Islamic Republic of Afghanistan
National Assembly

LEGISLATIVE MANUAL

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This Legislative Process Manual is prepared by USAID/APAP during the process of providing technical assistance to the National Assembly of the Islamic Republic of Afghanistan. It is designed to facilitate improvement of the law-making process in Afghanistan through the clarification of current practice.
IN THE NAME OF ALLMIGHTY ALLAH THE MERCIFUL THE COMPASSIONATE
FOREWORD

The purpose of this Manual is to assist the Members of Parliament and Parliamentary staff of the National Assembly of Afghanistan in understanding the law-making process in Afghanistan, from its very first stage, during which a bill or legislative document is drafted through its scrutiny by the Ministry of Justice and other Ministries, its approval by the Council of Ministers, its processing and approval by the National Assembly, its endorsement by the President and its publication in the Official Gazette. Additionally, it is hoped that this manual will help improve existing law-making processes in Afghanistan.

Within the context of this Manual, a bill is a proposal for a new law or a proposal to change or amend an existing law, originating either in government agencies (Ministries, Agencies or Independent Governmental Departments among others) the Supreme Court, or Parliament itself and presented for debate before Parliament. After its approval by both Houses of the National Assembly and endorsement by the President the bill becomes law1.

The word "law" is defined very precisely in Afghanistan from a procedural and ceremonial perspective, as follows: “Law shall be what both houses of the National Assembly approve and the President endorses, unless this Constitution provides otherwise”2

Under Article 4 of “The Statute of the Institute of Legislative Affairs and Scientific Legal Research”3 the term “Legislative Documents” refers to laws, decrees, regulations, statutes, amendments, annexes, additions, deletions and approvals of the Council of Ministers, if these possess legislative nature.

The enactment of legislative documents follows the procedures set out in the Law on Publication and Enforcement of Legislative Documents and the Regulation on the Procedure for Preparing and Proposing Legislative Documents, both of which are

1 J. Ghulam Hasan Gran A guide for the members of Afghanistan’s parliament, published by the Administration of the Houses of Parliament in cooperation with the SEAL project.
2 Article 94, Constitution of the Islamic Republic of Afghanistan
3 This Statute is an Internal Regulation of the Ministry of Justice regulating the preparation of legislative documents. It is published in Official Gazette No: 924 dated 20/04/1386 corresponding to 11/07/2007.
Legislative documents fall within a well defined hierarchy. The approval, rejection or amendment of primary laws is more difficult than that of secondary laws and follows a special procedure. Constitutionally the secondary legislative documents must not contradict primary laws. The hierarchy of legal documents is set out as follows:

The Constitution which was adopted by the Loya Jirga is the supreme law of the country. There is a special procedure, set out in the Constitution, for any amendment to this law. Other legislative documents such as ordinary laws or legislative decrees, must not contradict the Constitution.

Ordinary laws which are passed and approved by the National Assembly are primary legislation, which is positioned in a second category after the Constitution. A legislative decree is also classified as primary legislation which possesses the force of law. However, it is not approved by the Parliament. Its source of approval is the Ministerial Council (Council of Ministers). It is valid and legally binding similar to the other laws, unless it is subsequently rejected by the Ministerial Council or Parliament.

Secondary or subsidiary legislation such as regulations and bi-laws are issued pursuant to, and within the limits of, a legislative authorization, which is in turn approved by the Council of Ministers and is required to be consistent with the Constitution and existing legislation of the country.
The law-making or legislative process is not the same worldwide. In Afghanistan it is a relatively lengthy process; a bill becomes law after it passes the following six stages: drafting, scrutiny by the Ministry of Justice and other relevant Ministries, affirmation or approval by the Council of Ministers and Parliament, endorsement by the President and publication in the official gazette.

The Executive branch is not the only source of proposals for bills; every one of the three bodies of the state: the Executive, the Judicial and the Legislative, can originate the law making process by proposing a bill. However the law-making process is not the same for each of these three branches.

There are two main divisions in the processes through which a bill moves to become Law. Those originating in the Executive or Judicial Branches can be classified as Government Bills and follow one process. Those originating in the Legislative branch follow a slightly different procedure and are referred to within this manual as Members’ Bills or Private Members Bills. In this section, we will briefly discuss the law making processes followed for a Government Bill.

Under Article 95 of the Constitution of the Islamic Republic of Afghanistan the Government can make a proposal for drafting laws for itself or on behalf of the Supreme Court in issues related to the Judiciary. Article 95 provides that: “The proposal for drafting laws shall be made by the Government or members of the National Assembly or, in the domain of regulating the judiciary, by the Supreme Court, through the Government...while proposals for drafting the budget and financial affairs laws shall be made only by the Government.”
THE DRAFTING OF A GOVERNMENT BILL

I. Types of Government Bills

The usual procedure for the drafting of a bill and its subsequent scrutiny and approval is for the bill to be prepared by the Ministries or other governmental agencies. The bill is reviewed and approved by the National Assembly, then signed by the President and published in the official Gazette. The Government authority to submit prospective legislation to Parliament under this process derives from Articles 95 and 97 of the Constitution.

Under Article 95 of the Constitution, the Government can propose bills on its own behalf or, in the case of issues relating to the Judiciary, on behalf of Supreme Court. Thereafter, the bills are transmitted to the National Assembly by the government. These are divided into two types: A) the Executive bill, B) the Judiciary bill.

- Executive bill
- Judiciary Bill

Article 5 of the Regulation on the Procedure for Preparing and Proposing Legislative Documents states: “The draft of the legislative proposal shall be prepared based on a proposal made by the Ministers, the Chief Justice of the Supreme Court, the Minister of Justice, independent general Departments and the heads of other central offices of the Islamic Republic of Afghanistan”.

