



## Legislative Newsletter

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### **NEWS:**

#### **Women's Affairs Commission of Wolesi Jirga Discusses EAW Law**

In commemoration of the global campaign of "16 Days of Activism Against Gender Violence," UNWOMEN hosted a public seminar together with the Women's Affairs, Civil Society and Human Rights Commission of Wolesi Jirga (WJ), and the Research Institute for Women Peace and Security (RIWPS). The forum organized to discuss the Elimination of Violence Against Women Law (EAW Law) was held on 9 December 2012. Over ninety participants from the National Assembly, (NA), Government Ministries, the Ulema Council, civil society organizations and women activists met to discuss the implementation of the legislative decree, and the process of its approval in the NA.

Participants at the forum discussed inequality issues facing Afghan women and girls such as forced and underage marriages, polygamous marriages, and the selling and buying of women for the purpose of, or under the auspices of 'marriage.' Participants stressed on the need to improve the implementation of the presidential decree on elimination of violence against women, and expediting its formal approval by the NA. Most of the participants were of the view that the EAW Law is necessary for eliminating violence against women, securing Islamic Sharia and safeguarding families.

The Chairperson of the Women's Affairs, Civil Society and Human Rights Commission (WJ) Ms. Fozia Kofi, in her speech said that there are three categories of MPs who are 'hesitant' to approve the EAW Law: one group believes that most of the articles of EAW are in contradiction with the Islamic Sharia, the second group reasons that there is no need for a specific bill on women affairs when there is a presidential decree, and the third group warns if the Women Affairs Commission adheres to this bill in its present form, then some of the MPs will work to reject the bill. It is clear that a lot of work is still to be done on the law's path to the approval process.

Although the legal age of marriage in Afghanistan has still not yet been determined, Article five of the EAW Law makes explicit the terminology and definitions of underage marriages, force marriages and multiplicity of marriages (polygamy). Clause 25 of Article 5 in particular has led to divisions in opinion among MPs, with some believing that defining the age of marriage directly contradicts the Sharia. Defending this latter belief, Mr. Sayed Alemi Balkhi said "There is no special verse in Quran about age of marriage, only the signs and conditions of maturity."

CSOs and women activist are of the view that the government has not yet succeeded in implementing the presidential decree on eliminating violence against women as the cases of violence have continued to increase. Just this week saw the assassination of Najia Sediqi, the acting head of Women's Affairs Directorate in Laghman province. She was killed by

unknown gunman on Monday, 10<sup>th</sup> December 2012. Women activists called on the government decision-makers and others influential people to urge judicial and local authorities to apply the law to all cases of violence against women. Stressing the need to ensure implementation of laws, Mr Zia Mobalegh, a CSO representative said “The drafting and approval the ERAW Law will not solve all the problems women are facing in this country. The government should pay more attention in implementing the law in all provinces.”

In response, the Deputy Minister of Justice, Mr. Yousuf Halim said the government is struggling to apply the law and there are “still some spaces and gaps in the presidential decree that could be considered in the ERAW Law.” He added that “We all still have time to consider those gaps and provide a comprehensive law for society.”

While all supporters believe in the need for the law on Elimination of Violence Against Women, they realize there are many miles to go before this law is approved. For that reason, the Women’s Commission (WJ) will take it up again after the winter parliamentary recess.

### **Social Organizations Law Officially Introduced to the Lower House**

Mr. Habibullah Ghalib, Minister of Justice (MoJ) officially introduced the draft Law of Social Organizations to the plenary session of Wolesi Jirga (WJ) on 8 December 2012 for approval. According to Mr. Ghalib, the law has been redrafted and includes substantial amendments from inputs received by civil society organizations (CSOs) as well as law experts and lecturers of the Universities.

The Social Organizations Law was drafted in accordance with Article 35, of the Constitution.<sup>1</sup> The Social Organizations law has been drafted for the purpose of defining the establishment, functions, rights, obligations and provisions for dissolution of Social Organizations.

Presenting the official draft law to the house, Minister of Justice, Mr. Ghalib said, “The law was enacted in 2002, but required substantial amendments (more than 50% of the original law). Ministry of Justice then decided to draft another law and consulted with CSOs, experts and lecturers.” He added that the original draft of the law had 31 articles, but two articles were eliminated by the Council of Ministers. The reason the Council of Minister’s struck those articles regarding social organizations having offices in other countries was their belief that foreigners might bring their “lobbying and marketing culture” with them which would be against Afghanistan’s culture and religion. The Minister assured MPs that the comments and input from CSOs as well as lecturers has been included to the law.

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<sup>1</sup> “To attain moral and material goals, the citizens of Afghanistan shall have the right to form associations in accordance with provisions of the law. The people of Afghanistan shall have the right, in accordance with provisions of the law; to form political parties.....a party or association formed according to provisions of the law shall not be dissolved without legal causes and the order of an authoritative court.”

