



Promoting Democracy in Post-Conflict Societies

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EXECUTIVE SUMMARY

After 23 years of conflict the reconstruction of Afghanistan began in December 2001 with the formation of a transitional authority, and with the general elections scheduled for June, 2004, the first major steps in building a democratic state will be completed.

Afghanistan's new constitution promulgated in January, 2004, lays the foundation for a state based on Islamic values and democratic principles. Although currently available research is insufficient to fully evaluate the compatibility of these core elements of the constitution with the cultural and political perceptions of society, there are some preliminary indications that they do meet the aspirations of the people of Afghanistan.

Afghanistan's answer to the challenge of institution-building in a post-conflict society is mainly based on past experiences, e.g. the constitution of 1964, and some new features are being added due to the developments since then. Out of the democratic principles, four are being looked at in this paper: Equality, division of power, power-sharing, and pluralism. They are considered crucial elements for institutions in post-conflict societies to gain popular support and legitimacy in order to overcome a climate of mutual distrust and suspicion that results from the period of conflict.

In looking at these principles, some issues are raised to compare them with available empirical data concerning political culture in Afghanistan. Most of the questions must, however, remain unanswered because further research is required into the cultural and political perceptions of society.

INTRODUCTION

Afghanistan is emerging from a period of 23 years of successive conflicts: The war against Soviet occupation, factional fighting among different groups after the Soviets were defeated, and the struggle against the oppressive regime of the Taliban that only came to an end in 2001 with the assistance of foreign intervention.

Foreign intervention, however, did not only come for the benefit of Afghans who had suffered for more than two decades. It was largely motivated by external interests – the international war on terror. Terrorism had become a threat to international security and the extremist regime of the Taliban in Afghanistan was associated with this threat. Thus removing the Taliban from power was not only the desire of Afghans who suffered from it, it had also become an international priority.

Foreign interest in permanently removing the extremist regime of the Taliban from power in Afghanistan and thereby destroying one of the strong bases of international terrorism led to the continuing military assistance both in fighting the remnants and resurgence of the old regime and protecting the emerging new state that will be based on human rights, gender equality, and the rule of law.

With a major international threat being (almost) removed, Afghanistan has to place emphasis on establishing such a democratic system that will guarantee internal

stability and prospects for economic reconstruction even when foreign interests are no longer identical with Afghanistan's concerns. There may be economic assistance provided by the developed nations for some time. It is, however, most crucial that Afghanistan develops a sustainable state structure that can absorb such assistance.

Afghanistan has, during the past two years of transition, made some remarkable progress. The action plan and time table contained in the Bonn Agreement of December 2001 are almost completed. A new constitution has been promulgated, first elections and the end of the transitional period are scheduled for June 2004.

This paper looks at some aspects of the ongoing process of building democratic institutions and how these relate to issues of cultural perception. In doing so, the paper may raise more questions than provide answers. This should be regarded as an encouragement to research into issues that are vital for building a democratic system on the cultural foundations of the country to give it a better chance of continued existence.

AFGHANISTAN'S NEW CONSTITUTION: MERGING ISLAMIC VALUES AND DEMOCRATIC PRINCIPLES

Article One of Afghanistan's new constitution did more than raising the eyebrows of political observers – it raised suspicion that the constitution may leave room for the resurgence of Islamic extremism. Article One states that Afghanistan is an Islamic Republic. But far from establishing a theocratic regime, the new constitution determines a hybrid system in which secular features outweigh the Islamic elements. Although by name an Islamic Republic, Afghanistan is built on democratic principles some of which require a liberal interpretation of Islam to satisfy the requirement of the constitution that "...no law [and that would include the constitution itself] can be contrary to the beliefs and provisions of the sacred religion of Islam" (art. 3). There is no room for extremism in the constitution.

