



# Legislative Newsletter

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## NEWS

### **MPs Concerned With Possible State of Emergency**

During the 6 August Wolesi Jirga (WJ) plenary session, Mr. Siavash Baktash (Kabul) claimed that President Karzai is considering declaring a state of emergency in Afghanistan. “In recent days there are talks about the declaration of a state of emergency by the President. I would like to make it clear to Mr. Karzai that there is no excuse for him to do that and that he will not be able to do so without the confirmation of the National Assembly.”

Mr. Siavash went further to warn the President against such a declaration and said that it would turn Afghanistan into a “Middle East” – referring to the recent uprising of the Middle East and North Africa. “If the President does go ahead with the state of emergency, no better fate will await him than that of Mr. Mubarak.” Mr. Siavash warned.

Mr. Abdul Zahir Qadeer also touched on the issue, saying, “There are certainly rumors about the state of emergency, but the President has no authority to declare that without the confirmation of the National Assembly.” Mr. Qadeer went on to say that if the President takes such action, it would be very “reckless” of him.

Mr. Nader Khan Katawazai, an MP from the eastern province of Paktika, however, called the debate about the state of emergency ‘premature’. “No emergency state has been proposed or considered by the President and no official has mentioned it, so it’s premature to discuss it.” Mr. Katawazai argued. He did agree with his colleagues though that in order for the President to declare a state of emergency, confirmation by the National Assembly was necessary. “We all know that the President can’t declare a state of emergency without the approval of the National Assembly.” Mr. Katawazai continued.

According to article 143<sup>1</sup> of the Afghan Constitution, the president can declare a state of emergency but needs the confirmation of both houses of the National Assembly.

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<sup>1</sup> Article One Hundred and forty three of Afghan constitution states:

“If due to war, threat of war, serious rebellion, natural disasters, or situations similar to these protecting the independence or nation’s survival becomes impossible by following the provision of this Constitution, the President in confirmation of National Assembly shall declare a state of emergency in some or all parts of the country. If the state of emergency continues for more than two months, the agreement of National Assembly is required for its extension.”

Implementation of a state of emergency would suspend four articles of the Constitution and transfer the powers of the Legislators to the president for a period of two months.

### **MJ Hears from Emergency Response Committee**

During the 7 August plenary session of the Meshrano Jirga (MJ), Senators invited the Emergency Response Committee to hear about their preparations for emergencies. The Committee, chaired by Dr. Dayem Kakar, is responsible to respond to all emergencies. It has representatives from the Ministry of Public Health, Ministry of Rural Development, Ministry of Agriculture and the Afghan Red Crescent.

Chairman Kakar presented an overview of the Emergency Response Committee activities and highlighted that drought was one of the major issues to be addressed by the Committee.

Senators agreed with Chairman Kakar that drought was the biggest challenge facing the countryside. Abdul Satar Efat (Baghlan) thanked the Afghan Red Crescent for its assistance in the northern province of Baghlan, saying “Recently I went to some villages in my province and people were suffering from drought. In some of the areas people are getting displaced because of it.”

Mawlawi Mahmood Daneshjo (Balkh) was critical of relief efforts, agreeing that drought was a major issue “The aid has not been distributed fairly. There is a need to strengthen the oversight of aid distribution to the needy. The drought has effected up to 85% of districts in Balkh province.”

All the officials present assured the Senators that the drought was at the top of their priority list, but also explained that the issue required time and patience given the magnitude of the problem and the scarcity of resources at their disposal.

Alhaj Mohammad Dawood Asas, a Senator from southern province of Zabul, however, criticized the past record of the Emergency Response Committee. “The Emergency Response Committee has never done well. Residents of many areas don’t even recognize the name. In Zabul province there has been serious flooding, but the Committee is not even aware of it.” said Senator Asas.

Some other Senators had practical suggestions to fight the drought. Alhaj Allah Dad (Ghazni) said: “The Bandi Sardi dam is full of mud. If cleared, it could irrigate thousands of acres of agricultural land.”

Officials took note of the Senators concerns and suggestions, promising to do their best to assist people who are most at risk.

## **Senators Quiz Minister of Interior**

On 9 August, Senators invited Mr. Bismilah Mohammadi, Minister of the Interior, to the general plenary of the Meshrano Jirga (MJ) to discuss Afghanistan's deteriorating security situation. Some Senators believe that there is a correlation between deteriorating security and the transfer of security responsibilities to Afghan forces.