CSOs have been reviewing the draft and presented their comments on the law to the Women's Affairs Commission (WJ), which is the lead commission in the consideration of the law in the Wolesi Jirga. The International Center for Not-for-Profit Law (ICNL) has compiled inputs into the law and presented a written submission on the Draft Social Organizations Law in February, 2012. The organization also provided their professional comments on 11 articles of the draft law to the Women Affairs, Civil Society and Human Rights Committee of WJ. AN ICNL delegate presented their comments at the Women's Commission public forum in Balkh province with CSOs. *(Please refer for the comments to APAP Legislative Newsletter, 7 December 2012)*

The Social Organizations Law has been discussed in the commissions for months now. The formal introduction of the law before the plenary represents deliberate efforts between the executive and the National Assembly to bring to finality the passage of the law. In a positive development, following the request of the Women Affairs Commission to the Executive, the Commission had received the draft version of Social Organization law unofficially from Ministry of Justice and had started legislative deliberations to speed up the process. The Commission started the law's deliberation process in August 2012 sending it to other Commissions for their comments and proposed amendments.

Reportedly this week the Joint Committee met to finalize and compile all the amendments. The law is expected to be presented at the WJ plenary session on Saturday, 15 December. According to the Women Affairs, Civil Society and Human Rights Commission, the new amendments (proposed by the Joint Committee) allow social organization to have sub offices in other countries and keep their central office in Afghanistan, allow the social organizations to renew their licenses every three years, and by informing the Ministry of Finance the Social Organizations they are allowed to receive gifts and financial assistance from external organizations. The Women Affairs Commission believes that by approval of this law, social organizations will have more legal opportunities to run their activities.

### **ICOIC Sends their Statement to Parliament on the Central Audit Law**

Last week the Independent Commission on Oversight of the Implementation of the Constitution (ICOIC) sent their response to Joint Committee (MJ/WJ) on the controversial articles in the Central Audit Law. The specific question that the ICOIC responded to was whether the appointment of Head of Central Audit by the President would need approval of the Wolesi Jirga (WJ). The ICOIC in an official letter declared its position saying that only those ministers and high government officials explicitly mentioned in the Constitution need the approval of the WJ for their appointments: "Paragraphs 11 and 12 of Article 64 and Article 157 of the constitution provides for the confirmation of appointment of entities by the House of Peoples (Wolesi Jirga) and is very clear and limited to only those individuals who are set forth in the Constitution."

The Central Office of Audit and Control is the highest state fiscal authority with the responsibility to inspect the financial activities of state administrative units. The Law was

enacted based on the provisions of Paragraph 4 of Article 75 of the Constitution of Afghanistan.<sup>2</sup> The law has three chapters and 27 articles: Chapter 1) General provisions; Chapter 2) Powers and duties of the Central Office of Audit and Control; Chapter 3) Miscellaneous provisions.

The Law was officially presented to the WJ plenary session on 6th August 2012 and approved with amendments. A key amendment made to the law by the WJ was in terms of Article 7 wherein, the house had provided for their approval of a person nominated to the position of Auditor General. Following the WJ approval of the law it was transmitted to the MJ for their consideration. The MJ approved the law on 12 August 2012 accepting some amendments of the WJ. The MJ, however, agreed with the government proposal in Article 7 that the President has the power to appoint the Head of the High Office of Central Audit (HOCA), without NA approval. Further disagreement between the WJ and MJ centered on Article 8, which deals with whether the Head of Central Audit could belong to a political party or not. These disputes resulted in a joint commission of both houses referring the issues to the ICOIC for determination.

When referring the controversial articles of the law to the ICOIC, the Joint Commission posed the following questions:

- a) Considering paragraph 11 of Article 64 of the constitution, the appointments of Ministers, Attorney General, Governors, Director of Central Bank, Director of Afghan Red Crescent Society and the Director of NDS are considered the within the power of the President but with endorsement of the House of People. *If a new law provides for another position which is not mentioned in the above mentioned provision then it shall also be subject to the confirmation of Wolesi Jirga. Would this law be in compliance with the Constitution?*
- b) Whereas in consideration to paragraph 6 of Articles 118 & 153 of the Constitution the members of the Supreme Court, judges, attorneys, officers of armed forces, and officials of NDS during their incumbency are forbidden membership in political parties. *Is the approval of an article or articles in ordinary law which limits membership of officials—other than the abovementioned entities—against the constitution?*

The amendments proposed by the Wolesi Jirga to Article 7 limit the appointment of the Head of Central Audit to the approval of the House and to Article 8 removing the paragraph forbidding Head of the Central Audit Office being member of a political party. The Wolesi Jirga members reasoned that if the Head of Central Audit Office does not require the approval of the Lower House, then his name should also not be included in the list the Constitution has forbidden to be a member of a political party.

After many weeks of waiting, the ICOIC offered its interpretation of Article 7, concluding that the WJ proposal to approve the Head of Central Audit is unconstitutional. The ICOIC said that paragraphs 11 & 12 of Article 64 and Article 157 of the constitution, stating the

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<sup>2</sup> “Prepare the budget, regulate financial conditions of the state as well as protect public wealth”

Offices which require approval confirmation by WJ, are very clear and limited to only those individuals who are set forth. Secondly the ICOIC opined that paragraph 3 of Article 91 of the Constitution details the special authorities of the House of Peoples which includes “Approve or reject appointments according to the provisions of this constitution” and therefore the power and jurisdiction of the WJ to reject and approve appointments has been taken into account.

