly providing the necessary checks and balances by the legislative over exercise of executive power. Although there has been some criticism, that the 2004 constitution replaces a constitutional monarchy with a presidential system¹³, without a Prime Minister who would be actually ruling the country, the constitution paves the way for a strong National Assembly with power to veto many decisions of the President.

As was discussed in relation to the 1965 parliament, a weak parliament can quickly take the country back to control by war lords. Political parties are not yet a strong feature of the Afghan political scene, and many candidates contesting the elections are doing so in their independent capacity. In this regard, the formation of the National Understanding Front (Jabha-ye Tafahom-e Melli, JTM), by Mohammad Yunos Qanuni¹⁴ is a welcome development. The leader of the newly formed opposition alliance wants to win the majority of seats in the upcoming to bring "better socioeconomic, political, and cultural life" for the Afghan people¹⁵.

¹¹ http://en.wikipedia.org/wiki/Single_non-transferable_vote

¹² http://www.jemb.org/parliamentary_faq.htm#14

¹³ http://afghanvoice.blogspot.com/2003_10_26_afghanvoice_archive.html

¹⁴ Qanuni won 16% of the votes in the 2004 presidential elections, coming second to President Karzai. He later lodged protests about the improprieties of the election.

¹⁵ RFE/RL Afghanistan Report, 11 April, 2005

Impact of Conflict on the Establishment of the Afghan Parliament

Since the invasion of Afghanistan by the Soviet Union, the conflict in Afghanistan has assumed international proportions. ‘The U.S- led military intervention in Afghanistan marks the fourth phase in the country's twenty-three-year-old civil war. In every phase foreign powers have intensified the conflict by supporting one side against another’¹⁶.

The war on terrorism waged by the US and allied forces in their search for Osama Bin Laden and Al Qaeda forces damaged the fragile infrastructure of Afghanistan even further leaving it one of the most under developed countries in the world with low literacy rates as discussed at the beginning of this Study. Due to this lack of capacity, UNDP together with a number of other donors are involved in helping the country establish its first parliament. Therefore, this country study will focus more on challenges in preparing for a democratically elected parliament in a post-conflict situation. The lack of capacity extending to human, financial, economic, and infrastructure resources has a great bearing on the establishment of a parliament for Afghanistan.

Lack of Human Resources

The continuous conflict in Afghanistan, and in particular the exclusion of women from education during the Taliban rule, has left the human resources situation in Afghanistan in a serious situation. In addition, during the conflict starting with the Russian invasion in 1989, many educated Afghans left the country. In order to attract some of these professionals to return, the Government of Afghanistan has introduced a Priority Reform and Restructuring (PRR) process under which the Government can offer better salaries to returning or other professionals with special skills. However, the PRR process remains an interim measure to inject qualified people in the system, many of whom return as an experimental measure often leaving their families abroad.

Right now, human resources are urgently required both to appoint staff to the parliament secretariat, as well as for the membership of parliament. The parliament secretariat was started with 8 eminent Afghan persons, some of whom had been living outside the country during the war, but had since returned to help establish democracy and foster development in their country. Although these are eminent persons, except for one person who was a Senator in the 1964 government, the others have no experience with parliaments. They received a brief training in the French parliament after which they have been appointed as Directors for various departments.

The legal basis for the establishment of the parliament and appointment of the Secretary General by Presidential Decree was only passed in March 2005. As a result of a Ministerial Appraisal Committee, the parliament secretariat organigram and hiring of a total of 250 staff was approved out of which 120 staff is now being hired through the PRR process. They will be given intensive training by experts from the French

¹⁶ Human Rights Watch, Background on Afghanistan: History of the War

parliament. They will also be given training in English, and sent for attachments in other parliaments for awareness building.

In March, 2005, the former head of the Anti Corruption Commission was appointed the interim Secretary General of Parliament. The incumbent has a Ph.D in Economics from Germany and is an eminent and well respected Afghan. However, since the Government has not yet nominated a head to the Anti Corruption Commission, and he has to hold both posts. Since the parliament secretariat needs to be urgently established, this creates an undue amount of pressure on the individual, where he is unable to devote 100% of his time to the parliament secretariat.

Financial and Economic Resources

The other effect of the conflict is the total lack of a financial base. At the recent Afghan Development Forum, a sum of \$ 5.1 million was set aside for the parliament. This US\$ 5.1m only covers basically the salaries of the members of the parliament leaving the considerable expenditure associated with the establishment and running of a bicameral parliament in the hands of international donors. Cost of the secretariat staff is covered through PRR but no budgetary allocations have not yet been made.

The economy is struggling for a beginning and for example, although 8 people were appointed to work in the parliament as mentioned earlier, there were no budget allocations made to pay their salaries. The Civil Service Commission recruited the staff promising US\$2,000 per month salaries without consultation with external partners and no clear strategy for funding of salaries. There were long and difficult discussions with the Civil Service Commission, Office of the President, donors, World Bank project staff, United Nations Assistance Mission in Afghanistan (UNAMA) and UNDP to determine the long-term salary policy for the parliamentary secretariat, bridging the gap and measures for staff already on board. In the meantime, for the first six months the eight senior staff were paid through the SEAL project.

In addition, the PRR system is a temporary measure to attract qualified staff by paying reasonable salaries until a permanent scale that is affordable to the government has been established. Therefore, once the government pay and grade scale is set for the parliament secretariat civil servants, there is great risk that the recruited and trained staff will not remain with the system.

Destruction of Infrastructure

Years of war have reduced the infrastructure of Kabul to a minimal level. It is a positive sign to see some construction happening in Kabul today. However, in terms of infrastructure for the parliament, this is posing a serious problem. At the beginning, the cabinet without much consultation with the Civil Service Commission (who was given the mandate of coordinating parliament activities until a secretariat was established), kept the Commission completely out of the loop of the cabinet decision. During the needs assessment, the Commission ended up looking for potential parliament sites when the

decision was already taken to renovate the old parliament building. It took some time before the secretariat staff linked up with the Ministry of Housing only to learn that the subcontracting was already awarded and renovation was ongoing. The renovation was supposed to be completed by March but now it will not be completed until September. The initial renovation cost indicated by Ministry of Housing was US\$1m, but later it was learnt that they needed US\$3-4m more. Afghanistan's top architect was called into the design of the parliament renovation.

