



# Legislative Newsletter

## Legislative Session Summary

February- June 2010

A summary of the first Session of the National Assembly's fifth legislative year

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# Executive Summary

The first half of the Afghanistan National Assembly's 2010 calendar year began on February 20 and ended on June 6<sup>th</sup> and 29<sup>th</sup> for the Meshrano Jirga and Wolesi Jirga respectively. While the Constitution provides for the WJ and MJ sessions to run concurrently, WJ members decided to delay their summer break to address issues that arose towards the end of the session. These will be discussed in great detail below.

Legislative activities included:

- The Lower House conducted 55 legislative sessions and the Upper House 35;
- The Assembly passed the National Budget, 7 Bills and 8 Conventions;
- 1 draft law was referred to the ICOC for clarification of relevant articles of the Constitution;
- 6 draft laws, 1 Treaty and 1 Convention were active in the Assembly but are yet to be passed and;
- 23 bills are pending in the NA.

| <b>Legislative Session First Half 2010</b>  |    |
|---|----|
| Bills approved by the National Assembly     | 8  |
| National Budget approved                    | 1  |
| Active bills                                | 6  |
| Inactive bills                              | 23 |
| Inactive treaties and conventions           | 2  |
| Bill Referred to ICOC                       | 1  |
| Conventions, Treaties and Agreements passed | 8  |
| Rejected Bills                              | 1  |
| Rejected decrees                            | 1  |
| Convention and agreements approved          | 8  |

# Major Events

## **Wolesi Jirga approved five ministers.**

The Wolesi Jirga approved five cabinet nominees from a list of seven submitted by President Karzai on June 24. The two rejected nominees were both from the Hazara tribe. Jamahear Anwari was endorsed as Minister of Immigration and Returnees by 140 out of 212 MPs present; Anwarulhaq Ahadi obtained 147 votes as the Minister of Commerce and Industries; Abdul Qudus Hamidi obtained 160 votes as Minister of Public Works; Asadullah Khalid received 120 votes as Borders and Tribal Affairs Minister and General Bismillah Khan Mohammadi obtained 150 votes to be confirmed Minister of Interior.

## **National Assembly approved 1389 National Budget**

On April 22 the National Assembly approved the 1389 National budget after 28 days of debate in the Lower House. The approval followed the initial rejection of the budget over the disproportionate allocation of provincial funding among other issues. This prompted the Ministry of Finance to revise the budget before resubmitting it on April 14. The revised budget took into consideration 14 out of 18 recommendations proposed by the National Assembly. The rejection of the national budget demonstrated the ability of the National Assembly to exercise its oversight powers on the Executive without undue influence from the government.

## **Wolesi Jirga Reject Electoral Decree,**

The Upper House rejected the Presidential Electoral Decree issued by President Karzai during the legislative recess in February. MPs not only disagreed with the contents of the decree but also questioned the legality of issuing the decree within one year of the end of the legislative term. The MPs disagreed with specific provisions of the decree, including the removal of UN-appointed foreign members of the Electoral Complaints Commission (ECC), the body which rejected a large number of votes in last fall's Presidential Election.

## **MPs boycott legislative duties.**

On May 22<sup>nd</sup> 2010, the Wolesi Jirga resolved to boycott the National Assembly and refused to consider government business for what they perceived as government's disregard of the WJ and failure to honor its constitutional duties. Members sat in silence for the duration of plenary sessions and banged their tables every five minutes. The MPs made four demands to pressure the government to respect the constitution and parliament. They demanded the submission of fundamental government policies to the NA; the submission of the outstanding list of cabinet nominees for approval by the National Assembly; submission of nominees to the Commission on Oversight and

Implementation of the Constitution; and the appearance of the Second Vice President Muhammad Karim Khalili in his capacity as chairman of the Emergency Response Committee to respond to MPs' concerns over the government's handling of floods in 14 provinces. The members' protest continued through to the end of legislative term with occasional exceptions.

### **Lower House approved members of the ICOC.**

On June 9, 2010, the Wolesi Jirga approved five nominees for the Independent Commission for Oversight and Implementation of the Constitution (ICOIC). Article 157 of the the Afghan Constitution provides for the establishment of the ICOIC, but does not specify the scope of its authority. MPs viewed the body as an alternative to the Supreme Court, arguing the Supreme Court lacks the comprehensive Constitutional interpretation powers. They also accused the Supreme Court for being pro-government, in violation of the Constitution.

