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Legislative Newsletter

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 - Law on Domestic and Foreign Private Investment
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News

Seven Ministers Receive Votes of Confidence, 17 Rejected by Wolesi Jirga.

On January 2nd 2010, after hearing presentations on proposed strategies of the nominee ministers during past two weeks, the Wolesi Jirga gave its vote of confidence to seven nominee ministers and rejected 17 others. The ministers to receive votes of confidence are Mohammad Rahim Wardak (Defense), Mohammad Hanif Atmar (Interior), Dr. Farooq Wardak (Education), Omer Zakhilwal (Finance), Wahedullah Shahrani (Mines and Industries), and Mohammad Asif Rahimi (Agriculture, Irrigation, and Livestock) All who received the vote of confidence from the WJ were sitting ministers in the previous Karzai administration except for Sayed Makhdom Rahin (Information and Culture) who was serving as the Afghan ambassador to India.

The nominees needed at least 117 votes in favour of them from the 232 MPs present to win approval. Nominee Minister Rahim Wardak received 124 votes in favour of him and 100 votes against him. Atmar received 148 positive votes and 77 negative, Omer Zakhilwal, 141 positive and 84 negative, Wahedullah Shahrani, 140 for and 78 against, Makhdom Rahin, 120 for and 93 against; Dr. Farooq Wardak, 155 positive votes and 73 negative; and Mohammad Asif Rahimi, 136 votes of confidence and 89 negative votes.

The nominees for 17 ministries were not able to receive votes of confidence from the MPs.

Detailed hereunder is how the WJ voted.

NAME OF NOMINEE	MINISTRY	VOTES FOR	VOTES AGAINST
Sarwar Danish	Justice	96	122
Obaidullah Obaid	Higher Education	96	121
Ismayel Khan	Water and Energy	111	109
Enayatullah Baligh	Religious Affairs	108	115
Hussain Abdullhahi	Public Welfare	33	179
Mohammad Amin Fatimi	Public Health	102	120
Anwarulhaq Ahadi	Economic Affairs	91	130
Amirzai Sangin	Communication	92	130
Gulam Mohammad Eilaqi	Commerce	76	138
Wais Barmak	Rural Rehabilitation and Development	90	127
Mohammad Ismayel Munshi	Public Work	39	176

Mohammad ullah Batash	Transport	82	138
Husn Bano Ghazanfar	Women Affairs	115	108
Enayatullah Nazari	Refugees	82	133
Sayed Hamid Ghailani	Tribal and Borders	70	149
Khudaidad	Counter narcotics	36	176
Mohammad Yusaf Pashtoon	Construction	88	127

Some of the MPs remarked that the refusal of such a big number of the proposed cabinet can be viewed as an exceptional incident. Almost 70 percent of the proposed cabinet received votes of non-confidence.

Abdul Qayom Sajadi (Ghazni) told the media that, "This is an exceptional event, we saw that 70 percent of the proposed cabinet did not succeed to get votes of confidence from Wolesi Jirga". He added that some of the reasons for the votes on no confidence included the executive not campaigning properly for its cabinet, a number of the nominees were not popular faces, and some of them were former ministers who had not been successful in executing their mandates previously.

It is not clear when a new list of nominees will be introduced by the President in place of the ones rejected. The Wolesi Jirga announced that it will go on winter recess from January the 5th to 20 February 2010.

The previous week, President Karzai insisted at a press conference that his proposed cabinet was a combination of professionals and expert Afghans. However a number of MPs are of the view that the list presented by the President was not his desired cabinet, but a ploy to have the WJ reject potential candidates on his behalf. There is speculation that the list the President will present in future represents his desired cabinet, and that the current list was an exercise in politicking.

Meshrano Jirga Seeks Reinstatement of Gaillani

The MJ on January the 3rd resolved to ask President Hamid Karzai for the reinstatement of its first Deputy Speaker, Hamid Gaillani. This was after he failed to get a vote of confidence as the Minister of the Tribal Affairs from the National Assembly. Hamid Karzai appointed Haji Din Muhammad, former governor of Kabul, as a replacement of Hamid Gaillani in the Meshrano Jirga last week when he nominated Gaillani for the position of Minister of the Tribal Affairs.

Referring to the Internal Rules of Procedure of the Meshrano Jirga, Moinuddin Muzaffari, First Secretary of MJ, noted that there was nothing in the rules that provided that if someone is nominated as a minister and does not get approval from the National Assembly, they cannot re-occupy their place in the parliament. "Gaillani was nominated as minister of the Tribal Affairs but could not get the vote of confidence from the parliament, he should join us again." He stated.

Other MPs were of the view that it was unlawful for the MJ to ask the President for the reinstatement of Gaillani. Mulavi Arsala Rahamani (Paktika) said that according to the constitution if an MP is nominated for a ministry by the president he loses his seat in the parliament whether he is approved by the National Assembly or not. In his view the MJ did not have any constitutional support for a demand to the President for Gaillani's reinstatement, rather they could only request.

