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Legislative Newsletter

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 - Criminal Procedure Code for Military Courts and Law on Military Crimes
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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 draft is pending transfer to the Meshrano Jirga after Wolesi Jirga approval on 27 May.

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: Last week the Wolesi Jirga plenary passed Article 10 of the bill which allows 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. On 3 June the Meshrano Jirga Complaints Committee, while discussing teachers' issues, called on the Wolesi to make the bill a priority after summer recess.

Law on Medals and Badges

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

Update: The Wolesi Jirga Religious, Cultural, Education and Higher Education Committee is compiling proposed amendments of the Wolesi 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: No 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.

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.

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 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 was scheduled for consideration and a possible vote in the Wolesi Jirga last week but has been delayed until next session. The Wolesi 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. It was scheduled for consideration and a possible vote in the Wolesi Jirga last week but will be considered in the next session. The WJ 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, 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.

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: The bill has been rejected by the government. The Wolesi Jirga had amended the draft to call for use of national ID cards in conducting the census with the objective of excluding foreigners, especially in the borders regions. The government countered that many people lack ID cards which will make completion of the census impossible.

Political Parties Law

The law will regulate political parties' creation, activities, and rights and responsibilities.

Update: The bill has been returned by the government.

The Assembly had amended the draft to specify that political parties have the right to establish offices outside the country and that the government is responsible for ensuring their security. The government rejected the amendment arguing that parties do not have the right to establish offices abroad and that ensuring security inside the country is its only responsibility (as specified in the original text). The Wolesi last week accepted the government's position but stated that, while not establishing offices abroad, parties are allowed to be active outside the country.

The Assembly had also amended the bill such that, "Dissolution of political parties shall take place by proposal of the Ministry of Justice." The government insists that dissolution authority lies with the Supreme Court, as specified in the original draft. Last week the Wolesi modified its amendment to specify that dissolution shall take place by proposal of the Ministry of Justice *and through an authorized organ*.

If approved by both houses, the new amendments will be sent back to the President. The Wolesi Jirga will not attempt to override the President's changes with a two-thirds majority.

Law on Children's Violations

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: The bill has been returned to the Wolesi Jirga by the government over an Assembly amendment that includes "signs of maturity" (per Sharia Law) as well as age as criteria for classification of subjects as minors or adults. Further consideration of the draft is postponed to next session due to the lack of a two-thirds majority to override the President's veto.

Independent Election Commission Structure Law

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

Update: The President rejected the bill last month over Assembly amendments that call for Wolesi Jirga approval of IEC presidential appointees. The government argues that lower house approval of the IEC commissioners and chair would be unconstitutional as the requirement is not mentioned in the Constitution. IEC officials argue that Assembly approval of IEC commissioners would jeopardize their independence. Proponents of Assembly approval argue that exclusive presidential appointment of IEC members would promote bias and contradicts international best practice.

The President is also opposed to an Assembly amendment that would require the IEC Secretariat head to report to the IEC commissioners but has accepted that the Secretariat head report only to the IEC chairman.

Further consideration is postponed until next session due to the lack of a two-thirds majority to override the President's veto.

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: The Meshrano Jirga rejected the bill on 7 June. Justice and Judiciary Committee Chairman Abu Aman proposed changing "law" to "procedure" with the rationale that the document contains more ethical recommendations than mandates. The document will be return to the Wolesi Jirga with a letter clarifying that it is "advisory" and that the draft, if approved, would limit Parliament's authorities.

Planting Seeds Law

This bill is drafted to regulate planting, production, purchase, quality control, and trade of seeds and related issues. Objectives of the bill include improving and developing planting and root seeds, protection of genetic resources and materials, and promoting scientific research on seeds.

Update: The Wolesi Jirga approved the bill on 3 June. The Wolesi committees have proposed amendments and added clauses which will help to prevent importation of low quality seeds and mandate punishment for violators. An amendment to Article 7 increases the number of National Board of Farming members from two to seven to be composed of cooperative, Ministry of Commerce and Ministry of Agriculture representatives.

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 Wolesi Jirga approved the draft on 30 May with amendments.

Eng. Mohammad Alim Qarar (Laghman) explained that the law was drafted to control and monitor the internet, radio frequencies, and other telecommunication issues. "The significant points of this law are that the Ministry of Telecommunications and Information Technology has been given more authority to control and protect telephone, radio, and internet conversations and services. The ministry will be able to control communications cut offs and confidentiality of information sent through mass communication."

