



## Legislative Newsletter

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### NEWS

#### **Lower House Speaker Elections Reach a Deadlock.**

A week after inauguration of the second post Taliban Parliament on January 26, newly seated members of the Wolesi Jirga (WJ) are yet to elect a leader. The Lower House members have held two polls to date and both have failed to produce a winner as provided for in the Internal Rules of Procedure. Both elections were overseen by the interim speaker Muhammad Sarwar Usmani.

Four candidates presented themselves for election to the position of speaker on the first sitting of the WJ on January 29. The four, Abdul Zahir Qadir (Nangahar), Rasoul Sayyaf (Kabul), Mirwais Yasini (Nangarhar) and Yunus Qanooni (Kabul), all failed to garner the required 50% plus one vote to secure the position in the first round. According to the WJ's interpretation of their internal rules of procedure, the candidates needed at least 123 votes out of the 244 MPs present to be declared the new speaker.

A second round with the two candidates who received the highest number of votes from the first round (Qanooni with 84 votes and Sayyaf with 77 votes) followed. Mr. Sayyaf won the round with 119 votes while Mr. Qanooni received 116. There were nine spoiled ballots. Again both candidates failed to exceed the 50% plus one requirement, prompting fierce debate on the way forward.

Mr. Sayyaf moved a motion for the members to make a decision on how to deal with eight blank ballots which were deemed spoiled votes. In his view, the blank votes should be distributed equally among the candidates; "Shall we deem them invalid or distribute them equally to both candidates?" asked Sayyaf. Ramazan Bashardust (Kabul) quickly countered Mr. Sayyaf's proposition arguing the blank ballot papers represent a "no confidence vote" for both candidates. "When somebody casts a blank vote, they mean something; you can't interpret their intention and use the vote for or against a candidate," Bashardust argued.

Some members were of the view that the 50% plus one requirement should be interpreted as a simple majority. They argued it would be difficult for any candidate to attract 50% plus one votes after discounting spoiled or blank ballots and hence the elections for the speaker could drag on without producing clear results. Contributing to the debate, Mr. Iqbal Safai (Kapisa) said; "If we go to the third round or agree that new faces should enter the race, some of the MPs will cast blank votes and then it would be difficult for a candidate to meet the 50% plus one requirement. In that case, we will not have a speaker for a long time."

The debate continued on January 30 with Members proffering three solutions to break the impasse. Some Members suggested that Article 8 of the WJ's rules of procedure be amended to allow for a third round of voting. "We approved the internal rules and procedure to solve our problems not to create problems; they are not verses of the Quran, we have the authority to change article 8, to get out of this deadlock," said Mr. Nadir Khan Katawazai (Paktika).

Mr. Katawazai's suggestion did not receive majority support, with some members arguing that the rules of procedure cannot be amended under the leadership of an Interim Administrative Board which is currently presiding over the leadership elections. Instead another suggestion was made to refer Article 106 of the Constitution to the Independent Commission of Oversight and Implementation of Constitution (ICOIC).

Some members, including former Speaker Qanooni advocated for a fresh round of elections which would exclude the four original, unsuccessful candidates who presented themselves for the first round. "We heard all the comments and ideas, some of them are against the law. For example, we cannot change Article 8 of internal rules of procedure under the leadership of the Interim Administrative Board. We do not have the authority to count blank votes as valid votes. Also the MPs should not accept [the proposal] to refer the issue to the Supreme Court. I suggest that new candidates should contest in a new race."

### ***Second Polls Conducted***

In line with the suggestion by former Speaker Qanooni, a second leadership election for speaker was conducted on February 2. Five candidates nominated themselves as candidates in the election. For any of the candidates to be declared Speaker, they had to draw 123 of the total 244 votes cast. Results of the first round were:

|                                      |          |
|--------------------------------------|----------|
| 1. Mr. Baktash Siyawash (Kabul)      | 14 votes |
| 2. Mr. Sayed Ishaq Gailani (Paktika) | 41 votes |
| 3. Mr. Sediq Ahmad Usmani (Parwan)   | 94 votes |
| 4. Ms. Homa Sultani (Ghazni)         | 48 votes |
| 5. Mr. Ubaidullah Ramin (Baglan)     | 19 votes |
| 6. Blank ballots                     | 19       |
| 7. Spoiled votes                     | 8        |

With none of the candidates obtaining the required 123 majority votes, Interim Speaker Mohammad Sarwar Usmani called for a second round of voting between Mr. Sediq Ahmad Usmani and Ms. Sultani. Only 240 members cast their votes in the second round resulting in 118 votes for Mr. Usmani and 39 for Ms. Sultani. Ninety-two ballots were deemed invalid, including 62 blank ballots.

