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Legislative Newsletter

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News

Wolesi Jirga Discusses the Mid Year Budget

The Mid Year Budget was the subject of much discussion within the Wolesi Jirga Budget and Finance Committee as well as in the plenary sessions. On the 9th of December it was agreed by the plenary that the Finance and Budget Committee should in consultation with the Ministry of Finance make necessary changes to the Mid Year Budget and present it to the next Wolesi plenary for approval.

Mohammad Yonus Qanooni, Wolesi Jirga Speaker, briefed the plenary that the Mid Year Budget, which was sent by the Ministry of Finance to the Wolesi Jirga, was annexed with 18 proposals. Of the proposals annexed, 13 related to the operational budget and five others to the development budget. The Wolesi Jirga did not agree with the proposals and had, therefore, two weeks ago, sent back to the Ministry of Finance the budget proposals so that amendments could be made to them. He further advised that the government had accepted recommendations of the Wolesi Jirga in ten instances and had made only slight changes in the remaining proposals.

On the 9th of December, a combined committee of Wolesi Jirga had summoned the Acting Ministers of Commerce and Industries, Finance, Public Welfare and Agriculture to discuss shortcomings in the Mid Year Budget and to finalize debate on the draft.

In that meeting, Sediq Ahmad Usmani, (Kabul), Chairman of the Budget and Finance Committee of Wolesi Jirga, pointed out some of the shortcomings of the Mid Year Budget. He explained that the Finance Ministry proposed the approval of outstanding construction projects in Kandahar province, debts of the Nengarhar Municipality, 1500 million AFS for wheat procurement, an allocation of 100 million AFS for the Independent Administration of highways' maintenance, and 79 million AFS for the purchase of wheat in the year 2008. Honourable Usmani and Wolesi Jirga members called some of the proposals illegal and wanted them removed from the Mid Year Budget proposals. Honourable Usmani further indicated that a large amount of money was transferred from Code 21 of the Budget to Code 22, which is against the law. Wolesi members agreed that this was a violation of the law and decided to eliminate this variation from the draft Mid Year Budget and insisted that the law should be adhered to in preparing budget proposals.

Engineer Asim (Baghlan) weighed in on this matter when he said that, "The transfer of money from one code to another without approval of the Wolesi Jirga is against the law. The Government has no right to transfer money from one code to another. This is illegal."

Kabir Ranjbar (Kabul) commented that the provision for the purchase of wheat in 2009 was illegal because "the Wolesi Jirga's approval was not given in this regard." He added that the wheat which was not purchased due to its low quality in 2008 was purchased this year. He pointed out that, according to previous decisions, the Government should not have purchased wheat from those companies whose wheat were rejected due to sub-standard quality. He concluded that the Government should have purchased wheat from farmers whose wheat met the required standards.

In response to questions from Wolesi members, the Minister of Finance Omer Zakhilwal explained the process of purchasing wheat and confirmed the shortcomings of moving money from one code to another. In this regard he said, “The money was transferred from code 21 to 22 as a loan, but I agree that the Wolesi Jirga should have been informed.”

As indicated above, the plenary meeting of the 9th December referred to the meeting of the 8th December, and decided that the Budget and Finance Committee of the Wolesi Jirga should work together with the Ministry of Finance to adjust the Mid Year Budget report and prepare a final draft for presentation to the Wolesi Jirga plenary in the coming week.

Wolesi Jirga condemns civilian casualties

On Wednesday, 9th December, the Wolesi Jirga condemned the killing of 13 civilians including a woman and a local journalist in Laghman province. It decided to summon security officials to explain the incident.

Engineer Mohammad Alem Qarar (Laghman) presented to the plenary a report of the incident. He said that on the night of the 1st of December, US Special Forces had operated in Harmal village, eastern Laghman province. Thirteen civilians, including a woman and a local TV journalist were killed as a result of the operation. He further indicated that, according to the Laghman province governor, this operation was not coordinated with local authorities. The following morning, thousands of local residents protested over the assault, and as a result of the National Police and National Army’s effort to contain the demonstration, one person was shot and killed, while two others were injured.