The ICOIC also struck down the WJ’s amendment to Article 8 of the Law and did not agree with their reasoning. In the official statement letter the ICOIC wrote: “Regarding the condition for non membership in political parties during the incumbency of the position, it is also necessary to say that Section 6 of article 118 & article 153 does not mean to only limit this condition to those individuals whose names are registered in the Constitution.” The ICOIC opined that non membership to the political parties during incumbency of the position for the members of these commissions is required.

In essence the ICOIC offered a strict reading of the constitution, with respect to article 7. With respect to Article 8, there is some disagreement among NA members regarding ICOIC’s interpretation. Membership to political parties is considered one of the fundamental rights of Afghan citizens. The political system also requires plurality of political parties. Some members also argue that based on the principles of legal probity, the conditions for prohibition of membership in political parties could only be applicable for those duties and positions that fall under the jurisdiction of such offices as the judiciary and armed forces, which require that those positions to be completely impartial and nonpolitical.

This is not the first time the Wolessi Jirga has tried to gain authority to confirm executive appointments (i.e. those offices or commissions not explicitly stated in the Constitution). Members are concerned that some of the independent organizations have grown even larger than Ministries with bigger budgets and staff; therefore, Members reason that the House of People should have the power to confirm government appointees as well as approving whether the government should disband some of those organizations.

At this point it is not clear the fate of Central Audit Law and whether the Lower House will accept the opinions of the ICOIC.

### **National Assembly Condemns Suicide Attack on NDS Director**

Members of the Parliament in both the Lower and Upper Houses condemned the suicide attack on Assadullah Khalid, the head of National Directorate of Security (NDS). Several members expressed belief that the attack was planned and executed by the Inter-Services Intelligence (ISI) of Pakistan and called on the Afghan government to revise its peace negotiations with the Taliban.

The Head of National Directorate of Security Mr. Asadullah Khalid was injured in a suicide attack last Thursday (6 December). What Members found disconcerting was that he was in his guest house attending a meeting with a messenger allegedly from the Taliban. He is reported to have been moved from Bagram hospital to a medical facility abroad. The

President, H.E. Hamid Karzai, in his press conference on Saturday called the attack “too complicated in planning and execution to have been carried out by the Taliban.” The Deputy Speaker of the Lower House, Mr. Niamatullah Ghafari on Saturday 8 December called on the security institutions [in government] to investigate the incident” specifically, “how the messenger, who was the suicide bomber was not searched and how he got as far as the guest house.”

Remarking on the incident, Ms. Fatima Aziz said that with the release of the Taliban prisoners every day, which the High Peace Council calls their success and achievement; “Parliament should not sit quietly.” She called for the conclusion of the peace process, “since it’s not a budgetary unit, and is getting more money for doing nothing.”

Some MPs believed that both the assassination of the former Head of High Peace Council professor Burhanuddin Rabbani and the attack on Mr. Khalid, are the results of the intelligence services of a neighboring country. Ms. Fawzia Kofi reasoned that the attack on the Head of NDS showed that Pakistan “will eliminate people who are against them.” She suggested that the National Directorate of Security (NDS) should revise their policy against ‘unknown’ people.

During the plenary on 9 December, Senators also expressed their deep concerns and condemned the planners of the suicide attack on Mr. Asadullah Khalid. Mr. Hedayatullah Rehayee said, “The suicide attack on the director of National Directorate of Security (NDS) shocked everyone. If the NDS is not capable of securing its director how can it secure other organs of the government?” Mr. Rehayee strongly believed that the Inter-Services Intelligence (ISI) of Pakistan was involved in the attack to the extent that “ISI penetrated NDS and this shows weakness of the NDS.” Echoing his voice Mr. Ali Akbar Jamshedi said, “Pakistan is not sincere with Afghanistan regarding the work toward a peace. Whenever Pakistan showed flexibility or amenability towards the peace process, such attacks are carried in order to blow up the peace process” He cited the recent attack on Mr. Khalid and the assassination of Mr. Rabbani as evidence to his point.

Other Senators blamed the machinations in foreign policy as the root cause of Mr. Khalid’s attack. Mr. Zalmai Zabuli strongly criticized the government for its lack of leadership in creating a uniform Afghan foreign policy. According to Mr. Zabuli, “foreign governments are directly contacting the [Afghan] opposition to discuss the fate of the country. The constitution never stated that foreign policy should be in the opposition’s hands.”

Offering another view, Mr. Sher Mohammed Akhondzada said there is no connection between the attacks and the peace process; he blamed the US for the attacks. “I don’t know why my colleagues are criticizing the peace process. What do we want if we don’t want peace?” He was adamant that the suicide attacks are not linked with the peace process. He refuted the idea that Pakistan was involved in Mr. Khalid’s attack and instead blamed the United States. “I don’t think this attack was carried out by Pakistan because it needs lot of resources which only can be provided by the U.S government. The U.S gives money to both suicide bombers and to the Afghan government at the same time.”

At this time the investigation into the attacks on the head of NDS are still ongoing. During the trilateral meeting in Turkey, President Karzai was said to have presented the evidence of Pakistan's involvement in what news sources are calling the plot to assassinate the Head of NDS.<sup>3</sup>

### **ANDMA Briefs Meshrano Jirga on Emergency Preparedness for Winter**

The Meshrano Jirga (MJ) on 11 December invited the Afghan National Disaster Management Authority (ANDMA) officials to its plenary session to update Senators on the government's preparedness to respond to emergency situations during winter season. Senators questioned ANDMA about their contract procurement process as well as their ability to provide timely assistance to people affected by extreme winter weather and conditions. In addition to the Deputy of the ANDMA, the Ministers of Rural Rehabilitation and Development, Public Health, and Agriculture along with the General Secretary of Afghan Red Crescent attended the MJ session.

