



Statement

17-18 November, 2023
Geneva, Switzerland

Afghanistan Constitutional Law Expert Group Calls for Genuine, Transparent and Inclusive Constitution Drafting Process

[Geneva-Switzerland] - The Afghanistan Constitutional Law Expert Group convened on 17-18 of November 2023 at the Geneva Center for International Conferences. The Expert Group representing Afghanistan's constitutional and legal professionals and academics, committed to promoting, inter alia, national, Islamic and democratic values centered on the principles of popular sovereignty and respect for human rights; strongly appeals for a genuine, transparent and inclusive constitutional drafting process in Afghanistan. Deeply concerned with the absence of a constitutional order in Afghanistan and while stressing that national sovereignty belongs to the people of Afghanistan, the Group firmly believes that the reinstatement of a modern and comprehensive constitution, developed through a democratic and transparent process, is crucial for maintaining the unity and assuring the prosperity of the nation of Afghanistan.

The 2004 constitution, drafted through a legitimate and popular process; reflecting the aspirations and rights of the Afghans based on Islamic and human rights values, articulating the mechanism of separation of powers, social justice and the rule of law - despite its shortcomings - was a significant milestone in Afghanistan's modern history. The suspension of this constitution by the Taliban in 2021 has deprived the country of a constitutional order, undermining the fundamental principles of justice, inclusivity, and rights-based governance.

While the Taliban have repeatedly claimed to have started drafting a constitution, if genuine, their approach lacks transparency and accountability, raising serious concerns on the legitimacy and credibility of the process. The Afghanistan Constitutional Law Expert Group firmly believes that any constitution, procedurally, must be drafted in adherence to the principles of popular sovereignty and broad societal consensus and, substantively, be comprehensive enough to reflect all relevant national and international values.

We believe it is essential to engage openly and meaningfully with various stakeholders, including but not limited to the political groups, civil society activists and organizations, the media, various ethnic and religious groups, the academia, youth, and women's groups, to ensure their active participation throughout the constitutional drafting process. Transparency and inclusivity are vital in developing a constitution that reflects the values, needs, and aspirations of all Afghans. This definitely enhances the legitimacy and credibility of the constitution.

Guaranteeing respect for human rights, promoting equality, protecting diverse minority groups, and establishing a system of nationally and locally accountable governance are essential components of a modern constitution, crucial for the continuity, cohesion and prosperity of our nation. Moreover, we stress the importance of upholding democratic values, respecting the rule of law, and safeguarding the rights and freedoms of all citizens, irrespective of their gender, ethnicity, or sect and religious beliefs.

The Afghanistan Constitutional Law Expert Group remains committed to supporting an inclusive constitution drafting process. Stressing the need for the existence of technical expertise in the process, it stands ready to collaborate with all relevant stakeholders, both on the process and substance, to ensure that the new constitution is comprehensive and becomes a genuine representation of the people's will, ultimately fostering a peaceful and prosperous future for Afghanistan. From the perspective of the Afghanistan Constitutional Law Expert Group, popular participation and opinion on the constitution is the most fitting form through which popular sovereignty can manifest itself democratically.

About the Afghanistan Constitutional Law Expert Group

The Afghanistan Constitutional Law Expert Group consists of a group of highly qualified constitutional lawyers, legal experts and academics who have experience of working in or contributing to the development of the Afghanistan's legal system. The Group is established, within the *Center for Dialogue and Progress*, to support and promote discussions on the legal and constitutional aspects of governance in Afghanistan and highlight the importance of this theme as part of the agenda of a national dialogue.

The work of the Afghanistan Constitutional Law Expert Group is based on three overarching principles:

1. Constitutionalism based on popular participation must be the basis of the governance in Afghanistan and state legitimacy must come from the will of the people. These would require adherence to the separation of powers, checks and balances, decentralization of power, the rule of law, respect for human rights, participation and inclusivity, among others.
2. Afghanistan is a pluralistic society, and its legal system should reflect and be based on pluralism in the sources of law-making.
3. Afghan citizens, men and women, shall equally enjoy universally accepted fundamental rights and freedoms, provided for, guaranteed, and protected by the Constitution. The people of Afghanistan should not be discriminated against based on their ethnicity, race, gender, age, language, religion or other considerations.

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