

In the Name of God, the Most Merciful, the Most Kind



June 16, 2015

## Extension of Afghanistan's Parliament's Term

The legal term of Afghanistan's current parliament ends in a week, while there is no timeline set for holding the parliamentary elections and reforms agenda for bringing changes to the electoral bodies and system. With the end of the parliament's term in sight, officials are bracing for making arrangements for extension of the parliament's term beyond June 22, 2015 which is the last day of the parliament's term. On June 15, 2015, Abdul Rauf Ibrahim, the Speaker of the Lower House of the parliament, said that until the upcoming parliamentary elections are held, the parliament's working beyond the June 22 date would be legal and legitimate. This is while previously President Ashraf Ghani had suggested his decision to refer the issue of the parliament's term extension to the Supreme Court.

The government has been seeking a consensus in recent weeks for extension of the tenure of the parliament. In last few days, the President has had consultations with key stakeholders including political figures, government agencies and the lawmakers over the fate of the parliament. It is now almost clear that the term of the parliament would be extended until the next parliamentary elections are held. Given the government's consultations with key stakeholders and relevant agencies, it seems there is a sufficient consensus over the parliament's prolonged working beyond end of its legal term. Consensus-building has been the main approach of the government on deciding the end term of the House of Representatives. While developing consensus on issues of national importance is crucial for Afghanistan's political stability, there has been lesser focus on legal and constitutional basis for decision-makings.

The justifications for extension of the parliament's term remain controversial, and many experts and lawmakers consider the parliament's working beyond June 22 as illegitimate. This is while others argue that the parliament's working beyond its legal term would be legitimate and required based on the country's need for having functioning state branches and overseeing the government's actions. For any viable option, there should be legal and constitutional basis so to provide the critical legitimacy to the parliament's decision-makings until the next parliamentary elections are held. Both the government and the House of Representatives should come to the realization to not bypass the constitution in their decision-makings regarding the parliament's tenure.

On the other hand, there is no clarity over what authority would decide on extension or termination of the parliament's current term. The lawmakers' views differ over who has the competency to decide extension of the parliament's working term. The Speaker of the House maintains that the President shares the idea of extending the parliament's term, stressing that no other agency has the right to question the legitimacy of the parliament's extended term. The lawmakers have been unable to take a unified stance over who should decide the fate of the parliament. President Ashraf Ghani has made it clear that he is going to refer the issue to the Supreme Court. In absence of a dedicated body for interpreting the constitution, there are confusions and chaos regarding the issue. The decision for extending the parliament's term should be made based on national consensus and Afghanistan's laws.

The government needs to quickly resolve the issue of reforms to the electoral bodies and procedures and task the newly established reform commission to bring the required changes. The delayed reforms have already created enormous challenges for Afghanistan's democratic practice of voting for electing the members of the next parliament. It is reported that the President has notified of his intentions for assigning the Independent Election Commission with proposing reforms to the electoral system within five days. This is while the IEC is not supposed to propose reforms to the electoral system as the body itself needs to be reformed. Based on the agreement which led to formation of the current government, the newly established electoral reforms commission should propose changes to the electoral system. However, due to the disagreements over who should lead the reforms commission, the reform agenda for electoral system and procedures is virtually stalled.

The government needs to implement the provisions of the agreement mediated by the United States on reforms to the electoral system and procedures. The National Unity Government should establish electoral reform agenda and set the date for parliamentary elections. Any further uncertainties involving the upcoming parliamentary elections would exacerbate Afghanistan's fundamental administrative and constitutional deficiencies. The existing differences over the leadership of the electoral reforms commission have paralyzed the reform initiative for months. It is time for the leaders of the unity government should determination for correcting the harms done to the reforms initiative and the parliamentary elections.

The challenges ahead of the upcoming parliamentary elections are enormous. The preparations for the election would be a long and exhausting process. The electoral bodies would need sufficient time and resources to get preparations after they are reformed. The government needs to convince the international community for funding the elections. All these cannot be done without political will from the leaders of the National Unity Government.