A bill which regulates judicial affairs is initially drafted by the judiciary itself, and then the proposed bill is submitted to the National Assembly by the Government. Article 95 of the constitution states: “The proposal for drafting bills, in the domain of regulating the judiciary, shall be made by the Supreme Court, through the Government”.

II. Preparation of the Draft of Legislative Documents

**Formation of an authorized drafting Commission**

The Minister or the Director of the Department responsible for preparing the legislative document is responsible for forming an authorized drafting Commission consisting of the officials of the Ministry or the Department, as well as the necessary experts, in order to prepare the legislative document.

If the preparation of the draft is undertaken by a number of Ministries or Departments, a Joint Commission is formed. The Director charged with preparing the legislative document guides and co-ordinates the activities of the Commission. Codification of highly important or sensitive legislative documents is handled by a Commission constituted by the Office of the President of the Islamic Republic of Afghanistan or by the Council of Ministers.\(^4\)

**Conformity of proposed legislation with existing laws and state policy**

The drafting Commission commences its work through reading and study of existing applicable legislation of the Islamic Republic of Afghanistan in order to determine that the proposed legislation does not contradict or conflict with higher laws. Any proposed legislation must be consistent with the Constitution and, under Article 3 of the Constitution, with the tenets and provisions of Islam. The Commission may also

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\(^4\) Articles 16 & 17 of *The Regulations on the Procedure for Preparing and Proposing Legislative Documents.*
consider similar legislative documents of other Islamic countries and the experiences gained from their implementation, treatises or scholarly literature, the published opinions of respected citizens of the nation, commentaries and opinions of legal experts on the subject, and other materials as required.\(^5\)

The provisions of a proposed legislative document should also be drafted in a manner that complies with the state policies, and carefully reviewed for any potential gaps, shortages or contradictions. \(^6\)

**Assessment of potential consequences of implementation of proposed legislation**

During preparation and drafting of the legislative document, the need for internal consistency and stability of the legal system in regard to issues regulated by a specific piece of legislation, are carefully considered to avoid the need for any subsequent amendments and attachments.

While drafting the legislative document, anticipated consequences of enactment are identified and evaluated. In addition, other applicable legislative documents which might need to be amended, complemented, or abrogated as a result of the coming into force of the new legislative document are considered. \(^7\)

**Consultation and collection of supplementary information and comments of stakeholders**

In addition to the representatives of the Ministries, Departments, and interested experts, authorized representatives from academic institutions and the mass media may also be invited to attend the deliberations and discussion of the initial draft of the legislative document. The drafters may also consider observations, suggestions, and opinions presented on the floor. \(^8\)

\(^{5}\) Article 18 of *The Regulations on the Procedure for Preparing and Proposing Legislative Documents*.

\(^{6}\) Article 18, of the Regulation on the Procedure for Preparing and Proposing Legislative Document.

\(^{7}\) Article 20, of the *Regulations on the Procedure for Preparing and Proposing Legislative Documents*. It is recommended that, once the anticipated consequences of enactment of the proposed legislation are identified and evaluated, these consequence be included in the explanatory statement for the bill.

\(^{8}\) Article 21 of the *Regulations on the Procedure for Preparing and Proposing Legislative Documents*. 
Explanatory statements accompanying Bills
The drafted legislative document along with the explanatory statement assembled by the Minister or the Head of the Department in charge of its preparation is first sent to the Ministries of Economics and Finance, and other relevant Ministries and Departments for the purpose of obtaining comment and consent, after which it is submitted to the Ministry of Justice for final scrutiny.⁹

III. Inclusion of the Legislative Proposal in the Annual Legislative Work Plan of the Council of Ministers

Referral of the legislative proposal to the Minister of Justice at least 3 months before the end of the year
Proposals for inclusion of a draft piece of legislation in the legislative work plan of the Council of Ministers must be sent to the Minister of Justice at least three months before the end of the year accompanied by an explanation of the need for inclusion in the plan. Justification for inclusion must include the following:

- A list of the existing legislative documents concerning the issues that are intended to be newly regulated.
- The reasons for enacting the proposed legislative document.
- Information on financial and material resources that is required for implementation of the legislative document.
- The estimated time for presenting the plan to the Council of Ministers.¹⁰

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⁹ Article twenty two of the regulation on the procedure for preparing and proposing legislative documents
¹⁰ - Article 6 of the Regulation on the Procedure for Preparing and Proposing Legislative Documents.
“The Minister of Justice may, prior to the inclusion of the proposal in the draft of the legislative work plan, invite the sponsoring-party to provide additional explanations regarding the need for approval, amendment, attachment, or annulment of the legislative document”.11

**Sending the legislative proposal to the Council of Ministers one month before the end of the year**

“The Minister of Justice presents the draft of the proposed legislative work plan one month before the end of the year to the Council of Ministers along with written observations regarding any proposals which he believes are unnecessary and baseless and which have been omitted from the plan.12

**Approval of the Annual Legislative work plan by the Council of Ministers**

The annual legislative work plan is confirmed by the Council of Ministers and approved by the President. The Council of Ministers then reports to the Minister of Justice and to the Director in charge of the preparation of legislative documents on the inclusion of a legislative document in the plan and the time period for the document’s submission to the Council of Ministers.13

**Exclusion of the Proposed Legislation from the Annual Work plan**

If the legislative proposal has not been included in the annual legislative work plan, it can be added to the plan either at the suggestion of the Minister of Justice or on the initiative of the Council of Ministers. Article 14 of the Regulation provides that: “proposals on ing the legislative documents which are not commonly important and also the amendment, completion, or abrogation of the valid legislative documents not included in the plan shall be presented to the Ministry of Justice for its consent”.