Now, the preparation of a building for the parliament is being delayed due to funding shortages. It has also recently been revealed that the building will not be large enough to house all the staff of the parliament as well as the parliamentarians. There are no suitable buildings for temporary use as most buildings have been destroyed during the war. The Government of India is constructing a new parliament for the country, but this will take a few years. The lack of financial resources in the Government makes it impossible for them to provide any funds to the parliament at present. USAID rented a house for six months for the parliament secretariat to commence operations, and now UNDP has rented two houses in the area of the parliament building that is being renovated. However, these are temporary solutions. The SEAL project is now assisting the Secretariat to look at a number of options including the use of the tents of the constitutional Jirga, and prefabricated housing until a permanent building can be constructed.

Post-conflict Afghanistan also needs to build up its transportation facilities in the capital, Kabul and throughout the country. Transportation for the parliamentarians and parliament staff poses a significant problem. While the SEAL project has some provision for transportation needs of the staff, vehicles for parliamentarians will have to be provided for by the government. Public transportation facilities are minimal in Afghanistan, and since these parliamentarians will be coming from all parts of the country they would need adequate transport facilities. The budget probably does not leave scope for MPs to keep in touch with the constituencies.

Fragile Security Situation

After the fall of the Taliban, security in Kabul is largely provided by a multi-national force called the International Security Assistance Force. It is hardly likely that they can provide security for 249 parliamentarians of the lower house and 102 in the upper house. Local capacity in providing security needs to be urgently built. UN is providing assistance to the Afghan National Police and the Afghan National Army for capacity building, but this needs to be continued rigorously. The added dimension of providing security to the parliament building and the parliament staff need to be taken in to account. Sporadic attacks by the Taliban, internal demonstrations, criminal gangs, and kidnappings add an extra burden on the security situation.

Extra security restrictions placed on staff of international organizations interfere with the day to day operations of these organizations. For example, declaration of 'white city status' requires all UN staff to be confined to their living quarters unless they are deemed essential staff. As international staff carry out most tasks in such organizations any situation that warrants evacuation can have serious effects on elections and parliament.

Viable Civil Society Organizations

Another effect of the conflict in the capacity area is the lack of a viable civil society structure. During the Taliban, Civil Society organizations were not allowed to freely function, and they had to start from the basics after 2001. International non-government agencies left or reduced their programmes to only providing relief, in protest against the Taliban policies on humanity, and women in particular.

However, this is a most hopeful area with many civil society organizations emerging, and being supported by international civil society organizations through various networking activities. In a report published before the Conference on Rebuilding Assistance, in Tokyo in January 2003, the UNDP stressed the importance to include all the actors of the Afghan civil society in all the aspects and on all the levels of the rebuilding of Afghanistan. CSO capacity building has been built (engagement in the democratic process) through the voter registration and elections 2004/2005 civic education and public outreach activities. It is important that the post-elections momentum is used to keep them engaged.

Due to the sudden in flow of increased funding to civil society organizations, there has been some skepticism within the government. The international community can be partly be responsible for this recent set back for not building sufficient accountability mechanisms. The government accused the NGOs of operating like private sector organizations and a law has recently been passed regulating the operations of NGOs. These problems need to be resolved and an environment created for effective civil society building, especially for credible of oversight of parliament activities.

Need for Effective Media

Another sector in Afghanistan that was severely censored and curtailed during the conflict and especially during the Taliban was media. For democracy to flourish in Afghanistan, there is an urgent need to develop credible, effective and responsible media institutions. Under severe censorship under the Taliban, media organizations have emerged only during the past three years. Afghanistan now has one national television station, and three private television stations. Programmes are run in Pashto and Dari. The national television also broadcasts programmes in other minority languages of Afghanistan. There are a number of radio stations that broadcast throughout the country. Newspapers are available in Dari, Pashto and English. However, basic infrastructure and operational costs to reach the remote population is still lacking. For example, in 2004, Gardez¹⁷ radio, could only operate for 2 hours a day to broadcast messages in Dari/Pashto simply because they could not afford the fuel to run the generators. The UNDP Elections Project is distributing radios to enable people in remote areas to have access to Public Service Announcements. The SEAL project has a specific output to develop a public outreach programme for parliament to develop and maintain relationships with media, civil society and the public.

¹⁷ Gardez is the capital of Paktia province located to the West of Kabul

Women's Participation in Parliament and Democracy

The intimidation and harassment of women under the Taliban is well documented. Girl children were not allowed to go to school, and women were barred from employment. Women were stoned to death for adultery, and were often given corporal punishment for any misdemeanour. The forced wearing of the blue veil became a symbol of oppression of women under the Taliban. "Women, you should not step outside your residence. If you go outside the house you should not be like women who used to go before the coming of Islam--with fashionable clothes wearing much cosmetics and appearing in front of every man.... We request all family elders to keep tight control over their families and avoid these social problems. Otherwise these women will be threatened, investigated and severely punished, as well as the family elders by the Religious Police. The Religious Police have the responsibility to struggle against these social problems and will continue their effort until evil is finished."¹⁸

It is not easy to come out of such persecution within a short time span of four years from 2001 to 2005. Although 25% of the seats in the wolesi jirga are reserved for women, it will be difficult for women to come forward as contestants due to cultural and social taboos. There are reports of houses belonging to women candidates being burnt by village mobs. Half of the presidential nominees to the meshrano jirga will be women, and this is a more realistic possibility as the President can select from learned women who come from more well-informed backgrounds. It is also worth mentioning that the Government has appointed a female governor in the province of Bamyān, and the head of the National Human Rights Commission is a woman. UNDP and other bilateral donors conduct aggressive programmes to educate women to stand for election, and to vote. The Ministry of Women's Affairs, assisted by UNDP, has a number of projects to promote the status of women. However, out of a primary school enrolment ratio of about 54.4% now, girls enrolment ratio is only 40.5% of the total.

Voter Registration and Elections have focused a lot on gender activities. 41.2% of the people who registered to vote in the presidential elections were women. Unfortunately, it is not possible to get accurate figures on the percentage of women who voted because Kabul/Iran did not separate the figures for the votes cast by men and female. Even as rockets flew over them, women cast their ballots in the presidential elections. There were many women hired for the elections and in spite of the attacks (some times directly at women) the majority of the women continued to work for the elections.

