



Legislative Newsletter

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NEWS:

Meshrano Jirga Invites Security Officials over killing of Three ANA officers and post 2014 situation

Meshrano Jirga (MJ), sitting in an extra ordinary session on 12 January, invited Mr. Sher Mohammad Kareemi, the Army Chief, Mr. Dr. Zia, Deputy Director of NDS, Mr. Abdul Khaliq Farahi, Director of IDLG, Mr. Mujtaba Patang, the Minister of Interior Affairs, and the Deputy Attorney General in Military Affairs to update Senators on their response to the case of the alledged murder of three ANA soldiers by former police commander Kameen and former District Chief Ameer Gul of Baghlan Markazi in Baghlan province, and to answer Senators' questions on post-2014 security concerns. *(Please refer to APAP legislative newsletter 11 January, 2013 for previous discussions in the MJ on the killing of these three ANA soldiers)*

The senators once again emphasized the need to arrest the accused murderers of these ANA soldiers and asserted that this incident has lowered the morale of ANA soldiers. If these killers are not arrested then, they argued, than no one will be willing to serve in volatile provinces. A number of other Senators claimed that WJ members and high ranking officials in the Presidential Palace are hindering the arrest and prosecution of the murderers. Mrs. Balqees Roshan (Farah) strongly criticized the officials of MoD and MoI for not arresting Kameen and Ameer Gul and added that the culprits are living in the presidential palace. "Does Mr. Faheem, First Vice President, support the murderers or does Mr. Kareem Khalili, Second Vice President support Shujayee who killed civilians in Uruzgan? It is shame for you people that you couldn't arrest the killers. I am afraid that after 2014 the warlords and smugglers will torture the people [of Afghanistan]."

Responding to the Senators concerns, Deputy Attorney General in Military Affairs said, "Eleven people have been detained in Baghlan province in relation to the killing of ANA soldiers. We issued four letters for the arrest of Kameen and Ameer Gul to the MoI, but still they have not been arrested."

The Senators then turned to questions on post 2014. If security forces of Afghanistan are not equipped, they argued, the withdrawal of all American forces from this country will mean handing over of Afghanistan to the neighboring countries and Taliban. Mr. Hafez Abdul Qayoum (Nuristan) said, "2014 is coming, but we don't have an air force, artillery, or air defense system. Can you tell us whether or not you (MoD) will be able to defend the country...?"

Mr. Abdul Wahab Irfan (Takhar) asserted that if Afghan forces are equipped with heavy artillery and air force, then Afghanistan will not face disaster or huge change after 2014. However, he asked the Chief of Army, "We do not have air force, missile and air defense system. Will you be able to maintain the security or not? I want you to update the House about the contracts of ANA with international community regarding helicopters and small planes."

Mrs. Shahnaz Ghousi (Herat) said, "President Obama mentioned in a press conference that Afghan security forces will conduct military operations in the country. What do you think - will the ANA be

able to conduct military operations?”

In response, Mr. Sher Mohammad Kareemi, Army Chief stated that the international community committed to equip ANA and give helicopters and transportation planes to the Afghan army. He said, “The United States of America promised to provide four C130 transportation planes in 2013. We are facing challenges in the air force, air defense system, heavy artillery and so forth. [However] the ANA can play important role after 2014 with the support of the nation.”

Mr. Kareemi also informed the Senators about preparing a plan for the 4th phase of transition and showed commitment to secure the high ways. He further assured the Senators that some NATO soldiers may remain in Afghanistan after 2014 to train the Afghan forces.

Senators Criticize Independent Administrative Reform and Civil Service Commission Recruitments

On 13 January, the Meshrano Jirga (MJ) invited Dr. Ahmad Mushahid, the Director of the (IARCSC) to the plenary session to answer Senators questions regarding recruitment of the district governors and district chiefs. According to the Senators the main purpose of establishment of the IARCSC was to bring transparency to the hiring of government employees and to prevent irregularities in the recruitment process. However, they asserted, since its establishment the commission has hired government employees based on personal relationships or bribes rather than considering their capabilities.

The Senators believe that such recruitments violate the goals of transparency and is one of the reasons Afghanistan is listed as one of the most corrupt countries in the world. The Chairman of the International Relations Commission, Mr. Arifullah Pashtoon (Khost) said, “The establishment of this commission gave hope of transparency to the people, but, unfortunately, real reforms were not made. Bachelor degree holders are jobless while graduates of high schools were recruited as district chief.” Mr. Daoud Assas (Zabul) added, “A majority of district chiefs were recruited through money. Even I was told that if I am interested to become governor of Badghees province I should pay 200,000 USD.” Pointing to Mr. Mushahid the Director of IARCSC, he added, “Your commission has provoked the feelings of the people.”

Mrs. Balqees Roshan (Farah) and Mrs. Tayeba Zahedi (Appointee) agreed that people were expecting the commission to bring reforms, which were unfulfilled, adding that the Civil Services Commission has also not paid attention to the recruitment of females. According to them, Members of the parliament and other high officials are interfering in the recruitment process. The commission should not accept recommendations of these high ranking officials, MPs and Senators to recruit someone. “It would be better to name your commission as the corruption commission rather than to name it the reforms commission. High school graduates are recruited instead of bachelor holder degrees. You should not cheat the people. If the president is involved in such things, you should tell him that you cannot cheat the people.”

