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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
 - Law on Chamber of Commerce and Industry
 - 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 of Soldier Crimes
- Meshrano Jirga (Upper House) Agenda:
 - 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: Deputy Chairman of IEC, Zakarya Barekzai, told the Provincial Council Committee of the MJ that if the National Assembly postponed approving the bill, IEC will perform according to the previous law. At the same time Noor Ulhaq Olomi (Kandahar) told APAP that the WJ should resolve the issue of the Kuchi (nomad) seats, as delaying the passage of this law will effect the elections and complicate matters regarding the Kuchis.

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 also promotes cultivation of alternative crops.

Update: No change from last week.

Procurement Law

This bill will address material and service procurement affairs of government and private entities. The draft law aims to promote transparency and equal opportunity in competitive procurement processes, control of financial and public expenditure affairs, and supply of quality goods and services.

Update: The Budget and Finance Committee has given the bill to three Members of the Committee for review and comments.

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.

Law on Cooperative and Limited Liability Companies

The bill is drafted to govern the affairs and activities of Cooperatives and Limited Liability Companies.

Update: The National Economy, NGO, Rural Development, Agriculture and Livestock Committee reviewed the bill. It proposed legal and grammatical amendments and removed two paragraphs regarding the Chamber of Commerce. The bill is scheduled to be referred to WJ committees next 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: No change from last week.

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 National Economy, NGOs, Rural Development, Agriculture and Livestock Committee scheduled a meeting for this week with the Minister of Finance, Minister of Commerce and Industries, and the Chair of the Chamber of Commerce to discuss a legal solution for the new controversial paragraph that would require

National Assembly approval for the sale of Chamber of Commerce and Industry property.

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. The bill is pending consideration by a combined meeting of the Wolesi committees.

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 bill promotes respect for and monitoring of human rights, and governs the structure, functions, authorities, and activities of the Afghanistan Independent Human Rights Commission.

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: No change from last week.

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: Last Monday, the bill was dispatched to the Internal Affairs Committee of the WJ. The Committee invited the Ministry of Interior and Ministry of Justice this week to discuss the bill. (See the 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; clarifies job descriptions for Government employees; improvement of education levels of Government employees; improvement of employee qualifications and work ethic; and provision of 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 the telecommunications services, organize and monitor telecommunication markets, and govern business relationships between the Ministry of Communications, service providers, and customers.

Update: The Wolesi Jirga Communication, Transportation, City Development and Municipalities Committee proposed amendments last week to Article 6 that the head of the Communication Administrative Board should report not only to the Minister of Information and Communication but also to the Cabinet.

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 estates.

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: No change from last week.

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 draft law is with the Meshrano Jirga.

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 3 May 2009.

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: A joint committee comprised of Members of the Health, Sports, Youth, Labor, and Laborers Committee of the WJ, Central Audit and Oversight on Implementation of the Law Committee of the WJ, and Public Welfare Committee of the MJ scheduled a meeting this week with the Minister of Public Health to discuss the issue of complex medical treatments. Last week the joint committee reversed Wolesi Jirga amendments that require that such advanced medical treatment be free of charge based on the government's ability to provide the care.

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. The bill remains in the joint committee, comprised of Members of the Internal Affairs, Borders, and Local Administrations

Committee of the Lower House and the Defense & Internal Affairs Committee of the Upper House.

News

MPs Divided on Supreme Court Decision regarding Election Date

On 26 April 2009, Members of WJ Syed Mohammad Gulab Zoy, Mohammad Aref Noorzai, Pinda Mohammad Khan, Haji Niaz Mohammad Amiri, Jamil Karzai, Mullah Abdul Salam Rocketi, Khalid Farooq, Khalid Pashton, Moeen Marastial, Pacha Khan Zadran, Mowlawee Shahzada Shahed, Mohammad Daud Kalakani, Haji Mohammad Mosa Hotak, Khial Mohammad Husaini, Freba Ahmadi, and Haji Alam Gul Kochai gathered at the residence of former Jihadi leader, Professor Abdulrab Rasool Sayaf, and announced their support of President Karzai's tenure by releasing a letter signed by 150 MPs.

The letter, which was read out loud by Daud Kalakani (Kabul) stated, "In the interest of avoiding political crisis and a power vacuum, the current President and two Vice-Presidents should continue to serve in office until elections are held."

