



Legislative Newsletter

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NEWS:

Wolesi Jirga Asks for Revision of the Date of Presidential and Provincial Elections

On Monday, 19 November Wolesi Jirga Members questioned the Head of the Independent Elections Commission (IEC), Mr. Fazal Ahmad Manawi, about the date and budget of the 2014 presidential and provincial elections. The MPs expressed concern that the cold weather at that time of year in Bamyan, Daikundi, Ghor, Jouzjan, and Badakhshan province may inhibit voting in the province, resulting in lower participation and affecting the legitimacy of the election. Article 61 of the constitution mandates free, general, secret and direct voting. The Members were also concerned that the date announced for the election violates the constitution of Afghanistan as it occurs after the expiration of the term of office for the one third of senators elected from the provincial councils who are themselves elected in the provincial elections.

Briefing the house, Mr. Manawi emphasized that the date announced for 2014 presidential election (Hamal 16, 1393 or April 5, 2014) is within the mandated 30-60 days before the end of the president's term. Part of the reason for choosing an earlier rather than a later date within that window is to allow enough time to process and respond to allegations of fraud and other corruption cases regarding the elections. While he understands that the weather will be cold in some of the provinces on election day, he could not "overlook the constitution." He suggested that the Supreme Court and the High Office of Overseeing the Constitution should try to find a legal solution in order to change the date. If a legal solution is found, then the Commission will change the date of the elections.

In regards to the concern over the provincial council elections, Mr. Manawi advised that he was constrained by the budget. "It is impossible to finance [separate provincial elections] from the National Budget" he claimed. He stressed that, while the IEC was technically prepared to hold timely elections for both the president and provincial councils, there were not enough funds available to underwrite election costs and providing necessary security. Since the international community is providing funding for the presidential election and the necessary security, holding them together was the only option which made sense Mr. Manawi told the House.

The MPs countered that holding both presidential and provincial council elections at the same time contradicts Articles 61, 84 and 138 of the constitution and asserted that the provincial elections must be held in 2013, a year prior to presidential election. They noted that two third of the Upper House (districts and provincial councils representatives) end their terms in 2013. The Upper House of the National Assembly has 102 members: 34 are from provincial councils and are appointed for four years; 34 represent districts councils

and are appointed for three years; and 34 are appointed by the president for five years. According to some MPs the term of district councils representatives has already ended and the term of provincial councils will end in September 2013. At that point, the NA will not be able to pass any bills or hold sessions.

Other MPs argue that the presidential decree authorizing the appointment of senators from district councils has already extended their term. Nonetheless, failing to hold provincial elections would raise serious concerns. Mr. Mohammad Noor Akbari (Bamyan) argued that with respect to the one-third of senators drawn from the provincial council elections, “their term is for four years. This means that one third will be illegitimate [no longer able to sit on the Council and thus be appointed to the MJ] and the legitimacy of Parliament [will be] under question.”

Supporting the call for separation of presidential and provincial elections, Mr. Mohammad Youns Qanooni (Kabul) also said that provincial council elections in 2014 will be “illegal, if there is no money.” He asked the IEC to request the Ministry of Finance to include money for holding the elections in the National Budget. “The Wolesi Jirga will support [you]” he said. He further criticized the IEC saying that an early date for the elections could create weather-related voting challenges for people in some of the provinces. Mr. Qanooni then proposed two solutions: revise the election date to occur later within the framework of constitution, or open more polling stations in those provinces so that people will be able to cast their votes in a polling station closer to them despite the weather.

Despite Mr. Manawi’s assurances and report on what is being done, a number of MPs remained suspicious of the IEC and the government. Mr. Ramazan Bashardost (Kabul) noted, “The Constitution says that elections should be held 30-60 days before the end of the president’s term. So then, why cannot the IEC delay the elections by just 15 days to give the weather a chance to warm up a little bit?” In answer to this, he speculated, “This is a political project and the IEC does not want people to cast their votes.” He added that if people are not able to cast their votes then the IEC and others “can fill the boxes with the names of their favorite candidate.”

The Speaker of the House, Mr. Abdul Rauf Ibrahimy (Kunduz), said that the elections are a national process and all Afghans should be able to take part in voting for their candidate and all should work to ensure a transparent process. He suggested that the provincial council election should be conducted in the year 1392 as later elections will be unconstitutional. Failing to do so, “the legitimacy of the parliament will go under question.” The Speaker requested IEC to estimate their budget and include those figures in their budget line of the National Budget. “The government is responsible to find the money to budget for the provincial council elections.” Lastly, the Speaker requested the IEC to revise the date of the elections.