Before ANDMA officials presented their report, Welfare Commission Chairman Mr. Basheer Samim discussed the effects of the inclement weather conditions across the country: "Afghanistan is a mountainous country and the people are facing problems in winter due to heavy snow which causes many roads to be impassible in the cold provinces." He questioned the Ministry of Public Works' justification for awarding the snow removal contracts to just one company in the past. He pointed to the last years' experience saying that that one company was not capable to clear all the roads and hoped that this year the ministry will award the contract to several companies.

Mr. Samim reminded ANDMA and Ministry officials that last year's demonstrations were in response to the government (i.e. ANDMA and related ministries) not providing timely assistance to the provinces of Badakhshan, Samangan, Ghor and Badghees. Speaking on behalf of the Welfare Commission he counseled the Ministry of Public Health to shift medical kits to those impassable provinces before the winter begins. "ANDMA should use all resources to help the people survive [during the winter months]" Mr. Samim reiterated.

Mr. Mohammad Dayem Kakar, Director-General of ANDMA briefly reported on the preparations underway in ANDMA for the coming winter:

- Provincial health directorates were given instruction for winter preparations. The Ministry of Public Health vaccinated more than 16 million children for measles. The Ministry prepared 282 medical kits and established 320 emergency health centers across the country.
- MRRD provided 1,600 tents, 2,370 blankets and reconstructed 879 km of village roads across the country.
- Ministry of Agriculture stored 2,000 ton of wheat in Ghor, Badakhshan, Badghees provinces, 1,000 tons in Daikundi, and 1,500 tons in Bamyān province. The Ministry

<sup>3</sup> <http://www.tolonews.com/en/afghanistan/8702-turkey-pledges-peace-support-allow-taliban-office-in-ankara->

is going to import 150,000 tons of wheat from India soon. The Ministry also stored 3,000 tons of food for animals across the country. The Ministry of Defense promised to provide two choppers when needed.

- ANDMA allocated 84 million Afn for the coming winter

Senators were not entirely convinced by these preparations. They called on the Ministry of Public Health to establish special winter clinics in areas of the country that are especially hard hit by the winter snowfalls. The roads are relatively dangerous and sometimes impassable, which makes it difficult if people are in need of medical services. Senators also called on ANDMA to distribute quality food stuffs to the citizens. Last year it was reported that the flour distributed was of a very poor quality. Nomads are an especially hard hit community during the winter and Senators urged ANDMA and Ministry officials to not forget nomads in their winter preparation, planning, and disaster relief efforts.

In response to the Senators concerns and questions, the Ministers gave brief updates on the progress they have made to date and their preparations for the winter. Mrs. Surayya Dalil, Minister of Public Health said that her ministry will prepare its programs for all provinces with special regard to winter disasters that might occur. In preparation, the Ministry of Public Health has vaccinated more than 16 million children for measles in 26 provinces. The Minister also announced that the ministry prepared 282 medical kits where one kit can handle 10,000 people and established 320 emergency health centers across the country.

Mr. Asif Rahimi, Minister of Agriculture informed the Senators that the Ministry has stored 26,000 tonnes of wheat and rice in impassable provinces. Mr. Wais Barmak, Minister of Rural Rehabilitation Development visited several provinces to prepare for the coming winter. The Deputy Minister of Public Works assured Senators that this year the Ministry will award snow removal and road clearing contracts to several companies. The contracts will be awarded in consultation with the provincial council, governor and provincial office of ANDMA.

While pleased to hear of these preparations, the Speaker, Mr. Muslimyar tasked the Public Welfare Commission to follow up on these efforts to ensure their timely implementation and preparations for the winter.

### **Legislative Status**

**5- 12 December 2012**

#### **Upper House MJ:**

#### **Law on the Structure, Duties and Jurisdiction of the Attorney's Office**

The law was introduced on 6<sup>th</sup> October 2012 to the National Assembly, the WJ approved on 13<sup>th</sup> October 2012, the law includes in eight chapter and 42 articles. This law has been enacted pursuant to the provision of paragraph (3) article one hundred and thirty four

(134) of the Afghanistan constitution which says “The organization, jurisdiction as well as method of work of the Attorney's Office shall be regulated by law.” This law is drafted for the purpose of regulating the affairs relating to the structure, duty, composition, authority and course of action of the Prosecutor Office. The principle objectives of this law are as follows: to strengthen legality and order in society; to defend the spiritual and corporeal rights, interests and freedom of individual and public for the purpose of rule of law and ensuring the justice; to regulate the personal affairs of prosecutors and staff of civil service of the Attorney's Office; and to regulate the affairs relating to the prosecutors' punishment and disciplinary action responsibility.