Paragraph four of Article 11 provides that: “In case it is deemed necessary during that year, according to either the initiative of the Council of Ministers of the Islamic Republic of Afghanistan or at the suggestion of the Minister of Justice, the plan can be amended.”

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11. Article 7 of the Regulations on the Procedure for Preparing and Proposing Legislative Documents.
12. Article 8 of the Regulations on the Procedure for Preparing and Proposing Legislative Documents.
13. Articles 9 and 10 of the Regulations on the Procedure for Preparing and Proposing Legislative Documents.
Rejection of proposed legislation and return to its initial drafting agency

If the legislative document is not included in the annual legislative work plan because of its non-conformity with the provisions of the Regulation on the Procedure for Preparing and Proposing Legislative Documents, it is returned to the Department in which its initial draft was prepared. Article 43 of the Regulation on the Procedure for Preparing Legislative Documents provides that: “the legislative document which is contrary to the contents of this regulation shall not be accepted for proceedings and shall be remanded to the Department that drafted it”.

SCRUTINY OF A GOVERNMENT BILL

Once the draft legislation has been included in the annual legislative work plan and approved by the Council of Ministers, the proposed legislation is scrutinized by the Ministries of Economics and Finance and other related agencies. The bill is then sent to the Legislative Department of the Ministry of Justice for final examination and evaluation.

Article 22 of the Regulation on the Procedure for Preparing and Proposing Legislative Documents states, “…it shall be submitted to the Ministry of Justice for final scrutiny. The consent shall be obtained in accordance with the procedure established by the Council of Ministers”. Further details of these scrutiny stages are described below.

Referral of the Bill to the Ministries of Economics and Finance and other relevant Departments for scrutiny

The Ministry of Economics examines the draft and analyses it to determine whether its effect is consistent with the current economic policies of the State. Concurrently, the legislative draft is sent to the Ministry of Finance, which is responsible for determining its possible funding implications and impact. Most laws require an allocation of funds for implementation. The Ministry projects how much the government will spend to implement the proposed law and how the necessary funding can be sourced, as well as whether it is feasible.

Subsequently, the legislative draft is sent to other Ministries and relevant Governmental Departments for review and for suggestions. These are conveyed to
the Department in which the bill originated in order to allow the opportunity to incorporate improvements.

**Referral of the legislative draft to the Ministry of Justice for final scrutiny**

The legislative draft is next sent to the Legislative Department of the Ministry of Justice for final scrutiny. “The Legislation Department in the Ministry of Justice has the duty not only to draft laws but also to vet all draft laws for compliance with the Constitution, Islamic law, and the country’s obligations under international agreements it has entered into.” 14 The Ministry also ensures that standard legal terms are adopted in the bill text, and that the text is prepared in the two official languages: Pashto and Dari.

**CONFIRMATION OF THE LEGISLATIVE DOCUMENT BY THE COUNCIL OF MINISTERS**

After the scrutiny stage, the draft legislation is handed over to the Council of Ministers jointly by the Minister or Director of the Department responsible for its drafting and the Minister of Justice.

At the same time as the legislative document is presented, written explanations are also presented by the Minister or Head of the Department in charge of the preparation of the initial draft. The written explanations should contain the following items:

1. The need for, and purpose of, approving the submitted legislative document
2. A brief evaluation of the applicable legislative document related to the issue.
3. A brief evaluation of the contents of the legislative document and the new provisions that are being proposed for introduction into the legal system.
4. Anticipated possible consequences resulting from the application of the legislative document
5. The list of ministries and agencies whose consent about the legislative document have been received and the differences that have existed.

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The explanations must not exceed five typed pages. If the implementation of the legislative document requires considerable financial and material resources, the financial and economic calculations and documentation, statistical data, and other necessary information which justify and support the proposal are attached to the explanations together with the conclusions of the Ministry of Finance. In the Council of Ministers, the primary report regarding the draft legislation is presented by the Minister or Director of the responsible government body and the secondary report is presented by the Minister of Justice. However, depending on the subject of the draft legislation, the Minister of Justice may also be the primary reporter.

The draft legislative document is then approved in the Council of Ministers. If the draft of the legislative document does not require the approval of the National Assembly (as is the case with regulations, rules and internal rules of procedures and so on), these are then directly published in the Official Gazette in both Pashto and Dari as soon as possible after approval of the Council of Ministers. If the legislative document requires immediate publication, they may be broadcasted through the Government mass media before being published in the Official Gazette.\(^\text{15}\)

Other legislative documents, such as laws, legislative decrees, the state budget and international treaties needing ratification require the approval of the National Assembly. These are presented, initially to the Wolesi Jirga, by the Government.

**APPROVAL OF A BILL**

Approval of the draft legislation is the fourth stage in the Legislative Process. The usual procedure is for the legislative document to be approved by the National Assembly itself, if it is in session. However, if the National Assembly is in recess the prospective legislation may also be approved through a legislative decree.

**Approval of a Bill through Legislative Decree during the National Assembly Recess**

\(^{15}\) See Article 7 of *The Law on the Publication and Enforcement of Legislative Documents*, Official Gazette No: 787(1999).
Under the authority of Article 79 of the Constitution, in the event that circumstances require the speedy processing of a legislative document during the recess of the Wolesi Jirga, the Government can approve a bill through a legislative decree, with the exception of legislation dealing with matters related to budget and financial affairs. A legislative decree, after endorsement by the President of the Republic, acquires the force of law.

Legislative decrees must be presented to the National Assembly within 30 days of the convening of its first session after the decree has been endorsed, and if it is rejected by the National Assembly, it becomes void.

In summary, approval of a legislative document through a legislative decree is subject to the existence of the following conditions:

1. The National Assembly and specifically the Wolesi Jirga must be in recess;
2. The subject of the bill cannot be a matter related to budget or financial affairs;
3. The approval can only occur in case of an urgent need; and
4. Legislative decrees must be presented to the National Assembly within 30 days of the convening of its first session after the decree. The legislative decree is always subject to the endorsement of the President and acquires the force of law after endorsement, unless and until it is rejected by the National Assembly.

