

**AFGHANISTAN'S NEW LEGISLATURE:
MAKING DEMOCRACY WORK**

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AFGHANISTAN'S NEW LEGISLATURE: MAKING DEMOCRACY WORK

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The new National Assembly has the potential to play a vital role in stabilising Afghanistan, entrenching pluralism, institutionalising political competition and giving voice to the country's diverse population. By being accountable to the Afghan people it can demand accountability of the presidential government. However, the success of this fledgling institution remains delicately poised, particularly because of the absence of a formal role for political parties, essential for mediating internal tensions. The lack of such organised blocs has seen power-brokers of past eras try to dominate proceedings. New moderate forces need to move quickly now to establish formal groups within the houses to ensure their voices are heard.

The Single Non-Transferable Voting (SNTV) system used in the 2005 legislative election all but excluded political parties, which are vital for the development of robust democracy. President Hamid Karzai has done all he can to marginalise these parties, leaving him isolated and dependent on unstable alliances in a fragmented body. He probably can win votes of confidence by relying in the main on Pashtun conservatives together with pro-government moderates and members of the smaller minority communities. However, the absence of solid political blocs means he will have to assemble ad hoc support on every issue. Ethnic politics has been, and indeed will likely remain, one of the main organising factors but would be better brought out into the open within formalised blocs.

The rules of procedure allow these as mechanisms – called parliamentary groups in the lower house (Wolesi Jirga), and political groups in the upper house (Meshrano Jirga) – to facilitate efficient parliamentary operation. However, many impulses for their creation – regional, linguistic and tribal – are barred, rendering them all but meaningless. And even then the formation of such emasculated groups has been delayed in the lower house. If parties were required to have charters stipulating internal democratic functioning, their formation based on any criteria should be encouraged also as a means to stimulate the development of true political parties. Given that no one ethnic group has a majority in either house of the assembly, ongoing compromise would be demanded.

In its opening months, the bicameral legislature has functioned slowly but encouragingly steadily, emphasising procedural decision-making. Tedious discussion and repetitive voting on the same topics have hopefully demonstrated to lawmakers the importance of building more formal blocs to organise proceedings as well as the importance of following well-defined procedures.

There have been victories for the opposition, with a Karzai rival elected to head the more important Wolesi Jirga (lower house), though the government secured confirmation of major ministers in a key vote. Fears of deadlock through obstructionism, the sheer amount of work to get through and inexperience have translated into a tendency towards a lack of oversight and acceptance of governmental preferences. But as legislators gain confidence and experience, such acquiescence cannot be relied on. Building good relationships between the institutions of state needs to be a priority now.

That the legislature contains warlords, commanders and drug traffickers is undisputed, but it is the institution, not the individual members, that is important. Their presence must not be used as an excuse to marginalise the body, which in this sense is not unique among the branches of the Afghan state. A policy of co-optation over the last four years has entrenched notorious figures in the executive, from the highest central government posts to district level. Those who have committed and are still committing atrocities – in many cases with remarkable continuity – are not held answerable, highlighting the urgent need to reform the third branch, the judiciary. Commitments to disarmament that many candidates made to qualify to stand for election must also be rigorously monitored.

The National Assembly could force religious and factional leaders, who have long claimed to speak for the Afghan people, to prove their real levels of support, which there is good reason to believe is in some cases far less than they assert. It is also a place in which the first stirrings of new national thinking may appear. Under a quota system, around one quarter of its membership is female, in noticeable contrast to the executive. As it moves into substantive work, the National Assembly has real potential to draw the

regions to the centre in a way that has not happened in Afghanistan's history.

But for the legislature – and democratic values – to take root, domestic recognition and international support are required. This is not just about finances, resources and training, but also executive branch and international community interaction with it. National Assembly leaders as well as the emerging moderate voices need to be given appropriate recognition and encouragement. Thus far President Karzai's government does not seem to have learnt the lessons of the past, appearing instead to calculate that a weak, fragmented legislature would mean more power for itself rather than a lost opportunity for the country. It is imperative that the executive and legislative branches not approach their relationship as a zero sum game.

One of the primary tasks of elected representatives in a democracy is usually to mediate the allocation of resources. Afghanistan is in an unusual situation in that donors control nearly all its resources. Nevertheless, the international community can expect to find the National Assembly a demanding interlocutor. Amid growing disillusionment at the pace of political and economic reconstruction, this is the forum from which to start managing expectations and hearing the priorities of the Afghan people. It must also perform a vital role if the ambitious regulatory and legislative benchmarks laid down in the Afghanistan Compact as conditions for ongoing international commitments are to be met.

It is also vital that Afghanistan have functioning institutions to implement the decisions of its democratic law-making body. If the National Assembly is not seen to be achieving anything, citizens are likely to lose faith in democratisation as a whole, allowing old powerbrokers to reassert themselves outside constitutional structures. The need to ensure implementation of laws highlights again how vital it is to reform and strengthen the civil service, police and other institutions of state.

The National Assembly's creation was just one further step in the country's political transition, certainly not its end. A well-established, accountable and respected legislature would add to stability by allowing a wide spectrum of voices to be heard at the centre and to participate in setting the country's future course. The considerable goodwill and energy that is at hand now needs to be harnessed.

RECOMMENDATIONS

To the National Assembly:

1. The Wolesi Jirga (lower house) should quickly establish parliamentary groups as provided for in

the rules of procedure to help make operations more efficient, and both houses should ensure such groups have a strengthened role in proceedings by:

- (a) removing regional, linguistic and ethnic bars to their creation;
- (b) requiring them to have charters providing for democratic internal functioning;
- (c) building links between the groups of the two houses; and
- (d) aiding their further transformation into political parties by establishing offices outside parliament for each group.

2. Strengthen expertise and diversity on the standing committees by:

- (a) re-constituting their membership after parliamentary groups are formed in the Wolesi Jirga;
- (b) setting quotas for women members; and
- (c) seeking seats for members on the relevant Consultative Groups, the joint government, NGO, donor and UN agency mechanisms to facilitate and coordinate development plans.

3. Focus during this legislative period on establishing the necessary legal framework for a functioning state and on meeting development goals, with priorities to include:

- (a) administrative units, court and ministry structures;
- (b) speeding development and meeting the benchmarks under the Afghanistan Compact; and
- (c) revising the Electoral Law and the Political Party Law, including by replacing the SNTV voting system with a party list system and otherwise strengthening the role of parties.

4. Use the standing committees for members' immunities, salaries and privileges to ensure individual accountability by creating and strictly enforcing:

- (a) a code of conduct for members which includes commitments to disarmament and a subcommittee tasked with enforcing this in consultation with the Disarmament and Reintegration Commission;
- (b) a register listing the interests of all members; and
- (c) a code of conduct for lobbyists.

5. Help ensure accountability by providing week-long recesses at major holidays which can be used to travel back to constituencies to maintain contact with voters.

To the government of Afghanistan:

6. Change the role of Minister of State for Parliamentary Affairs into that of a representative for parliamentary affairs heading a small staff in the president's office, tasked to:
 - (a) co-ordinate government business with the National Assembly; and
 - (b) draft, in cooperation with its leadership, a formal memorandum of understanding regarding regular and institutionalised interaction.
7. Create liaison points within every ministry for technical queries related to legislative work.
8. Ensure that when parliamentary groups are formed, their leaders are invited to take part in important state functions and relevant decision-making forums.
9. Appoint a legislative coordinator to the Joint Coordination and Monitoring Board of the Afghanistan Compact, in consultation with international members and the National Assembly.
10. Work with the National Assembly and heads of Provincial Councils towards the necessary constitutional amendments for a functioning state and the next National Assembly and Presidential elections, including:
 - (a) creating mechanisms to deal with deadlock between the executive and legislature;
 - (b) re-examining the 30-day deadline pursuant to which legislation introduced by the executive automatically becomes law unless otherwise acted upon;

- (c) revising the electoral timetable; and
- (d) defining who is responsible for overseeing members' credentials once election results are certified.

11. Ensure adequate security for members, especially women, as they travel to and from their electoral districts and throughout the country.

To the International Community:

12. Help build up the prestige of the National Assembly and the capacity of its members by:
 - (a) ensuring that visiting officials, parliamentarians and other senior delegations always call on the National Assembly leadership and members of the relevant committees, including women and minority representatives;
 - (b) meeting regularly with the international affairs committee and helping its individual members develop expertise in different geographical regions; and
 - (c) distributing study tours equitably among members, with particular emphasis on visits to regional legislatures, extending most invitations for legislative recess periods so work time is not lost, coordinating invitations between host countries, and making special efforts to ensure that women parliamentarians are given opportunities to participate in such tours.
13. Donors should help develop the expertise of standing committees by:
 - (a) funding international and national specialist technical advisors for each committee; and
 - (b) engaging and informing relevant committees actively on development projects.

Kabul/Brussels, 15 May 2006

AFGHANISTAN'S NEW LEGISLATURE: MAKING DEMOCRACY WORK

I. INTRODUCTION

Looking at the turbans, *pakools* (woollen hats), headscarves and Western neckties in the National Assembly, it is clear this is a body that reflects Afghanistan. Amidst such diversity there is a genuine air of expectancy and hope that the new legislature will play a vital role in stabilising the country.

Following the Taliban's fall, Afghanistan had an unbalanced state with all power as well as international attention concentrated on the executive. However, a legislature is an essential component of a healthy polity. It is all the more vital for a wide variety of voices to be heard at the centre after years of violent conflict both the result of – and exacerbated by – ethnic, linguistic, sectarian and regional divides.

The 2004 Constitution mandates a strong presidential system but also gives important law-making, representative and oversight functions to a bicameral National Assembly (Shura-e Milli), consisting of a 249-seat Wolesi Jirga (House of the People, lower house) and a 102-seat Meshrano Jirga (House of Elders, upper house). The inauguration of the delayed legislature on 19 December 2005 means all the instruments of the sovereign state are now in place.

But this is the beginning of the political transition, not its end. The executive and legislature must now learn to function, both within themselves and with each other, if conflict is to be mediated through democratic means rather than violence. Furthermore, reform of the judiciary and the police, as well as the civil service and administrative units is urgently needed if an increasingly impatient population is to see real change.

If members continue to take their work as seriously as they have so far, put the greater good first and receive appropriate support from outside, the National Assembly can greatly aid the stabilisation of Afghanistan through entrenching the rule of law and a culture of pluralism. Critics emphasise that it is a body in which discredited powerbrokers from past eras loom large but while the perpetrators of atrocities must not be allowed to amnesty themselves, it is also important that their presence not be

used as an excuse to marginalise a vital constitutional institution.

It is hard to distinguish the shape and direction quickly in a body without political parties. Alliances will likely remain fluid for a long time. President Hamid Karzai can probably obtain majorities by emphasising ethnic politics but this will require unstable alliances of hard-line conservatives and pro-government moderates based on self-interest or preservation rather than the issues at hand.

Showing how difficult this will be day to day – and the organisational skills of the opposition – the government suffered high-profile defeats in the first weeks: a Karzai rival was elected leader of the Wolesi Jirga and secret, individual votes were taken on ministers despite the government's strong push for an open group vote. The government has, however, managed to get the assembly to approve the structure of ministries and most key ministers, which suggests that, while it will not be a rubber stamp, the National Assembly is eager to press on with business and avoid confrontation.

This report provides a snapshot of the opening months of the new National Assembly, focusing in particular on the nascent shape and actions of the Wolesi Jirga, the more powerful of the two houses.

II. THE LEGAL FRAMEWORK

Under the Bonn Agreement,¹ the interim² and transitional periods³ invested nearly all powers in an executive, which has been led by President Karzai. The Constitutional Loya Jirga of December 2003-January 2004 further agreed to a presidential system, as sought by Karzai and his international backers.⁴ Although last minute negotiations produced a provision that efforts should be made to hold simultaneous presidential and National Assembly elections, they were conducted nearly a year apart.⁵ This complicated a number of constitutional provisions and created a backlog of work for the new legislature.

¹ The Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, commonly referred to as the Bonn Agreement, was endorsed by the United Nations Security Council on 7 December 2001. It aimed for the transition to democratic institutions to be complete by June 2004 but the tight deadlines slipped almost from the start. Even now, constitutional arrangements have not been fully met, as claimed in the new "Afghanistan Compact, Building on Success: The London Conference on Afghanistan", 31 January-1 February 2006. Article 84 of the constitution requires one third of the members of the Meshrano Jirga to be elected by District Councils. It is not mentioned in the Afghanistan Compact that elections for these administrative units have been indefinitely postponed.

² The Bonn Agreement created the Interim Authority on 22 December 2001. Under provisions I (2) and III A (1), this consisted of the Interim Administration, composed of a chairman, five vice chairmen and 24 members, a special Independent Commission for the Convening of the Emergency Loya Jirga and the Supreme Court.

³ The Bonn Agreement mandated an Emergency Loya Jirga, held in June 2002, which confirmed Hamid Karzai as head of state for the Transitional Administration.

⁴ The constitution adopted on 4 January 2004 is largely based on the 1964 constitution when there was a constitutional monarchy rather than presidency. Many arrangements for the division of power between the executive and legislature are unchanged. See Crisis Group Asia Report N°56, *Afghanistan's Flawed Constitutional Process*, 12 June 2003; Crisis Group Asia Briefing N°29, *Afghanistan: The Constitutional Loya Jirga*, 12 December 2003; and Crisis Group Asia Briefing N°31, *Elections and Security in Afghanistan*, 30 March 2004. The official versions of the constitution are in Dari and Pashto. The unofficial English translation used in this report is from "The A to Z Guide to Afghanistan Assistance", fourth edition, Kabul, August 2005, Afghanistan Research and Evaluation Unit (AREU).

