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## AFGHANISTAN PARLIAMENTARY ASSISTANCE PROJECT

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# Legislative Newsletter

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  - Law on Domestic and Foreign Private Investment
  - Law on Non-Governmental Organizations (NGOs)
  - Law on Commercial Agency
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## News

### **Nominee Ministers Questioned on Their Future Strategies**

On December the 21<sup>st</sup>, Ministerial candidates began the process of presenting themselves before the Wolesi Jirga. This is in terms of the Constitution that requires the Wolesi Jirga to give its vote of approval on Ministerial candidates nominated by the President. Three nominees to the Afghan cabinet, Mohammad Rahim Wardak Minister of Defense, Mohammad Farooq Wardak Minister of Education and Sarwar Danish, Minister of Justice presented their future plans and programs to the Wolesi Jirga and answered questions from the MPs'.

Prior to the hearings commencing, there was discussion and agreement on the manner the confirmations would be conducted. It was decided that the nominees would present themselves and then thereafter, three MP's from the relevant commissions of the Wolesi would be given an opportunity to ask relevant questions. It was also further agreed that the outstanding two nominees for the ministries of Foreign Affairs and that of Construction Works should be presented by the President prior to the end of confirmation hearings of the list currently presented. The Wolesi came to the decision that it would procedurally only vote at the end for all the nominees and not for a list that excluded the two outstanding nominees. It also agreed that the vote of confirmation would be by ballot and that it would be conducted in one session.

The Minister of Parliamentary Affairs, Mohammad Anwar Jegdalek, presented the CV's and programs of the initial 3 ministerial nominees. This was followed by a questioning session by the MPs, where most of the questions were directed to the nominees for the ministries of Defense and Justice.

During the nominee Defense Minister's questioning period, some MPs expressed their concerns with regard to the United States' proposed new strategy to begin withdrawing forces at the end of the year 2010 from Afghanistan. The MPs were concerned that after the withdrawal of the international forces from Afghanistan, because of the weak national security organizations, the insurgents would control Afghanistan within a short period. Mawlawee Abdul Khabeer (Sar-e-Pul), on behalf of the legislation committee, sought to find out from the proposed Minister of Defense what preparations were being made to maintain security in Afghanistan.

A key question that recurred during the question was around the financing of the Afghan security, particularly the army. Sadeqi Zada Nili (Daikundi) commented that Afghanistan as a country was financially and militarily dependent on foreign countries. He indicated that Afghanistan had 200 thousand military personnel who enjoyed good salaries at a comparative level and he was concerned who would foot the bill once the international community pulled out. He wanted to know from the nominee what plans had been put in place to address this potential crisis. Noor-ul-Haq Olumi (Kandahar) further remarked, "Our officer's use rented armored vehicle whose's rentals are paid for by the foreigners. How long should our soldiers and officers be backed by the foreigners' salaries and armored vehicles?"

Shah Gul Rezaie (Ghazni) also asked the defense nominee about the future and capacity of the national army. He wanted to find out what in the estimation of the Defense nominee would be the period before Afghanistan was militarily independent.

Some MPs posed questions on the coordination of operations between the international forces and the national security forces. They considered lack of coordination a major reason for the increase in civilian casualties and the loss of support for the government in the eyes of the people. In their opinion, the defense minister was to prepare a specific mechanism for coordination that was satisfactory to both the international forces and to the people.

Mawlawee Shahzada (Kunar) remarked that, “There are small operations that our army and police can perform them, but foreigners do them. They search houses and smash doors, which disappoints the people.” He wanted to find out from the nominee why relatively small operations were not conducted by the local security forces.

Zaheer (Panjshir) further added that, “After the Kunduz Province incident, we witnessed the German Defense Minister resigning, while no one in Afghanistan is willing to accept his/her weaknesses or blame, In the past few years, you could not present to the parliament a specific mechanism for consensus on how to prevent the civilian casualties.”

A number of the MPs called the authorities themselves the reason for insecurity because according to them the security in some provinces is deteriorated intentionally. “The Kunduz Province changed to an insecure province. The issue of helicopters landing there during the night has not been clarified to the people; what plans do you have that ensure the Taliban are not well financed in future?” said, Dr, Fatima Aziz (Kunduz).

In response to the MPs, the nominee Minister of Defense commented that, “The withdrawal of the foreign troops will be limited until the Afghan army is independent and capable. He also presented his plans on the government strategy for reducing the civilian casualties.

The nominee Minister of Justice was also questioned about the conditions of prisoners and the state of the jails. Some of the MPs who visited the jails recently, told the nominate minister what they had witnessed in the jails. According to these MPs, because of the ill treatment of the prisoners, some prisoners had sewn their lips, which defames the government and adds to the support of the insurgents.

The nominee Minister of Education was asked about the supervision and guarantee for the provision of a balanced education. He also faced questions on the progress on building of dormitories in the insecure districts of the country for students.

