Long Read: Sowing seeds of ethnic division? Afghanistan's constitution and electoral system

Meetra Qutb (Independent Researcher and Consultant, UK) *explains how Afghanistan's constitution promotes ethnic divisions in the country through the establishment of a highly centralised form of government, as well as adopting electoral systems that do not enable a true political reflection of the diversity of Afghan society.*

Afghanistan is a multi-ethnic and multi-lingual country. Due to the decades of war, there exists no accurate census on its population, especially with regards to the size of each ethnic group. But one thing is known: one ethnic group is not big enough to form a majority, rather the country is made up of several different ethnic groups.

In Article 4 of Afghanistan's constitution, 14 ethnic groups are mentioned: Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pachaie, Nuristani, Aymaq, Arab, Qirghiz, Qizilbash, Gujur, Brahwui and Other Tribes. The first five groups are large communities and play a prominent role in the country's political life. Pashtuns, the largest group, however, have historically asserted a "right to rule". Estimates of their size vary between 32-42 per cent of the entire population.

On the other hand, Afghanistan is virtually a religiously homogeneous country: its population is estimated to be 99 per cent Muslim, including 84-89 per cent Sunni, 10-15 per cent Shiite Muslim, and the rest (0.3 per cent) 'other religions', such as Hindus, Sikhs and Jews. There is also total of 45 native languages spoken in Afghanistan. However, the constitution recognises only 8, among which are the official languages of Farsi, Dari and Pashto.

The 2004 Constitution

The new Constitution of Afghanistan, adopted in 2004, stuck to a unitary tradition of the country and a presidential system of government (Article 1), giving broad powers to the president. The recognition of the multi-ethnic character of the country (Article 4), however, was not included in the initial draft version of the political document. It was only upon insistence of the Constitutional Loya Jirga (Grand Assembly) (CLJ), a grand representative meeting made up of 502 members of Afghan society that was convened in accordance to the Bonn Agreement from December 2003 to January 2004 that a debate was held to ratify the draft constitution. (The constitution was drafted by 35-member Constitutional Commission appointed by the Transitional Authority of Afghanistan in 2003.)

During this debate over the constitution, the Northern Alliance (a coalition of non-Pashtun groups which was led by Tajik, Uzbek, Hazara and some other ethnic leaders united against the Taliban) opposed what they believed was a centralisation of power that favoured Pashtuns. After failing in their campaign to set up a system in which parliament would select a prime minister, the Alliance ensured some limitations to the power of the president, mainly through the assignment of key authorities by parliament. The country's newly installed presidential system however did not leave the country with a truly collective and inclusive executive, therefore creating a political system designed to provide power to only one winner from one community. Under the terms of the constitution, for a president to be elected, a candidate must receive more than 50 per cent or the majority of votes (Article 61). Such a crude measure does not provide a structure of governance that fairly represents the ethnic divisions of Afghanistan's multicultural society, rather it enhances them.

Elections and the centralisation of government

The negative consequences of a highly centralised structure of government in Afghanistan can be seen in the country's electoral system. Afghanistan's electoral system for presidential elections is based on a majoritarian voting system that can lead to the encouragement of ethnic divisions among voters.

Take the country's first presidential elections in 2004 in which Hamid Karzai won with 55 per cent of vote. Karzai, the most powerful and most internationally favoured candidate, received the majority of his votes from Pashtuns. His Tajik, Hazara and Uzbek rivals received 16 per cent, 11 per cent and 10 per cent of the vote respectively. These other candidates did not receive much support outside of their ethno-linguistic group. The ethnicity of the candidates and the election results therefore revealed the long-standing ethnic and regional divisions in Afghanistan.

Because Afghanistan does not have a majority ethnic group, candidates are forced to reach out to other communities to be elected rather than relying solely on their own community. While a Pashtun candidate has to reach out only to one other group to be elected other political candidates from other ethnic groups have to form a much larger coalition. It is therefore challenging for non-Pashtuns to win a presidential election.

Karzai gave himself a good chance of winning the 2004 elections by appointing a Tajik and a Hazara as vice presidents. This multi-ethnic ticket allowed Karzai to win the election. Under the constitution, the power to appoint all high-ranking officials (a power that includes not only cabinet ministers but also members of the Supreme Court, judges, provincial governors and district governors, local security chiefs, and members of supposedly independent commissions) is granted to one person: the president, allowing that president to reward political allies in their small coalitions such positions.

NUG's failed inclusive government

And then there are the 2014 elections. The National Unity Government (NUG), which was the outcome of a U.S. brokered agreement between Ashraf Ghani and Abdullah Abdullah after both claimed victory in 2014 presidential elections, is another failed attempt in establishing an inclusive government, further impeded by the Constitution. The NUG was a step towards formalising power-sharing in Afghanistan, however it failed to change the strong centralised system of government.