Afghanistan's strong dependence on foreign assistance in recent times may be the reason that some commentators thought to detect a 'guiding hand' in the drafting process which led to a constitution modelled after that of the USA. A closer look shows similarities between the Afghan and the American constitution in few aspects other than the executive presidency and even these are only superficial because the Afghan president enjoys greater powers than the president of the United States. Fact is, Afghanistan's constitution of 2004 leans strongly onto the country's own constitution of 1964. Two generations ago, at that time under a constitutional monarchy, Afghanistan made an attempt to combine Islamic values with democratic principles. Democratic elements feature strongly in both the 1964 and 2004 constitutions but the elements of Islam denote a clear distinction from 'western' democracies.

Secular features in the constitution

Secular institutions are given the highest authority by the constitution. If by a theocratic state is meant a state in which the temporal ruler is subject to the final direction of a theological head (like in Iran) and in which the law of God is the supreme law of the land, then clearly Afghanistan is nowhere near a theocratic, Islamic state.

Sovereignty belongs to the nation (art. 4). In Islam, sovereignty belongs only to God, the state and its functionaries are not above the law.

Of the senior posts in government only one, the president (incl. the vice-presidents) is mandatory to be held by a Muslim. For all others like ministers, supreme court judges, there is no such requirement in the constitution.

There is no supremacy of Islamic law. The formulation that "in Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam" (art. 3) does not necessarily and automatically support the literal approach of law being of divine origin sent to human beings through revelation. The chapter on the judicial branch contains only two references to Islamic law in that "...when there is no provision in the constitution or other laws [court rulings will be in accord] with the Hanafi jurisprudence..." (art. 130), and that "courts will apply Shia school of law in cases dealing with personal matters involving the followers of Shia Sect..." (art. 131).

Islamic features in the constitution

There are, among others, two specific provisions in Afghanistan's constitution that clearly distinguish it from a purely secular state:

- The constitution recognises Islam as the state religion (art. 2). In the same article religious pluralism is accepted. Religious pluralism is not a concession to a secular system, it is in line with Islam which forbids compulsion in religion.
- The state promotes religious education, organizes and improves the conditions of mosques, madrasas and religious centres (art. 17). Thus, taxpayers' money can be utilised to promote Islamic institutions.

During the period of conflict, Afghanistan has had both, a secular system during communist rule and a theocratic system during the Taliban regime. Both seem to have been strongly rejected if popular support for fighting these regimes can be taken as an indicator. Whether the present blend of secular and Islamic features meets public perception of what elements represent a desirable form of government and whether these are in line with democratic principles and Islamic values has not yet been researched in full. Preliminary research indicates that cultural perception appreciates democratic values and principles when they are compatible with Islamic values.

INSTITUTION-BUILDING IN POST-CONFLICT SOCIETIES

The Challenge

In very general terms it could be stated, that public institutions in post-conflict societies must fulfil two requirements: They must enjoy popular support and they must have legitimacy in order to overcome a climate of mutual distrust and suspicion that results from the period of conflict. An equally simplified answer to the challenge would be to establish a democratic system based on two core principles: Fundamental equality in the political process (one man, one vote) leading to wide-spread public support should be supported by a system of checks and balances (division of power) instilling trust in public institutions. In order to create legitimacy, the system has to function in a way as to make the public feel that their aspirations are reflected and they are participating in the decision-making process.

The question is whether such a simplified approach provides an appropriate answer to the multi-faceted character of the conflict(s) from which Afghanistan emerges:

The war against the Soviet invaders was also a war against the communist regime that had been established with the support of the Soviet Union after the over-throw of the monarchy. The ruling party at the time called its system a 'democracy'. Many Afghans today associate the term 'democracy' still with communism because they never knew a different meaning of the word. Democracy thus became a synonym for a regime that removed the religion of Islam from the constitution and tried to alienate the people from their traditions and culture.

The mujahideen (holy warriors) who finally defeated the Soviets and abolished communism turned out to create a state of anarchy in which different factions more often than not divided the nation along ethnic lines. It may have been mainly a struggle for power among the warlords, it turned to some effect also into an ethnic conflict.