### **Wolesi Jirga continues cabinet discussions**

On December 22<sup>nd</sup>, four nominee Ministers, Mohammad Hanif Atmar, Minister of Interior, Hazrat Omar Zakhilwal Minister of Finance, Mohammad Amin Fatimi Minister of Public health, and Obaidullah Obaid, Minister of Higher Education presented their strategies to the WJ plenary and answered questions from the MP's.

The nominee health minister, Mohammad Amin Fatimi, presented a report of his past achievements and explained his proposed five-year-plan. Likewise, the Interior Ministry nominee, Hanif Atmar, Finance Minister nominee, Omar Zakhilwal and the Higher Education nominee Minister, Obaidullah Obaid presented their future strategies and proposed changes to the MPs.

The MPs posed their questions centering on the existence of corruption, lack of national participation and the weak capacities of the ministries.

Apart from the importation of poor quality medicines, lack of observance of national participation in health issues, the chair of the Health Committee of Wolesi Jirga Dr. Nehmatullah (Kabul), criticized the Minister of Public Health for outsourcing some of the hospitals to private organizations that do not perform their duties properly and have no responsibility to the people. He said that, "Contrary to article 52 of the constitution, patients are charged money in the hospitals, such charging has no legal basis and the money is not submitted to the finance ministry, either."

Malalai Shinwari (Kabul) was of the view that in the health ministry they invest in the old generation and there is no attention to the young generation. According to her, "the education bursaries are given to the heads of the departments, only."

Alemi Balkhi (Kabul) spoke of detainees' health problems and said that the health ministry did not pay any special attention towards them.

The nominee minister of interior was asked about the strengthening of the frontier forces, the low quality weapons of the police and the existence of corruption in the security forces. Nader Khan Katawazi (Paktika) and Pacha Khan Zadran (Paktia) reiterated on the need for speedy steps towards strengthening the frontier police for the benefit of the nation. According to them, it was the only way to bring the people together.

Pacha Khan Zadran argued that, "Security is the only problem, if the security is ensured, there is no other problem. There is no security unless the nation empowers the police." Mawlawee Taj Mohammad (Kabul) further reflected on the searching of Afghans' houses and their imprisonment by the foreigners without a court's verdict. He said that, "The safety of the community members is preserved according to article 26, 36, 29 and 27 of the constitution. They can protest according to the law, the detention of the people should be according to the law. The foreigners don't have the right to arrest and detain people without the court's verdict." He asked the nominee interior minister about the absence of the Afghan police when foreigners search houses.

The interior minister nominee explained three types of corruption in that ministry. He articulated these as the misuse of the administrative system, corruption by the police themselves, and the use of police by other corrupt people. He said that they had put a lot of effort to eradicate these problems, but they were yet fully under control. He also added that he was working on some of the policy issues with foreign assistance, particularly with respect to the coordination of searches and arrests.

On December 23<sup>th</sup>, the second day of the session, the finance minister nominee, was asked about the transparency of the privatization processes, the increase in the budget, the eradication of corruption in the collection of custom duties, and about developing a proper taxation system.

Saliha Mirzad (Nimroz) asked the minister nominee to supervise the custom offices strictly in the future and said that staff of foreign organizations should be asked to pay tax.

Sadiqi Zada (Daikundi) criticized the Minister of Finance for the existence of corruption in his ministry. He said to the nominee minister, “There are complaints regarding corruption in your ministry. For example, there are complaints about corruption in recruitment, tax collection as well as imports. When will you be able to collect tax in a hundred percent of cases and increase the national income by establishing new systems?”

The Minister of Finance Zakhilwal accepted that there was corruption in all ministries and promised to clean up his ministry of corruption if he was able to get vote of confidence from the Wolesi Jirga.

The MPs also proposed some suggestions to the nominated Minister of Higher Education on combating corruption, changing old methods, the controlling of fees for private universities and the enhancement of the higher education systems.

## 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. The status of Bills remains largely unchanged from the previous week as the National Assembly focused on the confirmation of Ministers.*

### ***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 14<sup>th</sup> 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: No change from last week. 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: No change from last week 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 has referred the bill 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 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. Some of the MPs raised the issue in Wolesi plenary and asked for consideration of the bill, but no decision has been made yet. 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: Update: No change. The bill was inactive last week in the Wolesi Jirga. Please see the *Legislative Newsletter* for 7 September 2009 for the last update.

### ***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: No change from last week. There are reports that the government returned the bill over an Assembly amendment which includes “signs of maturity” (per Sharia Law) as well as age as criterion for classification of subjects as minors or adults. The bill is reportedly pending in the Wolesi Legislative Department for further approval by two third of the members.

### ***Law on Acting Ministers***

The law has been promulgated based on paragraph 11 of article 67 of the constitution. The law is consisting of three articles which indicate time allowable for acting ministers, in the case of rejection, resignation, impeachment or death of the minister, as well as an incurable illness.

Update: Wolesi Jirga approved the law by a majority of the members present.

## **Meshrano Jirga**

### ***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.

## 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 and introduced members for 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.

## **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)