

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



June 15, 2015

Getting Rid of Calamity of Problems!!

The decades of prevalent conflict and war in Afghanistan shambled everything, ranging from infrastructural to socio-political downfall; reasonless bloodshed followed by enormous people rendered physically impaired, counts to be ill consequences of those endless conflicts. Most often we see people with unpaired body part, sitting at the corner of streets haplessly ask for financial help from every passerby. This is the disappointing picture of neglected section of society, battered by negligence of leaving them unattended.

Afghanistan is a country with a population of about 29 million 50 percent of whom counted as the youth. The young people constitute a large force. They are energetic, enthusiastic and full of zeal. It is a great national wear and tear if these energetic hands and brains are left unemployed that inflict great losses to nation. This massive manpower can do wonders provided its enthusiasm is harnessed for development work. Afghanistan youth have never lagged behind when called upon to meet a challenge. Unfortunately a large number of them are without any direction. In addition the bad governance and meager services delivered by the incumbent government would increase their frustration -increasing the chances of their manipulation by anti-state elements. It is for the national leaders to play their part by mobilizing their abilities and providing them with a direction instead of letting them at the reach of extremist elements.

There can be a large number of schemes, projects and programs wherein their total involvement will bring quicker and better results. They can play a pivotal role in the socio-economic regeneration of the society. There are many evil practices in our society. If the youth is associated in a drive against these practices, the results may be much more satisfactory. There may be schemes connected with the raising of the level of production in agriculture. The youth may be assigned the job of dissemination of knowledge for better farming, new techniques and proper use of fertilizers and pesticides. What is required is that they may be given adequate training in these tasks. In a drive against economic offences, their energy may be used in molding public opinion in favor of eradication and prevention of such offences. The youth may work successfully as an arm of the administration in the implementation of governmental programs aimed at fighting against these and other maladies.

Another field wherein their energy may be gainfully employed is the task of adult education and universalisation of education. Being given a little dose of incentive, encouragement and support, they may take over the great responsibility of fulfilling the targets fixed by the government. However, for continuous success to take place; it is the Government's responsibility to provide the youth with proper facilities for, getting equipped with the knowledge of the modern era.

It is right for the world and us to worry about the impact of Afghanistan's dysfunctional educational system, especially when it has been demonstrated that poorly educated young men in a country as large as Afghanistan pose a serious security threat to the rest of the world. Millions of families, especially those with little money, send their children to religious schools or Madrasas. Many of these schools are the only opportunity available for an education, but some have been used as nurturing ground for violent extremism and terrorism. There is no doubt that Madrasas need to be reformed, but what is even more critical is the reform of public sector educational systems.

Child labor is an issue of growing concern in Afghanistan. Child labor includes working children who are below a certain minimum age. This practice is going on since long and is one of the worst forms of child exploitation. According to recent estimates, one in four Afghan children aged seven to 14 is engaged in some form of work. The data explores the factors that influence decision-making at the household level. The decision to send children to work is influenced by a combination of factors. Poverty is an obvious contextual factor that dominates the decision-making of all households in the study. In addition, household composition and gender norms affect the availability of labour resources, which can result in the need to send children to work.

Child labor victims in Afghanistan mostly work in illegal remote mines and other sources for at least 12 hours a day since mining a major source of income for poor families, they then force their children into it for money, food and other basic commodities. Child labor is most concentrated in Asia and Africa, which together account for more than 90 percent of total child employment. Though there are more child workers in Asia than anywhere else, a higher percentage of African children participate in the labor force.

Nevertheless, it did not help, instead the numbers seem to have grown in the last few years, and many of the beggars are women and children. The Afghanistan Human Rights Independent Commission (AHRIC) estimates there are 60,000 child addicts in the country. Opium is the most common drug sown and used in the street of the country unchecked. The addict children are used a tool to earn money for respective gangs. This is alarming figure narrating the grave human rights violation where children subjected ill-treatment under the very nose concerned departments.

Eliminating child labor is one of the biggest challenges that the whole world is facing now. Child labor not only causes damage to a child's physical and mental health but also keep him deprive of his basic rights to education, development and freedom. Learning of aforementioned statistics, the government of Afghanistan must take immediate steps for alleviating the child labor on war footing. The government is awaited to devise implementable plan that could assists ridding out of calamities of problems.

