



USAID
از طرف مردم امریکا
د امریکا دولس لخوا

**AFGHANISTAN
PARLIAMENTARY ASSISTANCE
PROJECT**

12 April 2009 Vol. 2, No. 11

Legislative Newsletter

Calendar

- Wolesi Jirga (Lower House) Agenda:
 - Electoral Law
 - Counternarcotics Law
 - Law on Child Correction and Education Centers
 - Law on Registration of Commercial Trademarks
 - Law on Chamber of Commerce and Industry
 - Education Law
 - Law on Medals and Badges
 - Law on the Structure, Duties, and Authorities of the Afghanistan Independent Human Rights Commission
 - Law on Personnel Affairs of ANA Sergeants
 - Law on Private Security Companies
 - Government Structure Law
 - Communication Services Regulatory Law
 - Private Investment Law
 - Higher Education Law

- Meshrano Jirga (Upper House) Agenda:
 - Extradition Law
 - Organization and Jurisdiction of Courts Law
 - Criminal Procedure Code for Military Courts and Law of Soldier Crimes
 - Law on Movable Assets in Banking Transactions
 - Law on Regulating the Ethical Relations of the Three Powers of State

- Joint Committees:
 - Law on Health
 - Law on Mortgage of Immovable Assets in Banking Transactions
 - Police Law
 - Law on Gatherings, Protests, and Demonstrations

Legislation

The status update and description of bills remaining inactive for several weeks have been removed. They will be reintroduced as the drafts become active. Bills on the Assembly agendas will remain in the calendar above.

Electoral Law

The Electoral Law establishes the electoral system and will regulate electoral issues, including voting centers/polling stations, observers, election campaigns, candidacy, candidate lists, voting eligibility, counting, and inter-agency cooperation on elections. The draft law addresses presidential, parliamentary, provincial, district, and mayoral elections.

Update: No change from previous report.

Counternarcotics Law

The draft law, in accordance with Article 7 of the Afghan Constitution, will prevent cultivation, trafficking, production, transaction, export and import of narcotics. The bill also addresses punishment of narcotics traffickers and promotes assistance from national and international organizations on countering narcotics processing, production, and facilities. The bill also promotes cultivation of alternative crops.

Update: The Ministry of Counternarcotics introduced the bill to the Wolesi Jirga plenary on 1 April. The Antinarcotics Committee has reviewed the first chapter and proposed amendments including removing a reference to a procedure for legal movement of narcotics to make all trafficking, including for medical purposes, illegal.

Law on Child Correction and Education Centers

The bill is drafted in accordance with the values embodied in Article 54 of the Afghan Constitution and the UN Convention on the Rights of the Child. The draft law addresses issues of reeducation and protection of suspected, accused, and convicted children in child correction and education centers.

Update: The Wolesi Jirga committees have amended articles addressing convicted children's education and health facilities in child correction centers. A combined meeting of WJ committees is scheduled to discuss the bill this week.

Law on Registration of Commercial Trademarks

This law is established to organize the registration and use of trademarks for industrial, commercial, communications, and agricultural goods, products and services. According to the law, a name, word, signature, written piece, map, title, stamp, picture, and advisement can be trademarked. The law also regulates registration, change, and transfer of trademarks and restricts the use by two or more individuals, companies, offices, organizations or institutions of the same trademark.

Update: The Wolesi Jirga committees have reviewed the bill and proposed amendments including calling for legal decisions in commercial disputes to be published. A combined meeting of Wolesi committees will discuss committee differences if necessary.

Law on Chamber of Commerce and Industry

This law is drafted to improve commercial, industrial, agricultural, husbandry and other economic services in the private sector.

Update: The Wolesi Jirga committees amended several articles of the bill including adding a provision for educating merchants on commerce issues and encouraging importers to acquire Chamber of Commerce membership when obtaining or renewing commercial permits.

