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# Legislative Newsletter

## News

### **Assembly Stalemate on Electoral Decree Continues**

As reported last week, the Meshrano Jirga Committee of Chairs refused to consider the Electoral Decree rejected by the Wolesi Jirga, citing Article 109 of the Constitution which bars consideration of ‘proposals for amending’ electoral legislation in the last year of a legislative term. This contradicts the Wolesi’s rationale for voting on the decree that *new* electoral legislation can be approved or rejected without amendments under Article 79, which grants the Assembly the right to consider *all* legislative decrees.

This week Meshrano Jirga Deputy Speaker, Fazal Hadi Muslimyar, further explained the MJ’s decision. He told APAP that, “Constitutionally, we cannot discuss the election law, and we don’t want the National Assembly, especially the MJ, to be the center of politics and opposition.” Najiba Hussaini (Bamyan), Meshrano First Secretary, agreed, adding that the Wolesi’s decision to reject the decree is not only unconstitutional but a political reaction to the government. “There is a conflict between the President and the Wolesi Jirga following the WJ’s rejection of sixty percent of Cabinet nominees. Now the WJ wants to involve the MJ in this controversy,” Hussaini said.

In a further development, Sayed Azizullah Ulfati (Jawzjan), the MJ Deputy Secretary, cited Article 157<sup>1</sup> of the Constitution in pointing to the need to seek interpretation of Articles 79 and 109 by the Independent Commission for the Supervision of the Implementation of the Constitution. “We believe that the spirit of Article 109 is the same as what we are saying. If it’s still not clear for the others (Wolesi Jirga MPs), there should be a legal referral to resolve the dispute,” Mr. Ulfati said.

Wolesi MP Dr. Fazlullah Mujadidi (Logar), in an interview with APAP, agreed that the body’s formation could help resolve the impasse between the two houses’ interpretations of the Constitution. “The government has the power to resolve Constitutional disputes simply by

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<sup>1</sup> Article 157 of the Constitution: “Independent Commission for the Supervision of the implementation of the Constitution shall be established in accordance with the provisions of the Law. Members of the Commission shall be appointed by the President with the endorsement of the House of the People.”

implementing Article 157. Unfortunately the president has escaped from the law,” Mujadidi said. Legal analysts suggest that the commission’s authority to *interpret* the Constitution is open to debate, however. The Assembly has previously requested the commission’s formation.

The Meshrano Jirga has yet to send formal notification of its Committee of Chair’s decision to the Wolesi despite confirmation by Deputy Muslimyar that the decision is final. “The Committee of Chairs has the right to make the MJ plenary agenda and decide what to discuss or not. We consider the Electoral Decree non-discussable.”

Article 97 of the Constitution also mandates that the MJ send its decision on the decree to the WJ within 15 days of receiving the same. In this case, April 18.

Meanwhile, WJ Speaker Yunus Qanooni told the plenary on April 5 that “We are still waiting for the MJ to inform the WJ formally of their decision. We will announce our position as soon as we get the MJ’s official decision.” Speculation has it that non-action by the upper house will by default endorse the Wolesi position. Another scenario should the Meshrano not address the decree is a Wolesi ‘confirmation’ of its previous rejection with a 2/3 majority vote. Should the Meshrano approve the decree, the Wolesi would also have the option of overriding that decision with a 2/3 vote, assuming the requisite joint committee is unable to generate a common position.

Speaker Qanooni also reassured MPs anxious to know the campaign calendar and candidacy criteria that the electoral legislation issue will be a priority as soon as the WJ receives formal communication from the MJ. He also assured MPs that the WJ’s relevant quiet for the past week is not due to a “deal being struck behind your backs.”

### ***Wolesi Jirga MPs react to IEC declaration on implementing Electoral Decree***

In a related development, the Independent Election Commission (IEC) announced that it and will implement the president’s Electoral Decree for the September Parliamentary Elections. The IEC spokesman, Noor Mohammad Noor, told the media that the IEC made the decision on advice from the Ministry of Justice (MoJ).

MPs responded last week that the IEC position undermines Parliament. In their view, the decree is still under legislative review and should not be implemented until a decision is reached on whether to adopt or reject it. “The IEC said they take their orders from MoJ and they will do as the MoJ asks. Now it’s not clear whether an illegal announcement by the MoJ is more credible than the decision of legislators...I suggest the Minister of Justice should be summoned to clarify his stance,” argued Eng Abas Nawyan (Kabul).

