

Legislative Newsletter

26 October 2012, Vol.8, No. 8

NEWS:

Legislators Discuss the Issue of Foreigners on the ECC

In a statement made last Thursday, the 18th of October, President Hamid Karzai called the presence of foreign advisers in the Election Complaint Commission (ECC) a violation of national sovereignty. During the October 21st plenary session of the Meshrano Jirga (MJ), the Senators took up this issue and discussed foreign presence on the ECC vis-à-vis Afghanistan's national interest and sovereignty. Senators vigorously argued the merits and hazards of foreigners on the ECC and while no definitive position was reached, the First Deputy Speaker of the house, Mr. Mohammad Alam Izedyar (Panjshir) concluded the session by stating the senators will express their views on the structure of the Election Complaint Commission upon their return from the Eid holidays.

A brief to recap the developments of this issue. The draft of the Independent Election Commission Structure law was approved on Monday, September 24, 2012 by the Wolesi Jirga and recommended that the ECC commissioners should be increased from five to seven members with a composition of five national and two international members. This draft structure was sent to the Senate for final approval; however, senators have thus far had general discussions on the law in the plenary. According to the First Deputy Speaker of the house, the draft has not formally been placed before the Senate (it is still in the MJ Legislative Committee) and therefore it has not been placed on the agenda for plenary discussion. All recent discussion in the MJ has been in response to the President's statements and since the MJ failed to reach quorum in the last plenary session of 21st of October, the statements made do not reflect a decision made by the upper house. "When the draft is placed before the Senate for discussion and approval, then the MJ will declare its stance and decision" the First Deputy Speaker pronounced.

During the MJ plenary discussion, Members argued for and against foreign presence on the Electoral Complaints Commission. Those opposed, disagreed on the provisions of the draft law, which included the appointment of two international members as ECC commissioners. Mr. Sher Mohammad Akhondzada (Appointee) argued that appointing international representatives will be unconstitutional and will create problems like those in which the foreigners "defamed the last parliamentary and presidential elections." Mr. Akhondzada also claimed public opinion was against foreigners [as members in the Election Complaints Commission]. Mr. Mohammad Hassan Hotak (Appointee) seconded Mr. Akhondzada remarks and urged senators to consider "national interests" when debating and deciding on this issue.

Those members in support of the presence of foreign members in the ECC argued along transparency, accountability and authenticity lines. Mr. Mohammad Daud Aassas (Zabul) outlined the mandate of the Commission stating that it is tasked to address breaches, complaints and objections resulting from elections. He further posited that political parties will not be convinced of the transparency of the vote, without a presence of independent foreign members. Political parties, by and large, feel that the presence of foreign members in the ECC ensures electoral transparency and lend validation to the election process and results. "If foreigners are excluded,

people won't trust the current administration and will not participate in the election" he said. The ECC (and implicitly the foreign members) will provide a mechanism to limit the government's (i.e. the Executive) influence in the electoral bodies. Mr. Hedayatullah Rehayee (Bamyan) summarized this position in his remarks stating, "the presence of foreigners in the Election Complaint Commission is critically important to prevent fraud and other irregularities from occurring in coming elections."

Should the MJ fail to resolve the disagreement over the ECC structure and not approve the draft law, it will be referred back to the Wolesi Jirga. The WJ will then discuss the draft law in plenary and a final vote will be taken. The Executive's spokesperson has announced early to the media that the President would not endorse the legislation if it contains a designation for foreign members in the Electoral Complaint Commission.

The plenary session ended with First Deputy Speaker of the House, Mr. Mohammad Alam Izedyar (Panjshir) stating that the senators will formally consider the ECC structure and other aspects of the draft law after the Eid holidays. At that time they will render their views on the structure of the election commission.