Education law

The draft law guarantees equal and balanced access to free primary education for all Afghan citizens. The bill aims to eliminate illiteracy and improve the quality of education countrywide through modern methodology and parental involvement in managing schools. In addition, the bill calls for improved professional qualifications of teachers, school principals, and Ministry of Education employees. The draft sets a minimum education level of grade eight for all Afghans and mandates design of age-appropriate curricula by the Ministry of Education. The Wolesi Jirga Religious, Cultural, Education and Higher Education Committee amended the grade at which Islamic subjects should be taught from 10th to 6th.

Update: No change from last week. The bill is pending consideration by a combined meeting of the Wolesi committees.

Law on Medals and Badges

The Law on Medals and Badges regulates affairs related to class, value, size, and production of official government medals and badges.

Update: The bill was inactive in the Wolesi committees last week.

Law on the Structure, Duties, and Authorities of the Afghanistan Independent Human Rights Commission

Pursuant to United Nations General Assembly Resolution 48/134 dated 20 December 1993 and provisions of Article 58 of the Afghan Constitution, the bill promotes respect for and monitoring of human rights, and governs the structure, functions, authorities, and activities of the Afghanistan Independent Human Rights Commission.

Update: No change from last week. The bill was inactive in the Wolesi Jirga Women, Civil Society and Human Rights Committee. Wolesi Jirga Speaker Qanooni has requested that the committee members choose a chairperson or face being folded into the Central Audit and Oversight on Implementation of the Law Committee.

Law on Personnel Affairs of ANA Sergeants

The law regulates personnel issues (appointment, transfer, vacation, discipline, rewards, and retirement) of ANA sergeants.

Update: The bill was inactive in the combined Wolesi committee last week.

Law on Private Security Companies

The bill regulates foreign and domestic private security companies (PSC) in Afghanistan and places licensing and oversight authority with the Ministry of Interior. The draft law establishes a board chaired by the Minister of Interior to oversee security companies' affairs. The board will review and approve applications before forwarding them to the Cabinet and revoke licenses or impose restrictions as deemed necessary. The Wolesi Jirga Internal Affairs, Borders and Local Administrations Committee draft reduces the maximum staff size of a private security company from 500 to 100-300.

Update: The Wolesi Jirga Internal Affairs Borders and Local Administrations Committee has raised fees for armored vehicle movement permits from 30,000 to 50,000 Afs for external PSCs and from 20,000 to 30,000 Afs for Afghan PSCs. PSCs active with military logistical convoys have been authorized to carry mid-level heavy weapons. As previously reported, the committee also changed the name for security organizations from Private Security Company to Private Security Organization.

Government Structure Law

The law regulates affairs related to government structure in accordance with the Afghan Constitution.

Update: No change from last week.

Communication Services Regulatory Law

The law is proposed in accordance with provisions of Articles 10 and 37 of the Constitution of Afghanistan in order to enhance and develop the telecommunications services, organize and monitor telecommunication markets, and govern business relationships between the Ministry of Communications, service providers, and customers.

Update: No change from the last report. The Wolesi Jirga Communications, Transportation, City Development, and Municipalities Committee has distributed the bill to the other Wolesi committees for comments.

Private Investment Law

The draft law regulates issues related to encouraging and protecting private investment in a free market economy. The Wolesi has amended the maximum lease period for foreign investors from 50 to 90 years. A joint committee of the houses has approved the amendment.

Update: No change from last week. The Wolesi Jirga National Economy Committee has completed drafting the joint committee amendments but the bill has not been sent to the President.

Extradition Law

The bill governs the transfer of suspects, accused, and convicts to and from Afghanistan and addresses requests for judicial cooperation on criminal matters between Afghanistan and other countries. In line with Articles 7 and 28 of the Constitution, the bill seeks to implement Afghanistan's obligations under bilateral extradition treaties as well as consolidate procedures in existing laws which address Afghanistan's obligations under multilateral conventions, including the United Nations Convention against Transnational Organized Crime and the Convention for the Suppression of the Financing of Terrorism.

