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Legislative Newsletter

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News

Wolesi Jirga Discusses Priorities

On 24 August, Wolesi Jirga Speaker Qanooni introduced an agenda of legislative and oversight activities for the next month.

As part of its oversight function, the Wolesi Jirga will summon 11 ministries to elaborate on the government's developmental plans for 1389. One goal of the exchanges will be to bolster executive-legislative communication during the National Budget making process.

Three bills – the Electoral Law, Municipalities Law (not yet active), and Counter Terrorism Law (not yet active) – have been prioritized. See the Legislation section below for an update on the Electoral Law debate.

Another priority will be review of draft laws rejected by the government.

Wolesi Jirga Works with MRRD

On 26 August, the Wolesi Jirga queried Minister of Rural Rehabilitation and Development (MRRD), Mohammad Ihsan Zia, on the ministry's activities and future plans, requesting a detailed report of planned 2010 projects. One focus of the Wolesi will be to look for balance between the provinces in future budgeting.

Speaker Qanooni said during opening comments: "We have two questions for the ministry: First, please tell us your 2010 development plans and, second, whether there have been transitional budget projects or not. If there have, then why have they not been implemented?"

Minister Zia explained that progress of all MRRD projects, including the National Solidarity Program (NSP), rural energy (which includes micro-hydro), road projects, and drinking water programs are in varying stages and that 2010 development plans include strategic projects such as support to producers of handicrafts. The minister added that the national projects will be implemented throughout Afghanistan.

Unsatisfied with the information presented, Sediq Ahmad Osmani (Parwan), Chairman of the Wolesi Jirga Budget and Finance Committee said, "The project documents and tables handed over by the minister are only for projects which are unfunded for 1389 (2010). The list of funded projects should also be submitted so that we are aware of provincial locations and practical implementation of works."

Although Qanooni reminded the MPs that the session was not an interpellation but rather a discussion of how to include the constituencies in the government's development budget planning, the majority were somewhat critical of past MRRD and NSP performance.

"Honorable Minister, in fact not a thing has been done by your ministry or the Ministry of Public Works in Ghazni Province. Ghazni was secure before, but because of a lack of attention, this province is now insecure. Attention should be given to the

provinces that have no security, not to the provinces that are one hundred percent secure,” commented Daud Sultanzoi (Ghazni).

Haji Zainulabedin Farid (Kapisa) said, “The wells have been dug, but there is no water; there was no program for the disaster last year; and there will be no specific program for the current year. The projects have been designed for the residents of the poor provinces, but are not being implemented.” The MP added, “Millions of dollars have been spent, but there is no fruit or result and this is the sole reason why the people of Afghanistan are unhappy.”

“Honorable Minister is doing less and talking more. Only ten percent of the work has been done. There is no project which creates jobs for the public. Those projects implemented in the villages are not sustainable, and no supervision is available,” said Sardar Mohammad Rahman Oghly (Faryab).

On a slightly more optimistic note, Mohammad Ali Stigh (Daikundi) commented, “Daikundi is facing a human catastrophe because of poverty; people want work and development. We are optimistic that sound development is to be considered for next year. I hope that that which is rightly due to poor provinces is not given to other provinces based on politics.”

The development chief pledged to share the ministry’s project plans in writing and solicit input from MPs. He also shot back at certain colorful illustrations: “And you Honorable [MP], tell me what well has been filled with tanker water so it can be scrutinized. I respect the nation’s house, but you should keep our problems in mind, too. One of the biggest problems we have in the country is a lack of working capacity of private companies.”

In concluding comments, Speaker Qanooni said that similar planning meetings with the ministries will continue.

Ghazni MPs Survive Taliban Attacks

On 23 August three Wolesi Jirga representatives from southern Ghazni Province escaped unhurt in an insurgent attack in central Maidan Wardak Province. Another reportedly escaped a similar attack in the same area on the 25th.

Abdul Jabar Shalgari, Chairman of the Complaints Committee; Engineer Khial Mohammad Rahmani, Chairman of Communications, Transportation, City Development and Municipalities Committee; and Haji Niaz Mohammad Amiri were traveling from Ghazni to Kabul when they become under attack of unknown gunmen in Hassankhil area of Syedabad District.

