



## Legislative Newsletter

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### **NEWS:**

#### **Wolesi Jirga Rejects 1392 Draft National Budget**

Mr. Amir Khan Yar (Nangarhar), the Chair of Budget Commission, presented the 1392 National Budget to the House on December 22, 2012. In his overview address he said the Ministry of Finance prepared the national budget which is comprised of fifty-six budgetary units. The budget first came to the Parliament on 16 Aqrab and the Meshrano Jirga sent the national budget along with their proposals to the Wolesi Jirga on 7<sup>th</sup> Qaws. The Ministry of Finance then introduced the 1392 National Budget to the Wolesi Jirga officially on 8<sup>th</sup> of Qaws. Mr. Yar said that the Budget and Finance commission analyzed the budget and sent their analysis to the 17 commissions for their review.

The total amount of the 1392 National is 366 billion Afghanis, which is equivalent to 7 billion dollars. The allocated operating budget is 196 billion Afghanis and the allocated development budget is 170 billion Afghanis. Mr. Yar said that of the total budget 54% is devoted to operating expenses and 46% is devoted to the development budget. He further added that 37% of total budget comes from internal revenues and 60% of the budget comes from donor funding with a 3% budget deficit.

In terms with the Commissions' deliberation on the budget document, MPs had several meetings with Ministry of Finance officials. He criticized most of the commission's representatives for not attending the Joint Commission. Two were held with only seven and ten MPs attending the respective joint sessions. Mr. Amir Khan Yar (Nangarhar) then highlighted the some of the major issues discussed in the Joint Commission:

- MPs in the Joint Commission requested the Ministry of Finance to bring the Directorate of Water under the structure of the Ministry of Housing; however, the Ministry of Finance argued that Water Directorates in other countries are also independent directorates
- MPs in the Joint Commission had problem with the budget guidelines, and wanted to amend or eliminate the following articles: 8,12,22,24, 39, 40, and 41. The Ministry of Finance responded saying that any changes would create serious problems in implementation of the National Budget.
- MPs in the Joint Commission claimed that the Presidential Protection Service (PPS) and Directorate 10 of NDS received 'too much' in budget; they requested the Ministry of Finance to cut the budget from the PPS and Directorate 10 and add those monies to the development budget. In response to this request, the Ministry of Finance said

that those amounts are allocated for the Office of the Administrative Affairs, President Protection Service, and President's Office.

- MPs in the Joint Commission claimed that the distribution of the provincial budget is imbalanced. The Budget and Finance Commission advised the other MPs to first compare the budget allocations from the last five years and then judge whether the budget is imbalanced in the provincial level. Their reason for this was that without a comparison, "it's difficult to understand the imbalance looking at only one year."
- MPs in the Joint Commission also asked that Ministry of Finance to allocated an additional 2 million (Afghanis) for each of the 11 less developed provinces, but MoF did not identify those projects [or the mechanism for how this money will be dispersed]. In response the Ministry of Finance said that they have given the chance to Parliament to identify the projects based on the need of the people.
- MPs in the Joint Commission also said that Wolesi Jirga had requested 2 million Afghanis for Parliament's TV channel, but it was not considered.

Mr. Yar concluded saying that out of nine commissions that attended the Joint Commission sessions, eight of them rejected the budget and one of the commissions made recommendations.

Ms. Shukria Barakzai (Kabul) said that the presidential palace budget is \$86 million. While the budget of judiciary is \$31 million and the budget of Parliament (both houses) is \$33 million. So \$86 million for the president's office is not acceptable. Ms. Barakzia also criticized the national budget saying it didn't create job opportunities.

Mr. Daud Kalakani (Kabul) said that withdrawal of international forces from Afghanistan will cause a rise in the unemployment rate and particularly 5,000 to 6,000 Afghans will lose their jobs in every province. He also criticized the lack of policy on job creation and job opportunities. "As representative of the International Commission [I] rejected the National budget" Mr. Kalakani said.

Mr. Abdul Qayoum Sajadi (Ghazni) said that as Joint Committee decided to reject the national budget of 1392, "why is there a need for further discussion in the floor now." He called on the Admin Board to vote on the decision of the Joint Committee.

Speaker of the House said that the budget allocation has been imbalanced, and considering the decision of the joint committee, he placed the 1392 draft National Budget for a vote. *The majority of the MPs rejected the National Budget.*

## Legislative Status

19-26 December 2012

### Upper House MJ

#### **Law of 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 eight chapters 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 and the WJ approved the law on 13<sup>th</sup> October 2012. The law is currently under discussion in the MJ Legislative Affairs Commission. During this week and upon the invitation of the Commission, the representatives of 1) the Attorney General's office, 2) the Supreme Court, 3) the Ministry of Interior Affairs, 4) the Ministry of Justice and 5) representatives of Independent Commission of Oversight on Implementation of the Constitution (ICOIC) attended the Legislative Affairs and Judicial and Justice Commission meeting. The discussion centered on the provision (of the law) which grants the Prosecution office the power of oversight, specifically the power to oversee the implementation of legislation and to oversee the action of police during the criminal investigations. This meeting did not reach a resolution in terms of the amendment and upon the advice of the representatives of ICOIC, the Commission sent an official request to ICOIC asking them their official view concerning the power of prosecution office to oversee over the action of police and other organizations. Once the commission receives the official views, the commission will then finalize this law.

#### **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 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 was scheduled to be discussed at the 25 December MJ plenary session, but due to lack of quorum it was not discussed. It is anticipated to be on the agenda for an upcoming

### **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. The members of the convention are around 175 parties. 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 was included in the MJ plenary agenda on 25 December, but due to lack of quorum it was not discussed. It is anticipated to 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.

The objective of the IRENA Protocol 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 as well as 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 Protocol was included in the MJ plenary agenda on 25 December, but due to lack of quorum it was not discussed. It is anticipated to be discussed in the coming week.

### **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 approved by the Lower House (WJ) on December 15, 2012. The law was sent by the MJ plenary session on 25<sup>th</sup> December, 2012 to the Women Affairs Commission of MJ.

### **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 the 71 articles of the law. 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 a member of an academic position disobeys academic discipline rules, he/she shall be dismissed based on approval of the Higher Council in accordance with the provision of the

law”. This paragraph was amended as follow: “Member of academic position in case of explicit violation of the law shall be punished with the 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.

**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

**1392 Draft National Budget**

On November 28, 2012 the 1392 Draft National Budget was introduced to the Wolesi Jirga by the Minister of Parliamentary Affairs. The MJ had sent the budget to the WJ with 22 suggestions or concerns. The total 1392 budget amount is 366 billion AFN (US\$ 7,042 million). The Development budget is 169 AFN billion (US\$ 3,269 million) and Operating budget is 196 AFN billion (US\$ 3,773 million). The Current Budget Deficit is 12.7% which equals US\$ 243.8 million.

**Status:** On December 22, 2012 the Wolesi Jirga rejected the budget and sent it back to the Executive.

**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:** Under discussion in Joint Commission

### **Audit and control 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.

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**Status:** According to the MJ plenary session on 25<sup>th</sup> December, 2012, the Joint commission on Audit & Control Law will be held on 26<sup>th</sup> December 2012.

**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 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

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