Qarar offered a warning, indicating that, “If this issue is not followed up, the people of Laghman will continue their protests and may boycott relations with the government.”

Mawlawee Sayed–u-Rahman (Laghman) criticized the national and international forces, and said that this incident is not the first one in Laghman, and that prior to this particular incident, there were many other operations in various villages. He further said that, “The local authorities were involved in these incidents and they want to create distance between government and the people.” He added that peoples’ houses were searched without any court decision or authority, that the innocent were unlawfully taken into custody or were killed, and that these were against democratic principles. Sayed-u-Rahman further remarked that, “We don’t know how we should answer our people. Should we tell them that Afghanistan is an occupied country? Should we say that they should leave their land and homes and stand against the Government?”

While condemning the US Special Forces operation, legislators also criticized the firing by Afghan forces on demonstrators, and demanded the summoning of security officials to the Wolesi Jirga.

“The defense minister should be called to answer why the national army is killing the protesters intentionally,” said Abdul Hadi Wahidi (Laghman).

A number of MPs debated the issue of the legal framework for foreign troops. Alemi Balkhi (Kabul) commented that, “The presence of foreign troops is not within a legal framework. If their activities are not organized according to law, the expected increase by 40 thousand additional troops and expansion of the war will result in the number of casualties increasing

as well.” He added that if the foreigners are not ready to be legitimized then the National Assembly should also present its own opinion that disagrees with the increase in foreign troops.

Hamidullah Tokhai (Zabul) called on the US Special Forces Commander and the US Ambassador to punish those Afghan spies who are giving false reports to the special forces. He said, “punishing spies who give false reports will decrease the civilian casualty rate.”

Speaker Qanooni pointed to article 64 of the Constitution that says determining the fundamental policy of the country needs the approval of the National Assembly. He said, “If the government has not considered your demands, you have the right to ask the president for clarification on fundamental policies.” He also suggested summoning the country’s security officials the next day to ask them about the matter for the satisfaction of the people and their representatives.

Meshrano Jirga Debates and Passes Firearms Law

The Meshrano Jirga approved the Law on Firearms, Ammunition and Explosives in its original form with a majority of votes in its plenary session on 13th December.

Article 6 of the first section of the law provides that all persons must get a license for the possession, carrying, and usage of weapons that are used for hunting. This provision generated spirited debate and discussion among members of the MJ. Some Senate members wanted to make changes to the licensing requirement for hunting weapons but the majority of the members were in support of the provision.

Aminuddin Muzaffari (Kapisa) called the provision of the law requiring licenses impractical and called for its amendment. He said that, “We are from this society and we know that due to red tape it is very difficult for people to get licenses for weapons used for hunting. Our people will not follow this law.”

Dr. Mirbat Khan Mangal (Khost) also objected to the provision and called possession of hunting weapons in houses “a must for the personal defense of the people and for the defense of their country.” He addressed the plenary, saying that, “We saw that people defended their country with such weapons in Paktia province when Pakistani forces violated Afghanistan’s territorial boundary last year....Getting licenses for the weapons that are used for hunting should not be made a part of law.”

In support of the proposed law, Sibgahtullah Mujadidi, Speaker of MJ, argued that getting a license should be a must for keeping and using any kind of weapon. He stated that, “Gone are the days when people were peaceful. As the situation has changed, people have also changed and this necessitates more control on the part of the government.”

Najiba Hussaini (Bamyan) was of the view that the ambiguity in the law was such that it required further clarification. She opined that, “According to the law, it was traders of hunting weapons who had to get licenses from the government and not necessarily their customers.”

After further debate on the law, the majority of the MJ members voted in favor of the law without changes to the contentious clause. The rest of the law was approved in its original form save for some minor grammatical changes.

Debate on the Firearms Law was reflective of attitudes around personal security and the level of control the government should have in regulating possession of weapons by individuals. The vote in favour of the original text which called for licensing suggests a majority view towards regulation.