Shalgari, while explaining the incident, told APAP: “We don’t know exactly who attacked our vehicles, but suddenly we heard AK 47 fire and our convoy was assaulted. There was a clash of nearly one hour between the gunmen and our security guards. Finally the enemies of peace and stability escaped, but, as a result of the crossfire, one of my bodyguards and three policemen sustained injuries.”

Engineer Rahmani, head of Hezbi-Islami in Ghazni province until 1994, and now an active Wolesi Jirga member, told APAP: “The situation of Ghazni Province is worsening day by day. I think it will be difficult for the MPs of Ghazni to visit their constituencies.” When asked, the MP did not speculate on who was responsible, but said, “I don’t know, but the Taliban immediately claimed responsibility for the attack in a radio interview.”

Another Ghazni MP, Haji Khial Mohammad Husaini – not involved in the incident – told APAP that another Ghazni Assembly member, Sayed Mohmood Hesamudin Algailani, escaped an attack in the same area on 25 August. The MP explained: “The Taliban are afraid of these MPs because they are working hard in Ghazni Province to eliminate the space between the government and people.”

Legislation

Wolesi Jirga

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: After a long period of inactivity in the Wolesi Jirga, largely due to contentious issues around Kuchi nomad representation, Deputy Chairman of the Legislative Committee, Fazlullah Mujadidi, told APAP last week that the Assembly sent the bill to the not yet established Independent Commission for Overseeing Implementation of the Constitution for “clarification” of the fifth paragraph of Article 83 of the Constitution which says, “The elections law shall adopt measures to attain, through the electorate system, general and fair representation for all the people of the country, and proportionate to the population of every province, on average, at least two females shall be the elected members of the House of People from each province.” However, Mujadidi has pledged to have the bill returned within two weeks to the Assembly, where many, spurred by the current election situation, are pushing to make improvements in time for the Wolesi Jirga and tentative District Council elections next year.

However, the legality of considering the bill at this point in the legislative term came under debate last week in the Wolesi plenary. According to Article 109 of the Constitution, “Proposals for amending elections law shall not be included in the work agenda of the National Assembly during the last year of the legislative term.” According to Article 83, the term ends on the 1st of Saratan in the fifth legislative year (late June, 2010). If this date is taken as immovable and “last year” is defined as the last 12 months of the term, the window for considering the draft law is over.

But in light of the presidential term extension – based largely on the inability of candidates to campaign and voters to get to the polls in many parts of the country during the spring season – some argue that the parliamentary term will also be extended and that the window for considering the bill can be adjusted accordingly. Depending on when elections are held and the current term ends (possibly late next year or at the start of the next spring session in January 2011) there may be an opening to consider the draft.

Several MPs, including Fawzia Kofi (Badakhshan) and Daud Sutanzoï (Ghazni) argued that the Assembly’s “last year” begins at the start of the first session of the fifth year on the first of Dalwa (about 21 January 2010), not 12 months prior to the end of the term. Others argued that the 12 month period is the “last year.” While several MPs asked that the two articles be referred to the Supreme Court for clarification, Speaker Qanooni closed the session with, “According to the majority view, the fifth year begins on the first of Dalwa. We can discuss the Election Law.”

Unresolved are contentious articles granting Afghanistan’s nomads, the Kuchi, ten seats in the lower house and a national constituency. Some see the seats as fair accommodation for a nomadic population and others as an unfair set-aside which disproportionately favors the Kuchis’ primary ethnic group, the Pashtuns.

Procurement Law

This bill addresses procurement of materials and services of the government and private entities. The draft law aims to promote transparency and equal opportunity in competitive procurement processes, control of financial and public expenditures, and supply of high quality goods and services.

Update: No change from last week. The bill was inactive in the Wolesi Jirga Budget and Finance Committee.

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 authority conferred on customs personnel, outlining export policies and procedures, and preventing customs violations.

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

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 re-education and protection of suspected, accused, and convicted children in child correction and education centers.

Update: The bill is pending discussion in a combined meeting of Wolesi Committees.

Local Governance Law

This law is drafted pursuant to Article 136 of the Constitution to provide for the management of issues relating to the numbers, areas, and structures of local administrations. The draft law also addresses affairs related to provincial governors, district governors and sub-district governors. Local administrations act to: secure the needs of local peoples in different areas of social, cultural and economic life; maintain order and protect public interests; implement state-proposed programs in related areas; and attract people's cooperation in securing government's development objectives.