"After the transition of security to the Afghan forces began, the security in the country has deteriorated. We see vehicles in Kabul armed with RPGs and other heavy weapons. If this is the situation in the capital, I can't imagine what the security situation is like in the provinces." said Mr. Gul Ahmad Azami (Farah). Concurring with Mr. Azami's sentiments, Mr. Mohammad Younis Takhari (Takhar) asked: "We hear that after the transition of security to the Afghan forces, there are aircraft crashes of the coalition forces in the provinces. This is worrying to people. Is this due to technical failure or something else?"

Minister Mohammadi agreed with the Senators that the security situation has indeed deteriorated but argued that the Afghan National Police (ANP) had improved. "I absolutely agree with your concerns in regards to deteriorating security situation in some parts of the country. However, it is worth mentioning that we have had achievements too." said Mr. Mohammadi.

Senators also expressed their concerns about private security companies that still operate in Afghanistan. Mrs. Najiba Hussaini (Dikundi) asked: "Provision of security is the sole responsibility of the government. Has the Ministry of Interior been able to dissolve the private security companies?" This was a concern many other Senators shared and urged the Minister to dissolve all the companies, regardless of who they may belong to.

"Have you dissolved the private security companies of high ranking officials of the government, such as Mr. Marshal Fahim's security company, and the security company belonging to the son of the Minister of Defence? Wouldn't it be good if you closed all, not just some of them?" Mr. Abdul Hanan Haqwayoon (Paktika) asked.

Minister Mohammadi informed the house that all companies were planned to be dissolved in the next six months and the Ministry of Interior would provide security for everyone. "We have dissolved 54 private security companies so far - many of which belonged to top ranking government officials - based on the directive of the President. We will dissolve the remaining 46 companies in next six months. The Ministry will then take charge of security once all companies are dissolved."

Minister Mohammadi was also asked about the claim that was made by Ms. Huma Sultani, a lawmaker with the Wolesi Jirga from Ghazni province. Ms. Sultani claimed to have met Taliban leader Mullah Omar inside Afghanistan and that he had picked her as the negotiator between the Taliban and the government (see APAP Newsletter of 5 August). Minister Mohammadi informed the house that there was no evidence to suggest that Mr. Omar was inside Afghanistan. He also stated that the police would have arrested Ms. Sultani for interrogation if she did not have parliamentary immunity.

## **MP Coalition Considers Protest**

The Protectors of Law Coalition (Coalition) announced during the Wolesi Jirga's (WJ) 10 August plenary session that its members plan to stage a protest until the issue of Special Election Court (SEC) is resolved. Coalition chairman Mr. Abdul Zahir Qadeer (Nangarhar) announced the decision and said that the decision was a collective one taken by all Coalition members. "I hereby announce that I and all my colleagues who are members of the Protectors of the Law Coalition will stage a protest starting this afternoon. I warn the President that it will only be the beginning and it will not be limited just to Kabul." The Coalition is rumored to have less than two hundred members.

The decision to stage a protest comes after some MPs claimed that they had met with Independent Election Commission (IEC) Chairman Fazel Ahmad Manawee who told them that a presidential decree that ordered the IEC to uphold the SEC's decision was "imminent".

Mr. Asadullah Saadati (Dikundi) informed the house that he was one of the MPs who met with the IEC chairman. "We met with Mr. Manawee at 11:00 last night. He told us that we had reached 90th minute and that we [the MPs] had to stand for ourselves. According to Mr. Manawee, the President has decided to issue a decree ordering the IEC to accept the SEC's ruling." Mr. Saadati claimed. Mr. Saadati also informed the house that Mr. Manawee had been under "immense pressure" to accept the SEC's ruling.

Mr. Ahmad Shah Behzad (Herat), WJ Second Deputy Speaker, even went further and claimed that Mr. Manawee has been given a choice, saying "Mr. Manawee has been given two options; either to choose imprisonment or accept the ruling of the SEC." He went further to quote Mr. Manawee as saying that the removal of MPs was done randomly, resembling "Russian roulette," not based on any conclusive evidence.

Former WJ speaker, Mr. Mohammad Younis Qanooni (Kabul), claimed that the crisis surrounding the parliamentary elections was just the tip of the iceberg. "The entire crisis is orchestrated to prove a point – the failure of democracy in Afghanistan." claimed Mr. Qanooni. He added that the president could resolve the issue if he wanted to.