The Fate of UN experts in ECC went to Combined Committee, while the Legitimacy of one third of the Upper House Comes under Question

After comprehensive debates over the *Law of the Structure, Duties and Jurisdiction of the Election Commission*¹, the Upper House rejected the Lower House's amendments in 14 instances, especially regarding presence of the two UN experts as temporary members in the ECC and formation of the selection committee. The house approved the law by agreeing with seven amendments of the Lower House and 14 amendments proposed by the various committees of the MJ. Concluding the session of Tuesday, 20 November, the Speaker of the House Mr. Fazal Hadi Muslimyar introduced five members for the Joint Committee for the reconciliation of the bill with the WJ and called on the Lower House to introduce their members for further discussion of the controversial amendments.

According to the legislators, the Joint Committee will face three major controversial amendments: (1) the separation of the Complaint Commission from the IEC as independent, permanent commission; (2) article 8 on the formation of a selection committee for the IEC and Article 22 on the formation of a selection committee for the ECC; and (3) article 33 on temporary membership of the UN experts in the ECC.

The Upper House determined that the Election Complaints Commission (ECC) should be a permanent and independent commission. It should be separated from the IEC as it is also a decision maker and should not work under umbrella of the IEC. As noted by Mr. Ali Akbar Jamshedi (Daikundi), "Upcoming elections need [somewhere] to register complaints about the candidates and voters....We need a permanent, independent election complaints commission. If the ECC is not independent then there is no need to establish such a commission."

Senators' rejected Article 8's proposed formation of a selection committee to chose 27 people from representatives of the National Assembly, the Supreme Court, Political Parties, Civil Society Representatives and the intellectual of the country to be submitted to the president to choose among them seven members of IEC, reasoning that this was an 'intervention' into the president's powers. Similarly, the MJ also rejected the proposed amendments to Article 22 creating a selection committee to choose among the intellectuals of the country 15 people whose names would be sent to the president from which to choose the members for the ECC. The original version of the law (as presented by Government) did not propose or discuss a selection committee to determine ECC membership.

The government and Senate are now in clear agreement in rejecting the presence of UN experts as temporary members. The President last week in a meeting with MPs has warned even if the Senate approves the presence of foreign experts he will not endorse it. Although some Senators still called for the appointment of two UN experts on the ECC to assure the transparency of the election, a majority disagreed.

¹ The law was changed in the Wolesi Jirga to read Law on the Structure, Duties and Jurisdiction of the Election Commission & Independent Election Complaint Commission and the MJ accepted this change during the November 13th plenary session; however they still refer the bill by the original title.

The chairman of the Legislative Affairs Commission, Mr. Hafez Abdul Qayoum Nooristani (Nooristan), explained, “Including foreigners as members in the ECC is against Afghanistan’s national interests and sovereignty, and so, therefore, the Legislative Committee of MJ decided to omit the article or proposal of WJ regarding the temporary membership of two foreigners in ECC.” (Omission in this sense means that the Legislative Committee did not discuss Article 33 as they considered it against national sovereignty.) There were no reactions to the explanation of Mr. Nooristani and finally the article 33 was approved with rejection of foreigners’ experts as members of ECC. The Senate also reduced the proposed number of female members, approving the appointment of only one female member among the five members of ECC.

The two houses have now enacted two conflicting versions of the Electoral Commissions Law. Therefore, the constitution provides that the two houses appoint representatives from each house to serve on a Joint Committee to negotiate their differences. During the Plenary, the Upper House nominated 5 members and requested that the Lower House promptly do the same.

Under normal circumstances, the Joint Committee would seek to resolve the differences between the two bills. If an agreement is reached, the decision of the Joint Committee is sent to the President for endorsement through the Ministry of State for Parliamentary Affairs. If the Joint Committee does not resolve the differences, under Article 100 of the Constitution, the legislation is considered rejected by the Parliament. In this situation, the Wolesi Jirga has the option of passing the bill with a two-thirds majority in its next session. If the bill is passed with the necessary majority, it is not resubmitted to the Meshrano Jirga but is instead immediately sent to the President for endorsement².