'Women and girls bear some of the worst effects of Afghanistan's insecurity. Conditions are generally better than under the Taliban, but women and girls continue to face severe governmental and social discrimination. Through intimidation and armed attacks, local warlord factions, the Taliban, and other insurgent forces have forced the closure of projects that provided desperately needed education, health, rights awareness, and job training to women and girls. Female journalists, activists, and government officials have

¹⁸ Decree of Taliban's Religious Police, November 1996
1 <http://www.cia.gov/cia/publications/factbook/geos/af.html>

reported death threats, harassment, and attacks for speaking out about sensitive women's rights issues'¹⁹.

As such, the full participation of women may take a number of years. Unsurprisingly, some women vote without understanding the full meaning of the power of the vote, and according to instructions given by husbands or male relatives. Understanding of the powers and role of the parliament is important for both women and men. Setting aside quotas in parliament is a good beginning. Encouraging women to vote is another beginning. However, these must be accompanied by other inputs to improve the overall state of women in the country through education, awareness, and empowerment.

Building Ownership

One of the results of the conflict is that most activities relating to parliament are donor funded and implemented, due to obvious lack of human and financial resources. Therefore, it is important to pay specific attention to building ownership by the country. Otherwise, this will have an impact on the sustainability of the parliament, and indeed the establishment of democracy in the country.

Some donors follow traditional methods of building ownership such as involving local stakeholders in identification of problems, needs assessment, project design and implementation. While these are important, more imaginative methods are necessary to ensure that ownership is not limited to the elites, and those in cities who are easily accessible but also extended to include the rural population living in remote villages.

In this regard, the application of a Human Rights Based Approach is valuable to ensure that there is due attention to right to participation by everyone, principles of accountability and empowerment are rigorously followed, and there is special attention to vulnerable groups. Vulnerable groups would include the poor and those living in remote areas unaware and untouched by developments in Kabul and other cities.

Identification of duty bearers with a duty to ensure that ownership by everyone is built up, and of right holders who hold a right to be included in the ownership effort will enable the effective application of a Rights Based Approach. Duty bearers in this instance include donors, civil society organizations, and government officials. Right holders would for example, simply be the disadvantaged and poor people specially those living in remote areas. Women all over the country would fall within the group of disadvantaged people necessitating especially programmes to enable them to fully participate. Transparency and accountability by duty bearers are essential to ensure that the right holders are empowered and able to make decisions that they feel they 'own'. Once efforts have been made in building ownership, progression must be ensured so that people are not left even more disenfranchised than they were before. Application of a HRBA requires commitment, and considerable human resources by donor organizations.

¹⁹ Human Rights Watch, Special Report: Women and Elections in Afghanistan

UNDP ‘Support to the Establishment of the Afghan Legislature’ (SEAL) Project

UNDP has taken a number of practical steps in the design and implementation of the SEAL project. The Civil Service Commission was identified as the government counterpart pending the appointment of a parliament secretariat. President’s office was consulted to identify key counterpart where UNDP was advised that it would be under Vice President Arsallah. They were not clear whether a ministry of legislative affairs would be established or parliament adviser would be appointed. UNDP consulted the Vice President who appointed Civil Service Commission as the counterpart.

There was active coordination with donors, for example USAID, to avoid risk of overlapping and non-communication. A working group was formed to proactively share information and adapt a transparent approach. There was no baseline study but a needs assessment for the design of the preparatory assistance. The needs assessment team was short listed together with the Civil Service Commission, Government of France who was appointed as Lead Nation for parliament in Bonn, and the Inter Parliamentary Union. The final decision for the composition of the team, and its terms of reference was taken together with this group. During the design, a team of international consultants worked closely, on the ground in Kabul, with the Afghan Civil Service Commission and other Afghan counterparts in identifying needs and developing a viable project. A number of consultative meetings were held with the government and other donors to discuss the needs assessment report and subsequent project formulation. As such, a participatory approach was used from design that will be continued throughout its implementation through the Task Force, Working Group and other informal mechanisms.

The UNDP Support to the Establishment of the Afghan Legislature Project²⁰ has set aside a sum of US \$ 15.5 million including contributions from France, Italy, Germany, Denmark and the European Union to help in the following key areas:

1. ensure the setting-up of an effective coordination and programming mechanism for all activities related to the support to the Parliament;
2. build capacities of administrative and technical staff as well as members of the Parliament to ensure a smoother and efficient function of the Parliament;
3. ensure the establishment of the necessary legal environment to enable the first session of the Parliament;
4. ensure proper linkage and complementarities between physical infrastructures, information services and information and communication technologies (ICT) tools to provide assistance to members, staff, media and public;
5. allow for parliament outreach and the design of an effective public information and awareness strategy;
6. parliament set-up and basic running cost met during first year of activity; and,
7. an effective project management team fully operational throughout the duration of SEAL project activities.

²⁰ SEAL Project Document, February 2005

The first element of the SEAL project is the creation of a Task Force that will provide a strong and effective coordination mechanism led by the Government of Afghanistan to avoid risks of duplications, contradictions and gaps. All activities in support to the establishment and the strengthening of its capacity will be coordinated through this Task Force. The Task Force has already commenced its meetings and includes Government representatives at the ministerial level from the Ministries of Finance, Housing and Urban Development (who are involved in construction of the parliament building), Communications (for ICT requirements), as well as the Civil Service Commission. Other members include representatives from UNAMA, UNDP and bilateral donors.

In addition to the Task Force, the SEAL project also actively supports the continuation of the Working Group that was set up during the preparatory phase. The Group meets weekly to discuss implementation activities including work plans. The Group has recently been formalized by the Task Force. The Group includes project staff from UNDP, USAID, some bilateral donors, and most importantly staff from the parliament secretariat. The two groups at a policy level and implementation level ensure that Afghan nationals are involved in every discussion, and have input in to any decision that is made at the technical or advisory level.

The project has been designed with a view to covering the salient features of a new parliament. The capacity building element attempts to capture the training of parliamentary staff, and parliamentarians, who have never been exposed to a democracy. This will be done through in country training, mentoring, and attachments in other parliaments. Establishment of a legislative environment for the effective functioning of parliament is also a key element in the project. In order to ensure that Afghanistan can immediately make use of advances made in information technology, a separate section headed by a dedicated technical advisor and a national programme officer will support the parliament in this regard. Public Outreach is another important component that aims to build sustainable relationships with media, civil society, youth, women, and the general public.

