

DRAFT

**Afghanistan Parliamentary  
Assistance Project  
Assessment and Program Options**

Draft

For Presentation to USAID/Afghanistan

By

**Stevens P. Tucker, Ph.D.**

and

**David B. Ogle**

January 2005

DRAFT

The State University of New York/Center for International Development

SUNY/CID

# Table of Contents

	<u>Page</u>
Executive Summary	2
Introduction	6
Part I - Political Analysis	
A. The Surrounding Environment	9
B. Elections From A Parliamentary Perspective	11
Part II – Institutional And Organizational Analysis	
A. Key Institutional Factors	18
B. Key Organizational Issues	25
C. External Assistance And Donor Coordination	31
Part III - Program Recommendations	
A. Implications For The USAID/APAP Program	33
B. Phases Of Project Assistance	35
Phase 1 – Pre-Election	36
Phase 2 – Post-Election-Dec. 2006	46
Phase 3 - Jan. 2007- Project Completion	54
C. Managing The USAID/APAP Program	58
<i>Annex I</i> - Documents Reviewed	60
<i>Annex II</i> - Interviews and Meetings	62
<i>Annex III</i> - USAID Parliamentary Assistance Program Areas Impacted By Suggested APAP Activities	65
<i>Annex IV</i> – APAP Program - Suggested Short-Term Consultants	72
Acknowledgements	75

## **Executive Summary**

This assessment is intended to provide the analytical foundation for the design of USAID's Afghanistan Parliamentary Assistance Project (APAP) to assist the National Assembly of Afghanistan that will be elected in the spring of 2005. The three-year project is being operated by the State University of New York's Center for International Development (SUNY/CID).

### **Assessment Team**

Fieldwork for this assessment was conducted in Kabul between November 17 and December 12, 2004. The assessment team consisted of David Ogle of the State Legislative Leaders Foundation (team leader), Stevens Tucker of ARD, Inc., and Nasrullah Stanikzai of the Kabul University Faculty of Law and Political Science. Additional assistance and insight were provided during the latter phase of the assessment by APAP Project Director John Johnson of SUNY/CID and APAP Legislative Technical Adviser Jawad Risheq.

### **Assessment Methodology**

An analysis of an organized legislative institution generally involves extensive interviewing of members, staff, journalists, and other observers and analysts of the legislative process. Because the Afghanistan parliament had yet to be elected and was only in the very early stage of organizational development when this assessment was conducted in late 2004, a different approach was required. The focus of the assessment team was on: a) achieving an understanding of the constitutional/legal, institutional and political contexts within which the new National Assembly will be created; b) underscoring factors that appear likely to condition expectations and perceptions of the new institution by citizens as well as by political actors; and, c) anticipating, to the extent possible, the demands likely to be placed on the institution and the institutional needs they will likely generate.

The assessment team conducted a wide range of interviews with individuals deemed likely to be in a position to provide insights related to the design, operation and political context of the National Assembly, the characteristics of the current policy making process, and relevant historical and contextual factors. The team also participated in a number of meetings that were organized to discuss donor assistance to the National Assembly, and interacted briefly with a United Nations Development Program (UNDP) team fielded in conjunction with the Inter Parliamentary Union (IPU) to undertake a similar assessment. In the interests of facilitating coordination and avoiding duplication between donor efforts the team has drawn, where appropriate, on the findings and recommendations of the UNDP/IPU assessment report.

### **Political, Institutional And Organizational Analysis**

After three decades of civil conflict and social turmoil, the Afghan people have clearly expressed their desire for a new political order based on participatory institutions, and substantial international attention, resources and expertise have been earmarked to assist the country in its effort to build a stable democratic future based on its 2004 Constitution.

With the December 2004 inauguration of Hamid Karzai as President and his announcement of a new Council of Ministers in early January 2005, the executive branch of Afghanistan's new democratic government has been constituted well in advance of its legislative branch. Until parliamentary elections can be held and the parliament can be seated sometime in mid 2005, legislative power will be exercised by the executive, with the constitutional proviso that decreed legislation will be submitted for review to the National Assembly during its initial session.

As it prepares for its parliamentary elections, Afghanistan remains a society deeply divided along multiple fault lines – ethnic, linguistic, and political. With serious opponents to President Karzai's reformist agenda and regime ranged on both the extreme right and left, the risk of derailment is one that must be taken seriously. The deliberate pace and the subtle combination of inducements and constraints thus far applied by President Karzai has produced early positive results. But over the longer term the government's ability to move forward with systemic reforms will depend heavily on its ability to command majority support in the National Assembly.

Issues related to the upcoming parliamentary elections are of critical importance to the development of democratic governance in Afghanistan in general and, more particularly, to the composition, perceived legitimacy, and effective role of the National Assembly. These issues can be grouped into two categories: those relating to the timing of elections, and those concerning the nature of the system of voting adopted with the electoral law of 2003.

The timing of parliamentary elections is critical in several respects. It will likely determine both the coherence of electoral administration and of the electoral process itself, the time available to candidates and political parties to organize and conduct political campaigns, and the time available to create organizational structures, administrative systems, and staff capacity capable of supporting the operations of the National Assembly.

With regard to the system of voting that will be used in the parliamentary election, the single non-transferable vote (SNTV) system that will be used for the election of members to the *Wolesi Jirga* is critical because it will have a powerful influence on the development of the Afghan political system over the medium term and, to a large extent, influence the composition and character of the first National Assembly.

A number of factors will impact heavily on how the National Assembly will function as an instrument of Afghanistan democracy. How the Assembly itself chooses to address at least some of these, early on and/or over the next few years, will significantly influence how it evolves as a democratic institution. These factors include: the exercise of its constitutional powers; its physical infrastructure; how it is internally organized and managed; the rules and procedures that it adopts; the organization and operation of its committee system; bi-lingualism; the integration of women members as meaningful participants in the legislative process; the possibility of significant illiteracy among the

parliamentary membership; and its ability to achieve autonomy over its internal financial and fiscal operations

### **Program Recommendations**

The many variables that will impact on both the parliamentary election and on the National Assembly after it comes into being will require an adaptive and flexible approach to organizational design and development, both by the National Assembly itself and by the APAP project team and other donors with which it is recommended the APAP team work closely.

The three-year APAP project would logically break out into three phases. Phase 1 would involve pre-election activities, the goal of which should be to provide orientation and infrastructure development and guidance that will construct a solid foundation on which the National Assembly will be able to get off to a quick and productive start when it convenes. Many Phase 1 activities would carry over in modified form to Phase 2, which would begin immediately following the certification of parliamentary election results and continue through 2006. The goal of Phase 2 should be to provide post-election assistance to help the National Assembly become operational as quickly as possible as an effective representative assembly for the Afghan people. Phase 3 would cover the period from January 2007 through the scheduled completion of the project. It is recommended that that Phase 3, which would begin approximately two years into the project, be launched by a project reassessment to review results and outcomes of Phases 1 and 2, determine the benefit of continuing, refocusing, or expanding those activities, and offer suggestions for new initiatives.

Phase 1 offers, arguably, the greatest opportunity for impact on the design and process of the National Assembly because all activities in this phase will be conducted during the pre-election period before any official decisions will have been made on the matters that will be addressed by these activities. It is therefore strongly suggested that the APAP team take advantage of its likely being the only permanent on-site donor assistance team in Kabul at the beginning of 2005 and “take off running” by initiating a series of activities - both through an aggressive effort by the project team to identify key individuals and establish working relationships with them and through utilization of short-term consultants - that will provide hands-on assistance and a body of documentation that will help to shape the organizational structure and process of the National Assembly.

Suggested activities for Phase 1 include: orientation and training of the Secretary General and department directors and their supporting staff; assistance in the development of rules of procedure (standing orders), and information technology and document and record-keeping systems; the preparation of manuals or handbooks on committee organization and operations, constituent relations, parliament/media relations and an introduction to parliamentary ethics; candidate orientation and training, including special orientation for women candidates; citizen education about the parliament and parliamentary process; beginning the establishment of a student internship program; and early assistance on the design of the new parliamentary office building. Some of these activities could be

undertaken by APAP project staff and some would require use of short-term consultants. A number of them could and should be conducted in conjunction with other donors to assure maximum coordination of all donor resources.

A number of Phase 1 activities would continue in Phase 2. These would include staff orientation and training, development of an information technology network, assistance in the design of the new parliament building, and expansion of the student internship program. With the election of the National Assembly, the greatest focus of Phase 2 would be on legislator orientation and training. Activities should include: a member orientation conference as soon as possible following certification of election results; orientation for National Assembly leaders, with particular emphasis on the Speakers (Chairmen) and Vice Speakers; assistance to the parliamentary leaders in preparation of a National Assembly institutional development plan; committee and committee chairperson orientation; and workshops and orientation on various aspects of the legislative/parliamentary process covering such subjects as parliamentary review of the budget, parliamentary oversight, constituent relations, parliament/media relations, parliamentary ethics, and workshops for women legislators.

While many Phase 1 and 2 activities would be continued into Phase 3, the project reassessment that is recommended at the beginning of the phase would indicate how the activities could be expanded, contracted or modified to achieve maximum benefit and value and also what new activities might be undertaken during the project's final year. By the start of Phase 3 in early 2007, the National Assembly will have been in operation for over a year and will have been through a complete parliamentary and budget cycle and it should be possible for both the assessment team and the APAP team to receive helpful input from National Assembly members identify individuals who have emerged as leaders and help them to develop their demonstrated leadership skills.

It is recommended that, at the conclusion of each project phase, the APAP team conduct a one- to two-day staff retreat to evaluate the project and receive input from project participants and possibly other donors who should be invited as participants.

## Introduction

After three decades of civil conflict and social turmoil, Afghanistan is at a crossroads. Following the displacement of the Taliban in 2001, substantial international attention, resources and expertise have been earmarked to assist Afghanistan's efforts to build a stable, democratic and prosperous future, and incremental progress has been made in addressing a variety of pressing political, social and economic problems. The Afghan people have clearly expressed a desire for a new political order based on participatory institutions. More than eleven million Afghans registered to vote in the October 9 presidential election – many registering in the face of threats of violence from elements fundamentally opposed to these changes – and demonstrated their interest in change by voting in large numbers. One critical hurdle in the direction of a new political order has been passed, many more remain. Timely donor intervention to support the establishment and strengthening of an independent parliament capable of providing effective legislative, representative, and oversight of government will likely be crucial to the realization of Afghans' hopes for the future.

The present parliamentary assessment is intended to provide the analytical foundations for the design of a long-term program of assistance to the parliament of Afghanistan. Since available assessment methodologies have generally been developed to analyze the characteristics of existing institutions, it was necessary for the assessment team to depart somewhat from the norm to address the present Afghan political context in which the first democratically elected parliament since the mid-1960s will emerge when parliamentary elections are held sometime in 2005. Generally in analyzing an extant legislative institution, considerable time is devoted to interviewing members, staff, politicians, journalists, and other analysts and observers of the legislative process. In the case of Afghanistan at the end of 2004, a variety of factors implied the need for a different approach. These factors included:

- Afghanistan's parliamentary, provincial and district elections remained in the planning stages and a definitive schedule had not yet been finalized or announced;
- The process of forming and registering political parties to contest eventual parliamentary elections was in its infancy, with the consequence that politics remained largely opaque;
- Formal decisions on the structure, budget, staffing, and physical infrastructure to be attributed to the institution had not yet been made, nor was it entirely clear where in government decision making authority with regard to these issues would be located;
- Parliamentary staff – with the exception of eight individuals identified by the government's Independent Administrative Reform and Civil Service Commission (IARCSC) who will serve as department heads – had yet to be recruited; and,
- Preparations for the presidential inauguration, and uncertainty regarding the (then) impending announcement of a new Council of Ministers meant that a variety of

senior government officials were less accessible than might otherwise have been the case.

Consequently, the assessment team sought to understand the constitutional/legal, institutional and political contexts within which the new National Assembly will be created, to underscore factors which appear likely to condition expectations and perceptions of the new institution by citizens as well as by political actors, and to anticipate (to the extent possible) the demands likely to be placed on the institution and the institutional needs these will likely generate. This was no simple task. Because previous Afghan parliaments had limited roles with regard to the core functions generally attributed to legislative institutions in democratic systems (i.e., law-making, representation and oversight), those charged with establishing parliamentary institutions under the Afghan constitution of 2004 must do so largely *de novo*.

Even as Afghanistan moves forward in the establishment of its new democratic system, legacies of previous institutional experiments must be considered in the process of institutional design. Institutions of collective decision-making (although not perhaps democratic in a strict sense) exist in a variety of Afghan cultural traditions and shape expectations and understandings of governance structures. Similarly, previous experiments with formal legislative bodies both color perceptions of likely patterns of political interaction, and may provide useful lessons (positive and negative) for institutional design. The experience of the 1964-1973 National Assembly is likely to be particularly pertinent, given the extent to which the 2004 Afghan Constitution draws upon that of 1964. But the political context within which the present National Assembly will emerge and function is fundamentally different. To the extent possible in the limited time available to the assessment team, we have attempted to draw out some of these lessons, consider the present political moment and its likely implications for the functioning of parliament, and analyze the formal constitutional powers, functions and responsibilities of the emergent institution in relation to other institutions of governance.

**Based on this analysis we suggest a phased sequence of activities designed to prepare for the establishment of the two chambers of the National Assembly following the 2005 elections, to support the Assembly during the initial formative phase of its existence during which internal structures, rules, procedures (formal and informal) will take form, and to support institutional consolidation over the longer term. We recognize from the outset that a large number of variables will condition the environment actually faced by the institution, and stress as a consequence the need for an adaptive and flexible approach to organizational design and development, both on the part of the National Assembly itself, and on the part of donors.**

Fieldwork for the present assessment was conducted in Kabul between November 17 and December 12, 2004. The assessment team consisted of David Ogle of the State Legislative Leaders Foundation (team leader), Stevens Tucker of ARD, Inc. and Nasrullah Stanikzai of the Kabul University Faculty of Law and Political Science. Additional assistance and insight were provided during the latter phase of the assessment

by APAP Project Director John Johnson of SUNY/CID and APAP Legislative Technical Adviser Jawad Rishiq. The team conducted a wide range of interviews with individuals deemed likely to be in a position to provide insights related to the design, operation and political context of the National Assembly, the characteristics of the current policy making process, as well as relevant historical and contextual factors. These included academics, NGO-based analysts (Afghan and foreign), journalists, politicians, officials of the present and past governments, and the nascent legislative staff. The team also participated in a number of meetings organized to discuss donor assistance to the National Assembly, and interacted briefly with a United Nations Development Program (UNDP) team fielded in conjunction with the Inter-Parliamentary Union (IPU) to undertake a similar assessment. In the interests of facilitating coordination and avoiding duplication between donor efforts to support the emerging Afghan National Assembly, we have drawn where appropriate on the findings and recommendations of the UNDP/IPU assessment report.<sup>1</sup> A list of those interviewed is attached as *Annex II*.

---

<sup>1</sup> “Afghan National Assembly Capacity Building Preparatory Assistance Needs Assessment Report,” Final Draft, 29 November 2004. Report prepared by Dhammika Dasanayake, Rafael de Guzman and Laurence Marzal.

# Part I: Political Analysis

## A. The Surrounding Environment

It is hardly surprising that following three decades of civil conflict, Afghanistan remains a society and polity deeply divided along multiple fault lines – ethnic, linguistic, and political. Upon historical divisions are layered the consequences of the years of war – large numbers of refugees and internally displaced; devastated infrastructure; insular and underdeveloped institutions of state, lacking material, financial and human resources, and the ability to effectively control large areas of the country; economic stagnation and a burgeoning opium economy; a profusion of weapons (light and heavy), and prevalence of local militias owing limited allegiance to and marginally controlled by the state. Although active military conflict has largely been suppressed, the divisions which produced it continue to resonate, and are susceptible to manipulation by individuals and groups seeking power.

The challenges facing the Afghan state in addressing these and other important issues are made more difficult by the long-term decline in the legitimacy of state institutions themselves. Far from being viewed as a neutral or positive arbiter of political and social relations, the post-1973 Afghan state was an exclusionary force to be avoided where possible, one that could exact terrible sanctions. At the same time, survey data strongly suggests a widespread desire for strong central institutions of representative governance, and an end to the chronic insecurity that their absence has implied. The challenge is thus to re-legitimize the state and to root it in society, while simultaneously addressing issues of insecurity, stagnation and political exclusion, and preventing the process from being derailed.

With serious opponents to the West-looking reformist agenda and composition of the current regime ranged on both the extreme right and the left, the risk of derailment is one that must be taken seriously. Outside the formal political realm, armed elements associated with the former Taliban regime, the forces of the Hizb-i-Islami (Gulbuddin Hekmatyar and others), and a variety of other smaller jihadi movements continue to destabilize the South and Southeast. Although the reconstituted Afghanistan National Army (ANA), in conjunction with the military resources of International Security Force for Afghanistan (ISAF) and the United States, has been largely sufficient to contain these forces, it does not yet have the capacity to ensure the physical security essential for reconstruction efforts to proceed unimpeded. To complicate matters, as the military capacity of the fundamentalists is progressively degraded, the incentives for them to join the political fray increase.