There is no time limit for Joint Committee deliberations, though, presumably failure to reach a consensus prior to the end of the current session would trigger the authority of the Wolesi Jirga to treat the failure of the Joint Commission as a rejection and seek to pass the bill as proposed by it by a two-thirds majority. However, due to the potential restrictions imposed by Article 109 of the Constitution, which precludes consideration of election laws in the last year of the term, many Members have concluded that failure to promptly resolve the dispute by not later than the first few weeks following the Winter Recess will result in the National Assembly not being able to enact a new Electoral Commission Law.

Disagreements rage over the Election Commission Law and the application of Constitutional Article 109

As the Meshrano Jirga continued its review of the *Structure, Duties and Jurisdiction of the Election Commission* (Election Commission Law), questions have emerged about the application of Article 109 of the constitution. As noted in last week’s newsletter, a number of Senators have expressed concern that Article 109 will soon preclude further action by the NA on the Election Commission Law. They suggested that failure to enact the law before the

² Article 100 of the Constitution.

end of December 2012 could effectively prevent any further NA action on the law. Others have questioned this analysis both in terms of the applicability of Article 109 and the timing in which it will go into 'effect.'

Article 109 of the Constitution states that "proposals for amendments of the elections law cannot be included in the working agenda of the assembly during the last year of the legislative period." Ostensibly, a simple reading of the provision suggests that it was drafted so as to avoid parliament changing or altering the electoral law during the heat of an election to benefit the reelection of its members. The provision is included in the Chapter on the National Assembly and specifically cites "the last year of the legislative period" suggesting that it is targeting the parliament in the last year before parliamentary elections. Therefore, as noted by some newsletter readers, the Article should not in fact come into effect until 2014, the year before the next expected parliamentary elections.

This interpretation, however, only considers the term of and elections for the Wolesi Jirga (WJ), which are indeed the next direct elections for parliamentarians. The Meshrano Jirga has a series of staggered legislative terms. Under the constitution, one third of the senators are members of the district councils and are elected by their respective councils to serve a three year term as Senator, one third of the senators are members of provincial councils and elected by their respective council to serve for a four year term as Senator, and the final third are appointed by the President for a five year term. The last provincial elections were held in 2009 and the senators from provincial councils commenced their terms in January 2010. Therefore, as argued by a number of senators in plenary debates, provincial council elections are constitutionally mandated in the later portion of 2013 or very early in 2014. The IEC has scheduled them to take place concurrently with the Presidential election on April 5, 2014. Under either interpretation, Article 109 would come into effect in early 2013 as that is the last year of the term for those members of the MJ.³ It appears that most members agree with this interpretation.

Last week's newsletter article further reported that a number of senators felt that the deadline for NA action was the end of 2012. This is not strictly correct, though on a practical level it may be true. First, with respect to the MJ, as noted by Speaker Muslimyar⁴ and above, the MJ will lose one third if its members on 20 February 2014. Therefore the last year of the term for the MJ would commence 21 February 2013. In that the MJ voted on 20 November to adopt a recess schedule that provides a Winter Recess between 5 January and 18 February, the ability to consider the law further would effectively end as of 5 January.

With respect to WJ, the legislative period or term runs from January 2011 through March 5, 2015. However, if the MJ fails to pass or reject the law prior 20 February, then questions arise as to whether the WJ can act in the absence of a final vote by the MJ. The Constitution provides that the WJ can override the rejection of a law by the MJ by a 2/3s vote. However,

³ If one were to take this argument further and say that it applies whenever there is any election affecting the NA, including district council elections, than the NA's window of opportunity to address an election law would be extraordinarily limited to fit within these multiple elections. That issue has not been raised in the current debates.

⁴ See also the first article "Wolesi Jirga Asks for Revision of the Date of Presidential and Provincial Elections"

what happens when the MJ does not enact or reject a law? This question came up during the debates over the controversial Presidential Electoral Decree in 2010 where the MJ felt it was bound by the limits of Article 109 and refused to consider a WJ proposed law amending the Presidential Decree. The WJ then debated whether or not it had the power to override the MJ and enact the law through a 2/3s vote. The dispute over the decree was ultimately settled through a political compromise with the president, so the legality of using the 2/3s override vote to enact a law not finally voted on and submitted to the WJ remains an open question.