Following the inconclusive vote, Interim Speaker Mohammad Sarwar Usmani said, "None of the candidates could get the absolute majority votes in the second round election. On Saturday [February 5] the House will discuss and decide whether to amend the WJ internal rules of procedure or to continue the election process through the same procedure".

### **MJ Elects Admin Board**

Meshrano Jirga (MJ) members held their first plenary session on January 27, a day after President Karzai inaugurated the National Assembly. On the first day of sitting, the Senators issued an ultimatum to President Karzai to complete the composition of the MJ by appointing the remaining 34 members no later than January 29. Even without the outstanding presidential appointments, the Senators threatened to proceed with leadership elections for the MJ's Administrative Board on the same day without one third of the Upper House members.

President Karzai did not submit the list of the newly appointed members by the deadline, prompting senators to move forward with leadership elections on January 29. Interim Speaker Bahram Khan

Samkani (Paktia) presided over the elections for the Speaker as required by Article 18 of the MJ internal rules of procedure.

Mr. Zalmai Zabuli (Zabul) said, “We asked the president last Thursday to send either the list of appointees or we will go ahead with the elections in their absence. The president did not respond to our request and it’s now too late to change our decision.”

The following were elected to the MJ Administrative Board;

**Speaker:** Mr. Fazel Hadi Muslimyar (Nangarhar)

**First Deputy Speaker:** Mr. Mohammad Alam Izedyar (Panjshir)

**Second Deputy Speaker:** Mr. Gul Afghan (Kabul)

**Secretary:** Mr. Malavi Abdul Wali Raji (Baghlan)

**Assistant Secretary:** Mr. Azizullah Ulfati (Jawzjan)

### **ICOIC Nullifies MJ Administrative Board Elections**

The Independent Commission of Oversight and Implementation of the Constitution (ICOIC) announced on January 30 that elections held for the Meshrano Jirga Administrative Board were unconstitutional.

Using Article 87<sup>1</sup> of the Constitution to arrive at its decision, the ICOIC argued only appointed members can run for the post of the Speaker. Article 87 provides for the election of a Speaker for the term of the legislature (5 years). The district and provincial members’ term is 3 and 4 years respectively, while the appointed members’ term is five years. The ICOIC argued a senator whose term lasts less than five years cannot be a speaker as “elections for the President can only take place at the beginning of the legislative term and not in between the legislative terms”.

Responding to the ICOIC’s announcement in the January 31 plenary session, Mohammad Alam Izedyar (Panjshir) said a committee of senators will be formed to prepare a formal response to the assertions of the ICOIC.

Speaking to Afghanistan Parliamentary Assistant Project (APAP), Mr. Azizullah Ulfati (Jawzjan) who retained his position as MJ assistant secretary, argued that the ICOIC’s interpretation of the Constitution is misinformed; “The Commission has argued that elected Senators cannot run for the post of President of the House, this is contrary to Article 33 of the Constitution<sup>2</sup>”. Mr. Ulfati added that the MJ legislative term is not necessarily five years. “There are three legislative terms in the MJ; three, four and five year’s terms. The Speaker could be elected for any of these terms.” argued Mr. Ulfati.

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<sup>1</sup> Article 87 of the Constitution ; “ Each of the two houses of the National Assembly, at the commencement of their work period, shall elect one member as president for the term of the legislature, and two members as first and second deputies and two members as secretary and assistant secretary for the period of one year”

<sup>2</sup> Article 33 of the Constitution: “The citizens of Afghanistan have the right to elect and be elected. The conditions of exercising this right shall be regulated by law.”

## **Legislation**

There is no legislative activity to report at this time.

## **Upcoming Events:**

- Wolesi Jirga Speaker Elections – 8 February 2011