The proposed law generally follows the principles of the UN Model Law on Extradition and of most extradition laws, including those on covered offences, dual criminality requirement, prohibition against double jeopardy, and grounds for refusal of extradition requests. In addition, the bill conditions Afghanistan's approval of extradition requests on the provisions of the International Covenant on Civil and Political Rights and the Prohibition of Torture and Other Cruel, Inhuman, and Degrading Treatment.

Update: No changes from last week. The bill is pending introduction to the Meshrano plenary by the Legislative, Justice and Judiciary Committee.

Organization and Jurisdiction of Courts Law

The law will regulate the structure, staffing, and rights and responsibilities of the courts. Under the law, the Supreme Court, as the highest judicial authority in the country, has the right to overturn or amend decisions of the lower courts. The courts review disputes, monitor implementation of the law, and protect citizens' rights in accordance with the law.

Update: The bill is under consideration in the Meshrano Jirga plenary.

Criminal Procedure Code for Military Courts and Law of Soldier Crimes (one document)

The draft law addresses issues of crimes committed by Afghan National Army officers and soldiers. Procedures involving criminal investigation and reporting, arrest of the accused, collection of evidence, access to witnesses and evidence, rights of the convicted, court verdicts, punishment, etc. are covered.

Update: The Meshrano Jirga Defense Committee has made several amendments to the bill.

Law on Movable Assets in Banking Transactions

This draft law outlines the rights and responsibilities of the parties to a transaction, and establishes parameters for management of mortgage affairs in banking deals involving movable estates.

Update: The bill is included in this week's Meshrano Jirga agenda.

Law on Regulating Ethical Relations of the Three Powers of State

The draft law establishes expectations for behavior and communication between representatives of the executive, legislative, and judicial branches of government.

Update: A combined meeting of Wolesi Jirga committees has amended 31 articles and added one paragraph prohibiting exchanges of recommendations on personal issues. A second change includes referring to National Assembly committee chairmen as officials. A push by one faction to refer to the heads of parliamentary groups as officials was defeated in the plenary, which otherwise approved the bill on the 11th.

Law on Health

The law regulates private health services and health centers, implementation of health projects in different areas of the country, prevention of disease, and protection of mothers and newborns.

Update: A joint committee of the houses is scheduled to discuss the bill this week. As previously reported, a central issue is whether the government has the right under the Constitution to charge for "advanced" health services or should provide them free of charge as it is able.

Law on Mortgage of Immovable Assets in Banking Transactions

The draft law regulates business and banking transactions that use immovable property as security and specifies the rights and obligations of the parties involved. The law will secure debt and contracts using immovable property; facilitate access to negotiable credit by securing immovable property; provide mutual agreement between parties to a banking transaction; and facilitate expansion of commerce, credit, investment, and economic growth.

Update: A Meshrano and Wolesi joint committee meeting is scheduled to review the houses' differences this week.

Police Law

The law regulates the structure, responsibilities, duties, activities, and authorities of the police forces. The Wolesi draft gives the Minister of Interior responsibility for supervision of Kabul city, border, and highway and traffic police forces nationally. The regular MoI police forces in the provinces and districts would be supervised by provincial governors and district administrators.

Update: A joint meeting of Meshrano and Wolesi committees is scheduled to consider the law this week.

Law on Rights and Privileges of the Relatives of Martyrs and Missing

The law regulates the special rights and privileges of families of the martyred and missing. The draft addresses the social, economic, and political needs of the families, including housing and employment benefits.

Update: The Assembly bill was sent to the President early this week.

Law on Rights and Privileges of the Disabled

The law will integrate and support the disabled economically.

Update: The Assembly bill was sent to the President early this week.

News

MPs Debate Supreme Court Decision on Presidents Karzai's Tenure

The Supreme Court released a statement on 29 March that the president and vice presidents should remain in office until a new president is sworn in after the delayed election on 20 August. Article 61 of the Constitution specifies that the presidential term end on 21 May but the Independent Election Commission (IEC) has delayed the election due to logistical and security concerns.