One final question that has been raised about Article 109 is whether it even applies to the Election Commissions Law. Article 109 precludes consideration of “elections laws” during this last year of the term. (In Dari, the term appears to be translated as “electoral law.”) Some have suggested that the article only applies to a law labeled as the elections law and governing the condition of holding an election. Two identified elections laws are in fact in the works: a member’s bill currently being considered in a WJ commission and an elections law promised but not yet submitted by the Government. Most members appear to have rejected this interpretation. A general rule of constitutional interpretation is that the provisions of a constitution must be interpreted broadly because a constitution, as the fundamental law of the land, cannot be expected to specifically identify all possible contingencies. Therefore, since the Election Commissions Law relates to functions essential to carrying out the elections, however it is named, it must be considered as falling within the general class of laws indicated by the term “elections law.”

Local Government to National Government: Provincial Councils Have a Role in Oversight and Reforms

On Sunday November 18th the Heads of Provincial Councils from the thirty four provinces of Afghanistan met with Administration Board Members of Wolesi Jirga (WJ) to discuss the various problems faced by provincial councils. Council Heads spoke about the need for increased oversight authorities of the executive (i.e. Governor) to assume their rightful role in the reform and fight against corruption. While the Administration Board has met with the Heads of Provincial Councils in the past, meetings are infrequent and somewhat *ad hoc*. It was resolved at the end of this conclave to plan for regular monthly meetings.

Parliament does not underestimate the role of provincial councils or this representative body. They played a key role in bringing back the coalition group of MPs who boycotted attending Parliament for 45 days in protest over the decision of the IEC to expel nine members of the House in connection with allegations of fraud in the Parliamentary elections of 2010. Mr. Sharifullah Kamawal, the Chair of Rights, Privileges, and Immunity Commission of Wolesi Jirga, thanked the provincial council’s members for resolving the parliamentary elections disputes between reformists and the coalitionists saying, “This was a historical great work of the Provincial councils.”

On behalf of the provincial councils (PCs), Mr. Doctor Abdul Wali, the head of Logar PC, raised the problems the PCs are facing in regard to the ambiguity of their roles in oversight, lawmaking, and the reform process. He asked that the WJ consult with the provincial

councils to strengthen the draft Provincial Council's Law and then work on getting it passed. Secondly, Mr. Wali said the provincial councils are not separate budgetary units; they get their budget from the IDLG with very little input into the initial budget setting process. Thirdly, the lack of immunity for provincial councilors has impacted their ability to work on reforms (for fear of losing their jobs). Lastly, Mr. Wali asked that Parliament (i.e. Members) "not to forget the provincial councils, when fighting for their own privileges" - the unspoken meaning being that PCs should be granted privileges as well.

Mr. Abdul Zaher Qadir, the First Deputy Speaker of the Wolesi Jirga, acknowledged that meeting with the PCs has been infrequently and generally only to discuss specific problems. He affirmed this commitment to the provincial councils and recommended meeting each month regardless of whether there are problems to be discussed or not. These meetings would serve as a way for the National Assembly to be more connected to the needs of provincial councils and in particular to learn about the "governor's duties in provinces [which we would then use to] praise or punish [their performance] based on the assessment of the provincial councils." Mr. Zaher opined that, like the National Assembly, PCs should oversee the executive as well. He informed the representative that, "I have heard that the Provincial Councils Law is pending in the Council of Ministers. One of the articles has been amended to read 'Governors of the provinces are not responsible to respond to the provincial councils'." He insisted that this amendment is not acceptable for Parliament; they will support the provincial councils' position that governors should be responsible to the provincial councils.

Mr. Zaher appreciated Mr. Wali's remarks on extending immunity to provincial council members. Reforms must happen at all levels of government. With the election coming, this is an important concern. He requested the PCs to bring to the House their written proposal on the immunity of the provincial councils members so that the WJ make take necessary steps. He also called on the PCs to be a 'strong pillar of government.' Anticipating further proposed election dates controversy, Mr. Zaher said, "Afghanistan needs three strong pillars. People should think for the interests of their country. The provincial councils must be ready to play this role." He reiterated that while the date of presidential elections has been proclaimed, many politicians, critics, and CSOs have voiced their concerns and speculated as to the Government's real plan. Mr. Zaher feared that the "Government will hold a Loya Jirga to decide [the date issue] and this is unconstitutional. I call on all of you to stand against this illegal act of government. I hope that you don't stand with the Government when the time comes." Only a close relationship and coordination between the parliament and the provincial councils can ensure the welfare of the people beyond 2014, the First Deputy Speaker asserted.

In part to encourage a more direct link between the PCs and the government, some Members of the PCs reiterated their previous suggestions to promote the 'Solidarity Directorate' to a Deputy Ministerial position with the provincial councils working directly under it. This idea does not have much traction with the current Solidarity Directorate but, these members argued, perhaps Parliament should also consider this option.