The Looming Constitutional Stalemate

By Abdul Ahad Bahrami

With the legal term of Afghanistan's parliament ending in a week, there is a constitutional conflict and political vacuum looming in the country. There is now increased focus from the media, politicians, election monitoring organizations and the lawmakers in the parliament over the fate of the parliamentary elections and the constitutional stalemate that is looming. On Sunday June 14, 2015, President Ashraf Ghani said the issue of the Lower House of the parliament will be referred to Afghanistan's Supreme Court as the court is the only competent authority to interpret the constitution. In a sense of urgency to tackle the issue, President Ghani has recently carried out a series of consultations with representatives of relevant stakeholders including government agencies, top political figures and representatives from the donor countries. He assured on Saturday that there would no legal vacuum in Afghanistan's state and that the parliament's fate will be decided according to the constitution and in light of national consensus and interests.

The ambiguity over the fate of the current parliament and the looming constitutional is marking another bad precedent in governance in Afghanistan. The evolving constitutional crisis is not unprecedented in Afghanistan, but with no doubt it is the most serious case of breaching the constitution during the last fourteen years of post-Taliban era. The ongoing uncertainty over the legal term of the parliament has roots in last year's controversial presidential elections which produced the National Unity Government in Afghanistan. In fact, the presidential elections held last year tarnished the credibility of whole electoral bodies and systems and led to administrative failures to hold a timely parliamentary election. As result of the presidential elections, all parties particularly the main stakeholders of the National Unity Government and the major international donors of Afghanistan lost trust to the bodies responsible for conducting national elections. Exhausted with the outcome of the presidential elections, the Afghan political spectrum and the international donors of Afghanistan expected reforms in the electoral bodies and election procedures for a fair and free parliamentary election. Reform to electoral bodies and system was one of the main provisions of the agreement which led to formation of the current unity government in Afghanistan. It took months for the leaders of the unity government to establish a reform commission, but again they failed to agree over who should lead the commission tasked with proposing reforms to the electoral system. The donor countries financing Afghanistan's elections abstained from funding the parliamentary elections without due reforms to the electoral system. With the electoral reforms commission in limbo, the electoral bodies have virtually been unable to proceed with the preparations for the parliamentary elections.

While the legal term of the current parliament ends in a week from now, the end of the Lower House of the parliament's tenure will be the onset of further uncertainties in Afghanistan's political system and constitutional legitimacy of

the state. Obviously, there is no constitutional and legal basis neither for extension of the term of the current parliament nor shutting down the legislative branch of the state. According to Afghanistan's constitution, the term of the parliament ends at the end of the first quarter of the fifth year of the parliament's tenure. Based on the constitution, the parliamentary elections should be held within 30 or 60 days before the end of the parliament's term. There is no provision in the constitution whether what to do with the parliament's working if parliamentary election is not held on time.

On the other hand, there is no competent authority authorized by the constitution to interpret ambiguous articles of the constitution and to set out a way for resolving such challenges while the constitution remains on any such matters. However, former president Hamid Karzai set a precedent with referring some high-profile cases to the Supreme Court of Afghanistan or setting up special courts for resolving such stalemates. Still, there is no convincing justification for referring issues with constitutional ambiguities to the Supreme Court or any special courts formed by the government. While there is a body responsible for clarifying constitutional matters, its mandate and capacity is yet to be clear and justified. With no doubt, extension of the term of the current parliament by the Supreme Court or the parliament itself will remain controversial given the lack of legal basis for such an action. Many lawmakers also believe that decisions made by a parliament with 'extended working term' would be unconstitutional and illegitimate. This is while others believe it would be legal given the silence of the constitution over such a stalemate and Afghanistan's need for a functioning legislative branch. They argue that the state would be dysfunctional in absence of a parliament and that the government would go despotic and take arbitrary decisions in absence an overseeing body such as the parliament. All the arguments are justified given the constitutional stalemate and the country's best interests. But there should be legal basis for any decisions to be made for the fate of the legislative branch of Afghanistan's state when the term of the parliament ends. The bottom line is that both extension or termination of the parliament's tenure beyond its legal term would be another precedent for violating the Afghan constitution. The formation of the national unity government produced by the last year's presidential elections was itself a derailment of the constitution in Afghanistan. Former president Hamid Karzai violated the laws in many occasions while confronting the decisions of the parliament or dealing with other important challenges. Systemic violation of the constitution does not forebode well for the future course of Afghanistan's political system. It suggests how democracies in unstable countries like Afghanistan are vulnerable to legal and constitutional derailments.