Update: No change. Further Wolesi consideration is pending clarification of Article 137 of the Constitution by the yet-to-be-established Independent Commission for Overseeing Implementation of the Constitution. At issue is the appointment versus election of provincial and local governors. The article states: "The government, in preserving the principles of centralism, shall transfer necessary powers, in accordance with the law, to local administrations in order to accelerate and improve economic, social as well as cultural matters, and foster people's participation in developing national life."

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 nationwide through instituting modern methodology and parental involvement in 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 draft law remains with the Wolesi Jirga Religious, Cultural, Education and Higher Education Committee.

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: The Wolesi Jirga Religious, Cultural, Education and Higher Education Committee has received proposed amendments from the Wolesi committees.

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 law, passed by decree, promotes respect for and monitoring of human rights, and governs the

structure, functions, authorities, and activities of the Afghanistan Independent Human Rights Commission. It now requires ratification by the National Assembly.

Update: No change from last week. The bill is with the Wolesi Jirga Women's, Civil Society, and Human Rights Committee.

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 Wolesi Jirga has postponed further consideration of the bill pending clarification of Article 5 of the Constitution by the not yet established Independent Commission for Overseeing Implementation of the Constitution. Article 5 states, "...attaining the security and defense capability of the country shall be the fundamental duties of the state." In light of this, many MPs take issue with the role and reach of private security companies in Afghanistan.

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.

Higher Education Law

The law will regulate the activities of public and private higher education institutions in Afghanistan.

Update: No change. The Wolesi has referred the draft to the not yet established Independent Commission for Overseeing Implementation of the Constitution for clarification of what constitutes "academic and national terminology" in the Article 16 phrase, "Academic and national administrative terminology and usage in the country shall be preserved."

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 families' social, economic, and political needs, including housing and employment benefits.

Update: The bill was inactive last week, but Wolesi Speaker Qanooni has instructed the Committee of the Disabled, Martyred, and Widowed to consider the draft, rejected by the President, in the coming weeks.

Law on Rights and Privileges of the Disabled

The law will integrate and support the disabled economically.

Update: The draft law is with the Wolesi Jirga Committee on the Disabled, Martyred, and Widowed where it will be discussed prior to being sent to the plenary for a possible two-thirds vote to override the President's objections.

Statistics Law

The Statistic Law addresses the duties, authorities, and organization of the Independent Central Statistics Department. The law establishes a central office for coordination and integration of all statistical activities at the national level. The draft calls for conducting a census every 10 years and issuance of national ID cards.

Update: The bill has been rejected by the government. The Wolesi Jirga had amended the draft to call for use of national ID cards in conducting the census with the objective of excluding foreigners, especially in the borders regions. The government countered that many people lack ID cards which will make completion of the census impossible. According to Wolesi Jirga Speaker Qanooni, all rejected bills will be considered during the coming month.

Political Parties Law

The law will regulate political parties' creation, activities, rights, and responsibilities.

Update: Drafting of the previously reported Wolesi adjustments below is continuing in the Wolesi Women's, Civil Society, and Human Rights Committee.

The Assembly had amended the draft to specify that political parties have the right to establish offices outside the country and that the government is responsible for ensuring their security. The government rejected the amendment arguing that parties do not have the right to establish offices abroad and that ensuring security inside the country is its only responsibility (as specified in the original text). The Wolesi last week accepted the government's position but stated that, while not establishing offices abroad, parties are allowed to be active outside the country.

The Assembly had also amended the bill such that, "Dissolution of political parties shall take place by proposal of the Ministry of Justice." The government insists that dissolution authority lies with the Supreme Court, as specified in the original draft. Last week the Wolesi modified its amendment to specify that dissolution shall take place by proposal of the Ministry of Justice and through an authorized organ.

If approved by both houses, the new amendments will be sent back to the President. The Wolesi Jirga will not attempt to override the President's changes with a two-thirds majority.

Law on Juvenile Offenders

The bill is drafted based on Article 54 of the Constitution and human rights conventions to protect the rights and privileges of accused children.

Update: The bill has been returned to the Wolesi Jirga by the government over an Assembly amendment that includes “signs of maturity” (per Sharia Law) as well as age as criteria for classification of subjects as minors or adults.

Independent Election Commission Structure Law

The law will outline the funding mechanism, structure, duties, authorities, procedures, and staffing of the body.