Members of the Admin Board and those from the provincial councils concluded that the meeting was useful and they had high expectations for continued discussions and collaboration. Mr. Qadir assigned the secretariat of WJ and the IDLG to schedule regular meetings between head of provincial councils and Admin board on a monthly basis

Senators' Reactions to the Release of Nine Taliban

On Sunday 18 November, Senators in the Meshrano Jirga (MJ) reacted to the released of nine Taliban prisoners formerly held in Pakistani jails. At the request of the High Peace Council of Afghanistan (HPC), Pakistan released the nine prisoners. The Senators do not believe that the freed Taliban commanders will promote the 'drive for peace' in Afghanistan. Senators went so far as to say that the Taliban has not showed any 'green lights' to the reconciliation process and in the past have responded to the government's peace appeals with suicide attacks, bombings, and killing government employees. "The ongoing peace process is complicated...So far no one from the Taliban has showed preparations for negotiations and has not announced their conditions [for peace]," complained MJ Deputy Speaker Mr. Mohammad Alam Izedyar.

Last week the Head of High Council of Peace, Mr. Salahuddin Rabbani, along with a number of his team members went to Pakistan to negotiate the release of Taliban prisoners so that they might join the peace process (and so that they might also influence other Taliban and Taliban supporters in Afghanistan). Following the HPC's visit, the media reported the release of nine Taliban officials. According to TOLO News, the nine men released include only one military commander, Anuarulhaq Mujahed. The rest are all former political office holders. This could be interpreted as a sign that their liberation is aimed at encouraging political negotiations. The eight political members understood to have been released are: the former Taliban justice minister Mullah Nooruddin Toorabi; Taliban leader Mullah Omar's former secretary, Mullah Jahangirwal; former deputy minister of communications Allahdat Tayab; former Baghlan governor Abdul Salaam; former Kunduz governor Maulawi Mohammad; and two former government officials. Haji Kotob and Maulawi Matiullah.⁵

The Senators doubt the sincerity of the HPC visit to Pakistan. Mrs. Balqees Roshan (Farah) was very critical of the visit calling it "useless." In her opinion the HPC delegation to Pakistan was more of a mission of appeasement than actual work and, in her words, it served only "to make the government of Pakistan happy [which is the government] who is at the same time killing innocent Afghans daily."

Senators also questioned the transparency of the negotiations. "The High Peace Council officials went to Pakistan to discuss the fate of Taliban prisoners, but who are these prisoners?" asked Senator Arifullah Pashtoon (Khost). He also questioned whether their release will have a net positive impact on the peace process in Afghanistan. Another Senator, Mr. Ghulam Mahiuddin Munsif (Kapeesa), added that when the officials of the High Peace Council negotiated the release of the Taliban prisoners in Pakistan, they neglected to

⁵ <http://www.tolonews.com/en/afghanistan/8360-nine-former-taliban-officials-released-in-pakistan->

negotiate with the prisoners themselves. “The head of HPC stated [that the] freed Taliban prisoners can live where they want and [the prisoners have not given any] guarantee to the government that they will join peace process after they were released.” This last point greatly concerns Senator Munsif. He formally requested that the Head of HPC again appear before the House to update the Senators on what exactly was negotiated.

Given Afghanistan’s past experiences with freeing Taliban prisoners, Senators do not think this act alone will guarantee a cessation of violence or a willingness to engage in peace talks with the government. Senators cited past examples of freeing Taliban prisoners and rather than a peaceful response, the Taliban responded with suicide attacks and bombings. In fact Senators discussed this in relation to a roadside bomb this week in Farah province which left 15 civilian dead. (A provincial government spokesman blamed the Taliban for planting the roadside bomb.⁶) Mrs. Najiba Hussaini (Appointee) called the HPC visit and release of Taliban prisoners a “good step;” however, her concerns are whether the Taliban will now cooperate with the government and join the peace process. She is unsure whether the act of releasing Taliban prisoners in Pakistan has bought the government any “influence with the Taliban.” She counseled that “the first step towards peace is to stop the war.” Supporting her sentiments Mr. Abdul Hanan Haqwayoun (Paktia) remarked that, “People don’t trust the peace talks.” In his opinion the Taliban, the United States and the Afghan government “do not want real peace. The first condition for peace is a ceasefire. [To date] nobody wants a ceasefire; all of them want bloodshed in the country.” He even went so far as to include the National Assembly as a culpable partner saying they “didn’t work for the peace.”