In parallel, in the overt political domain, President Karzai faces overt or potential opposition from a number of mujehidin leaders (and to an extent the communities they claim to represent) who have been marginalized or coopted by the present distribution of power. These range from the largely instrumentalist Junbish-i-Milli-Yi Islami of Rashid Dostum, to the more conservative or fundamentalist parties/forces associated with former

President Burhanuddin Rabbani, and a range of other former mujehidin leaders (Younis Quanuni, Mohammed Fahim, Mohammed Mohaqqueq, Abdul Sayyaf, Ismael Khan, etc.) Finally, on the left, President Karzai must contend with political forces who represent the legacy of the PDPA regimes of Babrak Karmal and Mohammed Najibullah which, although they have not been granted legal organizational status by the Ministry of Justice, nonetheless resonate in certain communities. Underlying the multiplicity of political groupings, is an underlying logic of ethnic and regional identity and tension, which results in politics being viewed in largely zero-sum terms. Indeed, as a recent analysis by the International Crisis Group (ICG) indicates, voting in the presidential election was “largely along ethnic and regional lines. President Karzai now faces the difficult task of honoring his campaign pledge to break with warlordism while running a government that enjoys broad support across ethnic lines.”<sup>2</sup>

If political space in Afghanistan is crowded, it is also underdeveloped. Political parties have been slow to emerge, remain organizationally weak and largely the vehicles for prominent individuals, most of whom trace their lineage to previous regimes or mujehidin movements. Legal impediments to the registration of parties early in the transitional period have made the process of party formation and consolidation more difficult, and likely proved most “detrimental to the emergence of moderate political actors.”<sup>3</sup> A variety of movements have sought or are seeking to recast and reorganize themselves in the form of political parties in order to contest the presidential and parliamentary elections, but have generally failed to bridge communal divides. Others with some claim to multi-ethnic support like the United National Party (Hizb-e Muttahid-e Milli , a successor of the PDPA) are finding it difficult to navigate the registration process, as implemented by the Ministry of Justice.<sup>4</sup> All things considered, however, it is possible to generalize to say that greater organizational capacity presently exists at the left and right than at the center. The center itself remains ill defined, with a variety of liberal intellectuals as well as former mujehidin (e.g. Quanuni) staking a claim to it.

The implications of a weak party system for the functioning of the National Assembly are uncertain. President Karzai himself does not lead or belong to a political party, and apparently remains resistant to the idea of forming one.<sup>5</sup> If this stance does not change, several alternative scenarios appear possible: a fragmented National Assembly dominated (as in 1964-73) by relatively small but coherent opposition parties at both extremes of the political spectrum; a fragmented Assembly in which it is simply difficult to form majorities in order to ensure the passage of legislation; a fragmented but largely moderate

---

<sup>2</sup> ICG, “Afghanistan: From Presidential to Parliamentary Elections,” Asia Report N<sup>o</sup>. 88, 23 November 2004, p.14.

<sup>3</sup> The International Crisis Group (ICG) notes in this regard that, “until the passage of the Political Parties Law in September 2003, parties wanting to act publicly had to do so under the name of a registered publication, making it difficult for newly emerging parties to organize or gain public visibility.” Ibid., p.17

<sup>4</sup> For further discussion, see *ibid.*

<sup>5</sup> This reluctance is perhaps a function of the widespread association in Afghanistan of parties with the political chaos of the 1964-73 period, which saw the relatively well organized (and externally supported) extreme left manipulate parliamentary procedures to paralyze government. Yet without viable parties capable of articulating political visions for Afghanistan which transcend narrow communal identities, it is difficult to imagine the emergence of a stable democratic polity.

Assembly amenable to organization as a ruling majority “after the fact.” Each of these scenarios would pose its own difficulties.

The deliberate pace with which the transitional government has begun to address critical problems (and its sequencing of priorities) suggests on the one hand a deep concern for the potential power of spoilers, and on the other a strategy based on sequentially (rather than simultaneously) resolving problems in a manner designed both to consolidate state power and to reinforce its legitimacy. This approach – reflected in a succession of discrete stages from the Emergency *Loya Jirga* through the recent announcement of a carefully balanced post-inauguration cabinet - has afforded the political leadership the ability to take action, evaluate its impact, and make strategic corrections before moving on to the next action. The subtle combination of inducements and constraints (and at times overt force, as in the case of the removal of Ismael Khan as Governor of Herat) applied thus far has produced results, but over the longer term the government’s ability to move forward with systemic reforms will depend heavily on its ability to command a majority in the National Assembly.

With the inauguration of Hamid Karzai, the clear winner of the presidential round, on December 7, 2004, and the announcement of a new Council of Ministers in early January 2005, the executive branch of government has been constituted well in advance of the legislative branch, effectively prolonging the transitional period. Until parliamentary elections can be held and parliament can be seated, legislative power will continue to be held by the executive,<sup>6</sup> with the proviso that decreed legislation will be submitted for review to the National Assembly during its initial session.<sup>7</sup> For those concerned with preservation of the separation of powers as a fundamental principle of democratic governance, this situation is cause for considerable concern.

The next step along the continuum is clearly the holding of parliamentary, provincial and district elections, and the subsequent completion of the core institutions of state – the National Assembly and local governments. How these tasks are addressed will clearly affect not only the composition and character of the institutions but also their perceived legitimacy, and that of the central state.

## **B. Elections From a Parliamentary Perspective**

A variety of issues related to elections are of critical importance to the development of democratic governance in Afghanistan in general and to the composition, perceived

---

<sup>6</sup> Chapter 12, Article 160 of the 2004 Constitution provides, *inter alia*, that, “...Every effort shall be made to hold the first presidential elections and the parliamentary elections at the same time. Until the establishment of the National Assembly, 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.”

<sup>7</sup> According to Article 161 of the 2004 Constitution, “legislative decrees enforced from the beginning of the interim period shall be referred to the first session of the National Assembly. These decrees shall be enforceable unless annulled by the National Assembly.”

legitimacy, and effective role of the National Assembly more particularly.<sup>8</sup> These can be grouped into two categories relating to the timing of elections<sup>9</sup>, and to the nature of the system of voting adopted with the electoral law of 2003.

### **The Timing of Parliamentary, Provincial and District Elections**

The timing of parliamentary elections is critical in several respects because it will likely determine both the coherence of electoral administration and of the electoral process itself, the time available to candidates and political parties to organize and conduct political campaigns, and the time available to create organizational structures, administrative systems, and staff capacity capable of supporting the operations of the National Assembly. The nature of the system of voting is critical because it will have a powerful influence on the development of the Afghan political system over the medium term and to a large extent influence the composition and character of the first National Assembly.

The 2001 Bonn Agreement established an ambitious and probably overly optimistic timeframe for the establishment of a transitional government, the drafting and ratification of a new Afghan constitution, the organization of national elections, and the seating of an elected government by June 2004. Given the complexity of these tasks from both political and logistical perspectives, the transitional government found it necessary to extend the electoral timetable, and to separate the presidential election from elections for members of the National Assembly, as well as for provincial and district councils. The presidential election was postponed from June to September 2004, then again to October 9 when it ultimately took place. In parallel, parliamentary elections were postponed to April or May 2005, and must now be definitively scheduled.

In deciding when precisely to conduct parliamentary elections, the executive faces several competing imperatives. On one hand, parliamentary elections will involve a far greater number of candidates than the presidential round, and can be expected to be exponentially more complex to administer. For elections to take place, credible census figures must be available on the basis of which seats can be allocated between provinces for the *Wolesi Jirga* (and the number of seats for provincial and district councils

---

<sup>8</sup> Although several of the conclusions reached in the present assessment differ in important respects, several excellent analyses have been published in recent months that provide an extremely useful mapping of Afghan electoral issues. These are: Andrew Reynolds and Andrew Wilder, "Free, Fair or flawed: Challenges for Legitimate Elections in Afghanistan," Afghanistan Research and Evaluation Unit (AREU) Briefing Paper, September 2004 (available at [www.areu.org.af](http://www.areu.org.af)); and International Crisis Group (ICG), "Afghanistan: From Presidential to Parliamentary Elections," Asia Report N<sup>o</sup>. 88, 23 November 2004. The former argues strongly and persuasively for a postponement of parliamentary elections and a change of the voting system; the latter provides an analysis of the many reasons that holding elections in April would be difficult, then somewhat paradoxically concludes that they should be held as scheduled.

<sup>9</sup> Some observers have also suggested that the sequence of elections – i.e. whether to hold elections for the national assembly and elections for provincial and district councils simultaneously or sequentially should also be considered. While sequential elections might simplify election administration and logistics, such an approach would be costly and, more importantly, complicate matters politically, since it would mean that the two houses of the National Assembly (the *Wolesi Jirga* and *Meshrano Jirga*) would be established at different times. In our discussions with Afghan political observers, government officials, and politicians the desirability of holding separate elections was not once suggested.

determined), political party registration must advance, candidates and voter registration must take place, candidates must be vetted by the Independent Electoral Commission, ballots must be prepared, printed and distributed, election workers and observers must be trained, and a myriad of other tasks accomplished.

In parallel, adequate physical security for voters, candidates, election workers and observers must be provided at all stages of the process, to allow for the free expression of political preferences. This alone will be a daunting task. Although there has been progress on the demobilization, disarmament and reintegration (DDR) of armed militias, the process is far from completed. The situation is further complicated because programs to respond to the massive expansion of opium production and the drug economy more generally, remain in their infancy. Reductions in the power of local commanders and militias, and in the supply and potential influence of narco-resources are critical if a stable democratic system is to emerge, but additional time will be required for these complex goals to be achieved. If progress can be achieved rapidly in DDR during the interim, a further postponement of the next round of elections may mean that when they are held, elections benefit from better security.

In addition to logistical and practical imperatives there are critical strategic dimensions to the scheduling of elections, since the availability of more or less time to prepare will likely have an impact on the political fortunes of various political (and military) actors. Exactly who will benefit most from a postponement is of course impossible to predict. However, some of those interviewed by the assessment team suggested that an early vote would likely tend to favor those groups already possessed of viable (if not necessarily overt) organizational networks and means of communication with their supporters – fundamentalists on the right, socialists on the left – resulting in a National Assembly with powerful and organized extremes.<sup>10</sup> According to this perspective, nascent liberal parties would benefit from a postponement since it would provide time for DDR and CN programs to degrade the capacity of some opponents, while providing time vital for political organization and voter education. Others, in contrast, suggested that early elections would favor Karzai, who would benefit from the momentum of his presidential victory and draw in a largely Pashtun majority on his coat tails.

Whatever the political impact, the general consensus among those with whom the assessment team spoke was that a postponement was essential, if only for logistical and practical reasons. Few observers have confidence that, even with substantial assistance from UNAMA and the rest of the international community, the JEMB can be prepared by April to manage effectively three simultaneous elections of the administrative complexity implied by the present system of voting. In addition, with April elections the time

---

<sup>10</sup> Such an outcome invokes images of the instability and paralysis that characterized the 13 sessions of parliament between 1964 and the Daoud coup d'état of 1973 which brought Afghanistan's first experiment with participatory democracy to a close. As Dupree notes, during this brief period, "five prime ministers and seven cabinets marched across the political stage." See Louis Dupree, "The New Republic of Afghanistan – The First Twenty-One Months," Spring 1976 (Paper based on lecture delivered to the Afghanistan Council, Asia Society, May 7, 1975.)

available to NGOs to increase awareness and understanding of the process among both voters and candidates will be exceedingly limited.

### **Systems of Voting: Single Non-Transferable Vote (SNTV) versus Proportional Representation (*election experts v. political reality*)**

In order to reestablish the basis for the rule of law, the Bonn Agreement provided for the convening of an Emergency *Loya Jirga*, the establishment of a constitutional drafting commission, and for the subsequent convening of a Constitutional *Loya Jirga* to adopt a new constitution. During the interim, the Bonn agreement reinstated the 1964 Constitution (the last Afghan constitution deemed consistent with democratic governance), to the extent that its provisions were not in contradiction with the Bonn agreement itself. The 2004 Constitution adopted by the Constitutional *Loya Jirga* in January 2004 is similar in many respects to that of 1964, but has significant differences as well. Significant divergences relevant to the composition and structure of the National Assembly relate to provisions dealing with the electoral system.

Both the 1964 and 2004 Constitutions stipulate that members of the *Wolesi Jirga* be selected through free, universal, secret and direct election. The constitutions vary significantly however in the degree to which specific electoral mechanisms are identified. The former is considerably more precise, stipulating in Article 43 that for the purposes of electing members to the *Wolesi Jirga*, “Afghanistan shall be divided into electoral constituencies, the number and limits of which are fixed by the law. Each Constituency shall return one member. The candidate who obtains the largest number of votes cast in his constituency, in accordance with the provisions of the law shall be recognized as the representative of that constituency.”<sup>11</sup> This clearly established a system based on single-member districts, with members elected on the basis of a first-past-the-post electoral system. Such a system requires the delimitation of individual constituencies – in itself a difficult process – but provides for unambiguous linkages between those elected and constituents, and for a direct and visible correlation between the degree of support for a party and the its electoral performance.

The 2004 Constitution is more vague with regard to the nature of the electoral system, and includes only the provision that: “The number of members of the *Wolesi Jirga*, proportionate to the population of each region, shall be not more than two hundred and fifty. Electoral constituency and other related issues shall be determined by election laws. In the election law measures should be adopted for so the election system shall provide general and just representation for all the people of the country and based on the population, from each province on average at least two female delegates shall have membership to the *Wolesi Jirga*.”(Article 83)<sup>12</sup>

---

<sup>11</sup> Constitution of 1964, Title Four, Article 43.

<sup>12</sup> A variety of English translations of the 2004 Constitution are in circulation, none of them official. A slightly different version of this paragraph reads as follows: “The elections law shall adopt measures to attain, through the electorate (sic) system, general and fair representation for all people of the country, and proportionate to the population of every province, on average, at least two females shall be elected members of the House of the People from each province.” (Version available on constitutional commission web site, marked “Translated by Sayed Shafi Rahel for the Secretariat of the Constitutional Commission).

The Electoral Law decreed in 2004 prior to the presidential round has the effect of putting in place a system of voting that elections professionals view as singularly ill adapted to transitional elections – that of the Single Non-Transferable Vote (SNTV). As Reynolds and Wilder note, “under the SNTV system for Afghanistan, voters cast ballots for individuals rather than political parties. Within each region there are a set number of open seats, with a certain number of these reserved for female candidates. This means that if collectively a party wins a majority of the vote, it does not necessarily win a majority of the seats – the number of seats depends on whether individual candidates within the party have performed well.”<sup>13</sup> When combined with the fact that individual parliamentary constituencies within Afghanistan’s 34 provinces will not be delimited, the SNTV system implies that not only will all candidates run “at large” in their province, but that they will all be in competition, regardless of party affiliation.<sup>14</sup> SNTV may favor reasonable representation by ethnic minorities, since the coherence of support is likely to be more important than the aggregate number of votes in determining outcomes, but will almost certainly have a negative impact on party representation.

Party performance under SNTV will likely depend primarily on strategic decisions and party discipline rather than on the degree of voter support – much will depend “on how many candidates each party stands in a province and how their voters distribute their votes across these candidates.”<sup>15</sup> However, with one notable exception, few of the Afghan analysts and politicians with whom the assessment team spoke appeared to have reflected on the implications of SNTV. This individual articulated what is clearly the winning strategy under an SNTV system, underlining the desirability of limiting the number of candidates proposed per province and concentrating on voter mobilization. A party applying such a strategy effectively might well achieve significant representation and, given the relatively small numbers of votes needed in the Wolesi Jirga to initiate legislation (10 members, under Article 97) or to interpellate Ministers (one-tenth of the chamber’s membership, under Article 92), might have a considerable impact on the functioning of that body. For Reynolds and Wilder, the implications for the National Assembly of this system of voting are disturbing. Their analysis is powerful and worth considering at length:

“While the electoral law in Afghanistan allows political parties to run candidates, the SNTV system reduces the chances of a dynamic and accountable party system taking hold. The parties produced are likely to be fragmented and personality driven. They are likely to be beholden to regional power bases and less to national interests. In established party systems SNTV advantages parties that can work out the optimum number of candidates to nominate, and discipline voters to distribute their votes equally across the party’s candidates. In Afghanistan it is hard to imagine any political party having such rigid organizational ability in the foreseeable future. As a result, the SNTV in Afghanistan will most likely lead to

---

<sup>13</sup> Reynolds and Wilder, *op.cit.*, p.12

<sup>14</sup> The intricacies of the SNTV and alternative voting systems are discussed at greater length in Reynolds and Wilder, *Ibid.*

<sup>15</sup> *Ibid.*, p. 13.

the election of a multitude of independents and small political factions with very small shares of the overall provincial (and national) vote. The Wolesi Jirga will be fragmented and government formation and legislative politics exceptionally difficult.”

In fledgling democracies that balance legislative power between a directly elected executive and legislature it is important to facilitate a parliament that is likely to work with the president and not block his or her will at every turn. Gridlock in government at a time of pressing need for effective policy making, is particularly dangerous. President Karzai may have an aversion to political parties, but if parliamentary elections are held under the SNTV system... he may find himself continually trying to stitch together coalitions rather than actually governing.”<sup>16</sup>

Still, however essential to long term democratic consolidation the facilitation of a vibrant party system may be, a move to a system of proportional representation would likely pose difficult political choices in the short-term. Lacking a party of his own, and faced with the prospect of a parliament composed of well organized blocs of his opponents on the right and left if voting were to take place under a system of proportional representation, a fragmented parliament consisting primarily of independents may appear the lesser of evils to the President. Although it may be difficult to form a majority on the basis of partisan allegiance, if voting in the parliamentary elections follows ethnic and regional lines as it did in the presidential round, a working majority necessary for the passage of legislation may emerge along ethnic lines. This would likely have the consequence of nudging the administration somewhat more to the right, and lessening the discretion available to liberal reformers.

In either scenario, relations between the National Assembly and the executive would appear destined to be tense.