⁵ Article 160 of the Constitution of Afghanistan (2004). Unless otherwise stated, "Article" refers to an article of the current constitution. The presidential elections were held on 9 October 2004. Until the creation of the National Assembly under Article 160, "the powers of this assembly outlined in this Constitution will be held by the government and the interim Supreme Court shall be established by Presidential Decree".

While it is sometimes argued that a developing democracy needs a strong president to help speed decision-making, a legislature is a vital representative body, particularly during transition times. Indeed, there are still some opposition figures who argue that Afghanistan should have a more parliament-oriented system: "Karzai is a weak engine for a big train. We need a second engine – a prime minister".⁶

The 2004 Constitution recognises that the National Assembly "as the highest legislative organ is the manifestation of the will of its people and represents the whole nation".⁷ Even within the presidential system, it has some powerful functions of oversight, and the president is required to determine fundamental state policies with the approval⁸ of the National Assembly.⁹ The President and his ministers are also held responsible to the Wolesi Jirga.¹⁰

The Political Parties Law, the Electoral Law and the constitution form the legal framework for the new legislature. They specify a bicameral body with 249 popularly elected members in the Wolesi Jirga¹¹ and 102 senators in the Meshrano Jirga. Two thirds of the senators are to be indirectly elected from the regions and one third appointed by the president.¹²

⁶ Crisis Group interview, Registani Saleh Mohammad, Wolesi Jirga member for Panjshir, 1 March 2006.

⁷ Article 81.

⁸ In Dari, *taswib*.

⁹ Article 64(2).

¹⁰ Article 69 holds the president responsible to the nation and the Wolesi Jirga, while Article 77 holds the ministers responsible to the president and Wolesi Jirga. What this actually means is not further specified. The Wolesi Jirga is only able to start proceedings against the president for reasons of "crimes against humanity, national treason or crime" (Article 69) as discussed further below. However, regulating the presidential pay packet does lie within the legislature's mandate (Article 70). There are more formal areas of oversight for the ministers, including the right of the Wolesi Jirga to question them and ultimately take a vote of no confidence (Article 92). The constitution remains untested but as the Wolesi Jirga is given the right of confirmation of appointment, its later rejection of a minister would appear to be binding on the government.

¹¹ 239 members were elected to represent the country's 34 provinces, with each forming a multi-member constituency. Ten additional members were elected by a nationwide Kuchi (nomad) constituency. The compatibility of this is questionable with Article 83 of the constitution, which details representation by region. Many suspect this community was afforded special privileges for ethnic reasons, most Kuchis being Pashtun. See Crisis Group Asia Report N°101, *Afghanistan Elections: Endgame or New Beginning?* 21 July 2005.

¹² One Meshrano Jirga representative is elected by each Provincial Council (for four years) under Article 84(1) of the constitution, and one is elected for each province by all the

The Political Party Law states that “the political system of the State of Afghanistan is based on the principles of democracy and pluralism of political parties”.¹³ Article 35 of the constitution recognises that “the citizens of Afghanistan have the right to form political parties in accordance with the provisions of the law”. However, the Electoral Law all but removes such groups from any formal role in the electoral process. This has stifled their development and presence within the assembly.

As well as law-making, the two houses that make up the National Assembly are responsible for:

- ❑ creating, modifying, and/or abrogating administrative units;¹⁴
- ❑ granting permission for obtaining or granting loans;¹⁵
- ❑ ratifying treaties and other international agreements;¹⁶
- ❑ confirming¹⁷ presidential declarations of war and ceasefire and the sending of troops abroad;¹⁸ and
- ❑ confirming presidential declarations of states of emergency.¹⁹

The more powerful of the two houses, the Wolesi Jirga, can force through legislation that the President does not sign if two thirds of its members agree²⁰ and can further:

- ❑ confirm presidential appointments, including of ministers, the attorney general, the governor of the Central Bank, the head of the National Security Directorate, the president of the Afghan Red Crescent Society and the head and other members of the Supreme Court;²¹
- ❑ question a minister formally if 20 per cent of members agree to do so and put him or her to a vote of no confidence;²²

district councils within that province (for three years) under Article 84(2).

¹³ Article 3 of the Political Parties Law. See Crisis Group Asia Briefing N°39, *Political Parties in Afghanistan*, 2 June 2005.

¹⁴ Article 90(4).

¹⁵ Article 90(3).

¹⁶ Article 90(5).

¹⁷ In Dari, *taid*.

¹⁸ Article 64 (4) and (6).

¹⁹ Article 64 (8).

²⁰ Article 94.

²¹ Article 64(11) and 64(12).

²² Article 92. The process for confirming a minister's original appointment (Article 64) is discussed at length below under Executive-Legislative Relations. The separate provisions for the committees of both houses to question ministers “about specific

- ❑ require the Central Bank to consult the economics committee about the printing of currency;²³
- ❑ take decisions on the state budget and development programs;²⁴ and
- ❑ vote, by two-thirds majority, to start the process of bringing charges against the president concerning “crimes against humanity, national treason or crime”.²⁵

In the event that the Wolesi Jirga begins prosecution of the president, the next step is convening a Loya Jirga (Grand Council),²⁶ “the highest manifestation of the people of Afghanistan”,²⁷ which consists of the National Assembly and the chairpersons of the Provincial and District Councils. When convened by the president,²⁸ this is also the body that can amend the constitution²⁹ and take decisions on “independence, national sovereignty, territorial integrity and the supreme interests of the country”.³⁰

topics” (Article 93) are discussed further in the Committees section.

²³ Article 12.

²⁴ Article 91(2).

²⁵ Article 69.

²⁶ Article 69.

²⁷ Article 110.

²⁸ Article 64(7).

²⁹ Article 150 further specifies that to amend the constitution: “A commission composed of members of the government, National Assembly, and the Supreme Court, would be established by a Presidential decree, and the commission shall prepare a draft of the amendments. For approval of the amendments, a Loya Jirga shall be convened by the decree of the President ... when the Loya Jirga approves an amendment by a majority of two thirds of its members, it shall be enforced after endorsement by the President”.

³⁰ Article 111(1).

III. ELECTIONS AND SELECTIONS

The Wolesi Jirga and Provincial Council elections were held on 18 September 2005, in a generally peaceful environment, without major security incidents on the day,³¹ although seven pro-government clerics, five electoral workers and seven candidates³² were killed during the campaign period. Altogether some 6.4 million voters³³ and 2,835 candidates³⁴ took part in one of the most complex post-conflict elections ever held.

However the turnout was down from 8.1 million for the presidential election in 2004, even though many more refugees had returned in the interim. There was a palpable air of disillusionment just a year after the presidential poll that no democracy dividend had yet been paid. Particularly striking was a 34 per cent turnout in Kabul that was more comparable with the southern provinces where security was worst. Many well-known figures from the unhappy past stood in the capital, and many voters, it seems, preferred to stay at home.

That such questionable personalities were able to contest the polls caused consternation and confusion. The constitution requires that a candidate “should not have been convicted by a court”³⁵ of a regular crime or a crime against humanity but such convictions would be unlikely in a country that has not had a properly functioning judicial system for 25 years. The Electoral Complaints Commission (ECC), therefore, did not consider the vast majority

of complaints it received against candidates since these related to accusations – not convictions.³⁶

While some fear that those rebuffed at this first attempt to seek justice would be deterred from making future efforts, others believe that the sheer number of complaints constituted a challenge to the culture of impunity. “This will have a positive impact for transitional justice”, reckoned Electoral Complaints Commissioner Mohammad Farid Hamadi, who is a member of the Afghanistan Independent Human Rights Commission (AIHRC). “It indicates to the government the people’s hunger for justice”.³⁷

Overall, the determination of candidate eligibility was a confusing and non-transparent process that exposed the lack of judicial reform and transitional justice since the Taliban’s fall. However, achieving those objectives within the framework of a single election that had to be prepared over a mere six months was always improbable. In the end only 54 candidates were barred: 34 because of links to armed groups, twelve for refusal to resign from public office, five for lack of adequate signatures on supporting petitions and three for intimidation and fraud.³⁸ No one was excluded under the provision banning “funds originating from illegal activities”.³⁹

Most exclusions were based on the Electoral Law provision barring “individuals who practically command or are members of unofficial military forces or armed groups”.⁴⁰ However, top factional leaders never appeared on even provisional exclusion lists for reasons of “national security”. Many others qualified by signing letters promising future compliance. Those pledges need to be monitored carefully. The lack of violent reaction from those who were excluded suggested that the electoral authorities could have shown more backbone and used the screening process to greater effect in advancing the disbandment of armed groups.

³¹ According to the election overseers, the Joint Election Management Body (JEMB), there were 26,248 polling stations in 6,260 locations, only seven centres were unable to open: six in Daikundi and one in Uruzgan. JEMB, “Final Report, National Assembly and Provincial Council Elections”, December 2005, pp. 5, 16.

³² “Statement of Preliminary Findings and Conclusions of the European Union Election Observation Mission to Afghanistan”, 19 September 2005, p. 7. A further two candidates were killed after the vote. Mohammad Ashraf Ramazan, representative-elect for Balkh, was assassinated on 27 September 2005 and Esmatullah Mohabat, Laghman, on 4 December 2005. As per the Electoral Law, Article 21(4) – what became known as the assassination clause – the next candidate of the same gender on the list replaced Ramazan. Mohabat’s seat, however, was held open and the clause suspended. The Wolesi Jirga thus opened with 248 members. See Amin Tarzi, “Afghanistan: Lawmakers’ slayings pose hard questions”, Radio Free Europe 15 December 2005.

³³ JEMB, “Final Report”, op. cit., p. 6.

³⁴ This was the number that nominated themselves for the Wolesi Jirga elections before withdrawals and exclusions. A further 3,201 competed for Provincial Council seats. Ibid, p. 11.

³⁵ Article 85(2).

³⁶ While these complaints could not be used to bar candidates, Crisis Group interviews with those who had seen them suggested they could be used to seek convictions. It is to be hoped that the files, currently controlled by the Special Representative of the UN Secretary General, are not simply forgotten. Crisis Group interviews, Kabul, September and October 2005.

³⁷ Crisis Group interview, Kabul, 22 February 2006.

³⁸ JEMB, “Final Report”, op. cit., p. 12.

³⁹ Article 53(o) of the Electoral Law. Narcotics was the most obvious source of such funds.

⁴⁰ Article 15(3) of the Electoral Law. The ECC’s information on armed groups came from the Joint Secretariat of the Disarmament and Reintegration Commission, made up of representatives of local and international security forces. Its closed door meetings were the subject of much lobbying, and the names that emerged to be recommended for exclusion were “in some cases based on political expediency”. Crisis Group interview, senior election official, Kabul, October 2005.

It is particularly disturbing, however, that a number of those who were barred from standing have since been appointed to powerful positions, including Mullah Amir Mohammad Akhundzada, now deputy governor of Helmand.⁴¹

Following the election, each of the new Provincial Councils selected two senators for the Meshrano Jirga – one being a “transitional” member until the not yet created District Councils select 34 permanent members nationwide.⁴² The President appointed a further 34 senators, without public consultation, despite the Electoral Law provision that he “invite social organisations, political parties and the general public to nominate [individuals]”.⁴³ There was resistance to vetting appointees for links to armed groups on the grounds that the provision applied only to elected candidates.⁴⁴ Karzai’s appointees to the Meshrano Jirga include Mohammad Qasim Fahim, his former defence minister and a key member of the late Ahmad Shah Massoud’s Shura-yi Nazar;⁴⁵ Helmand Governor Mullah Sheer Mohammad Akhundzada, whose brother, had been excluded from standing for the Wolesi Jirga for links to armed groups; Abdul Saboor Farid, who had worked closely with Hizb-e Islami’s notorious Gulbuddin Hekmatyar during the civil war, and Mawlawi Arsalan Rahmani, a deputy minister under the Taliban regime.⁴⁶

As the Joint Election Management Body (JEMB) pointed out, the September election had all the difficulties to be expected in a post-conflict environment. Allegations of irregularities surfaced after the poll, with counting proving more controversial and difficult than anticipated. Among

other factors, the JEMB pointed the finger at the 5,000 losing candidates as well as the thousands of often young and ill-trained political agents for misunderstanding the process. However, the European Union Election Observation Mission to Afghanistan (EUEOM), while praising the elections as “an accomplishment”, noted that “irregularities and fraud cast a shadow over the integrity of the elections in a number of provinces”.⁴⁷ While the election was an important landmark, such issues – particularly proxy voting by men for women – need to be honestly addressed and lessons learned and applied next time.

By the time the National Assembly was convened on 19 December 2005, however, protests had faded and the new institution was greeted with some excitement and anticipation. President Karzai, in his address to the opening session, recognised that “people are the owners of the state and the real source of political power”.⁴⁸ Now, public perceptions of the body’s legitimacy will depend largely on its behaviour and actions.

⁴¹ Human Rights Watch say that at least four of the candidates for the posts of provincial police chiefs in a May 2006 reshuffle were barred from standing in the 2005 polls for links with armed groups, including Mustafa Khan currently acting police chief of Logar. “Afghanistan: Reject known abusers as police chiefs, time for Karzai to show he is a genuine reformer”, Human Rights Watch, New York, 4 May 2006.

⁴² With the indefinite delay of district elections, a presidential decree published in October 2005 provided that each Provincial Council should elect two representatives, one permanent and one “transitional”. The decree did not meet the terms laid out under Article 150 of the constitution for amendments.

⁴³ Article 26 of the Electoral Law.

⁴⁴ Article 86 of the constitution, however, seems clear: “Credentials of members of the National Assembly are reviewed by the Independent Election Commission in accordance with law”.

⁴⁵ The Shura-yi Nazar-i Shamali (Supervisory Council of the North) was a regional politico–military group. Its core leaders were Panjshiris associated with the Jamiat-i Islami party of former President Burhanuddin Rabbani. The group dominated the security agencies in the period after the Taliban’s fall.

