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# Legislative Newsletter

## Calendar

- Wolesi Jirga (Lower House) Agenda:
  - Electoral Law
  - Counternarcotics Law
  - Procurement Law
  - Customs Law
  - Law on Cooperative and Limited Liability Companies
  - Law on Transit
  - 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
  - Law on Civil Servants
  - Government Structure Law
  - Communication Services Regulatory Law
  - Higher Education Law
  - Law on Rights and Privileges of the Relatives of Martyrs and Missing
  - Law on Rights and Privileges of the Disabled
- Meshrano Jirga (Upper House) Agenda:
  - Law on Regulating the Ethical Relations of the Three Powers of State
  - 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
- Joint Committees:
  - Private Investment Law
  - 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 last week. Wolesi Jirga Deputy Speaker Yaseeni last week stressed the importance of moving ahead with the bill but the ad hoc committee established to resolve the Kuchi (nomad) seat issues has not met.

### ***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 Antinarcotics Committee has reviewed eight chapters of the bill. Members told APAP last week that the committee is debating penalties, including detention periods, for trafficking different types and quantities of narcotics. The committee has also linked care centers for addicts to the Ministry of Public Health rather than the Ministry of Counternarcotics and removed a reference to a procedure for legal movement of narcotics to make all trafficking illegal. The committee has not released the drafted amendments.

### ***Procurement Law***

This bill will address material and service procurement affairs of government and private entities. The draft law aims to promote transparency and equal opportunity in competitive procurement processes, control of financial and public expenditure affairs, and supply of quality goods and services.

Update: The bill was inactive in the Wolesi Jirga Budget and Finance Committee due to questioning of the Minister of Rural Rehabilitation and Development on delayed payment of National Solidarity Program employee salaries.

### ***Customs Law***

This bill is drafted in accordance with Article 42 of the Constitution to legislate customs affairs including government collection of customs revenue, establishing

customs duties, specifying the authorities of customs personnel, outlining export policies and procedures, and preventing customs violations.

Update: The bill was inactive last week in the Wolesi Jirga Budget and Finance Committee.

### ***Law on Cooperative and Limited Liability Companies***

The bill is drafted to govern the affairs and activities of Cooperative and Limited Liability Companies.

Update: No change from last week. The bill remains with the Wolesi Jirga National Economy, NGO, Rural Development, Agriculture and Livestock Committee.

### ***Law on Transit***

The bill is drafted to regulate transport affairs including provision of facilities for the transit of goods and their protection.

Update: The Wolesi Jirga Communication, Transportation, City Development and Municipalities Committee has distributed the bill to the Wolesi committees for review and input.

### ***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 combined meeting of Wolesi committees planned for last week has been rescheduled to 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 completed their review of the bill and made minor amendments. The draft is scheduled to go to the plenary this week.

### ***Chamber of Commerce and Industry Law***

The bill, drafted pursuant to Articles 10, 11 and 13 of the Constitution, aims to defend the rights of private sector enterprises; develop commercial, industrial, agricultural, husbandry and other economic services in the private sector; coordinate the

handicraft, trade union, and service industries; and pave the way for economic development of private sector enterprises, nationally and internationally.

Update: Lack of a quorum delayed further debate on the bill last week. Whether or not to require National Assembly approval for the sale of Chamber of Commerce and Industry property is under debate.

### ***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.

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 the class, value, size, and production of official government medals and badges. The draft explains the types and purposes of various medals and badges and defines award conditions and processes.

Update: Wolesi Jirga Religious, Cultural, Education and Higher Education Affairs Committee reviewed 69 articles of the bill and proposed creation of a new medal in the name of Abdul Ali Mazari, a former Hazara leader.

### ***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.

### ***Law on Personnel Affairs of ANA Sergeants***

The law regulates personnel issues including conditions for appointment, compensation for death and injury, rank, transfer, benefits, vacation, discipline, rewards, resignation, retirement, and reserve status of ANA sergeants and officers.

