Summary of Form of Government and Electoral System Choices

For the thirty years since the monarchy's overthrow, Afghanistan has been unable to establish stable, legitimate government. This paper reviews republican options for a central government: His Majesty Muhammad Zahir, the former king and Father of the Nation, has stated that he does not support restoration of the monarchy.

I.   Possible structures for central government

The three possible central government systems are: (a) presidential, with a president elected separately from a legislature and independent of that legislature; (b) parliamentary, with the executive (the prime minister and cabinet) being selected by the legislature and removed by votes of no-confidence; and (c) semi-presidential, with both a president and a prime minister who share governmental powers. Legislatures can have one or two houses, but two is more common because it gives voice to elders and vulnerable groups, like minorities and women.

II.   Afghanistan's Needs and the Choice of Structure

For stability and peace, Afghanistan needs strong, national leadership to shift from rule by gun to the rule of law, and also an inclusive system that gives diverse ethnic and regional group a sense of participation. But both presidential and parliamentary systems can deadlock, as happened here after the 1964 constitution, sharpen divisions between groups, and even make losers feel so left out they resort to violence against the system.

A parliamentary system seems more flexible, more inclusive of ethnic groups, and better able to restrain an executive, but it needs strong parties, which are lacking in Afghanistan. A presidential system concentrates power, creates a legitimate national leader, and gives stability – but when one group's candidate wins, other groups might feel so left out they turn to violence. Presidents can also become dictators because they are difficult to remove and could exercise power unchecked. A semi-presidential system allows power sharing and has an in-built contingency if one leader is incapacitated, but it could lead to conflict between president and prime minister. But a president with only token powers could also be a moral leader.

Anecdotal evidence suggests that Afghans want a president. Presidential elections can be designed to maximize the winner's national appeal by requiring that a candidate win, say, both a plurality of total votes and at least 25 percent of the votes in two thirds of the provinces. The electoral system for the president could also require voters to mark both their first and second choices. If no candidate receives a majority of first-choice votes, the candidate wit the fewest first choice votes is eliminated and the second choices on those ballots are counted as first choices, and so on, until one

candidate gains a majority. This "alternative vote" system need not be complex: All it needs on the ballot is a second column for the second choice. These systems encourage presidents to reach across ethnic lines to form broad coalitions. But a plurality system, awarding the presidency simply to the candidate with most votes, could give power to a leader with only minority support, leading to a disputed outcome. Devolution of power to provinces and uluswalis can also give "losing" groups incentives to remain in the system.

Succession to the president must be clear, to several degrees, unlike in the current situation where there are four vice-presidents.

III.   Power of a chief executive and a legislature

Any chief executive needs powers over making war, foreign relations, and states of emergency. Afghanistan's many divisions will likely be reflected in a divided and argumentative legislature. To be effective here, a chief executive therefore needs more powers, like unique authority to introduce legislation in some areas (especially a budget); veto legislation; control of fiscal policy; and authority to issue decrees (subject to eventual legislative approval). Presidential acts impinging on individual rights should be potentially subject to court review for constitutionality. The number of terms a president can serve could be limited (in most countries, to two terms), which prevents a president from taking power for life through corruption and patronage. Term limits may damage accountability, because a president cannot be punished for misbehavior at the second term's end. In the executive, there should be independent offices appointed by the chief executive, with the legislature's approval, including loya saranwal, the central bank director, and solicitor general.

Principally, legislatures approve laws. Legislatures should have power to approve, but not modify, budgets, so these cannot be a way of granting favors to client groups. It should have power to question ministers. Its lower house should have a chairperson, who issues procedural rules and establishes committees. A standing legislative committee could also review presidential decrees between legislative sessions. The upper house should have power to delay, but not stop, legislation, in order to encourage well-designed laws. How divided or unified a legislature is depends on the electoral design, and whether it encourages many parties or few.

A national loya jirga might be called for extraordinary questions.

IV.   Afghanistan's legislative election system

The constitution need not only give broad outlines, not details, of the manner of selecting legislators. Any system must allow territories to be represented, because of the strength of local interests and feelings. It must also encourage parties to form broad

coalitions, and not be too fragmented. In a presidential system, a legislature can be more divided, because it is the president who will take policy initiatives.

One system is "first past the post," where many candidates run to be elected in each electoral district, and the one with the most votes wins. This system encourages fewer parties, so creates a legislature with fewer voices, although such parties could be more internally diverse. But this system needs districts of equal population, which Afghanistan cannot demarcate for lack of a census. It also restricts representation of local minorities.

Another system is "proportional representation," where the party gets seats in the electoral unit in accordance with its proportion of the vote. This gives more diversity but a more fragmented legislature. The electoral unit can be the nation or a large, multi-member district. In such districts, people could vote for a party, which has given a list of its candidates, and also for individuals, whose names can simply be checked off. Such multi-member districts give minorities a better chance of being represented. Or a district could have a number of seats (say four); each voter would have one vote for the many seats; and the four candidates with the most votes would win (called single non-transferable voting). In the absence of a census, the number of seats per constituency (for instance, a province) could be determined after the election by the number of valid votes cast.

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