With this likelihood in mind, several issues of concern were raised by observers with whom we spoke:

- The potential for a paralysis of the legislative process by groups at either end of the political spectrum;
- The potential for a lack of government stability resulting from the power to introduce motions of no confidence relative to individual ministers with only twenty percent of the membership (the actual dismissal of a minister following on a simple majority of the *Wolesi Jirga*);
- The potential for the use of low thresholds for challenging ministers as a mechanism for extracting illicit rents (corruption);

---

<sup>16</sup> Reynolds and Wilder, *ibid.* p.14.

- The potential for the legitimacy of parliament to be severely compromised by the election and subsequent legitimation of warlords (specific reference was made to Rabbani and Sayyaf); and,
- The potential for great confusion as to the appropriate basis for legal interpretation and therefore legislation given the existence of parallel legal systems and sources of legitimacy (secular/civil and religious).<sup>17</sup>

Since ultimately the power to define the law is vested in parliament rather than the executive, the importance of ensuring that the electoral process is truly reflective of popular will cannot be sufficiently stressed. Much rides on the outcome.

Finally, it is important to keep in mind the newness of legislative process in the Afghan context. The National Assembly that is seated following the forthcoming parliamentary elections, whatever its partisan composition, will depart essentially from ground zero. It will not have the benefit of any sustained national experience with democratic governance, nor will it be supported by institutional structures or staff tested in a legislative environment. It will operate initially under procedures that are untried under Afghan conditions and, at best, reflect sound practice in legislative institutions elsewhere in the developing world. Members themselves will lack access to the support structures available to legislators elsewhere, having likely been elected as independent candidates or as the representatives of newly formed political parties which themselves have only recently emerged as formal organizations, and likely lack the capacity to provide significant support to their members. Many members may also be illiterate. Finally, for the first time in Afghanistan's history, women will be significantly represented (a minimum of 85 of 351 members of the combined houses).

### **Legacies Of The Past**

Candidates and potential candidates for the National Assembly, voters, and Afghan society at large will likely understand the role and power of the parliament with reference to previous Afghan experience. It is thus important at the outset to briefly characterize Afghan parliamentary history, identify sources of past institutional failure, and identify areas in which the institutions defined by the 2004 Constitution are intended to diverge from past experience as well as areas of potential institutional weakness. Lessons from past experience can be useful both to the process of institutional design and to the definition of civic and voter education materials and programs. The development of an informed citizenry constitutes a critical element of the democratization process, and is perhaps the best hedge against its manipulation.

Forms of consultative governance and community discussion are common in a wide range of non-democratic societies, and Afghanistan is no exception. Traditions of "jirga" (or shura) as mechanisms for community discussion or decision making can be identified in virtually all periods of Afghan civilization, taking different forms and nomenclatures (Saba, Simiti, Shura, Jirga) at different times. Deliberative councils

---

<sup>17</sup> Article 3 of the Constitution stipulates that, "no law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan."

appear to have generally existed at three levels – village, district (or city) and nation-addressing issues of ascending importance, and to have bridged both secular and spiritual domains, particularly after the introduction of Islam in the 7<sup>th</sup> century, but also during the preceding Buddhist period.

With the progressive establishment of a degree of central control over what is now modern Afghanistan during the latter half of the eighteenth century, three type of jirga/shura appear to have prevailed. One analyst (Nasrullah Stanikzai) has characterized these as: a) jirga/shura specific to district/province or ethnic group (powerful in Pashtun areas, weaker but present in other areas) and having a role in regulating social, legal, & customary relations but no direct political function; b) national jirga, which functioned to manage inter-ethnic conflict or other large scale social problems; and c) the (grand) loya jirga. These, Stanikzai argues, have tended to be divided into two categories. One highly politicized and symbolic, serving to address issues with high protocol content (e.g., In the nineteenth century, discussion of succession issues, or in the twentieth century during the regime of Babrak Karmal, discussion of support for the USSR in opposition to Pakistan); the other more substantive, serving to address critical issues of national importance or fundamental rule-setting (e.g., deciding on Afghanistan's position during the two world wars; the ratification of the 1964 constitution, the Emergency *Loya Jirga* of 2002, and the Constitutional *Loya Jirga* of 2004).

What is important to note however is that although nominally consultative or participatory institutions have long existed, they have been dominated and their meaning determined by the dominant social hierarchy at any given time.<sup>18</sup> Only with the 1964 Constitution were forms of electoral participation and of representative government recognizable as democratic in modern terms introduced, and even then, theory and practice diverged.

Village shuras have tended to be episodic rather than continuous institutions and were not broadly participatory, their membership consisting of the village religious and secular leadership (mullah, landowners, etc.). They generally considered family, civil and criminal issues, making decisions on the basis of customary and Islamic law, with only members having the right to speak.<sup>19</sup> Similarly, the composition of loya jirgas has largely reflected the interests of existing power structures, with membership determined in whole (up to 1964, and post-1973), or in part (1964-73) by the head of state. With the Emergency and Constitutional *Loya Jirgas* following the demise of the Taliban, an element of democratic selection was again introduced, based on indirect representation.

---

<sup>18</sup> Thus, referring to the institutions created under the 1931 constitution, Dupree noted that they “ appeared to allocate authority to various government offices, but, in reality, power centered in the monarchy and the royal family, creating a virtual oligarchy. Therefore the constitution created the illusion of popular participation without proper enforcement provisions.” (Louis Dupree, “Pre-1964 Afghan Constitutional Development,” American Universities Field Staff Reports, South Asia Series, v.IX, n.2, May 1965).

<sup>19</sup> Post 2001, transitional and interim governments, attempt to bring village shura into reconstruction efforts, attempt to secure shura support for central government -> NSP. Changes criteria for selection of members, but (stanikzai), de facto, membership remains essentially unchanged, reflecting village power structures; (Stanikzai- probab in majority of cases, loc commanders are not active participants in loca shura); mutual support: gov't supports shura in return for allegiance.

With the 2004 Constitution, the composition of the *Loya Jirga* becomes an almost fully elected body, consisting of the members of the national assembly as well as the Presidents of both provincial and district councils. A degree of executive influence remains to the extent that one third of the members of the *Meshrano Jirga* are appointed by the President.

Similarly, methods for the selection of members of the parliament have also evolved, although a balance between popular election of a lower house and royal (or executive) appointment – and later a combination of appointment and election to an upper house. Thus, under the 1931 Constitution adopted under Nadir Shah, the national council (*shura i-milli*) was directly elected, while the smaller upper house (*majlis a'yan*) was directly appointed by the King from among Islamic scholars, intellectuals, etc. This system of constitutional monarchy was however never fully implemented, and parliament served largely as a rubber stamp for executive legislation.<sup>20</sup>

The adoption of the more liberal 1964 Constitution at the start of the reign of King Zahir Shah ushered in a period of relative democracy that lasted until the Daoud coup d'etat of 1973. It is the experience of this brief period that forms the practical basis of Afghan experience with (semi) functioning democratic institutions, and which largely accounts for widespread distrust of political parties. Parliaments for the most part, however, have been weak advisory bodies having little credibility as representative institutions, and having only a limited capacity to control or limit the actions of the executive. Their existence has been most important in providing a façade of democratic legitimacy.

---

<sup>20</sup> Although there was a brief period of liberal reform in the early 1950s during which a genuine opposition appeared to be emerging, this provoked a conservative backlash that resulted in the detention of the core group of liberal parliamentarians by 1952. See L. Dupree, 1965, op. cit, for a further discussion of the 1931 and 1964 constitutions. Elsewhere, Dupree provides an interesting overview of the composition of parliament during the 12<sup>th</sup> and 13<sup>th</sup> legislative sessions, including data on education, ethnic composition, linguistic capacity, and professional background of members. Louis Dupree, "Comparative Profiles of recent Parliaments in Afghanistan – Emphasis on the Twelfth and Thirteenth," American Universities Field Staff Report, South Asia Series, V.XV, n. 4, July 1971.

## Part II: Institutional and Organizational Analysis

### A. Key Institutional Factors

#### Legal Structures of Representative Institutions

The legal framework defining the structure and formal powers functions and responsibilities of the institutions of the Islamic Republic of Afghanistan, including the National Assembly, is provided by the 2004 Constitution of Afghanistan, approved by the Constitutional *Loya Jirga* (CLJ) on January 4, 2004.

The 2004 Constitution, provides for hierarchy of representative institutions at national and sub-national levels. Following the tradition of Afghan parliaments dating from 1930, it provides for the establishment of a bicameral National Assembly composed of a *Wolesi Jirga* (House of the People, or lower house), and a *Meshrano Jirga* (House of Elders, or upper house), with distinct mandates. The Constitution also mandates a third parliamentary body, the *Loya Jirga* (Grand Assembly), the traditional gathering of all representatives in Afghanistan and, as the Constitution states: “the highest manifestation of will of the people of Afghanistan.”

The 249 members of the *Wolesi Jirga* are to be “elected by the people through free, general, secret, and direct elections”(Article 83), while the membership of the *Meshrano Jirga* – whose size is effect determined by the number of provinces in existence at the time of elections, are to be in part indirectly elected by (and from) provincial and district councils, and in part appointed by the President. In appointing members to the *Meshrano Jirga*, the President is charged with ensuring that half are women, and that there is representation of the nomadic population and well as the “impaired and handicapped.”<sup>21</sup>

#### Article 111, 2004 Constitution:

**Loya Jirga shall be convened in the following situations:**

- 1- To take decision on the issues related to independence, national sovereignty, territorial integrity, and supreme interests of the country.**
- 2- To amend the provisions of this Constitution.**
- 3- To prosecute the President in accordance with the provisions of Article 69 of this Constitution.**

Chapter Eight (Articles 136-142) of the Constitution provides a framework for sub-national administration and provides for directly elected councils at both provincial and district level, but does not clearly define their functions.<sup>22</sup> In practice, the only

<sup>21</sup> “From among the members of each provincial council, the respective council elects one person for a period of four years; from among the district councils of each province, the respective councils elect one person for a period of three years; The President, from among experts and experienced personalities – including two representatives of the disabled and impaired and two representatives from the Nomads - appoints the remaining one-third of the members for a period of five years.” (Chapter 5, Art. 84)

<sup>22</sup> It also provides for the establishment (under conditions defined by law) of municipalities, which are also to be governed by elected councils. At the same time however, the constitution stops short of attributing specific powers to these elected councils relative to the parallel hierarchy of deconcentrated state administrative structures, nor does it refer to village councils (or to Community Development Councils

constitutional power attributed to district and provincial councils is to serve as the electors for two thirds of the members of the *Meshrano Jirga*, and to participate in the *Loya Jirga*.<sup>23</sup>

### **Formal Powers, Functions And Responsibilities**

A recent overview of the role of parliaments in government notes that:

“Parliaments<sup>24</sup> vary in size, in how members are elected, how long they hold office, in their ways of relating to political parties and to constituents, in their relations with executive powers, in their responsibilities in lawmaking and budgeting, in how they oversee executive spending and activities, and in a dozen other ways. But scholars tend to agree that there are three functions common to parliaments in democracies; representation, lawmaking, and oversight. Parliaments represent the diversity of individuals and groups in society; as the supreme lawmaking institution in a nation they make the rules by which society is governed; and they are designed to oversee executive spending and performance. Just how, and how successfully, they carry out these functions varies dramatically, and for a number of reasons.’<sup>25</sup>

Among the factors that determine parliamentary performance are the nature of the legislative system and of the electoral system, the nature and extent of the institution’s legal mandate, the presence or absence of what is best characterized as the political (or institutional) will to exercise independent power, the availability of political space within which to do so, and the technical capacity to do so effectively. The table below suggests an heuristic framework based on these variables that may be useful in predicting the degree to which legislative institutions are likely to exercise significant independence and power. An attempt is made below to situate Afghanistan along this continuum:

- With regard to the first variable, the Afghan system appears to be clearly presidential in nature, with an executive head of state and government directly elected by the people, and administering the executive branch via an appointed cabinet of Ministers who are not sitting members of Parliament.

---

created within the context of the National Solidarity Program (NSP), although these generally exist in practice).

<sup>23</sup> Chairpersons of the provincial, and district councils are *de jure* members of the Loya Jirga along with members of the National Assembly (Chapter 6, Art. 110)

<sup>24</sup> This paper uses the words parliament and legislature interchangeably for the generic word, legislature.

<sup>25</sup> John Johnson, “The Role of Parliaments in Government,” Draft paper prepared for the World Bank Institute, 30 September, 2004. Table I is also adapted from this paper.

**Table I: Characteristics influencing legislative independence and power**

← Less independence and power	More independence and power →
(1) Parliamentary political system	Presidential political system
(2) PR electoral system	Single member districts
(3) Limited lawmaking/oversight power	Significant lawmaking/oversight powers
(4) Weak political will to exercise independent power	Strong political will to exercise independent power
(5) Limited political space to expand parliament's power	Broad political space to expand parliament's power
(6) Strong technical capacity	Weak technical capacity

- With regard to the second variable, Afghanistan reflects an ambiguous amalgam due to the adoption of the SNTV voting system discussed at length above. While a model based on single member districts establishes a firm linkage between members of parliament and a defined constituency, and a PR system establishes a firm linkages between members and their respective political parties, the Afghan system will likely do neither. Since members run at large on a provincial level, their connection to defined territorial constituencies is likely to be limited, while the SNTV system will tend to reduce the salience of political party representation in favor of independent (and perhaps ethnic minority) candidates. Since representation is a continuous, rather than one-off, function in healthy legislative systems, serious attention will need to be devoted to developing means of effectively linking members to the populace on an on-going basis if the institution is to accurately reflect citizen demands.

- With regard to the third variable (significant lawmaking and oversight powers), Afghanistan again presents a somewhat ambiguous picture. On one hand, significant powers appear to be attributed to the National Assembly, on the other the Assembly's ability to effectively exercise its powers are undercut in significant respects by constitutional provisions that, *inter alia*,

**Article 90, 2004 Constitution:**

**The National Assembly shall have the following duties:**

1. **Ratification, modification or abrogation of laws or legislative decrees;**
2. **Approval of social, cultural, economic as well as technological development programs;**
3. **Approval of the state budget as well as permission to obtain or grant loans;**
4. **Creation, modification and or abrogation of administrative units;**
5. **Ratification of international treaties and agreements, or abrogation of membership of Afghanistan in them;**
6. **Other authorities enshrined in this Constitution.**

impose restrictive limits on the time available to consider draft legislation. Articles 97 and 98 both stipulate that the *Wolesi Jirga* may not exceed one month (from

receipt to decision) in considering normal legislation. Within that period, it must vote to approve or reject proposed legislation as a whole.<sup>26</sup> This suggests a distinct limitation of the parliament's legislative mandate, in that it would appear to preclude the introductions of amendments to government-proposed legislation. It is also interesting to note that a specific limit does not appear to be imposed on the *Meshrano Jirga*, for consideration of the budget, although the one-month limit applies once the budget is received by the *Wolesi Jirga*.

The fact that the period available to the *Wolesi Jirga* for the consideration of draft legislation is limited to a month will have significant consequences in a number of areas, reducing the potential for detailed legislative analysis, for committee deliberations, and making difficult the organization of meaningful public hearings and citizen input.

The one-month rule will also have a significant and deleterious impact on the National Assembly's ability to give meaningful consideration to the backlog of executive decrees passed during the transitional period from the adoption of the Constitution to the convening of the National Assembly following parliamentary elections. During this period, legislative power is vested in the executive branch of government,<sup>27</sup> with the proviso that legislative decrees adopted during the transitional be submitted for approval to the first session of the National Assembly.<sup>28</sup> These provisions will mean that the new National Assembly will, in its first month of existence, be required to consider the entire body of legislative decrees enacted by the executive over the course of the transitional period, in addition to whatever new draft legislation the executive chooses to submit for consideration. This suggests that in practice it will be impossible for the Assembly to exercise an adequate review function, and that the legislation will therefore be adopted by default.

While the National Assembly has the power to introduce legislation, the power to initiate the process of amending the Constitution is reserved for the executive, and

---

<sup>26</sup> Article 97 contains the following language: "Proposals for drafting laws shall first be submitted to the House of People by the government. The House of People shall consider the draft laws, including budgetary and financial affairs as well as the proposal for obtaining or granting loans, and, after debate, either approve or reject as a whole. The House of People shall not delay more than one month the draft proposal. The House of People, after approving the proposed draft, shall send it to the House of Elders. The House of Elders shall decide on it within fifteen days. In deciding about the proposed laws, the National Assembly shall give priority to treaties and development programs of the state that, according to the proposal of the government, require urgent consideration. If the proposal for drafting a law is made by ten members of either of the two houses, it shall be, after approval of one fifth of the House where it was initiated, included in the working agenda of that House." (emphasis added)

<sup>27</sup> Article 160(3) stipulates that, "pending the establishment of the National Assembly, its powers, enshrined in this Constitution, shall be submitted to the government, and the interim Supreme Court shall be established by Presidential decree."

<sup>28</sup> Article 161 requires, inter alia, that "legislative decrees enforced from the beginning of the interim period shall be referred to the first session of the National Assembly. These decrees shall be enforceable unless annulled by the National Assembly." Article 79(3) also requires that, "legislative decrees shall be presented to the National Assembly within thirty days of convening its first session, and if rejected by the National Assembly, they become void."

deliberations relative to proposed amendments fall ultimately to the *Loya Jirga* although they must be approved prior to submission by a majority of members of the Assembly. (Articles 149 and 150)

In other respects, however, the National Assembly has considerable power since it has the power to establish special commissions to review or investigate government actions (Article 98), the power to confirm or reject nominations of Ministers and a number of other high officials, and the power (with only twenty percent of the membership of the lower house) both to question ministers and to subject them individually to a vote of no confidence. Such a vote can be passed by simple majority of the of all members of the *Wolesi Jirga*.

