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Legislative Newsletter

Meshrano Jirga discusses Media Law

Minister of Information and Culture, Sayed Makhdom Rahin, briefed the Meshrano Jirga (MJ) on the implementation of the Media Law. The meeting held at the request of the MJ, was chaired by H.E Speaker Sebgatullah Mujadidi on April 12.

Senators questioned Mr. Rahin on the failure of the Ministry of Information and Culture, to implement provisions of the Media Law passed by the National Assembly in August 2008. The Media Law, in its provisions, advocates for the independence of the public owned Radio and Television Afghanistan (RTA) to be managed by an RTA Commission. The Law further provides for the establishment of a High Council of Media (HCM) to propose and approve long term media policies as well as propose media experts to serve on the RTA Commission. Membership of the HCM, according to Article 44 of the Media Law, should include the Minister of Information and Culture, Deputy Minister of Communication, four members of the National Assembly, a representative of the Ministry of Justice, representative of the Supreme Court, a religious scholar from the Council of Islamic Scholars of Afghanistan, representatives of civil society and journalists.

Concerned about the lack of visible progress in the implementation of the provisions of the Media Law, Senator Najiba Hussaini (Bamyan) said, “We want to know the status of the Media Law, whether the law approved by two thirds of the Wolesi Jirga has been implemented or not? If yes, what is the status of the different structures proposed by the law?” Members also questioned the Ministry’s effort in censoring screening of ‘immoral programs’ by private television stations. In their view, some programs, mainly from India, “directly affected the moral fabric of the Afghans and are no less dangerous than counternarcotics, why can we not ban these serials?” asked Mawlawee Abdulwahab Erfan (Takhar).

The Senators agreed that establishing the High Council of Media (HCM) and other commissions, as per provisions of the Media Law would allow for regulation of the operations of the media in Afghanistan. “If the Ministry of Information and Culture has the

authority to give licenses to the private media, they must also have the authority to withdraw the licenses of those TV stations that violate the law,” said Deputy Speaker Fazal Hadi Muslimyar. “If I am head of the High Council of Media, I can easily control programs of Ariana and Tolo TVs,” added Haji Nazar Mohammad Faqiri (Baglan).

In protest to Mr. Faqiri’s statement, journalists from the private media organizations walked out of the MJ gallery prompting Muslimyar to comment; “We tolerate the media’s negative comments on our Jihadi leaders and personalities every day, but when Senators criticize their TV stations, they (journalists) all leave the MJ gallery as a sign of protest, I don’t know what kind of freedom of speech that is?”

Acknowledging the Senator’s concerns, Minister Sayed Makhdom Rahin, pledged to work towards the implementation of the law. “We have to do a lot; I have started negotiations with the private media channels over immoral soap operas, I hope they will respect the culture and Islamic values of the country, otherwise they will be prosecuted.” He further asked the Senators to do their part by nominating their representatives in the High Council of Media.

Senators condemn civilian killings in Kandahar Province

On April 13, the Meshrano Jirga, chaired by Second Deputy Speaker, Fazal Hadi Muslimyar, condemned the killing of civilians on the Kandahar-Herat Highway. The Senators called on the international forces to stop the loss of life of innocent civilians and coordinate their activities with the Afghanistan government. They further called on the government to investigate the incident and prosecute those responsible. It was the view of the Senators that failure by the government to deal with the issue in a satisfactory manner, would only confirm the Taliban’s assertions that the government is weak and under the control of foreigners.

Four Afghan civilians were killed and 18 others wounded on Monday, April 12, when NATO forces allegedly opened fire on a civilian bus in the Zherai District of Kandahar province. According to the Kandahar Governor’s spokesperson, Zalmay Ayobi, the 303 bus carrying mainly women and children, was bound for Herat province from Kandahar.

The Senators condemned the incident accusing international forces of recklessness. Mawlawee Abdul Wahab Erfan (Takar) said, “The 303 buses carry passengers, they are neither used for suicide bombing nor for any other devastating purposes. They can be identified even from a distance. Without assessing the bus, the foreigners raided the bus killing children, women and men.”

Speaker Sibghatullah Mujadidi concurred with Erfan adding that foreign troops have brought more suffering than protection to the people of Afghanistan. “All Afghans are suffering because of the foreign troops’ operations and the intervention of both neighboring and non neighboring countries. It is obvious that such issues are not solved by the condemnation of the National Assembly and the government,” he said.

Speaker Mujadidi further accused international forces of supporting the Taliban. “On one hand the foreign forces fight against terrorism and on the other they strengthen the Taliban,” he added.