**Status:** The Law was introduced on 6 October 2012 to the National Assembly, WJ approved the law on 13<sup>th</sup> October 2012, the law is currently under discussion in MJ Legislative Affairs Commission and during the week the Commission invited representatives of the Attorney General's Office for clarification on the structure of the Prosecution Office as well as some of the mandates set forth in the law which Members viewed as interfering with the mandate of the NA and other governmental organs affairs. The First Deputy of the Attorney General appeared before the Commission and clarified the structure of AGO, and added that there is no intention of conducting “oversight or overseeing the implementation of legislation” but rather they mean to evaluate and study the complaints and cases before they are referral to the Investigation Department. It was agreed that a more suitable word than ‘oversight’ needs to be found.

### **Cartagena Protocol**

The Cartagena Protocol on Biosafety is an international agreement on Biosafety, as a supplement to the Convention on Biological Diversity. The Biosafety Protocol seeks to protect biological diversity from the potential risks posed by genetically modified organisms resulting from modern biotechnology.

The Biosafety Protocol makes clear that products from new technologies must be based on the precautionary principle and allow developing nations to balance public health against economic benefits. It will for example let countries ban imports of a genetically modified organisms if they feel there is not enough scientific evidence that the product is safe and requires exporters to label shipments containing genetically altered commodities such as corn or cotton.

The Cartagena Protocol on Biosafety to the Convention on Biological Diversity has 40 articles, one preface & three annexes.

The member countries of this protocol are reached to 50 countries in May 2003. In accordance with the provisions of its Article 37, the Protocol entered into force on 11 September 2003.

**Status:** The protocol was ratified by the MJ plenary session on 9th December 2012.

### **Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade**

The Rotterdam Convention is a multilateral treaty to promote shared responsibilities in relation to importation of hazardous chemicals. The convention promotes open exchange of information and calls on exporters of hazardous chemicals to use proper labeling, include directions on safe handling, and inform purchasers of any known restrictions or bans. Signatory nations can decide whether to allow or ban the importation of chemicals listed in the treaty, and exporting countries are obliged make sure that producers within their jurisdiction comply. The conversion includes a preamble, 30 articles and 5 annexes.

**Status:** The Convention was approved by the WJ plenary session on 7<sup>th</sup> November 2012. The Convention was received by the MJ plenary session on 13<sup>th</sup> November and was sent to the International Affairs Commission. The convention has been included in the Commissions' agenda and will be discussed in the coming week.

### **Stockholm Convention on Persistent Organic Pollutants**

This is an International Environmental Convention, signed in 2001 and effective from May 2004, that aims to eliminate or restrict the production and use of persistent organic pollutants (POPs). Key elements of the Convention include the requirement that developed countries provide new and additional financial resources and measures to eliminate production and use of intentionally produced POPs, eliminate unintentionally produced POPs where feasible, and manage and dispose of POPs wastes in an environmentally sound manner. Precaution is exercised throughout the Stockholm Convention, with specific references in the preamble, the objective and the provision on identifying new POPs. The conversion includes a preamble, 30 articles and 6 annexes.

**Status:** The Convention was approved by the WJ plenary session on 7<sup>th</sup> November 2012. The Convention was received by the MJ plenary session on 13<sup>th</sup> November and was sent to the International Affairs Commission. The convention has been included in the Commissions' agenda and will be discussed in the coming week.

### **UN Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries**

The overall goal of the UN Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing countries is to use quality research and advocacy methods to help build the capacity of Landlocked Developing Countries (LLDCs) with a view to benefiting from international trade. Long-term goals include poverty reduction and raising human development in Landlocked Developing Countries. The byproduct of the Agreement will be promotion of cooperation between LLCs, dissemination and sharing of information on trade related topics, and contributing to policy formulation as well as fostering quality views and approaches among Landlocked Developing Countries. This agreement includes a preamble and 15 articles.

The Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries was signed on 19 October 2011, by His Excellency, Dr. Zahir Tanin Permanent Representative of Afghanistan to the United Nations.

**Status:** The Agreement was approved by the WJ plenary session on 7<sup>th</sup> November 2012. The Convention was received by the MJ plenary session on 13<sup>th</sup> November and was sent to the International Affairs Commission. The convention has been included in the Commissions' agenda and will be discussed in the coming week. This Convention has also been included in the agenda of Legislative Affairs Commission and several other commissions. Technically the convention falls under the jurisdiction of the International Affairs Commission as it is considered the principle commission.

### **Energy Charter Treaty**

ECT is an international agreement which establishes a multilateral framework for cross-border co-operation. The Energy Charter Treaty was signed in December 1994 and entered into legal force in April 1998. The treaty covers all aspects of commercial energy activities including trade, transit, investments and energy efficiency. The treaty is legally binding, including dispute resolution procedures. The Treaty's provisions focus on four broad areas: Energy Trade, Investment, Energy Efficiency, and Dispute Settlement. The treaty has been signed or acceded to by fifty-one countries and the European Union. Twenty four states and ten international organizations have the status of observers to the Energy Charter. Observers have the right to attend all Charter meetings and to receive all related documentation, reports and analysis, and to participate in the working debates taking place within the Energy Charter. The Islamic Republic of Afghanistan became an observer to the Charter in 2006. In December 2007, upon the country's completion of all the preparatory procedures, the Energy Charter Conference (the Charter's top governing and decision-making body) invited Afghanistan to accede to the Energy Charter Treaty.

