



**USAID**  
از طرف مردم امریکا  
د امریکا دولس لخوا

**AFGHANISTAN  
PARLIAMENTARY ASSISTANCE  
PROJECT**

1 June 2009 Vol. 2, No. 18

# Legislative Newsletter

## Calendar

- Wolesi Jirga (Lower House) Agenda:
  - Electoral Law
  - Counternarcotics Law
  - Procurement Law
  - Customs Law
  - Law on Cooperative and Limited Liability Companies
  - Law on Child Correction and Education Centers
  - Law on Local Governance
  - Education Law
  - Law on Medals and Badges
  - Law on the Structure, Duties, and Authorities of the Afghanistan Independent Human Rights Commission
  - Law on Private Security Companies
  - Law on Civil Servants
  - Government Structure Law
  - Communication Services Regulatory Law
  - Higher Education Law
  - Law on Rights and Privileges of the Relatives of Martyrs and Missing
  - Law on Rights and Privileges of the Disabled
  - Organization and Jurisdiction of Courts Law
- Meshrano Jirga (Upper House) Agenda:
  - Law on Chamber of Commerce and Industry
  - Law on Regulating the Ethical Relations of the Three Powers of State
  - Law on Registration of Commercial Trademarks
  - Law on Transit
  - Law on Personnel Affairs of ANA Sergeants
  - UNESCO Convention
- Joint Committees:
  - Extradition Law
  - Criminal Procedure Code for Military Courts and Law on Military Crimes
  - Law on Health
  - Police Law
  - Law on Gatherings, Protests, and Demonstrations

## 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: The bill was inactive in the Wolesi Jirga last week.

### ***Counternarcotics Law***

The draft law, in accordance with Article 7 of the Afghan Constitution, will prevent cultivation, trafficking, production, transaction, export and import of narcotics. The bill also addresses punishment of narcotics traffickers and promotes assistance from national and international organizations on countering narcotics processing, production, and facilities. The bill promotes cultivation of alternative crops.

Update: The Wolesi Jirga approved the bill on 27 May. The lower house renamed the draft law as the Law on Counter and Control of Narcotics and Intoxicants and added two articles. Article 45 specifies detention periods from one month to twenty years for trafficking of intoxicating substances. Article 46 allows confiscation of the property of narcotic or intoxicant dealers by judgment of the courts. The article also clarifies that counternarcotics police are responsible for controlling the intoxicating substances specified in the law. See full report in *News* below.

### ***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 is under review by the Wolesi Jirga Budget and Finance Committee.

### ***Customs Law***

This bill is drafted in accordance with Article 42 of the Constitution to legislate customs affairs, including government collection of customs revenue, establishing customs duties, specifying the authority conferred on customs personnel, outlining export policies and procedures, and preventing customs violations.

Update: No change from last week. The bill has been distributed to Wolesi Jirga Budget and Finance Committee members for review and comment.

### ***Law on Cooperatives and Limited Liability Companies***

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

Update: The bill is under discussion in the Wolesi Jirga committees. The committees agreed to allow the registration office of the Ministry of Commerce and Industry to set registration fees.

### ***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 from last week. The bill is pending discussion in a combined meeting of Wolesi Committees.

### ***Local Governance Law***

This law is drafted pursuant to Article 136 of the Constitution to provide for the management of issues relating to the numbers, areas, and structures of local administrations. The local administration acts to achieve objectives such as securing the needs of local peoples in different areas of social, cultural and economic life; maintaining order and protecting public interests; implementing state-proposed programs in related areas; and attracting people's cooperation in securing government's development objectives. The draft law also addresses affairs related to provincial governors, district governors and sub-district governors.

Update: No change from last week. Further Wolesi consideration is pending clarification of Article 137 of the Constitution by the yet to be established Independent Commission for Overseeing Implementation of the Constitution.

### ***Education law***

The draft law guarantees equal and balanced access to free primary education for all Afghan citizens. The bill aims to eliminate illiteracy and improve the quality of education nationwide through instituting modern methodology and parental involvement in schools. In addition, the bill calls for improved professional qualifications of teachers, school principals, and Ministry of Education employees. The draft sets a minimum education level of grade eight for all Afghans and mandates design of age-appropriate curricula by the Ministry of Education.