The ascent of the Taliban regime was the extreme reaction to the rule of communists and their denial of religion and an attempt to centralise power after the fragmentation through fighting among the warlords. Although the Taliban never gained full control of the country, they established in the area under their influence an extremist religious regime that maintained law and order of a sort which completely ignored basic human rights and oppressed the nation.

The institutions that will shape the 'new' Afghanistan have to consider all these experiences.

Afghanistan's Answer to the Challenge

Equality

Fundamental equality allowing every citizen participation in the political process has been manifested in the constitution of 2004. Although similar provisions had been contained in earlier constitutions, equal rights and duties for men and women were the subject of heated debate among members of the recently concluded

constitutional assembly. Nevertheless, they finally accepted equality as a basic principle.

Society in general does not seem to be strongly divided regarding the question of equal voting rights for men and women although there are some differences among ethnic groups. In a survey conducted in January 2004 only 82 per cent of the Pashtu speaking respondents are willing to grant women the right to vote, compared with 92 per cent among the Dari speaking respondents; and only 75 per cent of Pashtu speakers are in favour of females having the right to stand as candidates for a political mandate while this is supported by 86 per cent of Dari speaking respondents. This indicates a difference in cultural perception of the role of women among the various ethnic groups of the country. Voting rights, however, do not constitute full equality as enshrined in the constitution. And when it comes to equality beyond equal voting rights the difference in opinions of men and women is considerable: In the same survey only 15 per cent of men consider equality an important issue but 42 per cent of women give this matter priority.

Division of Power

Preventing arbitrary rule by one individual or group is the reasoning behind the principle of checks and balances and in a democracy this is achieved by division of power between the legislature, executive and judiciary. Democracy allows for variations such as a presidential or parliamentary system, one or two chambers of parliament, federalism or a centrally organised state. There must, however, be clear distinction between the legislative branch that makes the rules but does not enforce them; the executive that implements but cannot make the rules; and the judiciary that interprets the rules and ensures adherence by them.

Afghanistan has opted for a presidential system that assigns extensive powers to the office of the president. At a first glance, Afghanistan's constitution appears in this aspect to be modelled on other presidential systems but the powers of the president of Afghanistan go beyond those of presidents in other democracies. The president of Afghanistan "...conducts his authorities in executive, legislative, and judiciary branches..." (art. 60). Besides the usual executive powers, he appoints one third of the members of the *Meshrano Jirga* (House of Elders, 2nd chamber of parliament) which gives him influence over the legislative branch; he chairs the government that passes regulations that guide in case of recess of the *Wolesi Jirga* (House of the People, 1st chamber of parliament); emergency regulations enforced by government remain in force even after parliament reassembles until they are formally annulled by a vote in parliament. The president's influence over the judiciary is shown in that he appoints High Court judges and enjoys discretion in dismissal of judges of lower courts.

While such far-reaching powers dilute the democratic principle of checks and balances¹, there are indications that a strong president corresponds with the cultural perception of a ruler in Afghan society. It is generally argued by the supporters of a strong presidency in Afghanistan that such concentration of power is necessary after factional fighting among the warlords has torn the country apart. That argument may suit a post-conflict society in particular and may in this present situation be shared by a majority of the people who desire stability and security.

¹ In this aspect, Afghanistan is not the only country opting for an exception from the principle of division of power. In many democracies strict division of power is not adhered to. Examples can be found in countries where the prime minister as head of the executive or cabinet ministers are, at the same time, members of the legislature.

Moreover it may reflect a cultural perception to the effect that there is no need for a strict division between the three branches.

Islamic political theory does not emphasize Montesquieu's concept of separation of powers amongst the various organs of the state on which western democracies are based. Islam does, however, treat functional independence of the judiciary as of great importance. Furthermore, in Islam the legislature is of minor importance since human-made law is superseded by the law of God. Given the strong influence Islam has on Afghan culture, it would not surprise if separation of power between the executive and legislative branch is perceived of not being a compelling condition.