Once the Legislative Decree has been submitted to the National Assembly, it is processed like an ordinary bill.

**No Action or Rejection of the Legislative Decree by the National Assembly**

Under Paragraph 3 of Article 79 of the Constitution, the legislative decree becomes void if it is rejected by the National Assembly. However, if the decree is not rejected by the National Assembly and the National Assembly chooses not to act on the decree, it continues to be enforceable law.

**Approval of the Bill by Regular Means in the National Assembly**

If the National Assembly is in session, the Legislative Document (e.g., laws, legislative decrees, the State Budget and any international treaties, which Afghanistan has signed but not yet ratified, etc.) that requires approval of the
National Assembly, is presented to the National Assembly, accompanied by an explanatory statement from the Minister of State for Parliamentary Affairs setting out the rationale for approval of the bill. This process begins when the bill is received by the Secretariat of the Wolesi Jirga.

**Legislative Process in the Wolesi Jirga**

The bill is first submitted by the Government to the Documentation and Research Department of the Wolesi Jirga Secretariat through the Minister of State for Parliamentary Affairs. The Secretariat then refers the bill to the Speaker of the House for submission to the Council of Chairs for inclusion in the agenda of the plenary session.

**Official Introduction of a Bill in the Plenary**

The official introduction of a Bill gives the Members of Parliament an opportunity to either accept for consideration or reject the bill as a whole. The Speaker of the House may invite the Minister of State for Parliamentary Affairs and the Minister to whom the bill relates to formally introduce the bill to the Plenary session.

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**Notes:**

16 Article 77 of the Wolesi Jirga Rules of Procedure

17 Article 78 of the Wolesi Jirga Rules of Procedure. See also: G. H. Gran, *Manual on Legislative & Budget Process within the Wolesi Jirga of the National Assembly*. Article 7 of this Manual provides that: “The Ministry of State for Parliamentary Affairs submits the document to the General Department of Documentation and Relation of Secretariat. The General Department of Documentation and Relation after it registered and stamped the bill that indicates the exact date and time of receipt of the document, present the documents to the General Secretary. The General Secretary presents the document to the Speaker of the Jirga for Legislative process; the Speaker of the Jirga, based on the provisions of the Rules of Procedure, refers the bill to the relevant standing Commission”.

18 Article 97 of the Constitution
Bills are registered, tabled and announced at the Sitting of the House; at this stage there is no debate. After introduction of the Bill, the Speaker refers it to its relevant Commission.\textsuperscript{19}

If a bill covers issues falling within the area of jurisdiction of more than one Commission, the Speaker of the Jirga shall refer it to the Commission within whose jurisdiction the principal issues falls.\textsuperscript{20}

**Deliberation of a Bill in Standing Commissions**

The Commission stage is where detailed deliberation of the bill takes place. In the Commission stage, the Standing Commission to which the bill has been referred has 20 days to consider and approve the bill.

The main Commission can decide to invite the proponent of the bill for explanation if they feel it is necessary.

According to Article 81 of the *Rules of Procedure*, the chairperson of the main Commission considering the draft legislation designates a reporter for each bill. The reporter is then responsible for sending a copy of the bill to the other relevant Commissions in order for them to make comments or propose amendments in a timely fashion. The reporter then submits the report, containing the suggested amendments, additions, and modifications.

The main Commission determines the deadline for the compilation of amendments. The reporters from each parliamentary group and Commission then participate in the sitting of the main Commission at which these are discussed. Further Commissions and parliamentary groups may also send their amendments in writing. The main Commission debates and compiles all the proposed amendments referred to the main Commission by all parliamentary groups and Commissions.\textsuperscript{21}

Under Article 81 of the *Rules of Procedure* of the Wolesi Jirga, the compiled bill is then referred to the plenary session by the Council of Chairs for approval.

\textsuperscript{19} Article 78 of the Wolesi Jirga *Rules of Procedure*

\textsuperscript{20} Article 29 of the Wolesi Jirga *Rules of Procedure*

\textsuperscript{21} Article 81 of the Wolesi Jirga *Rules of Procedure*
Deliberation of a Bill in the Plenary Session

The Plenary stage gives Members of Parliament an opportunity, on the floor of the House, to share their views with other Members and to consider further amendments to a bill which has been examined in Commission.

“In the Plenary session, only those articles over which one or more Commissions have disagreed with the opinion of the main Commission are debated. Articles which have not been the subject of comment are not debated, only recited and approved.”22

In the event that any of the articles in the Bill have been reported incorrectly so as not to reflect the decision of the main Commission, the incorrect report is brought to the attention of the Jirga by one of the Commission reporters.23 Once it is approved by the Wolesi Jirga, the bill is referred to the Secretariat for transmission to the Meshrano Jirga.

According to Article 89 of the *Rules of Procedures*, once approved by the Wolesi Jirga, the bill must be submitted to the Meshrano Jirga for consideration within 15 days.

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22 Article 82 of the Wolesi Jirga *Rules of Procedure*
23 Article 83 of the Wolesi Jirga *Rules of Procedure*
II. Legislative Process in the Meshrano Jirga

Under the provisions of the Constitution, the Meshrano Jirga has fifteen days to debate referred Legislative proposals together with amendments after receipt of the bill from the Wolesi Jirga.24

Procedure for Introduction and Consideration of a Bill in the Plenary

Under Article 77 of the Rules of Procedure: “The Government’s Bills and Members’ Bills shall be registered, tabled and announced at the Plenary”

After registration and introduction Government Bills and Members’ Bills are included in the Agenda of the House. At this stage, there is no debate, unless the Government wishes to state its reasons for introducing a bill, or if a Parliamentary Group wishes to state its position. After the bill is introduced, the Speaker of the Meshrano Jirga refers the bill to its appropriate Standing Commission.25

Deliberation of a bill in Meshrano Jirga Standing Commissions

The Commission stage is where detailed deliberation of the Bill takes place.