Update: No change from last week. The draft law remains with the Wolesi Jirga Religious, Cultural, Education and Higher Education Committee.

### ***Law on Medals and Badges***

The Law on Medals and Badges regulates affairs related to the class, value, size, and production of official government medals and badges. The draft explains the types and purposes of various medals and badges and defines award conditions and processes.

Update: The draft law is under discussion in the Wolesi Jirga committees.

### ***Law on the Structure, Duties, and Authorities of the Afghanistan Independent Human Rights Commission***

Pursuant to United Nations General Assembly Resolution 48/134 dated 20 December 1993 and provisions of Article 58 of the Afghan Constitution, the law, passed by decree, promotes respect for and monitoring of human rights, and governs the structure, functions, authorities, and activities of the Afghanistan Independent Human Rights Commission. It now requires ratification by the National Assembly.

Update: The change from last week. The bill is with the Wolesi Jirga Women's, Civil Society, and Human Rights Committee.

### ***Law on Private Security Companies***

The bill regulates foreign and domestic private security companies (PSC) in Afghanistan and places licensing and oversight authority with the Ministry of Interior. The draft law establishes a board chaired by the Minister of Interior to oversee security companies' affairs. The board will review and approve applications before forwarding them to the Cabinet and revoke licenses or impose restrictions as deemed necessary.

Update: The Wolesi Jirga has postponed further consideration of the bill until clarification of Article 5 of the Constitution by the not yet established Independent Commission for Overseeing Implementation of the Constitution. *See report below.*

### ***Civil Servants Law***

The draft law addresses the salaries and ranks of civil service employees and outlines measures to: make administrative corrections to Government systems; clarify job descriptions for Government employees; improve education levels of Government employees; improve employee qualifications and work ethic; and provide employee housing and other benefits.

Update: No change from last week. The bill is tentatively scheduled for discussion in a Wolesi Jirga combined committee. Previous amendments include reinstatement of the Superscale mechanism – intended to promote staff retention – which includes a six level pay scale ranging from 300 to 1,500 USD per month.

### ***Government Structure Law***

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

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

### ***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 between the Ministry of Communications, service providers, and customers.

Update: The bill was not discussed in the Wolesi Jirga plenary last week as planned and has been deferred to next session.

### ***Higher Education Law***

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

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

### ***Law on Rights and Privileges of the Relatives of Martyrs and Missing***

The law regulates the special rights and privileges of families of the martyred and missing. The draft addresses the social, economic, and political needs of the families, including housing and employment benefits.

Update: The bill is scheduled for consideration and a possible vote in the Wolesi Jirga this week. The Lower House can override the President’s veto with a two-thirds majority.

### ***Law on Rights and Privileges of the Disabled***

The law will integrate and support the disabled economically.

Update: The draft law is with the Wolesi Jirga Committee on the Disabled, Martyred, and Widowed and is scheduled for consideration and a possible vote in the Wolesi Jirga this week. The lower house can override the President’s veto with a two-thirds majority.

### ***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 in the country, has the right to overturn or amend decisions of the lower courts. The courts review disputes, monitor implementation of the law, and protect citizens' rights in accordance with the law.

Update: The draft is pending discussion in a combined meeting of Wolesi Jirga committees.

### ***Chamber of Commerce and Industry Law***

The bill, drafted pursuant to Articles 10, 11 and 13 of the Constitution, aims to defend the rights of private sector enterprises; develop commercial, industrial, agricultural, husbandry and other economic services in the private sector; coordinate the handicraft, trade union, and service industries; and pave the way for economic development of private sector enterprises, nationally and internationally.

Update: The bill is under discussion in the Meshrano Jirga National Economy and Budget Committee.

### ***Law on Regulating Ethical Relations of the Three Powers of State***

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

Update: No change from last week. The Meshrano Jirga Justice and Judiciary Committee has amended the title from "law" to "procedure" with the rationale that the document contains more ethical recommendations than mandates. There is a chance the document will be returned to the Wolesi without Meshrano approval due to concerns that it is "advisory" but would also limit Parliament's authorities.