### **The Upper and Lower houses join forces to condemn 'proselytizing'**

In a show of solidarity, WJ and MJ members joined forces to condemn proselytizing in Afghanistan. This followed a series of Noorin TV reports unveiling an alleged Christian missionary office in Kabul that was accused of converting Afghan Muslims to Christianity. Both Houses called on the government to take stern action against the NGOs allegedly involved. Some members called for the execution of the converts.

### **NA Assembly elects Administrative Boards.**

The Wolesi and Meshrano Jirgas elected deputies and secretaries for the first session of the NA's fifth legislative year. The Speakers' positions remained unchanged as they are elected for the entire legislative term. Wolesi Jirga MPs voted to retain the incumbent Admin Board while the Meshrano Jirga elected, Fazal Hadi Muslimyar and Mohammad Alam Eazedyar as first and second deputies respectively. Upper House members also endorsed sole candidate for secretary, female MP Najiba Hussaini (Daikundi) while Azizullah Ulfati (Jawzjan) was elected to the second secretary position.

### **Meshrano Jirga concerned with execution of Afghans in Iran**

On the 20<sup>th</sup> of April, Senators accused Iran for flouting agreements between Tehran and Kabul relating to treatment of refugees and prisoners. The accusation followed a series of media reports in April, of alleged execution of 45 Afghans in Iran on drug related crimes. The Meshrano Jirga invited Deputy Minister of Foreign Affairs, Mohammad Kabir Farahi to explain the government's efforts in addressing the issue. However, MPs were not convinced by Farahi's assurances that the government had taken reasonable steps in raising the issue with Iran. The Senators accused the MoFA of complacency in resolving issues of Afghans incarcerated in Iran.

### **Senators call for action on Kandahar security situation**

In several plenary sessions, the Meshrano Jirga (MJ) debated deteriorating security situation in Kandahar Province. The Senators were worried that the instability in Kandahar will spread to the rest of the country, particularly Western provinces. This concern followed the targeted killing of elders and security officials of Kandahar. A plenary report presented following a field assessment visit to Kandahar by a nine member delegation of senators cited lack of coordination between government officials, the Provincial council and foreign troops as reasons for the deteriorating security situation. The report further noted that the ill-treatment of residents by local authorities and the rampant administrative corruption led to loss of people's confidence in the government, leading to people turning to the Taliban. Therefore, the Senators urged the government to urgently prioritize the stabilization of the security situation in Kandahar.

### **Senators call for 'legalization' of foreign forces**

During the Meshrano Jirga plenary sessions of April 13 and May 2, 2010, senators discussed the continued civilian casualties resulting from Coalition operations. Senators expressed concern over what they perceived as Coalition insensitivity to and 'targeting' of civilians. Therefore, they called for 'legalization' of foreign forces in Afghanistan to monitor their activities and bring to book those guilty of not adhering to the law. The Senators argued that failure by the government to effectively deal with the issue would only confirm the Taliban's assertions that the government is weak and under the control of foreigners.

## **Bills Approved by the National Assembly**

### **Law on Regulating Ethical Relations of the Three Powers of State**

The law establishes expectations for behavior and communication among representatives of the executive, legislative, and judicial branches of government. The law seeks;

1. To establish standards for regulating the conduct and treatment by authorities of the three organs of state;
2. To establish mutual duties and responsibilities for conduct of the authorities of the three organs of the state;
3. To observe the principle of mutual respect between the authorities of the three organs of state, and establish good mutual working relations between them and to recognize their internal independence.

The president rejected the Bill and refereed it back to the Wolesi Jirga for reconsideration. However, on June 28; the Wolesi Jirga passed the Law by a two-thirds majority, to override the President's decision.

### **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.

Following the MJ and WJ approval, the law was sent to the President for endorsement. However, the President rejected the bill, arguing that the draft law restricted the authority of the president, which authorities are guaranteed in the Constitution of Afghanistan. However, on June 28, the WJ overruled the President's decision by a two-thirds vote.

### **Communication Services Regulatory Law**

The Law is enacted pursuant to Articles 10 and 37 of the Constitution of Afghanistan in order to promote and develop telecom services, regulate and supervise the Telecom market, guide the relationship between the Telecom Regulatory Authority (TRA) and Operators or Service Providers, Users and other interested parties in this country. Paragraph 3 provides that the Telecommunications Services Regulation should be comprised of an Executive Board headed by Executive Director. Paragraph 4 states that the Executive Director should be elected from members of the board, appointment of the Head of the Executive Board should be made as per the recommendations of the Minister of Communications and Information Technology and approval of the President.

