

Jihadi Groups Win Key Constitutional Points

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They also have made a deal with President Hamid Karzai to decrease the powers of the president as currently described in the proposed document and create a council to interpret and oversee the implementation of the constitution, according to a delegate who represented the jihadi groups in negotiations.

Some of the changes were approved by a majority on the Loya Jirga's coordination committee of 38 members, which includes the chairmen and secretaries of the body's 10 working committees as well as the elected leadership of the Loya Jirga.

The changes in the articles were described to IWPR by Mirwais Yaseni, deputy chairman of the Loya Jirga; Eng. Ahmad Shah Ahmadzai, who is a member of Itihad-e-Islami party and is a Loya Jirga delegate on the coordination committee; and two observers from the commission that drafted the constitution, Shukria Barakzai and Parwin Mohman.

Given the large numbers of jihadi leaders and their political allies in the 502-member Loya Jirga, the changes stand a good chance of being approved by the full assembly when they come up for a vote starting tomorrow afternoon.

The coordination committee will meet on Saturday morning to discuss the elements of the deal with Karzai.

Among the most significant changes is one proposed to Article 3, which currently states that "no law can be contrary to the sacred religion of Islam and the values of this constitution". The coordination committee agreed to eliminate the reference to "the values of this constitution" - which includes concurrence with the United Nations Declaration on Human Rights.

If the phrase were eliminated, some fear, conservative interpretations of Islam could take precedence over human rights.

In addition, the committee voted to change the wording of Article 2, which currently states that "The religion of Afghanistan is the sacred religion of Islam", to read instead, "The religion of Afghanistan's government and people is the sacred religion of Islam".

And, in an acknowledgment to the rights of women advocated by many delegates, the coordination committee also voted to specify in Article 4 that the term "citizen" applies to men and women.

As for the deal with Karzai, which is expected to come up for consideration by the coordinating committee Saturday morning, Siddiq Chakari, a member of Jamiat-e-Islami party who participated in the negotiations, said the tradeoff would mean that the clause in the draft constitution which specifies that the president should be directly elected by the people would remain despite the fact that many in the Constitutional Loya Jirga favoured a parliamentary system, without a president.

But the power of the president to appoint ministers would instead be given to the parliament, according to Chakari, who was part of the negotiations with Karzai.

In addition, a new article would be added to create the Diwan-e-Aali, or High Council, which would supervise the implementation of the constitution, including review of the new laws passed by the parliament. The council members would be appointed by the president immediately following the Loya Jirga's approval of the constitution.

This addition leaves room for a conservative interpretation of the constitution - depending entirely on who is selected for the council. Some delegates opposed the creation of this council for that reason.

"All the [jihadi] delegates wanted the word 'Islam' added to the end of every article," said Barakzai. "They didn't even want a market economy, but wanted 'Islamic economy' to be written", she said.

She said the jihadi leaders also had been advocating for special rights in the constitution, "but the privileges they were demanding have not been fulfilled".

Yaseni said the entire Loya Jirga will have the chance to discuss and approve the changes.

"These 502 people have come to make a good constitution for the people of Afghanistan", he told IWPR. "If they want a change in the constitution, they can make this change", he said.

Another 22 articles, not yet agreed by the coordination committee, are in contention and will be voted on separately by the entire assembly. These include:

- * The list of powers of the president, which some delegates want to see reduced;
- * The powers of the parliament, which would be enlarged;
- * That the parliament should be elected at the same time as the president, presumably in June 2004;
- * The official languages, which the draft says are Dari and Pashtu; ethnic Uzbeks have advocated that their language should also be one of the official languages;
- * The national anthem, which the draft says should be in Pashtu. Some have suggested a new anthem that would be in Pashtu but include the names of various tribes of Afghanistan;
- * The former king's title of "Father of the Nation" and awarding of ceremonial privileges to him. Jihadi groups also want to have some privileges;
- * That anyone appointed as a minister could not have dual citizenship. The draft constitution only specifies this as a qualification for the president;
- * The article which allows Shia jurisprudence to be used "in cases dealing with personal matters" between Shias, who are in the minority in Afghanistan. Some delegates feel that only the Hanafi law of the majority Sunni community should be used.

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