The prospect of the parliament until the next presidential elections is uncertain while its legitimacy will remain questionable. The impacts of this constitutional derailment would not be limited to the legislative branch but also to the whole political system in the country. This would further undermine efforts of Afghanistan and its international backers to boost state-building and good governance in the country.

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شبكة نهادهای جامعه مدنی افغانستان برای تحکیم پروسه انتخابات
د تاكو پير د ټينگښت لپاره د افغانستان د مدني ټولنو شبكه
Afghanistan Civil Society Elections Network



The Manner of Wolesi Jirga's Work Continuation after June 22, 2015

The signing of the political agreement between the two contesting teams during the second round of 2014 runoff presidential election, which led to formation of the National Unity Government, has helped to steer the country out of likely crisis and created some hopes.

However the inability of the National Unity Government in fulfilling its pledges with the people has resulted in that this victory is also accompanied by some concerns.

Delay in the commencement of the electoral reform process, which was believed to be completed before the expiration of working period of the Wolesi Jirga (WJ) or lower house, and setting a date for holding upcoming parliamentary election, are yet to materialize.

This is while that a handful of days remain prior to June 22, 2015, in which the legal working period of the lower house members comes to an end.

The present situation raises concerns about legitimacy of continuation of WJ's tenure, which requires the National Unity Government to address these concerns as early as possible.

To reach a possible solution and consensus, this publication attempts to address some of the main questions regarding the manner of how the continuation of the lower house's tenure after Saratan.1.1394, should be managed.

1. What are the major consequences on the lack of legitimacy of WJ after June 22, 2015?
2. What are the main legal viewpoints on the continuation of WJ tenure after June 22, 2015?
3. How can we preserve the legal solution of WJ tenure after June 22, 2015?
4. Can we call the extension of the WJ tenure legitimate, despite the lack of a legal solutions to this problem?
5. Does start of electoral reform process help reduce the impacts on the illegitimacy of WJ tenure?

1. What are the Major Consequences on the Lack of Legitimacy of WJ after June 22, 2015.

Absence of the lower house can raise questions to the legitimacy of Afghan government as a political-democratic structure in the national and international level. It will bring the principle of balance amongst the three branches of government (legislative, judiciary and executive), which are considered as prominent indexes of a democratic system and are the main components of the Afghan constitution, under question.

Provision of article 4 of the constitution states: "National sovereignty in Afghanistan belongs to the nation that exercises it directly or through its representatives," can also be questioned.

It can further reduce applicability of the Parliament's decisions and resolutions with regard to monitoring the performance of the government and the legislation process. The motive for an active representation and launching group programs among the parliamentarians can be reduced as well.

2. What are the Main legal Viewpoints on the Continuation of WJ Tenure after June 22, 2015?

On the basis of discussions which took place among legal associations of the country, it shows that legal solution for this problem should be sought in the clause No. 2 of article 83 of the constitution. Which says: "Wolesi Jirga member's mandate ends on the 1st of Saratan (June.22.2015) of the fifth year after the elections, and the new assembly starts its work." But owing to the lack of any specific organ for the interpretation of constitution, various interpretations of the article are provided. Currently, members of lower house and legal associations make two different interpretations of the clause No. 2 of article 83 of the constitution.

First interpretation: Proponents of this interpretation describe the first paragraph as an independent ruling, insisting that the second clause of article 83 focuses on illegitimacy of WJ after 1.4.1394 as the adverb of time is prior than other phrases in this clause. Therefore, the mention of second paragraph (after the announcement of the elections results) does not justify continuation of WJ. They argue that the phrase "after announcement of election results" is aimed to determine the first working year of the parliament in attempt to specify the fifth year and not prolonging WJ tenure until holding elections.