Power-Sharing

It has become practice in modern constitution-making to enshrine power-sharing beyond the normal division of powers between legislature, executive and judiciary. Particularly in post-conflict societies power-sharing is being used as a tool to avoid discrimination of certain groups in society. The principle of federalism allows extensive power-sharing among ethnic groups. The constitution of Bosnia-Herzegovina is an example of how authority at federal level is minimized and most powers are devolved to the ethnically grouped lower units.

It is obvious that the new constitution of Afghanistan does not embrace such a model of power sharing. The constitution is reluctant in mentioning ethnic, religious, and cultural diversity that might determine conflicts and could be relevant for the political decision-making process. On the contrary, the constitution explicitly forbids political parties to be based on ethnicity, language, or religion. If as a result one or more group(s) feel unduly cut off from participating in the decision-making process, there could be potential for new conflicts. Little empirical research has been done as to the perception of the different groups in Afghanistan regarding the ethnic dimension of the past conflicts and their aspirations for the structure of the future state.

Although it can be assumed that the lengthy consultations of the constitutional drafting committee will have dealt with the option of federalism, their final decision to disregard such a system will most likely have been based on a preference of national unity over cultural and political diversity. The constitution does, however, not put restrictions on the ethnic, religious, or cultural composition of parliament. Instead the constitution stipulates that "...measures should be adopted for so the election system shall provide general and just representation for all the people of the country..." (art. 83). Since no electoral system has been decided upon yet, this provision of the constitution could be interpreted as the intention of adopting a system that facilitates proportional representation of the regions and ethnicities.

Pluralism

For constitutional separation of power to be fully effective, it must be accompanied by political division of power. Only when power is shared between different political parties or groups will the constitutional mechanism become political reality. A functioning democracy requires a system that is at the same time pluralistic and truly competitive.

Afghanistan's constitution refers to political parties only in the second chapter that deals with fundamental rights and duties of citizens. Article 35 guarantees citizens the right to form political parties and sets out some basic rules for such parties. The

constitution does not recognise in any form the role political parties play within the democratic system, nor does it specify the rights of political parties to fulfil such a role. Being subjected to the legislative (for subsequent legislation on parties) and the executive (for registration) political parties may not be truly independent and thus not able to contribute to the strengthening of democracy. Society appears to be split more or less equally between those who see positive impacts deriving from political parties and those who fear the "hidden motives" of parties and consider them a danger for unity and democracy.

Competition among political parties in Afghanistan is restricted by the constitution to areas that are not based on regions, ethnicity, language, or religion. This also restricts pluralism of the system. It must be stated that to date only little is known about political culture in Afghanistan. How is competition between parties and candidates perceived by the voters? Islamic theory offers a contrast to modern day competitive politics, in which candidates jostle with each other to obtain a nomination and then conduct a vigorous and expensive campaign to win (or sometimes even buy) over the voters. Islamic ideal is that public office should not be sought. It should be accepted as a trust only when offered. How far does such thinking influence political culture in Afghanistan?

CONCLUSION

This paper touched on some topics that will be of relevance for the future of democracy in Afghanistan. Only some of the questions raised can be answered by presently available results from empirical research. Simply applying the yardstick of democracy theory and judging the chances for developing a democratic system in Afghanistan by theoretically analysing adherence to democratic principles on the basis of the constitution or other documents may not provide satisfactory results.

Research in the fields of political and social science has been lacking in Afghanistan for a long period and research capacity has been reduced both on the institutional level and in terms of human resources, the latter mainly due to migration of experienced scientists during the period of conflict. In this respect Afghanistan shares the predicament of other post-conflict societies.

A first attempt has been made in Afghanistan by the newly established National Center for Policy Research at Kabul University to fill some of the gaps in empirical data related to the subjects mentioned in this paper. But this can only be considered a humble beginning. Both, quality and quantity of empirical surveys need to be improved over time and with growing experience.

Kabul, March 2004