Echoing Mr. Nawyan’s concerns, Sayed Hussain Alemi Balkhi (Kabul) added, “One person from the executive has set our responsibilities and duties. The executive can’t do that, let alone one minister telling us what we can and what we can’t do.”

## **Lower House Rejects 1389 Budget**

All but five MPs on April 7 rejected the 1389 National Budget and related Budget Guidelines/Manual. In making their decision, MPs cited the Budget's failure to adequately address the challenges facing the country and discrepancies in constituency and regional allocations.

Of particular concern to MPs was the Budget's apparent lack of balance in provincial allocations. "Kabul, Balkh, Kandahar, Kunuz and Badakhshan have been allocated \$549.31 million, whereas the remaining 29 provinces only got \$569.31," said Eng Abas Nawyan (Kabul). "The Budget does not support job creation," and it duplicates allocations to some ministries and commissions. "The Independent Election Commission has two separate budgetary allocations, each under a different name; first for registering the electorate in Afghanistan as well as money to help in the election," he said.

Citing a lack of consistency in provincial allocations, Mohammad Yaqub (Badghis) said, "The energy subsidy is only paid to a few provinces, and it is not fair."

The Deputy Finance Minister, Mohammad Mustafa Mastoor, who attended the plenary debate, attempted to address some of the MPs' concerns. The apparent duplication can be attributed to the fact that certain projects are funded by different countries, according to Mastoor. The use of different names by different countries for the same projects contributes to the misperception. Nonetheless, Mastoor assured the MPs that the ministry would seek to address their concerns.

The MPs were unconvinced. "We need evidence; promises are not good enough. I suggest that this Budget be rejected and that you send us the revised Budget which reflects all of our proposals," Qazi Nazir Ahmad Hanifi (Herat) said.

## **MPs Critique Agenda, President**

In the April 5 plenary session, MPs complained that the WJ schedule devoted too much time to the 1389 Budget debate to the detriment of other issues of national urgency. "We can't stand by as the country is grappling with a crisis," said Abdul Kabir Ranjbar (Kabul). "One person in our country wants to change Afghanistan's foreign policy profoundly and the representatives of the people are watching and waiting to see what happens," Mr. Ranjbar said, referring to President Karzai's recent frictions with the West.

Echoing Ranjbar, Ahmad Shah Behzad (Herat) said, "The country is in a crisis. I agree with Mr. Ranjbar's comments...The National Assembly needs to hold extraordinary sessions to debate these issues."

Responding to the comments, Speaker Yunus Qanooni assured members that their objections would be considered by the Committee of Chairs. “Mr. Ranjbar raised some vital issues. We will discuss inclusion of those points in an extraordinary meeting with the chairs of the committees,” Qanooni said.

As a result, the Committee of Chairs on April 7 decided to include the following issues in the agenda:

1. Presentation of the list of nominees for remaining ministerial posts;
2. Formation of the Commission on Oversight of the Implementation of the Constitution as stipulated by the Constitution;
3. Submission of Afghanistan’s foreign policy basics to the National Assembly.

After extensive discussions in the April 10 plenary, the MPs passed a resolution demanding that the government address the issues. By suggestion of Speaker Qanooni, the resolution included a phased timetable beginning from April 10. This includes submissions of ministerial nominees within 10 days, formation of the Constitutional commission within twenty days, and submission of the government’s foreign policies to the National Assembly within one month.

Explaining to APAP the MPs’ arguments on the foreign policy issue, Sayed Hussain Alemi Balkhi (Kabul) said, “We don’t approve of [the president’s] remarks and he has not consulted with the National Assembly.” He accused President Karzai of amending Afghanistan’s foreign policy without National Assembly approval. “What he is doing is against the law. All the fundamental lines of government policy should be approved by the National Assembly, but the president has not sought our approval at all.”

Abdul Jabar Shalgarai (Ghazni) agreed that the president’s comments are a “cause of concern to everyone, it’s not only the international community that is concerned about Mr. Karzai’s stance, it’s the entire nation.” Asked if MPs support Karzai’s stance, Shalgarai said, “Support or opposition to his stance is another issue. We need the international community, they pay our salaries and they help us with security.”

According to Article 64 of the Constitution, the president has the authority and duty to “determine the fundamental lines of the policy of the country with the approval of the National Assembly.”