MJ recommended amendments to Section 3 and 4 of the law, which were rejected by a Joint Committee on April 5. The law was subsequently approved by the WJ and sent to the President for endorsement in May.

### **Financial Lease Law**

The law was enacted in pursuance of article 10 and 13 of Afghanistan's constitution for the regulation of financial lease related affairs. The objectives of the Financial Lease Law include; development of small and medium investments through financial lease, creation and improvement of a competitive atmosphere in the investment sector through alternative bank loan grants and creation of employment opportunities through financial lease.

The Law was approved by the National Assembly in May.

### **Law on Acting Ministers**

The law was introduced to the Wolesi Jirga as a Private Members Bill, pursuant to Article 97 of the constitution, which provides that “If a bill is initiated by ten members of one of the two Houses and then approved by one fifth of the members of the respective Houses, it can be admitted to the agenda of the respective Houses”. The law was promulgated in terms of Article 91 of the Constitution which gives the WJ the right to approve appointment of ministers as well as Article 64 which accords the President power and duty for Appointing Ministers and the Attorney General subject to the approval of the WJ including dismissing and accepting their resignations.

The law was approved and sent to the President for his endorsement in January. The President rejected the Law and sent it back to the WJ. The Lower House on June 28 passed the law by a two thirds majority, effectively nullifying the President’s decision to reject the law.

### **Law on Cooperatives (Amendment of Section 1, Article 30)**

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

The law was approved by the WJ on 12 April.

### **Law on structure and jurisdiction of military courts**

The Military Court Law will regulate the structure and responsibilities of military courts.

### **Law on commission of reform of National Police**

Based on Articles 64, paragraph 3 of Article and 134 of the Constitution; the law aims to establish a reform committee to address issues like discrimination, respect for human rights and impartiality of the Afghan National Police by filtering the appointees through a 11 member committee.

## **Conventions, Treaties and Agreements Passed**

### **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 is responsible for insurance and security costs. The amendment makes the owner of the chartered plane responsible for insurance and security costs.

**Agreement on Criminal Extradition & bilateral legal assistance between Islamic Republic of Afghanistan and United Arab Emirates (USE)**

On 22/10/2008 The United Arab Emirates and Islamic Republic of Afghanistan signed agreements on extradition of criminals, mutual legal assistance in criminal matters and assistance on civilian matters. The agreements, signed in Abu Dhabi by H.E. Dr. Jawan Hadeef Al Dhaheri, Minister of Justice and Afghani Minister of Foreign Affairs Rangin Dadfar Spanta, seeks to enhance bilateral, regional and international cooperation on legal and judicial fields. The agreement was ratified by the WJ in April.

**Agreement on the Establishment of Diplomatic Relation between Afghanistan and Malta**

The agreement, signed between the Republic of Malta and Islamic Republic of Afghanistan seeks to establish a diplomatic relationship between the two countries. The agreement was signed in New York by UN ambassadors of both countries. The agreement required approval by both Malta and Afghanistan Parliaments.

**Charter of the South Asian Association for Regional Cooperation (SAARC) Development Fund**

The SAARC Development fund is designed to promote the welfare of people in the region; improve their quality of life and to accelerate economic growth, social progress and poverty alleviation in the region. The Fund will serve as the umbrella financial institution for SAARC projects and programmes, which are in fulfilment of the objectives of the SAARC Charter. It also aims to contribute to regional cooperation and integration through project collaboration.

**Convention on Establishment of South Asia Regional Standard Organization (SARSO).**

The convention seeks to promote and harmonize national standards of the South Asian Association for Regional Cooperation (SAARC) member States by removing technical barriers to trade and facilitate the flow of goods and services in the region.

**Agreement of the SAARC Member Countries on Elimination and Abolition of Terrorism in the Region**

The agreement was signed to ensure that perpetrators of terroristic acts do not escape prosecution and punishment by providing for their extradition and or prosecution. It sets up offences that can be regarded as terroristic and liable for extradition. The agreement further exempts political offences or offences inspired by political motives from the list of terroristic acts. Included are such acts as unlawful seizure of aircrafts, hostage taking

and offences relating to firearms, weapons and dangerous explosives and substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons and or property.

**Agreement of the SAARC Member Countries on Prevention and Suppression of Terrorism in the Region (Appendix- Additional Protocol)**

The additional protocol strengthens the SAARC Regional Convention on Suppression of Terrorism through criminalizing the provision, collection or acquisition of funds for the purpose of committing terrorist acts. It also includes facilitating exchange of information on activities of terrorist elements and enables member states to take measures to prevent and suppress financing of terrorist activities. To this end, state parties agree to adopt necessary measures to strengthen cooperation among them.

