



Legislative Newsletter

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NEWS:

“Traditional Jirga has no Legal Basis” says Wolesi Jirga

Members in the Wolesi Jirga (WJ) said that the upcoming Traditional Loya Jirga (TLG) has no legal basis and so they will not participate in it. Discussing its legality in their plenary session on 29 June, MPs passed a motion that said: “The Traditional Loya Jirga has no legal basis. The WJ will not participate in it and will question its budget.”

The decision was made after extensive debate about the exact nature of the proposed TLG and its legal authority. The Afghan Constitution contains an entire chapter on the Loya Jirga but makes no mention of a TLG. The Constitution specifies the three occasions in which a Loya Jirga may be called,¹ however none of which includes convening for a strategic partnership. President Karzai has repeatedly said that the TLG would be called to discuss the US Afghan strategic partnership. MPs argue that constitutionally, the authority to decide on any strategic partnership belongs to the National Assembly².

All present MPs who spoke during the 29 June session voiced their opposition against the TLG. “I don’t accept the TLG, it is not constitutional.” Ms. Gen. Nazifa Zaki (Kabul) declared.

Mr. Haji Mohammad Mohaqqeq (Kabul) called the TLG a deliberate attempt to sideline the WJ. “The TLG is an attempt, part of a series of ongoing efforts, to undermine the WJ’s authority and marginalize the People’s House. The WJ should not participate in it and should block its budget.”

Perhaps the most explicit statement in opposition to the TLG came from Mr. Qazi Nazir Ahmad Hanafi (Herat), which served as the basis of the motion adopted by the MPs. “We will not

¹ Article One Hundred and eleven of Afghan Constitution states:

“Loya Jirga is convened in the following situations:

1. To take decision on the issues related to independence, national sovereignty, territorial integrity, and supreme interests of the country.
2. To amend the provisions of this Constitution.
3. To prosecute the President in accordance with the provisions of Article 69 of this Constitution.”

² Article Ninety of the Afghan Constitution states:

“The National Assembly has the following powers:

1. Ratification, modification, or abrogation of laws and or legislative decrees.
2. Approval of plans for economic, social, cultural, and technological development.
3. Approval of state budget, permission for obtaining, and granting loans.
4. Creation, modification of administrative units.
5. Ratification of international treaties and agreements, or abrogation of the membership of Afghanistan to them.
6. Other authorities specified in this Constitution.”

recognize the TLG. We will not participate in it and we will not approve any budget for it,” said Mr. Hanafi.

The motion adopted by the WJ would prevent MPs from officially participating in the TLG.

MPs Issue Ultimatum to the Government

After MPs in the Wolesi Jirga (WJ) passed a vote of no confidence concerning the Afghan Attorney General, five Supreme Court Justices and the Chief Justice earlier in the week, the lawmakers issued an ultimatum on 28 June, calling upon the government to enforce their decisions in regards to the now “former” officials.

The Attorney General (AG) has argued in the local media that the WJ did not have the quorum in order to pass a vote of no confidence regarding his position since 62 out of the 132 MPs who voted for the motion had been previously disqualified by the Special Elections Court. A spokesman for the Supreme Court expressed a similar opinion concerning the WJ’s vote of no confidence in the Supreme Court Justices.

Both statements, along with President Hamid Karzai’s actions, have angered some MPs. “We must set a deadline for the government,” Abdul Hafiz Mansoor (Kabul) argued. Mr. Muhammad Naeem Lalai Hamidzai an MP from Kandahar agreed with Mr. Mansoor and added: “We should issue an ultimatum for the AG to leave office. It could be one or two days.” Mr. Lalai went further and accused the AG of corruption and called for his trial.

WJ Speaker Abdul Rauf Ibrahimy (Kunduz) put the resolution to a vote and a majority of the MPs approved it. “Those individuals who have received a vote of no confidence must leave their offices” the resolution read.

The government has not yet responded to the resolution but Mr. Mohammad Sarwar Usmani Farahi (Farah) was already suggesting the next step should their decision be ignored. “We should ask the Afghan National Security Forces (ANSF) to prevent the AG and the Supreme Court Justices from entering their former offices.” said Mr. Farahi. “If the ANSF doesn’t listen to us, we will pass a vote of no-confidence for them too. If that doesn’t work, we will stage a protest with the help of our people. If that doesn’t work either, we will apply Article 69³ of the Constitution.” he continued.

³ Article Sixty-Nine of the Afghan Constitution states:

“The President is responsible to the nation and the Wolesi Jirga in accordance with this article.

Accusations of crime against humanity, national treason or crime can be leveled against the President by one third of the members of the Wolesi Jirga.

If two third of the Wolesi Jirga votes for charges to be brought forth, the Wolesi Jirga shall convene a Loya Jirga within one month.

If the Loya Jirga approve the accusation by a two-thirds majority of votes the President is then dismissed, and the case is referred to a special court.

The special court is composed of three members of the Wolesi Jirga, and three members of the Supreme Court appointed by the Loya Jirga and the Chair of the Meshrano Jirga.

The lawsuit is conducted by a person appointed by the Loya Jirga. In this situation, the provisions of Article 67 of this Constitution are applied.”

Tensions Rise between the President and the MPs

As tensions rise between the three branches of power, MPs are increasingly critical of the president's role. President Karzai's response to lawmakers' concerns about the Special Election Court (SEC), the Traditional Loya Jirga (TLJ) and acting ministers have fueled tensions between the legislators, the executive as well as the judiciary.

Some MPs believe that the president is trying to marginalize the Wolesi Jirga (WJ). "Rather than making every effort to weaken the WJ, the president should focus on defending the integrity of the nation against Pakistani aggression." Mr. Asadullah Saadati (Daikundi) said in the plenary of 29 June.

Mr. Haji Mohammad Mohaqqeq (Kabul) picked on the issue of the TLJ and said: "The TLJ is an attempt, part of a series of ongoing efforts, to undermine the WJ's authority and marginalize people's house." Mr. Abdul Zahir Qadeer, MP of Nangarhar province, criticized the president for what he called "enforcement of self-made laws" and explained, "We have voted you [the president] in to build the system, we haven't voted for you to break it."

Another sensitive issue which has further fueled the lawmakers' discontent is the president's response to the recent shelling of some villages in the eastern provinces of Nangarhar and Kunar by Pakistani army. Mr. Muhammad Naeem Lalai Hamidzai (Kandahar) was unequivocal in his criticism, saying "If you [President Karzai] can't defend the nation, step aside right now."

Mr. Lalai wasn't the only MP who called on the president to step down. Mr. Amanulah Paiman (Badakhshan) also called on the President to resign. "... I also call on the President to resign because his resignation would be in our national interest." stated Mr. Paiman in the plenary of 28 June.

Some MPs believe that there is sufficient evidence and grounds to apply Article 69 of the Afghan Constitution. Mr. Baktash Siavash (Kabul) raised the issue of Kunar and Nangarhar as part of three potential charges against the President and called upon his fellow MPs to consider "impeaching" him based on Article 69. "The answer to the crisis lies not on the streets but under this roof. I propose that we impeach the President so that it will be a lesson for all dictators." stated Mr. Siavash. Mr. Mohammad Sarwar Usmani Farahi (Farah) also referred to the Constitutional provision, albeit as a last resort. "If it [staging protest] doesn't work, we will apply Article 69 of the Constitution.

Acronyms:

ANSF	Afghan National Security Forces
AG	Attorney General
TLG	Traditional Loya Jirga
WJ	Wolesi Jirga