Given the particularly difficult past of Afghan women under Taliban, a separate output in the SEAL project focuses on this element. Working with UNIFEM, and other relevant agencies, the SEAL project carry out a number of activities to empower women. The project will build upon the success of the Elections Project that has a successful outreach programme to encourage women to vote and stand for elections, by using material and methodologies used by the Elections project, to ensure that women continue to be engaged in the parliamentary process so that the quantity and quality of women participating in the democratic process will continue to grow. Training for women parliamentarians, creation of a women's caucus in parliament are other activities. The SEAL project team has also started informal consultations with the Ministry of Women's Affairs to identify further activities for support by the SEAL project. The parliament secretariat targets 50% of its staff to be women, although this is proving to be a difficult task given the low capacity of women.

Challenges

In an era of ever-growing globalization, every country is susceptible to the impact of changes that are occurring in the rest of the world. Afghanistan is no exception. As a fledgling democracy, it is even more prone to being affected by globalization than other countries that have a more firm and concrete base to govern themselves. The geographic position of Afghanistan almost in the crossroads of Asia and Europe is also a key factor that has subjected to the country to global influences and attacks from pre-Christian times. This trend continues with modern Afghanistan being occupied by international forces, and many foreign countries providing economic aid. Therefore, for the Afghan parliament to flourish there are several external challenges.

While the impact of long years of conflict leading to lack of capacity in every area remains a challenge, there are external challenges that are common in preparing for a parliament in a post conflict setting. As discussed in the section on the effect of conflict on the Afghan parliament, there are a number of internal challenges as well. It would be necessary to identify both external and internal challenges at an early stage so that these can be taken in to account and addressed at the right time so that sustainability of activities is assured.

External Challenges

Security continues to be a major issue. The presence of foreign forces, though necessary, is resented by the Afghan population. The killing of two Afghan prisoners in US custody in Bagram prison to the north of Kabul city evoked a strong reaction from the Afghan people two years ago. More recently, on May 9, 2005, Newsweek magazine reported that American interrogators in the Guantanamo Bay prison, put copies of the Quran on toilets, or in one case, flushed one down a toilet in front of prisoners. Riots broke out across the Islamic world, including in Afghanistan. Riots in Afghanistan started in Jalalabad and quickly spread to the rest of the country. Around 15 people including civilians and policemen were killed, and property belonging to the United Nations and other international NGOs burnt and destroyed. "Based on what we know now, we are retracting our original story that an internal military investigation had uncovered Quran abuse at Guantanamo Bay," Newsweek Editor Mark Whitaker said in a statement issued Monday May 16. In the aftermath, on May 16, an Italian aid worker was kidnapped at gunpoint. Such challenges to the fragile security situation in Kabul can affect the course of democracy in general, and the conduct of elections in particular. For example, the publication of such a news report if published close to the date of the elections on Sep 18th, the security situation may not permit the conduct of elections, and the subsequent establishment of parliament. Security issues also affect the freedom of movement of hundreds of international staff who are working on elections, parliament, and other areas in Kabul.

Some political analysts also believe that interests of the US, and other neighbouring countries in Afghanistan is not in the interests of Afghanistan. US interests in Afghanistan are reportedly fueled by oil interests. 'To the north of Afghanistan is one of

the wealthiest oil fields in the world-on the Eastern Shore of the Caspian Sea in the new republics of the former Soviet Union. American oil companies are involved in an oil boom larger than any in the last 40 years in this region. Untold wealth is at stake depending on getting the oil out of the landlocked region through a warm water port'²¹. Another analyst wrote in 2001 that, a few days before September 11, the U.S. Energy Information Administration documented Afghanistan's strategic "geographical position as a potential transit route for oil and natural and gas exports from Central Asia to the Arabian Sea," including the construction of pipelines through Afghanistan'²².

Russia and China, both of whom have borders with Afghanistan, also have an interest in how the situation unfolds in Afghanistan. Russia's involvement in Afghanistan is documented in Annex A. Since then, both Russia and China have been involved in providing arms to Afghan groups in the past. '...both China and Russia had been supplying Soviet-era equipment and ordnance to the Northern Alliance prior to the September events. The deliveries have been conducted through commercial channels and regional middlemen. Russian arms shipped included the portable and mobile anti-aircraft missile and artillery systems Iгла and Shilka, as well as anti-tank weapons and transport helicopters'²³. For Afghanistan to emerge as a peaceful parliamentary democracy, such arms supplies that are easily moved across the border to warring factions must cease totally. In addition to cessation of arms exports, Russia must also fully respect the sovereignty of Afghanistan. In 2002, a political analyst stated 'I would argue that Russia is looking to create a security zone in northern Afghanistan so that any instability in the country doesn't approach the borders of the old USSR. It is, additionally, very clear to me that Russia wants to have a major role and a "say" in what happens in Afghanistan'²⁴.

Pakistan's relations with Afghanistan are interesting. Pakistan recognized the Taliban as an official government but also became a close ally of the US in their operations in Afghanistan after the defeat of the Taliban. It is estimated that over half a million Afghan refugees crossed the border to Pakistan and are living mostly in refugee camps, although some have since returned. The territory of the Pashtu speaking people, Peshawar is divided between Afghanistan and Pakistan. In late 2001, Pakistani analysts claimed that it 'is Afghanistan's only regional neighbour that has continued dialogue with all sides of the Afghan political divide. Since May 1997 Islamabad has been involved in two rounds of intensive shuttle diplomacy.'²⁵ However, the common Afghan 'man on the street' believes that Pakistan's interests lie in keeping Afghanistan unstable, so that their value as a peaceful regional power is increased. Some Afghans believe that the recent demonstrations were also orchestrated by interest groups from Pakistan.

The anti U.S. sentiments of Iran on the southern side of Afghanistan are not a secret. However, Iran tacitly supported the US in its War Against Terrorism in Afghanistan.

²¹ Beeman, William.O, Brown University, Department of Anthropology Publications, 'The Mess in East Africa and Afghanistan is Partly the fault of the U.S. Government'

²² Cohn, Marjorie, Thomas Jefferson School of Law, JURIST Contributing Editor, 'The Deadly Pipeline War: US Afghan policy driven by oil interests'

²³ Helmer, John, The Russia Journal, Feb 1-7, 2002, 'Kremlin and China face new Afghan decision'

²⁴ January 8, 2002: #6009 #6010 #7 RFE/RL, Russian Political Weekly, Vol. 2, No. 1, 7 January 2002

²⁵ Zehra, Nasim, Board of Editorial Advisors, Defence Journal, 'Pakistan's Afghan Policy'

'Iran has since moved to restore its traditional sway in western, central, and northern Afghanistan where Persian speaking Afghans predominate. Iran has expressed major objections to the US use of Shindand airbase in western Afghanistan, fearing it is being used to conduct surveillance on Iran²⁶. This is a sensitive issue given the accusations that Iran is now facing for its nuclear programme.