⁴⁶ “Karzai appoints Mujaddedi, Fahim to Afghan upper house”, *Daily Times*, 11 December 2005.

⁴⁷ “Final Report on the Parliamentary and Provincial Council Elections”, the European Union Election Observation Mission to Afghanistan (EUEOM) 2005, p. 1. The EUEOM fielded 60 long-term observers in 29 provinces. In its press release, 30 September 2005, entitled, “Transparency needed in handling cases of fraud”, it said: “In certain provinces the counting process has revealed worrying cases of fraud, such as ballot stuffing, proxy voting and possible intimidation of voters intended to influence their choice of candidate....The EUEOM stresses the need for the election administration to handle these issues in a transparent and effective way in order to safeguard the integrity of the electoral process”.

⁴⁸ H.E. Hamid Karzai, President of the Islamic Republic of Afghanistan, “Speech at the Opening Session of the Parliament of Afghanistan”, Kabul, 19 December 2005.

IV. THE CHARACTER OF THE NATIONAL ASSEMBLY

A. MEMBERSHIP

“A small glass of water from a big tap,” is how one member describes the National Assembly’s reflection of Afghanistan society at large.⁴⁹ “It is absolutely heterogeneous”, said another. “That is its significance: that it does not belong to one group, one party, one political voice”.⁵⁰ There were – and still are – some calls for an educational requirement. However, in a largely illiterate country this would work against the true representation that is vital if old fissures – often between more urbane Kabul and the conservative countryside – are to be mediated democratically. A losing candidate, Hafiz Mansoor, acknowledged: “This is a good parliament; it is parallel with the people, the same standard of development as the people”.⁵¹

The glaring downside of the new body is the presence of warlords, drug dealers and human rights violators – many of whom continue their abuses with impunity. The deputy head of the Afghanistan Independent Human Rights Body, Ahmad Fahim Hakim, has estimated that more than 80 per cent of members from the provinces and more than 60 per cent from Kabul have links to armed groups.⁵² Their election is a product of decades of violence and lack of trust in central government. Under the constitution, on paper at least, members do not receive immunity and are not above the law.⁵³ Prosecuting a member for drug trafficking would probably have much more effect than ripping up the fields of 1,000 small-scale poppy farmers. Nevertheless, local strongmen are likely to lose their power only when the state is able to provide services and security to the population.

Another reason the figures of past eras continue to dominate the political landscape is the lack of political parties, which are essential to any robust democratic system. Under the Single Non-Transferable Voting System (SNTV), which Karzai pushed through against international

advice, every candidate stood as an individual in multi-member constituencies. This meant there was little incentive to form pluralistic, broad-based parties. Newer voices were quite simply lost in the melee. The legal marginalisation and generally low level of development of parties will hinder organisation within the National Assembly.

In a land of multiple overlapping allegiances, a certain degree of fluidity is to be expected but there are no government and opposition benches to help identify this body’s shape. There have already been major upheavals, redefining who is thought of as “pro-government” and who as “opposition”,⁵⁴ and the most powerful figures from the past are demonstrating once again that they are, above all, survivors. The sections below outline some of the defining features of the National Assembly.

1. Ethnicity

Because the country last had a census in 1979 – and that was incomplete – it is impossible to say with certainty that the Wolesi Jirga’s ethnic breakdown is representative. However, it does appear to conform to population estimates⁵⁵ and may well be the most diverse ever in an Afghan national body. This bodes well for the multi-ethnic, multi-regional country where the historical roots of conflict can be partly attributed to Pashtun domination and marginalisation of Tajiks, Hazaras, Uzbeks and other communities. If the absence of representative, pluralistic institutions transformed ethnic tensions into conflict in the past, the National Assembly now provides a forum where all ethnic communities can articulate their grievances and demands within a constitutional framework, instead of attempting to gain their rights through the gun.⁵⁶ As the country stabilises and political parties solidify, national-level parties will likely become multi-ethnic, and ethnicity will transform into one of many sources of political competition. But attempting to ignore ethnic realities now

⁴⁹ Crisis Group interview, Wolesi Jirga member for Jawzjan, Faizullah Zaki, Kabul, 28 February 2006.

⁵⁰ Crisis Group interview, Wolesi Jirga member for Kabul, Kabir Ranjbar, Kabul, 26 January 2006.

⁵¹ Crisis Group interview, chief editor of Jamiat publication *Payam-e Mujahid Weekly*, Kabul, 26 February 2006.

⁵² “Rights body warns of warlords’ success in election”, IRIN-UN, 18 October 2005.

⁵³ “When a member of the National Assembly is accused of a crime the law enforcement authority informs the house of which the accused is a member about the case and the accused member can be prosecuted”, Article 102.

⁵⁴ Andrew Wilder, “A House Divided? Analyzing the 2005 Afghan Elections”, Afghanistan Research and Evaluation Unit (AREU), December 2005.

⁵⁵ The “CIA Factbook” July 2005 estimate is population of 29.9 million, of which 42 per cent are Pashtun, 27 per cent Tajik, 9 per cent Hazara, 9 per cent Uzbek, 4 per cent Aimak, 3 per cent Turkmen, 2 percent Baluch, and 4 per cent others.

⁵⁶ William Malley, “Interpreting the Taliban” in William Malley (ed.), *Afghanistan and the Taliban: the rebirth of fundamentalism?* (London, 2001), pp. 4-7. Similarly multi-ethnic and multi-regional, India has successfully managed ethnic relations when “it has adopted ‘great policies’ built on power-sharing and devolution”. See Kanti Bajpai, “Diversity, Democracy and Devolution in India”, in Michael Brown and Sumit Ganguly (eds.), *Government Policies and Ethnic Relations in Asia and the Pacific* (Cambridge, Mass., 1997).

might prove far more dangerous, since ethnic bargaining could once again degenerate into conflict.⁵⁷

Pashtuns, who are believed to be the major – but not majority – ethnic group and dominate the southern and eastern regions, took 113 of 249 seats.⁵⁸ Tajiks, the second largest group and widely dispersed across the country, took 60. As anticipated, the SNTV voting system favoured organised minorities. The Hazara-Shia (42) and Uzbek (22) communities won more seats than their estimated populations might suggest. Smaller groups with representation include the Baluch (one), Arab (three), Turkman (four), Pashai (two), Nuristani (one) and Tatar (one).

Though Pashtuns have the largest ethnic bloc, they would be unable to impose their will, even if they all work together. Most of their attempts within the Wolesi Jirga at forging alliances have so far been with Hazara and Uzbek members.

2. Gender

Under the constitution women have a quota of 68 seats in the National Assembly, over one quarter of the seats and an impressively high number compared to many Western countries. An average of two seats in every province were reserved for women.⁵⁹ Nineteen women – including from conservative provinces such as Nangarhar and Uruzgan – did not need a helping hand and got in with enough votes of their own.⁶⁰ Businesswoman Fauzia Gailani came in first in a hard-fought contest in Herat, the second largest city. Several of the successful women, such as Shirin

⁵⁷ For greater detail on the role of ethnicity in Afghan politics, see Crisis Group Asia Report N°62, *Afghanistan: The Problem of Pashtun Alienation*, 5 August 2003. This points out that: "Ethnic and tribal loyalties are not fixed [and] remain subject to political negotiations...ethnicity is one of the primary fault lines around which politicians wage battles for power in Afghanistan, but it is not the only one", p. 3.

⁵⁸ Crisis Group did this breakdown, drawing on a variety of sources. In this count a number of smaller ethnic groups closely linked with larger identities have been counted as part of the larger grouping. This includes Aimaqs as Tajik, Sayed Sunnis as Pashtun, Sayed and Qizilbash Shias as Hazara-Shia. However, ethnic identity is imprecise; even when people positively identify with one group, they may have mixed parentage or, in the case of women, sometimes claim that of their husband.

⁵⁹ Rather than voting for a separate women's list, the appropriate number of female members were simply drawn from the top polling women on the general ballot in each province.

⁶⁰ Nevertheless, there are only 68 women in the National Assembly. The quota merely guaranteed a minimum number. Where a woman defeated men for a seat, she was counted against this number. The number of women winning seats without the assistance of the quota did not exceed this guaranteed minimum in any province.

Mohseni of Daikundi and Habiba Danish of Takhar, are married or otherwise related to prominent commanders.⁶¹ Other women had expensive campaigns with no obvious source of financing of their own. This may suggest backers who appreciated that female seats were easier to win and who will now presumably seek returns for their patronage. One female member said:

The majority of women are not self-sufficient; they are dictated to by male parliamentarians. There are a handful who are independent but they are not being effective.⁶²

More positively it appears, anecdotally, that not only women but also many men voted for female candidates, the most cited reasons being that they were less likely to have "blood on their hands". Such a protest was obvious with the success of Malalai Joya, the second highest vote getter in Farah province, who is known for having denounced former mujahidin at the Constitutional Loya Jirga.

The women in the National Assembly are not the uneducated and illiterate group some feared they might be. Those prepared to aim for high office and live in Kabul, sometimes away from their families, tend to be doctors, teachers and former government and NGO workers. Approximately 50 per cent of the female members of the Wolesi Jirga claim to hold a university qualification compared to 40 per cent of the male members.⁶³ While they do not form a single bloc and have all shades of political opinion – just like their male counterparts – most say they want to advance women's issues.

3. Political affiliation

The electoral system forced all candidates to stand as individuals, virtually excluding political parties. Only 12 per cent of candidates entered any such affiliation on their registration form.⁶⁴ Of the winners, 14.5 per cent (36) were thus "officially" affiliated. This suggests that a tie to a political party did not hurt a candidate's chances, as had been widely suggested by the executive. Furthermore, many other successful candidates were unofficially

⁶¹ Early on it was decided that marriage was too tenuous a connection to an armed group to be considered for disqualification.

⁶² Crisis Group interview, Kabul, 12 April 2006.

⁶³ These figures were drawn from biographical data of all candidates collected by the Foundation for Culture and Civil Society, published August 2005. All surveys were self-completed and thus may over-report qualifications.

⁶⁴ Peter Erben, Chief Electoral Officer, Joint Election Management Body Secretariat, at the JEMBS' International Stakeholders Meeting, Kabul, 8 June 2005.

affiliated.⁶⁵ Leaders, or those long associated with parties, such as Younus Qanooni (Hizb-e Afghanistan-e Nawin), Burhanuddin Rabbani (Jamiat-i Islami) and Khalid Farooqi (Hezb-i Islami Afghanistan) ran without a party name on their registration form, either because their party had not registered in time or they had no incentive to do so.

Any analysis of allegiances is complicated because Afghan culture is characterised by multiple, overlaying ties, and information about those ties is at a premium. Sanjar Sebghatullah, leader of the Republican Party who failed to win a seat, said three of his members were “unofficially” in the Wolesi Jirga, including two from Herat and a third who, he indicated, preferred to remain “secret”.⁶⁶ Hizb-i Islami Afghanistan has claimed up to 40 affiliates in the National Assembly, “not all equally committed to the party”, but has not named them all.⁶⁷

An examination of past allegiances and actions shows that the largest apparent grouping, probably just over half the Wolesi Jirga, consists of those who fought as part of the mujahidin. This is not a homogeneous group, however, as the civil war made clear. But most likely support a broadly conservative agenda⁶⁸ and will resist attempts at re-examining the past.

Some 34 members were associated with former communist regimes or politics. The most prominent include Sayed Mohammad Gulabzoi, member for Khost and a former Khalq general and key figure in the 1978 coup, and Nurul Haq Oloomi, the principal heir to the Parcham faction from the Najibullah era, who was elected in Kandahar. Again, this is a broad group, one just as divided, if not more so, than the mujahidin. Better educated than most members, many have held highly technical or authoritative positions. They tend to seek distance from their pasts and to position

themselves as “democrats” and “moderates”, in some cases emphasising ethnic and tribal allegiances.

Another eleven – nine Pashtuns mainly associated with the Afghan Millat party and two Hazara activists – can be best described as ethno-nationalists, seeking greater rights or prominence for their ethnic group. Two new figures campaigned on single-issue populist platforms – Malalai Joya in Farah on an anti-mujahidin agenda and Bashar Dost, the third largest vote-getter in Kabul, on corruption issues – where has the aid money gone?

This leaves a large group without obvious previous national political colouration. Some 30 of these have worked with NGOs or abroad, sometimes in business, and have espoused democracy, human rights or free markets.⁶⁹ More conservative elements include local powerbrokers and tribal leaders.

4. The Meshrano Jirga

The 102-seat Meshrano Jirga has a generally older and more traditional membership and is likely to be a more cohesive body politically and more consensual. With a third of its members appointed by the president, it is also more broadly pro-government.

Former mujahidin are again the largest group, with leading figures including, as noted above, Fahim; Abdul Saboor Farid, former deputy to Gulbuddin Hekmatyar; and Qurban Ali Urfani, former deputy leader of Hizb-e-Wahdat. The second largest group consists of community leaders and tribal elders who have traditional influence as intermediaries between the government and their communities. A much smaller group includes academics and human rights activists, none of whom are as prominent as those in the Wolesi Jirga.

Ethnically it is fairly mixed: around 40 per cent Pashtun, 25 per cent Tajik, 10 to 15 per cent Hazara, 8 to 10 per cent Uzbek and the rest a mix of smaller minorities, including a representative of the Sikh and Hindu minority appointed by Karzai.

Six of 68 senators elected by the Provincial Councils are female – low but comparable to many Western democracies – and with no quota. The constitution required half the president’s appointees to be female,⁷⁰ meaning that altogether 23 of the senators are women. Karzai also had to appoint two Kuchi and two disabled members.⁷¹

⁶⁵ One long-time international observer estimates that representatives of 34 political parties were elected to the Wolesi Jirga, although 26 of these parties placed five or fewer members in the legislature. Crisis Group interview, Kabul, 27 February 2006.