### ***Law on Registration of Commercial Trademarks***

This law is established to organize the registration and use of trademarks for industrial, commercial, communications, and agricultural goods, products and services. According to the law, a name, word, signature, written piece, map, title, stamp, picture, etc. can be registered. The law also regulates registration, change, and transfer of trademarks and restricts the use by two or more individuals, companies, offices, organizations or institutions of the same trademark.

Update: Meshrano Jirga National Economy and Budget Committee discussed the bill last week, making grammatical amendments.

### ***Law on Transit***

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

Update: The Meshrano Jirga Communications, Transportation, City Development and Municipalities Committee discussed the bill last week and made only grammatical changes to the Pashtu version.

### ***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: Meshrano Jirga passed the bill on 26 May without additional amendments. (Correction: The bill had been with the Meshrano Jirga Defense Committee rather than the Wolesi Defense Committee the previous week.)

### ***United Nations Education, Scientific, and Cultural Organization (UNESCO) World Heritage Convention***

Article 4 states that parties to the Convention Concerning the Protection of the World Cultural and Natural Heritage Convention recognize that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage situated on its territory, belongs primarily to that state. As such, the state is obligated to do all that it can within its means to achieve these measures and, where appropriate, seek international assistance.

Update: The Meshrano Jirga approved the convention last week.

### ***Extradition Law***

The bill governs the transfer of suspects, accused, and convicts to and from Afghanistan and addresses requests for judicial cooperation on criminal matters between Afghanistan and other countries. In line with Articles 7 and 28 of the Constitution, the bill seeks to implement Afghanistan's obligations under bilateral extradition treaties as well as consolidate procedures in existing laws which address Afghanistan's obligations under multilateral conventions, including the United Nations Convention against Transnational Organized Crime and the Convention for the Suppression of the Financing of Terrorism.

The proposed law generally follows the principles of the UN Model Law on Extradition and of most extradition laws, including those on covered offences, dual criminality requirement, prohibition against double jeopardy, and grounds for refusal of extradition requests. In addition, the bill conditions Afghanistan's approval of extradition requests on the provisions of the International Covenant on Civil and Political Rights and the Prohibition of Torture and Other Cruel, Inhuman, and Degrading Treatment.

Update: Further discussion is pending formation of a joint committee of the houses to reconcile their differences. See the 18 May Newsletter for a summary of Lower House amendments.

### ***Criminal Procedure Code for Military Courts and Law on Military Crimes (one document)***

The draft law addresses issues of crimes committed by Afghan National Army officers and soldiers. Procedures involving criminal investigation and reporting, arrest of the accused, collection of evidence, access to witnesses and evidence, rights of the convicted, court verdicts, punishment, etc. are covered.

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

### ***Law on Health***

The law regulates private health services and health centers, implementation of health projects in different areas of the country, prevention of disease, and protection of mothers and newborns.

Update: A joint committee met last week but reached no conclusion on the issue of charging for “advanced” medical services.

### ***Police Law***

The law regulates the structure, responsibilities, duties, activities, and authorities of the police forces. The Wolesi draft gives the Minister of Interior responsibility for supervision of Kabul city, border, and highway and traffic police forces nationally. The regular MoI police forces in the provinces and districts would be supervised by provincial governors and district administrators.

Update: A joint committee of the houses passed the bill on 25 May.

## **News**

### **Committee Insists on Review of Shia Law Document**

The Wolesi Jirga Committee on Women, Civil Society and Human Rights requested and held a meeting with the Deputy Minister of Justice and MoJ Legislative Director on 21 May to discuss the Shia Family Law document and request that it be returned to the lower house for review. The document is reportedly with the MoJ for review and possible amendments after President Karzai’s signature. The National Assembly had previously forwarded the draft to the President without a complete review or vote.