Afghanistan needs to develop relationships based on equal power, especially with these countries in order to have sustained and strengthened democracy. As Afghanistan is still a fledgling state these influential countries have an unfair advantage. Greater responsibility by all of Afghanistan's international 'friends' is necessary to protect Afghan interests.

In addition to these political factors, in many post conflict countries, the presence of external donors is also a common feature of the national landscape. While the overall goal of the donors is clearly to support the emerging democracy, donor country or donor organization priorities can sometimes create a conflict of interest. UNDP, as the representative of all these countries has a special challenge to bring all these donors together and ensure that conflicting interests will not affect the sustainability of the country's democratic development.

For example, in the case of the SEAL project, there are a number of donors involved. While some donors provide unearmarked funds, others prefer to earmark funding for specific activities which sometimes adversely affects the activities that are not popular or appealing to bilateral donors. In this case, it is necessary for UNDP to always set aside some core funds for their projects. A desire for close involvement in the particular activities that are funded by a single donor needs to be sensitively handled so as to maintain UNDP's independence and integrity while accommodating the natural interest of the donor.

Internal Challenges

In 1996, approximately 40 percent of Afghans were Pashtun, 11.4 of whom are of the Durrani tribal group and 13.8 percent of the Ghilzai group. Tajiks make up the second largest ethnic group with 25.3 percent of the population, followed by Hazaras, 18 percent; Uzbeks, 6.3 percent; Turkmen, 2.5 percent; Qizilbash, 1.0; 6.9 percent other including the Kuchi nomads. The largest and traditionally most politically powerful ethnic group, the Pashtun (or Pakhtun in northern Pakhtu dialects), is composed of many units totalling in 1995 an estimated 10.1 million, the most numerous being the Durrani and the Ghilzai. Like a number of other Afghan ethnic groups, the Pashtun extend beyond Afghanistan into Pakistan where they constitute a major ethnic group of about 14 million²⁷.

The current President of Afghanistan, Hamid Karzai, belongs to the majority ethnic group, Pashtun. The Taliban were also from the same ethnic group. The Taliban systematically persecuted the Hazaras, with well documented massacres in Yakaolang,

²⁶ Katzman, Kenneth, Specialist in Middle Eastern Affairs; Foreign Affairs, Trade, and Defense Division; 'Iran: US concerns and policy responses' updated Apr 15, 2005

²⁷ [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+af0037\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+af0037))

Robotak, Maza-e-Sharif, Bamyán and Afshar.²⁸ There are deep rooted fears and suspicions in such ethnic groups. There is a serious challenge to the government to ensure that all ethnic groups are included, and feel included. Many new democracies have failed for not protecting the rights of minorities, such as the case of Sri Lanka, and the new parliament to be established in Afghanistan needs to be inclusive of all minority groups, and actively promote and protect the rights of minorities in their deliberations, legislation, and activities. Given the limited resources for employment and growth in the country at present, a serious effort needs to be made to ensure that these opportunities are shared equitably among all ethnic groups.

The lack of government coordination and long term planning poses a key challenge. There was insufficient planning by the Government and the international community with more focus being placed up to the elections and lack of planning beyond the elections. Up to date a focal point within the government to liaise with the parliament has not been appointed. It is not clear which office of the Government offices will act as the Cabinet Office although international consultants have assumed that the Government's Office of Administrative Affairs should assume this role.

Presidential decree establishing the Secretariat and appointment of the Secretary General and the secretariat were only issued this year. No allocation was made for the parliament in the national budget. The Civil Service Commission is weak and has no overview of the situation. Although activity six of the SEAL project refers to the basic running costs of the parliament, for obvious reasons of sustainability this does not include the salaries of the staff or the parliamentarians. UNDP has been coordinating with the Parliament Secretariat, and other relevant agencies of the Government of Afghanistan to approve these cadre allocations, and make the necessary budgetary provisions to pay their salaries. This has been a slow and difficult process.

The transfer of the power base at the regional level from war lords to parliamentary representatives remains a serious challenge. The Disarmament, Demobilization, and Reintegration (DDR) programme has been helping warlords and physical power holders understand that the power will now be with those who are democratically elected. The programme has seen some successes with former warlord General Dostum running for presidential elections and a commander dismantling an entire unit in Gardez and working for community dispute resolution with the hope of being elected to parliament.

The security situation as discussed earlier poses a definite challenge. Criminal elements have been engaged in murders and robberies, and the recent kidnapping of the Italian aid worker. As most activities are yet spearheaded by international staff, the stability of the security situation will have a direct effect on their ability to freely do their work. Taliban also conducts sporadic attacks that could destabilize the country especially during the period leading up to the elections. Up to date Taliban has shot dead clerics who criticized the Taliban the latest being on May 29, 2005²⁹, burnt down newly built schools³⁰, and attacked law enforcement officers.

²⁸ <http://www.hazara.net/taliban/genocide/genocide.html>

²⁹ Afghanistan Sun, Monday May 30, 2005

Balance of power amongst the executive, parliament and judiciary will be challenging. One of the first tasks for the new parliament will be to pass or rescind over a hundred presidential decrees some of which border on the flippant. This could take considerable time, and the reaction of the government to any decree that is not passed, will be critical. Afghanistan is not familiar with separation of powers, or of the traditional oversight, legislative, and representational roles of parliamentarians. The evolution of a relationship with a powerful presidency will be a challenge. Everything will be so new, without any precedent or reference point to help the parliament, that even the most minute matter will run the risk of being blown out of proportion.

Corruption poses a challenge that could totally destroy the credibility of the parliament. 'Corruption is now systemic, although not yet well organized or closely linked to criminal national or international networks. Thus, now is the time to broaden, prioritize and target the scope and nature of reforms, both geographically and programmatically, and to launch a holistic anti-corruption campaign through informed and engaged dialogue with all key stakeholders³¹'. The parliament has an important role to play in spearheading this struggle. If due care is not taken, Parliament could end up becoming the source of corruption instead of ensuring public accountability. For example the Minister of Rural Development and Rehabilitation stated in the UNDP Country Office retreat that the biggest threat was the Members of Parliament that will newly elected trying to push in their tribal groups/relatives to be hired and as a result corrupting his ministry. The challenge lies in the parliament leading the effort in the fight against corruption together with civil society organizations and media.