Article 81 of the Meshrano Jirga Rules of Procedure describes the Commission stage as follow: “The Chairperson of the Commission designates a Reporter for each bill. The report shall be submitted, printed and distributed within specified period as indicated in the agenda. If a report has not been distributed on time, the debate in the Plenary session shall start without the report.”

24 Article 97 of the Constitution
25 Article 80 of the Meshrano Jirga Rules of Procedure
The report contains recommendations on approving, rejecting or amending the bill. Amendments are proposed by the Reporter or Members of the Commission or Members of the House twenty four hours before debates in the plenary session begin.

Amendments adopted by the Commission are attached to the report which is submitted to the Plenary.

However, if needed, the Commission can invite government officials and proponents of the bill for explanation and further clarification of the bill.

**Deliberation of a Bill in the Meshrano Jirga Plenary**

The Plenary stage gives Senators an opportunity, on the floor of the House, to share their views and consider further amendments to a bill which has been deliberated in Commission.

The debate of a bill begins with a statement by the Government, followed by the Commission Report. A general debate follows, with each paragraph or article of the bill considered in turn. However, each speaker who comments on any provision of the bill may only speak for five minutes.  

The final version of each article or paragraph is then put to a vote before the entire text is put to a final vote. Under Article 92 of the Meshrano Jirga *Rules of Procedure*: “If the discussion of the bill has not been completed within the allocated fifteen days, the debate must cease and the Speaker must immediately put the entire bill to a final vote including any amendments already adopted.”

If the Meshrano Jirga agrees with the Wolesi Jirga amendments and approves the Wolesi Jirga version of the bill, it is then returned to the Wolesi Jirga Secretariat for presentation to the President for endorsement. In the event that one Jirga rejects the bill approved by the other Jirga, or in a case in which one Jirga disagrees with the amendments made by the other Jirga, the bill is then deliberated and a final version...
approved by a Joint Commission comprised of an equal number of members from both the houses.28

The Processing of a Government Bill in the Joint Commission
The Joint Commission discusses the proposed bill in accordance with the procedure laid down for Legislative Commissions. If the bill was originally proposed by the Government, the Minister or Head of the Department to which the bill relates attends the sessions.29

When the Joint Commission has agreed on the bill, the decision of the Joint Commission is sent to the President for endorsement through the Ministry of State for Parliamentary Affairs.

Under Article 100 of the Constitution, if the Joint Commission does not solve the difference, 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 endorsement30.

ENDORSEMENT OF A GOVERNMENT BILL AND ITS PUBLICATION IN THE OFFICIAL GAZETTE

Endorsement
The endorsement stage is the fifth stage of the legislative process. According to Article 94 of the Constitution, legislation approved by parliament must then be submitted to the President for endorsement or rejection.

According to the provisions of the Constitution the President has only fifteen days to consider and endorse a Bill. When a bill approved by the National Assembly is endorsed by the President within 15 days of the date it is presented, it becomes law and is sent to the Ministry of Justice for publication in the Official Gazette.

28 Articles 90 and 94 of the Meshrano Jirga Rules of Procedure.
30 Article 100 of the Constitution.
If the President rejects a legislative document that has been approved by the National Assembly, it shall be sent back, within fifteen days from the date it was presented, to the House of the People mentioning the reasons for rejection, and, with expiration of the period or if the House of People re-approves it with two thirds of all the votes, the draft shall be considered endorsed and enforceable31.

The Constitution and Rules of both Jirga are silent with regard to the proper procedure to be followed if the Wolesi Jirga accepts the rejection by the President, and amends the bill as requested. However, current practice in the National Assembly, allows the amended bill to be passed by a vote of two thirds majority in the Wolesi Jirga, at which point it is deemed endorsed and published in the Official Gazette.

There are examples from other Parliaments in which a bill amended at this stage is considered a new proposal and is subject to the normal process of law-making. There are merits to adopting this procedure as part of their law making process and the Parliament may want to consider this at some future point.

**Publication**

The publication of a Government Bill is the sixth and last stage in the legislative process. The Government Bill enters into force, becomes binding law and is published in the Official Gazette after its endorsement by the President or by a two-thirds majority vote of the entire Wolesi Jirga. Usually the last article of every bill refers to the enforcement of the bill and determines its enforcement dates. According to provisions of the *Regulation on the Procedure of Preparing and Proposing Legislative Documents*, legislative documents shall be published in both Dari and Pashto language32.

After the Presidential endorsement of a bill passed by the National Assembly, it is published in the Official Gazette and becomes law. There is nothing to prohibit republication in the government mass media in order to guarantee proper notice of a new law. The Ministry of Justice has an obligation to take necessary measures to introduce the newly enacted law through media conferences, seminars, interviews

31 Article 94 of the Constitution.
32 Articles 8-9 of the *Regulation on the Procedure of Preparing and Proposing Legislative Documents* should be referred to.
and re-publication soon after the publication in the Official Gazette. In a similar fashion, the Ministry of Justice may distribute the bill throughout the country in bookshops, libraries, governmental centers and especially offices of law enforcement agencies.

The Budget Process

One of the fundamental functions of Parliament is to oversee the activities of Government Departments. An important part of this process is budgetary scrutiny and approval. Every year the Minister of Finance introduces the budget in the National Assembly. It is discussed, primarily in the Budget and Finance Commissions, initially by the Meshrano Jirga and then by the Wolesi Jirga, after which a vote is taken. Other Commissions usually deliberate those sectors which fall within their mandates. The Constitution allows no amendments to the draft budget: it must be adopted or rejected, as it is submitted.  