At this time, it is uncertain what will become of the newly released prisoners and whether they will join the peace talks and bring other Taliban fighters with them.

1392 Draft National Budget Raising Some Questions in the Meshrano Jirga

(Editor’s Note: APAP Newsletter covered the introduction of the 1392 Draft Budget in the November 9th edition. Please refer to our [archives](#) for more detail about the contents of the 1392 Draft)

This past week, Commissions in the Meshrano Jirga (MJ) reviewed the 1392 Draft National Budget. Judging by the quality of interest and debate Senators have been engaged in, APAP believes it is fair to say that the MJ is taking their responsibility as ‘advisors’ very seriously so that they might submit substantive and development-driven suggestions to the Wolesi Jirga when they officially send the budget to the Lower House. The parliamentary week concluded with an extra-ordinary session of the MJ devoted entirely to the 1392 Budget. The Ministers of Finance, Public Works and Agriculture were called to appear and answer questions in response to Senators’ approbations to various budget allocations. When only the Finance Minister appeared, Speaker of the Meshrano Jirga Mr. Muslimyar warned the government that “the House will not approve the 1392 budget until these [absent] Ministers appear [before the House] and provide answers to Senators’ questions.” It is expected all three Ministers will appear at next week’s plenary session to finish answering Senator’s questions.

⁶ <http://www.dvidshub.net/news/97985/isaf-condemns-roadside-bombing-farah#ixzz2Cq98w3dx>

APAP regularly partners with the National Economic and Budget Commission of the MJ to provide fiscal analysis on budgets (both National and then later Supplementary) and expenditures (Qatia reviews). This year, the demand for APAP's support has increased three-fold. Commissions in the MJ have expressed their strong commitment to understanding the 1392 Draft National Budget with an emphasis on allocations by sector (i.e. security, health, education, etc.) and the provinces. APAP's analysis of the draft budget includes macroeconomic issues, sectoral priorities, and comparison with the previous year's budget. The analysis seeks to simplify the complex budget document and render it easier for Members to understand the different aspects of the national budget.

In response to commission requests, APAP met with several commissions to presented its analysis of the draft budget and provided relevant sector analysis for each commission. Senator were particularly interested in scrutinizing the following areas: the Development budget; the Operating budget; current budget deficit; Afghanistan's economy; foreign aid funding; economic growth over the last ten years; and estimates on domestic revenues and sources. Debate in MJ Commission concentrated on sources of development loans and projects funded through this source, careful study of the increase in the operating budget, increase in Tashkeel (number of government employees), and the reasons for the low execution of 1391 development budget. As a result, Senators were awash with questions which they posed to the Minister of Finance during the extra ordinary session. The Minister also commented on the Senator's grasp of the budget saying, *"I am really glad that Senators have studied the budget draft very well."*

The chairman of National Economy and Budget Commission of Meshrano Jirga, Mr. Mowlawei Abdul Wahab Irfan told APAP, "We are concerned about the seeming lack of provincial equity in the budget for development projects. The budget is not equally distributed among the provinces." Mr. Irfan then gave the example of Paktika (designated as a Least Developed Province) and Bamyan provinces. In Paktika province, approximately US \$24 million has been allocated from core development budget to the province, while external budget for this province is zero. The allocation to Bamyan province is approximately US \$81 million from the core development budget, but the province also has an allocation of approximately US\$ 156 million from the external budget bringing the *total development budget for Bamyan province to approximately US \$238 million!* Mr. Irfan said that Senators are very concerned with these types of budget inequities especially for the Least Developed Provinces.

Why such spirited debating and scrutiny in the House that is not constitutionally able to change anything in the budget draft? Mr. Irfan sees the role of the MJ as truly the House of Elders which, drawing on its collective wisdom, carefully considers the budget, calls Ministers for questions to further clarify allocations, revenue sources and expenditures, raises the concerns of their constituencies and provinces all of which culminates with the House's budget commission compiling the comments and suggestions to send it to the Wolesi Jirga (WJ) for their consideration.

Legislative Status

14-21 November 2012

Upper House MJ:

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

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, authority 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 Prosecutors 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 individuals and the public for the purpose of rule of law and insuring 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. The law includes eight chapter and 42 articles.