Last week Assembly MPs debated the Supreme Court's decision and presented arguments for and against extension of the President's term. One group cited prevention of a power vacuum, internal stability, and security in supporting the decision. Others argued that the Court overstepped its authority in making the decision and requested a meeting between Assembly, Supreme Court, IEC, and government representatives to take a joint decision on the issue.

Calling on MPs to question the Court's decision, Honorable Oghli (Faryab) said, "This is the third violation of the Supreme Court against the legislative branch. This time it needs our strong response."

Daud Sultanzoi MP (Ghazni) agreed: "As an Afghan, the Supreme Court's decision shocked me; this is an obvious violation of the Constitution, the President has launched a writ coup d'état, he is using his authority and official position before the election."

Fawzia Gailani (Herat), member of Wolesi Jirga Central Audit and Oversight on Implementation of the Law committee added, "Parliament has the authority to take decisions over these types of cases, not the Supreme Court. It is good to discuss this issue in legal terms, not political."

Citing prevention of a national crisis and continuity in governance, other MPs supported the Court's decision.

Honorable Abdulrab Rasool Sayaf (Kabul) said, "It is a logical decision, based on Islamic jurisprudence. The President can remain until the new president has taken charge. I cannot forget the bad memories of past years and power vacuums. Three months will be easier than establishing a new government. This house should not take a rash and emotionally decision which could create a crisis."

Honorable Haji Alam Gul Kuchi (Kuchi) highlighted other concerns: "Instead of this issue, we should talk about the election itself. Are you sure that the election is happening? Currently 22 provinces are insecure which means that the coming election will not be legitimate, universal, and nationwide. The President should call for a Loya Jirga to clear up these concerns."

Upper House

From his hospital bed in Turkey, Meshrano Jirga Speaker Sebghatullah Mujadidi expressed support for President Karzai to remain in power after May 20. The plenary has not considered the issue, but several senators have supported Mujadidi's position saying that they can 'tolerate' President Karzai for another three months as to avoid a constitutional crisis and power vacuum.

Wolesi Jirga Summons Ministers over Human Trafficking Tragedy

After the death of 62 Afghans – mostly teenagers from Kandahar, Kabul, Kunduz and Kapisa – in southwestern Pakistan in early April, the Wolesi Jirga summoned the Ministers of Foreign Affairs, Work and Social Affairs, and Refugees and Returnees for an explanation about the incident. The victims were being moved by traffickers in a shipping container through Pakistan to Iran. The MPs also requested that the ministers clarify their strategy to reduce unemployment – cited as an indirect cause of the incident – in a joint session of the Wolesi Jirga committees.

Honorable Parwin Momand (Kuchi) expressed sadness and accused the Government and UNHCR of negligence. "During the past years the Ministry of Work and Social Affairs has been unable to provide employment facilities to Afghans. This Ministry has failed to handle its responsibilities. The UNHCR also failed in facilitating Afghan's ability to work or stay in neighboring countries."

Honorable Molawee Shahzada (Kunar), blaming the government, Assembly, and neighboring countries, said, "We are all responsible for finding a way to reduce poverty. Millions of dollars come to Afghanistan to stabilize the country and reduce poverty. If half of this money were spent for employment we would not face these problems." The MP accused the National Assembly of wasting its time on partisan issues rather than national interests.

Minister of Interior Hanif Atmar responded to the MPs' concerns by pointing out that, "Although the incident happened outside the country, it was a human trafficking

attempt and its roots are inside the country in Kandahar. Four Afghans are suspected in this case. We have arrested two and police are looking for the others.”

A bill on human trafficking is pending consideration in the Assembly.

Acronyms:

ANA – Afghan National Army
ANDS – Afghanistan National Development Strategy
ANP – Afghan National Police
CSO – Civil Society Organization
DIPR – Department of Information and Public Relations
IEC – Independent Election Committee
IHRC – Independent Human Rights Commission
ISAF – International Security Assistance Force
NATO – North Atlantic Treaty Organization
NDS – National Directorate of Security
MOF – Ministry of Finance
MOI – Ministry of Interior
MOD – Ministry of Defense