Some MPs were of the view that Gaillani should be consulted first and only then could further steps be taken. Dr. Mirbat Khan Mangal (Khost) asked the MPs that the House should contact Gaillani and enquire if he was interested in coming back. Only then could the MJ request the President and if Gaillani was not interested, then the matter was moot. Muzzafari was however of the view that it was the responsibility of the House to ask the President for the reinstatement of Gaillani regardless of his future intentions. The MJ after further discussion resolved to write a letter to the President and ask for the reinstatement of Gaillani.

Article 73 of the constitution provides that when a Member of the National Assembly is appointed as a Minister he shall lose his membership in the National Assembly and another individual appointed in his place. It is not clear whether nomination as minister by the president equates with appointment or if one is only said to be duly appointed after confirmation by the National Assembly.

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. The status of Bills remains largely unchanged from the previous week as the National Assembly focused on the confirmation of Ministers.

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: No change from last week. According to the Afghanistan Times, the Acting Ministry of Justice presented to the cabinet the new draft of the Electoral Law which was amended as of the 14th December 2009. However, the constitutionality of a government review may come into question given the constitutional prohibition on the National Assembly reviewing government edicts within 12 months of the end of the legislative term.

Law on Domestic and Foreign Private Investment

The legislation is drafted to encourage and protect domestic and foreign private

Investment. Its primary objectives are to promote economic development, expand the labor market, improve national prosperity, advance the standard of living, and enable Afghanistan's reconstruction.

Update: No change from last week. The National Economy, NGOs, Rural Development, Agriculture and Livestock Committee of Wolesi Jirga have halted deliberation of the bill per a Ministry of Finance request to include new clauses.

Law on Non-Governmental Organizations (NGOs)

This law is enacted for the purpose of regulating the activities of domestic and foreign non-governmental organizations (NGOs) in Afghanistan. The terms of establishment, registration, administration, activity, internal supervision, dissolution, and liquidation of properties of domestic and foreign non-governmental organizations are regulated according to the provisions of this law.

Update: No change. The draft is with the Wolesi Jirga National Economy, NGOs, Rural Development, Agriculture and Livestock Committee.

Law on Commercial Agency

Update: No change from last week. The Wolesi Jirga National Economy, NGOs, Rural Development, Agriculture and Livestock Committee have received the draft law and will lead discussion after winter recess.

Law on Elimination of Violence against Women

The draft law has been enacted in light of provisions in Article 24 and 54 of the Constitution guaranteeing rights. This draft initiated by the Ministry of Women's Affairs, the Wolesi Jirga Women's, Civil Society, and Human Rights Committee, and civil society, and processed by the Ministry of Justice, in consultation with the Supreme Court and Ministry of Interior. The objectives of the law are: Protection of women's Islamic and legal rights, and human dignity; preventing of violations against women, provision of information and public training about violations against women; and prosecution of perpetrators of violations against women.

Update: No change from last week. The Women, Civil Society and Human Rights Affairs committee of WJ discussed the bill and made new amendments. Reportedly; after contentious debate in the committee and the threatened boycott by male MPs. The Women's Committee member Fawzia Koofi has called for the bill's introduction to the plenary.

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 Afghan citizens.

Update: No change. The bill was inactive in the Wolesi Jirga Natural Resources and Environment Committee, which is leading discussion of the draft.

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. Further discussion is pending formation of a combined meeting of Wolesi committees. The Justice and Judiciary Committee is leading the Wolesi deliberations.

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 was inactive in the Wolesi Jirga Budget and Finance Committee.

Law on Financial Leases

Update: No change from last week. Reportedly; the committee has referred the bill to Da Afghanistan Bank for their consideration. The MPs had concerns over the provision of loans to internal producers of goods without guarantee. It was decided by the committee that the Afghanistan Bank should find ways to provide for the problems and reservations raised by the committee on the draft law and present them to the 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 is with the Wolesi Jirga Budget and Finance Committee. It is worth noting that the Budget Committee is of the view that the Bill should be rightfully sent to the Economic Committee of WJ.

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 which plans to recommence deliberations after winter 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: No change from last week. The draft is under discussion in the Wolesi Jirga. The lead committee – Religion, Cultural, Education and Higher Education – distributed the draft to other Wolesi committees for their consideration. It has since received the comments from the other committees and is in the process of compiling a report of the various comments.

Law on Rights and Privileges of the Disabled

The law will integrate and support the disabled economically.

Update: No change. As reported, the Wolesi Jirga Committee on the Disabled, Martyred, and Widowed passed the bill to the Wolesi Legislative Department to forward to the plenary. As reported, the government rejected the bill over the issue of increasing compensation to the disabled. See the October 19 *Legislative Newsletter* for details.

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: No change from last week. Some of the MPs raised the issue in Wolesi plenary and asked for consideration of the bill, but no decision has been made yet. As previously

reported, the bill has been rejected by the government over a Wolesi Jirga amendment calling for use of national ID cards in conducting the census to ensure exclusion of foreigners in the border regions.