**Status:** The charter was approved by the WJ plenary session on 17<sup>th</sup> November 2012. The Convention was received by the MJ plenary session on 25<sup>th</sup> November and was sent to the International Affairs Commission. The convention has been included in the Commissions' agenda and will be discussed in the coming week.

### **Basel Convention**

This Convention has 29 articles and 8 annexes. The convention is an international treaty that was designed to reduce the movements of hazardous waste between nations, and specifically to prevent transfer of hazardous waste from developed to less developed countries (LDCs). It does not, however, address the movement of radioactive waste. The Convention is also intended to minimize the amount and toxicity of wastes generated, to ensure their environmentally sound management as closely as possible to the source of generation, and to assist LDCs in environmentally sound management of the hazardous and other wastes they generate.

The Convention was opened for signature on 22 March 1989, and entered into force on 5 May 1992. There are 175 members to the convention. Only Afghanistan, Haiti, and the United States have signed the Convention but not yet ratified it.

**Status:** The convention was approved by the WJ plenary session on 17th November 2012. The Convention was received by the MJ plenary session on 25<sup>th</sup> November and was sent to the International Affairs Commission. The convention has been included in the Commissions' agenda and will be discussed in the coming week.

### **Protocol on the Establishment of the International Renewable Energy Agency (IRENA)**

The protocol has 20 articles and 14 annexes. The International Renewable Energy Agency (IRENA) was founded in 2009 to promote widespread and increased adoption and sustainable use of all forms of renewable energy. IRENA facilitates access to all relevant renewable energy information, including technical data. Its statute entered into force on 8 July 2010. On June 2009, at the Preparatory Commission meeting Abu Dhabi was elected as interim headquarters of the Agency.

Objective of the IRENA is to become the main driving force in promoting a transition towards the use of renewable energy on a global scale:

Acting as the global voice for renewable energies, IRENA will provide practical advice and support for both industrialized and developing countries, help them improve their regulatory frameworks and build capacity. The agency will facilitate access to all relevant information including reliable data on the potential of renewable energy, best practices, effective financial mechanisms and state-of-the-art technological expertise.

**Status:** The protocol was approved by the WJ plenary session on 17th November 2012. The Convention was received by the MJ plenary session on 25<sup>th</sup> November and was sent to the International Affairs Commission. The convention has been included in the Commissions' agenda and will be discussed in the coming week.

### **Lower House (WJ)**

#### **Law on Higher Education**

This Law was enacted pursuant to the provisions of Article 43 and 46 of the Constitution of Afghanistan. Article 43 stated that "Education is the right of all citizens of Afghanistan, which shall be offered up to the B.A. level in the state educational institutes free of charge by the state."

The committee debated and deliberated all 71 articles. The most debated articles were: Section one of article 41 which says "professors of the higher education institutions shall be retired after age (70)". This article was amended as follow: "Professors of the higher education institutions shall be retired after age (75)."

Paragraph two of article 42 states “if member of academic position disobeys academic discipline rules, he/she shall be dismissed based on approval of the Higher Council in accordance with the provision of law”. This paragraph was amended as follow: “Member of academic position in case of explicit violation of the law shall be punished with following disciplinary actions: 1) advice, 2) notification, 3) decrease of salary, 4) transferring and 5) dismiss”.

**Status:** The Commission on Education and Higher Education included all articles proposed by the representatives of the private higher education institutions into the law with few changes to the law on higher education. The commission in its next step will share the law with the rest of WJ standing commissions for their consideration and comments.

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

The draft bill on Elimination of Violence against Women was prepared by the government of Afghanistan (MOWA) in accordance with article 24 and 54 of the Constitution and based on the Afghanistan Obligation towards CEDAW International Convention, in order to criminalize all types of violence against women. This bill was then submitted to Ministerial Council for approval when the Parliament was on summer recess. The Elimination of Violence Against women law has been approved by Ministerial Council through approval number 16 on 15/04/1388 in 4 chapters and 44 articles which has been later signed by the President through Legislative Decree number 91 on 29/04/1388. Afterward this law has been published in official GAZETTE number 989 since that the law is pending with the National Assembly.

The Principle Objectives of this law are safeguarding the religious and legal rights, protecting the human dignity of women, protecting the well-being of family, fighting against customs and traditional practices that cause violence against women contrary to the provisions of religion of Islam, protecting the victims of violence, ensuring public awareness and education on violence against women, and prosecuting perpetrators of violence against women. The law identifies all types of violence and set the punishment for each types of violence. Also, this law set the preventive measures and explained and the rights of victims, as well as identifying the implementing organizations and determined their duties and responsibilities.

**Status:** The WJ Women Affairs Commission conducted a one day seminar on December 9, 2012. Members of WJ, MJ, Ministry of Women Affairs, Ministry of Justice, Ministry of Hajj & Endowment, Deputy Ministry for Islamic Studies, Council of Religious Scholars, Civil Society, Defense Attorneys Association & Women’s rights activists participated in the seminar. Several issues were covered such as the underage marriage, number of wives & forced marriages. The proposed amendment of the Commission and the proposed amendments of the Ministry of Hajj and Endowment were also discussed. All participants agreed on the importance and need for the Law on the Elimination of Violence Against Women. The Ministry of Justice informed the participants that the Ministry has received amendments from the Ministry of Hajj & Endowment. There are some differences in views about on some

of the issues and will be solved through dialogue. It is expected that the Women's Commission will take this up again after the winter recess of Parliament.