⁶⁶ Crisis Group interview, Kabul, 22 February 2006.

⁶⁷ Crisis Group interview, Hizb-i Islami Afghanistan leader and Wolesi Jirga member for Paktika, Khalid Farooqi, Kabul, 2 March 2006.

⁶⁸ Citha D. Maass, “Afghanistan without Political Parties: Can the New Parliament Function?”, *Stiftung Wissenschaft und Politik (SWP) Comments*, March 2006, identifies two “wings” in the conservative camp, which she calls “conservative Islamist” and “moderate traditionalist”. The first “successfully appeal to sacrosanct religious values in their campaign for power and support”; in the second some “may very well be open to cautious attempts at liberalisation. They see themselves as the champions of traditional cultural values which are rooted in the innumerable variants of customary law that have evolved in different regions”, p. 4.

⁶⁹ The term “moderate” is mainly used in this paper to denote attitudes on social issues. Members of this camp may well evidence ethnic chauvinism.

⁷⁰ Article 84.

⁷¹ Article 84(3).

B. VOTING FOR CHAIRS

The first order of business in the National Assembly was to elect its leaders. The constitution specifies that the presidents of the two houses are elected for the legislative period, the two vice-presidents, a secretary and an assistant secretary for one year.⁷² The role of these officers is not defined. The provisional Rules of Procedure subsequently adopted by the Wolesi Jirga⁷³ direct its president to act with “full neutrality” in:

- presiding over plenary sittings;
- putting questions or issues to the vote;
- preserving the order and decorum of sessions;
- signing acts and documents on behalf of the Wolesi Jirga; and
- enforcing disciplinary measures.⁷⁴

In a legislature lacking government and opposition benches, the vote was a fiercely contested early test of strength.

1. Meshrano Jirga

In the Meshrano Jirga, Sebghatullah Mujadidi, a Karzai-appointee and long-time ally from a prominent religious family, received 50 of 102 votes in the first round on 20 December 2005.⁷⁵ A Pashtun elder who was the first president during the mujahidin period and heads the National Reconciliation Commission, he defied democratic norms by angrily shaming his younger rival into stepping aside without a run-off.

2. Wolesi Jirga

The contest was between two of the former mujahidin who dominate the body.⁷⁶ Younus Qanooni, a Tajik and

key member of Ahmad Shah Massoud's Shura-yi Nazar, was runner-up in the presidential election and campaigned for the Wolesi Jirga as “leader of the opposition”. He was opposed by Abdul Rabb al-Rasul Sayyaf, a Pashtun and hard-line Islamist scholar and long-time leader of Ittihad-i Islami (now reconstituted as Tanzim-e Dawat-e Islami). The groups both candidates came from – and Sayyaf personally – were implicated in some of the worst atrocities of the civil war,⁷⁷ which was also the period when many of the restrictions on women – later pinned on the Taliban – were put in place. Sayyaf was a leading theorist of global jihad, running training camps in Pakistan that were a “magnet for militant Muslims from every country”.⁷⁸ That he is now able to seek to lead a new Western-backed democracy is one of the ironies of the war on terror.

Qanooni's candidacy was at the expense of Rabbani, head of Jamiat-i Islami, one of the country's oldest Islamist organisations, which Qanooni recently left to form his own Hizb-e Afghanistan-e Nawin. An ethnic Tajik who refused to abide by power-sharing arrangements and formally remained president of Afghanistan for much of the

received sixteen. A member of a prominent Pashtun religious family from the south east, he withdrew from the presidential election a week before the polls in favour of Karzai, although he is now increasingly critical of the administration. Nurul Haq Oloomi, leader of Hizb-e Mutahid-e Milli, the principal heir to the Parcham faction of the People's Democratic Party of Afghanistan (PDPA) got twelve votes. Shukria Barakzai, a female Pashtun who campaigned for Karzai for president, received nine, Qudriya Ibrahim Yazdan Parast, a Tajik woman who has worked closely with Qanooni six, and Safia Sidiqi, a pro-Karzai female Pashtun from Nangarhar five. One member was dead, one absent and one walked out. “Younus Qanooni elected as speaker of the Wolesi Jirga”, press release at www.nationalassembly.af. Note that the provided numbers are still two members short.

⁷² Examining the period when the mujahidin controlled Kabul, an era when several current members of the National Assembly were linked to atrocities, a Human Rights Watch (HRW) report noted: “Abdul Rabb al-Rasul Sayyaf, the overall leader of Ittihad, is directly implicated in the abductions and the indiscriminate and intentional targeting of civilians... as a senior leader of Ittihad, Sayyaf had effective control over all Ittihad commanders throughout the period covered here [April 1992-March 1993]”. Of Qanooni it said: “Ahmad Shah Massoud is implicated in many of the abuses documented in this report... further investigation is needed into the responsibility of Massoud's sub-commanders... [including] Younis Qanooni”. “Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity”, Human Rights Watch, New York, July 2005, pp. 114, 120. An earlier report said Qanooni was implicated in cases of “harassment, threats and arrests of journalists”. “Killing you is a very easy thing to do”, Human Rights Watch, July 2003, vol. 15, no. 5(c), p. 12.

⁷⁸ Kathy Gannon, *I is for Infidel: From Holy War to Holy Terror, 18 Years Inside Afghanistan* (New York, 2005), p. 161.

⁷² Article 87. The English language terminology for positions referred to in this report, however, is that of the Rules of Procedure of the Wolesi Jirga (Provisional), 3 January 2006.

⁷³ Except for the issue of how to confirm ministers and other presidential appointees, the Wolesi Jirga adopted its Rules of Procedure provisionally for three months in January. Although that period has now passed, no changes have been made. The Meshrano Jirga quickly adopted Rules of Procedure, which lay out similar roles for its chairperson.

⁷⁴ “Rules of Procedure of the Wolesi Jirga (Provisional)”, *op. cit.*, Rule 10(b).

⁷⁵ Bakhtar Aminzai received 27 votes and Arif Sarwari 25. Sayed Hamid Gilani, a Sayed-Pashtun, was chosen as first deputy; Dr Burhanullah Shinwari, a Pashtun, second deputy; Aminudin Muzafari, a Tajik, became secretary and Abdul Khaliq Hussani, a Pashai, deputy secretary.

⁷⁶ In the first round, Qanooni received 108 votes, Sayyaf 88. Sayyid Ishaq Gailani, leader of Nazhat-e Hambastagi Milli,

mujahidin period,⁷⁹ Rabbani was long believed to be Karzai's preferred choice. Accounts differ as to whether he chose to step aside after determining that he lacked the necessary support, or whether Karzai withdrew his backing after taking soundings.⁸⁰ Either way, just days before the contest Rabbani backed Qanooni as the Tajik-Jamiat candidate. Part of the deal is believed to be the return of Qanooni's party to Jamiat.

Karzai then turned to Sayyaf.⁸¹ Having long refused to form his own party and thus build stable, reliable alliances, he probably saw few other figures of appropriate stature at that late stage. Ethnicity certainly played a part in some of his advisors' calculations, Sayyaf being Pashtun. Sayyaf's running mate, Hizb-e Wahdat-e Islami Mardumi Afghanistan leader Mohammad Mohaqqueq, argued that a hard-line fundamentalist and scholar as Wolesi Jirga leader could counter charges by some in the Islamic world that Afghanistan did the bidding of "infidel" invaders:

When we support Sayyaf we give this message to the Islamic world, that we have an Islamic scholar as head, and there are no fears for Islam [in Afghanistan]. Also there is a message for the Taliban: we have a Pashtun as the head, we have an Islamic scholar as the head, why do you accept Pakistani orders?⁸²

Indeed, for Mohaqqueq, a Shia-Hazara nationalist, to team up with his long-term Pashtun enemy Sayyaf was a seismic shift in the political landscape.⁸³ During the years of civil war, their factions had been violent rivals.⁸⁴ Moreover,

Mohaqqueq had quit as a minister in Karzai's cabinet and joined an alliance with Qanooni in the presidential election. He has said that one reason for his change of heart dates to the killing of his ally, Ashraf Ramazan, member-elect for Balkh province, in September 2005.⁸⁵ The finger of blame pointed at members of Jamiat-i Islami. Karzai's allies have portrayed this turnabout as a grand gesture of national reconciliation. "They came together for the betterment of the country", said Jamil Karzai, the president's nephew, and a Kabul member.⁸⁶ Above all it should be seen as the survival instinct of factional leaders at work. Mohaqqueq apparently calculated that a Hazara alliance with the Pashtuns would give him access to power.

In the second round, Sayyaf had 117 votes, Qanooni 122.⁸⁷ It was a secret poll but largely presumed to be along ethnic lines, which would have given Sayyaf a head start. Factors accounting for his defeat likely include that a number of Mohaqqueq's followers refused to vote for Sayyaf and the opposition of many women⁸⁸ and younger members of all ethnicities looking for a chance for change.

Many non-mujahidin members voted without any particular enthusiasm for the "shortest beard". "It was a choice between bad and badder", said one member who felt compelled to support Qanooni in the second round to defeat Sayyaf.⁸⁹ Another criticised the failure of moderates to align behind a candidate of their own choosing and said that the recriminations after the vote had set back their cause: "Like animals after a big truck has sounded its horn, they scattered".⁹⁰

Mohammad Arif Noorzai, a Pashtun with close ties to Karzai, was elected first vice-president with 76 votes.⁹¹ Mohaqqueq received just 41 votes in this contest, suggesting that Sayyaf's supporters did not keep their end of the bargain. Indeed, Mohaqqueq was probably the biggest loser

⁷⁹ During the Taliban era, Rabbani remained the recognised leader of the country by most of the international community and retained Afghanistan's UN seat.

⁸⁰ Crisis Group interviews, Kabul, January-February 2006.

⁸¹ Since Sayyaf's loss, Karzai's allies deny that the president backed him but Crisis Group interviews with highly-placed insiders at the presidential palace and the National Assembly indicate that he did.

⁸² Crisis Group interview, Wolesi Jirga member for Kabul, Mohammad Mohaqqueq, Kabul, 29 January 2006.

⁸³ This was an informal but public arrangement, as the leadership of the house is voted on individually, not as a slate.

⁸⁴ The Afghanistan Justice Project provides a detailed account of the Afshar campaign in which western Kabul, an area largely populated by Hazaras, was subjected to "indiscriminate attacks, rapes, abductions and summary executions". It concluded that "Sayyaf acted as the de facto commander of Ittihad forces during the [Afshar] operation and was directly in touch with senior commanders by radio". Of Wahdat it noted that its research on the period in Kabul between 1992 and 1995 "does not indicate the Wahdat senior command and leadership ordered the abuses against civilians ... however, the persistence of the pattern of systematic abuse of civilians, and Wahdat leaders' failure to enforce effective action against its commanders to stop and prevent abuses amounts to a policy of tolerating the

behaviour". "Casting Shadows: War Crimes and Crimes against Humanity: 1978-2001", Afghanistan Justice Project, July 2005, pp. 82, 95, at <http://afghanistanjusticeproject.org/warcrimesandcrimesagainsthumanity19782001.pdf>.

⁸⁵ Crisis Group interview, Mohaqqueq, Kabul, 29 January 2006.

⁸⁶ Crisis Group interview, Kabul, 26 January 2006.

⁸⁷ Of the 248 Wolesi Jirga members, four did not participate in the voting and five abstained. "Younus Qanooni elected as speaker of the Wolesi Jirga", press release at www.nationalassembly.af.

⁸⁸ A number of Pashtun female representatives, however, told Crisis Group they were shocked that women were campaigning for Sayyaf, apparently on ethnic grounds.

⁸⁹ Crisis Group interview, Kabul, 31 January 2006.

⁹⁰ Crisis Group interview, Kabul, 12 April 2006.

⁹¹ Noorzai has been accused of having links to the drug trade, a charge he denies. See Carlotta Gall, "Afghan poppy growing reaches record level, UN says", *The New York Times*, 19 November 2004 and Ron Moreau and Sami Yousafzai, "A harvest of treachery", *Newsweek*, 9 January 2006.

in the process. He received the largest vote in the election to the Wolesi Jirga and entered the body with a sizeable bloc of supporters inside it. His followers have dispersed, and neither he nor any Hazara won a leadership position. Fawzia Kofi, a young Tajik woman from Badakhshan with a leftist background became second vice-president.⁹²

Qanooni's victory somewhat levels ethnic power in the state. President Karzai is a Pashtun. While the Tajik-dominated Shura-yi Nazar still controls key security positions, its leading powerbrokers have been eased out of the cabinet.⁹³ Qanooni is widely expected to run in the next presidential election. He is no supporter of the president but he is ambitious enough to want the legislative institution he now heads to succeed. A Qanooni ally, Panjshir member Registani Saleh Mohammad, said that: "Karzai is a little afraid of us, but it is not true [Qanooni and his allies will be obstructive] because we only aim to improve the government, not to go back".⁹⁴ Everyone understood the stakes, he emphasised, and theirs would be a loyal opposition:

We have to face problems inside parliament, find solutions inside parliament, not be afraid...We have ethnic problems – we have to bring this into parliament and find a solution rather than out on the street or on television.⁹⁵

V. SHAPING THE NATIONAL ASSEMBLY

A. ORGANISING THE HOUSES

Rules of procedure "define what kind of creature this is going to be", an international analyst observed.⁹⁶ International advisers and secretariat staff had worked on draft procedures for many months. The Meshrano Jirga appointed a committee to study them, after which they were approved almost untouched. Proceedings were slower in the Wolesi Jirga, where after a two-week debate, it was agreed to adopt the rules provisionally for three months, starting 3 January 2006, subject to further discussions on how to approve the cabinet.⁹⁷

In a body where both members and staff have little familiarity with parliamentary proceedings, there have been misunderstandings and ignorance of the rules, with voting not run as specified and re-runs of decisions already taken. Members have sometimes milled around in the corridors waiting for sessions that are never called. But altogether, as a member from Nimroz said of the first few months, "it is not as bad as some people thought at the start. It is not *buzkashi*".⁹⁸ The big factional leaders have one vote like everyone else; voting has been peaceful and decision-making, while often tedious, has been largely orderly.⁹⁹ "People who used guns against each other are now using green and red cards to disagree", says the Wolesi Jirga's second vice-president, referring to the coloured cards used for votes.¹⁰⁰

⁹² Sardar Mohammad Rahman Oghli (Uzbek) is secretary and Mohammad Salih Saljoqi (Tajik) assistant secretary.