## **Corruption Discussions Continue, International Organizations Accused**

On April 4, members of the Meshrano Jirga (MJ) plenary continued questioning Yasin Osmani, director of the High Office of Oversight and Anti-Corruption (HOOAC) on the agency’s ability to curb corruption. In the course of the discussion, Osmani and the senators turned their attention to international organizations. Several senators raised concerns over the

lack of capacity and overlap of powers between the Attorney General's Office and HOOAC, which they blamed for the failure to deal with corruption. In their view, the blurred line between the powers and responsibilities of the government agencies would undermine implementation of Government's strategy against corruption.

Senators had pointed to the need to improve the system of government before efforts to curb corruption would take effect. They argued that granting HOOAC additional powers would not eradicate corruption if their attorneys continued to refer cases to the equally corrupt Attorney General's Office and Courts. Furthermore, the senators suggested that the law would be applied only to low ranking officials while high ranking officials continued to embezzle millions of dollars. "The provincial governors and the government authorities involved in the corruption have not been arrested in the last eight years, they have just been transferred from one place to the other," Bilqees Roshan (Faryab) said.

Mohammad Daud Ghafari (Ghor) supported Roshan's sentiments, adding, "How can an employee be corrupt if the minister is not involved in corruption? To date, no minister has been prosecuted despite the Attorney General's Office proclamations that cases of some high ranking officials are under investigation." Ghafari further questioned the rationale of expecting the "corrupt Attorney General's Office to try and follow up the case of an equally corrupt official."

Responding to the senators' concerns, Director of HOOAC, Yasin Osmani suggested that corruption occurs at both the international and national levels. Osmani further advised the plenary that his office is in discussions with relevant organizations to establish a joint Afghan-foreign committee to curb corruption. "We will fight against corruption in the foreign organizations. According to my investigations, eighty percent of the corruption in Afghanistan is committed by our foreign friends," Osmani, said.

In response to Osmani's comments, senators questioned the ability of the HOOAC to prosecute officials from foreign organizations while the Committee has not adequately addressed domestic government officials. "Why do you expect the foreigners to give you information that the Afghan officials withhold from you?" Hafiz Abdul Qayoum (Nurisitan) asked.

At the conclusion of the session, senators called on the government to address corruption in international organizations. They alleged that non-discretionary development projects are a major cause of corruption. Some members suggested that there should be a requirement for foreign organizations to submit their expense accounts to the government. "If the International Organizations have come to help Afghanistan, they should be accountable to the Afghan government," Dr. Zalmay Zabul (Kabul) said.

The United Nations and the Agency Coordinating Body for Afghan Relief (ACBAR) denied claims of corruption in international organizations. The two organizations called upon Osmani to substantiate his claims.

# Legislation

## Meshrano Jirga

This week the MJ approved and sent to Government for endorsement the South Asian Free Trade Area (SAFTA) treaty.

### **South Asian Free Trade Area (SAFTA)**

The South Asian Free Trade Area is an agreement reached at the 12<sup>th</sup> SAARC Summit in Islamabad, Pakistan on 6<sup>th</sup> January 2004. It creates a framework for the creation of a free trade area for 1.4billion people in India, Pakistan, Nepal, Sri Lanka, Bangladesh, Bhutan and the Maldives. The seven foreign ministers of the region signed the framework agreement of SAFTA with zero customs duty on the trade of all the products in the region by the end of 2016. Afghanistan signed the Treaty on 3 August 2008 in Colombo, Sri Lanka. India have acceded to the terms but are yet to ratify the treaty.

## Wolesi Jirga

The Natural Resources Committee sat to consider the Law on Forests.

### **Law on Forests**

The draft law is proposed to protect and manage Afghanistan's forests in line with Article 15 of the Constitution. The Draft aims to promote reforestation, preservation, improvement and management of forest resources with the help of ordinary Afghanistan citizens.

Current status: The Natural Resources Committee held several meetings with representatives of the Agriculture Ministry to discuss the bill. Problems identified included the issue of private trees being placed under national forests and the lack of clarity in citizens' roles in preserving forests.

## Acronyms

ACBAR:	Agency Coordinating Body for Afghan Relief
HOOAC:	High Office of Oversight and Anti- Corruption
IEC:	Independent Election Commission
MJ:	Meshrano Jirga
SAARC:	The South Asian Association for Regional Cooperation
SAFTA:	South Asian Free Trade Area
WJ:	Wolesi Jirga