Meshrano Jirga decides on Bashar Dost

The Meshrano Jirga in its plenary session of 6th December, decided to make a formal complaint to the Committee on Immunities and Privileges of the Wolesi Jirga, against Ramazan Bashar Dost for his comments about the allocation of pieces of land to parliamentarians.

Ramazan Bashar Dost, a member of the Lower House of the Parliament, had termed the allocation of pieces of land to parliamentarians as political bribes by President Karzai. He made the assertions during his participation in a TV talk show hosted by Tolo TV the previous week. He further accused President Karzai for misusing his powers.

Mohammad Hassan Hotak (Zabul) called for the taking of strict action against Bashar Dost. He said that, "Bashar Dost has insulted not only himself but also all parliamentarians. MJ should report the issue to the Attorney General's office, for he has accused the President and the Representatives of the people."

Dr. Mangal remarked that, "Bashar Dost talks all the time against the government. He does not open his mouth against the foreigners and is a puppet of others." He added that Bashar Dost should be summoned before the MJ, or alternatively, the issue should be reported to the Attorney General's office. Sultan Jan Khaksar (Logar) concurred, saying that, "Bashar Dost is accusing every one. He insults the Parliament and the people of Afghanistan. Meshrano Jirga should report this issue to the Attorney General's office."

Other MPs stressed the need to discuss the issue with the Wolesi Jirga. Najeeba Hussaini said, "All parliamentarians, including Bashar Dost, have immunities and privileges. We should send a letter to the Committee on Immunities and Privileges of WJ and formally make a complaint about the comments of Bashar Dost."

Aarif Sarawari (Panjsher) agreed, and said that, "Mr. Bashar Dost and everyone else has the right to express their viewpoints, but they should not tell lies. We should send a complaint to the Committee on Immunities and Privileges of WJ about this issue."

Bashar Dost had accused the government of selling ten Biswa of land in Badwla desert to parliamentarians for 100,000 Afs, which he had asserted was 10 times lower than the actual price. However, Muzafari, senator from Kapisa, rejected Bashar Dost's claim and said the price of the land has been fixed at \$20,000 per ten biswa and not 100,000 Afs.

Hamid Gailani, Deputy Speaker of MJ, proceeded to order the administration of MJ to send a letter of complaint to the administration of Wolesi Jirga and another one to the Committee on the Immunities and Privileges of Wolesi Jirga.

The issue of allocation of pieces of land to parliamentarians and the allegedly corrupt manner of such allocation has been the issue of focus for Afghan media featuring prominently in a number of TV talk shows over last the few weeks.

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. As reported, news reports indicate that the Ministry of Justice may be discussing a review of the draft. However, the constitutionality of a government review may come into question given the constitutional prohibition on National Assembly review of government edicts within 12 months of the end of the legislative term.

Law on Domestic and Foreign Private Investment

The legislation is drafted to encourage and protect domestic and foreign private investment. Its primary objectives are to promote economic development, expand the labor market, improve national prosperity, advance the standard of living, and enable Afghanistan's reconstruction.

Update: No change from last week. The National Economy, NGOs, Rural Development, Agriculture and Livestock Committee of Wolesi Jirga has halted deliberation of the bill per a Ministry of Finance request to include new clauses.

Law on Non-Governmental Organizations (NGOs)

This law is enacted for the purpose of regulating the activities of domestic and foreign non-governmental organizations (NGOs) in Afghanistan. The terms of establishment, registration, administration, activity, internal supervision, dissolution, and liquidation of properties of domestic and foreign non-governmental organizations are regulated according to the provisions of this law.

Update: No change. The draft is with the Wolesi Jirga National Economy, NGOs, Rural Development, Agriculture and Livestock Committee.