Phases of Budget Process

In Afghanistan the fiscal year is March 21 to March 20. The budget process is ongoing and its cycles have the following four phases:

I. Budget Preparation Phase:

The budget preparation phase starts with a budget circular from the Ministry of Finance which is sent to all spending units. The guidelines, schedule and ceilings for recurrent and investment budget are declared within this circular. The budget of Afghanistan is prepared according to eight priority sectors listed in the National Development Strategy.

The line ministries prepare their programs and priorities in line with the guidelines set out in the circular and send these to the Ministry of Finance. The Ministry of Economy analyses the projects and programs and recommends the national priorities to the Ministry of Finance.

The Ministry of Finance then calls the Budget Commission into session. The Budget Commission is comprised of representatives of the Ministry of Finance, the Ministry of Economy, the Ministry of Foreign Affairs and the Office of the President. The

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33 Information collected by the Budget Office of the National Assembly.
Commission debates the budget and proposes allocations to various programs and projects. The Minister of Finance then submits the draft budget to the Cabinet for approval. Once the budget is approved by the Cabinet, the Ministry of Finance submits it to the National Assembly during the fourth quarter of the fiscal year for their approval.

II. The Adoption Phase
The state budget is submitted to the Meshrano Jirga 45 days prior to the commencement of the new fiscal year.

Budget Speech by Minister of Finance
The Minister of Finance introduces the budget bill with a speech in both Houses which covers the revenues and expenditures of the Government, the debts and loans, the fiscal framework of the budget and all directly related matters.

Budget Debate (Upper House & Lower House)
The budget is debated in the Meshrano Jirga for 15 days. During this time it is, discussed in the Budget and National Economy Commission and then debated in the Plenary session. The Meshrano Jirga sends the bill with its advisory comments to the Lower House.

The representatives of the Wolesi Jirga serve on various Commissions, each one responsible for analysis of their relevant sector of the budget. These Commissions pass their recommendations on to the Budget and Finance Commission. The Budget and Finance Commission then asks the line Ministries to appear before them, including the Ministry of Finance, in order to put questions to them about their programs. The Commission prepares its report and presents it in the Plenary session of the Wolesi Jirga. The Wolesi Jirga continues its debate for a month after which the bill is either accepted or rejected as a whole. In case of rejection, the Wolesi Jirga has to explain their reasons.

Approval of the President
Once the bill is approved by the National Assembly, it is sent to the President for his endorsement and to the ministries for implementation.

34 Article 84 of the the Wolesi Jirga Rules of Procedure.
III. Budget Implementation Phase
The implementation phase of the budget starts with a circular containing the budget decree which is sent from the Ministry of Finance to all spending units. The spending units may then begin the procurement process and the awarding of contracts for investment projects. They also issue allotments for the first quarter of the fiscal year to cover the recurrent costs of the government.

The Ministry of Finance has a special branch for execution and tracking of records of all contracts, payments and expenditures. The Ministry conducts mid-year reviews of the budget and makes any necessary amendments. Procurement takes place in accordance with the procurement law of the country. The spending units cannot spend money which is not reflected in the budget.

IV. The Monitoring and Control Phase:
Monitoring and control is a process which is designed to determine whether the programs and activities are going as planned and to identify and implement any necessary corrections. If activities are not proceeding as planned, the monitoring phase allows the Ministry to identify the problems and make recommendations for possible solutions. The monitoring and control phase is divided into the following steps:

Internal Control
The Ministry of Finance has assigned a controller in each spending unit who identifies and corrects any errors and assures compliance with existing financial regulations before the allotments are approved. These controllers also monitor the expenditure of resources in the line spending units. When a request for an allotment is sent to the Budget and Treasury Departments, it goes through this same process after being forwarded to the Ministry of Finance for action.

External Control
The Independent Audit and Control Office is responsible for the oversight of the annual performance of the Government. This Office audits the accounts and procedures of the Government and identifies deviations from and misuse of budget allocations. It reports directly to the President.
Parliamentary Oversight
The Parliament has an oversight role in monitoring the performance of the government and ensuring a balanced economic development in the country. If programs and activities are not going smoothly, or expenditures are not made properly, the National Assembly has the right to call the Minister of the relevant Ministry and put questions to him. If a Minister is not able to respond properly to the questions of the Assembly, the Members of Parliament have the right to withdraw their vote of confidence from the Minister.
PART II
PRIVATE MEMBERS’ BILLS

The Members of the Wolesi Jirga and the Meshrano Jirga can start the legislative process through the drafting of a bill. Under Articles 95 and 97 of the Constitution, Members of the National Assembly can originate a proposal for a new law or a proposal to amend or change an existing law when the following conditions are fulfilled:

1- The subject of the draft shall not pertain to budgetary and financial affairs; The proponents of the bill and its sponsors shall not be less than 10 members of one Jirga; and
2- The proposal shall be approved by one fifth (20%) of the members of the same chamber in which it originates.

The proposal of a Private Members’ Bill is subject to a procedure similar to that of a Government Bill. The differences among these two proposals are that the proposal of a Private Members’ Bill unlike a Government Bill is first processed inside the House in which it initiated and that it needs to be sponsored by ten or more members of either House of the National Assembly, as indicated above.

One other difference between the two is that the law-making process of a Private Members’ Bill is simpler than that of a Government Bill, and it only goes through five stages, the drafting stage, scrutiny stage, approval stage, endorsement by the President and publishing in the official gazette. Further details regarding the legislative process of private members’ bills are set out below.