Update: No change. The bill was inactive last week in the Wolesi Jirga. As previously reported, the President rejected the bill last July over Assembly amendments that call for Wolesi Jirga approval of IEC presidential appointees. The government argues that lower house approval of the IEC commissioners and chair would be unconstitutional as the requirement is not mentioned in the Constitution. IEC officials argue that Assembly approval of IEC commissioners would jeopardize their independence. Proponents of Assembly approval argue that exclusive presidential appointment of IEC members would promote bias and contradicts international best practice.

The President is also opposed to an Assembly amendment that would require the IEC Secretariat head to report to the IEC commissioners but has accepted that the Secretariat head report only to the IEC chairman.

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: No changes last week. As previously reported, the Wolesi plenary may put the bill to a vote in an attempt to override the Meshrano’s objections with a two-third majority. Justice and Judiciary Committee Chairman Abu Aman proposed changing “law” to “procedure” with the rationale that the document contains more ethical recommendations than mandates. The upper house returned the bill to the Wolesi Jirga with a letter clarifying that it is “advisory” and that the draft, if approved, would limit Parliament’s authorities.

Meshrano Jirga

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 promotes cultivation of alternative crops.

Update: The draft is being reviewed by the Meshrano Jirga Environment and Public Welfare Committee. The committee has restored many of the Wolesi amendments – particularly sentencing periods – to the government versions. For example, the committee has restored from ten days to one month the incarceration term for every Beswa (100 sqm) more than one Jreb (2000 sqm) cultivation of poppy or coca.

Law on Cooperatives and Limited Liability Companies

The bill is drafted to govern the affairs and activities of cooperatives and limited liability companies.

Update: The draft is in the Meshrano Jirga. The Wolesi draft allows the registration office of the Ministry of Commerce and Industry to set registration fees.

Law on Planting Seeds

This bill is drafted to regulate planting, production, purchase, quality control, and trade of seeds, and related issues. Objectives of the bill include improving and developing planting and root seeds, protection of genetic resources and materials, and promoting scientific research on seeds.

Update: The draft is with the Meshrano Jirga where copies have been distributed to the committees for review and comments. The Wolesi committees proposed amendments which aim to help prevent importation of low quality seeds and mandate punishment for violators. An amendment to Article 7 increases the number of National Board of Farming members from two to seven to be composed of cooperative, Ministry of Commerce and Ministry of Agriculture representatives.

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 telecommunications services, organize and monitor telecommunication markets, and govern business relationships among the Ministry of Communications, service providers, and customers.

Update: The draft is with the Meshrano committees.

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 other benefits.

Update: The Assembly sent the approved draft to the government on 13 June.

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, etc. can be registered. 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 bill was inactive the Meshrano last week.

Joint Committees

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, 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 is pending discussion in a joint committee of the houses.

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: The Wolesi Jirga National Economy, NGOs, Rural Development, Agriculture and Livestock Committee has rejected Meshrano amendments that the Chamber of Commerce and Industry be independent but "supervised" by a Cabinet committee and has requested joint committee consideration.

Law on Transit

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

Update: According to Khial Mohammad Rahmani, chairman of the Wolesi Jirga Communications, Transportation City Development and Municipalities Committee, the committee is unsatisfied with some Meshrano amendments and has requested joint committee consideration.

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: The Meshrano has returned the draft to the Wolesi and is seeking to establish a joint committee to discuss differences over issues including appointment/recruitment powers.

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: Further discussion is pending formation of a joint committee of the houses. See the 18 May Newsletter for a summary of Wolesi Jirga amendments.

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: No change from last week. Further consideration of the draft is pending introduction of a joint committee of the houses.

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: According to Dr. Niamatullah, Chairman of the Wolesi Health, Sports, Youth, Labor and Laborers Committee, several joint committee meetings have failed to resolve the issue of charging for “advanced” (complex) medical services. The Wolesi members may attempt to override the President’s veto with a two-thirds majority in the plenary, arguing that the charges would be unconstitutional and that complex services, like standard services, should be provided free of charge as the government is able.

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 draft has been sent to the President but, reportedly, executive-legislative discussions continue on supervision of the provincial and district level police forces.

Acronyms

NDS – National Directorate of Security
MJ - Meshrano Jirga (Upper House)
MOF – Ministry of Finance
MOI – Ministry of Interior
MOD – Ministry of Defense
WJ – Wolesi Jirga (Lower House)