Law on Elimination of Violence against Women

The draft law has been enacted in light of provisions in Article 24 and 54 of the Constitution guaranteeing rights. This draft was initiated by the Ministry of Women's Affairs, the Wolesi Jirga Women's, Civil Society, and Human Rights Committee, and civil society, and

processed by the Ministry of Justice, in consultation with the Supreme Court and Ministry of Interior. The objectives of the law are: protection of women's Islamic and legal rights, and human dignity; prevention of violence against women, provision of information and public training about violence against women; and prosecution of perpetrators of violence against women.

Update: No change from last week. After a contentious debate in the committees and the threatened boycott by male MPs two weeks ago, Women's Committee member Fawzia Koofi has called for the bill's introduction to the plenary.

Law on Forests

The draft law is proposed to protect and manage Afghanistan's forests in line with Article 15 of the Constitution. The draft aims to promote reforestation, preservation, improvement, and management of forest resources with the help of ordinary Afghan citizens.

Update: No change. The bill was inactive in the Wolesi Jirga Natural Resources and Environment Committee, which is leading discussions on the draft.

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: No change. Further discussion is pending formation of a combined meeting of Wolesi committees. The Justice and Judiciary Committee is leading the Wolesi deliberations.

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, which was focused on the Mid Year Budget.

Law on Financial Leases

Update: The committee meeting headed by Aziz Ahmad Nadim discussed the draft. The Advisor of the Da Afghanistan Bank participated in the discussion. The MPs had concerns over the provision of loans to internal producers of goods without guarantee. It was decided by the committee that the Da Afghanistan Bank should find ways to address the problems and reservations raised by the committee on the draft law and to present them to the committee.

Customs Law

This bill is drafted in accordance with Article 42 of the Constitution to govern customs affairs. It regulates government collection of customs revenue, establishes customs duties, specifies the authority conferred on customs personnel, outlines export policies and procedures, and prevents customs violations.

Update: No change from last week. The bill is with the Wolesi Jirga Budget and Finance Committee. It is worth noting that the Budget Committee is of the view that the Bill should be rightfully sent to the Economic Committee of WJ.

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 the 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, which plans to recommence deliberations after the winter recess.

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 draft is under discussion in the Wolesi Jirga. The lead committee – Religion, Cultural, Education and Higher Education – distributed the draft to other Wolesi committees for their consideration. It has since received comments from other committees and is in the process of compiling a report of the various comments.

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: No change. The bill is set to move from the Wolesi Jirga Committee on the Disabled, Martyred, and Widowed to the plenary but has not been included in the agenda. As previously reported, the government rejected the Assembly draft over the issue of increasing compensation for the families of the martyred and missing. See the October 19 *Legislative Newsletter* for details.

Law on Rights and Privileges of the Disabled

The law will integrate and support the disabled economically.

Update: No change. As reported, the Wolesi Jirga Committee on the Disabled, Martyred, and Widowed passed the bill to the Wolesi Legislative Department to forward to the plenary. As reported, the government rejected the bill over the issue of increasing compensation to the disabled. See the October 19 *Legislative Newsletter* for details.

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: No change from last week. As previously reported, the bill has been rejected by the government over a Wolesi Jirga amendment calling for use of national ID cards in conducting the census to ensure exclusion of foreigners in the border regions.

Independent Election Commission Structure Law

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

Update: No change. See the 7 September 2009 *Legislative Newsletter* for the latest update.

Law on Regulating Ethical Relations of the Three Powers of State

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

Update: No change from 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-thirds majority. See the *Legislative Newsletter* of October 19 for further details.

Meshrano Jirga

Counterterrorism Law

This law is drafted to counter terrorist crimes in light of provisions in paragraph two of Article 7 of the Constitution which obligates the state to "prevent all kinds of terrorist activities, cultivation and smuggling of narcotics, and production and use of intoxicants."

Update: The Bill awaits consideration by a joint committee of the Meshrano and Wolesi Jirga. The Meshrano has modified some articles of the draft and asked for a joint committee of the Houses. The Meshrano omitted as repetitive a Wolesi amendment that mandated the death penalty for killing someone to gain objectives under Article Three of the draft. The Wolesi Jirga Internal Affairs, Borders, and Local Administrations Committee will lead discussions.

