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Legislative Newsletter

Calendar

- Wolesi Jirga (Lower House) Agenda:
 - Electoral Law
 - Law on Domestic and Foreign Private Investment
 - Law on Non-Governmental Organizations (NGOs)
 - Law on Elimination of Violence Against Women
 - Law on Forests
 - Law on Child Correction and Education Centers
 - Procurement Law
 - Law on Financial Leases
 - Customs Law
 - Education Law
 - Law on Medals and Badges
 - Law on Rights and Privileges of the Relatives of Martyrs and Missing
 - Law on Rights and Privileges of the Disabled
 - Statistics Law
 - Independent Election Commission Structure Law
 - Law on Regulating the Ethical Relations of the Three Powers of State
 - Law on Juvenile Offenders

- Meshrano Jirga (Upper House) Agenda:
 - Counterterrorism Law
 - Expropriation Law
 - Law on Firearms, Ammunition, and Explosives
 - C138 Minimum Age Convention, 1973
 - The Agreement of the Governments over the Asian Highway Net

- Joint Committees:
 - Counternarcotics Law
 - Law on Support for Competition (Anti-Trust Law)
 - Communication Services Regulatory Law
 - Government Structure Law
 - Organization and Jurisdiction of Courts Law
 - Law on Personnel Affairs of ANA Sergeants
 - Extradition Law
 - Criminal Procedure Code for Military Courts and Law on Military Crimes

News

Assembly Rejects Annual Financial Report

The lower house on December 5 rejected the government's annual financial report, the Qatia, for 1387, returning the document for follow up of disputed issues. MPs focused on a low development budget expenditure rate of 40 percent and non-implementation of 217 projects. They also alleged incompetence, misuse of funds, violation of financial regulations, disregard for Control and Audit Office guidance, and account discrepancies. Many demanded summoning the ministers for questioning.

Wolesi Jirga Budget and Finance Committee Chairman Usmani cited the low expenditure rate and explained that some ministries spent close to none of their development budgets. Usmani also recommended that the Assembly not refer the draft to the Attorney General as the Assembly's request for investigation of government officials over the 2006 and 2007 Qatias had still not been acted upon.

Criticizing the low expenditure rates, Mohammad Daud Kalakani (Kabul) complained that the public is "screaming of unemployment and hunger while funds are going unused. The ministers who have not spent their development budgets should be called to explain the reasons."

Shukoria Barekzai (Kabul) demanded that "Action be taken against those ministries which are incompetent...They should be introduced to the judicial authorities for prosecution."

Questioning whether low spending rates are necessarily negative, Engineer Moahammad Kahn (Ghazni) asserted that the Qatia reveals overt corruption. "We should praise the ministers who have not spent their budgets because they haven't stolen them. The ones who spent the budget should be questioned on what projects they have implemented and where," he said.

Sardar Mohammad Rahman Oghly (Faryab) blamed the Wolesi Jirga Administrative Board and MPs for failing to fulfill their government oversight duties. "I have been informed that one of the ministers drank water worth \$7,000 on one of his trips. This budget is full of corruption."

Assembly Extends Session

In anticipation of President Karzai's publication of minister nominees, the Wolesi Jirga plans to extend its legislative session to allow for debate and voting on the candidates. The Meshrano Jirga has also extended its session for 15 days to continue work on pending legislation.

While the list of presidential nominees is set to arrive on the 8th, some Karzai supporters are concerned that a group of MPs on Hajj – a majority of which support the president – will not be available for the votes. Others speculate that the president will delay release of the list until his supporters have returned.

Committee Members Meet US General

Members of the Wolesi Jirga Defense, Internal Security, and International Affairs committees met with US and NATO commander in Afghanistan, General Stanley McCrystal, on December 3. McCrystal briefed the MPs on US strategy in Afghanistan in light of the recent troop increase announcement. MPs shared their concerns and generally expressed support for the plan, but complained that they should have been consulted in developing the policy. They requested regular consultations to improve implementation of the strategy.

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 Assembly review of government edits 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 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. After a contentious debate in the committees and 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 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: The draft is with the Wolesi Jirga National Economic 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.

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 committees. The lead committee – Religion, Cultural, Education and Higher Education – has distributed the draft to other Wolesi committees for their consideration.

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 Meshrano has modified some articles of the draft and asked for a joint committee of the houses. Wolesi Jirga Internal Affairs Borders and Local Administrations committee will lead discussions.

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.

Expropriation Law

The bill aims to prevent expropriation of land and property.

Update: A joint committee has approved the draft and staff is preparing it for transfer to the government.

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 draft is with the Committee on Defense and Security.

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 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: 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 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. 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. The Ministry of Parliamentary Affairs returned the draft to the Wolesi Jirga due to a missing signature.

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)