### **Social Organizations Law**

This law has been drafted in consideration of Article 35, of the Constitution that says "To attain moral and material goals, the citizens of Afghanistan shall have the right to form associations in accordance with provisions of the law. The people of Afghanistan shall have the right, in accordance with provisions of the law; to form political parties.....a party or association formed according to provisions of the law shall not be dissolved without legal causes and the order of an authoritative court. This law is drafted for the purpose of establishment of how to precede function, the rights, and obligation and dissolved of the Social Organizations. The law has 5 chapters and 31 articles, including: general provisions, registration and establishment procedure of the organizations, financial affairs, dissolve of the social organizations, miscellaneous provisions.

**Status:** The law was formally introduced in WJ plenary session by Mr. Habibullah Ghalib, Minister of Justice on December 8 2012. To date, six WJ commissions sent their amendments to the Women Affairs Commission and the remaining 12 commissions supported the proposed amendments of the commission. The amendments were finalized in the Commission and will be discussed in the WJ plenary session on December 15, 2012.

### **Law on Telecommunication**

This Law has been 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, ensure relations between the Telecommunications Regulatory Authority (ATRA), Operators or Service Providers, Users, and other relevant agencies in the country. The law includes 17 chapters and 67 articles.

**Status:** Under discussion in WJ commission.

### **Criminal Procedure Code**

This Law has been formulated pursuant to the provision of Article (134) and observance of provisions (123) and section (1) of Article (75) of the Afghanistan Constitution in order to regulate the issues related to discovery and investigation of crime, filing a criminal law suit against the accused, proceedings for criminal cases in court, and the enforcement of decisions. The CPC aims to organize and regulate the criminal trails. Thus, it specifies the organization and jurisdiction of different bodies and criminal courts, and explains those principles which should be followed and those formalities which should be observed during detection and prosecution of criminals

**Status:** the law is under discussion in WJ Justice and Judiciary Affairs Commission

### **Bills referred to Joint commission**

## Statistic Law

This law is enacted for the purpose of organization of statistical activities in the country, formation, and determination of the duties and authorities of the Central Statistics Office. The law includes 7 chapters and 26 articles. WJ approved the proposed amendments to the Law on 22 September 2012. The MJ Economic Commission finalized the law and accepted some amendment brought by WJ but not all. The amendments were presented to the plenary session today 6th November 2012. The most debated article was Article Five which is about the establishment of the National Statistical Council to ensure better procedure of statistical activities in the country and to advise the Central Statistics Office. The Council shall be composed of ten members. Paragraph 2 of this article says "Authorized representatives of the related ministries and state administrations, will be members of this council." WJ amended the paragraph 2 through addition and identified the authorized representatives as follow: Minister on Economy, Minister of Finance, Minister of Education, Minister of Minister of Labor and work, Minister of Agriculture, Minister of Health, Head of Central Bank, Head of Science Academy, Head of ACCI, as member of the council.

Article Six discusses the NSC duties and authorities. WJ added two paragraphs talking about the deposition of the Director of the Central Statistics Office (CSO), which says that "the NSC can propose for deposit of the Director if he found weak and misuses in management according to the provisions of law. The NSC can refer the Director of the CSO for prosecution if he hid the truth or release spurious statistic data. The MJ approved the original text; not WJ Amendments.

**Status:** The law is under discussion in Joint Commission.

## Audit and control Law

The Central Office of Audit and Control is the highest authority that has the responsibility of inspection of the financial activities of the administrations in the state. The Law was enacted based on the provisions of paragraph 4 of Article 75 of the Constitution of Afghanistan. Paragraph 4, of Article 75 of the Constitution stated that "Prepare the budget, regulate financial conditions of the state as well as protect public wealth". This law has 3 chapters and 27 articles. Chapter 1) discusses general provisions; chapter 2) discusses powers and duties of the Central Office of Audit and Control; chapter 3) is about miscellaneous provisions.

The Law is officially presented to the WJ plenary session on 6th August 2012 and approved. MJ approved the law on 12 August 2012 accepting some amendments of the WJ not all and the law was referred to the Joint commission. The JC had meeting on 10 September 2012 to discuss the Law and went through seven articles only, the discussion ended without agreement on Article 7. The MJ was supporting the government proposal that give to President Power to appoint the Head of the High Office of Central Audit (HOCA). Whereas WJ proposed that the President should nominate the HOCA head who should be approved by the Lower House. The JC agreed to send the issue to the Independent Commission of

Oversight on Implementation of the Constitution requesting for their view and advice in this regard. The JC will have final discussion to finalize the rest of articles after the ICOCC view and advice.

**Status:** The Independent Commission on Oversight of Implementation of the Constitution (ICOIC) supported view of the MJ in article 7 of the law which says, “The President has Power to appoint the Head of the High Office of Central Audit (HOCA).” The ICOIC was of the opinion that the WJ cannot give their approval of the appointment of the Auditor General as his office was not one of the offices provided for in the constitution as requiring NA approval. Essentially the ICOIC agreed with the interpretation of the MJ.