Meshrano Jirga React to alleged Ambassador Grossman Statement on Durand Line

At the plenary session of 23 October 2012, members of the Meshrano Jirga (Upper House) vehemently spoke out against perceived foreign interference regarding an on-going boundary dispute with Pakistan. A controversial statement was reportedly made by the United States Special Representative for Afghanistan and Pakistan, Mr. Marc Grossman during a recent visit to Pakistan, in which he allegedly recognized the Durand Line as the official international border between the two countries. This statement was later reportedly confirmed by the US Ambassador to Afghanistan Mr. James Cunningham, who reiterated that this was "nothing new, Washington like many other nations has already recognized the Durand Line as the [border between Afghanistan and Pakistan]. This is not a new issue.¹" The majority of the House's members reasserted the Government's position that the Durand Line is a matter of historic importance for the Afghan people and that in denouncing Special Representative Grossman's statement they reiterated that foreign nations should not intervene in foreign policy issues in Afghanistan.

This week the United States Special Representative Ambassador Marc Grossman and the State Department's spokeswoman Victoria Nuland, reportedly confirmed at a media event that the Durand Line is the internationally recognized border that separates Pakistan and Afghanistan. Shortly thereafter, the Afghan government released a short statement rejecting the Ambassador's remarks by calling it "irrelevant" and reiterating that no foreign country can make a claim on the legality of the Durand Line as an official boundary. Supporting the Government's statement, Senator Mr. Daoud Assas (Zabul) said in the Meshrano Jirga's plenary discussion, "I reject Mr. Grossman's statement on Durand Line. He doesn't have the authority to determine Afghanistan's borders. The Afghan people will decide the Durand Line issue and whether they recognize the Durand Line as border with Pakistan. This statement made by Mr. Grossman is a clear interference in Afghanistan's foreign policy affairs." Agreeing with his colleagues sentiments, Mr. Hafez Abdul Qayoum (Nuristan) asserted, "No one has the right to intervene between two countries in disputed areas. America is not a judge to issue verdicts to solve the Durand line issue." He continued by urging the Afghan government to find a solution for Durand Line claiming, "We are fed-up with our neighbors and the government should try to come to a harmonious solution with them."

¹<http://www.khaama.com/us-ambassador-confirm-grossmans-remarks-on-durand-line-835/>

Point in fact, the majority of senators present at plenary, who denounced the alleged remarks by Mr. Grossman, viewed them as an unlawful intervention or a “clear interference” in Afghanistan’s foreign policy affairs. Senators unequivocally stated that the right to determine the fate of Durand Line is the province of the Afghan nation due to the Line’s political and historical significance to the Afghan people. Ms. Najiba Hussaini (Appointee) called Ambassador Grossman’s statement “his own views” rather than those shared by the international community. She added that he has “no right to impose his views on Afghan nation...the Durand Line issue will be solved when the position of Afghan government is firm and only then dialogues should be under UN supervision.”

The lone voice at plenary that did not outright condemn the statements on the Durand Line made by Special Representative Grossman was that of the Senator from Bamyan, Mr. Hedayatullah Rehayee. In his opinion, this was not an instance of US interference in Afghanistan, but rather a “constructive draft to solve the Durand Line issue.” He said he believed, “the Afghan government should recognize the Durand Line as the formal border with Pakistan, so that once this dispute is settled the border region will be safe from bombs and suicide attacks.” He reiterating in his concluding remarks to the Members that Special Representative Grossman’s “draft will help Afghanistan.”

The Senators rebutted Mr. Rehayee’s remarks, reasoning that even if Afghanistan recognizes the Durand Line as the international border, Pakistan will still continue to interfere in Afghanistan through cross border skirmishes and attacks. Mr. Ali Akbar Jamshedi (Daikundi) proposed to his colleagues that Parliament should hold a referendum on the Duran Line, so that the government will have a clear and definitive solution for the border line issue. “Should government try to circumvent Parliament, then a nation-wide referendum on this issue needs to be held,” Mr. Jamshedi advised. He also echoed Ms. Najiba Hussaini in suggesting the formation of a joint Commission with representatives from Pakistan and Afghanistan and under UN supervision to discuss the Durand Line in order to find a mutually acceptable solution to the issue.