Second Interpretation: Proponents of the second interpretation argue that the first paragraph of second clause of article 83 (Working period of Wolesi Jirga on 1.4.1394) without the second paragraph of this clause (Ends after announcement of election

results) is incomplete as there is coma (,) after the mention of time-adverb. As per writing principles, interpretation of the first paragraph without the second paragraph is incomplete, therefore, the time-adverb (1st of Saratan of the 5th year) is dependent on (after announcement of election results).

They add that the lawmakers' intention in mixing and interlinking two paragraphs together is tied with two matters: On the one hand, he made the government and relevant organs responsible by mentioning time-adverb to be ready for holding elections timely, on the other hand, he attempted to pave the ground for exceptions for maintaining flexibility in fixing the date of elections in case of unpredictable conditions.

3. How Can Preserve Legal Solution of WJ Tenure after June 22, 2015?

The only solution to ensure legitimacy for continuation of WJ tenure is to justify the second interpretation (2nd clause of article 83 of the constitution) which apparently seems difficult due to the lack of interpretation organ of the constitution. In fact, there are legal ways to certify one of these two interpretations and get the right one.

Under the law, both the president and parliament can seek legal advices from the Commission on Overseeing Implementation of the Constitution and Supreme Court on multiple legal matters.

The president, who heads the three branches of the government, therefore, is required to officially seek views of the Commission on overseeing the implementation of the constitution or Supreme Court about the two interpretations from the second clause of article 83 of the constitution. In case relevant commission endorse the second interpretation, the president as the head of government's three branches can send it to the parliament along with an official order in attempt to ensure legitimacy of continuation of WJ until the parliamentary election accordingly.

4. Can We Call WJ Tenure Continuation Legitimate, Despite the Lack of a Legal Solution to This Problem?

A. Experts of political sciences who divide legitimacy word into two dimensions. Legal legitimacy that is based on the legality of continuance can stop or eliminate with the expiry of the legal period. But the psychological legitimacy which is based on the need and acceptability of an action could not be stopped and ended with the expiry or end of legal basis. With respect to the definition of psychological legitimacy, we can reach a conclusion that whenever there is need to reformation in the electoral system, tenure of WJ can prolong despite the expiry of its legal period and psychological legitimacy of this period cannot end and remain in place.

B. A number of legal associations and parliamentarians also argue that this is not the first time that parliamentary elections are postponed contrary to the provision of the constitution and has had the consequences of the continuation of WJ after the expiry of its legal working period. They base their argument on the parliamentary elections of 2010 and say that former WJ continued to work for about 5 to 6 months due to controversy rose in former parliamentary elections. This group's above argument state the experience of 2010 parliamentary elections as an undesirable practice to some extent can seem logical in the face of the current situation of WJ. But if we compare the situation of lower house of prevailing to 2010 elections with the current situation, some difference can be observed because before the expiry of the legal tenure of previous WJ, the date of the next elections in that time had already been set by Independent Elections Commission (IEC). Similarly, preparations to conducting elections were underway - this matter has largely played a role in ensuring psychological legitimacy for continuing tenure of WJ of 15th period beyond its legal period.

5. Second Proposed Solution: Does Start of Electoral Reform Process Help Reduce Impacts on the Illegitimacy of WJ Tenure?

The existing consensus on the need to reform before elections among the government, parliament, political leaders, civil society and international community gives necessary opportunity to leaders of the national unity government to deal with the impacts of illegitimacy of continuation of WJ tenure. To materialize this, leaders of the national unity government are required to take the following measures urgently.

A. In the first step, leaders of the national unity government should establish necessary assurance among the people, civil society and international partners by launching electoral reform commission for electoral reform. Building such assurance will inherently consider as preparation for holding upcoming election and can justify repeat of similar situation that was before 2010 parliamentary polls.

B. In the second step, leaders of the national unity government should convene a meeting in consultation with the heads of three branches of government, elders, national leaders, representatives of political parties and civil society to lure their support for continuing WJ tenure till the hold of upcoming parliamentary elections. An official declaration, supporting prolong of WJ tenure should be released for public awareness. In current situation, release of such official declaration by the presidential office can be justified as national expediency-need for prolonging lower house tenure until holding parliamentary polls.



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