- With regard to the fourth variable (the presence of political will to exercise independent power) it is perhaps early to comment. What may be said however is that institutional will is likely to be a function of the political coherence of the National Assembly and thus, to the extent that the SNTV voting system tends to promote independents at the expense of parties, the will to act independently will be lessened.
- With regard to the fifth variable (the availability of political space to expand parliament's power), much will depend on the conduct of the forthcoming elections, and on the degree to which the executive remains committed to the active implementation of the principles endorsed by the Constitutional Loya Jirga and enshrined in the 2004 Constitution. There is considerable work to be done to bring the mass of existing laws into conformity with the new constitution, and the availability of effective political space will depend considerably on the speed with which this task is addressed, and on the mechanisms available to political actors to challenge the application of laws and administrative regulations that overtly contravene rights granted under the Constitution. Given the present condition of the Afghan judiciary at all levels, it would appear that such mechanisms are some way off.
- With regard to the final variable (degree of technical capacity), it must be assumed that the technical capacity of the national assembly will be initially weak, and that this – in conjunction with the one month rule - will constitute a powerful force militating against the exercise of significant independence in the short term. That said, much can be done to support the development of effective organizational and support structures, to develop the capacity of members and staff, and to put in place a strategy for long term organizational development that will begin to redress this situation.

## **B. Key Organizational Issues**

In the absence of an elected membership of either house of the National Assembly, responsibility for decisions regarding institutional design – including but not limited to structure, internal rules, infrastructure and budget – lie with the executive branch. The agency charged with oversight of at least the initial stages of the process of institutional

construction has been the Independent Administrative Reform and Civil Service Commission (hereafter referred to as the Civil Service Commission, or CSC), which is responsible for not only the establishment, but for the overall re-design of the Afghan government writ large.

Operating under the direction of a Ministerial Advisory Committee overseen by Vice President Arsala,<sup>29</sup> the CSC developed an initial strategy and timeline for the establishment of the national parliament, conducted an initial mapping of institutional needs, suggested a tentative organizational structure, developed an initial estimate of external resource requirements, and developed recommendations on a series of key policy issues.<sup>30</sup> Following on the initial policy note, the CSC has moved to recruit an initial eight senior staff who will take up positions as department heads within the emerging structure, and begin discussions with the donor community regarding the generation of external resources. Since their recruitment, the eight department heads have begun to take the lead in revising the initially proposed organigram, in defining staffing needs relative to their departments, in reviewing position descriptions on which personnel tenders will be based, and will subsequently be involved in the review of applications. They have also been provided with an introductory exposure to the French National Assembly and a short training program at the French Ecole Nationale d'Administration (French National School For Administration), funded by France through the United Nations Development Program (UNDP).

### **Physical Infrastructure As A Key Constraint**

Pending the construction of a suitable permanent structure capable of adequately accommodating both houses of the National Assembly, an effort to identify temporary quarters for the parliament was undertaken by the Council of Ministers. After considering a number of options, the former Parliament Building adjacent to the Ministry of Commerce facility in Karti Seh on the Darullaman Road was selected as the temporary location of the National Assembly. The Ministry of Housing is presently overseeing the reconstruction of the building, which was heavily damaged during the inter-mujehiddin fighting in West Kabul during the mid-1990s.

This renovation of the former Parliament Building is expected to be completed in time for occupation by the National Assembly following parliamentary elections, but the facility will provide only a bare minimum of the space required for the operation of the two houses. However, since the retrofitting will likely not be completed much in advance of the parliamentary election, the building will not be available to accommodate the one hundred-plus staff that the CSC anticipates will be hired during the interim. Consequently, initial temporary quarters (and the resources to acquire and equip them) must be identified for the emergent National Assembly administrative structures.

---

<sup>29</sup> Arsala has since left his vice presidential post. With the inauguration of a new government in December 2004 he assumed the post of Minister of Commerce, but remains involved in the civil service reform process.

<sup>30</sup> See IARCSC document, "Policy Note for MAC on Parliamentary Tasks," From Ekill Hakimi (CSC), Asad Farhad (CSC), Satendra Prasad (DFID/WB), Ajmal Ahmady (MOF), August 22, 2004.

Physical infrastructure considerations have several implications:

- The National Assembly and its staff will move repeatedly over the next several years. The staff will initially occupy temporary quarters during the lead-up to the seating of the Assembly, and as a consequence will not have the capacity to develop systems and internal structures in situ; little time will be available for a trial run of critical infrastructure prior to the official opening; Members and staff will then be housed for a period of several years in a structure initially conceived for an assembly of roughly one third the size of the present one. Decisions related to organizational design and staffing levels must be made with reference to critical space constraints. When the new parliament building is completed, the Assembly will move (yet again) to the new facility. This facility should provide an infrastructural base to allow the institution to put in place internal structures and staffing adapted to the full exercise of its functions as an independent branch of government.
- During the interim period until a move to new permanent facilities can take place, the parliament must take a minimalist approach to organizational design and staff recruitment, emphasizing efficient use of staff and, to the extent possible, the pooling of services between the *Wolesi Jirga* and *Meshrano Jirga*. An analysis of critical functions should precede decisions on an interim staffing structure and the definition of tasks and these, in turn, should precede the actual hiring of personnel.
- Forward planning for the construction of a new facility must begin as soon as possible since organizational development will remain constrained by space limitations until the Assembly is able to move into permanent facilities. However, given the degree to which it is expected that the new structures will need to evolve over the first several years of their operation, a premium should be placed in designing a new parliament building on the internal adaptability of the structure itself. It should be anticipated that the evolution of organizational and management structures will have implications for the spatial organization of facilities.

### **Internal Organization**

The CSC-led planning process outlined above has been successful in generating momentum and stimulating decision-making on a number of key issues that must be resolved before an elected Assembly can be seated (e.g. identification of physical space, staff, etc.). At the same time, decision making on space and personnel must be linked effectively with an understanding of the demands of the legislative process. The availability of expertise relative to the functioning of legislative institutions is limited in Afghanistan, and previous experiments with parliamentary structures, procedures and rules are unlikely to provide good models for institutional construction. Although possessed of impressive credentials in organizational management acquired in different contexts both within Afghanistan and abroad, none of the eight CSC-selected department heads has direct experience working in a legislative environment. The result has been an emphasis on the definition of administrative support structures, and a relative lack of attention to the mapping of the parliament's technical (political) functions, or the resource and staffing requirements these are likely to generate.

Attention to key aspects of the National Assembly's primary technical (political) functions and their implications for organizational structure and assistance requirements will be critical in the early stages of institutional design. The key technical functions of the National Assembly – representation, law making, and oversight – should drive the definition of administrative structures and staffing requirements, not the reverse. **Since initially neither the CSC nor the department heads that it has appointed have direct experience with legislative functions or structures, the need for substantial advisory assistance in this domain can be anticipated.**

A variety of factors thus suggest that it would be unwise to seek to pursue the ideal in establishing an organizational structure for the National Assembly. **The long-term needs of the institution are likely to far outstrip available resources, capacity and available infrastructure over the short and medium term. As a consequence, a priority should be placed on identifying essential core functions and the resources necessary to ensuring that the institution is capable of effectively achieving them.** As the institution gains experience, internal structures and the size and definition of assembly staffing requirements can be rethought, and adapted to address emerging needs.

**Given the persistence of space constraints, staffing should remain lean, and an emphasis should be placed on recruitment based on carefully defined and clearly essential functions. For the period remaining until the National Assembly moves to its permanent home in the new parliamentary building (optimistically in three to five years), emphasis should be placed on the efficient use of limited resources to accomplish multiple functions. Where possible, the pooling of assets to serve both the *Wolesi Jirga* and *Meshrano Jirga*, should be encouraged.**

#### **Internal Rules And Procedures**

Just as there is a need to provide for flexibility, adaptation and growth in internal structures, there is a need to avoid premature closure in the establishment of rules and procedures. Ultimately, rules and procedures must be adapted to and effectively serve the institutions to which they apply. If the institution is to evolve, so to must the rules that govern internal process. **It is important that a minimalist set of procedures be available to bring order to discussions when the National Assembly is first seated, but the Assembly must thereafter have the ability to adopt an internal order of its own making. Given the need for adaptability, it would be useful to avoid having internal procedures developed prior to the Assembly's creation attain the force of law through their inclusion in a presidential decree. At a minimum it will be important to avoid excessive executive interference in rule making.**

#### **Internal Structures**

While considerable attention has been devoted to the development of an organigram to guide the development of staffing for support functions, comparatively little attention has been devoted to thinking through the structures that will be needed to organize the National Assembly's substantive functions. Decisions on the sectoral domains of committees will need to be made, as well as decisions on the size of committee (and

perhaps sub-committee) membership. **Operating on the assumption that all of the *Wolesi Jirga's* 249 members, with the possible exception of its top leaders, will be members of at least one committee, and that there is an upper limit to the size of individual committees determined by the need to foster effective interaction and deliberation (and perhaps by space constraints), something in the range of twelve to sixteen committees would seem appropriate.** How committee structures map the structure of executive ministries will deserve considerable attention. Some balance between will have to be struck between the creation of parliamentary committees charged with monitoring the affairs of multiple ministries and a strict mapping of committees with individual executive bodies. The latter is clearly not necessary and would constitute a waste of scarce resources, the former carries with it the danger that the Assembly will be unable to exercise effective oversight.

In addition, although the partisan composition of the assembly remains to be determined, provision must be made to support groupings of members – whether organized along partisan lines (e.g. party caucuses or fractions), or spatial lines (zonal/regional groupings that might have the effect of transecting partisan divisions). Finally, structures to support the collective voice of women should also be considered. **As a smaller institution and one with more specialized functions, the *Meshrano Jirga* will need to be endowed with an appropriate committee structure tailored to its own needs. If it takes what would seem to be the preferable approach of paralleling the *Wolesi Jirga's* committee structure, its committee memberships would have to be significantly smaller than in the lower house to avoid overburdening its members with multiple assignments.**

### **Language**

Article 16 of the Constitution provides for two official languages – Pashtu and Dari – but allows for the adoption of additional national languages in provinces where the majority of the population speak one of the following: Uzbeki, Turkmani, Baluchi, Pashai, Nuristani, and Pamiri. There is no specific rule of precedence in case of conflicts of interpretation between Dari and Pashtu texts. Although since the establishment of the Afghan state, Dari has assumed predominance as the language of state administration, it is by no means a lingua franca, and it is anticipated that simultaneous interpretation of all session (and most probably committee) proceedings will be required. Translation from a range of third languages may also occasionally be required. The need for bilingualism in the conduct of the National Assembly's day-to-day business will have a profound impact on staffing and budgetary requirements, if it is not to greatly slow the pace of legislative activity. For example, since the production of the official record and the circulation of draft legislation and other official documents, will entail another step, additional staff and organizational resources will be required to ensure that translation happens quickly and accurately. This will have an impact on the Assembly's budget and staffing requirements which must be taken into account in planning, but more importantly will further compress the already limited time available for the consideration of legislation.

The problem will be compounded to the extent that draft legislation is received from executive agencies in one language only. This would imply that the parliament would

need to ensure the translation of drafts prior to their consideration. It is to be hoped for a variety of reasons that responsibility for legal drafting and legal translation can be assigned to the same executive agency responsible for the preparation of legislation (logically this would be the Taqin department of the Ministry of Justice).

### **Gender**

The provisions of the 2004 Constitution which reserve seats in both the *Wolesi Jirga* (two seats per province, of which there are presently 34) and *Meshrano Jirga* (at least half of those appointed by the President, in other words a minimum of 17) for women, will result in an assured minimum female membership of just under one-quarter of the combined houses (85 of 351). This degree of female representation will be unprecedented in Afghanistan, and it can be expected that, given the legacy of exclusion and repression of women under the Taliban and the prevalence of social and cultural norms requiring subservience, women members will face a particularly difficult process of adjustment to their new institutional roles. **It will be particularly important that women members receive assistance in developing a forum or caucus that can serve as a vehicle for collective discussion and action, and that women members rapidly achieve a sophisticated understanding of the legislative process and of parliamentary procedures.** Assistance targeting the rapid development of techniques of public expression may also be useful to consider.

### **Literacy**

Adult literacy in Afghanistan is estimated to on the order of twenty to twenty-five percent. This suggests the possibility that a relatively significant number of those elected to the national assembly will be illiterate. Whereas the 1964 Constitution contained the provision that candidates have the ability to read and write (Article 46 (3)), this requirement is omitted from the 2004 Constitution. Given the legacy of conflict that has greatly affected both the supply of education, its quality, and the degree to which it was accessible to large numbers (and in the case of women, classes) of people to have maintained such a provision would have been fundamentally undemocratic. The role of parliament, however, revolves in large part around the discussion of proposals for the adoption, amendment of laws.

**If a sizeable minority of National Assembly members are at least initially illiterate, alternative means must be identified to enable them to effectively engage in debate.**

A variety of possible solutions can be identified, and should be seriously studied before a definitive choice is made. In making a final determination, several factors should be considered, including cost and space considerations, and well as political impact. In this regard we have some concerns regarding the proposed assignment of “legislative assistants” to individual members as a solution to the literacy problem, since this would effectively double the number of staff at a time when space constraints are significant, but more importantly might have the effect of empowering a class of civil servant to assume functions attributed to elected members. Other approaches, including the distribution of audio recordings of draft legislation, would avoid this danger.

### **Financial and Fiscal Autonomy**

Among the critical issues to be considered are not only the aggregate level of resources attributed to the National Assembly to support the costs of operation, including the salaries of both members and staff, but the issue of the institution's financial autonomy.

At present, the budgetary situation of the National Assembly is dire. Resources have not yet been identified to cover the salary costs of initially hired staff, much less of members or the additional one hundred or so staff that the CSC has indicated will be hired in the near future. Resources for Assembly operations have also not been identified. No decision on what will be considered adequate compensation for members of the National Assembly has yet been taken. To an extent, the level of compensation for members (and perhaps for some staff) will likely depend initially on the availability of external financing, which may be accessible if the Assembly is granted Priority Restructuring and Reform (PRR) status. Donor funding is, however, rarely available to cover the long term recurrent costs associated with salaries, and it should be assumed that these costs will have to be factored into the national budget.

It is assumed that the capital costs associated with the construction of the new parliament building will be borne in their entirety by the international community, but it remains unclear whether the costs of furnishing a new building will be completely financed. In retrofitting the old parliament building, major construction costs have been assumed by the government through the Ministry of Housing, but resources to cover the adaptation of the structure for use by the Assembly are scarce.<sup>31</sup>

**In parallel with questions relating to the availability of budget in the short-term are issues relating to the autonomy of the National Assembly budget from control by executive agencies, particularly the Ministry of Finance.** To the extent that the executive exercises too much control over the parliamentary vote (whether in determining its level or in regulating the flow of cash resources actually available to support operations), institutional autonomy can be compromised. The same principle applies to the control of staff resources, since the ability to transfer staff away from parliament can constitute an important lever of control under certain circumstances. **Although in the short-term it is likely that the Ministry of Finance and CSC will be remain actively involved in decision making relative to the National Assembly's budget and staffing, over the medium term, it will be essential for the institution to develop the capacity to assume direct control of these functions.**

## **C. External Assistance And Donor Coordination**

A variety of donors have indicated an interest and willingness to support the development of the National Assembly, either via direct bilateral assistance programs (as in the case of USAID) or via multilateral institutions as in the case of UNDP. Among the donor

---

<sup>31</sup> For example, in retrofitting the building, the cost of cabling to support the operation of a communications network/local area network (LAN) was not factored in.

agencies/countries that have expressed interest thus far are UNDP, the European Union (EU), India, Germany, the Netherlands, the United Kingdom, and France.

The UNDP has conducted an initial parliamentary needs assessment, as a precursor to the development of a project document that will be presented to interested bilateral and multilateral donors with a request for co-financing. If adequate funding is secured, UNDP plans to engage the services of a project technical manager and Senior Technical Advisor to coordinate assistance on behalf of contributing donors. Thus far, UNDP has operated on the basis of an initial contribution of €1.5 million from France, which covered the assessment and an initial training/study tour to France for the group of eight National Assembly Department heads that have been recruited by the CSC. Remaining resources are reserved for the training of additional parliamentary staff as they are hired. The French have also indicated the potential for a renewal of assistance in the future, with the addition of several million Euro. The UNDP has indicated a willingness to contribute an additional \$ 1 million or so of its own resources to the endeavor. UNDP-administered assistance will likely be provided in conjunction with the Inter-Parliamentary Union (IPU), which contributed a member to the UNDP assessment team.

Other smaller bilateral donors have indicated a willingness to contribute to a donor pool of the sort suggested by UNDP but have not suggested indicative planning levels. The Germans indicated at a donor coordination meeting in late November 2004 that they will require a significant lead time in order to contribute.

Other significant players are likely to be the Indian government and the United Kingdom's Department for International Development (DFID). The former has apparently pledged up to \$20 million to cover the cost of constructing the new permanent parliament building. Although a formal agreement is not in place, the Afghan government appears to be proceeding on the assumption that this pledge is solid. Others in the donor community have expressed a certain skepticism in this regard.

DFID has indicated that it has significant resources earmarked for parliamentary assistance over the next several years, and has indicated a willingness to consider alternative vehicles for the programming of these resources – either in conjunction with a bilateral USAID project, or through a donor pool administered through UNDP. DFID's decision will be contingent on its perceptions of the relative merits of the approaches suggested.

**Given the multiplicity of donors involved, the maintenance of effective communication and coordination between donors will be essential if the National Assembly is to be spared the inconvenience of contradictory advice, and competing demands on the time and attention of already busy staff. All of those donor representative with whom we spoke indicated a desire for effective coordination, and the avoidance of duplication and overlap in programming.** Of the principal players, both UNDP and USAID are committed to cooperating in the definition and implementation of an overall assistance strategy. UNDP will likely continue to be the

convening body for periodic meetings of the donor community to discuss parliamentary assistance.