⁹³ The last of its big powerbrokers, Abdullah Abdullah, was dropped as foreign minister in the March 2006 cabinet reshuffle.

⁹⁴ Crisis Group interview, Wolesi Jirga member for Panjshir, Registani Saleh Mohammad, 1 March 2006.

⁹⁵ Ibid.

⁹⁶ Crisis Group interview, Peter Dimitroff, country director, National Democratic Institute, Kabul, 21 February 2006.

⁹⁷ As noted above, however, there has been no movement to review them even though the provisional period is over.

⁹⁸ Crisis Group interview, Wolesi Jirga member from Nimroz, Khuda Nazar Sarmachar, Kabul, 27 February 2006. Buzkashi is the famously ferocious and chaotic regional game of horseback polo played with a dead goat as the "ball". See G. Whitney Azoy, "Buzkashi, Game and Power in Afghanistan", (July 2002).

⁹⁹ On 7 May 2006 there was the first scuffle in the house, with members throwing water bottles and sexual slurs at Malalai Joya as she spoke against human rights abuses in the midst of the budget debate. See "Female MP's mojahedin criticism sparks anger in parliament", Pajhwok Afghan News, 7 May 2006. A journalist was also caught in the fray. Qanooni's failure to take any disciplinary action shows the hold that the powerbrokers of the mujhadin era still wield over proceedings and is of serious concern for the future. The incident did, however, bring female members closer together in their shock at the language used.

¹⁰⁰ Crisis Group interview, Fawzia Kofi, Wolesi Jirga member from Badakhshan, Kabul, 7 March 2006.

1. Groups

Afghanistan has had experience of how difficult it can be to achieve anything in a legislature without political parties. Of the previous nominal bodies three decades ago – when political parties were not legal – an analyst wrote that “the Wolesi Jirga, in effect, houses 216 distinct parties – one for each member”.¹⁰¹ Proceedings were time-consuming: “Deputies view themselves as sovereign representatives entitled to an equal right to be heard on any subject”.¹⁰² Ultimately the lack of parties was a contributing factor to driving competition outside the house.

This time, while parties were not banned, the electoral system excluded them, thus hindering their consolidation. With no incentive to organise in large groups to appeal to a broad spectrum of voters, the capacity of political parties remains low and their numbers high.¹⁰³ An electoral system in which all candidates stood as individuals further means that even those members of the National Assembly who are official or unofficial party members do not have detailed manifestoes to be held to, and party discipline is all but impossible.

Each house's rules of procedures do provide for the formation of “political groups” although the Wolesi Jirga avoided using the word “political”, renaming them parliamentary groups. These have no direct links to grassroots membership outside the National Assembly. The concept is based on the European practice of allowing many small parties in legislatures to come together to give some order to proceedings. In the Wolesi Jirga they must have at least 21 members,¹⁰⁴ with speaking time and seating during plenary sessions allocated proportionally to group size.¹⁰⁵ Parliamentary groups are also entitled to resources, such as assistants.¹⁰⁶

Theoretically meant to be formed in accordance with “shared opinions and affinities”,¹⁰⁷ nearly all opinions or affinities are subsequently barred by the provision that

“no group may be formed for the purpose of representing local, professional, linguistic or private interests, or for reasons of religious sectarianism or tribalism”.¹⁰⁸ A female member who had been thinking of forming an all-women's parliamentary group feared that this provision and similar constitutional restrictions would not allow it.¹⁰⁹

The emphasis on national interest and unity is understandable, given decades of conflict. But these restrictions lend themselves to abuse and could be used to quash expressions of dissent. The new legislature should recognise that open competition within a democratic setting would help alleviate and mediate disagreements. The present rules are particularly problematical for minorities, as they make it easier to justify imposing the wishes and norms of dominant communities in the name of “unity”. Zaki, a member for Jawzjan who is set to join an Uzbek-dominated northern parliamentary group, argues that regional blocs are an obvious place to start organising:

We are not supposed to open our mouths about regional or ethnic agendas. We know that under the constitution the national interest must come first but the nation is composed of different interests; these are living groups, and our rules of procedure are against this truth. We are against ethnic agendas if they claim superiority but not if they legitimately aid the national interest.¹¹⁰

It is the behaviour of parliamentary groups – for instance, if they advocate violence or racial superiority – that should be challenged rather than their representation of shared “interests”. A more apt precondition for the formation of parliamentary groups should be the submission of charters establishing democratic internal functioning, including provisions barring discrimination against potential members on the grounds of race or ethnicity.

It was agreed that the formation of even such emasculated parliamentary groups would be delayed until after the Afghan New Year (March 21). However in the weeks since then, there has not been any return to the issue. While some nascent parliamentary groups are functioning behind the scenes, there appears to be a general reluctance to

¹⁰¹ Marvin Weinbaum, “Afghanistan: Non-Party Parliamentary Democracy”, *The Journal of Developing Areas*, vol. 7, no. 1. October 1972, p. 59.

¹⁰² *Ibid.*, p. 60.

¹⁰³ Some 81 political parties have officially registered with the ministry of justice. See www.moj.gov.af.

¹⁰⁴ “Rules of Procedure of the Wolesi Jirga (Provisional)”, *op. cit.*, Rule 12.

¹⁰⁵ “The Committee of Presidents shall organise the debate so as to guarantee speaking time to the parliamentary groups and to independent members in proportion to their numbers and their presence in the house”, *ibid.*, Rule 51. The Meshrano Jirga's Rules of Procedure have similar provisions (Articles 48 and 49).

¹⁰⁶ Rule 14, “Rules of Procedure of the Wolesi Jirga (Provisional)”, *op. cit.*

¹⁰⁷ *Ibid.*, Rule 12.

¹⁰⁸ *Ibid.*, Rule 13. The Meshrano Jirga similarly specified that: “No groups should be formed for the purpose of representing personal, local, professional or ethnic interests”. Article 12 “Rules of Procedure of the Meshrano Jirga”, December 2005.

¹⁰⁹ Crisis Group interview, Wolesi Jirga member for Nangarhar, Safia Sidiqi, Kabul, 8 March 2006. Article 35 of the constitution states: “Formation and functioning of a party based on ethnicity, language, religious sect and region is not permissible”.

¹¹⁰ Crisis Group interview, Faizullah Zaki, Wolesi Jirga member from Jawzjan, and former spokesman for Uzbek commander and current Chief of Staff of the Armed Forces General Rashid Dostum, Kabul, 28 February 2006.

register without further discussion in the house. Sayyaf told the Wolesi Jirga that parliamentary groups would create unnecessary divisions, comparing them to “throwing a rock at a group of sparrows”.¹¹¹ His close ally, Mullah Taj Mohammad Mujahid, a member for Kabul, was insistent that:

We need more time to familiarise ourselves with [parliamentary] politics. Now we would make groups for ethnic and materialistic reasons. If we delayed it for another year we would be more experienced and it would be based on professional links.¹¹²

The head of Hizb-e Islami Afghanistan, Khalid Farooqi, agreed: “If we hurry to establish groups they would be based on relationships rather than thoughts”.¹¹³

The old power holders appear to realise that their grip will weaken as other interests organise. Many of the factional leaders, who initially talked of forming large parliamentary groups to showcase their power, were dismayed to discover they had difficulty finding members who would support them formally and exclusively. Crisis Group was several times shown lists of members apparently pledged to one group only to see the same names appear on different lists.

In some ways the extra time may yet prove beneficial. The members are learning from their own frustration, discovering that political groups are not a foreign imposition but a necessity for smooth functioning. There have been growing complaints at the endlessly repetitive debate. Sayed Ghulam Farooq Meranai, member for Nangarhar and member of the Afghan Millat party, said: “248 people now want to speak on each issue. If we had groups it would be ten or twelve people leading the discussions”.¹¹⁴ Moderate members also realise that while they are fairly numerous, their voice is lost without organisation. “I fear that if the moderates fail to organise it [the National Assembly] will be a religious *shura*”, one said.¹¹⁵

Increasingly, the hand of parliamentary groups can be seen in proceedings but amidst clashes of egos – both from power holders who have long claimed to speak for the people and emerging leaders seeking the “moderate” mantle – negotiations are likely to proceed until the last minute of formal registration with the secretariat.¹¹⁶

In contrast, seven political groups were formed within days in the Meshrano Jirga.¹¹⁷ They were organised, however, by the senators with such a careful mixing of regions, ethnicity and ideology as to be all but meaningless. The political statements of each grouping fail to articulate programs or ideology, instead repeating general statements about the importance of religious values, the defence of sovereignty and promotion of reconstruction.¹¹⁸ “Since the day they were formed, I have not met with my group”, one senator said after three months.¹¹⁹

2. Standing committees

The constitution requires each house to have standing committees to “study the topics under discussion”¹²⁰ and with the power to question ministers.¹²¹ The Wolesi Jirga’s eighteen committees have ten to 25 members¹²² and can review draft bills, propose amendments and submit bills, reports and recommendations to the plenary.¹²³ The Meshrano Jirga has sixteen committees of five to ten members each.¹²⁴

members and the membership list”. Rule 13, “Rules of Procedure of the Wolesi Jirga (Provisional)”.

¹¹⁷ The Meshrano Jirga groups are called: Like-Minded, Independence, Peace-Makers, National Covenant, Honesty, Message of Peace, and Protection of People’s Rights. In the Meshrano Jirga they are called political groups and require only ten members. “Rules of Procedure of the Meshrano Jirga”, December 2005, Article 11.

¹¹⁸ Article 12 of the “Rules of Procedure of the Meshrano Jirga” reads: “A political group is formed by transmitting to the President of the House a political statement signed by all its members and submitted to the President of the group”.

¹¹⁹ Crisis Group interview, Kabul, 12 April 2006.

¹²⁰ Article 88.

¹²¹ “Any commission of both houses of the National Assembly can question each of the ministers about specific topics. The person questioned can provide a verbal or written response”, Article 93.

¹²² Rule 18, “Rules of Procedure of the Wolesi Jirga (Provisional)”, op. cit.

¹²³ Ibid, Rule 20. These committees are: Legal Affairs; Finance; Economics and Rural Development; International Affairs; Internal Affairs; Complaints and Petitions; Justice; Nomads, Tribes and Refugee Affairs; Transport, Communications, Urban Development, Housing and Utilities; Women’s Affairs, Civil Society and Human Rights; Disabled, Martyrs and Widows; Environment; Health, Youth and Labour; Counter-Narcotics, Alcohol and Immorality; Religion, Cultural Affairs and Education; Wolesi Jirga Immunities, Salaries and Privileges; and Defence. There is also an Oversight of the Implementation of Laws committee, which may suggest some possible confusion of responsibility with the judiciary.

¹²⁴ Rule 17, Rules of Procedure of the Meshrano Jirga, op. cit. Meshrano Jirga committees are: Transport, Communications and Housing; Budget; Social Welfare; Legislative Affairs; Women and Civil Society; Borders and Tribal Affairs;

¹¹¹ Sayyaf, in the Wolesi Jirga, 6 February 2006.

¹¹² Crisis Group interview, Kabul, 1 March 2006.

¹¹³ Crisis Group interview, Kabul, 2 March 2006.

¹¹⁴ Crisis Group interview, Kabul, 7 March 2006.

¹¹⁵ Crisis Group interview, Kabul, 12 April 2006.

¹¹⁶ “To form a parliamentary group its chairman shall transmit to the President of the House a statement signed by all its

Since the Wolesi Jirga delayed formation of parliamentary groups, membership of its committees was decided through an open vote on the floor.¹²⁵ With few other organising factors, campaigning was largely along ethnic lines, with Tajik and Pashtun “lists” widely circulated. The selection process became a popularity contest. It was widely considered, both inside and outside the body that the most qualified members were not chosen. “Individuals who are professionals did not have the ability to win votes”, said Helaluddeen, member for Baghlan.¹²⁶ Expertise and a wide spectrum of opinion will, therefore, be missing from many committee-level discussions, and committees will likely not be competent to mediate much policy debate.

Lacking the diversity that representation by meaningful parliamentary groups would have allowed, the members of the internal affairs and counter narcotics, alcohol and immorality committees are nearly entirely former mujahidin. All except one Kuchi chose to sit on the Kuchi, tribal affairs and refugee committee, with the result that the nomadic community has no representatives in other areas important to it. Without the support of parliamentary groups and with no quota for women, there is also a gross gender imbalance. The internal affairs, counter narcotics, defence and complaints committees are entirely male, while the women’s affairs, civil society and human rights committee has wholly female membership, and the health and youth affairs committee has seven women and three men.

Old powerbrokers divided the committee chairs to claim a formal role within the Wolesi Jirga. Thus, Sayyaf heads the international relations committee; Oloomi, defence; Mohaqqeq, religious affairs and education; Rabbani, legislative affairs. Taken as a whole, however, the leaders of committees are actually reasonably representative, with eight Pashtuns, five Tajiks, three Hazaras and two Uzbeks; a majority come from mujahidin backgrounds but there are a mix of others including leftists, a Kuchi and a new face or two. While gender is skewed with fifteen men to three women, it is still far better than anywhere in the executive.

