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**Rome Conference on Rule of Law in Afghanistan**

An intense and stimulating debate took place in panel n° 1 with respect to the difficulties affecting legislative procedure in Afghanistan, which might seriously threaten the performances of the rule of law reform.

The legislative expertise of the country is mainly concentrated in the Ministry of Justice Legislative Department (Taqnin). Parliament, which began to function only in 2006, lacks at the moment of legislative expertise. Panelists supported the idea of enhancing Taqnin's capacity and of building Parliament's capacity. In his intervention, the Minister of Justice Sarwar Danish pointed out that more capacity is needed to build skills in the Ministry. Major problems regard computers, legal library, translation and internet access. Although cooperation has been provided in the area of capacity building, more cooperation is still needed.

For what concerns Parliament, the debate was centered on three issues: fragmentation of parliamentary representation, the long delays required for the passage of new legislation and uncertainty surrounding procedures, scarce attention to Islamic law from internationally supported rule of law programs.

1. Fragmentation of representation within the Afghan Parliament, it has been observed, impedes the emerging of a clear-cut divide and therefore of a sufficient voting discipline. According to the participants, such difficulty derives mainly from the electoral law, corresponding to the mechanism known as the Single Non Transferable Vote, founded on a direct relationship between candidates organized from parties among which electors are expected to choose, thus discouraging the creation of political parties. The Minister of Justice said that a draft reform of the electoral law moving in the direction of enhancing the role of political parties.
2. The low performances of the Afghan Parliament, including the long delays required for drafting and uncertainty concerning procedures, depend on various reasons and require a wide array of measures. Panelists have reached the common conclusion that the following measures should be taken into account:
  - a) Donors should greatly improve translation services concerning draft and legislation;
  - b) Technical capabilities of the two houses should be strengthened through the participation of members of the Standing Committees of the two houses to the Law Reform Working Group held by the Ministry of Justice;
  - c) Legal training for the staff of the two houses should be granted from foreign experts, in the perspective of the formation of a skilled and authoritative board irrespective of partisan preferences;
  - d) the role of Universities for preparing new scholars and for participating in drafting new laws should be enhanced;
  - e) laws should be accompanied with explanatory notes, which are of paramount importance for letting people realize the content and meaning of legislation and therefore its own implementation.

Participants also noted that, for the first time in history, the Supreme Court of Afghanistan exercises the right of review of laws for conformity with the Constitution. Someone suggested that the Supreme Court could exert its review on legislation prior to the parliamentary approval, with the aim of ensuring a good legislative product. Other participants, however, argued that a better solution would be to strengthen the capacity of existing institutions to carry out these

functions and clarify, on the other hand, the procedures for review by the Supreme Court. Adding more reviews would result in more delays and implicit vetoes.

3. Participants highlighted the need for international assistance to take into account the Islamic character of Afghan law, including its relation to jurisprudence (fiqh). Some suggested a need for building the capacity of the international community offer such appropriate assistance. Some suggested greater consultation with ulama during the legislative process. Others urged to strengthen technical dimension in preparing the legislation including resort to sharia experts.

A move from a donor driven perspective to an Afghan driven perspective was generally supported by panelists, most of which admitted that international assistance organizations still need a sufficient understanding of the constitutional, legal and social system, as well as of the Afghan language. Awareness of these failures in the international assistance approach is of course crucial for improving legislative procedure, which, in turn, conditions the well functioning of rule of law reform process.