

(3) Mohammad Qasim HASHIMZAI

"The Separation of Powers and the Problem of Constitutional Interpretation in Afghanistan"

In view of the new Afghan constitution adopted in 2004, this article provides a concise overview describing central institutions of the political system and the separation of powers between them. Furthermore, the author discusses perpetual problems concerning different sources of law as well as regularly contested Human Rights standards in Afghan society. The text finally puts special attention on the ongoing conflicts revolving around the question which institution is responsible for interpreting constitutional provisions.

Starting from outlining the development of Afghan constitutionalism in the course of the 20th century, the article depicts basic organizational principles characterizing the political system according to the 2004 constitution. These features comprise a strong presidential governing system, a bicameral parliament, a unitary centralistic state and an independent judiciary. After illuminating distinct competences and characteristics of different state organs, Hashimzai elucidates other important attributes of the current Afghan constitution. He argues that the country possesses a relatively progressive basic law, which attempts to reconcile dominant Islamic sources of law and secular, international Human Rights conventions. However, religious and secular legal norms contradict each other regarding the rights of religious minorities and women. Finally, the author points out that the authority of the Afghan Supreme Court must not be impugned by relevant political actors as a generally accepted interpreter of the constitution is a precondition for political stability in Afghanistan.