The NUG agreement included pledges to convene a Constitutional *Loya Jirga* to amend the Constitution so that the position of Chief Executive Officer as "prime minister" was formalised within two years, as well as adopt new electoral reforms. Despite Abdullah's persistence to implement the deal, it was never implemented. Although the NUG looked to be a step towards formalising a system of power-sharing, there were serious challenges and disagreements within the leadership as both leaders had not been able to bridge their fundamental differences regarding their respective roles and powers.

Tensions between both leaders created widely divergent interpretations of the NUG agreement. Ghani was the main beneficiary of a centralised constitutional framework, while the vaguely worded agreement gave the CEO (a role that lacks any constitutional or formal standing) few defined powers or responsibilities. Both failed to agree on basic principles of governance regarding central government and preferential bias toward ethnicity in the appointment of key posts.

Concerning the former, Ghani has been in favour of creating a Kabul-centric powerhouse, while Abdullah has argued for more decentralisation. Ghani's push for centralisation has led to more division among Afghan elites who criticise him as being a micromanager and have brought discontent and isolation. Regarding the latter, Ghani has been accused of "extreme Pashtun nationalism" and Abdullah has been accused of favouring Tajiks.

For instance, in 2015, 75 per cent of officials appointed in the President's Office of Administrative Affairs (OAA) were Pashtuns. Moreover, Ghani has side-lined several prominent non-Pashtun leaders and forced them out of the unity government. Namely he forced his first vice president, the Uzbek, Abdul Rashid Dostum, into self-imposed exile after accusing him of kidnapping and raping an elderly political opponent. Instead, he has surrounded himself with ethnonationalist Pashtun leaders and has given his Pashtun advisors full access to government resources and decision-making authority.

After Ghani was announced as the winner of the 2019 presidential elections, his rival Abdullah also claimed to be president, and refused to accept defeat in the elections, establishing a parallel administration in a palace next to Ghani's presidential palace. Ghani on the other hand refuses any other unity government, while Abdullah still insists on amending the constitution and creating a prime ministerial post. As a result, if the problem is not solved (especially during at a time of relative peace with the Taliban) the country's deeper ethnic tension will be further deepened.

The Electoral system and ethnic tensions

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In addition, the parliamentary electoral system does nothing to reduce ethnic tensions in Afghanistan. Afghanistan's electoral law, adopted in 2004, relies on a Single Non-Transferrable Vote (SNTV) system for parliamentary elections. This system allows voters to cast votes to individual candidates not to political parties. One explanation for adopting this system was the poor performance of advocates of closed-list Proportional Representation (PR) system, which benefitted the opponents of a PR system who were worried about the emergence of strong political parties.

Another argument was Karzai's concern that the closed-list PR system would benefit the charismatic non-Pashtuns, as Karzai wanted a fragmented opposition in the legislature rather than powerful political parties. Opponents of the SNTV system warned about the dangers associated with this system, mainly that voters would be able to assess whether their vote was wasted because under SNTV citizens vote for an individual not for a political party and individual candidates are elected only if they win a certain threshold.

What is perhaps most significant is the ethnic distribution of supporters and opponents of the government. For instance, no Uzbek supported the government in the 2005 parliament while some Hazaras supported and opposed the government (the support from Hazaras was linked to the inclusion of Khalili as one of Karzai's vice presidents), but Uzbeks opposed the government due to feelings of underrepresentation.

Prohibition of ethnic parties

The Constitution also prohibits the formation of parties based on tribalism, parochialism, language and religious sectarianism (Article 35). The president and cabinet members are prohibited to base their decisions on ethnic and regional considerations and from using their posts for regional and ethnic purposes (Article 66 and 80). The prohibition appears a logical way of avoiding discrimination between citizens of Afghanistan (Article 22). Nevertheless, the constitutional ban on forming parties based on language, ethnicity, region and Islamic school of thought is far more questionable. Such a prohibition limits the ability of ethnic groups to seek redress for any injustice or discrimination through the electoral process. This along with the centralisation of power in hands of the president, and the weakening the role of the parliament, aggravates the feeling that smaller ethnic groups are excluded from any significant participation in government.

How to amend the Constitution to promote ethnic diversity

With all this in mind, there are ways in which governance in Afghanistan can function to decrease the political divisions between different ethnic groups. This could firstly be brought about by amending the constitution and changing the system of government to federal or semi-presidential system. Secondly, reforms could be brought to the current electoral system from SNTV to a PR system to strengthen political parties and ensure a just and inclusive set of representative rights for all segments.

It is in the interests of each citizen of Afghanistan that the government adopt a new constitution based on power-sharing norms and due regard to the ethnic and plural diversity of Afghan society. Such a change would help stabilise democracy, and ensure a broader representation of ethnic, religious and linguistic diversity of the country than the current status quo.

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