Several Senators were of the view that the rift between President Karzai and the West was being accentuated by the continuing rise in civilian casualties. There was agreement that if international forces continue to kill civilians, their presence in Afghanistan would be severely undermined. Taiba Zahidi (Herat) said, “If such acts continue, the confidence in the foreigners will fade.”

Senator Zahidi further called upon the Upper House to support President Karzai in his criticism of the West, with respect to civilian casualties. “When the president criticizes the foreigners, the nation’s representatives should not side with the foreigners. We should cooperate with the president,” said Senator Zahidi.

Some Senators weighed in on the debate suggesting that the NATO commander general should be summoned to the MJ to discuss the issue and explore mechanisms for better coordination of operations by NATO forces with the Afghan forces. In this regard, Bismillah Afghanmal (Kandahar) said, “NATO promised to accelerate coordination with the Afghan forces; the shooting in Kandahar is an indication that they have not lived up to their promises. The NATO commander should be called to respond to the concerns of the people’s representatives.”

Concluding the session, Speaker Mujadidi acknowledged the need for the MJ to hold discussions with NATO representatives, especially General Stanley McCrystal. He further advised the Senators to follow the right protocol in inviting McCrystal to the MJ plenary. “Summoning McCrystal is a political issue, we will consider contacting him through the government so he can attend one of the MJ’s sessions,” Speaker Mujadidi said.

Meanwhile NATO and Afghan officials have announced an investigation into the incident that sparked outrage among Senators. The investigation will seek to find out the exact circumstances as well as provide mechanisms to prevent the occurrence of similar incidents in future.

Wolesi Jirga summons Minister of Justice

On April 14, the Wolesi Jirga summoned the Minister of Justice (MOJ), Professor Habibullah Ghalib, to answer questions related to the statement he allegedly made that he deemed the WJ decision to consider the Electoral Decree unconstitutional. In his defense, Mr. Ghalib denied ever making the alleged statement. “All I said is that Article 97 of the Constitution stipulates that the National Assembly (NA) can not include the proposals of amendments on Electoral law in the last year of the Parliament term. That is all I said. Nothing more than that. If you consider that illogical or immoral, then we can discuss that,” Ghalib said.

Mr. Ghalib's alleged statement sparked fierce debate with the MPs who questioned the basis of the statement. The MPs argued that if the government truly believed that it was unconstitutional for the WJ to consider the electoral decree, then it should not have been sent to the WJ. Mohammad Dawood Sultanzoi (Ghazni) paused a question to the MOJ; "I would like to know your opinion on this; when a decree is sent to the WJ, is it sent for approval or a decision? Do you think if we had approved the electoral decree, our decision to consider it would have been constitutional?"

Other MPs were of the view that there cannot be any proposals of amendments to the electoral law when no electoral law has ever been enacted in Afghanistan. What is generally referred to as the Electoral Law, they argued is in fact an electoral decree issued by President Karzai in May 2004. "We don't have an Electoral Law; all we have is a presidential decree. Hence the article 97 (of the Constitution) that bars considering proposals of amendment to Electoral Law in the last year of the WJ does not apply here. We simply do not have an electoral law," argued Shokoria Barekzai (Kabul).

A presidential decree is enforceable as law once it is issued and has to be sent to the National Assembly within 30 days of the sessions beginning, for its approval or rejection¹.

Mr. Ghalib could not be drawn to respond to the MPs' views on whether if they had accepted the Decree, their action would have been deemed constitutional. "I can't comment on that, I can't say if the WJ decision to consider the electoral decree is constitutional or not," Ghalib said.

H.E Yunus Qanooni (Kabul), Speaker of the House, seemed to agree with Mr. Ghalib. He said "Mr. Ghalib is in no position to interpret the Constitution for us. What you are asking is an interpretation of the constitution. It is wrong to ask the minister to tell us whether our decision to consider the decree was right or otherwise."

Wolesi Jirga continues discussion on Electoral Decree

On April 17, the Wolesi Jirga discussed the decision by the MJ not to include the electoral decree on their agenda. The MJ Committee of chairs which has in the past weeks given indications of a decision not to include the decree in their working agenda did not formally notify the WJ of their decision. The MJ had argued that the WJ's decision to consider the decree contravened Article 109 of the Constitution which bars the NA to discuss the electoral

¹Article 97 of Constitution. "Proposals for drafting laws shall be first submitted to the House of the People by the government. The House of the People shall consider the draft laws, including budgetary and financial affairs as well as proposal for obtaining or granting loans and after debate either approve or reject as a whole. The House of people shall not delay more than one month the draft proposal. The House of People, after approving draft, shall send it to the House of the Elders. The House of Elders shall decide on it within fifteen days.

law in the last year of a parliamentary term. “We have not received any formal response from MJ about the electoral decree,” said Speaker of the WJ, H.E Yunus Qanooni.