Independent Election Commission Structure Law

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

Update: Update: No change. The bill was inactive last week in the Wolesi Jirga. Please see the *Legislative Newsletter* for 7 September 2009 for the last update.

Law on Juvenile Offenders

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: No change from last week. There are reports that the government returned the bill over an Assembly amendment which includes “signs of maturity” (per Sharia Law) as well as age as criterion for classification of subjects as minors or adults. The bill is reportedly pending in the Wolesi Legislative Department for further approval by two third of the members.

Law on Acting Ministers

The law has been promulgated based on paragraph 11 of article 67 of the constitution. The law is consisting of three articles which indicate time allowable for acting ministers, in the case of rejection, resignation, impeachment or death of the minister, as well as an incurable illness.

Update: No change from last week. Wolesi Jirga approved the law by a majority of the members present. It is yet to be sent to the Meshrano Jirga.

Meshrano Jirga

Law on Firearms, Ammunition and Explosives

The bill addresses affairs related to the acquisition, possession, transport, production, use, sale, import, and export of firearms, ammunition, and explosives.

Update: No change from last week. The MJ plenary approved the Bill and it is prepared for transfer to the president. Reportedly; they did not make any substantive changes to the Bill. A contentious issue in the Bill had been the requirement for the licensing of weapons used for hunting purposes.

Joint Committees

Counterterrorism Law

This law is drafted to counter terrorist crimes in light of provisions in paragraph two of Article 7 of the Constitution which obligates the state to “prevent all kinds of terrorist activities, cultivation and smuggling of narcotics, and production and use of intoxicants.”

Update: No change from last week. The Wolesi discussed the amendments of the Meshrano Jirga and introduced members for a joint committee of the Meshrano and Wolesi Jirga. The Meshrano has modified some articles of the draft and asked for a joint committee of the houses. The Meshrano omitted as repetitive a Wolesi amendment that mandated the death penalty for killing someone to gain objectives under Article Three of the draft. The Wolesi Jirga Internal Affairs Borders and Local Administrations committee will lead discussions.

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: No change from last week. A joint committee of the houses discussed the law and reportedly approved the Wolesi Jirga amendments. “Intoxicants” has been reintroduced to all relevant articles. An addition to Article 7 calls for establishment of provincial, district, and village-level offices of the High Commission on Counternarcotics. The bill is waiting for transfer to the president.

Law on Support for Competition (Anti-Trust Law)

The law is drafted, in light of provisions in Article 11 of the Constitution, which stipulates that matters of trade be regulated by law, to support competition and prevention of monopoly in the market. The objectives of this law are: Supporting prevention of unjust contracts, agreements and procedures that result in limiting, preventing or violating competition in the market of goods and services and the production process; prevention of monopoly in commerce activities; and to provide opportunities for positive competition aimed at boosting the welfare of the economy.

The law will establish a board of ministry representatives and others dedicated to supporting competition.

Update: No change from last week. The Wolesi Jirga has introduced members for a joint committee of the houses. See October 5 *Newsletter* for more information.

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 among the Ministry of Communications, service providers, and customers.

Update: No change from last week. The joint committee of the houses discussed the law and approved all articles except a Meshrano modification to Article 10 which would establish an “executive board.” Wolesi members are unclear of the board’s role and responsibilities and have requested an explanation. This week the Wolesi Jirga Communications, Transportation, Urban Development and Municipalities Committee will lead another joint committee discussion.

Government Structure Law

The law regulates affairs related to government structure in accordance with the Afghan Constitution.

Update: No change from last week. According to Legislative Department of Wolesi Jirga, the Bill has been referred to the Ministry of Justice for review of the names and responsibilities of additional directorates to be added before consideration by the Assembly continues.

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: No change from last week. The bill will reportedly move to the Wolesi Jirga plenary for an attempt at a two-thirds approval to override the Meshrano’s draft. The Meshrano Justice and Judiciary Committee had taken issue with Wolesi amendments that would allow the National Assembly to question Supreme Court justices when the Court has made “illegal” decisions.

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. After approval in a joint committee the bill is pending further action in the Wolesi Legislative Department. As reported, a joint committee of the houses approved the bill, but according to committee staff, certain Meshrano members are refusing to sign off on the Wolesi Jirga’s amendments disaggregating the authority to hire and transfer officers. The dissenting senators recommend the original article, which states that the Chief of Staff has sole authority to both hire and transfer.

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: No change from last week. A joint committee of the houses has passed all articles but Article Eight, which says that extradition of a foreign citizen to a third country shall only take place in accordance with agreements signed between Afghanistan and another sovereign state. Meshrano Jirga members have not yet agreed to the provision. In the event that the Meshrano members insist on not signing up to the agreed provisions, Wolesi can by 2/3 majority pass the Bill. See the May 18 *Legislative Newsletter* for a summary of Wolesi Jirga amendments.

Acronyms

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)