Most of the Senators were of the view that if the IARCSC cannot bring transparency and continues recruitments based on the recommendations, than there is no need for such an organization. Mr. Nesar Ahmad Hariss (Appointee) asked, “In Afghanistan, institutions have been established based on political interests. What do you think about your office? Was it established for political interest? You will answer the coming generation and history for not giving employment to high school graduates.” Echoing this, Mr. Bashir Samim (Badakhshan) said, “...Qualified and competent candidates have been ignored due to the recommendations of the ministers and deputy ministers. Will you resist these recommendations of the ministers or not? In your commission the super scale salaries were given

only to specific [favored] people and this leads to corruption. Your commission should review the age of employment and include those who are above 30 years of age.”

Responding to Senators questions, Mr. Ahmad Mushahed rejected allegations that government employees have been hired based on recommendations and corruption. “I request both Houses to pay attention when alleging wrongdoing by the Civil Services and Reform Commission. If you have evidence [of wrong doing] you are welcome to inform us and we will work together on it.” He added that the recruitment process of deputy governors and district chiefs is transparent and his commission defends the process. “I reject allegations of corruption in our commission, and I would like to say that there is no corruption in our commission. We evaluate previous experiences of the new employees. Our commission also gives extra marks to the disabled and to the inhabitants of less developed provinces. The MJ can send a delegation to review the recruitment process.”

The Senators were not satisfied with answers of Mr. Mushahed and accused him of being a traitor.

Wolesi Jirga Defers Review of the Electoral Law and Overrides Three Presidential Vetoes

This week the Wolesi Jirga (WJ) decided to defer further deliberations over the proposed Electoral Law until after the upcoming recess. This will allow them to devote their time and energy to the review and passage of the 1392 budget.

In the Wolesi Jirga plenary of January 14, the Secretary of the House presented to the plenary three previously passed acts: the Law on the Disabled; the Law on Structure and Authorities of the Courts; and the Law on the Martyrs and Dependents. These laws had been rejected by the president. The WJ overrode the president’s rejection by the required two-thirds vote. The laws will now be submitted for publication.

Legislative Status

January 11- 17 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 40 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 MJ plenary session discussed the law and approved 25 articles out of 40 on January 15, 2013. The remaining articles will be discussed in extra ordinary session on January 19, 2013.

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 passed by two third majority

Law on Rights & Privileges of the Disables:

This law is enacted pursuant to the article 53 of the Constitution for the purpose of ensuring the financial, social, political, cultural, recreational, athletic, educational and rehabilitating support to the disabled for their active participation in the society and for the protection of their rights and privileges.

Status: The WJ approved the law on September 03, 2012. The Upper House approved the law on October 16, 2012. The Joint commission finalized the amendments and approved the law on November 22, 2012. The law was sent for the endorsement of the president. The president rejected the amendments of both Houses and sent the law to WJ for the review.

On January 14, 2013 the WJ approved the law by two third majority of the House.

Law on Rights & Privileges of the Dependents of the Martyrs & Missing Persons

The Law on Rights & Privileges of the Martyrs and missing persons regulated based on Article 53 of the Afghanistan Constitution in order to provide economical, social, political, cultural, educational, training, entertainment and sport support to the disables (Women, Men and Children) to take active part in the society and protect their rights and privileges.

Status: The WJ approved the law on September 03, 2012. The Upper House approved the law on October 16, 2012. The Joint commission finalized the amendments and approved the law on November 22, 2012. The law was sent for the endorsement of the president. The president rejected the amendments of both Houses and sent the law to WJ for the review. On January 14, 2013 the WJ approved the law by two third majority of the House.

Law on Structure & Jurisdiction of Judiciary Courts

This law has been enacted pursuant to the provisions of Articles 116 and 123 of the Constitution for the purpose of managing the affairs related to the organization of the judiciary, duties and powers of the Supreme Court, primary and appeal courts and judges of the Islamic Republic of Afghanistan.

The law is 7 chapters and 77 articles. Chapter 1 covers general provisions, chapter 2 covers organization, structure and jurisdiction of the supreme court, chapter 3 covers organization, structure and powers of the courts of appeals, chapter 4 covers organization, structure and jurisdiction of primary courts, chapter 5 covers issues concerning judges and the employees of the judiciary power, chapter 6 covers discipline and punishment of judged & chapter 7 covers miscellaneous provisions.

Status: The law was passed by the Lower House (WJ) on May 17, 2012. The Upper House passed the law on June 4, 2012. The joint commission approved the law on August 13, 2012 and sent it to the president for endorsement. The president rejected the amendments of both Houses and sent the law to WJ. The Lower House approved the law by two third majority of the House on January 14, 2013.

Bills referred to Joint commission

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 joint commission finalized and approved the law on January 15, 2013.

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.

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 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 MJ plenary session approved the amendment of article 5 of the law on January 13, 2013. The law is referred to joint commission.