Committee Chairwoman, Tahera Mirzad, told APAP that, “The committee sent a letter to the Ministry of Justice requesting amendments and that the law be returned as soon as possible for further discussion and a vote.” The MP added, “We just wanted to raise the issue of violence against women, and we insisted once again on amending the bill.”

## **MPs Criticize Ministers' Behavior toward Parliament**

The Wolesi Jirga convened the Minister of Parliamentary Affairs, Mohammad Anwar Jegdalek, on 27 May to raise the issue of ministers and other officials' lack of responsiveness to the National Assembly and allege unethical relations between the government and certain MPs. Heated debate ensued over the issue.

During the questioning, Sediq Ahmad Osmani (Parwan) complained, "In the last month we have had serious problems with some of the ministers. We planned an oversight meeting on budget implementation, but the ministers did not appear to share the information." The MP added, "The ministers do not honor their commitments. They do not share requested documents with the Budget and Finance Committee on time."

Abdul Hadi Safi (Kapisa) added, "The Cabinet decided that the ministers will set aside two days a week for MPs, but now they make excuses that they have other business. Some of the MPs receive special privilege from the government, such as vehicles and 500 USD per month."

Mohammad Hussain Fahimi (Sar-e-Pul) agreed that select MPs receive privileges from the government, adding, "Not only are MPs treated inconsistently by the government, they have differential attitudes toward the nation as well. The ministers are not the ministers of people and government; they are the ministers of special interests, groups, and particular ideologies." The MP also accused the Ministry of Parliamentarian Affairs of arbitrarily forwarding certain Assembly-approved bills to the government quickly while delaying others.

Criticizing a lack of access to ministers, Mohammad Akbary (Bamyan) said, "People cannot reach the ministers. The administrative corruption has obligated the constituents to come to the MPs. If we are not able to visit the ministers, then what's the difference between an MP and a constituent?"

In response, Minister Jegdalak said, "I accept the existence of differential treatment, but I cannot personally solve this problem. I will inform the Cabinet of our discussion." The Minister added, "The door of my ministry is open to all of you. Whenever you want to see me, no one will hinder you."

To conclude, Speaker Qanooni summarized the debates and asked the MPs to reassert their previous demand that ministers come twice a week to the National Assembly. The speaker asked the Minister to pass the message to the Cabinet and report the result.

## **Wolesi Jirga Delays Private Security Companies' Bill**

On 25 May the Wolesi debated and postponed approval of the Private Security Company Bill for further interpretation of Article 5 of the Constitution by the yet to be established Independent Commission for Overseeing Implementation of the Constitution. The primary question at issue is the legality of outsourcing security functions. Article 5 states, "Implementing the provisions of this Constitution and

other laws, defending independence, national sovereignty, territorial integrity and attaining the security and defense capability of the country shall be the fundamental duties of the State.”

Some MPs are calling the presence and activities of private security companies a contradiction to Article 5, describing the companies as a threat to National Security.

During the debate, Sayed Hussain Alemi Balkhi (Kabul) argued that under the current circumstances, “There is no doubt that these security companies are illegal. If the MPs’ want these companies to operate without laws and regulations, then this is something illegal. We should instruct the Ministry of Interior to prevent their operations.” But the MP qualified that position with, “As the MoI and MoJ have explained, if the security companies act improperly, protocols signed between the Government of Afghanistan and the [security contractors’] countries mandate that the deviators be punished in their countries according to their laws. So there is no need for this law.”

Other MPs argued that the presence of private security companies are necessary in line with MoI assertions that it lacks the resources to guaranteed the security of embassies, construction companies, etc. “According to Article 10 of the Constitution, the State is responsible for encouraging investments and private enterprises, so is not against the Constitution,” said Haji Mohammad Daud Kalakani (Kabul).

Khalid Farooq (Paktika) said, “It is the reality that the private companies are acting arbitrarily. There is some evidence that at times the [private security] convoy staff have abandoned their vehicles and then informed the Taliban to set them on fire, so the secret may not be disclosed. They are smuggling expensive stones and other things. So, according to my point of view, if the Ministry of Interior needs them, these companies should come under the Ministry’s control and the Ministry should be accountable accordingly.”