Managing Partnerships

Managing partnerships is a key challenge, whether it be with the government, donors to the UNDP project, other donors involved with the parliament, civil society or with media. The SEAL project has made a good start with the creation of a Task Force and a Working Group, as discussed earlier in this paper.

Partnerships within United Nations agencies need to be successfully managed. In Afghanistan, although UNDP is the implementation agency for the SEAL project, UNAMA, UNDP and UNIFEM are all directly involved in the implementation. UNDP has been liaising since May 2004, with UNAMA, and also with UNIFEM in the design of the SEAL project, and continue to do so during the implementation.

Managing partnerships with donors within a project is also difficult in the face of political interests of bi-lateral donors that overshadow clear development notion and intentions. Often, their desire for quick disbursement of funds with high visibility put pressure on a project management team who is focusing on sustainable development.

³⁰ <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID>

³¹ UNDP, Afghanistan, Assessment of corruption and strategic framework for preventing and addressing corruption, March 2005

Where there is parallel funding, for example through USAID and others in the case of the Afghan parliament, and the design to ensure support is well coordinated is a challenge. The Taskforce built in the SEAL and agreed by all, particularly the secretariat and key donors to ensure this coordination and oversight remains a strong input to address this issue.

Collaboration with other projects are also important. Without DDR, it would have been very difficult to have successful elections. For example, DDR offices were used for voter registration/ elections civic education when disarmed soldiers came for demobilization.

It is equally important for parliament project to seek support and use elections activities including its widely spread human resources as well as its expertise. Partners engaged through the VRP/Elections is important. A number of organizations who are currently concentrating on the support to the elections are likely to be interested in providing the support to the parliament once elections activities start to phase out. This new group of organizations will need to be well coordinated, through the taskforce and the secretariat. However, it is likely to become very complicated when the secretariat expands and the parliamentarians are appointed and start exercising their power. Pressure to engage various organizations will likely to come and oversight of all the activities going on will become difficult.

SEAL is also now making efforts to form partnerships with the Ministry of Women's Affairs to enhance the implementation of activities targeting women members of parliament, and women in general. These efforts must continue to include partnerships with UNDP projects to support the justice sector, human rights commission, civil society building, anti-corruption and any others to be developed especially within the governance sector. Strategic partnerships with parliament support projects in other countries, regional centers and the Oslo Governance Centre are also important.

The Future

Since there are similarities between the 1964 constitution and the 2004 constitution, for the future of democracy in Afghanistan, it would be useful to analyze some of the reasons as to why the 1964 constitution failed.

“By the end of 1972, after nearly a decade of trial and error, King Zahir's "experiment" with parliamentary government has reached a standstill. Afghanistan's political system, despite its modern trappings, continued to ***operate more along tribal than parliamentary lines***. ... Each of the last three governments under the 1964 Constitution had been paralyzed by, and eventually succumbed to, the ***deadlock with the Parliament and the chaos in the Cabinet*** which appear to be inherent in the system. ... King Zahir's blueprint for democracy was to ***provide a representative parliamentary system over which he could retain absolute control***. With the King remaining aloof from the daily governmental process and refraining from direct exercise of his powers, the Afghans

would learn over time to operate the system responsibly, while the King retained the necessary power to ensure stability during the transition period. ... Both the executive and legislative branches look to the King for direction, support, and authority. ***When the King wishes a bill to pass, he is able to persuade the deputies to pass it. When the deputies oppose a government proposal, they complain directly to the King to have it stopped.*** As the King has endeavored to stay aloof from day-to-day operations, the result has been ***long periods of government paralysis punctuated by royal action.*** ... Despite its trappings of parliamentary democracy, the Government in Afghanistan until recently revealed many of the characteristics of ***an absolute monarchy run along Afghanistan's traditional tribal jirgah lines***³². (Emphasis added).

In Afghanistan's history, prior to the current constitution, the other most democratic constitution was the 1964 constitution. History shows that this failed, and there are many lessons to be learnt for the success of the current constitution. The highlighted phrases in the preceding paragraph describe some of the reasons why the 1964 constitution failed.

The first of these is that the parliament of 1964 operated more along tribal than parliamentary lines. Given the lack of a strong political party base in the current elections, there will be a natural tendency to adhere to tribal or ethnic lines. This was more fully discussed in the section on internal challenges. The future success of the current constitution demands that the 2005 parliament rises above these ethnic lines in the interest of the country. Singular strengths of charismatic and strong personalities must be used not to perpetuate ethnic or tribal tendencies, but to overcome them.

The paragraph points out to a deadlock with the Parliament and chaos in the Cabinet in 1965. The situation in 2005 already poses a problem as there is already a pre-parliamentary election cabinet in place, which has to be approved the parliament when they are elected. If rejected, the President must propose other candidates. The parliament, cabinet ministers, and the president need to approach this issue at the very start to ensure that deadlock and chaos will not be words associated with the 2005 parliament.

Another reason for the failure of the earlier parliament was the King's desire to provide a representative parliamentary system over which he could retain absolute control. Although there is no King in the current scenario, the President has considerable power and these powers must be exercised with great restraint and wisdom. The principles of separation of power that are a cornerstone of a functioning democracy must be embraced without reservation by the Afghan presidency. Passing of bills must be left entirely to the independent debate and vote of the parliamentarians without interference by other organs of the government. If not, the current parliament will also run in to the same problem as the parliament of 1965 where there were long periods of inaction punctuated by royal action, and in 2005, presidential action. This is especially pertinent as one of the first tasks of the new parliament will be the screening of about 100 presidential decrees that have been passed by the interim government as discussed earlier.

³² Afghanistan, Both Government and Political System Face Trial, March 30, 1973

Until Afghanistan is able to raise its own resources, it is essential for donor funding to continue. SEAL is a two year project but it is highly unlikely that after that, the Government of Afghanistan can take over the running of its own parliament. Continuous training of parliamentarians and parliament staff is necessary. Empowerment of women is necessary to ensure meaningful participation. In this regard, the special limitations placed by the Afghan culture need to be separately addressed through other awareness raising projects. Education of women is a must.