Drafting and Scrutiny of a Private Members’ Bill

On the basis of Paragraph 2 of Article 77 of the Wolesi Jirga Rules of Procedure “Ten Members of the Jirga may also introduce a bill by notifying the Speaker of the Jirga. The notification shall be accompanied by a copy of the bill, together with an explanatory statement signed by the Members”.35

35 The same provision exists in the Meshrano Jirga Rules of Procedure, See e.g. Article 76 of the Meshrano Jirga Rules of Procedure.
Drafting
With regard to the drafting of the Private Members’ Bill, the initial draft may be prepared by sponsoring members themselves but also by the Research Services Department of the Jirga Secretariat upon the request of the Members. Moreover, Members can also take advantage of the assistance of NGO’s and other Government Agencies in preparation of the initial draft of the bill.

During the preparation of a Private Members’ Bill the same procedure is followed as during preparation of a Government Bill as set out above. According to the provisions of the Rules of Procedure of both the Houses, the Private Members’ Bill must be accompanied by explanatory notes for the draft law and the signatures of sponsoring members, when it is submitted to the Speaker of Jirga. 36

Scrutiny
Unlike the Government Bill, the Private Members’ Bill does not necessarily go to the Ministry of Finance, Economics and Justice. Its drafting and scrutiny occur simultaneously. The Constitution and other laws are silent on this matter.

However, this does not necessarily prevent the Private Members’ Bill from being sent to relevant Departments for final scrutiny and collection of additional views. For example, a Private Members’ Bill may be submitted to the appropriate Research Department for vetting before the same is introduced.

Confirmation of a Private Members’ Bill
The confirmation stage comes after the drafting stage in the Private Members’ Bill legislative process. The Private Members’ Bill needs the approval of one-fifth (20%) of all of the Members of the House in which it was initiated in order to be included in the Agenda of the Plenary and debated on the floor.

Article 97 of the Constitution states: “If the proposal for drafting a law is made by ten members of either of the two houses, it shall be, after approval of one fifth of the House where it was initiated, included in the work agenda of that House”. After

approval by one fifth of the Members of the House, the draft proposal of a Private Members’ Bill is placed on the Agenda for debate.

**Approval of a Private Members’ Bill**

**I. Approval in the Wolesi Jirga**

The procedure followed in the processing of a Wolesi Jirga Private Members’ Bill within the Wolesi Jirga, is essentially the same as that followed in the case of a Government Bill, as discussed above. Therefore we will only discuss it briefly, highlighting the differences.

**Inclusion of Wolesi Jirga Private Members’ Bill in the Plenary Agenda**

The Speaker of Jirga refers a Government Bill within one month to the Council of Chairs for inclusion in the Agenda of the Plenary session. In contrast, a Private Members’ Bill after being approved by one fifth of the Members of the House to which the proposal of the bill has been presented, is automatically included in the Plenary Agenda.37

**Formal Introduction of Wolesi Jirga Private Members’ Bill in the Plenary**

Just as the Speaker of the Wolesi Jirga can invite the Minister of State for Parliamentary Affairs and the Minister to whom the bill relates to formally introduce the bill to the Plenary session, he or she may invite the sponsoring Members to make the formal introduction in the Plenary.

The bill introduced by Members is registered and announced in the Plenary. There are no debates during the introduction of the bill. After introduction of the bill, the Speaker refers the bill to the relevant Standing Commission38 and the same procedure is followed as that for a Government Bill.

**Processing in the Standing Commissions of the Wolesi Jirga**

The procedure here is the same as that followed in the case of a Government Bill, except, of course, that the sponsoring Members of Parliament are the parties who may be invited for discussion and explanation.39

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38 Article 78 of the Wolesi Jirga Rules of Procedure.
After the Commission stage
Subsequently, the consolidated version of the legislative draft is referred to the Plenary through the Council of Chairs. In the Plenary stage the same procedure is followed as that followed in the case of a Government Bill. The bill of either a Private Members’ Bill or a Government Bill is always referred to the Meshrano Jirga after its approval by Wolesi Jirga.

II. Processing of a Wolesi Jirga Private Members’ Bill in the Meshrano Jirga.

Under the provisions of the Constitution, the Meshrano Jirga debates the referred legislative proposals together with any amendments made by the Wolesi Jirga. According to the provisions of the Constitution whether the bill originates with the Government or Members of Parliament, it has to be considered within 15 days in the Meshrano Jirga.

Under the Meshrano Jirga Rules of Procedure: “The private members’ bills shall be registered, tabled and announced at the Plenary” If the Meshrano Jirga is not in a session, the Memorandum is processed and published in the Official Journal of the Meshrano Jirga”.

Members’ bills similar to Government Bills are introduced to the Plenary by their proponents and after introduction are included in the agenda of the House and referred to the appropriate Standing Commission by the Speaker of the Meshrano Jirga.

Deliberation of a Wolesi Jirga Private Members’ Bill in the Meshrano Jirga Standing Commissions
In the Meshrano Jirga Commission stage, the same procedure is followed in regard to the Private Members’ Bill as for a Government Bill. The Members’ Bill is then referred to the Plenary after deliberation in the Standing Commission.

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40 Article 81 of the Wolesi Jirga Rules of Procedure.
41 Article 77 of the Meshrano Jirga Rules of Procedure.
The process of a Wolesi Jirga Private Members’ Bill in the Meshrano Jirga Plenary.

In the Plenary stage of the Meshrano Jirga the same procedure is applied to a Private Members’ Bill as is followed for the Government Bill. If the Meshrano Jirga agrees with Wolesi Jirga and approves the legislative proposal drafted by the Members, the draft bill is first sent to the Secretary of the Wolesi Jirga, who then sends it to the Ministry of State for Parliamentary Affairs to be passed on to the president for the purpose of endorsement.