Expropriation Law

The bill aims to prevent expropriation of land and property.

Update: A joint committee of the houses (WJ and MJ) approved the draft and transmitted it to the government on the 8th of December 2009.

Law on Firearms, Ammunition and Explosives

The bill addresses affairs related to the acquisition, possession, transport, production, use, sale, import, and export of firearms, ammunition, and explosives.

Update: The MJ plenary approved the Bill in its original text, save for minor grammatical errors. A contentious issue in the Bill was the requirement for the licensing of weapons used for hunting purposes.

C138 Minimum Age Convention, 1973

The convention, adopted by the General Conference of the International Labour Organisation, addresses the minimum age for employment and binds signatories to developing policy aimed at abolishing child labor.

Update: The Meshrano has approved the convention and returned it to the Wolesi for forwarding to the government.

Intergovernmental Agreement on the Asian Highway Network

The agreement commits members to establish the Asian Highway network to international standards with the objective of promoting relations, trade, and tourism between member states. The agreement sets standards for road planning, construction, maintenance, signage, etc. for member states.

Update: The Meshrano has approved the convention and returned it to the Wolesi for forwarding to the government.

Joint Committees

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: A joint committee of the houses discussed the law and reportedly approved the Wolesi Jirga amendments. “Intoxicants” has been reintroduced to all relevant articles. An addition to Article 7 calls for establishment of provincial, district, and village-level offices of the High Commission on Counternarcotics.

Law on Support for Competition (Anti-Trust Law)

The law is drafted in light of provisions in Article 11 of the Constitution, which stipulates that matters of trade shall be regulated by law. It aims to support competition and prevention of monopoly in the market. The objectives of this law are: to prevent unjust contracts, agreements and procedures that result in limiting, preventing or violating competition in the market of goods and services and the production process; to prevent monopoly in commerce activities; and to provide opportunities for positive competition aimed at boosting the welfare of the economy.

The law will establish a board of ministry representatives and others dedicated to supporting competition.

Update: No change from last week. The Wolesi Jirga has introduced members for a joint committee of the Houses. See October 5 *Newsletter* for more information.

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 joint committee of the Houses discussed the law and approved all articles except a Meshrano modification to Article 10 which would establish an “executive board.” Wolesi members are unclear on the board’s role and responsibilities and have requested an explanation. This week the Wolesi Jirga Communications, Transportation, Urban Development and Municipalities Committee will lead another joint committee discussion.

Government Structure Law

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

Update: No change from last week. According to Assembly sources, the Ministry of Justice has asked that the draft be returned for review and that names and responsibilities of additional directorates be added before Assembly consideration continues.

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: No change from last week. The bill will reportedly move to the Wolesi Jirga plenary for an attempt at a two-thirds approval to override the Meshrano’s draft. The Meshrano Justice and Judiciary Committee had taken issue with Wolesi amendments that

would allow the National Assembly to question Supreme Court justices when the Court has made “illegal” decisions.

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: No change. After approval in a joint committee, the bill is pending further action in the Wolesi Legislative Department. As reported, a joint committee of the Houses approved the bill but, according to committee staff, certain Meshrano members are refusing to sign off on the Wolesi Jirga’s amendments disaggregating the authority to hire and transfer officers. The dissenting senators recommend the original article, which states that the Chief of Staff has sole authority to both hire and transfer.

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 change from last week. A joint committee of the Houses has passed all articles but Article Eight, which says that extradition of a foreign citizen to a third country shall only take place in accordance with agreements signed between Afghanistan and another sovereign state. Meshrano Jirga members have not yet agreed to the provision. In the event that Meshrano members insist on not signing up to the agreed provisions, Wolesi can by 2/3 majority pass the Bill. See the May 18 *Legislative 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: Legislative Department of the Wolesi Jirga transmitted the bill to the government on the 8th of December 2009.

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)