



Legislative Newsletter

11 January 2013, Vol.8, No. 16

NEWS:

Introduction of the Electoral Law to Wolesi Jirga

Minister of Parliamentary Affairs Mr. Mohammad Hamayoun Azizi and Minister of Justice Mr. Habibullah Ghaleb officially introduced the electoral law to Wolesi Jirga (WJ) on Saturday 29, December 2012. According to Mr. Azizi the draft of Electoral Law has 13 chapters and 70 articles and has been drafted based on the experiences of the last four elections. He requested members of Parliament to announce their position about fate of the draft of electoral law as soon as possible.

Minister of Justice Mr. Ghaleb briefed the house on the drafting process and approval of the Ministers Council. He noted that the political parties, CSOs, university lecturers, the Supreme Court, and the Attorney General's office were all invited to share their inputs with the ministry prior to presenting the draft Law to Ministers Council. He advised the MPs that the Election Complaint Commission (ECC) has been eliminated and instead a special court called the elections court is proposed. Citing historical reference Mr. Ghaleb said, "Such a court existed in 1344 and could respond to any elections problems."

Although WJ's position is not yet clear on this change, in September 2012 the WJ had approved existence of ECC with the composition of five national and two international members while debating the draft of the Independent Election Commission. This IEC structure draft was then sent to the Senate for final approval; however, the Upper House rejected. Talking to media after official introduction of the draft of electoral Law, the Legislative Commission head, Qazi Nazeer Ahmad Hanafi (Herat) said, "The panel would start technical discussions on the draft law that would be presented to MPs in the next couple of weeks."

The presidential and provincial council elections are slated for April 5, 2014. The presidential vote results will be announced on May 14 and the provincial council polls June 7. Over the past 10 years, presidential and parliamentary elections were held in compliance with legislative decrees, which placed restrictions neither on political parties' nominees nor on independent runners. In response to pressure by the WJ the election, commission and ministry of Justice drafted the presented draft. The Head of the Independent Election Commission, Mr. Fazal Ahmad Manavi, earlier announced that postponing approval of the draft electoral law would affect the date of election. He also has asked Civil Society Organizations and political parties to support implementation of the election process.

Before the official introduction of the draft electoral law to the WJ, the Legislative Affairs Commission had received an unofficial copy of the draft law and had started consultations with various experts, the Civil Society representative. Mr. Ajmal Balochzada presented a list of CSOs inputs on several aspects of the draft law. According to him, there are few issues that the MPs need consider.

“I will give you two examples that we think are important to be considered. First, ten seats have been allocated for nomads. We propose gender should be considered and that 5 of these 10 seats should be given to women nomads. Second, in article 67 the power of suspension and procrastination of the election in case of deterioration of security, natural disasters etc... has been given to a special commission which includes the president, speakers of both houses of the parliament, head of the Supreme Court and the head of Commission of Oversight on Implementation of the Constitution. We propose presence of political parties on this commission.” He further indicated articles 15, 18, 19, 21 and 22 have generated CSOs comments that have been provided to the related commissions.

Senators Calls for Arrest of Two Ex-officials on Charges of killing ANA Soldiers

Senators on 6th January 2013 raised the case of three ANA soldiers reportedly murdered by former police commander Kameen and former District Chief Ameer Gul of Baghlan Markazi of Baghlan province. According to the Senators, if the case is not followed up by the government officials and the murderers are not prosecuted, the moral of ANA soldiers all over the country will be affected.

Based on the Senators information, Amir Gull and Kameen are accused of killing three ANA special force soldiers in October 2012. When Ministry of Interior issued an arrest warrant for them, their armed people clashed with police forces resulting in four people killed and few other wounded. Mr. Zalmi Zabuli (Zabul) strongly criticized the government for not following this case. “Some people requested the president to reappoint them (Kameen and Ameer Gul) back. [These] murderers of ANA soldiers stayed at a government guesthouse in Kabul. I don’t know what the government is doing. I urge the government to follow the incident and refer this case to the court.”

Since last week, the families of the ANA soldiers have been demonstrating and asking for the prosecution of the murderers of their sons. They have submitted complaints to the Complaint Commission of the Meshrano Jirga and have warned that if the government does not arrest the accused commanders, the provincial security situation may deteriorate. Mr. Sher Mohammad Akhondzada (Appointee) termed the killing of the ANA soldiers by Kameen and Ameer Gul a sensitive issue and requested the House to invite the Minister of Defense and Minister of Interior to update the House on the issue. He added, “Killing ANA soldiers has depressed the morale of the soldiers.”

Some Senators believe that what should be a simple criminal case has, unfortunately, become political because the commanders are being supported by some high ranking officials. “It is pity that these culprits stayed at a government guesthouse. High ranking officials are involved to protect the culprits,” said Mr. Nazar Mohammad Faqeer (Appointee). Mr. Mohammad Amin Safi (Kunar) agreed. “No one has the right to defend culprits. This killing of ANA soldiers in Baghlan disappointed the ANA soldiers.”

Addressing the Speaker, Mr. Fazal Hadi Muslimyar, Mr. Ali Akbar Jamshedi (Baghlan) said, “Killing ANA soldiers provoked sensitiveness of the people. You should raise the issue with the president to refer the case to the office of Attorney General. ANA, ANP and NDS are not weak but behaviors of the government officials will weaken these organizations.”