Status: The law was introduced on 6 October 2012 to the National Assembly; WJ approved the law on 13th October 2012, now the law is discussion in MJ Legislative Commission

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 7th November 2012. The Convention was received by MJ plenary session on 13th November and sent to the International Affairs Commission. The Convention has been included in the Commission's 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 convention includes a preamble, 30 articles and 6 annexes.

Status: The Convention was approved by the WJ plenary session on 7th November 2012. The Convention was received by MJ plenary session on 13th November and sent to the International Affairs Commission. The Convention has been included in the Commission's 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 LLDCs, 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 Convention was approved by the WJ plenary session on 7th November 2012. The Convention was received by MJ plenary session on 13th November and referred to the International Affairs Commission. The Agreement has been included in the Commission's 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 Religious, Cultural Affairs, Education and Higher Education Commission debated and reviewed 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 Higher Education Law is still under discussion in the WJ commission on Education and Higher Education. The Commission received proposed amendments from the representatives of the Private Higher Education Institutions in its session on Sunday 18th November, therefore the Commission decided to debate the proposed amendments by the representatives of the Private Higher Education Institutions on Sunday 25th November.

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 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 type of violence. Also, this law set the preventive measures and explained the rights of victims, as well as identifying the implementing organizations and determined their duties and responsibilities.

Status: The WJ Women’s Affairs Commission finalized the law in the Commission, all 18 Commissions of the WJ their views to the Women’s Affairs Commission; the Commission will have a Seminar on the law on December 9 2012. The commission invited all parties to join the seminar and defend their arguments.

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 is under discussion in WJ Women's Affairs Commission, only 4 Commissions of the WJ have sent their views back to the Women's Affairs Commission.

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: the Commission included the Law in the agenda for discussion, but no discussion held during the last week.

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

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 ratified by WJ on November 17, 2012

Basel Convention on the Control of the Transboundary Movements of the Hazardous Wastes and their Disposal

The is convention 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. This Convention has 29 articles and 8 annexes.

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 ratified by WJ on November 17, 2012

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

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. The protocol has 20 articles and 14 annexes.

Status: The protocol was ratified by WJ on November 17, 2012

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 WJ on November 7, 2012

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 on 6 November 2012. The most debated articles were Articles 5 and 6. Article 5 outlines the establishment of the National Statistical Council (NSC) to ensure better procedures for statistical activities in the country and to advise the Central Statistics Office. The Council shall be composed of ten members: The paragraph 2 of this article says "Authorized representatives of the related ministries and state administrations, will be members of this council." The WJ amended the paragraph 2 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, and Head of ACCI, as members of the Council.

Article 6 discusses the duties and authorities of the NSC. The WJ added two paragraphs to clarify the procedures of deposition of the Director of the Central Statistics Office: "the NSC can propose for deposit of the Director if he/she found weak and misuses his/her management office in according to the provisions of law. The NSC can refer the Director of the CSO for prosecution if he/she hid the truth or release spurious statistic data. The MJ approved the original (government) text not WJ Amendments.

Status: WJ approved the proposed amendments to the Law on 22 September 2012. On 6 November 2012 13 articles were amended with the MJ Plenary taking the following positions:

- Supported the WJ revised amendments to Article 5.

- Supported the revisions to Article 7 made by the Economic Commission of MJ
- Supported original government text of articles 3, 6, 7,8,9,10,11, 14,16, 18 and 20, rejecting changes made by the WJ.

The law is currently pending for the joint committee discussion between the MJ and WJ.

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 6 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 thought seven articles only, the discussion ended without agreement on Article 7. The MJ was supporting the government proposal which gives the 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 law under discussion in Joint commission

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

The Law on Personal Affairs of Officers and Sergeants of the Afghan National Police has 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 Law was presented to the WJ on 25 October 2010, and after a long discussion over the bill, conducting three Joint Commissions of WJ. This law was finally approved by WJ on 12 May 2012. This law was then received by MJ on 15 May 2012 and was approved by MJ on 30 July 2012. The MJ rejected amendments made by the WJ and the law was referred to a Joint Commission.

The most debated article of this law was clause 3 of the Article 14, 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. 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 justified their change to the Article claiming that receiving a promotion to the higher ranks is considered based on the years of hard services done, but if due to any structural/organizational limitations an officer or sergeant is assigned to a lower position than his/her rank then they are not benefiting from the privileges of the actual rank he/she has; therefore, promotions to the higher ranks will be meaningless. MJ did not agree the WJ amendments and approved the original article of the Law.

