



USAID
از طرف مردم امریکا
د امریکا دولس لخوا

**AFGHANISTAN
PARLIAMENTARY ASSISTANCE
PROJECT**

11 May 2009 Vol. 2, No. 15

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 Transit
 - Law on Child Correction and Education Centers
 - Law on Registration of Commercial Trademarks
 - Education Law
 - Law on Medals and Badges
 - Law on the Structure, Duties, and Authorities of the Afghanistan Independent Human Rights Commission
 - Law on Personnel Affairs of ANA Sergeants
 - 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
 - Law on Movable Assets in Banking Transactions
 - Organization and Jurisdiction of Courts Law
 - Criminal Procedure Code for Military Courts and Law on Military Crimes
- Meshrano Jirga (Upper House) Agenda:
 - Law on Chamber of Commerce and Industry
 - Law on Regulating the Ethical Relations of the Three Powers of State
 - Extradition Law
- Joint Committees:
 - Private Investment Law
 - Law on Health
 - Law on Mortgage of Immovable Assets in Banking Transactions
 - 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: This week Speaker of the lower house, Mohammad Yonus Qanooni asked the joint committee of the WJ to discuss controversial articles of the bill and come up with their comments to the coming plenary. “Although the amended bill will not be able to pass through the whole process by the upcoming election, we will at least have clarified our concerns and will be able to approve the bill in time for parliamentary elections.” Due to the delay in passing this electoral law, the IEC is conducting its activities regarding the presidential election in accordance with the previous law.

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 Counternarcotics Committee of the WJ reviewed the bill and proposed some amendments. This week it was distributed to the other committees of the Wolesi for review and input.

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: The Budget and Finance Committee distributed the bill to some Members of the committee with economic expertise for their review and comment.

Customs Law

This bill is drafted in accordance with Article 42 of the Constitution to legislate on 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: The bill was inactive this week as the Finance & Budget committee of WJ was attending to other business.

Law on Cooperatives and Limited Liability Companies

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

Update: No change from last week.

Law on Transit

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

Update: No change from last week.

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: The Justice and Judiciary Committee of WJ received the inputs and amendments of other committees. No major changes were introduced. The bill will be sent to the plenary after grammatical corrections are made.

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, and advisement can be trademarked. 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.

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 WJ passed the bill which consists of four chapters and seventeen articles, including a provision that requires government approval for any transactions involving the property of the Chamber of Commerce and Industry.

The law was then sent to the Meshrano Jirga and will be introduced in the plenary session on May 12, 2009. The National Economy & Budget and Finance Committee will lead the deliberations on the bill in the Upper House. According to the Meshrano's internal regulations, the committee will have 15 days for making amendments and reintroducing the draft for plenary approval.

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 countrywide through modern methodology and parental involvement in managing 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 as the Religious, Cultural, Education and Higher Education Committee attended to other business.

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.

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 NA in terms of the constitution.

Update: No change from last week.

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: The Defense Affairs and Territorial Integrity Committee did not come to an agreement with the Ministry of Defense on terms for hiring high ranking officers; the bill is scheduled for discussion in the plenary.

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 joint committee of the WJ reconsidered Articles 4, 12, 17, 19 and 31 of the bill. Article 4, paragraph 3 was amended such that private foreign security companies are required to be at least partially domestically owned. The committee amended Article 12 such that the High Coordination Board, not the Cabinet, be responsible for evaluating, designating the location for, and limiting the nature of activities of PSCs before issuing a permit. An additional paragraph (5) was added to Article 19, giving the MoI responsibility for checking the weapons of the PSCs, prior to granting a license for carrying them, in accordance with other laws governing the police and weapons. Article 31 remains under consideration regarding financial penalties as there exists decrees by religious scholars which make cash fines not applicable and thus other options will be considered.

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 of education levels of Government employees; improve of employee qualifications and work ethic; and provide employee housing and other benefits.

Update: No change from last week.

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 Committee for the Disabled, Martyrs, and Widows of the WJ discussed the bill and proposed some grammatical and legal amendments.

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: No change from last week.

Law on Rights and Privileges of the Disabled

The law will integrate and support the disabled economically.

Update: No change from last week.

Law on Movable Assets in Banking Transactions

This draft law outlines the rights and responsibilities of the parties to a transaction and establishes parameters for management of mortgage affairs in banking deals involving movable property.

Update: No change from last week.

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: No change from last week.

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: The draft law has been approved by the plenary of the Mashrano Jirga (Upper House) and will be sent back to the Wolesi Jirga after final collation by the Legislative Department.

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: Based on information obtained informally from Meshrano personnel, it seems that the Justice and Judiciary Committee of the house believes that the draft law contains only suggestions and advice and does not carry the power of a law. Also, the committee members believe, if approved, the law will limit the authority of the Parliament. The law may be returned to the Wolesi without being approved by the Meshrano.