Responding to the senator's statements, Mr. Muslimyar said, "I met dependents of the ANA soldiers who were killed in Baghlan. They want justice and the trial of the culprits. The killing of these ANA soldiers has raised questions inside the ANA. The MJ will support and defend the victims' families." "What was the sin of these soldiers?" he added and further assured the Senators that the House will invite the Minister of Interior, Minister of Defense, NDS officials, Independent Directorate of Local Governance (IDLG) officials and the Attorney General to update the House on these killings.

Legislative Status

26 December 2012 to 9 January 2013

Upper House MJ:

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

The law was introduced on 6th October 2012 to the National Assembly, the WJ approved on 13th October 2012, the law includes in eight chapter and 42 articles. This law has been enacted pursuant to the provision of paragraph (3) article one hundred and thirty four (134) of the Afghanistan constitution which says "The organization, jurisdiction as well as method of work of the Attorney's Office shall be regulated by law." This law is drafted for the purpose of regulating the affairs relating to the structure, duty, composition, authority and course of action of the Prosecutor Office. The principle objectives of this law are as follows: to strengthen legality and order in society; to defend the spiritual and corporeal rights, interests and freedom of individual and public for the purpose of rule of law and insuring 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 13th October 2012. The law is currently under discussion in MJ legislative affairs commission, during last week, upon the invitation of the commission, the representatives of the 1) Attorney General office, 2) Supreme Court, 3) Ministry of Interior Affairs, 4) Ministry of Justice and 5) representative of Commission of Oversight on Implementation of Constitution (ICOIC) attended the Legislative Affairs and Judicial and Justice Commission meeting. The real 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 organization, after passage almost more than one week waiting for ICOIC view to be sent to the commission, and due to the constitution limitation the MJ Commission decided on 09/01/2013 to finalized the Law and will be soon presented in the MJ plenary session.

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 Upper House (MJ) on January 8, 2013. The Upper House (MJ) brought amendments in some articles of the law; the law is referred to joint commission.

Law on Diplomatic & Consulate Staff

This Law was enacted pursuant to the provisions of Article 95 of the constitution to regulate affairs of diplomatic & consulate staff. The aim of this law is to recruit qualified, competent and expert diplomatic and consulate staff. This law has been enacted to realize foreign policy of the state and defend rights of the Afghan citizens abroad. The law has 5 chapters and 8 articles. The law was approved by WJ on July 30/2012; the MJ approved the law on September 24/2012. The law was approved by the joint commission and was sent to the president for endorsement. The president rejected the amendment of both houses and suggested both Houses for the review of paragraph 2 of the article 5 of the law. The National Assembly in its amendment of article 5 restricted recruitment in MoFA to faculty of Law, Journalism, Literature and Economic. The president suggested the criteria for the recruitment should be only Bachelor degree from any faculty. The WJ also added word of wives (Wives of diplomats and consulate staff) in the law. In paragraph 1 of article 5 which states, "Diplomatic & Consulate staff and their wives/Husbands should have only Afghan citizenship". The WJ discussed and approved suggestion of the government and amended paragraph 1 & 2 of article 5 of this law.

Status: The WJ sent the law on 8 January, 2013 to MJ. The law is under discussion in International Relation 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 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 law is under discussion in WJ commission

Electoral Law

This Law was enacted pursuant to the provisions of Article 61, 83, 84 & 86 of the constitution of Afghanistan. The electoral law is 13 chapters and 70 articles. The aim of this law is to regulate general, free, fair and transparent elections across the country. Chapter 1 of the electoral law covers goals and names of the election commission. Chapter 2 of the law covers constituencies, chapter 3 covers candidates and voters, chapter 4 covers presidential elections, chapter 5 covers elections of the Lower House (WJ), chapter 6 covers elections of the upper House (MJ), chapter 7 covers elections of provincial councils, chapter 8 covers district council elections, chapter 9 covers village councils elections, chapter 10 covers elections for municipalities and its members, chapter 11 covers conduct of the elections, chapter 12 covers elections violations & chapter 13 covers miscellaneous provisions.

Status: the law is under discussion in WJ commissions

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 law is under discussion in WJ women 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: Under discussion in WJ commission.

Criminal Procedure Code

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

Status: The law is under discussion in WJ Justice and Judiciary Affairs Commission.

Bills referred to Joint commission

Statistic Law

This law is enacted for the purpose of organization of statistical activities in the country, formation, and determination of the duties and authorities of the Central Statistics Office. The law includes 7 chapters and 26 articles. WJ approved the proposed amendments to the Law on 22 September 2012. The MJ Economic commission finalized the law and accepted some amendment brought by WJ but not all. The amendments were presented to the plenary session today 6th November 2012. The most debated article was article five which is about the establishment of the National Statistical Council to ensure better procedure of statistical activities in the country and to advise the Central Statistics Office. The Council shall be composed of ten members: The 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 6th which is about the NSC duties and authorities: WJ added two paragraphs talking about the deposition of the Director of the Central Statistics Office, which says that “the NSC can propose for deposit of the Director if he found weak and misuses in management according to the provisions of law. The NSC can refer the Director of the CSO for prosecution if he hid the truth or release spurious statistic data. The MJ approved the original text not WJ Amendments.

Status: The joint commission finalized the law on 31st 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 14th Clause 3rd : 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: the law is under discussion in joint commission.

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 joint commission.