Update: Last week a combined meeting of Wolesi Jirga committees focused on appointment and transfer of officers and lieutenants. Article 29 states that the Chief

of Staff has the authority of hiring and transferring officers. The committee has proposed amendments designating the following appointment authorities:

- For sergeant rank and below, the Corp Commander
- For colonel, the Corp Commander with Chief of Staff's endorsement
- For generals, the Defense Minister with presidential endorsement upon request of the Chief of Staff
- For ranks of general beyond the structure of Chief of Staff, the Defense Minister with endorsement of the President.

### ***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.

Update: The bill has been distributed to MPs but has not been discussed in the plenary as planned due to lack of a quorum.

### ***Civil Servants Law***

The draft law addresses the salaries and ranks of civil service employees, and outlines measures to: make administrative corrections to Government systems; clarify job descriptions for Government employees; improve education levels of Government employees; improve employee qualifications and work ethic; and provide employee housing and benefits.

Update: After the President's rejection of the Assembly draft, the Wolesi Jirga Justice and Judiciary Committee has added the following entry to Article 35: "With consideration given to financial means, and for the recruitment and retention of specialized and expert staff, the government may pay up to USD 1,500 to exceptional employees."

### ***Government Structure Law***

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

Update: No change from last week. The bill is with the Wolesi Jirga Legislative Committee.

### ***Communication Services Regulatory Law***

The law is drafted in accordance with provisions of Articles 10 and 37 of the Afghan Constitution 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: The Wolesi Jirga Communication, Transportation, City Development and Municipalities committee last week proposed additions to Articles 4, 5, and 13 and amended another 20. The addition to Article 4 outlines the budget process, including development, approval and revenue collection for the Telecommunication Services Management Administration under the Ministry of Communications. Under the amendment, the Administration would use revenue collected directly from service providers to fund its activities. The addition to Article 5 specifies that the Minister of Communications nominate and the President approve the department head and three administrative board members. An amendment to Article 13 requires Cabinet approval of revisions to or suspension of licenses.

### ***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 bill has been returned from the President reportedly for grammatical errors.

### ***Law on Rights and Privileges of the Disabled***

The law will integrate and support the disabled economically.

Update: The bill has been returned from the President reportedly for grammatical errors.

### ***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: The draft law was introduced to the Meshrano Jirga plenary on 19 April. The Meshrano Justice and Judiciary Committee will lead discussion of the bill.

### ***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: The Meshrano Jirga Legislative, Justice and Judiciary Committee completed consideration of the draft law last week. Scheduled plenary debate has not happened due to lack of a quorum.

### ***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 draft law is with the Wolesi Jirga.

### ***Criminal Procedure Code for Military Courts and Law on Military 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 approved the draft law on 19 April with minor amendments and returned it to the Wolesi on 22 April.

### ***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 Meshrano Jirga approved the bill on 19 April and returned it to the Wolesi on the 22<sup>nd</sup>.

### ***Private Investment Law***

The draft law regulates issues related to encouraging and protecting private investment in a free market economy.

Update: The joint committee of the houses approved the bill on 21 April without the condition of lease renewal every three years originally proposed by the Meshrano to offset the risk that leasers of land for over 30 years could claim ownership of the property. The Wolesi amendment to Article 21 made by Executive request which extends the maximum lease period from 50 to 90 years remains.

### ***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 last week reversed Wolesi Jirga amendments that require advanced medical treatment be free of charge based on the government's ability to provide the care. Debate continues in the committee.

### ***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 joint committee of the houses approved the draft law on 21 April. The bill now moves to the President.

### ***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: The bill was inactive in the joint committee last week as members visited Kunar Province to inspect flood damage. As previously reported, there is speculation that the draft will be returned to the Wolesi Jirga as the joint committee is unable to decide contentious Wolesi amendments that place provincial police chiefs under the governors' authority during emergency situations. If the joint committee fails to resolve its differences, the Wolesi has the option of passing the bill with a two-thirds majority.

## **News**

### **Lower House Questions Minister of Information and Culture over Media Law**

Last week the Wolesi Jirga questioned the Minister of Information and Culture (MoIC), Abdul Karim Khuram, over the Ministry's failure to implement the Media Law, which the house had approved last fall with a legally binding two-thirds majority.

Honorable Mir Ahmad Joyenda (Kabul), designated to lead the session, commented, "Article 94 of the Constitution requires that the law be implemented after two-thirds

approval in the Lower House. The Minister of Information and Culture not only ignored implementation of the law, but gave interviews to TV channels arguing that the Media Law contradicts the Constitution, that there was no quorum when the law was approved, and that the media law was approved under foreigners' pressure."