### **Law on Personal Affairs of Officers and Sergeants of the Afghan National Police**

The Law was presented to the WJ on 25th October 2010, and after a long time discussion over the mentioned bill and conducting three joint commissions of WJ finally this law was approved by WJ on 12 May 2012. This law was received by MJ on 15 May 2012 and was approved by MJ on 30 July 2012. The Law on Personal Affairs of Officers and Sergeants of the Afghan National Police was enacted in 8 chapters and 59 articles pursuant to the article 95 of the Afghanistan constitution to regulate the personal affairs including issues related to the appointment, recruitment, transfer, promotion, vacation, reward, punishment, suspension, resignation, retirement, and other personal affairs of the officers and sergeants of Afghan National Police.

The most debated article of this law was clause 3rd of the Article 14th, which the original Law provides that; “Article 14 Clause 3: the salary and privileges of the officers and sergeants will be paid in consideration to their ranks and years of services they have done and based on the norms as specified by the Council of Ministers”. The WJ amended the mentioned article as follows: (the salary and privileges of the officers and sergeants will be paid in consideration to their ranks and years of services they have done as so that if the rank of an officer or sergeant is higher he/she is entitled of the rank salary scale and if the position of an officer or sergeant is higher he/she is entitled of the position salary scale and other privileges will be paid based on the norms as specified by the Council of Ministers).WJ justifies that; principally getting promoted to the higher ranks is considered based on the years of hard services done, if due to any structural/organizational limitations an officer or sergeant is assigned in a lower position than his/her rank and is not benefited from the privileges of the actual rank he/she has, so getting promotions to the higher ranks will be meaningless. MJ did not agree the WJ amendments and approved the original article of the Law.

**Status:** Both Houses agreed to hold joint commission on the law but once again due to the absence of WJ MPs the joint commission was postponed for the second time.

### **Law on Personal Affairs of the Afghanistan National Army Officers and Lieutenants**

The Law on Personal Affairs of Military Officers and Lieutenants was enacted in 9 chapters and 70 articles pursuant to the article 95 of the Afghanistan constitution to regulate the

personal affairs including issues related to the appointment, recruitment, transfer, promotion, vacation, reward, punishment, suspension, resignation, retirement, and other personal affairs of the officers and sergeants of the Afghan National army.

Chapter 1 covers the general provisions, Chapter 2 provides for the rights and responsibilities, Chapter 3 provides for position of Officers and Sergeants, Chapter 4 states the promotion of Officers and Sergeants, Chapter 5 provides for appointment and transfer of Officers and Sergeants, Chapter 6 discusses issues related to the leave and vacation for Officers and Sergeants, Chapter 7 provides for suspension, resignation and retirement of Officers and sergeants, Chapter 8 provides for reserve services and Chapter 9 covers the miscellaneous provisions.

The law is approved by WJ on May 7 2011. On June 5 2011 MJ discussed the law and approved. The MJ did not accept all WJ amendments and the law were referred to Joint commission.

**Status:** The law is under discussion in joint commission.

### **Law on National Standards**

The Law was drafted in Feb, 2007, and then presented to the WJ on 25/10/2010, and after long discussion on the bill, finally the bill was approved on 25/7/2012. This law was received by the MJ on 31/7/2012 and was approved the MJ on 2/9/2012. The law was enacted in 5 chapters and 26 articles based on article seventy five of the Afghanistan Constitution for the purpose of promoting standardization, improving quality of products, processes and services, by defining their characteristics which determine their capacity to meet given needs; improving the quality of life, safety, health and the protection of the environment and consumers; developing economy in human effort, materials and energy; and promoting international trade by preventing any technical barriers to trade.

Most of the amendments brought to this bill by the WJ were disapproved the MJ, therefore the law will be debated in a joint committee between the two houses.

The most controversial article of this bill was article two which the original text of the bill provides "preparation, formulation, amendment, publication and implementation of the national standards and technical regulation (compulsory standards). This article was amended by the WJ as follow: "*formulation of rules and regulations for preparation, resumption, derivation and implementation of the national standards, technical regulations and evaluation procedures according to the international recognized methods.*" MJ disagree with the WJ amendments and amended the article as follow: "*preparation, formulation, resumption, derivation and implementation of the national standards, technical regulations and evaluation procedures according to the international recognized methods.*" MJ justifies that for preparation of standards the law on procurement is applied. The MJ also justifies that formulation, resumption, derivation and implementation of the national standards are required based on the economic and social needs, therefore there is no need enact of extra rules and regulation beside this law.

**Status of the law:** The law is under discussion in joint commission.

## **Law on the Structure, Duties and Jurisdiction of the Election Commission**

The Law has been codified pursuant to the provisions of Article 156 of the Afghanistan Constitution which says "The Independent Elections Commission shall be established to administer and supervise every kind of election as well as refer to general public opinion of the people in accordance with the provisions of the law." The law is adapted for the purpose of regulating affairs regarding the Structure, Duties and jurisdiction and regulating the function and procedure of the Independent Election Commission. The law includes 4 chapters and 23 articles. The law was passed by the WJ on 24 September 2012.

The MJ amended the following articles in the Election Commission Law: 1, 5, 7, 8 & 12 13, 15, 17, 18, 20, 24, 26, 27, 28, 29, 30, 32, 33 & 34.

The House also added some paragraphs to the text in article 18 & 22.

The House omitted article 19 & 33 of the law.

**Status:** This week the WJ named the seven members to the Joint Commission