Mohammad Dawood Sultanzoi (Ghazni) argued that some companies are delinquent in paying taxes: “These companies are profitable organizations as are the others businesses. They work for their own benefit...They do not pay taxes and owe [the government] money.”

Ending the discussion, Speaker Qanooni explained that, “When we have multiple interpretations of the Constitution, we cannot solve this issue. Article 5 will go to the Commission on Oversight of Implementation of the Constitution. It is not our problem if the commission is established or not. The government must establish the commission in order to approve drafts coming to Parliament.”

Agreeing with the Speaker, Fawzia Kofi (Badakhshan) added, “If the government wants to establish the commission, it is very easy to send [proposed commission members] to the Wolesi Jirga for approval.”

Raising concerns about postponement of drafts, Eng. Abas Nawyan (Kabul) said on 27 May, “It is ridiculous that when we cannot solve a problem we are dispatching bills to a commission which is not yet established.”

The commission is mandated by Article 157 of the Constitution.

### **Wolesi Jirga Debates Counternarcotics Law**

After long discussions, the Wolesi Jirga approved the Counternarcotics Bill on 27 May.

Secretary of the Wolesi Jirga Antinarcotics Committee, Molawee Sayed-u-Rahman, explained the deliberation process, which included ministry and security organization representation. “As per the Article 7 of the Constitution and the international treaties which Afghanistan is bound to, narcotics are not completely banned. This is why certain terminology in the draft has been changed to ‘control’.

“Additionally, the High Commission article was amended so that a committee in the capital shall be established under one of the ministries and other regional committees will be established as the need arises. Finally, the National Army shall be included in the security organs responsible for controlling narcotics.”

Antinarcotics Committee member Erphanullah Erphaan (Kabul) explained the debate over the controversial issue of confiscation of convicted parties’ property. The MP said, “There are two ideas. One says all movable and immovable assets, equipment and instruments that are prepared for the use of narcotics shall be confiscated...The second opinion is that the government has no right to confiscate the property of someone who is jailed and punished because one punishment is enough, and there is no cash punishment in Sharia law.”

Sayed Hussain Alemi Balkhi (Kabul) agreed with the second view that, “Confiscation is a kind of cash fine; it must be omitted...Confiscation of property the person receives by any means is a second kind of penalty and there is no authorization for it in Islamic law because the person faces the punishment him/herself.”

Kabir Ranjber (Kabul) countered that, “If confiscation is prohibited, then many problems will be created. Ninety percent of the tall buildings are constructed with drug trafficking money. I am optimistic that an agency will be established one day to assess these issues.”

Qazi Nazir Hanifi (Herat) broadened the debate: “Alcoholic beverages and narcotics are both mentioned in the Constitution...Thus, in my point of view, the alcoholic beverages should be a part of this law, not part of the immorality law.”

Mawlawee Abdul Aziz Aziz agreed that, “The issue of alcohol is important because there was only wine/alcoholic drink in the era of the Holy Prophet Mohammad (PBUH), which was called narcotics.”

As explained in the legislation summary above, the Wolesi Jirga approved the committees’ amendments which include changing the law’s title to soften its antinarcotics language by including “control” of narcotics. “Intoxicants” was also added to give weight to non-poppy intoxicants including alcohol. Article 45 was added to specify penalties from one month to twenty years detention based on the

quantity of intoxicants trafficked. Confiscation of the properties of narcotics dealers based on judicial decision is included in Article 46. It is also mentioned that counternarcotics law enforcement agents are responsible for controlling the intoxicating chemicals prohibited by the law.

**Acronyms:**

ANA – Afghan National Army

ANDS – Afghanistan National Development Strategy

ANP – Afghan National Police

CSO – Civil Society Organization

DIPR – Department of Information and Public Relations

IEC – Independent Election Committee

IHRC – Independent Human Rights Commission

ISAF – International Security Assistance Force

NATO – North Atlantic Treaty Organization

NDS – National Directorate of Security

MOF – Ministry of Finance

MOI – Ministry of Interior

MOD – Ministry of Defense