Given the fragile security situation in Afghanistan, it could even be argued that Afghanistan is preparing for a parliament in a conflict situation, and not in a post conflict situation. The large presence of foreign troops who control the security situation, the frequent outbursts of public violence, extra judicial killings that are not investigated according to internationally accepted human rights standards, all point out to the possibility that Afghanistan may yet be a country in conflict. Restrictions on movements of international staff are a direct response to this conflict situation.

In conclusion, the establishment of the Afghan parliament cannot be successfully completed in isolation. The exercise has to be supported at the horizontal level by other arms of the government, as well as donor supported capacity building projects targeting security, women, civil society, and media. Certainly, it requires commitment in the long term by Afghans as well as the international community.

Annex A – A Brief Political History of Afghanistan

In the pre Christian era, there are historical records that Afghanistan was ruled by Darius the great, Alexander the Great, and Greco-Bactrian rulers. From 50 AD to 220, Afghanistan was ruled by the Kushan dynasty of India, in particular, King Kanishka.

After some 250 years of competing for control by White Huns, Persians, and Afghans Islam was introduced to the country by Arabs in 652. Since then, until the early 1200s, the Ghaznavid dynasty ruled Afghanistan for the most part, and the country became the center of Islamic power and civilization. There was a period of political instability during 1370 with an invasion by Genghis Khan. However, Afghan rulers controlled Afghanistan from that point until the early 1500s when the Moghul dynasty took control of Afghanistan. After continuous regional fighting with the Moghuls and with Iran, in 1747, Afghanistan under Ahmad Shah Abdali recaptured Kandahar from the Persians, and established Afghanistan.

From 1747, until the first Anglo Afghan war in 1839, despite internal fighting and losing of Sind and Peshawar provinces, Afghans kept political control of the country. The British were able to control the country only from 1839-1843, and the deposed King Dost Mohammad Khan returned to occupy the throne until 1863. Between 1859 and 1865, Britain and Russia took over some Afghan territories, and the country became completely landlocked.

In 1878, Britain invaded Afghanistan again, but the Afghans fought back strongly, and after two years Britain retreated only retaining the power to handle Afghanistan's foreign relations. During the last decade of the 1800's, Afghanistan's borders were further shrunk with Russia seizing the Panjdeh oasis, and the British establishing the Durand line, splitting Afghan tribal area in the southeast of the country, leaving half of these Afghans in what is now Pakistan.

In 1919, upon the assassination of his father, King Habibullah, King Amanullah ascended the throne and brought in a number of political reforms to the country. In 1921, the British again invaded Afghanistan, but were defeated and Afghanistan gained control over its foreign affairs. King Amanullah was overthrown in 1929 and after some instability when King Nader Shaf was assassinated in 1933, King Zahir Shah ruled Afghanistan from then until 1973.

In 1947, Britain moved out of India and Pakistan was carved including some Afghan lands. In 1953, Prince Mahmoud Daoud became the Prime Minister of Afghanistan by appointment. In 1954, when the US refused to sell arms to Afghanistan to modernize its army, the country turned towards the USSR who agreed to help with the military support, and close political ties between the two countries commenced. In 1959, the Purdah was made optional and women were permitted to enter university, government and the general work force.

In 1963, King Zahir Shah demanded the resignation of Prime Minister Daoud and Dr. Mohamed Yusuf became Prime Minister. The Afghan Communist Party was secretly formed in January of that year. Babrak Karmal was one of the founders. In September, first nationwide elections were held under the new constitution and Karmal was elected to the Parliament.

In 1969, second nationwide elections were held and Babrak and Hafizullah Amin were elected. In 1972 Mohammad Moussa became Prime Minister. A year later when, Zahir Shah was on vacation in Europe, his government was overthrown in a military coup headed by Daoud Khan and PDPA (Afghan Communist Party) who abolished the monarchy, and declared himself President. The Republic of Afghanistan was established.

In 1975, Daoud Khan presented a new constitution in which, women's rights were confirmed. He began to oust opponents from his government. In a bloody coup, three years later, Daoud was killed and Taraki was named as President, with Babrak Karmal as his deputy. Tensions rose as mass arrests, and widespread torture took place, and Taraki signed a treaty of friendship with the Soviet Union. As a reaction the Afghan guerrilla (Mujahideen) movement was born.

Afghanistan then entered an even more difficult period in its history as Taraki was killed in 1979 and Hafizullah Amin took over the Presidency. Soon after Amin was executed, he was replaced with Babrak Karmal. The same year in December, Soviet Union invaded Afghanistan. In 1980, Dr. Najibullah was brought back from the Soviet Union to run the Afghan Secret Police, and in 1986, Babrak Karmal was replaced by Dr. Najibullah. Najibullah proposed a ceasefire, but the Mujahideen refused to deal with a "puppet government". After long years of bitter guerilla fighting, the Soviet Union was defeated by Afghanistan, and by early 1989 there was a total withdrawal by the Soviets. Experts agree that at least 40,000-50,000 Soviets lost their lives in action, besides the wounded, suicides, and murders.

Mujahideen continued to fight against Najibullah's regime and in May of the same year, Afghan guerrillas elected Sibhatullah Mojadidi as head of their government-in-exile. In 1992, the Mujahideen took over Kabul and formed an Islamic State with elections to the Islamic Jihad Council. Professor Burhannudin Rabbani was elected President. By 1994, the Taliban was born, and advanced rapidly against the Rabbani government. Warlords Dostum and Hekmatyar continued to clash against Rabbani's government, and as a result Kabul was reduced to rubble. Throughout 1995 and 1996, Taliban continued to grow in strength, and in September they captured Kabul.

The human rights violations by the Taliban are well documented. Women were totally oppressed. They were required to be fully veiled, no longer allowed to work, go out alone or even wear white socks. Men were forced to grow beards. Buzkashi, the Afghan national sport was outlawed. Some of the ridiculous and unreasonable decrees by the Taliban are attached as Annex B.

In 1999, ex King Zahir Shah lead efforts to form a grand assembly or Loya Jirga to discuss ways of bringing peace to the country. In October, UN Security Council Resolution 1267 was adopted imposing sanctions against the Taliban on grounds that they offered sanctuary to Osama bin Ladin. In December, UN Security Council Resolution 1333 was adopted imposing additional sanctions against the Taliban for their continuing support of terrorism and cultivation of narcotics, etc.

