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Le principe d'Égalité et la constitution de l'Afghanistan de janvier 2004

The Principle of Equality and the January 2004 Afghanistan Constitution

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English abstracts :

Afghanistan has tragically joined the world after a quarter of century of miseries and a long history of isolation. Political science research has mainly looked at that period and the present reconstruction as an item within wider geo-strategical interests, or as an occurrence of an ongoing civilization clash, or again as an instance of nation building experiment. Since the principle of Equality was included as a fundamental in the international community fostered Bonn agreement, as well as in the new Afghan Constitution, this work intends to consider present political events in Afghanistan as one human experience.

What appeared to Western audiences as some kind of a miracle - the signature in December 2001 of a peace agreement between foes which had been fighting for more than two decades - was actually the result of long prepared negotiations involving various extremely war weary Afghan parties who took the opportunity of an international event, the September 11 attacks in the USA, to try and solve their problems in the Afghan style while brushing away long suffered foreign interference. On that occasion, the Afghan nevertheless accepted – welcomed? – international help, which required equality of citizens as a prerequisite for any support.

Equality has long been embedded in the Afghan culture. Islam started with a call for equality among believers and equality is nowadays considered as totally inherent to muslim law. As a United Nations member, Afghanistan is also complying to the Universal Declaration of Human Rights. These two legal basis are referred to in the new Constitution. They nevertheless display fundamental differences.

For the UDHR, humanity, thus equality, are received by birth. For Islam, being human is a matter of will, of compliancy to law as a support to peace and equity. Equity means equality of treatment within distinct positions in society. In Muslim law, every individual, man or woman, believer or *kafir*, powerful or destitute, has rights and duties which were awarded by divine will according to these positions. No law should contravene the human longing for a reward in afterlife. Thus a good government is one which supports Islam.

Afghan political life is not oblivious to considerations that their society should provide more equity. Some have long argued that religious matters could be kept private as a matter of choice, and *hanafi* jurisdiction (which is prevalent in Afghanistan) has been recognized as the most liberal in this prospect. But recent inputs inherited from the *jihad* years have disconsidered these trends. Furthermore, poorly educated muslim scholars tend to equate tribal law (where patriarchal rule is law) with muslim tradition.

The international community contribution to the renewal of the Afghan society was officially a pledge to equality and democracy, and most cynically an insurance against more future hazards. An analysis of the actual financial support to Afghanistan shows that priorities were counter-terrorism and anti-narcotics, both issues that certainly outlive current operations and to which hypothetical solutions cannot be found without improvements in day to day life. Emphasizing on these two matters with insufficient means has rather led to a strengthening of warlords, and to disconsidering the rule of law. Violence and corruption are getting more acute every month.

In the emerging Afghan society, the Shia minority has gained better recognition, as a community. But any Afghan individual – and most notably any woman – who would try and claim equal treatment in front of the law is presently confronted to the fact that not enough support has been given to the judicial system. Most crimes are not prosecuted.

The Afghan situation is regarded as heterogenous by foreign donors. International aid to Afghanistan is widely considered as plentiful, whereas it has never by far been equivalent – when considered according to the Afghan population – to what was awarded to other post-conflict situations. Donors argue that aid projects should be financed according to local standards.

The Bonn process has been considered a success. But the human situation in Afghanistan cannot be considered as one which has received equal treatment in a globalized world.

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