Environment; Disabled and Martyrs; Defence; Internal Affairs; Provincial and District Councils; Meshrano Jirga Immunities, Salary and Privileges; Religion, Cultural Affairs and Education; Economy and Rural Development; International Affairs; and Complaints and Petitions.

¹²⁵ “Membership of the Committees shall be proposed by the Parliamentary Groups and by the Administrative Board in the event of independent members and approved in plenary sitting of the house. All Parliamentary Groups must be represented in each committee and their proposals for membership shall take into account the work experience and expertise of its members”. Rule 17, “Rules of Procedure of the Wolesi Jirga (Provisional)”, *op. cit.*

¹²⁶ Crisis Group interview, Kabul, 12 March 2006.

The heads of the standing committees together with the leadership of the house – and the heads of the parliamentary groups when they are formed – make up the Committee of Presidents.¹²⁷ This has a role in setting the agenda and allocating speaking time.¹²⁸ Seeking to extend its reach, however, it has sought to reach agreement on important issues, including the budget, behind closed doors. So far this has not succeeded. Indeed, the vote within the Wolesi Jirga for approving the cabinet individually rather than as a group may have been even more emphatic the second time because members were angry at being made to wait all morning while the Committee of Presidents met to negotiate its own “third way”. “Jihadi leaders got used to ignoring the emotions of others”, said Zaki – who is on the Committee of Presidents but agrees that the issue was not handled sensitively. “They got used to [treating] their followers as sheep”.¹²⁹

Events to date have emphasised the need to form parliamentary groups in which members can help develop policy for their leaders if democracy is not to be turned on its head from the start by an unregulated body of power brokers.

B. EXECUTIVE-LEGISLATIVE RELATIONSHIP

The legal framework lacks both formal and informal linkages between the executive and legislature. Legislators cannot sit in the cabinet,¹³⁰ and a system, which has downplayed the role of political parties, has no large blocs that straddle government and parliament and can shape policy and ensure that bills are passed. By refusing to head a political organisation, Karzai has allowed himself to become isolated, without stable political support. A joint committee would be tasked to break a deadlock between the two houses of the National Assembly¹³¹ but there is little explicit guidance on what to do in case of deadlock between the executive and legislature – as discussed below in the example of the impasse over the vote to confirm ministers.¹³² In fact, little work was done to determine how

¹²⁷ Rule 10, “Rules of Procedure of the Wolesi Jirga (Provisional)”, *op. cit.* Some members argue that the same person is not allowed simultaneously to head a parliamentary group and a committee but there is no such provision in the rules of procedure.

¹²⁸ Rules 39 and 51, *Ibid.*

¹²⁹ Crisis Group interview, Wolesi Jirga member for Jawzjan, Faizullah Zaki, Kabul, 28 February 2006.

¹³⁰ Article 73.

¹³¹ Article 100.

¹³² “The Supreme Court, on the request of the Government or the Courts, shall review the laws, legislative decrees, international treaties and international covenants for their compliance with the Constitution and provide their interpretation in accordance with the law”, Article 121. This would, however, appear to cover laws and legislative decrees only once in force.

the executive and legislature would work and interact. The executive appears to believe the National Assembly is not a separate and equal arm of state, but rather another ministry to be managed. The National Assembly in turn has sought to assert its authority by developing rules and procedures on working with the executive without consulting it.

The disappointing lack of coordination and cooperation can at least partly be attributed to personal rivalries. It would be dangerous indeed for the two institutions to test each other and to view their relationship as a zero sum game, rather than seeing the larger picture of the country's need for stability.

Unrealistic timelines in some of the areas where the executive and legislature must work together most closely may also prove to be increasing sources of discord. The several 30-day deadlines to confirm the entire cabinet, Supreme Court and other appointments as well as passing the budget (the new financial year began on 21 March), while also creating the framework of an entirely new legislative institution, has been treated with some degree of flexibility. But there has also been a lack of thorough scrutiny in some cases due to fear of deadlock and a desire to press ahead. As experience and expertise is gained, more oversight will be demanded and such deadlines as the 30 days within which legislation proposed by the executive becomes law unless it is stopped could provoke an aggressive response. As a first step the National Assembly should seek a Supreme Court judgment that only legislative working days be counted for any deadline.

1. Minister of State for Parliamentary Affairs

Mention in the Wolesi Jirga rules of procedure of a "representative of state for parliamentary affairs" to provide a link between the executive and legislature created early tension.¹³³ The government had not been consulted and responded by appointing a minister of state for parliamentary affairs, Farooq Wardak, without consulting the National Assembly.¹³⁴ The government argued that as a minister of state of a "non-implementing"

¹³³ "Rules of Procedure of the Wolesi Jirga (Provisional)", op. cit. Rule 10 says the representative may be invited to meetings of the Committee of Presidents. Rule 32 says that "government business" including government bills, resolutions, motions, and approval of appointments, is introduced by the representative who also under Rule 33 determines the order of priority of government bills and treaties and development plans.

¹³⁴ Wardak is seen as a staunch Karzai supporter. As cabinet secretary and director general of the Office of Administrative Affairs, he is in the unusual position of being both a senior civil servant and minister. A member compared his roles to "trying to balance three watermelons in one hand". Despite repeated requests for an interview, Wardak's office was unable to schedule one.

agency, neither the post nor the individual needed to be confirmed by the Wolesi Jirga but there is no such distinction in the constitution.

The Wolesi Jirga has refused to recognise it as a ministry,¹³⁵ while it has apparently sought to insist that National Assembly members have contact with ministries only through it and receive approval for all travel. Such a publicly abrasive relationship at the very beginning of the National Assembly's existence does not bode well. The executive and leaders of both houses of the National Assembly should meet urgently to agree on a memorandum of understanding on the form and functions of the link. For instance, regular formal meetings would better serve both branches than the current ad hoc relationship.

Such a link could play a vital role in mustering support for government initiatives in a system without political parties and a governing bloc but it should be seen as helping the government to order its business with the legislature, not rule it. There does not appear to be a need for a minister. A representative heading a small secretariat within the president's office would perhaps be more appropriate. Parliamentary liaisons could also be appointed in each ministry, who should be carefully vetted to ensure their neutrality and professionalism.

2. Confirmation of Cabinet and Supreme Court

The major test between the executive and the Wolesi Jirga so far has been over cabinet confirmation.¹³⁶ According to the constitution, ministerial appointments require Wolesi Jirga confirmation,¹³⁷ and the "number of Ministers and

¹³⁵ Crisis Group interview, second vice-president of the Wolesi Jirga, Fawzia Kofi, Kabul, 7 March 2006. While it was initially referred to as a ministry, the government now speaks of it as the Office of the Minister of State for Parliamentary Affairs.

¹³⁶ In the past, too, it was a major point of friction. In 1969, 204 members spoke through fourteen consecutive sessions to approve the Etamadi government. In 1971 it took 204 speakers and seventeen days to approve the Zahir cabinet. "Sorely missing from these proceedings were party leaders to assign spokesmen or to coordinate speeches in conformity with legislative programs", Weinbaum, op. cit., p. 60.

¹³⁷ The only specified ministerial qualifications under Article 72 of the constitution are citizenship of Afghanistan, a "higher education, work experience and good reputation", being at least 35 years of age and "not convicted of crimes against humanity, criminal act or deprivation of civil rights". A last minute fudge over dual citizenship, a difficult issue at the Constitutional Loya Jirga, required that "should a nominee also hold citizenship of another country, the Wolesi Jirga shall have the right to confirm or reject his or her nomination". Of course all nominations are already subject to confirmation.

their duties” are to be regulated by law.¹³⁸ Aggressively seeking to assert its authority, the Wolesi Jirga spent weeks debating how to proceed, without apparent reference to the government or constitutional experts.

One of the most heated questions was whether confirmation of ministers should be done on an individual or package basis. Government allies pushed strongly for a group vote, claiming it was the best way to ensure minority representation. Mullah Taj Mohammad Mujahid further argued that multiple votes on individuals would leave “interaction between the executive and legislative vulnerable”.¹³⁹ Within the Wolesi Jirga however a member vividly argued the other side, saying that he chose fruit piece by piece rather than buy a box because shopkeepers put the good ones on top and buried the bad ones below.

On 23 January 2006 the Wolesi Jirga voted 82-78 for individual confirmations.¹⁴⁰ However after well-organised efforts led by Sayyaf, Qanooni reopened the debate. The second vote on 27 February was even more emphatic: 132-90, demonstrating members’ anger that their initial decision had not been accepted. The deputy leader of the house said they voted again to avoid division at this early stage.¹⁴¹ Both sides appeared to offer olive branches, with one presidential adviser implying that Karzai had backed away from legal action: “The president could have taken a hard-line but he didn’t want to be seen as overreaching”.¹⁴²

The Wolesi Jirga also decided that the votes on ministers would be secret to protect members from intimidation and guard against bribery. Government allies strongly opposed this as unconstitutional. Citizens do have a right to know what their representatives do and whether their actions match their public pronouncements. While at this stage in the country’s transition some issues may be best handled in confidence to help break the influence of the old powerbrokers, the procedures should be revisited in the future.

On 22 March 2006 the President submitted to the Wolesi Jirga a cabinet of 25 ministries and 26 ministers, including

¹³⁸ Article 71.

¹³⁹ Crisis Group interview, Kabul, 1 March 2006.

¹⁴⁰ There were two counts of the display of hands. One time 77 were said to be in favour of the package procedure, the other time 78. This disparity was part of the reason why those favouring a package procedure disputed the vote. However, such cases are provided for by Rule 62 of the Rules of Procedure: “In case of doubt about the result by a show of hands, the President shall request the House to vote by standing and sitting. If doubt remains, voting shall then be by public ballot”. Part of the problem in running an immediate re-vote was apparently that several members had left for lunch.

¹⁴¹ Crisis Group interview, Fawzia Kofi, second vice president of the Wolesi Jirga, Kabul, 7 March 2006.

¹⁴² Crisis Group interview, Kabul, 2 April 2006.

a “senior minister” without portfolio.¹⁴³ There had been much dissatisfaction in the house at the size of the cabinet, but it was agreed to keep the structure put forward by the president for one year. Another point of controversy was that there was only one female – the minister for women’s affairs. The ministers’ short statements and subsequent questioning by the Wolesi Jirga were shown live on state television for hours at a time.¹⁴⁴ The secret confirmation voting – done at one time – was similarly covered.

All the major ministers – including Tajik-Panjshiri power-broker Abdullah Abdullah’s replacement at the foreign ministry, Dr Rangeen Dadfar Spanta – were confirmed. The five rejected were mostly considered fairly weak ministers or as lacking the support of well-established blocs.¹⁴⁵ The minister of culture was apparently turned down as a conservative reaction to “racy” shows on the new private and cable television outlets. The reasons why the sole woman was rejected probably include a lack of a strong established bloc as well as opposition to the women’s affairs ministry.

Three other ministers, all Pashtuns, received a plurality but not a majority of all votes with abstentions counted.¹⁴⁶ Pashtun members in particular argued vociferously that this should constitute confirmation, and sometimes angry debate continued for days on interpretation of Article 106 of the constitution: “the quorum of the sessions of the house for voting is complete with the presence of the majority of the members, and its decisions are taken with the majority of the members present”.¹⁴⁷ Eventually the matter was referred to Karzai, who passed it to the Supreme Court, which confirmed the appointments.

¹⁴³ Hedayat Amin Arsala was not submitted for Wolesi Jirga confirmation, although this would appear unconstitutional.

¹⁴⁴ It was agreed that a representative of each of the eighteen committees would put questions to each minister. Again this is a role that might be more appropriate for the parliamentary groups.

¹⁴⁵ Rejected were Dr Mir Mohammad Amin Farhang (economy); Dr Suraya Raheem Sabarnag (women’s affairs); Mohammad Haidar Reza (commerce); Dr Sayed Makhdoum Raheem (youth and culture); and Gul Hussein Ahmadi (transport).

¹⁴⁶ 244 members were present to vote. Engineer Mohammad Yosouf Pashtun (urban development), gained 121 votes for his confirmation, Akbar Akbar (refugees), 118 and Ameerzai Sangeen (communications), 120. www.nationalassembly.af, 23 April 2006.

¹⁴⁷ It could be argued that this was a procedural matter and thus not bound by the constitution. The Rules of Procedure of the Wolesi Jirga (Rule 6), used for selecting the President of the House, appear to set a lower bar: “If none of the candidates wins 50 per cent of the votes in the first round, the second round is held between those two candidates who obtained the most votes in the first round and the one who wins the most votes in the second round shall be elected”.

The precedent of the executive being called in to adjudicate a dispute in the legislature is problematic. As the Kabul member and head of the Justice Committee, Alami Balkhi, argued: “The president is not the source to interpret the constitution. There is a difference between implementation and interpretation”.¹⁴⁸ Such a situation emphasises the necessity of establishing ground rules before a vote.

Daoud Sultanzoi, member for Ghazni, described the confirmation votes as the first “political map” of the house.¹⁴⁹ Part of a bloc positioning itself as pro-government and moderate and which backed key ministers along with Sayyaf and Mohaqqueq, he emphasised: “We vote with them but that doesn’t mean we think like them”.¹⁵⁰ This is likely to remain the somewhat unnatural alliance that Karzai can call on for votes of national importance.