**South Asia Free Trade Agreement (SAFTA)**

The SAFTA was signed on August 3, 2008 in Colombo, Sri Lanka by Foreign Ministers from South Asia. It creates a framework for the creation of a free trade area within the region. The agreement seeks to eliminate barriers to trade in and facilitate the cross-border movement of goods between the territories of the Contracting States; promote conditions of fair competition in the free trade area and ensure equitable benefits to all Contracting States, taking into account their respective levels and pattern of economic development.

**Bills rejected by the NA**

**Electoral Law**

This Law has been codified pursuant to the provisions of Article 33 of the Constitution of Afghanistan for the purpose of regulating election affairs in the country. It sought to regulate all 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. The WJ rejected the law.

## **Decrees rejected by the NA**

### **Presidential Decree on Electoral Law**

On 17<sup>th</sup> February 2010 President Karzai issued the Electoral Decree along with amendments to the Electoral law (referred to above). The Electoral Decree was issued to manage the 2010 WJ election. The WJ rejected the law in terms of Article 79 of the Constitution which bars amendment of the electoral law in the last year of a legislative term.

## **Bills Active during the Session but not Passed**

### **Higher Education Law**

The law will regulate the activities of public and private higher education institutions in Afghanistan.

Status: Due to the controversial issue of academic terminology, the Lower House referred the draft to the Independent Commission for Overseeing Implementation of the Constitution for clarification of what constitutes academic and national terminology as contained in Article 16, which states; “Academic and national administrative terminology and usage in the country shall be preserved.”

### **Law on Elimination of Violence against Women**

The draft law has been proposed in light of provisions in Article 24 and 54 of the Constitution. This draft was 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.

Status: The WJ Civil Society and Human Rights Affairs committee discussed the bill and recommended ten amendments to Articles 2,3,5,6 and 8. Despite the contentious debate in the committee and threat of boycott by male MPs, the Women’s Committee member Fawzia Koofi called for the introduction of the bill to the plenary. The Admin Board is yet to include the Bill on the plenary agenda.

### **Law on Forests**

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

Status: Pending in the Committee on Environment and Natural affairs WJ

### **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.

Status: Pending in the Committee on Culture and religious affairs WJ

### **Government Structure Law**

The draft law has been proposed in light of provisions in Article 159 paragraph 2 of the Afghanistan Constitution. The draft law establishes duties and function of the presidential office, Presidential secretariat, government, National Assembly, judiciary and local government.

Status: pending in the Committee on Justice Affairs WJ

### **Da Afghanistan bank law**

The bill specifies responsibilities and duties of the Central Bank; Da Afghanistan Bank, as to achieve and maintain domestic price stability; foster the liquidity, solvency and effective functioning of a stable market based financial system; promote a safe, sound and efficient national payment system; support the general economic policies of the State; and promote sustainable economic growth and formulate, adopt and execute the monetary policy of Afghanistan.

### **Convention on anti-atomic terrorism activities**

The convention covers a broad range of acts and possible targets, including nuclear power plants and nuclear reactors, threats and attempts to commit such crimes or to participate in them, as an accomplice; Stipulates that offenders shall be either extradited or prosecuted; Encourages States to cooperate in preventing terrorist attacks by sharing information and assisting each other in connection with criminal investigations and extradition proceedings; and Deals with both crisis situations (assisting States to solve the situation) and post-crisis situations (rendering nuclear material safe through the International Atomic Energy Agency (IAEA)).

## **Inactive Bills and Decrees**

*The following were prioritized bills for the fifth legislative year but remained inactive.*

- Law on counter disaster preparedness
- Law on trade agencies
- Interim law on activities of private security companies
- Law on commercial contracts
- Law on goods shipment
- Law on basic structure and the authorities of the election commission
- Law on basic structure and the authorities of the courts of the judicial power
- Amendment, addendums and omissions of some articles on Law on firearms, ammunition and explosives
- Amendments on the interim law on activities of private security companies

*The following were active in the second half of the NA fourth year (September 2009-Jan 2010) but remained inactive through the February- June Legislative session.*

- Law on rights and privileges of the disabled
- Law on juvenile offenders
- Statistics law
- Law on support for competition
- Independent election commission structure law
- Procurement law
- Customs law
- Law on child correction and education centers
- Law on structure, duties and authorities of the Afghanistan independent human rights commission
- Organization and jurisdiction of courts law
- Extradition law
- Law on non-governmental organizations (NGOs)
- Law on domestic and foreign private investment
- Law on commercial agency