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Legislative Newsletter

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News

Wolesi Jirga to reject ministerial candidates with dual citizenship.

Following heated debate in the Committee of Chairs, the Wolesi Jirga decided on 13 December to reject the nomination of ministers with dual nationality.

According to paragraph one of article 72 of the Afghanistan constitution, Ministers shall have only the citizenship of Afghanistan. If the ministerial candidate has the citizenship of another country as well, the House of the People shall have the right to approve or reject the nomination.

The Wolesi took the decision to reject nominations with dual nationality while, the President of Afghanistan was supposed to submit the list of his new cabinet to the Wolesi Jirga within the week. Under the constitution, ministerial appointments are the President's authority, but ministerial candidates have to have the vote of confidence from the Wolesi Jirga.

The Chairman of the Wolesi Jirga, Mohammad Yonus Qanooni explained that the committee of Chairs had decided to take a position on dual citizenship prior to the submission of the list of nominees from the President so as to avoid a situation wherein tribal and organizational considerations would dominate the choice of either giving a vote of confidence or not to an individual with dual citizenship. He added that, "it would be better to have a principle assigned beforehand so that tribal and color discrimination is not considered."

A number of the MPs were of the reasoning that some of the ministers in the former cabinet had committed treason, but as they had dual nationality, Afghanistan could not deal with them in the foreign countries. "We should make a decisive decision today; we are not obliged by any means to vote for ministers having double citizenship." Said, Engineer Asim (Baghlan).

Dr. Saadat Mir Zaheer (Panjshir) who is replacing Regastani as Chairman of the committee of Legislative Affairs of the Wolesi Jirga further stated that, "Anyone arrested for corruption can be freed with the intervention of the foreign country that the detainee has its citizenship. The Afghan government cannot prosecute the double citizenship holders."

Mohammad Husain Fahimi (Sar-e-Pul) indicated that he believed that the most important element of citizenship is political affiliation. In his view, if someone had the citizenship of a foreign country, he questioned their linkage to Afghanistan. He further asked the question, "What percentage of the person's economical, political and personal interests are linked with the foreign country and what percentage are linked with Afghanistan?" he added that for those who were not willing to lose their foreign citizenship for Afghan people, the Wolesi was also not willing voting for them.

A few MPs including Ranjbar, Sultanzoi, Shinkai Karokhail and Dr. Bashardoost were opposed to this decision, their reasoning was that the ministers should not enter the scene "through the wishes of the powerful or groups" but rather the public wants the ministers to be selected through their own identity and capacity.

Mohammad Dawood Sultanzoi (Ghazni) commented that the Wolesi Jirga should clarify the dual nationality issues. In his view the introduction of ministers was the President's job, and the President should be allowed to make a cabinet of his own wish. He added that if the wish was for an experienced, popular and sound cabinet, a ban on double citizenship made this task difficult if not impossible.

While, waving a copy of the constitution, Ranjbar commented that the constitution does not prohibit dual-citizenship, he further remarked, "If double citizenship was not important, why was it mentioned in the constitution, it is clear that there will be people holding double citizenship." He added that in terms of the constitution, after introduction of the cabinet, the MPs were given the authority to either reject or accept them. Alemi Balkhi (Kabul) indicated that according to the constitution if the Wolesi did not vote on the matter when it arose, they would be undermining the authority of the constitution, as the issue is one assigned to the WJ to vote upon when it arises and not before hand.

The Chairman of Wolesi Jirga Yonus Qanooni subsequently called for a vote on the matter. Most of the MPs were in favor of a vote of no confidence on ministers with dual nationality. 125 MPs of the total 239 members voted in opposition to double citizenship and 15 voted in favor. There were a total of eight MPs who left the session as a sign of protest and did not attend the vote.

Some analysts outside the Assembly believe that the issue was engineered by President Karzai through his supporters in the Wolesi Jirga. The idea being to decrease international pressure for establishing a technocrat led cabinet. While the Wolesi Jirga made the decision to decline ministers with dual citizenship, a number of legislators of both houses hold double nationality, including some who took part in the vote.

Wolesi Jirga receives Ministerial Nominees list

President Hamid Karzai submitted a list of 23 nominations for Cabinet Ministers to the Lower House, on Saturday 19th December. In terms of the Constitution, Article 91(3), the Lower House has the power to approve or reject appointments. The lower house will consider the nominations and either give their approval or rejection.

Prior to the submission of the proposed cabinet, the MPs discussed the issue of the President having divided the Ministry of Labor and Social Affairs into two. A Ministry of Labor and a Ministry of Martyrs. According to the legislators the government could not establish new organizations without the approval of the National Assembly. As a result of the discussion, the MPs decided to inform the government not to send the nominated Minister of the Ministry of Martyrs to the Lower House until approval of the creation of the ministry by the National Assembly, in terms of the constitution.

The list of the proposed new cabinet was presented to the Wolesi by the Vice President Mohammad Fahim Qaseem. The list consists of eleven new Ministers, that is Anwarulhaq Ahadi as Minister of Economic Affairs, Wais Ahmad Barmak for Rural Rehabilitation and Development, Ghulam Mohammad Elaqee for Commerce and Industry, Obdullah Obaid for Higher Education, Enayatullah Balegh for Hajj and Religious Affairs, Ahmad Ismayel Munshi for Labor and Social Affairs, Mohammad ullah Batash for Transport and Civil Aviation, Enayatullah Nazari for Refugees and Repatriation, Said Hamid Ghailani for the

Frontiers and Tribal Areas, Makhdom Raheen for Information and Culture and Merza Hussain Abdullahee for the Ministry of Public Welfare.