Much of the behind the scenes organisation for these votes – including frantic rounds of campaign banquets for weeks – was done by the emerging parliamentary groups despite their lack of formal registration. This showed in the often very similar voting patterns. Ethnic politics also reared its head. Ministers from minority groups received a larger share of cabinet positions than numbers might suggest in an apparent attempt to ensure their communities’ support for the slate. A female member said that “after the vote for individual [confirmation of ministers] ethnic minorities realised that they would lose out and have formed an alliance with the Pashtuns to ensure a representative cabinet”.¹⁵¹

The list of nine Supreme Court appointees was submitted the same day as that of the cabinet but has not yet received equal attention in the house.¹⁵² Ministers are subject to a vote of confidence at any time while Supreme Court judges serve for ten years.¹⁵³ Consequently, their appointments need even closer scrutiny at this stage. Unlike with ministers, there is no constitutional provision for Supreme Court judges to be questioned individually before the

Wolesi Jirga, a point of debate as consideration is given to the conduct of the confirmation process.

The qualifications for service on the Supreme Court set out in the constitution include being at least 40 years old and having a “higher education in law or Islamic jurisprudence” and “expertise and experience in the judicial system of Afghanistan”, as well as “high ethics and good reputation”.¹⁵⁴ The only discussion so far on the floor of the house has centred around the failure of three appointees, including the man designated to lead the court, to provide evidence of suitable educational qualifications.

The lack of reform of the judicial system – crucial for investment and for tackling the mounting land rights issues, human rights abuses and the narcotics trade – has been one of the major failings of both national political will and international donor attention since the fall of the Taliban.¹⁵⁵ The conservative Supreme Court has been seen as a major factor for this lack of momentum. A welcome initiative under the Afghanistan Compact is a high-level appointments panel to vet candidates for senior appointments – including the judiciary.¹⁵⁶ This will hopefully de-politicise the process and allow candidates to be judged on their merits. However, it will come too late for this round of confirmations.

C. NATIONAL ASSEMBLY’S FUNCTIONS

1. Budget

Budget approval and oversight of resources are usually among the most important legislative functions. “Elected governments without budgetary authority or control over security provision”, an international analyst with considerable Afghanistan experience observes, “hardly merit the term democracy”.¹⁵⁷ Nearly all of Afghanistan’s money, however, comes from donors and is not subject to the National Assembly’s decisions.

¹⁴⁸ Crisis Group interview, Kabul, 26 April 2006.

¹⁴⁹ Crisis Group interview, Kabul, 20 April 2006.

¹⁵⁰ Ibid.

¹⁵¹ Crisis Group interview, Kabul, 12 April 2006.

¹⁵² Fazl Hadi Shinwari, former head of a Peshawar madrasa and a close associate of Sayyaf’s, first appointed in 2001, has been put up for reappointment as chief justice. The other eight appointees are new to the Supreme Court and are being touted as “reformers”. They do appear more promising – if confirmed – but how much leverage they would have under a conservative leader who lacks secular law training remains to be seen.

¹⁵³ Article 117 has nine members appointed for ten years, but for the first round of appointments three shall be appointed for four years, three for seven years and three for ten years. Article 117 specifies that members can “in no way be dismissed from their service until the end of their term” except in cases of being accused of a crime, as set out in Article 127.

¹⁵⁴ Article 118

¹⁵⁵ See Crisis Group Asia Report N°45, *Afghanistan: Judicial Reform and Transitional Justice*, 28 January 2003.

¹⁵⁶ Afghanistan Compact, op. cit., Annex I: Benchmarks and Timelines p. 7: “A clear and transparent national appointments mechanism will be established within six months, applied within 12 months and fully implemented within 24 months for all senior level appointments to the central government and the judiciary, as well as for provincial governors, chiefs of police, district administrators and provincial heads of security”

¹⁵⁷ Barnett Rubin, “Constructing Sovereignty for Security”, *Survival*, vol.47, no. 4, Winter 2005, pp. 93-106.

The budget is submitted through the Meshrano Jirga first, the reverse of other legislation.¹⁵⁸ Along with advisory notes, it then goes to the Wolesi Jirga whose decision, regardless of whether the Meshrano Jirga agrees, becomes law once signed by the president. The budget was given to the Meshrano Jirga on 8 March 2006. After review by its budget committee, the upper house made a number of suggestions including increasing the funding of Provincial Councils and putting some development money under their control, and directing more money to agriculture and dams. "We respect the professionals at the ministry of finance but at the same time I believe they have not been out among the farmers and seen their problems", the committee head said.¹⁵⁹

The Wolesi Jirga is still debating the budget, arguing that the government introduced it late and it is not, therefore, bound to the 30-day deadline. On 10 May it decided to write to the ministry of finance to request modifications, including increased civil servant salaries and pensions, larger budgets for the Provincial Councils and National Assembly and revised figures to reflect that there are now 25 rather than 27 ministries.

In no democracy are most members financial experts. But few members in either house— even those on the budget committees – have any real comprehension of what is expected of them. The lack of political parties with a clear ruling majority adds to the difficulty of ensuring oversight without obstruction. This is an area on which the most technical assistance and training for all members is needed, as well as special mentoring for those on the budget committee. Currently members are almost entirely reliant on the very ministry of finance officials they are supposed to oversee.

Another important concern, for both Afghanistan and donors, is that approval is needed on all loans and state development plans. Comprehensive, ongoing interaction will be needed to ensure that this is a smooth process, including international agencies working with relevant committees and the government making information freely available and properly explaining it.

2. Legislation

Substantively, the National Assembly will need to focus on presidential decrees issued during the transitional period¹⁶⁰

¹⁵⁸ Article 98. Article 75 also requires the government to "report to the National Assembly at the end of the fiscal year about the tasks accomplished and about the main plans for the new fiscal year".

¹⁵⁹ Crisis Group interview, Mohammad Akbar Wahdat, Kabul, 12 April 2006.

¹⁶⁰ "The decrees, enforced from the beginning of the interim period, shall be submitted to the first session of the National

as well as the laws essential for smooth functioning of the state. There appears to be a role for the legislative affairs committee here in prioritising law-making as well as proposing possible amendments to the constitution as ambiguities and contradictions become clear. The legislative areas specified in the constitution, including the structure of the administration and the courts, should be a priority. Counter-narcotics legislation is a subject of intense international interest and one on which local buy-in is crucial.¹⁶¹

The Afghanistan Compact, the January 2006 agreement, which set out international commitments to the country under tight benchmarks, is another vital area for co-ordination and strategic planning. Under the Compact, for instance, the UN Convention against Corruption is meant to be ratified by the end of 2006 and national legislation adapted to its requirements by the end of 2007.¹⁶² The next year is also supposed to see an "enabling regulatory environment for the profitable extraction of Afghanistan's mineral and natural resources"¹⁶³ as well as harmonisation and simplification of "all legislation, regulations and procedures related to investment".¹⁶⁴ Many such deadlines – upon which donor help is contingent – loom over the next five years.

It would seem crucial to appoint a legislative coordinator for the Joint Coordination and Monitoring Board of the Afghanistan Compact to liaise with the National Assembly. Members of the relevant National Assembly standing committees should also be given seats on the Consultative Groups, which are joint government, NGO, donor and UN agency mechanisms to facilitate and coordinate development plans.

Under the constitution, the government or members of the National Assembly can initiate legislation.¹⁶⁵ A government proposal is submitted first to the Wolesi Jirga, which must act on it within 30 days, after which the Meshrano Jirga has fifteen days.¹⁶⁶ Such tight deadlines need to be managed carefully and should be re-examined when constitutional amendments are under consideration.

Assembly. These decrees are enforceable until they are annulled by the National Assembly". Article 161.

¹⁶¹ A new counter-narcotics law was brought into force as a presidential decree just days before the National Assembly's inauguration.

¹⁶² Annex I: Benchmarks and Timelines, Afghanistan Compact, *op. cit.*, p. 7.

¹⁶³ *Ibid.*, p. 9.

¹⁶⁴ *Ibid.*, p. 12.

¹⁶⁵ Article 95. This would appear to be a good place to give parliamentary groups more of a role under the Rules of Procedure for introduction of bills.

¹⁶⁶ Article 97.

Such time limits may make it tempting for the executive to overwhelm the National Assembly, trying to slip clauses, or whole bills, through. It could also tempt a president, like previous governments, to pass legislation by decree in recess periods.¹⁶⁷ However, the National Assembly would likely catch on to such tactics quickly and could in turn seek to retaliate by blocking everything and so produce deadlock.

3. Representing constituents

Links between members and their constituents are not very precise. The electoral system, in particular multi-member constituencies, means that numerous members have widely varying mandates and represent large geographical areas. In Kabul, for instance, the top polling victorious candidate, Mohaqqueq, received 52,686, the lowest, Najiba Sharif, just 1,547. No member has ties to any unit smaller than a province, and weak political party development means that they may not have colleagues with whom to divide the area they represent.

While members do get Thursdays off to deal with such matters,¹⁶⁸ the inadequate transportation infrastructure means many are unlikely to visit their constituencies regularly while the legislature is in session. It is to be hoped they will spend time in their home provinces during the three months of recess. Consideration should also be given to using extended breaks over religious holidays.

Senators elected by the Provincial Councils have a direct link to their regions through the local bodies, which appear to be in regular contact with them.¹⁶⁹ A Provincial Council Standing Committee was formed in the Meshrano Jirga, which has pressed for more funding for these neglected bodies.

Some constituents do make it to the capital, and the new institution must forge clear guidelines on what is allowed in helping them. A senator from a distant province explains what is demanded of members:

While in Kabul we have to run a guesthouse to receive people. There are a lot of expectations. They expect us to help them through problems with the

government and personal problems. We have to pay out more than we get. They say "I'm sick", and we have to pay. A lot of people come for job opportunities.¹⁷⁰

The Wolesi Jirga's complaints and petitions committee holds weekly public sessions. This would, however, risk intruding on the roles of both individual members and, in some cases, the judiciary. If it is to be retained, the committee needs clear parameters to prevent it from becoming a patronage body.

Wolesi Jirga debates are instructive, not least for the diplomatic and donor community in Kabul. Opinions are voiced that are not often heard within the executive and are far more representative of street views. A prolonged debate in late January 2006 on security did not mention the Taliban and brought up al-Qaeda only once but dealt with actions of corrupt officials, governors and police that drive people to join anti-government forces. Security barriers in Kabul were another early subject. A daily disturbance for ordinary people stuck in traffic jams or who have roads blocked off by international organisations, they are one of the most obvious symbols of lack of respect for Afghan sovereignty. Apparently seeking to head off the issue, Karzai ordered the barriers down.¹⁷¹

More troubling was the debate over the apostasy trial in March 2006 of Abdul Rahman, accused of converting to Christianity sixteen years ago in a case which exposed the contradictions in the constitution over the status of Islamic law. The case was a gift for religious conservatives, who expressed fury at international pressure on the government to release him in what they argued, was an internal matter in a newly sovereign democracy.¹⁷² Moderates felt unable to speak up. Officials of the Supreme Court and the attorney general's office were summoned but cited separation of powers and refused to appear. The member who fears the National Assembly could become a religious *shura* said it was hard in such a case, for moderates to voice opinions, and their cause would have to progress slowly: "Revolutionary politics are difficult anywhere in a democracy. In Afghanistan you want to go gradually".¹⁷³

Female members have not yet been able to serve their constituents effectively and have struggled to make their

¹⁶⁷ "In cases of recess of the Wolesi Jirga, the government can adopt legislation in an emergency situation on matters other than those related to budget and financial affairs. The legislative decrees become law after they are signed by the President. The legislative decrees should be submitted to the National Assembly in the course of 30 days beginning from the first session of the National Assembly. In case of rejection by the National Assembly, the legislation becomes void". Article 79.

¹⁶⁸ This has, however, rarely happened to date due to the amount of legislative business.

¹⁶⁹ Crisis Group interviews, Kabul, April 2006.

¹⁷⁰ Crisis Group interview, Kabul, 12 April 2006.

¹⁷¹ Little has actually changed. See Carlotta Gall, "New Afghan parliament presses for removal of security barriers", *The New York Times*, 1 January 2006; Wahidullah Amani, "Barriers prove insurmountable for Karzai", Institute for War and Peace Reporting (IWPR), Afghanistan Recovery Report (ARR), no. 203, 18 February 2006.

¹⁷² See Pamela Constable, "Afghans' uneasy peace with democracy", *The Washington Post*, 22 April 2006.

¹⁷³ Crisis Group interview, Kabul, 12 April 2006.

presence felt. "Women are not a strong bloc; in fact they are very, very, very, very weak", one stated.¹⁷⁴ There are several strong women in the Wolesi Jirga but there are also rivalries – three women stood for the deputy speakership, for example – and none has yet set herself apart as a leader or visionary. It is disappointing that even an early debate on whether female members should be required to have a *mahram* (close male relative as escort) when travelling abroad failed to unite them.

International efforts have concentrated on persuading the women members to form a caucus but these have so far largely failed because of personality differences. However, it is vital that women not be ghettoised. Efforts might be better directed on ensuring a female quota on committees and helping women to play prominent roles in the parliamentary groups. A very real fear is that with so much donor attention on women, those who are whisked abroad on tours will not actually be in the National Assembly to vote. If at all possible, such travel should come in breaks between sessions and be coordinated between the many invitees.

D. INTERNAL POLICING

There is some confusion as to whether the Independent Election Commission (IEC) retains jurisdiction over members' qualifications.¹⁷⁵ It should be made clear that this is no longer an appropriate role for it after election results have been certified.

A committee that has attracted little attention handles members' immunities, salaries and privileges. Few seem to realise its potential power – no member originally volunteered for it. If good working practices and sound norms are to be established early on, this is the place to start.¹⁷⁶

Areas for it to work on include a code of conduct for members that tries to stamp out the worst aspects of patronage seen in earlier parliaments. The constitutional requirement that members hold no other jobs should be enforced.¹⁷⁷ Members also need to know the boundary between legitimately helping constituents by standing up for their rights in a labyrinthine bureaucracy and abusing power by demanding favours of officials. Those who do not comply with the Disbandment of Illegal Armed Groups (DIAG) process¹⁷⁸ should be penalised. Likewise, there should be a register of members' interests, including assets, and gifts received in office.¹⁷⁹ If strictly monitored, this would be a good place to start tackling involvement with narcotic trafficking. Lobbying rules are also needed to help combat the widespread talk of bribery before important votes and to make the often lavish hospitality offered to members more transparent.