## **Part III: Program Recommendations**

### **A. Implications For The USAID/APAP Program**

In its description of its Infrastructure, Economic Governance and Democracy Strategic Objective for Afghanistan, USAID states:

“USAID will work toward successful parliamentary elections in 2005 by providing technical assistance . . . in the areas of voter education, capacity building and comparative study tours to similar developing Muslim democracies. Following the parliamentary elections, training for newly-elected parliamentarians will be provided to strengthen the legislative institution and promote a politically active citizenry.”

USAID’s Afghanistan Parliamentary Assistance Project (APAP) administered by the State University of New York’s Center for International Development (SUNY/CID) will be the central component in the parliamentary assistance portion of the objective. The activity proposal that SUNY/CID submitted to USAID on September 20, 2004 listed the goal of the APAP program as stated in USAID’s task order:

“To strengthen the Afghan government’s capacity to establish and develop a new parliament that is able to operate as a strong independent and effective legislative, representative and oversight body.”

The *USAID Handbook On Legislative Strengthening* (document identification number PN-ACF-632) suggests that legislative and parliamentary needs should be assessed in five program areas: political will and domestic support; representation; lawmaking; oversight; and management and infrastructure.

Political will and domestic support relates to development of an understanding and institutional commitment to construction of a sound foundation for an effective parliament capable of performing its basic responsibilities of representing constituents, making law, and overseeing the performance of the government.

Representation involves the legislative body being sensitive and responsive to the needs and wishes of the people it represents and serves.

Lawmaking concerns the process by which a legislature or parliament makes law, including its committee structure and process and its staff support services.

Oversight concerns the means and mechanisms by which a legislative body holds ministerial or executive officials and departments accountable for their performance.

Management and infrastructure involves the internal organizational structure and procedures that provide a parliament or legislature with the support necessary to enable it to conduct its basic responsibilities on behalf of its people.

As a wholly new institutional entity that will not officially come into existence until several months after the onset of the APAP project, the Afghanistan National Assembly will require substantial assistance in each of these program areas. Many of the assistance activities suggested in this assessment would impact on more than one of these program areas. *Annex III* lists each of the suggested activities under the USAID handbook program area or areas that they would impact.

The United Nations Development Program (UNDP) conducted a needs assessment for parliamentary development assistance that was released as this assessment was nearing completion. The report surveyed areas in which it is anticipated that donor assistance will prove helpful to the National Assembly, but it did not address modes of intervention assistance. At the time this assessment was being completed, only the French government had made a firm assistance commitment to UNDP. The French commitment extends through the period leading up to the election of the National Assembly and appears to focus almost exclusively on training of parliamentary staff, with heavy emphasis on study tours to France and several other countries.

USAID has indicated that it wants to work closely with other donors to provide a coordinated and cooperative program of assistance to the parliament. It appears unlikely that firm donor commitments beyond that of the French government will be forthcoming before the APAP project staff becomes fully operational in January 2005. This would leave the field open to APAP for early selection of specific areas in which to undertake its assistance activities.

Several modes of APAP intervention can be envisaged. The most extensive would involve orientation, training and capacity-building assistance that would include workshops, one-on-one training and preparation of manuals and other written materials. Given Afghanistan's national literacy rate of approximately thirty percent, it will be necessary to put most if not all written materials into alternative user-friendly formats to assure their accessibility to all individuals for whom they are intended.

Assistance would focus primarily on members of the National Assembly's staff during the period preceding the parliamentary election - which is expected to take place as early as April or as late as October 2005 - and would be extended to members of the National Assembly after the conclusion of the election.

Other modes of intervention are likely to include: inter-legislative and inter-parliamentary exchanges and study tours to the United States and other selected countries; working closely with other donor groups to maximize the effectiveness of the overall donor effort, and possibly engaging in some joint assistance efforts; and perhaps some material assistance.

## **B. Phases Of Project Assistance**

To some extent, the assistance activities that the APAP project team will provide to the Afghanistan National Assembly will be impacted by when the election of the first National Assembly takes place. While no official announcement is likely to be made until January 2005, it appeared most likely at the time this assessment was undertaken that the elections, scheduled for April 2005 will be pushed back by President Karzai until at least May and possibly as late as September or October.

A delay in the election date can actually work to the benefit of the APAP project because it will afford more time for the project team and special consultants to engage in assistance activities that can influence decision-makers on parliamentary structure and organization while these matters are still under their examination and review. The result could well be a more profound impact on the ultimate design and operation of the parliament than would be the case if the team were reviewing a structure and procedures already in place.

The three-year APAP project would logically break out into three phases. Phase 1 would involve pre-election activities, the goal of which should be to provide orientation and infrastructure development and guidance that will construct a solid foundation on which the National Assembly will be able to get off to a quick and productive start when it convenes. Many Phase 1 activities would carry over in modified form to Phase 2, which would begin immediately following the certification of parliamentary election results and continue through 2006. The goal of Phase 2 should be to provide post-election assistance to help the National Assembly become operational as quickly as possible as an effective representative assembly for the Afghan people. Phase 3 would cover the period from January 2007 through the scheduled completion of the project. It is recommended that that Phase 3, which would begin approximately two years into the project, be launched by a reassessment to review results and outcomes of Phases 1 and 2, determine the benefit of continuing or expanding those activities, and offer suggestions for new initiatives.

Operating on what appears to be the likelihood that the parliamentary elections will be delayed until at least mid 2005 and possibly until the fall of the year, and allowing an apparent interval of two months between completion of the elections and the actual convening of the National Assembly, the APAP team will have anywhere from an eight- to an eleven-month period to undertake Phase 1 activities that will offer the greatest potential for impact on parliamentary organization and process.

It is strongly suggested that the team take advantage of its likely being the only permanent on-site donor assistance team in Kabul at the beginning of 2005 and “take off running” by initiating a series of activities - both through an aggressive effort by the project team to identify key individuals and establish working relationships with them and through utilization of short-term consultants - that will provide hands-on assistance and a body of documentation that will help to shape the organizational structure and process of the National Assembly.

## **Phase 1 - Pre-Election (January 2005 to Completion Of Parliamentary Election)**

Phase 1 of the APAP project offers, arguably, the greatest opportunity for impact on the design and process of the National Assembly because all of its activities will be conducted during the pre-election period before any official decisions will have been made on the matters that will be addressed by these activities. These circumstances argue for a fast start and an aggressive effort to focus on as many areas as possible of organization and process during Phase 1, while taking care to not overextend the project team to the point where the quality of the various activities is jeopardized.

The following are suggested Phase One activities.

### **Orientation And Training For Secretariat Department Directors**

The Afghanistan Civil Service Commission (CSC), which is charged with responsibility for selection and training of parliamentary staff until the National Assembly comes into being, has selected eight individuals who will serve as heads of Secretariat departments that it has designated. The CSC says that it has selected one set of staff that will initially serve both the *Wolesi Jirga* and the *Meshrano Jirga*, but that it is anticipating that, once the National Assembly is operational, each chamber will want to have its own staff. Commission spokespersons emphasized that the structural breakdowns of its departments are temporary and subject to later change by the National Assembly.

Two of the CSC's eight selected department heads were interviewed during the course of this assessment. They are bright and well-educated, but lacking in direct legislative experience. They indicated a recognition of the need for direct training in legislative and parliamentary organization and process, and an eagerness to receive assistance through the APAP project. The UNDP provided a start on such training by sending the eight department heads to Paris for a three-week orientation and training program with the French National Assembly and the French National School for Administration from November 27 to December 19. At the time this assessment was being conducted, the CSC was in the early stages of designing a process for the selection of approximately one hundred additional staff members who would serve as top support staff to the eight department heads.

The three-week UNDP training course in Paris exposed the department heads to the French National Assembly. They would certainly benefit from additional orientation and exposure to the United States separation of powers system, Westminster-model systems, and the world's many hybrid systems. They could also benefit from one-on-one sit-down sessions with the APAP team's Legislative Technical Adviser who has been directly involved in the USAID assistance project to the Palestinian Legislative Council, a legislative body that, like the National Assembly, was designed and developed with little or no previous national history or experience with a democratic legislature.

**The APAP project staff should undertake a strong effort to immediately establish a close working relationship with the appropriate individuals in the CSC and with each of the eight department heads. Through such relationships, the project staff**

**should be able to provide meaningful orientation and training to supplement the UNDP/Paris program, and help the department heads and the CSC to both define their department responsibilities and develop cooperative working relationships with their fellow department heads.**

The eight individuals who have been selected by the CSC as National Assembly department directors **will serve as trailblazers for the pre-election development of the National Assembly, and, to some extent, as early trainers of the members of the *Wolesi Jirga* and *Meshrano Jirga* after they are elected.** While bright, educated and enthusiastic, they lack background or experience with democratic legislatures. They would clearly benefit from an early APAP-sponsored orientation seminar that would include a panel of short-term consultants experienced in the legislative/parliamentary process and familiar with the variety of legislative and parliamentary systems found throughout the world. The seminar would focus on the importance and value of democracy to the future of Afghanistan, the critical foundation that a parliament or legislature must provide for the democratic process to be successful, the importance of establishing a linkage between the parliament and the people, an overview of legislative and parliamentary systems ranging from Westminster to separation of powers models, and an emphasis throughout of the important responsibility and opportunity that has been given to them. It should also include one-on-one assistance sessions with each of the directors to help them focus on what they will need to do during the pre-election period to prepare their functional areas for the opening of the National Assembly, what they will need to do to get there, and a basic plan for doing so. The seminar could be conducted over approximately three days and should include ample time for unstructured discussion and exchange between the directors and the consultants.

**Indications are that the greatest emphasis of the UNDP and CSC, at least initially, will be on administrative aspects of parliamentary operations. Assuming this is so, the APAP project would be presented with a special opportunity to undertake orientation and training of the parliament's information services staff. Two of the CSC-established departments--the Department of Legislative and Parliamentary Affairs Department and the Department of Public Information and Press Relations--appear to offer the APAP project particularly promising opportunities for orientation and training.**

As envisioned by the CSC, the Department of Legislative and Parliamentary Affairs would include divisions of research, committee support, and bill drafting. A review of the organigram provided by the CSC did not indicate a separate division that would provide support to the parliament in its review of the government's proposed budget, and the possibility of such a separate division was not suggested in any discussions or donor analyses that were reviewed during the course of this assessment. Presumably, the CSC is envisioning that this function could be included in the department's research division. This raises a question as to whether sufficient consideration may have been accorded in the early stage of the parliament's development to the critical importance of an in-house budget review capability for a legislative body to operate with

**independence and effectiveness** (the UNDP needs assessment report does not address this issue).

While it is not anticipated that there will be many bills initially introduced by members of the parliament, member interest in exercising the right granted them under Article 97 of the Constitution to introduce legislation will very likely increase as the National Assembly develops. Discussions and written analyses of initial parliamentary staff requirements appear to indicate low priority accorded to the National Assembly's need for an internal legal capability, either within the Department of Legislative and Parliamentary Affairs or in a separate department. Even if members are not initially inclined to introduce legislation, the parliament will require an in-house drafting capability to be able to laws. **The CSC-appointed department directors - particularly the Director of the Department of Legislative and Parliamentary Affairs and later the National Assembly's leaders and members - would benefit from assistance in helping them to understand the importance of an in-house bill-drafting capability and an appreciation that bill drafting is a special art within the legal profession that to be done well requires specialized training best provided by individuals experienced in this area.**

**The potential for long-term effectiveness of the Department of Legislative and Parliamentary Affairs could be bolstered by APAP's use of a short-term consultant having a familiarity with several varieties of legislative staff information services, who could review and offer suggestions concerning the CSC's tentative departmental structure.**

The most important functions of the Department of Public Information and Press Relations, as envisioned by the CSC, would be performed by a press division and a public outreach division. The individual selected by the CSC to head the department is an educator by training who expressed a strong interest in receiving assistance through the APAP project in all areas of her responsibility, but particularly in the areas of parliament/media relations and public outreach.

The CSC departmental structure places a division of information , communication and technology within the Department of Public Information and Press Relations. Placement of information technology services in a department that includes divisions for press relations, public outreach, a parliamentary information center, a visitors office and a souvenir shop--the other divisions with this department according to an organigram included in the UNDP needs assessment report--seems an inappropriate location for this function. The APAP team should seek more information and explanation on the rationale for this suggestion and, unless it finds such rationale more acceptable that seems likely, suggest to the CSC that it seriously consider establishing information technology services as a separate department. At the conclusion of the UNDP report, the Inter-Parliamentary Union (IPU) recommends placement of information technology services in a three-division National Assembly Administration Department (transport and building and grounds management being the other two divisions) that IPU suggests could be a "pooled" service department that would serve both chambers of the National Assembly

even if certain other services are ultimately established to serve each chamber individually.

**The head of the Department of Public Information and Press Relations indicated to the assessment team that she feels she could benefit greatly, both in terms of her own development and in the training of her staff and her later orientation of legislators, from a) a handbook or manual on steps that the parliament can undertake to establish an effective working relationship with the media, and b) a manual or hands-on training in the area of parliament-constituent relations.** The early preparation and availability of a parliament/media relations manual, and perhaps a manual on how to construct an effective constituent relations program, would have the added benefit of giving the APAP project visibility and credibility with both the department heads and the CSC.

### **Orientation And Training Of Second-Tier Staff**

At the time this assessment was being conducted, the CSC was in the early stages of recruiting approximately one hundred additional parliamentary staff who would fill key support positions under the eight department heads. The commission said that it has no funding to provide any overseas training for these staff members and that all of their training will take place in Kabul. But the UNDP indicated that funds provided by the French government will be available for study tours by small groups of these individuals to various parliaments and legislatures. The USAID/Kabul office has indicated that it would like to sponsor at least one of these study tours in the United States.

As it appears unlikely that there will be any other full-time international donor staff in Kabul to assist in parliamentary development in early 2005, the APAP project team will be presented with a special opportunity to initiate on-site training for these second tier staff members. The CSC has indicated that it would welcome such support, and the two department heads that were interviewed indicated a realization that they will not be sufficiently trained in their positions to handle training of their new subordinates without substantial assistance from outside experts.

**In conjunction with the eight department heads, the APAP team should design and implement orientation and training programs for the second-tier staff that will be selected by the CSC, with particular emphasis on the Departments of Legislative and Parliamentary Affairs and Public Information and Press Relations.**

**The conduct of the hands-on orientation/training would almost certainly benefit from assistance by short-term consultants with expertise in specific functional areas, with specific areas in which the consultants might be used to be determined by the APAP staff through consultation with the department heads and the CSC.**

From the outset, a key goal of all APAP staff orientation and training activities should be the development of a training capability within the National Assembly staff that will provide the parliament with a permanent in-house capacity to train new staff as donor support scales down and eventually ends.

### **Committee (Commission) Development**

The Afghanistan Constitution refers to parliamentary committees as commissions. Article 88 provides that each house of the National Assembly “sets up commissions to study the topics under discussion in accordance with its internal regulations.”

Article 97 of the Constitution provides that the *Wolesi Jirga* must complete its examination of each piece of government-proposed legislation within one month and the *Mesharano Jirga* must complete its review within fifteen days. An effective committee system is the vehicle that drives a legislative body and provides the mechanism through which it can undertake careful review of proposed legislation. The abnormally short timetables that the Constitution allows for bill review will place an enormous burden on the National Assembly to design an exceptionally efficient committee review process if it is to avoid being simply a ratifier or rejecter of government proposals.

Article 93 of the Constitution provides that “any commission” of either house of the National Assembly may “question each of the [government] ministers about specific topics.” This responsibility, which also rests with the full *Wolesi Jirga* under Article 92, grants the National Assembly’s committees specific constitutional authority in the oversight area, further heightening their pivotal role in the parliamentary process.

The tentative organization chart that has been prepared by the CSC includes a committee division within the Department of Legislative and Parliamentary Affairs. While the exact role of this division was not made clear, it is presumed that it would include staff to serve the National Assembly’s committees. A donor suggestion that was reviewed during this assessment suggested an arrangement similar to that of the CSC while another suggested a committee division in each chamber and a single research division in a Parliamentary Information Department that it suggests should serve both chambers. As committee staff and research staff have very similar missions and activities that need to be closely coordinated to achieve maximum effectiveness, these proposed arrangements seem less than desirable.

Indications are that the matter of committee organization or operations has not yet been well thought through. A recent donor study contained a set of proposed National Assembly rules of procedure that included suggested committee titles, something that would be best delayed until after ministerial jurisdictions have been established by the President. These proposed rules even suggested a number of members for each committee, apparently without taking into consideration that the size of the *Meshrano Jirga* will be well less than half that of the *Wolesi Jirga*. The suggested committee structure would provide for one or two assignments per member in the *Wolesi Jirga*, but would require *Meshrano Jirga* members to serve on at least three and in most cases four committees.

As soon as the National Assembly convenes, its committees will become a focal point of activity because all decrees issued by the interim government prior to that point will be subject to parliamentary review (Article 161 of the Constitution). But the *Wolesi Jirga*

and *Meshrano Jirga* will have only the one month and 15 days respectively allowed them under Article 97 of the Constitution to review these decrees, after which they will become law. It would therefore seem critically important that the National Assembly have some sensible guidelines and rational procedures in place for its committees as soon as it convenes. To assist in this effort, **it is suggested that the APAP project utilize a short-term consultant familiar with the wide variety of legislative and parliamentary committee systems at an early stage of Phase 1 to prepare a committee manual that will address the central role that committees play in an effective parliament, the optimum size of committees, how to structure committee jurisdictions, suggestions for committee chairpersons on effective committee leadership and management, committee record-keeping, meeting and public hearing procedures, the importance and conduct of public hearings in building parliamentary transparency, effective committee oversight of government ministries, utilization of committee staff, and committee/media relations.** In addition to providing a framework for the design of a strong and effective committee system, the early production of a comprehensive committee manual (that could be revised and expanded as the project proceeds) would help to give the APAP project some valuable visibility and credibility in the project's early stages.