The government has been asked to have the Supreme Court consider Articles 58-59 which address penalties for violations of the law. At issue is whether or not monetary penalties are allowed in Islam.

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: The Wolesi Jirga passed the bill on 3 June and the Meshrano approved the Wolesi draft on 7 June. Changes, by request of the government, include reinstatement of the Superscale mechanism – intended to promote staff retention – with a six step pay scale ranging from 300 to 1,500 USD per month. The Wolesi made level of education one factor in determining salary levels and the ability to speak both Dari and Pashtu a criterion to qualify for Superscale salaries.

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 Meshrano Jirga plenary passed the bill on 7 June, proposing amendments including that the Chamber of Commerce and Industry should be independent but “supervised” by a Cabinet committee, while the original Wolesi Jirga amendments specify that body be independent and unsupervised.

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: No change from last week. Meshrano plenary discussion will commence in the next session.

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 passed the bill on 7 June with minor grammatical amendments.

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: There are conflicting reports from the Assembly on the bill's status. It now appears that after approving the bill without amendments, the Meshrano has returned the draft to the Wolesi and is seeking to establish a joint committee to discuss differences over issues such as appointment/recruitment powers.

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 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. 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 again last week but reached no conclusion on the issue of charging for “advanced” medical services. Opponents of the charges argue that they are unconstitutional and that complex services, like standard services, should be provided free of charge as the government is able.

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. The final draft is being prepared for transmission to the President.

News

National Assembly Completes Session

The Wolesi Jirga began its 45 day summer recess on 4 June while the Meshrano completed its session after approving several outstanding bills on 7 June.

Wolesi Jirga Speaker Mohammad Yonus Qanooni expressed satisfaction with the WJ’s seventh session, explaining that, “The total number of legislative documents received by Parliament over four years has reached 247, of which 89 are priority. In line with the Constitution, these documents have been included in the agenda and approved.”

Describing the Wolesi’s accomplishments during the session, Deputy Secretary Dr. Mohammad Saleh Saljoqi pointed out that, “During the first half of its fourth year, the house approved 14 draft laws, 10 conventions and two financial documents.”

On the decision to take recess on schedule rather than delaying to accommodate the elections, Saljoqi said, “Some of the MPs may not come back after 45 days, but that was a decision of the members according to our rules of procedure. We could have changed the rules with a two-third majority of the members.”

Commenting on the Assembly’s progress and current situation, Fawzia Kofi (Badakhshan) told APAP, “In every session, we have made good decisions about the legislation. The approved laws were in the interest of people. All that they need now is effective oversight to bring changes in their lives.” The MP went on: “The people

of Afghanistan suffer from corruption, weak governance, and a lack of rule of law. Unfortunately the Parliament of Afghanistan could not deliver tangible results in this regard, but, in addition, some of the MPs are accused of corruption. Some months ago we read articles about the involvement of the Administrative Board in corruption. So if the entity whose job it is to fight corruption is so weak, what would the people of Afghanistan expect from other organizations?”

Chairman Aziz Ahmad Nadim of the Wolesi Jirga National Economy, NGOs, Rural Development, Agriculture and Livestock Committee, which led consideration of five drafts to completion, explained that, “The house succeeded in doing a good job in approving laws” but more progress is needed in assessing the work of individual ministries and overseeing the executive branch.¹

The Lower House has 249 legislators including 68 females. Over the last four years, eleven MPs have been killed in various incidents of violence. Two legislators, Abul Qayoum Karzai (Kandahar) and Saleh Mohammad Regastani (Panjshir), resigned, while a third, Malalai Joya (Farah), was unseated over her unfavorable descriptions of her colleagues.

Wolesi Jirga Summons Security Officials Over Traffic

Members of the Lower House last week summoned security officials including, Minister of Interior Hanif Atmar, Minister of Defense Rahim Wardak, Director of National Security Directorate Amrullah Salih, and the Mayor of Kabul City on 2 June to discuss the traffic blockages and obstacles on the roads of Kabul. MPs complained that security barriers increase traffic problems and that a centralized location for embassies and diplomatic compounds should be established.

Acronyms:

ANA – Afghan National Army
ANDS – Afghanistan National Development Strategy
ANP – Afghan National Police
CSO – Civil Society Organization
IEC – Independent Election Committee
IHRC – Independent Human Rights Commission
ISAF – International Security Assistance Force
NATO – North Atlantic Treaty Organization
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)

¹ In May the Wolesi Jirga Budget and Finance Committee with National Assembly Budget Office assistance conducted several successful oversight meetings with ministries, obtaining and reviewing ministry financial reports.