Status: The Law was received by the WJ on 25th October 2010, and was approved by WJ on 12 May 2012. The MJ received the law on 15 May 2012 and was approved by MJ on 30 July 2012. Due to the disagreement of the MJ with WJ in some articles the law was referred to a Joint Commission. The Joint Commission meeting was schedule for November 19th however, due to the absence of some MPs from WJ who were assigned to the Joint Committee, the meeting was postponed.

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 currently pending for the joint committee discussion between the MJ and WJ.

Anti-Hoarding Law

This Law is regulated based on the provisions of Article 10 of the Afghanistan Constitution, for the purpose of preventing of hoarding the essential commodities, necessities of life and livelihood and fighting against hunger, increases in prices and starvation situations. "The Law on Anti-Hoarding was drafted in 1965 than it was reviewed and amended by the Ministry of Industry and Trade in 2010 and sent it to the National Assembly for approval. WJ officially received the Law on 17 September 2012 and approved on 22 September 2012.

MJ approved the Law on 16 October 2012. The MJ rejected amendments made by the WJ and the law was referred to a Joint Commission.

This law has 4 chapters and 12 articles. Chapter 1) general provisions; chapter 2) the establishing of committees for the better implementation of the provisions set forth in this law; chapter 3) obligations of persons who are engaged in trading and supplying the essential commodities as a wholesaler or retailer; chapter 4) miscellaneous provisions.

The most controversial article of this bill was Clause 1 of Article 2 which discusses terminologies used in this law such as raw materials. The original text of Clause 1 of Article 2 states “raw materials: raw materials of livelihood that necessary for the people daily use are comprised of the wheat, flour, rice, different kind of alimentary oils and combustible materials gas and oil.” Clause 1 of Article 2 was amended by the WJ as follow: “raw materials: raw materials of livelihood that necessary for the people daily use are comprised of the wheat, flour, rice, sugar different kind of alimentary oils, medicines, flammable materials gas and oil and wood and coal”. MJ disagreed with the WJ amendments and approved the original text of the bill.

Status of the law: WJ officially received the Law on 17 September 2012 and approved on 22 September 2012. MJ approved the Law on 16 October 2012. The law is currently pending for the Joint Commission discussion between the MJ and WJ.

Law on National Standards

The Law was drafted in February 2007, and then presented to the WJ on 25 October 2010, and after long discussion on the bill, finally the bill was approved on 25 July 2012. This law was received by the MJ on 31 July 2012 and was approved the MJ on 2S September 2012. Most of the amendments brought to this bill by the WJ were rejected by the MJ; therefore, the law will be debated in a Joint Committee between the two houses.

The law has 5 chapters and 26 articles based on Article 75 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.

The most controversial article of this bill was Article 2 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 reasoned

that for preparation of standards the law on procurement is applied. The MJ also said 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 was approved by WJ on July 25, 2012. This law was received by the MJ on July 31, 2012 and was approved the MJ on September 2, 2012. The law is currently pending the Joint Committee Discussion between the MJ and WJ.

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: On 20 November 2012 the MJ plenary session accepted some of WJ proposed amendments, rejected others. Therefore the law was referred to the Joint commission. The House rejected proposed addition as article 8 to the law by WJ which covers identifying of the IEC members. The articles states: Paragraph 1, "27 eligible personalities will be introduced to the selection committee as candidates from following institutions: 12 personalities from the government universities, 12 personalities from non-government higher education institutes, 3 persons from civil society including woman." Paragraph2, "The selection committee will introduce 14 personalities amongst 27 to the president considering the high quality and national partnership." Paragraph 4: "The president will appoint 9 persons including 3 women as members of the IEC out of 14 personalities for the period of 6 years." Paragraph 5: "the selection committee is composed of the following persons, WJ speaker, MJ speaker, Chief Justice, Head of the Commission on Oversight of the implementation of the constitution, Head of Human Rights Commission, Leadership of political parties which has at least six members in the parliament and a representative of civil society."

The House also rejected proposed amendments of WJ & MJ in article 22 of the law which covers formation of selection committee to choose 15 eligible personalities and send that list to to the president so that he might choose members for the ECC. The MJ added a paragraph to the article about the number of ECC members. The House proposed that the ECC should have 5 members including woman. The House also omitted article 33 of the ECC law which covers temporary membership of two foreigners in ECC. Article 33 states: "Considering the current situation of the country, The United Nations can introduce two persons as temporary members of the ECC." The House termed presence of the foreigners as members of the ECC against national sovereignty.

The Upper House 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.