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: The Meshrano Jirga approved the bill on May 3, 2009 with only minor grammatical corrections. It was sent back to the Wolesi Jirga on May 5th and is expected to be passed on to the President's office this week.

Private Investment Law

The draft law regulates issues related to encouraging and protecting private investment in a free market economy.

Update: No change from last week.

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: The bill was inactive in the joint committee meeting of the houses last week, however it scheduled a meeting for Wednesday, May 13th with the Ministers of Justice and Public Health to discuss incompatibilities within the bill with the Constitution regarding free health services.

Law on Mortgage of Immovable Assets in Banking Transactions

The draft law regulates business and banking transactions that use immovable property as security and specifies the rights and obligations of the parties involved. The law will secure debt and contracts using immovable property; facilitate access to negotiable credit by securing immovable property; provide mutual agreement between parties to a banking transaction; and facilitate expansion of commerce, credit, investment, and economic growth.

Update: No change from last week.

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: No change from last week. Further consideration of Meshrano and Wolesi differences is pending formation of a joint committee of the houses.

News

MPs Call for Legal Limits on the Foreign Troops

In response to the airstrike of coalition forces against the Taliban which took place on May 4 -5th in Gerani village, Bala Buluk District, Farah Province in which as many as 130 civilians were killed, the lower house expressed deep concern and asked the government to come up with a regulation within one week to govern foreign forces.

MP of Farah Province, Mohammad Naim Farahi, raised the issue, showing his anger over the incident: "The coalition forces bombed Gerani village in Farah Province during the night and killed 120 people. Too many innocent people women, children, and elderly are being injured. This is no longer limited to only Kunar and Khost Provinces, but you continue to give votes of confidence to the Ministers of Defense,

Minister of Interior, and Director of National Security. They are responsible for security but are unable to maintain it.”

Professor Abdulrab Rasool Sayaf (Kabul) suggested that a delegation shall go there to investigate the issue and come back to the National Assembly with a report so the assembly can make a proper decision. Most of the MPs were displeased with this idea, however. Mawlawee Sayed-u-Rahman (Laghman) said: “The purpose of a delegation is to uncover the truth; the truth is what we were told by the Governor of Farah Province by telephone just now. He certified that more than a hundred innocent people were killed. There is no need to send a delegation.” He added: “In my opinion, expelling the Ministers will also not resolve the problem. These Ministers are hired to close their eyes to the foreigners’ actions. If one Minister is removed, the same kind of Minister will take over the next day. Let’s take decisive action from this Assembly.”

Shekiba Hashemi (Kandahar) pointed out: “In the beginning of April the American Embassy assured us that they did not come to bomb civilians...I am asking my nation how long it will remain quiet. Only through a national rebellion will your voice be heard.”

Sayed Hussain Alemi Balkhi said: “I think the foreign troops do not obey any rules. They do not obey the law, human rights treaties or the United Nations, which gave every country the right to autonomy. The foreigners interfere in everything, including legislation and religious matters. They interfere in the date and time of the elections and the candidates who are running. They may decide in next future that our government shall be under their guardianship because we do not run a dynamic, independent government. I suggest that the foreign troops should conduct themselves within the law. If not, they should leave our country, and we should come to an understanding with the Taliban. In my opinion, the foreigners act according to the law of jungle. The Taliban are Muslims, however.”

The speaker of the Lower House Mohammad Yonus Qanooni confirmed in conclusion: “Based on your demands, we give the government a one week deadline to formulate a draft law for regulating the foreign forces present in Afghanistan. If they don’t respond by the deadline, the MPs will make their own decision.”

Wolesi Jirga Approves International Conventions and International Agreement letters

The lower house of the National Assembly Monday approved three international conventions and one agreement letter between the Afghan Government and the Red Crescent Society/Qatar.

In the session led by Speaker of the WJ Mohammad Yonus Qanooni the agreement letter of the Afghan Laborers Organization in Republic of Qatar (18 articles), the Convention on Preserving Cultural Heritage (40 articles), the quadruplet protocols and Geneva Treaty (5 chapters and 28 articles), and the Treaty on the Preservation of Cultural Artifacts (35 articles) were all approved.

Abdulrab Rasool Sayaf (Paghman) remarked that, “Some agreements and conventions have been kept in the Ministry of Foreign Affairs and are not sent to the Parliament. They take action without parliament’s involvement.”

Meanwhile, this week Speaker Qanooni recommended Sadat Mer from Panjsher Province to replace Saleh Mohammad Registani who resigned last March 2009 and Achakzai from Kandahar Province to replace Qauom Karzai. The mentioned individuals have got the second vote in previous election in their provinces.

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