

Articles Altered in Constitution

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The dilution of presidential powers and the creation of a national commission to oversee major government decision are declared part of the document.

Without a new vote being cast, major changes to Afghanistan's new constitution were declared approved on Thursday by the Loya Jirga. The changes include modifications of presidential and parliamentary powers and the establishment of a commission to oversee the implementation of the constitution.

Changes made to one article would reduce presidential authority by requiring parliamentary approval of national policy, as well as the president's choices for the head of the national bank, the head of intelligence and the attorney general.

Other changes made in the draft document include scheduling parliamentary elections six months after the presidential vote; making the president responsible to the parliament as well as the nation; and requiring that the national bank obtain permission from the parliament's economic committee before issuing new currency.

In addition, a new article was added to the document that would establish an independent commission to oversee the implementation of the constitution. The article fails to specify how the commission would be composed or the extent of its powers.

It is also unclear whether the commission will rule on the constitutionality of new laws – a role otherwise assigned to the Supreme Court – or have the authority for other practical aspects of the new government.

The new article says that members of the independent commission will be chosen by the president and approved by parliament.

A coordination committee, made up of 38 delegates including the leadership of the 10 working committees and the elected leadership of the Loya Jirga, wrote these changes into five articles. They discussed the changes with the leaders from various ethnic and political groups within the assembly.

Then the articles were read to the entire gathering, and were declared to have been approved. Delegates were not allowed to debate or object to articles. This time, there was no outcry from the floor for a debate, as had happened on the previous day.

The new commission replaces the idea of the Diwan-e-Aali, or High Council, that had been scrapped from the revised draft earlier this week.

The Diwan-e-Aali, which would have overseen implementation of the constitution and supervised work of the administration, was proposed by jihadi delegates. Some observers described that proposal as similar to the Council of Guardians in the Iranian constitution, which checks that all legislation does not contradict the tenets of Islam.

But many delegates said they feared the Diwan-e-Aali would have been dominated by jihadi leaders who would impose their own interpretation on the constitution.

The mujahedin delegates had warned they would boycott a final vote on the document if the Diwan-e-Aali was not approved, and there was a heated exchange among delegates Tuesday when an article creating the council was not included in the revised draft of the constitution.

Sidiq Chakari, deputy leader of Professor Burhanuddin Rabbani's party, Jamiat-e-Islami, told IWPR there should be an independent and authoritative body to supervise the implementation of the constitution fairly for all people. "I believe this council would greatly benefit Afghan people", said Chakari.

But others opposed its establishment. Abdul Hamid Mubarez, deputy minister of information and culture, said that a Diwan-e-Aali was a jihadi council suggested by fundamentalists. "I am strictly opposed to the High Council, because it would become an obstacle to the development and improvement of the country", he said.

Suraya Parluka, a delegate from Kabul, said, "At first we women agreed with this proposal. But later we realized there were jihadis working for their own advantage and wanting to dominate the country. So we changed our stance."

Hashmat Ghani Ahmadzai, a delegate representing the nomadic Kuchis and brother of the finance minister Ashraf Ghani, said that the idea of the High Council had mainly been pushed by Professor Abdul Rasul Sayyaf, one of the most conservative senior jihadi leaders.

"It would have been better if President Hamed Karzai had given Land Cruisers and bodyguards to the jihadi leaders to keep them out of politics," he said.

The creation of the independent commission was apparently the compromise.

The other changes, which weaken the president's powers by making more of his decisions subject to the approval of parliament, had previously been widely discussed. Delegates who had been supportive of a strong presidential system this time did not oppose the changes that were announced. Some delegates told IWPR on Wednesday that they could accept some of the changes in order to resolve the entrenched conflicts.

But other delegates said that the battle was not over yet. Mohammad Hassan Kohzad, a delegate from Faryab province, told IWPR, "All of us who demanded a presidential system wanted more power for the president. The discussion is still continuing on that issue."

But Kohzad said he ultimately decided not to oppose the changes "to avoid more chaos in the Loya Jirga. We didn't create conflict and didn't take any serious steps on this."

He observed that, "The environment was in a situation that if we did something like that, the jirga could have broken down."

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