

## EXECUTIVE SUMMARY

The aim of the Parliamentary and Expert Roundtable on Constitutional Issues was to bring local and international experts together with members of the Assembly of Kosovo and other political and party representatives to discuss constitutional issues and to help developing a shared understanding of the role of the Constitution in a democratic society.

The underlying assumption was that, although some issues relevant to a future Constitution are solely discussed in the context of the status talks (in particular minority protection, cultural heritage and decentralisation), a large number of elements, including the constitutional process itself, should already be discussed in order to ensure a smooth political transition. Two common views expressed by participants supported this:

- The political transition to post-status Kosovo would end with the adoption of a legitimate Constitution. The Constitution would be the result of an inclusive process that would bring together all the people of Kosovo to develop a common vision.
- The Constitution will have a lasting effect on the institutions themselves. The ultimate goal of the Constitution – one that will have a European perspective – is to bring stability and prosperity to Kosovo, and by extension to the region.



The main success of the Roundtable was to prove that this common vision on the role of the Constitution was shared by each and every participant. The following account of the roundtable is based on participants' comments and recommendations of the experts.



### **Institutions, judiciary, elections... and the question of minority rights**

The Constitution is to secure internal cohesion, external stability and prosperity, as stated by one expert. Its primary constitutive elements are the separation of powers and the protection of human right.

### ***Separation of powers: parliamentary system and independent judiciary***

During discussions on institutions and the judiciary, participants seemed to be especially interested in how to effectively apply the provisions of the Constitution:

- The current situation in institutions was assessed as unsatisfactory, in particular the judiciary, and participants stressed the need to develop functional institutions.
- To date, the four post-conflict elections have been seen as free and fair, thus increasing confidence in the democratic system. However, the need to adopt an open list system was expressed as a way to bring even more legitimacy to the elected representatives.
- A parliamentary system was considered by a majority of the discussants as the most flexible, accountable and sustainable system.
- The lack of a tradition of an independent judiciary in Kosovo was recognised by some participants as problematic.
- To interpret the constitution and guarantee its principles, the creation of a constitutional court was favoured. However, it should not deal with individual complaints (at least for the beginning).

Recommendations:

*On elections:*

- Many constitutions include only few key electoral provisions and call for an electoral law separated from the constitution. Doing so provides a way to entrench norms to protect against ruling party manipulation since constitutions are difficult to amend.



- Several “universal” principles (right of everyone to vote and stand for election) a set of principles establishing “equality” (equal voting rights; clear balanced distribution of seats, minority and gender equality) should determine constitutional electoral provisions.
- “Fairness” (allowing voters the freedom to form an opinion, be neutral and sanction campaign violations) and “secrecy” must also be ensured.

### *On an independent judiciary:*

- The judiciary must: protect citizens against the state; maintain the balance of power and the principles of legality and rule of law; and maintain public faith in the judiciary (e.g. ensuring there is no risk of politicisation, fair, speedy and low-cost judicial procedures, proper implementation of court decisions).
- Judges with high standards (integrity, dignity of the judiciary) and with in-depth knowledge of European laws are required.



### **Human Rights and Minority Rights: Protection versus Efficiency**

The conference did not intend to discuss minority issues for the reason that those issues will be dealt with during the status process, however, the issue deserves special attention as it was raised during each session.

- Participants repeatedly expressed the feeling that they perceived a sort of “trade off” between efficient institutions (that would enable prosperity) and protection of minority (that would enable stability), stressing the need that the latter should not hinder the former.
- Participants recognised that a society divided along ethnic lines like Kosovo, faces challenges with the protection of minority rights rather than the protection of individual rights as such.
- Some representatives stressed that protection mechanisms should take into account the reality in Kosovo and the specific situation and interests of each community.

For instance, this perception of a “trade off” the minority issue was exemplified when discussing the following issues:



- *On elections and representation:* Participants agreed that minority representation was important but disagreed on how to achieve “fair” representation. A few participants even questioned whether a state could truly be called a democracy if reserved seats were mandated, stressing that Kosovo’s current system of reserved seats was unfair to majority parties.
- *On the judiciary:* Some expressed the view that a definition in the Kosovo Constitution of the nature and diversity of the population of Kosovo, coupled with the statement that the judiciary should reflect that diversity, could be sufficient to guarantee diversity in judicial appointments. As long as the appointment procedure is not politicised, appointment based on merit should automatically lead to a diversity of judicial personnel.

### Recommendations:

- *Minority rights:* Any definition should embody individual rights of any member of a group as well as collective rights of a minority group. At the same time, those rights should fulfil an integrative function.





- *Inclusion in the Constitution:* Experts explained that human rights, including minority rights, are the binding expression of the values linking the society to the individual. As this is based in applicable laws justifying an obligation to protect, rights and protection mechanisms belong to the Constitution.
- *Protection mechanisms:* The range of possible human rights protection mechanisms was divided into three categories (internal, outside and supranational mechanisms). Each should be carefully examined to ensure the most efficient and comprehensive protection system.
- *Integration of international law:* Recognising that most human rights instruments are part of the international law, proper mechanisms to ensure their integration into the local legislative architecture should also be included in the Constitution.

- *To create confidence in the system:* Experts explained and repeated during each session that the only way to escape from the dilemma is to create goodwill and to transform the trade off as follow: the more the constitutive groups have confidence in the system, the less they need guarantees and the more efficient would institutions able to be.

### **Legitimate Constitutional Process: to create political willingness**

- *On legitimacy, inclusiveness and transparency:* Experts used any opportunity to stress that the constitutional process itself plays a key role in developing political willingness among all the constitutive groups in a society and to ensure a legitimate constitution. It requires an inclusive process where all groups can participate in a transparent manner.
- *On the role of politicians and experts:* During the constitutional process, the respective role of the politicians and the experts should be clearly defined. Politicians should work on building political consensus. Experts, following political guidance, should look at original solutions through comparative studies, in particular from the region, bearing in mind the specificity of Kosovo.

### **To ensure legitimacy: need for inclusiveness, local ownership and transparency**

- Experts expressed the view that the constitutional process is usually a long one, especially in a society divided along ethnic lines (which is a more permanent phenomenon than for instance division along political ideology).
- The constitutional process should not be rushed for short term interests. Speed could be at the detriment to political consensus and could result in non-functional institutions. Related to this, experts explained the need to be aware of the agenda of the international community.

### **Constitutional and status process: Drafting phase after status process**

- The constitutional process if properly handled will play a positive role in finding solutions to initial tensions and to ensure that the Constitution will be implemented.
- The constitutional process should not interfere with the status process