The decision by the MJ not to give a formal response drew mixed reactions from the MPs. Some deemed the decision by the MJ unconstitutional. “I call the problem we are facing a constitutional crises, the fifteen day period that the MJ had, has lapsed. They [MJ] have acted against the constitution and the decree therefore is considered rejected,” said Abdul Kabir Ranjbar (Kabul).

Sayed Hussain Alemi Balkhi (Kabul) differed with Mr. Ranjbar and said the fifteen day limit provided for in the Constitution does not apply to presidential decrees. He asked MPs to pay attention to Article 97 of the Constitution. “This article doesn’t apply; it is about new bills, not about presidential decrees.” Mr. Balkhi further argued that, “There is no article in Constitution that says if the MJ has not decided within fifteen days, the decision of the WJ is final”

In concluding the session, Speaker Qanooni said, “We need a legal discussion to unify different views on this matter” He is reported to have further said, “I have a solution to respect the integrity of the WJ, the president and to uphold the constitution but I can’t disclose it now.” After these remarks, it was subsequently decided that the discussion on the Electoral Decree be reserved for the Monday plenary session. Speaker Qanooni will hopefully share his proposed solution in that session.

Meanwhile latest indications are that the WJ in its plenary discussion of April 19 decided to uphold its initial decision to reject the electoral decree. A more detailed report of the plenary discussion and the decision taken by the WJ will be covered in the next issue of this Newsletter.

Chairman of Independent Election Commission appointed

Presidential spokesperson, Waheed Omar, on Saturday April 17, announced the appointment of Fazl Ahmad Manawi as Head of the Independent Election Commission (IEC). According to Mr. Omar, the appointment of Manawi, a former Afghan Poll Panel Commissioner, follows consultations with the National Assembly. Omar further stated that the remaining members of the IEC will be appointed within the next few days.

Mr. Omar further announced that appointments for the ECC will be made in due course. The announcement comes two days after President Karzai held a consultative meeting at the Presidential Palace. Present at the meeting were National Assembly members, Jihadi leaders, Chief of the Supreme Court and other high ranking government officials. According to APAP sources, the meeting discussed the appointment of ECC members, inclusion of foreigners in the ECC and setting the polling date for the Autumn Parliamentary elections. President

Karzai is understood to have consented to the appointment of two foreigners in the ECC. Of these, one of the non- Afghan members will have veto powers.

It is understood that the meeting endorsed September 18 as the polling date for the Autumn District Council and Parliamentary elections.

Legislation

This week the WJ approved the following conventions:

1. Protocol on diplomatic relations between Afghanistan and Malta.

Republic of Malta and Islamic republic of Afghanistan have signed an agreement to establish diplomatic relationship between the two countries. The agreement was signed in New York by ambassadors of both countries in the United Nations. The agreement required the approval of parliaments of both countries.

2. Amendment of Article 83 of International Civil Aviation Organization (IACO)

Article 83 discusses chartered planes. According to the original article, the company that rents an airplane would be responsible for insurance and security costs. The amendment makes the owner of the chartered airplanes responsible for all of these.

3. Agreement signed between Afghanistan and United Arab Emirates on the mutual legal cooperation.

The agreement contains 20 articles and was signed in Abu Dhabi. Should any of the countries want to pull out of the agreement, they can do so by writing via their diplomatic representatives. The agreement required the approval of Wolesi Jirga.

4. Agreement signed between Afghanistan and United Arab Emirates on extradition of criminals.

Based on this agreement, criminals could be extradited on request. This agreement was put to the WJ while Rangin Dadfar Spanta was the Minister of Foreign Affairs'. The WJ did not recognize him as the legitimate minister of Foreign Affairs and therefore did not consider any treaties signed by Spanta.

5. SARC agreement on the establishment of South Asia Standard Organization.

The agreement was signed on August 3 2008, in Colombo capital of Sri Lanka. This agreement will play a major role in facilitating South Asian Free Trade Area (SAFTA)

The WJ also approved and sent to the MJ for endorsement the Law on Cooperatives.

Law on Cooperatives (Section 1, Article 30)

The Amendment of Law on Cooperatives (Section 1, Article 30) was approved on April 12th 2010. This law is based on Article 13 of the Afghan constitution and regulates the creation, registration and development of the cooperative and their unions. The cooperatives are voluntary union between individuals who seek to achieve a common economical, cultural or social goal.

Acronyms

ECC:	Election Complaints Commission
IEC:	Independent Election Commission
HCM:	High Council of Media
MJ:	Meshrano Jirga
MOJ:	Minister of Justice
NA:	National Assembly
RTA:	Radio and Television Afghanistan
WJ:	Wolesi Jirga