#### **Orientation And Training For Secretary General**

The CSC has indicated that a Secretary General will be likely be appointed in the early part of 2005, probably from among the eight department heads. Plans appear to be to initially appoint a single Secretary General, with the intention to eventually have one for each house.

The Secretary General will require and benefit from some very specialized legislative and parliamentary management training that could be best provided by individuals who currently serve or previously held a similar position in another parliament or legislature. The Secretary General is likely to have at least one Deputy who would similarly benefit from such specialized training.

**The APAP project staff should consider either, a) bringing two or three current or previous Secretary Generals to Kabul for some one-on-one training for the Secretary General and any Deputy Secretary Generals, or b) a study tour for the Secretary General to selected parliaments or legislatures. Should the second approach be selected, consideration might be given to taking the National Assembly's Secretary General and three or four Secretary Generals from other countries to meet for two or three days in a neutral site where the Secretary Generals from the other countries would not be distracted by their own job demands and could meet jointly in informal group discussion with their Afghan counterparts.**

#### **Rules Of Procedure (Standing Orders)**

Articles 87 of the Constitution refers to "regulations pertaining to the internal duties of each house." Article 88 also refers to the "internal; regulations" of each chamber.

Both houses of the National Assembly will need a set of proposed rules of procedure, or Standing Orders, ready for their consideration on the day they convene.

The UNDP's needs assessment report includes a suggested set of rules for the National Assembly. Such a proposal months before the National Assembly comes into existence can represent a starting point for discussion that will require continual input, revision, and expansion from many quarters right up to the point when the National Assembly convenes.

**The APAP project team should offer assistance, possibly with use of a short-term consultant, in the development of a set of proposed rules and procedures for the internal operations of both the *Wolesi Jirga* and the *Meshrano Jirga*.**

#### **Information Technology Development**

It is anticipated that the APAP project team will include an information technology adviser. **The project team should offer the services of its information technology adviser in the early design and development of a National Assembly information technology system.**

Numerous donors are likely to become involved in the design of the National Assembly's information technology network. Under such circumstances, a danger will always exist for development of a functionally incoherent system comprised of non-compatible components. Injection of the project team adviser into the design process at its beginning stages should include close attention to this aspect of system design.

#### **Documentation And Record-Keeping System**

Every democratic legislative body needs a comprehensive and accurate process for the recording of its official actions and for the preservation of its documents, both as an historical record and to assist current and future parliaments as they attempt to legislate on behalf of the people. Being a new democratic parliament, the Afghanistan National Assembly will have no such process to build upon. This presents both a challenge and an opportunity. The challenge is to construct a documentation and record-keeping system that will take into account an anticipated large number of legislators and citizens who will not be able to read. The opportunity is to design a state-of-the-art system that will be custom-made to address Afghanistan's special circumstances and conditions.

**The APAP project team's Afghan information technology expert should seek to work closely with other identified staff members and donors who may be involved in the documentation and record-keeping process to help design an integrated bilingual state-of-the-art, written and audio, icon-based system that will pose no barrier to a lack of literacy.**

#### **Citizen Education About Parliament**

With no previous experience with a democratic process and with more than two-thirds of the country's people unable to read or write, a exceptional citizen education effort will be required to help the Afghan people understand what their national parliament is, how it

will benefit them, how its members will be chosen, how it will operate once it convenes, and why it is critical that they elect candidates who will view their parliamentary responsibility as service to the people and not to themselves.

The International Foundation For Election Systems (IFES) has begun a regional public education program on parliament and the upcoming parliamentary election. The IFES program is focusing on the central region of the country. The organization is training Afghan teachers, lawyers, doctors, journalists and engineers to conduct the training sessions. The Afghan Civil Society Forum (ACSF) and the Swiss Peace Foundation hope to undertake similar programs in the rest of the country, but at the time of this assessment were still looking for funding to launch their effort.

**IFES said that it would welcome partnership assistance from the APAP program staff in its public education efforts. The program staff should pursue this invitation, and should explore the possibility of also partnering with ACSF and the Swiss Peace Foundation. In undertaking this activity, the program staff should endeavor to include participation from the CSC-appointed Director of the National Assembly's Department of Public Information and Press Relations as civic education concerning the parliament will be a responsibility of her department.**

#### **Orientation And Training For Parliamentary Candidates**

The National Democratic Institute (NDI) is engaged in a program of political party orientation in preparation for the upcoming parliamentary election. The program involves helping parties to understand the workings of Afghanistan's new democratic system, and sponsoring conferences on the roles of parties, women, and youth in the system. The programs are being conducted in partnership with the Frederick Ebert Foundation.

In conjunction with its programs, NDI has established eight regional election training and information centers. The centers include meeting rooms for political parties, reading materials, and satellite Internet access.

**NDI is interested in conducting a program of candidate orientation and training in conjunction with the parliamentary election and expressed an interest in partnering with the APAP program in such an effort. The APAP team should explore such a partnership with the NDI staff.**

#### **Media Orientation Concerning The Parliament**

A free press is an essential element in a democracy. In the case of a parliament, journalists and reporters report to the public on the decisions and activities of their elected representatives who serve in the body. Without information provided by the news media, it would be almost impossible for the people to have sufficient knowledge to hold their representatives accountable for their actions, and this can leave the whole process of democracy in danger of breaking down.

The legislative/parliamentary process is arguably the most complex and least understood aspect of democracy, and in a country such as Afghanistan with such limited experience with parliamentary democracy, journalists and reporters who will be assigned to report on the parliamentary elections and later on the parliament itself cannot be expected to have more than a superficial understanding of the parliament's complicated, sometimes cumbersome, and often confusing processes and procedures. A reporter who does not have a thorough understanding of the process cannot be expected to be able to report on its activities and decisions with thoroughness, accuracy or fairness.

**In conjunction with the Director of the Department of Public Information and Press Relations, the APAP staff should conduct a series of workshops for journalists, with the focus of the workshops being to help journalists and reporters to develop an understanding of the purpose and role of the parliament and an appreciation of the nuances and complexities of the parliamentary process.**

#### **Orientation And Training For Women**

The obstacles faced by women in Afghanistan have been well-documented. The country's new Constitution addresses this matter, assuring gender equality to Afghan women. Article 22 of the document states: "Any kind of discrimination and privilege between citizens of Afghanistan are prohibited. The citizens of Afghanistan - whether woman or man - have equal rights and duties before the law."

The Constitution also guarantees representation for women in both the *Wolesi Jirga* and the *Meshrano Jirga*. Article 83 provides that "from each province on average at least two female delegates shall have membership in the *Wolesi Jirga*." This would indicate a minimum threshold of 68 of the chamber's 249 members. Article 84 provides that the President appoints one-third of the members of the *Meshrano Jirga*, half of whom must be women. This would assure a minimum of 17 women in the 102-member upper chamber.

**Article 27 of the Electoral Law issued by the transitional government requires the President to make his 34 appointments to the *Meshrano Jirga* within seven weeks after his December 7, 2004 inauguration. Under Article 84 of the Constitution, half of these appointments must be women. This will provide the APAP program with an early opportunity to offer orientation and training to these appointed women parliamentarians, with the possibility of utilizing them as participants in later orientation and training of women members elected to the *Wolesi Jirga*.**

**Candidate orientation and training activities should include programs providing assistance to women candidates, preferably in partnership with other donors who will also be interested in providing such assistance.** Such programs should focus on helping women candidates to fully understand the rights guaranteed them under the Afghan Constitution, that if elected to the National Assembly they will have full equality with its male members, and the importance of confidently expressing their thoughts, ideas and opinions in chamber debate and committee discussion.

For candidate programs focused on women, consideration should be given to providing Afghan women candidates with opportunities for face-to-face contact with women legislators and parliamentarians from other countries, particularly Islamic nations. Previous SUNY projects have utilized women legislative leaders from the United States in well-received capacity-building and gender empowerment programs for the parliaments of Bolivia and Uganda.

### **Student Internship Program**

Many developing legislative bodies utilize student internship programs in conjunction with local universities and colleges to help them to address the need for supplementary staff support and to provide a training ground for potential future full-time staff. Universities are almost always eager and enthusiastic about the prospect of providing the parliament with information and research assistance.

Kabul University faculty indicate that the university already has some student internship programs with government ministries and that they would be very interested in establishing a program in conjunction with the National Assembly.

SUNY has previously launched successful student internship programs in Chile, Guatemala, Kenya, Tanzania, Zimbabwe and Uganda.

**The APAP staff should work with appropriate faculty at Kabul University and the CSC to develop a student internship program that, during Phase 1 of the project will work with the heads of the CSC-designated National Assembly staff departments, with the intent of expanding the program to include assistance to members of the National Assembly after they take office.**

### **Space And Facilities**

The government of India has pledged funding for the construction of a new National Assembly Building, but the building is not expected to be ready for occupancy for three to five years.

During the course of this assessment it was learned that, until the new facility is completed, the National Assembly will occupy the old parliament building in the southwest section of Kabul, not far from the likely, but as yet unannounced, location of the new building. The old parliament complex, severely damaged during the civil war in the 1990s, is under renovation by the Ministry of Housing and is expected to be ready for occupancy by mid 2005. The complex includes separate adjacent buildings for each chamber and their staffs and will include construction of an additional six-story building that will be used for offices and meeting rooms. A tour of the complex found the design plan basically sound, but with a few deficiencies--in particular, the *Wolesi Jirga* meeting chamber, which is long and quite narrow and will not be conducive to effective floor debate.

It appears too late to have any impact on the renovation of the temporary quarters, but there is still ample time for input on how the interior space will be allocated. And while it is much too early to make any irrevocable decisions concerning the interior design of the

National Assembly's permanent headquarters, some suggestions have nevertheless already been offered by donor groups. Some of these suggestions relating to the allocation of office space seem open to question as regards the most effective utilization of space.

**APAP staff should identify individuals who will be responsible both for assignment of office space in the old parliament building that will be used by the National Assembly until the new parliament building has been completed and for space coordination and decision-making with regard to the new parliament building and, a) offer assistance in achieving the most effective utilization of office space in the temporary facility, and b) convey to those involved in decision-making with regard to the new building the importance of a design and construction process that will allow for substantial input from the National Assembly itself with regard to the interior design and layout of the building, and offer APAP project assistance in this area.**

### **Parliamentary Ethics**

The establishment of a strong linkage between the National Assembly and the people of Afghanistan will be essential if it is to be viewed as the representative assembly of the people. In a country with such a recent history of corruption and violence, it will be of vital importance that the Afghan people feel confident that the members of their parliament will act in a manner that will serve the public and not their personal interests.

Article 81 of the Constitution states that the members of the National Assembly shall "take into judgment the general welfare and supreme interests of all people of Afghanistan at the time of casting their vote." This is the only provision relating to what may be termed ethical behavior, and it refers only to when members are casting a vote. It would not appear to apply to any other aspect of parliamentary activity.

Other than a couple of brief references to Article 81 of the Constitution, almost no consideration appears to have as yet been given to the matter of parliamentary ethics by either Afghan authorities or potential donors.

The formal establishment of strong parliamentary ethical standards through adoption of an official parliamentary code of ethics and would provide the parliament's members with guidelines to which they can refer when they are unclear about whether there may be a conflict between the public and personal interest would contribute greatly to the development of a sense of public confidence in the integrity of the National Assembly.

**While a parliamentary code of ethics can only be adopted by the National Assembly after it comes into being, APAP should prepare a short introductory guide on the subject that would help to bring this important matter to the forefront of public, media and candidate attention in the pre-election period and serve as a starting point for a public discussion of the issue. The guide should be prepared by a knowledgeable short-term consultant and should address the general subject of parliamentary and legislative ethics and explain the importance of having guidelines to which members can refer and to which they will be expected to adhere. It should**

**include some indications of the types of provisions most often found in ethical codes and guidelines of other legislatures and parliaments.**

## **Phase 2 – Post-Election (From Completion Of Election Through 2006)**

As previously indicated, most Phase 1 programs would continue into Phase 2, although often in modified formats. These would include all forms of staff orientation and departmental organization, commission development, refinement of rules of procedure, information technology and document and record-keeping systems, citizen education concerning the parliament, training for women legislators, a student internship program, and the design of the new National Assembly building.

Without knowing what the make-up and special expertise of the APAP team will have evolved into by the outset of Phase 2, it is less certain than for Phase 1 which activities and programs could be conducted by program staff and which would benefit from the utilization of short-term consultants with extensive background and experience in the specific subject-matter of the activity. Clearly some, such as a member orientation program immediately following the election, orientation for the top leaders of the National Assembly and committee development and committee chairperson training will require participation by international consultants and panelists. But in a number of other areas of activity, decisions on where and when to utilize short-term consultants will figure to be made by the Chief of Party and program staff based on the nature of the activity and budget considerations.

The following are suggested activities for the Phase 2 period.

### **Member Orientation Conference**

**The logical starting point of Phase 2 would be an orientation conference for the members of the National Assembly. Without question, the newly elected members will benefit greatly from an orientation conference that should be held as soon as possible after the official certification of the parliamentary election results.** SUNY/CID is particularly well qualified to organize and conduct such a program, having done so on a number of occasions for other parliaments and legislatures. In addition, it has written a comprehensive *MP's Orientation Handbook* in conjunction with the Southern African Development Community Parliamentary Forum (SADAC). The handbook provides a complete blueprint for a new legislator orientation program.

A recent donor report suggested that a “comprehensive orientation programme...for a period of not less than one week” be held for the newly elected members of the National Assembly immediately following their inaugural session. The report suggested twenty topics that should be covered in this orientation.

There are two major reservations about the report's suggested approach to a member orientation program. First, a program of more than one week covering twenty topics - each one of major importance to the members of the parliament - would contain far too much subject matter to expect any new legislator to meaningfully absorb, let alone new

members who in the words of the report “in all probability may not have any legislative experience to guide them.” Allowing only two hours for each of the twenty topics suggested in the report would mean 40 hours of program session - far too much to expect members to absorb, and more importantly far too little time to devote to each topic. Second, Article 161 of the Constitution states: “The decrees enforced from the beginning of the interim period shall be submitted to the first session of the National Assembly.” This means that all laws issued by the interim government will be subject to National Assembly review, but presumably within the one month and fifteen day periods allowed under Article 97 of the Constitution. Given these time constraints, it would not seem a wise to set aside any of this important and very limited time period for a member orientation.

**A preferable approach would seem to be to try to make use of what is likely to be an interval of several weeks between the election and the opening of the National Assembly and hold a member orientation program during this period.**

**An initial donor-sponsored new member orientation conference should be held before the convening of the National Assembly and, to avoid over-kill, would best be limited to no more than three and one-half days.** Its focus should be on the role of the parliament, the constitutional powers of the National Assembly, the parliamentary process, the importance of the committee process, and housekeeping matters concerning salaries and benefits. The parliamentary process portion should, if possible, include a mock session to give members the feel of how to be recognized to speak on the floor of their chamber, how to address the chair, how to properly state motions, and other procedural aspects with which they should become quickly familiar to function effectively in the house to which they have been elected.

Beyond this initial session, member orientation should continue at least through Phase 2 of the APAP project, with the focus being on workshops and seminars, sometimes organized in conjunction with other donors, that would cover various aspects of parliamentary process and organization.

#### **Orientation For National Assembly Leaders**

It is impossible to envision a democratic legislative body being any more effective than those who occupy its top leadership positions. If the National Assembly is to get off to a strong and positive start as the Afghan peoples’ representative assembly, it will be imperative that both of its chambers have strong Speakers (referred to as Chairpersons in the Constitution) possessing solid leadership capabilities, an appreciation of the role of the parliament in Afghanistan’s new democratic system, and a basic understanding of the parliamentary process. Accordingly, **assistance to the Speakers of the *Wolesi Jirga* and the *Meshrano Jirga* should be a top priority in Phase Two of the APAP project.**

The first Speakers of the *Wolesi Jirga* and *Meshrano Jirga* (referred to as Chairmen in the Constitution) and their top deputies will have had no previous experience serving in, let alone running or presiding over, a democratic legislative body, and this factor will require special early attention in terms of orientation and training assistance fro these

individuals. **If the Speakers are elected to their positions in pre-session caucuses of their chambers, and sufficient time is available between these caucuses and the convening of the National Assembly, this would be the to ideal time to provide the Speakers with an initial orientation that might include both assistance in beginning preparation of a development plan for the National Assembly (see below) and an opportunity to meet with counterpart Speakers from other legislative bodies. If pre-session orientation proves impossible, the orientation should be scheduled for the earliest possible time that will not cause undue disruption to operation of the National Assembly.**

The State Legislative Leaders Foundation (SLLF), an IQC subcontract partner to SUNY/CID with its headquarters office in the United States and satellite offices in Germany, Argentina and Senegal, has an unmatched global network of legislative and parliamentary leaders and an extensive track record of highly acclaimed programs in leadership training. It offers the APAP project a very valuable resource to tap in the orientation and training of National Assembly leaders.