## Human Rights and Afghanistan

By Dilawar Sherzai

The status of human rights in Afghanistan is not satisfactory. There are many incidents every now and then that point at the fact that discrimination is prevalent and the measures against them are not sufficient. Particularly, the rights of the women are not safeguarded by authorities and authoritative bodies. Therefore, it is important that Afghanistan must consider the issue of human rights seriously.

The international community and the international organizations, particularly United Nations, have kept on emphasizing that there must be efforts by Afghan authorities as far as violation of human rights are concerned. Support for Afghanistan has been guaranteed on the basis of the condition that Afghanistan would preserve the human rights as per the UN Universal Declaration of Human Rights.

European Union (EU) is one of the bodies that have been emphasizing that Afghanistan must take steps to eradicate the violations of human rights. On Monday, June 15, 2015, Afghan official and the officials from EU had a joint session on human rights, wherein, the EU Ambassador to Afghanistan, Francis Michael Milibon, voiced his concerns regarding the violations of human rights in the country and added that the country's judicial system requires reforms. In this regard, he said, "One of the issues that we discussed is to progress on deep judicial reform and I am happy to say that the EU is one of the partners with the Afghan government as it moves forward on judicial reforms."

Afghan Foreign Affairs Minister, Salahuddin Rabbani, in the same session stressed that Afghanistan is committed to supporting human's rights, particularly women and children's rights, freedom of speech, and to safeguarding achievements of the past decade.

Looking at the plight of human rights in Afghan society, it is really important that the Afghan government must do something more than promises and commitments.

In the contemporary era when the world has been globalized and the politics has been internationalized, the theories and movements of rights have reached to all the corners of the world to provide the basic rights of the human beings. These endeavors try to facilitate human rights on the face of the barriers of economic and political incapacities and shortcomings of the national governments. These rights are basically monitored by the international bodies and work under the umbrella of United Nations Organizations. Though the international movements and organizations play their roles to make sure that all the human beings are given their rights, at the same time it is necessary for the human beings to have complete awareness about their rights so that they are not violated.

Though there have been both national and international endeavors to protect basic rights of human beings, still there are many human beings who suffer from the deprivation of their basic rights. Many governments in the world, like that of our country Afghanistan, still lack the basic democratic

principles and the requirements of welfare state and therefore fail to provide the citizens their due rights. To be very specific about Afghanistan it can be said that a so-called democratic government has been installed, which has taken oath to provide the people their basic rights, yet there are millions who remain unattended.

The international concept of human rights can be best developed on the basis of the United Nations Charter and the United Nations Universal Declaration of Human Rights (UDHR). Article 1 of the UDHR says, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Its preamble also emphasizes on the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. The UDHR was adopted by the United Nations General Assembly in 1948. It was then a non-binding resolution; however, today it has, to a certain extent, acquired the force of a customary law, which may be called upon by the national and other judiciaries. However, majority of the cases of the violation of human rights still go unattended because of the lack of a coercive and authoritative international body.

The United Nations Charter provides very strong commitments to the preservation of human rights and emphasizes that the member countries must follow them. The preamble of the charter reaffirms faith in fundamental human rights, in the equal rights of men and women, while the Article 1(3) of the charter says that one of the basic purposes of UN is "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." Most importantly, Article 56 of the charter says, "All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55, which suggests for '(a) higher standards of living, full employment, and conditions of economic and social progress and development; b) solutions of international economic, social, health, and related problems; c) international cultural and educational cooperation; d) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.'"

The objective for Afghan government to play a tremendous role can be what is set forth in Article 55 of United Nations Charter. To be very much realistic about Afghanistan, one can say that guidelines are many; the only missing factor is practical measure. There is a wide gap between the guidelines/commitments and actions, and this gap becomes wider once the intentions and honesty are doubted; and in case of Afghanistan the gap is wider.