In 2001, after the bombing of the World Trade Center buildings in New York on September 11, the US requested the Taliban government to hand over Osama Bin Laden which the Taliban refused to do. The United States and UK working with the forces of the United Front (UNIFSA) launched air strikes against the Taliban. After the fall of the Taliban, the Bonn Agreement was signed by Afghan political groups in Bonn, Germany to form an interim government. Hamid Karzai was chosen as Chairman. In June 2002, the Loya Jirga elected Hamid Karzai as President of the Transitional Government. Karzai selected members of his administration to serve until presidential elections were held in 2004.

In 2004, Afghanistan adopted a new Constitution turning the country in to a Republic with three branches of government, Executive, Legislative, and Judiciary. In 2004 October, presidential elections were held and Hamid Karzai was elected as President with 55.4% of the votes. His strongest challenger, Yunis Qanuni, came in second with 16.3% of the votes. On March 31st, 2005, Yunis Qanuni announced a new political alliance to contest the September elections.

Annex B – Selected Decrees during Taliban Rule

Records of decrees limiting the movement of women include the following decree announced by the General Presidency of Amr Bil Maruf and Nai Az Munkar (Religions Police.) “Women you should not step outside your residence. If you go outside the house you should not be like women who used to go with fashionable clothes wearing much cosmetics and appearing in front of every men before the coming of Islam.

Islam as a rescuing religion has determined specific dignity for women, Islam has valuable instructions for women. Women should not create such opportunity to attract the attention of useless people who will not look at them with a good eye. Women have the responsibility as a teacher or co-coordinator for her family. Husband, brother, father have the responsibility for providing the family with the necessary life requirements (food, clothes etc). In case women are required to go outside the residence for the purposes of education, social needs or social services they should cover themselves in accordance with Islamic Sharia regulation. If women are going outside with fashionable, ornamental, tight and charming clothes to show themselves, they will be cursed by the Islamic Sharia and should never expect to go to heaven. All family elders and every Muslim have responsibility in this respect. We request all family elders to keep tight Control over their families and avoid these social problems. Otherwise these women will be threatened, investigated and severely punished as well as the family elders by the forces of the Religions Police (Munkrat). The Religious Police (Munkrat) have the responsibility and duty to struggle against these social problems and will continue their effort until evil is finished.

The following decree was issued in Kabul in November, 1996 titled Rules of work for the State Hospitals and private clinics based on Islamic Sharia principles. Ministry of Health, on behalf of Amir ul Momineen Mullah Mohammed Omar.

1. Female patients should go to female physicians. In case a male physician is needed, the female patient should be accompanied by her close relative.
2. During examination, the female patients and male physicians both should be dressed with Islamic hijab (veil).
3. Male physicians should not touch or see the other parts of female patients except for the affected part.
4. Waiting room for female patients should be safely covered.
5. The person who regulates turn for female patients should be a female.
6. During the night duty, in what rooms which female patients are hospital-ized, the male doctor without the call of the patient is not allowed to enter the room.
7. Sitting and speaking between male and female doctors are not allowed, if there be need for discussion, it should be done with hijab.
8. Female doctors should wear simple clothes, they are not allowed to wear stylish clothes or use cosmetics or make-up.
9. Female doctors and nurses are not allowed to enter the rooms where male patients are hospitalised.
10. Hospital staff should pray in mosques on time.
11. The Religious Police are allowed to go for control at any time and nobody can prevent them.

Anybody who violates the order will be punished as per Islamic regulations.

Kabul, December 1996.

General Presidency of Amr Bil Maruf.

1. To prevent sedition and female uncovers (Be Hejabi). No drivers are allowed to pick up women who are using Iranian burqa. In case of violation the driver will be imprisoned. If such kind of female are observed in the street their house will be found and their husband punished. If the women use stimulating and attractive cloth and there is no accompany of close male relative with them, the drivers should not pick them up.
2. To prevent music. To be broadcasted by the public information resources. In shops, hotels, vehicles and rickshaws cassettes and music are prohibited. This matter should be monitored within five days. If any music cassette found in a shop, the shopkeeper should be imprisoned and the shop locked. If five people guarantee the shop should be opened the criminal released later. If cassette found in the vehicle, the vehicle and the driver will be imprisoned. If five people guarantee the vehicle will be released and the criminal released later.
3. To prevent beard shaving and its cutting. After one and a half months if anyone observed who has shaved and/or cut his beard, they should be arrested and imprisoned until their beard gets bushy.
4. To prevent keeping pigeons and playing with birds. Within ten days this habit/hobby should stop. After ten days this should be monitored and the pigeons and any other playing birds should be killed.
5. To prevent kite-flying. The kite shops in the city should be abolished.
6. To prevent idolatry. In vehicles, shops, hotels, room and any other place pictures/ portraits should be abolished. The monitors should tear up all pictures in the above places.
7. To prevent gambling. In collaboration with the security police the main centres should be found and the gamblers imprisoned for one month.
8. To eradicate the use or addiction. Addicts should be imprisoned and investigation made to find the supplier and the shop. The shop should be locked and the owner and user should be imprisoned and punished.
9. To prevent the British and American hairstyle. People with long hair should be arrested and taken to the Religious Police department to shave their hair. The criminal has to pay the barber.
10. To prevent interest on loans, charge on changing small denomination notes and charge on money orders. All money exchangers should be informed that the above three types of exchanging the money should be prohibited. In case of violation criminals will be imprisoned for a long time.
11. To prevent washing cloth by young ladies along the water streams in the city. Violator ladies should 'be picked up with respectful Islamic manner, taken to their houses and their husbands severely punished.
12. To prevent music and dances in wedding parties. In the case of violation the head of the family will be arrested and punished.
13. To prevent the playing of music drum. The prohibition of this should be announced. If anybody does this then the religious elders can decide about it.
14. To prevent sewing ladies cloth and taking female body measures by tailor. If women or fashion magazines are seen in the shop the tailor should be imprisoned.

15. To prevent sorcery. All the related books should be burnt and the magician should be imprisoned until his repentance.

16. To prevent not praying and order gathering pray at the bazaar. Prayer should be done on their due times in all districts. Transportation should be strictly prohibited and all people are obliged to go to the mosque. If young people are seen in the shops they will be immediately imprisoned³³.

³³ Afghanistan – behind the headlines, Moesgard Museum, Denmark, Exhibition