Study tours are often selected as a means of exposing new presiding officers to experienced counterparts. But this is not recommended. **Study visits to on-site locations of other legislatures and parliaments to consult with their leaders seldom work out as intended because the myriad of demands on the host leader almost invariably makes it impossible for the leader to separate himself or herself from daily responsibilities and focus upon his or her guests.** Visits of this sort will most often end up in a short meeting between the host leader and the visiting leaders, with second echelon leaders or staff then assigned to meet with the visitors for the remainder of their stay. **It is very important that the new Speakers of the National Assembly be provided with opportunities for extensive consultation with experienced presiding officers from other legislative and parliamentary bodies. A far more effective way of achieving this would be to get the experienced leaders away from the daily demands of the legislatures and parliaments they lead to a neutral location in which their full and undivided attention can be devoted to their Afghan counterparts.** It is suggested that either a small group of three to five presiding officers be brought to Kabul or that a meeting be held at a comfortable neutral site for informal discussions based on a structured agenda developed by the APAP team, with the agenda to include ample time for informal unstructured exchanges. The orientation team might include two Speakers from the United States, one or two from Europe, and one from an Islamic country.

**APAP leadership training should not be limited to just the presiding officers. It should also include the first and second Vice Speakers (Vice Chairpersons in the Constitution) and the Secretary and Assistant Secretary of each chamber. All of these positions are specifically designated in Article 87 of the Constitution.**

#### **Preparation Of A National Assembly Institutional Development Plan**

The National Assembly, and particularly its leadership, could benefit greatly from an institutional development plan that would spell out both a sort- and long-term vision for Afghanistan's parliament and indicate specific steps and timetables for its institutional

development. A well-crafted parliamentary development plan with carefully spelled-out goals and benchmarks would be extremely helpful to both the National Assembly's leaders and donors in their joint efforts to build the National Assembly into an effective and responsive legislative institution.

**The preparation of a parliamentary development plan would seem an ideal donor-partnership activity. The APAP team should take the lead (possibly in conjunction with the UNDP) in putting together a donor partnership team early in Phase 2 to approach the Speakers of the *Wolesi Jirga* and *Meshrano Jirga* and offer assistance in the design of a comprehensive National Assembly development plan.** In addition to development steps and timetables, the plan could specify areas of development in which the parliament's leaders feel that donor help is most needed and might even indicate in which of these areas individual donors would be prepared to provide assistance.

An essential goal of donor assistance in the preparation of a development plan must be that the leaders and members of the National Assembly view the plan as their own and not as something prepared for them by the donors.

#### **Committee (Commission) Orientation And Development**

**APAP should, individually or in partnership with other donors, conduct orientation workshops, preferably for each individual committee but, if not for every committee, at least for selected ones.** The workshops could utilize APAP's committee operations manual, recommended for Phase 1, and should emphasize the critical role that committees will play in the parliamentary process, the importance of public hearings and transparent activity, effective oversight of the ministries and departments within their jurisdictions, and utilization of staff resources.

#### **Orientation For Committee (Commission) Chairpersons**

**Again, either individually or in partnership with other donors, orientation and training should be provided to all committee chairs.** Sessions should focus on committee leadership and management, how to effectively preside over meetings, how to prepare for and conduct a public hearing, committee oversight powers and responsibilities, and utilization of staff.

**Selected committee chairs could benefit greatly from a study tour to the United States which is almost universally acknowledged as having the strongest and most effective committee systems in the world.** First-hand observation of committee meetings and public hearings and face-to-face consultation with their American counterparts would prove particularly helpful the National Assembly's inexperienced chairpersons. **A U.S. study tour should focus on state legislatures rather than the Congress, first because the staff and facilities of state legislatures will be more comparable to that of the National Assembly and second because state legislatures make extensive use of public hearings while the Congress does not.**

#### **Women Legislator Workshops**

**While many donors will likely be involved in assistance programs for women legislators, it would be important that APAP continue to be among the participating donors.** Workshops for women legislators should place continued emphasis on organization and capacity-building and should assure that Afghanistan's women legislators are provided with opportunities for face-to-face contact with accomplished women legislators from other parliaments and legislatures including, particularly, some from Islamic countries.

### **Constituent Relations Workshops and Study Tours**

There is evidence, both through constitutional provisions and discussions conducted during the course of this assessment, that insufficient importance is being accorded to developing what the people of Afghanistan will feel is a linkage between themselves and their national parliament. One of several aspects of such a linkage is the sort of ombudsman role that members of the parliament play in helping their constituents with problems they are encountering with the government.

**Workshops on how to develop a strong constituent relations program, utilizing legislators and staff from other parliaments and legislatures, would prove highly useful to members.**

**In anticipation of these Phase 2 workshops, consideration should be given to a Phase 1 study tour to the United States - preferably to some state legislatures that provide strong constituent relations service - for the Secretariat's Director of the Department of Public Information and Press Relations who will play a major role in orienting members to the importance of this function and in training them in how to do it effectively.**

### **Parliamentary Budget Review Workshops**

The budget is the lifeblood of any government, and a legislative body that fails to carefully scrutinize the government's proposed budget risks becoming a non-player in the policy-making process.

The UNDP needs assessment report addresses the importance of parliamentary budget review, but neither it, the IPU's suggested organizational revisions included in the report, or the CSC in its proposed Department of Legislative and Parliamentary Affairs suggests a separate staff division devoted exclusively to budget analysis and review.

It would be hoped that the CSC or later the National Assembly, with encouragement from the APAP project team, will establish a separate division of budget analysis and review within the Department of Legislative and Parliamentary Affairs. Whatever the ultimate decision, **APAP-sponsored workshops for the *Wolesi Jirga* and *Meshrano Jirga* committees responsible for reviewing the government's proposed budget and for the staff assigned to assist them will be extremely helpful to the National Assembly in establishing itself as an independent policy-making institution.**

### **Parliament/Media Relations Workshops**

For Afghanistan's new democratic process to work, the parliament and the media will have to develop an understanding of each other's respective role and importance in the process.

**Workshops including both journalists and National Assembly members, utilizing the parliament/media relations handbook suggested for Phase 1, should prove extremely helpful to the media in developing a better appreciation and understanding of the complex workings of the legislative process and to members in developing an understanding and acceptance of the critical role that the media plays in a democratic society.**

### **Parliamentary Oversight Workshops**

As indicated in the examination of Phase 1, the oversight authority and responsibility of the parliament is established in the Constitution. A recent donor assessment report addresses the topic of parliamentary oversight but its comments appear to place inordinate emphasis on the purpose of such activity as being to uncover government corruption and malfeasance. While the emphasis may seem understandable given Afghanistan's recent history, uncovering corruption is more a tangential aspect of the legislative oversight function, the primary focus of which should be examination of the government's administration to assure that its programs are being conducted effectively, efficiently, and in accord with the goals and intent of their enabling legislation.

Because the type of oversight that appears to be envisioned by Afghanistan's Constitution is generally associated with the more aggressive oversight activity practiced in separation of powers legislatures, **it is suggested that the APAP team accord high priority to workshops and member orientation and training on the parliament's oversight responsibilities.**

While the matter of oversight would be addressed in committee development workshops and in committee chairperson training, workshops or seminars addressing this topic from a broader parliamentary perspective, with emphasis on the importance that parliament make active but responsible use of this power, would also be beneficial to building internal capacity.

### **Parliamentary Ethics Workshops**

**If the National Assembly adopts a code of ethics for its members, workshops to help the members to understand the provisions of the code and the penalties for violations of it would be very important.**

**If a code of ethics or set of ethical guidelines are not adopted, APAP could design workshops utilizing the introductory guide on parliamentary ethics recommended for Phase 1 to help the leadership and members of the National Assembly develop a fuller understanding and appreciation for the importance of adopting formal guidelines and standards, both to guide members and to build public confidence in the integrity of the National Assembly as the representative assembly of the people of Afghanistan.**

### **Orientation And Training For National Assembly Staff**

Staff training activities begun in Phase 1 should continue full force in Phase 2, both for staff who participated in pre-election period programs and for new staff added after the parliamentary elections. **As in Phase 1, a primary goal of all APAP-conducted staff training should continue to be development of a capability within the National Assembly staff that will provide the parliament with a permanent in-house capacity to train new staff as donor support declines and eventually ends.**

#### **Areas suggested for particular focus in Phase 2 staff training would be:**

- a. **Research Staff** – Research staff training should place emphasis on research techniques and methodology, report-writing, and the preparation of bill analyses that will almost surely prove of major benefit to what is likely to be a vast number of members with no legal training who will have difficulty in understanding bills written in formal legal language.
- b. **Committee Staff** – Committee staff will benefit from specialized workshops focusing on the specific role that staff must play for a committee to carry out its responsibilities with effectiveness, with the agenda to include training in committee conduct of government oversight
- c. **Budget Staff** – Staff assigned to assist in the National Assembly’s review of the government’s proposed budget would benefit from workshops focusing on effective budget review techniques, how to develop productive working relationships with key personnel in government ministries, and parliamentary oversight of the government
- d. **Legal Staff** – Workshops on the techniques of bill drafting will almost certainly prove beneficial for legal staff who will likely have little or no formal training in this unique art. Special emphasis should be placed on the drafting of amendments which figures to be the primary activity of the legal staff, at least in the early stages of National Assembly development. During the period that this assessment was being undertaken, representatives from Boston University Law School’s Program on Legislative Drafting for Democratic Social Change were conducting a two-week bill drafting seminar through MSI and the Asia Foundation for staff of the Ministry of Justice. The program staff have conducted similar sessions in many developing countries, including a number in Central and Southeast Asia, and would offer a possible source of expert assistance in the area of bill drafting.
- e. **Constituent Relations Staff** – If the National Assembly hires staff to assist members in constituent service, training and workshops in how to most effectively perform their responsibilities could prove highly useful to these individuals.

### **Information Technology Development**

**During Phase 2, the APAP team should continue to make the services of its information technology adviser available to assist in the ongoing design and development of the National Assembly's information technology and document and record-keeping systems.** The exact nature of assistance to be provided by the adviser would be determined by how technology development has evolved and where assistance can most productively and usefully be provided.

As in Phase 1, with so many different donors figuring to be involved in the design of the National Assembly's information technology network, the danger will always exist of the development of a non-compatible system that is not functionally coherent. One very important role that the information technology adviser could play would be to continually monitor system design and development to assure that this will not be the case.

### **National Assembly Building Design**

By Phase 2, design planning of the new National Assembly Building should be underway. **Assuming the government has not moved to prematurely lock in a design without any input from the National Assembly, the APAP team should continue to offer its services for assistance in the building's design process.**

If the National Assembly leaders indicate an interest, **consideration might be given to use of short-term consultants - possibly legislative or parliamentary leaders who may have been recently involved in decision-making concerning the design of a new building in their country or state - to assist the parliament's leaders in decide the optimal design for their facility.**

### **Expansion Of Student Internship Program**

If, as recommended, a student internship program is launched during Phase 1, all interns would at that time be assigned to National Assembly staff. By Phase 2, student interns could be assigned to members of the National Assembly.

**If an internship program is begun during Phase 1, early in Phase 2 the APAP team should consider utilization of a short-term consultant experienced in the design and administration of legislative or parliamentary internship programs to review the progress of the program and assist in development of a program plan and methodology to will assure that its expansion will not result in any diminution in quality.**

## **Phase 3 – January 2007 Through Project Completion**

In late 2006, the APAP team should begin to think in terms of a transition from Phase 2 to Phase 3 of the project, with Phase 3 commencing roughly around the beginning of 2007 and continuing through the scheduled completion of the project.

**By the start of Phase 3, the National Assembly will have been in operation for more than a year and it can be anticipated that certain members will have emerged as**

**leaders and earned the respect and a degree of deference from their colleagues as key functionaries in the parliamentary process.** It will be critical that the Speakers of the two chambers be in the forefront of this group, which serves to reemphasize the importance of focusing on their orientation and training as a top priority during Phase 2. It would also be hoped that the Vice Speakers (Vice Chairpersons) of each chamber and at least some committee chairpersons would be among these individuals. **Phase 3 should include particular focus by the project team on further development of the leadership skills and process-mastery of these individuals.**

### **Project Reassessment**

**It is suggested that Phase 3 begin with a reassessment of what the APAP project has achieved and accomplished during its first two years, and of how it can most productively carry on with its efforts into the project's final phase. The reassessment should include an examination of the National Assembly's performance during its first year to year and one-half, particular areas of weakness that would appear in need of special attention in Phase 3, a review of all activities undertaken during Phases 1 and 2, and recommendations concerning which of those activities should be continued, expanded, modified or curtailed during Phase 3. Should USAID later decide to extend the APAP project beyond its scheduled completion in late 2007, a reassessment conducted at the outset of Phase 3 could have an added benefit of providing a framework upon which to design extension activities.**

While the suggested reassessment would ultimately determine the focus and specific nature of Phase 3 activities, it can be anticipated with a good degree of certainty that some Phase 1 and 2 activities would continue into the project's final phase, with how they may be modified or revised to be suggested by the reassessment team. These activities would include, but not limited to, the following.

### **National Assembly Leaders Development**

**After more than a year in office and having completed a full parliamentary session, the Speakers of the *Wolesi Jirga* and *Meshrano Jirga* will undoubtedly have thoughts about specific aspects of their leadership development in which the APAP project could be of special assistance and of areas in which they could particularly benefit from consultation with counterpart presiding officers in other parliaments and legislatures. It is suggested that consultations with counterpart presiding officers be conducted in the same format - on-site in Kabul or in a neutral site location - as suggested in Phase 2.**

**The Vice Speakers, Secretary and Assistant Secretary of each chamber would also certainly benefit from further leadership orientation during Phase 3.**

**By Phase 3, it is likely that the APAP project team should be able to identify National Assembly members who exhibit special promise as potential future leaders of their chambers. The project team should examine means by which it can help these individuals to develop the leadership skills that they have demonstrated.**

### **Orientation And Training For National Assembly Staff**

It can be expected that new staff members will continue to be added to the National Assembly staff throughout the APAP project. **During Phase 3, the project team should continue to focus on providing training for new staff members assigned to the areas listed in Phase 2.**

By Phase 3, the efforts of the project team, along with those of other donors, should be showing results in development of an internal training capability within the National Assembly staff, and parliamentary staff who will eventually have full responsibility for staff training should be able to be meaningful contributors in the training process.

### **Commission (Committee) Development**

By the onset of Phase 3, the National Assembly's committees will have gone through a complete parliamentary cycle. The APAP team will have observed the committee process throughout that cycle and should have some thoughts concerning specific aspects of committee activity in which assistance would be most beneficial. Committee chairpersons and some of their members should also have some thoughts on where assistance would be most helpful.

**In Phase 3, committee chairs who will have presided over a full parliamentary cycle and some identified committee members would likely benefit from study tours to state legislatures in the United States for first hand observation of their committee meetings and public hearings and for an opportunity to consult with their chairs and members.**

### **Parliamentary Budget Review**

By Phase 3, the National Assembly will have experienced the process of review and consideration of the government's proposed budget, although it is open to question what that review may have involved given the parliament's lack of any prior experience in the budget review process and the tight time constraints that the Constitution places on the process.

**Regardless of whether the parliament's initial review of the budget was successful, the budget committees of both chambers will certainly benefit from additional budget review workshops.**

### **Parliamentary Oversight**

As suggested in Phase 2, **the subject of parliamentary oversight would be addressed in committee development workshops and in committee chairperson orientation and training. But as in Phase 2, Phase 3 workshops or seminars addressing this topic from a broader parliamentary perspective, with emphasis on the importance that parliament make active but responsible use of its oversight power, should continue to prove helpful** in both building understanding and appreciation of the oversight function and in its effective and responsible exercise by the National Assembly.

### **Information Technology Development**

The National Assembly's information technology system and network will be under construction for an extended period, almost surely beyond the scheduled conclusion of the APAP project. For the same reasons spelled out in Phases 1 and 2, **the APAP team should continue in Phase 3 to monitor and, as much as proves possible, participate in, a) the on-going design and implementation of the National Assembly's information technology system to assure that it will be fully coherent and integrated and that its expansion will be compatible with needs and requirements and, b) the continued development of the parliamentary document and record-keeping system.**

### **Constituent Relations**

Regardless of how the parliament performs during its first year and few months, it can be expected that increasing numbers of Afghan citizens will become aware of its role and of the identity of their local representatives. Inevitably this will lead to members receiving ever larger numbers of constituent requests for assistance on a myriad of matters. This will require members to devote more time and attention to this aspect of their parliamentary service.

**Because many citizens form their opinion about the parliament - whether positive or negative - on how their representative or representatives handle personal problems on which citizens go to them for assistance, the importance of a strong constituent service program could prove critical to the National Assembly in its effort to establish credibility, build public confidence in itself, and create a linkage to the people it represents and serves. For this reason, the APAP team will almost surely find it important to continue to provide assistance and training in this area through the conclusion of the project.**

### **Parliamentary Ethics Workshops**

**If the National Assembly has not adopted a code of ethics or a set of ethical guidelines by the conclusion of Phase 2, APAP should continue to focus on this matter in Phase 3 by sponsoring workshops similar to those suggested for Phase 2 to help the leadership and members of the National Assembly develop an appreciation for the importance of adopting formal guidelines and standards, both to guide members and to help build and establish public confidence in the integrity of the National Assembly as the representative assembly of the people of Afghanistan.**

### **Orientation To Lobbying**

Lobbying is an activity generally associated with more developed legislative bodies that are more likely to fall on the separation of powers side of the legislative/parliamentary spectrum. But by their second full session, National Assembly members may well find themselves beginning to be subjected to external pressures from organized groups and organizations, even if most of these groups are primarily NGOs.

Lobbying is a very important aspect of a developed democratic legislative process. It is also probably the most maligned and misunderstood aspect of that process. Lobbying can provide a vital communication link between the people and their elected representatives. As such, the activity of lobbying constitutes a linchpin of representative democracy. This

does not mean that lobbying activity should be permitted to proceed in a legislative body without control and regulation. The regulation of lobbying activity is an inevitable component of every developing democratic process, and it will at some point have to be addressed by the National Assembly of Afghanistan.