Finally, there should be no attempts by members to put themselves above the law. The constitution is specific that members of the National Assembly do not enjoy immunity from prosecution and can be arrested.¹⁸⁰

¹⁷⁴ Crisis Group interview, Wolesi Jirga representative from Nangarhar, Safia Sadiqi, Kabul, 8 March 2006.

¹⁷⁵ "Credentials of members of the National Assembly are reviewed by the Independent Election Commission in accordance with law", Article 86 of the constitution. It should perhaps better refer to candidates. Reconsidering this article is also a recommendation of the Organisation for Security and Co-operation in Europe (OSCE) Election Support Team to Afghanistan; "Recommendations on the 2005 Parliamentary Elections", 6 October 2006, p. 11.

¹⁷⁶ Currently it appears more taken up with determining salaries and privileges. The provisional monthly salary and allowances for members have been: \$400 salary, \$100 telephone allowance, \$100 fuel allowance, and \$500 housing allowance. They have also been able to avail of a \$10,000 loan toward the cost of a vehicle and a \$3,000 loan to pay housing costs up front.

¹⁷⁷ Article 152.

¹⁷⁸ The Disarmament, Demobilisation and Reintegration (DDR) program is in its final phase, having disarmed over 60,000 members of the Afghan Military Forces (AMF), although reintegration will require ongoing attention if it is to prove sustainable. The follow-on DIAG program, with its main phase starting on 1 May 2006, is aimed at up to 120,000 members of some 1,800 illegal armed groups. www.diag.gov.af.

¹⁷⁹ Article 154 of the constitution requires the president, vice-presidents, ministers, members of the Supreme Court and the attorney general to register their "wealth" with an independent organ.

¹⁸⁰ "When a member of the National Assembly is accused of a crime, the law enforcement authority informs the house of which the accused is a member about the case, and the accused member can be prosecuted", Article 102.

VI. EXTERNAL ASSISTANCE

The creation of the institutions of state is not the end of democratisation but rather the beginning. International assurances are required while these institutions are built into robust, sustainable units. Donors and others will have to work closely with the National Assembly if the ambitious goals of the Afghanistan Compact are to be met. It is vital that the body is viewed as a partner not an obstacle. While the only explicit mention of the legislature in the Afghanistan Compact is that it will be “provided with technical and administrative support by mid-2006”,¹⁸¹ its acquiescence is needed to put in place the specified legislative and regulatory frameworks.¹⁸² Treaties also need to be confirmed by the legislature.

An obvious National Assembly need is more space.¹⁸³ There are not enough rooms for all the committees, let alone the parliamentary groups. Training members in their roles and responsibilities is also an important requirement, and the Wolesi Jirga leadership has taken a lead in telling donors what it believes is needed. Technical assistance must, in particular, focus at the committee level to ensure that members can exercise constructive, informed oversight of the executive. Short courses are all very well but financing long-term technical advice would likely help more.

At least as much as resources, political support would enhance the standing of the legislature and its bodies. Delegations of visiting parliamentarians should visit their Afghan counterparts, including women and minority members. Once parliamentary groups are formed, their leadership should be included at official functions. The old powerbrokers are reinforced by the international community's deference to them. “[The international community] has to know that some other people want to work for Afghanistan”, a member said after a recent high-level visit to functions at which only former factional leaders were invited.¹⁸⁴

Political backing also means taking the issues legislators discuss seriously, argues Bashar Dost: “The international community wants to have a strong government. At the same time it refuses to cooperate, as seen by the refusal to remove [security] barriers”.¹⁸⁵ If sovereignty and local ownership is to be reinforced, donor organisations and the UN agencies that coordinate policy need to work with relevant committees to explain their plans and goals.¹⁸⁶ This should not be seen as a one-way street. At a time when security restrictions make it difficult for foreigners to travel to the regions, the regions have come to Kabul. Each member is a source of information – albeit, as in any country, with biases – on provinces and constituent needs. Since the members also need protection, Kabul should be urged to provide adequate security to them, especially the women, as they travel to and from their electoral districts and throughout the country.

International assistance to political party development must also remain a focus. This would benefit the legislature, while helping reduce the influence of the old power brokers by empowering other voices. Under the Political Parties Law, foreign money cannot go directly to a party but resources could be made available to all registered parties, such as regional meeting places, reading centres, and access to photocopiers, as well as advice on registration and internal democratic functioning. Technical assistance and political support, which should not translate into the brokering of local alliances, would go a long way toward helping parties come into their own.¹⁸⁷

¹⁸¹ “Afghanistan Compact”, Annex I: Benchmarks and Timelines, *op. cit.*, p.7.

¹⁸² For instance, a review is to be undertaken by the end of 2006 of the number of administrative units and their boundaries. The UN Convention against Corruption has to be ratified by the end of the year and national legislation adapted accordingly by the end of 2007. The legal framework required under the constitution, including civil, criminal and commercial law, is to be in place by the end of 2010. Action on all these benchmarks requires National Assembly assent.

¹⁸³ The National Assembly has temporary accommodations at the seat of an earlier parliament. India has pledged to help build new premises; the foundation stone is laid but little work is yet apparent.

¹⁸⁴ Crisis Group interview, Kabul, 9 March 2006.

¹⁸⁵ Crisis Group interview, Wolesi Jirga representative for Kabul, Bashar Dost, Kabul, 5 January 2006.

¹⁸⁶ Rule 20 allows standing committees to “call on social institutions including national and international non-governmental organisations for questioning and hearing”. “Rules of Procedure of the Wolesi Jirga (Provisional)”, *op. cit.*

¹⁸⁷ See Crisis Group Briefing, *Political Parties in Afghanistan*, *op. cit.*

VII. FUTURE ELECTIONS AND DEMOCRATISATION

The next parliamentary and presidential elections will be important for entrenching democracy and demonstrating to those who lost this time, as well as the population at large, that change could be had through the ballot box. Municipal,¹⁸⁸ district and village council elections,¹⁸⁹ provided for in the constitution have yet to receive any attention. The National Assembly should advance them, including by drawing district boundaries. It is vital that the constitution not simply be cherry picked and that power be decentralised, with elected and accountable members, so as to speed development in areas that have seen little progress so far. The Provincial Council Law, under which those local bodies have been elected but exercise virtually no powers, should be re-examined.

If Presidential and National Assembly polls are to be held at the same time, the parliament's term will have to be shortened or the president's lengthened. The constitution envisages simultaneous National Assembly and presidential elections.¹⁹⁰ Since this did not happen, the polls are now a year apart, while the exact length of the five-year terms also differs. The presidential term expires on the first of Jawza (mid-May to mid-June)¹⁹¹ and the National Assembly's on the first of Saratan (mid-June to mid-July).¹⁹² Having two separate national elections so close together would be an enormous technical and financial burden.¹⁹³

The parliamentary and political groups should cooperate to assist political party consolidation. Sanjar of the small Republican Party recognised that: "The proliferation of parties in the last few years was natural; their reduction

now will also be natural".¹⁹⁴ This would pave the way to parties playing a larger role in the next elections. It is to be hoped the Political Parties Law and Electoral Law will be reviewed and the electoral system changed from SNTV to party list. Decisions need to be worked on now, not only to ensure that democratisation becomes a process rather than a series of stand-alone events as it has to date, but also because electoral law cannot be touched for a year before polls.¹⁹⁵

While elections on the scale of the last two – the Wolesi Jirga and Provincial Council polls alone costing \$172 million¹⁹⁶ – are not going to be seen again, it is essential that international and national attention and resources go into building strong and sustainable electoral institutions.¹⁹⁷ The constant hunt for funds is distracting from the job at hand of planning and preparation for future elections. The Afghan government must shoulder increasing responsibility for retaining good staff and building capacity at the Independent Election Commission, but it is not good enough for the international community to say simply that the body is now purely an Afghan one. With annual revenues (excluding donor and development funds) of only around \$520 million,¹⁹⁸ the government needs help in resourcing it. There should also be commitment on the Afghan side to re-do the electoral calendar. As the vice chair of the Independent Election Commission, General Ayob Asil, said:

They [the donors] spent almost \$300 million for two elections; now for the sake of \$2 million to \$3 million they will destroy the commission.¹⁹⁹

Funding – on a sliding scale – and international backing is needed now for at least two more election periods to ensure that democratic elections are embedded in a stable cycle.

¹⁸⁸ Article 141.

¹⁸⁹ Article 140. These constitutionally grounded bodies are not mentioned in the Afghanistan Compact. It focuses on the National Solidarity Program (NSP), with its own local councils in what is fast becoming a plethora of competing local bodies: "Rural development will be enhanced comprehensively...through the election of at least a further 14,000 voluntary community development councils". "Afghanistan Compact", op. cit., Annex I: Benchmarks and Timelines, p. 10.

¹⁹⁰ Article 160.

¹⁹¹ Article 61.

¹⁹² Article 83.

¹⁹³ The Post-Election Strategy Group (PESG), made up of government and international and national electoral officials, recommended a two-tier system with presidential and parliamentary elections every five years and provincial and municipal elections similarly every five years, but set apart by two years from the national polls. However, it concluded that such changes would be best done after one more election cycle. See the Post-Election Strategy Group (PESG), "Progress Report", 27 September 2005, p. 4.

¹⁹⁴ Crisis Group interview, Kabul, 22 February 2006.

¹⁹⁵ Article 109.

¹⁹⁶ UN Development Programme (UNDP) figures as of 26 April 2006. A \$15 million hole in funding remains.

¹⁹⁷ "The Afghanistan Independent Electoral Commission will have the high integrity, capacity and resources to undertake elections in an increasingly fiscally sustainable manner by end-2008, with the Government of Afghanistan contributing to the extent possible to the cost of future elections from its own resources. A permanent civil and voter registry with a single national identity document will be established by end-2009". "Afghanistan Compact", op. cit., Annex I, Benchmarks and Timelines, p. 7.

¹⁹⁸ Predicted for the financial year 1385 (which began 21 March 2006) in the budget description provided for the members by the ministry of finance.

¹⁹⁹ Crisis Group interview, Kabul, 26 February 2006.

VIII. CONCLUSION

Thwarting the nay-sayers, the National Assembly is functioning, slowly, as to be expected, but there is a palpable air of excitement and expectation in the new corridors of power. If the legislature and the democratic norms it should embody are to bear fruit, however, great care and attention will need to be taken by members, other branches of government, civil society and the international community alike.

Within the Wolesi Jirga and the Meshrano Jirga themselves, a genuine effort is being made. There is a reservoir of goodwill in a public that knows what is at stake. Civil society should reach out to give support to moderate members and embolden them to stand up to the hard-line rhetoric the old powerbrokers wield to silence opponents. The unity of the nation is vital but divisions among its many interests groups are better brought into the open than suppressed. The term "political party" has become virtually a dirty word to many Afghans but they are needed for a robust political transition.

"There are many sides trying to turn this into an ineffective, futile and unproductive body. It is in their interests to have an ineffectual body", warned a Nimroz member.²⁰⁰ The problem is not simply those who actively oppose

democratisation or resent a new branch of government taking away their power. Misunderstanding and neglect by those who want things done quickly and resent a legislature getting in the way can also lead to usurpation of constitutional norms.

Part of the way the National Assembly can assert its authority, however, is by putting its own affairs in order and seeing to it that transparent and well-enforced obligations are placed on members. The rule of law must be emphasised also within the legislature in order to set an example outside it.

Real change in people's daily lives is crucial to keep an impatient electorate on board but the symbolic importance of a stable representative institution will be just as important for peace-building. Nevertheless, expectations should be realistic – this is a transitional assembly.

Keeping matters on course and the legislative period running to full term is importantly about putting the necessary regulations and resources in place for future assemblies to function effectively, about building relationships with other parts of the state and about legislators and electorate learning their roles and responsibilities. As member Ishaq Gailani said, "this is our last job, to clean the road for a new generation".²⁰¹

Kabul/Brussels, 15 May 2006

²⁰⁰ Crisis Group interview, Wolesi Jirga representative from Nimroz, Khuda Nazar Sarmachar, Kabul, 27 February 2006.

²⁰¹ Crisis Group interview, Kabul, 26 March 2006.

APPENDIX A

MAP OF AFGHANISTAN



Map No. 3958 Rev. 5 UNITED NATIONS
 October 2005

Department of Peacekeeping Operations
 Cartographic Section

APPENDIX B

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with nearly 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and Boeing's Senior Vice-President, International Relations and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

Crisis Group's international headquarters are in Brussels, with advocacy offices in Washington DC (where it is based as a legal entity), New York, London and Moscow. The organisation currently operates fifteen field offices (in Amman, Belgrade, Bishkek, Bogotá, Cairo, Dakar, Dushanbe, Islamabad, Jakarta, Kabul, Nairobi, Pretoria, Pristina, Seoul and Tbilisi), with analysts working in over 50 crisis-affected countries and territories across four continents. In Africa, this includes Angola, Burundi, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Liberia, Rwanda, the Sahel region, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe;

in Asia, Afghanistan, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Myanmar/Burma, Nepal, North Korea, Pakistan, Tajikistan, Turkmenistan and Uzbekistan; in Europe, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kosovo, Macedonia, Moldova, Montenegro and Serbia; in the Middle East, the whole region from North Africa to Iran; and in Latin America, Colombia, the Andean region and Haiti.

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May 2006

APPENDIX C

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