At the end of plenary, senators called for the Meshrano Jirga (MJ) to issue a statement of condemnation regarding Special Representative Grossman’s statement. Concluding the session, Mr. Izedyar reiterated the Senators position that the solution to the border issue needs to be found internally and not subject to outside interference. “The Durand Line is the result of an imperialist policy in the region. Pakistan is interfering because of the ambiguity and dispute over interpretation of the Durand Line as the national border.” He further emphasized that only through the will of the people and in convening a Loya Jirga (grand assembly) and Parliament will a decision on the Durand Line issue be made. Without such process the “issue will not be solved.”

Legislative Status

16-30 October 2012

Upper House MJ:

▪ **Agreement on Cooperation & Friendship between the Islamic Republic of Afghanistan & France**

The cooperation and friendship agreement between the Islamic Republic of Afghanistan and France was signed on January 27th 2012. The agreement was signed based on Article 64 of the constitution, clause 17 which states "The President shall have the authoritiesto Issue credential letter for conclusion of international treaties in accordance with the provisions of the law." The cooperation and friendship agreement includes 13 articles and one preface. This agreement once finalized will be in effect for twenty years. Based on the signed agreement, France will continue its support to Afghanistan in the areas such as security, agriculture, rural development, health, education, higher education, culture, archeology, good governance, infrastructure and industry.

Status: under discussion in MJ commissions

▪ **Agreement on Bilateral Cooperation between the Islamic Republic of Afghanistan and Government of the Federal Republic of Germany**

The Bilateral Cooperation Agreement between the Islamic Republic of Afghanistan and Federal Germany was signed on 16th May 2012 by President Hamid Karzai and German Prime Minister Angela Merkel in Berlin. The agreement is signed based on Article 64 clause 17 which says "The President shall have the authorities to Issue credential letter for conclusion of international treaties in accordance with the provisions of the law". The agreement includes 9 articles and one preface. Based on the signed agreement Germany will continue its support to Afghanistan in the areas such as political, security, development cooperation, civil construction, education cooperation, academic and cultural cooperation, economic cooperation, civil aviation cooperation, foundation cooperation & Afghan-German intergovernmental working group on cooperation. Article 1 of the agreement states "The Contracting Parties shall continue their political dialogue on the basis of the conclusions of the International Afghanistan Conference in Bonn held on 5 December 2011. The political dialogue shall particularly focus on the areas of bilateral relations, regional and international issues, good governance, and human rights".

Status: under discussion in MJ commissions

▪ **Kyoto Protocol,**

The Protocol was initially adopted on 11 December 1997 in Kyoto, Japan, and entered into force on 16 February 2005. As of September 2011, 191 states have signed and ratified the protocol. Afghanistan will be added to the list of ratified countries after is first ratified by the Afghanistan Parliament. WJ ratified the Protocol on 3rd October 2012; the protocol includes a preamble and 27 articles. The objective of the Kyoto protocol is to prevent the industrialized countries to reduce their emissions of greenhouse gases.

Status: under discussion in MJ commissions

▪ **Agreement on Long Terms Cooperation between the Islamic Republic of Afghanistan & Australia.**

The Agreement was signed on 12th May 2012 during the Chicago conference. The agreement was signed based on Article 64 clause 17 which states "The President shall have the authorities to Issue credential letter for conclusion of international treaties in accordance with the provisions of the law." The aim of this agreement is that the Australian government will support Afghanistan after 2014 in the areas of security, development aid, business investment, cooperation on migration issues, and fostering networks for people to connect and help preserve Afghanistan's cultural heritage. Through the Partnership, Australia will also work with the Government of Afghanistan to build the capacity of government and national institutions to

promote and protect human rights.