**By Phase 3 of the APAP project, the project team may find that the members of the National Assembly will benefit from workshops introducing them to the role that lobbying plays in a democratic legislative process, how to handle relations with lobbyists, and how to effectively regulate lobbying activity.**

### **C. Managing The USAID/APAP Program**

The management structure that SUNY/CID has designed for the APAP program appears sound. As this assessment was being completed, the Center was still in the process of selecting its Chief of Party. A highly qualified Legislative Technical Advisor had been appointed and was already in Kabul working full-time on the project. The Legislative Technical Adviser has spent more than five years in a similar capacity on the USAID project to assist the Palestinian Legislative Council, an assignment that gave him extensive hands-on experience in helping to both construct and build the capacity of a new parliament in a newly democratic Islamic country. A full-time information technology expert is scheduled to be added to the staff. Additional local staff are scheduled to be added in early 2005.

The full-time APAP staff will require substantial assistance from both local consultants who will assist the program on a part-time basis and short-term international consultants with special expertise in specific activity areas. The most important and valuable of the part-time local consultants will be the head of the law and political science faculty of Kabul University who served as an adviser to both the emergency and constitutional *loya jirgas* and enjoys an outstanding reputation not just among government officials, but among supporters of opposition presidential candidates and CSO activists.

As the APAP project progresses, the project team, in consultation with the SUNY/CID management team, will determine where short-term international consultants can be most productively utilized. A listing of activity areas in which short-term consultants have been suggested and estimated levels of consultant effort for each activity are shown in *Annex IV*.

Because the APAP project involves a completely new parliament that will not yet be in existence at the project's outset, the APAP staff will begin their project work in somewhat of a vacuum, with no frame of reference on which to gauge the make-up, shape or form of the new parliament that it will be assisting. Given this uncertainty, the project team is likely to find it more necessary than would be the case in an assistance program involving an established parliament to revise and modify goals and activities as

the project progresses. This is why the independent project reassessment that is recommended at the beginning of Phase 3 would be so important and valuable.

Separate from an independent reassessment to be conducted at the outset of Phase 3, the APAP team should carefully monitor project progress on a continual basis, evaluating the success and benefits of each individual activity on its completion. At the conclusion of each project phase, the project should be thoroughly evaluated in a one- to two-day staff retreat to which project participants and possibly other donors should be invited. A staff retreat at the end of each project phase will allow the APAP team to reflect on what the project's activities have contributed, individually and collectively, to the institutional development of the National Assembly. Including parliamentarians and parliamentary staff in the retreat would enable the team to receive feedback directly from activity participants, while donor participation could contribute to a fully coordinated assistance effort in the upcoming project phase.

## *Annex I*

### **Document s Reviewed**

The 2004 Constitution of Afghanistan

Afghanistan Constitutions, 1923-1996

Afghanistan Electoral Law

Afghanistan Political Parties Law

Afghanistan Government Regulations Governing The Registration of Political Parties

State University of New York/Center For International Development Afghanistan Parliamentary Strengthening Proposal

United Nations Development Program (UNDP) Afghan National Assembly Capacity Building Preparatory Assistance Needs Assessment Report, December 2004

Afghanistan: From Presidential to Parliamentary Elections. International National; Crisis Group, November 23, 2004

Afghanistan Briefing. International Crisis Group, December 12, 2003

“Afghanistan on the Constitutional Path: Challenges and Opportunities”. Article by M. Abdul Ramzipoor in Liberal Times, April 2003

Free, Fair or Flawed: Challenges for Legitimate Elections in Afghanistan. Afghan Research and Evaluation Unit (AREU) Briefing Paper, September 2004

Afghanistan: Crosslines Field Guide to humanitarian and conflict zones. by Edward Giradet and Jonathon Walter; Charles Norchi and W Mirwais Masood, co-editors. Public Media Action International: Geneva, Switzerland, 2004

Policy Note For Ministerial Advisory Council (MAC) On Parliamentary Tasks, fall 2004

MP’s Orientation Manual, Southern African Development Forum and State University of New York/Center for International Development, 2004

Draft Regulations and Procedures of the Council of Ministers, prepared by DFID Cabinet and Center of Government Reform Project, November, 2004

Recommendations Of Afghan Civil Society Forum To President And New Government of Afghanistan, November 25, 2004

*Annex I (cont'd)*

USAID Handbook On Legislative Strengthening, USAID Center for Democratic Governance, February 2004

Legislative Drafting For Democratic Social Change. Ann Seidman, Robert B. Seidman, Nalin Abeysekere (authors)

## ***Annex II***

### **Interviews and Meetings**

Sean Hall, Democracy Officer, USAID/Afghanistan

Eric Richardson, Senior Democracy Adviser, USAID/Afghanistan

Professor Nasrullah Stanikze, Chairman, Civil Law Department, Kabul University

Professor Abdul Ahrar Ramzipoor, Professor of Islamic Law, Kabul University

Professor Mahmoud Habibi, former Governor of Kabul and former Chairman of Afghanistan Senate

Shafika Habibi, 2004 candidate for Vice President

Anthony Fitzherbert, United Kingdom Adviser to Ministry of Rural Development

Louise Perotta, United Kingdom Department For International Development (DFID)

Rebecca Sagar, First Secretary (political), British Embassy

Younis Qanuni, 2004 candidate for President

Ed Morgan, International Foundation for Election Systems (IFES)

Frydoon Shairzay, Acting Director of National Assembly Secretariat, Afghanistan Civil Service Commission

Tashera Sharvzay, National Assembly Director of Information and Public Relations, Afghanistan Civil Service Commission

Mohd Kazaim Maldwan, National Assembly Acting Deputy Secretary General (Administration), Afghanistan Civil Service Commission

Shukria Barigzai, journalist, member of constitutional drafting commission of Loya Jirga

William Cole, The Asia Foundation

Grant Kippen, National Democratic Institute (NDI)

Peter Dimitroff, National Democratic Institute (NDI)

Andrew Wilder, Afghan Research and Evaluation Unit (AREU)

***Annex II (cont'd)***

Sarah Lister, Afghan Research and Evaluation Unit (AREU)

Quadir Amir Yar, Special Adviser to President of Afghanistan and legal adviser to Afghanistan National Security Council

Michael Bowers, Mercy Corps

Philippe Chabot, Mercy Corps

Mohammed Ali Watanyai, Director, Afghanistan Central Statistics Office

Fahim Sadaq, Afghanistan National Participation Association

Firt Farahat, Afghanistan National Participation Association

Professor Mahbouba Hoquqmal, Director, Afghan Women Lawyers Council, and Professor of International Relations, Kabul University

Gregory John Wilson, Adam Smith Associates Ltd., consultant/team leader, DFID Center of Government Reform Project

Anthony Preston Stanley, Adam Smith Associates Ltd., consultant, DFID Center of Government Reform Project

Gord Evans, G. Evans Consulting Ltd., consultant, DFID Center of Government Reform Project

Nasser Insaf, 2004 candidate for Vice President

Khalid Lateef, journalist, stringer for BBC

Hamid Geilani, Sufi Adviser to President

General Sardor Abdel Wali, cousin to His Majesty Mohammed Zahir, former King of Afghanistan

Abdel Aziz Ahmed, Chief of Staff to His Majesty Mohammed Zahir, former King of Afghanistan, Secretary General of 2002 Emergency Loya Jirga

Stephan Kinloch Pichat, Senior Assistant Country Director, UNDP

Hiroko Takagi, Program Officer, Governance Unit, UNDP

***Annex II (cont'd)***

Olivier Guillaume, Conseiller, French Embassy

Robert Hager, Team Leader, BeringPoint Afghanistan Legal and Regulatory Assistance Project

Ann Seidman, Boston University School of Law, Program on Legislative Drafting for Democratic Social Change

Robert B. Seidman, Boston University School of Law, Program on Legislative Drafting for Democratic Social Change

Douglas Grube, ARD local government consultant

Mark Levenson, ARD local government consultant

### *Annex III*

## **USAID Parliamentary Assistance Program Areas Impacted By Suggested APAP Activities**

Following is the specific program area or areas, as defined in the *USAID Handbook On Legislative Strengthening* (document identification number PN-ACF-632), in which the assistance activities suggested in this assessment could contribute to building the Afghanistan National Assembly into an effective representative institution of the Afghan people. Many activities, particularly those involving orientation for parliamentary leaders and parliamentary staff, directly impact on multiple program areas and are listed more than once.

<b><u>Program Area</u></b>	<b><u>Activity</u></b>	<b><u>Project Phase(s)</u></b>
<b>POLITICAL WILL/ DOMESTIC SUPPORT</b>	Orientation/training for Secretariat department directors and second tier staff (all departments)	1,2,3
	Orientation/training for Secretary General and their deputies (seminars and study tours with APAP staff and counterparts from other legislatures and parliaments)	1,2,3
	Citizen education about parliament	1,2,3
	Orientation for parliamentary candidates	1
	Member orientation conference	2
	National Assembly leaders orientation and development (development plan assistance, study tours)	2,3
	Preparation of a National Assembly institutional development plan	2

APAP project reassessment 3

*Annex III (cont'd)*

<u>Program Area</u>	<u>Activity</u>	<u>Project Phase(s)</u>
<b>REPRESENTATION</b>		
	Orientation/training for Secretariat department directors and second tier staff (Department of Public Information and Press Relations)	1,2,3
	Orientation/training for Secretary General and their deputies (seminars and study tours with APAP staff and counterparts from other legislatures and parliaments)	1,2,3
	Preparation of committee (commission) operations handbook	1
	Assistance in development of information technology system and in the design of an integrated bilingual state-of-the-art written and audio, icon-based document and record-keeping system	1,2,3
	Assistance in drafting rules of procedure	1
	Orientation for parliamentary candidates	1
	Orientation for women candidates	1
	Orientation for women parliamentarians	2,3
	Assistance in establishing a student internship program	1
	Assistance in operation of student internship program	2,3
	Preparation of parliament/media relations handbook	1
	Preparation of manual and training in	

	for Director of Department of Public Information and Press Relations in constituent relations	1
--	---	---

*Annex III (cont'd)*

<u>Program Area</u>	<u>Activity</u>	<u>Project Phase(s)</u>
---------------------	-----------------	-------------------------

**REPRESENTATION (cont'd)**

	Workshops for journalists and reporters on parliament and parliamentary process	1,2
	Preparation of introductory handbook on parliamentary ethics	1
	Workshops and assistance in development of a parliamentary code of ethics	2,3
	Member orientation conference	2
	National Assembly leaders orientation and development	1,2
	Preparation of a National Assembly institutional development plan	2
	Committee (commission) chairperson orientation (public hearings)	2,3
	Constituent relations workshops and study tours	2,3
	Parliament/media relations workshops	2,3
	APAP project reassessment	3
	Orientation to lobbying	3

**LAWMAKING**

	Orientation/training for Secretariat department directors and second tier staff (Department of Legislative and Parliamentary Affairs)	1,2,3
--	---	-------

*Annex III (cont'd)*

<u>Program Area</u>	<u>Activity</u>	<u>Project Phase(s)</u>
<b>LAWMAKING (cont'd)</b>		
	Orientation/training for Secretary General and their deputies (seminars and study tours with APAP staff and counterparts from other legislatures and parliaments)	1,2,3
	Short-term consultant to review tentative structure of Department of Legislative and Parliamentary Affairs	1
	Preparation of committee (commission) operations handbook	1
	Assistance in development of information technology system and in the design of an integrated bilingual state-of-the-art written and audio, icon-based document and record-keeping system	1,2,3
	Assistance in drafting rules of procedure	1
	Assistance in establishing a student internship program	1
	Assistance in operation of student internship program	2,3
	Preparation of introductory handbook on parliamentary ethics	1
	Workshops and assistance in development of a parliamentary code of ethics	2,3
	Member orientation conference	2
	National Assembly leaders orientation and development	2,3

Preparation of a National Assembly institutional development plan	2
--	---

*Annex III (cont'd)*

<u>Program Area</u>	<u>Activity</u>	<u>Project Phase(s)</u>
---------------------	-----------------	-------------------------

**LAWMAKING (cont'd)**

Committee (commission) chairperson orientation	2,3
Budget review workshops	2,3
APAP project reassessment	3
Orientation to lobbying	3

**OVERSIGHT**

Orientation/training for Secretariat department directors and second tier staff (Department of Legislative and Parliamentary Affairs)	1,2,3
Orientation/training for Secretary General and their deputies (seminars and study tours with APAP staff and counterparts from other legislatures and parliaments)	1,2,3
Preparation of committee (commission) operations handbook	1
Committee (commission) development	2,3
Assistance in drafting rules of procedure	1
Member orientation conference	2
National Assembly leaders orientation and development	2,3
Preparation of a National Assembly institutional development plan	2
Committee (commission) chairperson	

	orientation	2,3
	Budget review workshops	2,3

*Annex III (cont'd)*

<u>Program Area</u>	<u>Activity</u>	<u>Project Phase(s)</u>
---------------------	-----------------	-------------------------

**OVERSIGHT (cont'd)**

	Parliamentary oversight workshops	2,3
	APAP project reassessment	3

**MANAGEMENT/  
INFRASTRUCTURE**

	Orientation/training for Secretariat department directors and second tier staff (all departments)	1,2,3
	Orientation/training for Secretary General and their deputies (seminars and study tours with APAP staff and counterparts from other legislatures and parliaments)	1,2,3
	Assistance in drafting rules of procedure	1
	Assistance in development of information technology system and in the design of an integrated bilingual state-of-the-art written and audio, icon-based document and record-keeping system	1,2,3
	Assistance in space and facility utilization	1
	Assistance in design of new parliament building	2,3
	Preparation of introductory handbook on parliamentary ethics	1
	Workshops and assistance in development of a parliamentary code of ethics	2,3
	National Assembly leaders orientation	

and development

2,3

*Annex III (cont'd)*

<u>Program Area</u>	<u>Activity</u>	<u>Project Phase(s)</u>
<b>MANAGEMENT/ INFRASTRUCTURE (cont'd)</b>	Preparation of a National Assembly institutional development plan	2
	APAP project reassessment	3
	Orientation to lobbying	3

## *Annex IV*

### **APAP Program Suggested Short-Term Consultants**

<b><u>Program Activity</u></b>	<b><u>Consultants</u></b>	<b><u>Estimated Total Person Days (including travel)</u></b>
<b>PHASE 1</b>		
Parliamentary orientation for Secretariat Department directors	3	21
Preparation of: a) handbook/manual on committee (commission) operations,  b) handbook/manual on parliament/media relations, and,  c) introductory guide to parliamentary ethics	1	20*
Preparation of handbook/manual on constituent relations	1	14
Review tentative organizational structure of Department of Legislative and Parliamentary Affairs	1	11
Orientation/training for individual Secretariat department directors	To be determined by APAP team	
Orientation/training for second tier staff	To be determined by APAP team	
Orientation/training for Secretary General(s) and Deputy Secretary Generals	2-3	14-21
Assistance in development of National Assembly rules of procedure	1	1

\* Twenty (20) person days required for preparation of all three documents.

***Annex IV (cont'd)***

<b><u>Program Activity</u></b>	<b><u>Consultants</u></b>	<b><u>Estimated Total Person Days (including travel)</u></b>
<b>PHASE 2</b>		
New member orientation conference	12-15	84-105
Speakers orientation (pre-session or early session meeting with Speakers from other legislatures)	4	28
Speakers and Deputy Speakers study tour, or meetings at neutral location	4	20
Committee (commission) workshops and committee chairperson orientation/training	2-3	18-27
Constituent relations workshop	2	9-18
Budget review and oversight workshops (could be conducted concurrently)	3	27
Parliamentary ethics workshop	1	7
National Assembly staff orientation/training	To be determined by APAP team	
National Assembly building design	1	9
Review of progress of student internship program	1	9

**PHASE 3**

It is suggested that Phase 3 begin with a reassessment of what the APAP program has accomplished during its first two years. The reassessment would likely be conducted by two short-term consultants and would require an estimated 40 to 50 person days. It should include an examination of program assistance areas in which short-term consultants could be effectively utilized during the program's final phase. Among the most likely activity areas would be the following:

*Annex IV (cont'd)*

**PHASE 3 (cont'd)**

- National Assembly leaders development
- Committee (commission) workshops and committee chairperson orientation/training
- National Assembly staff orientation/training
- Budget review
- Oversight
- Constituent relations
- Parliamentary ethics
- Orientation to lobbying

## Acknowledgments

This assessment could not have been completed without the support and assistance from a number of individuals who are deserving of special mention. Karen Glenski of the SUNY Center for International Development handled all of the many complicated logistical arrangements and the center's John Johnson, the APAP project director, was always available with helpful advice and counsel. APAP legislative specialist Jawad Risheq sat in on most of our interviews and offered useful thoughts and suggestions based on his five years of experience with the Palestinian Legislative Council. Professor Nasrullah Stanikzai of Kabul University provided invaluable analysis and keen insights and also arranged almost all of our interview appointments. His knowledge and understanding of Afghanistan's history and its current political situation will be a great asset to the APAP project. Sean Hall and Eric Richardson of USAID/Kabul were always available to answer questions, handle problems and provide guidance. President Steve Lakis of the State Legislative Leaders Foundation provided his usual strong support and SLLF Vice President Marcia VanderVoort handled coordination with SUNY/CID in her usual efficient manner. At ARD, special thanks is extended to President George Burrill for his support and to the numerous supportive staff in both the Washington and Burlington headquarters offices. Finally, a special thank you is extended to our driver Ishmael Korishi who somehow managed to remain unruffled while maneuvering and navigating through the chaotic traffic of Kabul as he transported us from one end of the city to the other.