Meanwhile, twelve sitting ministers including Hassan Banu Ghazanfar as Minister of Women Affairs, Hanif Atmar for Interior, Abdurahim Wardak for Defense, Omer Zakhilwal for Finance, Mohammad Sarwar Danish for Justice, Farooq Wardak for Education, Ismayel Khan for Water and Energy, Mohammad Amin Fatimi for Public Health, Eng. Amirzai Sangeen for Communication and Technology, Gen. Khudaidad for Counter-narcotics, Asif Rahimee for Agriculture and Wahedullah Shahraneer for Ministry of Mines were retained in the cabinet.

The first Vice President, Mohammad Qaseem Fahim stated that the names of ministers for the Ministry of Foreign Affairs and the Ministry of Constructions were not included in the list. He indicated that the nominee for the Ministry of Constructions would be presented soon to the Lower House, but the candidate for the Ministry of Foreign Affairs would be introduced after the London Conference.

Some MPs expressed the view that there was nothing new in the proposed cabinet, indicating that the people of Afghanistan had waited a long time, holding onto hope that they would have a cabinet with persons of known technical expertise and capacity to deliver.

Dr. Abdul Kabir Ranjbor (Kabul) commented that after long disputes among politicians, there was still no fundamental change in the cabinet, he added, "The people of Afghanistan were expecting basic changes, and the new Ministers are weaker than the previous ones."

Mowlawee Said-u-Rahman (Laghman) was of the view that the legislators would not give votes of confidence to more than five ministers. He did not name any specific proposed nominee, but stated that the MPs were concerned by the presented cabinet nominees. Mohammad Dawood Sultanzoi (Ghazni) remarked that the importance of introducing a new cabinet was not in introducing new faces but in articulating a new political framework. He said that the President should present the political and developmental strategy of the state together with the introduction of the new cabinet.

The House decided to convene an extraordinary plenary session on 20th December to debate the process of giving their votes of confidence or not in the proposed nominees, as well as checking the educational documents of the nominees. A first session for considering the nominees was set for December 21st.

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. According to the Afghanistan Times, the Acting Ministry of Justice presented to the cabinet the new draft of the Electoral Law which was amended as of the 14th December 2009. However, the constitutionality of a government review may come into question given the constitutional prohibition on the National Assembly reviewing 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 have 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 Commercial Agency

Update: The Wolesi Jirga National Economy, NGOs, Rural Development, Agriculture and Livestock Committee have received the draft law and will lead discussion after winter recess.

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 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; preventing of violations against women, provision of information and public training about violations against women; and prosecution of perpetrators of violations against women.

Update: The Women, Civil Society and Human Rights Affairs committee of WJ discussed the bill and made new amendments. Reportedly; after contentious debate in the committee and the threatened boycott by male MPs. The 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 discussion of 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.

Law on Financial Leases

Update: No change from last week. Reportedly; the committee discussed the bill last week and referred it to Da Afghanistan Bank for their consideration. The MPs had concerns over the provision of loans to internal producers of goods without guarantee. It was decided by the committee that the Afghanistan Bank should find ways to provide for the problems and reservations raised by the committee on the draft law and present them to the 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. 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 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 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: No change from last week. 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 the comments from the 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: The bill after rejection by the President has been approved by a two thirds vote of the WJ. The Wolesi Jirga has therefore overridden the veto by the President and the bill becomes law, it now awaits publishing in the official gazette.

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 from last week. However, according to the Afghanistan Times, last Monday December 14 the President tasked the Justice Ministry together with the Independent Election Commission (IEC) to consider the Electoral Law and the IEC authority. 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: The Wolesi Jirga by a two thirds majority overrode the objections of the Meshrano Jirga on the 17th of December. The law will now be sent to the President for signing.

Meshrano Jirga

Expropriation Law

The bill aims to prevent expropriation of land and property.

Update: No change from last week. 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: No change from last week. The MJ plenary approved the Bill and it is prepared for transfer to the president. Reportedly; they did not make any substantive changes to the Bill. A contentious issue in the Bill had been 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 Labor Organization, addresses the minimum age for employment and binds signatories to developing policy aimed at abolishing child labor.

Update: No change from last week. After approval of Meshrano the WJ transferred the convention to the president on 10th December.

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: No change from last week. The Meshrano approved the convention and Wolesi transferred it to the president on 10th December.

Joint Committees

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 Wolesi discussed the amendments of the Meshrano Jirga. The Bill now 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.

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: No change from last week. 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. The bill is waiting for transfer to the president.

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 be regulated by law, to support competition and prevention of monopoly in the market. The objectives of this law are: Supporting prevention of unjust contracts, agreements and procedures that result in limiting, preventing or violating competition in the market of goods and services and the production process; prevention of 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: No change from last week. 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 of 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 Legislative Department of Wolesi Jirga, the Bill has been referred to the Ministry of Justice for review of the names and responsibilities of additional directorates to be added before consideration by the Assembly 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 the 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: No change from last week. 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)