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## Violation of Humanitarian Law

By Hujjatullah Zia

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria" - stated by Geneva Convention relative to the Treatment of Prisoners of War. The "Law of Armed Conflict" insists on humanizing war and humanitarian treatment of civilians and war prisoners. Since men are born with natural and inalienable rights and dignity, these are inviolable under any circumstances - in time of war and peace. In case of no law in certain cases regarding civilians, armed forces will have to act upon "dictates of public conscience" and consider international norms. The international instruments have taken note of men's dignities and fundamental rights as "Intransgressible Principles of International Customary Law" which is preemptory norm of international law.

I believe that International laws and instruments are deeply rooted in ugly practices of human societies such as bloody wars and genocide - especially in the first and second World Wars - which led to indescribable casualties. The laws, thus, were established to mitigate men's suffering and anguish and to heal the bleeding wounds of human societies.

Human's dignity is believed to be "absolute and unique worth" which transcend material possessions. Immanuel Kant, a great European philosopher, stresses on men's "autonomy, dignity" and "principle of end". He is against instrumental use of human's rights and dignities and considers them inviolable. His theory had great influence on international instruments and modern concept of human rights.

Contrary to all aforementioned words, the rights and dignity of "hors de combats" and civilians are violated all around the globe, including Afghanistan, in one way or another. Prisoners of war are tortured or killed in the worst possible way and civilians are victimized on a massive scale. In other words, civilians are the sacrificial lambs of armed conflicts and their rights and dignity are trampled upon and their "autonomy" is denied. The civilians, including women and children, sustain great sufferings and loss in time of war with impunity.

Since men are born with "inherent" rights and dignity, slavery and contempt for humankind, physical or mental tortures, discriminations on the basis of race, sex, color or beliefs, using the weapon of mass destruction, etc. will be serious affront to their dignity and all these are ban internationally. Moreover, neither the civilians nor the prisoners of war are allowed to fall the victim of racial discriminations, inhumane treatments, outrageous acts of violence or

spreading pornographic photos. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) underlines the respect and protection of human dignity and consider it "inviolable".

Some international instruments have also stressed on prevention of "sexual exploitation" which is considered an aggression on humans' slavery and mental integrity and will relegate their status. Ill-fatedly, international laws were widely violated in armed conflicts and prisoners of war and civilians underwent highly inhumane and degrading treatments. As a result, the killing and burning of Burmese Muslims by Buddhist in Myanmar - which took place few days ago - and the violent genocide and painful tortures of Bosnians and Herzegovinians outraged the world's conscience as US President Barack Obama said in his speech in Cairo, "And when innocents in Bosnia and Darfur are slaughtered, that is a stain on our collective conscience. That is what it means to share this world in the 21st century..." Moreover, the humiliating acts of immorality in Abu Ghorab, such as forming triangles by a pile of naked bodies of men and women or putting the prisoners in front of their dogs, perpetrated by the US forces put the humanity under question. These acts of atrocity remind one of Ancient Gladiators. Currently, non-combatants, especially women and children, suffer painfully in Syria, Iraq and Yemen without an effective reaction from international community. Women's dignity is disrespected through honor killings and their husbands and children's blood is shed before their eyes by irresponsible armed forces and Islamic State militias. In Yemen, the wounded locals die in hospitals or camps via bombardments.

Similarly, Afghan civilians lose their lives in suicide bombings or improvised explosive device carried out by the militants - who are operating under the white banner of the Taliban or black banner of the Islamic State (IS) militias. According to reports, the civilian casualties are on rise in Afghanistan since the initiation of the Taliban's spring offensive. To gain financial supports, a considerable number of the Taliban militants have pledged allegiance to the IS groups and strengthened their militancy across the country.

A large number of Afghan civilians also lost their lives in the past decade via the US airstrikes and Taliban's acts of terror. In another item, the war and counter-terrorism campaigns terrorized Afghan non-combatants and led to large death toll. In short, the civilians' rights were trampled upon with impunity, which have raised public concerns. To remedy the challenges, government must prevent from civilian casualties across the country and international community should take preventative measures across the globe. To put it succinctly, the rights and dignity of the civilians have to be respected and protected in any corner of the world and the violators are to be prosecuted.

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