MP Shuja-ul-Malik Jalala (Kunar), one of the signatories to the resolution, told APAP, "We took action based on people's welfare, although this is not decision of the whole WJ. Considering that the country is in a state of war, a lapse in power could bring political and economical crisis which would push the country back to the years of civil war. In order to maintain stability, the term of the current President should be extended."

According to Mawlawee Sayed-u- Rahman (Laghman), "The period of time in question is short. It will be very difficult for a replacement of Karzai to lead the affairs of the country in the right direction and save the nation from problems which will show up in the political environment of the country. Therefore most Representatives of the people agree with President Karzai that he should stay in office until the August 20 election is held."

The same day, sixty MPs, including Sardar Mohammad Rahman Oghly and Noor Ulhaq Olomi, and led by Mohammad Dawood Sultanzoi, held a press conference at the National Assembly. They called on the President to present his plan for staying in power until 21st May; otherwise they will make a decision.

Sultanzoi pointed out: "According to the Constitution, the legal term of President Hamid Karzai ends on May 21. Unless we legalize his next term, the Karzai's government is illegitimate. We want the President to act based on the Constitution and present the WJ with a comprehensive plan."

The displeased MPs also released an open letter with six articles with these same demands. They did not specify what kind of decision would be taken if the President failed to convince them. When APAP asked Noor Ulhaq Olomi (Kandahar) what their demands from the President were, he pointed out: "Article 61 of the Constitution is very clear, referencing the 1st of Jawza (solar year equal to May 21). If the

President wants to legally stay in power he should come up with a plan for the WJ. We at least want to ensure that the three month extension of his term would be temporary to increase people's confidence that the election will definitely be held"

The Supreme Court released a decree almost one month ago announcing that the current President and his Vice Presidents can continue until the elections are held.

Private Security Organization Bill Debated in Wolesi Jirga

This week the WJ debated the bill on Private Security Organizations (PSO) drafted by the MoI.

On Monday, 27th April at the session, some members presented their views that the bill violates Article 5 and 75 of the Constitution which states, "Implementing the provisions of this Constitution and other laws, defending independence, national sovereignty, and territorial integrity, and maintaining security and the defense capabilities of the country shall be the fundamental duties of the State."

In the session held by Mohammad Yonus Qanooni, Speaker of the WJ, Shokria Barekzai (Kabul) was first to speak: "This draft has no legal, legitimate basis. All laws shall be enacted in accordance with the articles of the Constitution. We shall not let parallel organizations be established within the Government. We cannot take away responsibility from the Government and relegate it to the private security agencies. If these private security agencies can support peace, why did we implement the Disarmament, Demobilization and Reintegration (DDR) program, then? The Disarmament Commanders could establish better security than these companies. With this act we will not only violate the Constitution, but will also put the Military Services Law to question."

Sayed Jamal Fakori Beheshti (Bamyan) said: "We discussed this law in the committee. This law is in contradiction with the Constitution. On the other hand it has been observed that these security companies are involved in kidnappings, trafficking, insecurity, and other issues. We propose that they should be incorporated into the Ministry of Interior as a special unit. If we pass this law, insecurity will increase."

MP of Nangarhar Province, Abdul Majid, strongly criticized the private security companies, "The main reasons and causes of insecurity in Afghanistan are these security companies. They are carrying out dangerous duties. They are responsible for the Afghans' fight with foreigners. Most of the operations (of the coalition forces) are taking place based on the information of these security companies. Some of their activities are overt, and the rest are secret. If the security companies are legitimized, it will affect the rule of the National Army and Police."

Engineer Hilall Uldeen Helal (Baghlan) pointed out: "Private security companies were established because of Afghanistan's conditions and current circumstances. Thus, they have been accepted as the main means to support private financial companies. If private construction companies building roads are not satisfied with the security of their employees, some of their activities may come to a halt. We should not make a decision emotionally. By making such a decision, we may cause thousands of people to lose their jobs and prevent investment."

Haji Aziz Ahmad Nadem (Herat) said “If we claim that the Constitution does not have a provision for private security companies, then we should also identify which article of the Constitution provides that foreign forces support the independence of Afghanistan. The Districts do not have enough police officers. If the foreign embassies, private telecommunication companies, television broadcasting networks, road constructing companies, and others do not retain security personnel, then how would we be able to supply a sufficient number of police? The Ministry of Interior is saying that it doesn’t have capacity at this time.”

Finally, Mohammad Yonus Qanooni suspended consideration of the bill until the next session and updated the MPs regarding the joint meeting of the President, National Assembly Representatives, US Ambassador and NATO officials on avoiding civilian casualties.

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