Minister Khuram responded at length.

The bill has not been officially submitted to my ministry. If I was given the text of the law by the Ministry of Justice or it was published in the official gazette, I would implement it. Yes, I did say that the law has been approved under the foreigner's pressure because foreigners have come to me several times and said that they spoke with the Wolesi Jirga. Representatives of the European countries in Afghanistan came to my office and told me that if we added their views to the law, they would give us 66 million Euros for solving our problems. In my opinion, it is an overt interference in Afghanistan's internal affairs...By request of the National Assembly, I tried to stop the immoral serial programs run by private TV stations, but I was stopped by the international community. The Attorney General at the time told me that the foreigners would not let him prosecute the violators.

Supporting the Minister's views on foreign influence, Honorable Haji Zainulabedin Farid (Kapisa) said, "We should not blame the Minister for commenting on the foreigners' interference. We witnessed that they pressured the Afghan government and Shiites to amend the Shia Law. So it makes sense that the foreigners also intervened on Afghanistan's Media Law."

Honorable Mohammad Baqir Sheikh Zada (Kabul) added, "As a minister, what have you done to publicize Islamic culture? When you were pressured by the foreigners not to ban the foreign serials, why didn't you share the issue with the nation? I regret the fact that the public criticizes the Shia Affairs Law while they are silent over the serial issue."

Refuting the outside influence argument, Honorable Daud Sultanzoi (Ghazni) said, "No one is pressuring the people's representatives. You should have implemented the law. When it was approved by two-thirds, it is approved, according to the Constitution." The National Economy Committee member and former chairman added, "National TV should be out of the government's jurisdiction so it can broadcast real national programs."

Honorable Asem (Baghlan) added, "You have been free handed. By Article 94 of the Constitution, when you did not want to implement the law, you should have suggested an amendment. We would consider the draft."

In a final tally, Minister Khuram survived with 71 votes of confidence of 135 MPs present.

## **MPs Weigh in on Shiite Family Law Debate**

In the context of ongoing debate over the Shiite Family Law document<sup>1</sup> MPs weighed in the day after pro and anti demonstrations outside the Khatimunabiyeen Madrasa, which is run by Shia scholar and sponsor of the bill, Sheikh Asif Mohsini.

Honorable Mohammad Sarwar Jawadi (Bamyan), in a 16 April press conference with eight other MPs including two women from the parliamentarian group Raah-e-Naw, said, “No one can use the law for their political interests. No one is allowed to meddle in our Islamic values.”

Honorable Shah Gul Rezaie (Ghazni) agreed: “If anyone has criticism, they can discuss the issue logically, not emotionally. We have consulted scholars and religious people while approving the law. We don’t see anything that’s against women’s rights.”

In the 18 April Wolesi Jirga plenary other MPs criticized the international community for interfering with Afghan Islamic values. “If Shiite people don’t object to the law, why does the international community frequently ask for its review? It is an obvious interference,” said Haji Zainulabedin Farid (Kapisa).

Honorable Mohammad Baqer Sheikh Zada (Kabul) asked, “Do we have our cultural and Islamic freedom or not? If yes, then why are we criticized for approving the Shia Law? It is unfortunate that people protest a law which is drafted based on Islamic requirements and at the same time back the immoral serials run by private TV.”

Criticizing the law, Hazara leader and head of the Wolesi Jirga Education, Religious and Cultural Affairs Committee, Honorable Haji Mohammad Muhageq (Kabul), said in an interview with Outlook on 13 April that, “If not amended, the law is an offence to Hazaras. Hazaras are the third largest ethnic group of Afghanistan, and women make up half of our society. Any offence to their rights is against the spirit of our religion.”

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<sup>1</sup> The document never received open debate or a vote in the Meshrano Jirga plenary. Attached amendments are unsigned. A letter stating Wolesi Jirga approval of the draft, with certain omissions, and requesting Supreme Court “implementation” of the law was signed by the leadership of both houses and attached to the draft and amendments. See the 22 February 2009 Legislative Newsletter for a translation of the letter.

**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