Status: under discussion in MJ commission

▪ **Agreement of the Establishment of the International Anti-Corruption Academy as an International Organization**

The International Anti-Corruption Academy as an International Organization was established on 8th March 2011. The international anti-corruption academy was approved by WJ on 01 October 2012. The agreement has one preface and 21 articles. The Academy's goal is to become a center for excellence, training, cooperation and academic research in the area of anti-corruption. The Academy aims to contribute to the implementation of the United Nations Convention against Corruption (UNCAC) and other relevant regional and international legal instruments (OECD, Anti-Bribery Convention, African Union Convention on Preventing and Combating Corruption, Inter-American Convention against Corruption, and Group of States against Corruption GRECO). The international anti-corruption academy has 53 UN members' states and one international organization.

Status: under discussion in MJ commission

▪ **Amendment Financial and Public Expenditure law**

This law has been enacted in consideration of Article 75, paragraph 4 of the Constitution of Afghanistan for the Organization and Management of financial affairs, Protection of public assets, preparation of budget, and [management of] public Expenditure of the state administrations inside and outside Afghanistan. Government proposed amendment to the article 61 about talking about the Audit Powers of the Ministry of Finance. WJ approved the amendment on 24 September 2012.

Status: the MJ commissions approved the Government proposed amendment on 17 October and will present to the plenary session.

▪ **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 elections 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, Jurisdiction and Regulating the function and procedure of the Independent Election Commission. The law includes 4 chapters and 23 articles. The law passed by WJ plenary on 24 September 2012

Status: under discussion in MJ commission

▪ **Statistic Law**

This law is enacted for the purpose of organizing the 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.

Status: under discussion in MJ commission

▪ **SAARC Convention on Cooperation on Environment**

The Convention was signed by the Ministers of Foreign/External Affairs of Member States during the Sixteenth SAARC Summit held in Thimphu, Bhutan April 2010. The Convention provides for cooperation in the fields of environmental preservation and sustainable development through exchange of best practices and knowledge, capacity building and transfer of eco-friendly technology in a wide range of areas related to the environment. The implementation of the Convention has been entrusted to a Governing Council, comprising of the Environment Ministers of Member States. The Convention will enter into force after it has been ratified by all Member States. The WJ approved the Convention on 3 October 2012.

Status: under discussion in MJ commission

Lower House (WJ)

- **Law on Higher Education:** The first draft of the Law on Higher Education was initially prepared by the Ministry of Higher Education in 1989. The draft law was then discussed and scrutinized several times by the Ministry of Justice and finally the law after passing the legislation stages, based on the decree No 777, was approved and published in the Official Gazette No. 703, dated: 6/11/1989. The new draft of the Higher Education law was introduced in 2007 to the National Assembly for approval, but due to controversial terms in this law the WJ could not approve it. The government re-sent the law to the WJ in August 2012. 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”.

Status: under discussion in WJ Education commission.

- **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 then the law is pending with the National Assembly.

The Principle Objectives of this law are safeguarding religious and legal rights, protecting the human dignity of women, protecting the well-being of family, fighting against customs and traditional practices of violence against women which are contrary to the provisions of Islam, protecting the victims of violence, ensuring public awareness and education on violence against women, and prosecuting preparatory of violence against women. The law identifies all types of violence and sets the punishment for each types of violence, sets the preventive measures and explained the rights of the victim, and also identifies the implementing organizations and determination of their duties and responsibilities.

Status: under discussion in WJ commission

- **Social Organizations Law:** This law has been drafted in consideration of Article 35, of the Constitution that states “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 the procedures, functions, rights, obligations, and dissolution of Social Organizations.

Status: under discussion in WJ 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: 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 trials. As such 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: under discussion in WJ commission

- **Energy Charter Treaty:** ECT is an international agreement which establishes a multilateral framework for cross-border cooperation. 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: under discussion in WJ commission

Legislations under discussion in the WJ Standing Commission

- 1- Law on the Salary and Privilege of the High Ranking Government Officials
- 2- Law on Rights, Immunity & Privileges of the Members of the National Assembly

Legislations under discussion in the MJ Standing Commission

- 1- Law on the Structure, Duties and Jurisdiction of the Attorney General Office.