Mr. Qanooni stressed the need to prevent any changes in the results of the parliamentary elections if democracy was to triumph. "Be it one MP or one hundred, what is of paramount importance is this, the president wants to have a veto right and cherry pick the MPs. If we allow even one MP to be replaced, it will set a precedent for the future and that would be the end of democracy in Afghanistan."

Mr. Ustad Muhammad Aref Rahmani (Ghazni) argued that it was not a matter of honor for the WJ but rather the life of "an infant democracy" was at risk. "Today what is at stake is not merely the honor of this house but its very existence. I suggest we all stay back and stage a protest and if even then, no one respects the law, we will resort to other things already

planned.” urged Mr. Rahmani without giving any detail about what those activities might include.

Not all MPs were worried though. Mr. Hafiz Mansoor (Kabul) assured his colleagues that there was nothing to worry about. “We should not be scared. The government should. History is a witness that whenever there has been a conflict between the government and the legislature, the legislature has come out victorious.” But MPs were not prepared to take any risks. “We will begin with our protest just outside the main entrance of the WJ building and expect all our colleagues to join with the exception of three or four MPs who support the SEC.” said Mr. Rahmani.

### **WJ Demand Trail of Dismissed Supreme Court Justices**

On 10 August the Wolesi Jirga (WJ) passed a resolution calling for the trial of the Afghan Chief Justice and five Supreme Court Justices. The two page resolution outlines the charges against the Justices and bars other governmental ministries from dealing with “dismissed judges”. According to the Constitution, a special tribunal must be established to consider charges against them. The WJ passed a vote of no confidence in the Chief Justice and the five Supreme Court Justices because they had proposed the formation of Special Election Court (SEC).

The resolution begins by outlining the basis of the decision made by the WJ.

*“The Wolesi Jirga, considering its legal authority and historical mission and in reference to the establishment of the Special Election Court (SEC) on June 25, 2011 in accordance with Article 127 of the Constitution, dismisses the Chief Justice and five members of the Supreme Court, namely Abdul Salam Azimi, Bahudin Baha, Mawlawi Mohammad Qaasem, Mawlawi Abdul Aziz, Zamen Ali Behsudi and Omar Babrakzai, from their positions for severely violating the Constitution, Electoral Law, and the Law on Jurisdiction of Courts and for negligence in performing their duties. As the mentioned persons still continue with their duties against the law, the Wolesi Jirga approves the following measures to prevent further violation of the law.”*

The resolution specifies legal action against all government ministries which cooperate with the “dismissed” judges. It explicitly names the Ministries of Interior, Finance, Justice and Culture and information, as well is the National Directorate of Security.

Mr. Abdul Sattar Khawasi (Parwan) was the only WJ member who was vocal in his opposition to the resolution. “You will practically dissolve the Judiciary, think about the consequences to those killers who cannot be tried and sentenced because there will not be a Supreme Court,” argued Mr. Khawasi. His statement was interrupted by angry MPs who were pounding on the table with their fists, showing their disagreement with Mr. Khawasi’s argument.

The resolution was finally put to the vote and passed with only six opposing votes.

## **Active Bills in Parliament**

### **Supreme Audit Draft Bill**

This bill was submitted to the Wolesi Jirga on 6 August 2011. The bill contains three chapters and 26 articles and governs the authorities and responsibilities of the Supreme Audit Institution of Afghanistan. The bill is currently under consideration in the WJ Committee on Oversight and Implementation of Laws and Central Audit.

### **Emergency Preparedness Bill**

The draft bill was submitted to the WJ on 6 August 2011. It governs the creation of a mechanism to respond to disasters. The draft bill contains four chapters and 28 articles. It is currently with the Internal Affairs Committee of the WJ.

### **Law of Chamber of Commerce**

The proposed amendments to the Law on the Afghan Chamber of Commerce were submitted to the WJ on 6 August 2011. If approved, the amendments would change the name to the Afghan Chamber of Commerce and Industries in order to include a wide spectrum of businesses and industries. The amendments are currently under consideration in the Legislative Affairs Committee of the WJ.

### **Forest Bill**

The Meshrano Jirga (MJ) held an extraordinary session on 8 August to discuss the Forest Law amendments which were recently approved by the WJ. The MJ Public Welfare Affairs, Natural Resources and Environment Committee presented the bill to the plenary session, explaining points of disagreements with the amendments brought to the original bill by the WJ. The disputed amendments will now be referred to a joint committee of both houses for reconciliation.

## **Acronyms**

MJ Meshrano Jirga  
NA National Assembly  
WJ Wolesi Jirga