When one of the Houses rejects the bill approved by the other, or when one House disagrees with the amendments made by the other, the bill is then deliberated and approved or rejected by a Joint Commission comprised of an equal number of members from both the houses.

III. Approval of a Meshrano Jirga Private Members Bill

Processing of a Meshrano Jirga Private Members’ Bill in the Meshrano Jirga.

The Private Members’ Bill prepared by 10 or more Members of the Meshrano Jirga, is first processed within the Meshrano Jirga. The legislative process of a Meshrano Jirga Members’ Bill does not differ significantly from that of a Government Bill. Therefore we will only briefly discuss the process, focusing on the differences

Tabling and announcement of a Meshrano Jirga Private Members’ Bill in the Plenary

No matter which house it originates in, a Private Members’ Bills is registered, tabled and announced at the Plenary in the same fashion. Accordingly, the Meshrano Jirga is not in a session the draft legislation is processed and published in the Official Journal of the Meshrano Jirga.

Processing of a Meshrano Jirga Private Members’ Bill in the Standing Commission.

In the Meshrano Jirga Commission stage, in relation to the bill prepared by the Members of the Meshrano Jirga itself, the same procedure is applied as is followed

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42 See Article 77 of the Meshrano Jirga Rules of Procedure.
in the processing of a Government Bill. However the Constitution and the *Rules of Procedure* of the Meshrano Jirga are silent on how long the Commission has to consider the Private Members’ Bill. In practice the same procedure (application of a 15 day deadline) is applied for consideration of a Private Members’ Bill by Commission as for a Government Bill.

In the Commission stage of a Private Members’ Bill being processed by the Meshrano Jirga, the bill is deliberated article by article in Commission just as is the process for all other bills. The Private Members’ Bill is accordingly referred to the Plenary after its deliberation in the Standing Commissions. There it follows the same procedure followed for all other bills.

**Referral of a Meshrano Jirga Private Members’ Bill to the Wolesi Jirga.**
The text of the Private Members’ Bill originating in the Meshrano Jirga is first approved by the Meshrano Jirga and is then sent to the Wolesi Jirga.

**II. The Processing of a Meshrano Jirga Private Members Bill in the Wolesi Jirga.**
The processing of a Meshrano Jirga Private Members’ Bill in the Wolesi Jirga does not differ significantly from that of a Government Bill. Therefore our focus will be on indicating differences from the procedure followed for a Government Bill.

**Inclusion of a Meshrano Jirga Members’ Bill in the Wolesi Jirga Plenary Agenda.**
Just as he or she does with a Government Bill, the Speaker of Wolesi Jirga refers the Meshrano Jirga Private Members Bill to the Council of Chairs within one month for inclusion in the agenda of the Plenary.43

**Formal introduction of a Mehsrano Jirga Members’ Bill in the Plenary of the Wolesi Jirga.**
Just as the Speaker of the Wolesi Jirga may invite the Minister of State for Parliamentary Affairs and the Minister to whom the bill relates to formally introduce a Government Bill to the Plenary session, he or she may also invite the sponsoring Member or Members of the Meshrano Jirga, to formally introduce their

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43 See Article 78 of the Wolesi Jirga *Rules of Procedure* and paragraph 3 of Article 97 of the Constitution.
bill in the Plenary. The bill introduced by Members of the Meshrano Jirga is registered and announced in the Plenary, after which the Speaker refers it to the relevant Standing Commission.

**Deliberation of a Meshrano Jirga Private Members’ Bill in the Wolesi Jirga Standing Commissions**

The procedure here is the same as for all other bills with a 20 day time allotment for completion of consideration. After the Commission Stage, the consolidated version of the Meshrano Jirga Private Members’ Bill is referred by the Council of Chairs to the Plenary for approval.

**The processing of a Meshrano Jirga Members’ Bill in the Wolesi Jirga Plenary**

In the Plenary stage of the Wolesi Jirga, the Meshrano Jirga Private Members’ Bill is processed in the same fashion as a Wolesi Jirga Private Member Bill or a Government Bill.

If the Wolesi Jirga agrees with the bill approved by the Meshrano Jirga, that bill is sent to the Wolesi Jirga Secretariat which sends it on for endorsement by the President through the Ministry of State for Parliamentary Affairs.

If the bill is rejected by the Wolesi Jirga or the Wolesi Jirga disagrees with the amendments made by the Meshrano Jirga, the bill is then deliberated and approved or rejected by a Joint Commission comprised of an equal number of Members from both Houses.

**The Processing of Wolesi Jirga and Meshrano Jirga Members’ Bills in the Joint Commission**

**Referral of a Private Members’ Bill to the Joint Commission**

If one House does not agree with a bill approved by the other House, the Private Members’ Bill, like a Government Bill is referred to the Joint Commission. The procedure that follows in the Joint Commission is the same for all bills.
Endorsement of a Private Members’ Bill and Publication in the Official Gazette

I. Presidential Endorsement of Bills approved by the National Assembly
Endorsement by the President is considered to be the fourth stage of the legislative process. According to Article 94 of the Constitution, the approval of Parliament must be endorsed by the President.

As noted above, according to the provisions of Constitution, the President has only fifteen days for the endorsement of a Private Members’ Bill, the same time limit as for a Government Bill. Subsequently, the new law is sent to the Ministry of Justice for publication in the Official Gazette.

In the event that the President rejects the draft legislation and sends it back within the 15 days allowed by law, the procedure to be followed by the Wolesi Jirga remains the same as for other bills.

II. Publication of the Endorsed Members’ Bill in the Official Gazette.
The publication of a Private Members’ Bill is the fifth and last stage in the legislative process. After its publication in the official gazette, the Private Members’ Bill becomes enforceable law.

CONCLUSION
There are two main types of draft legislation which pass through the parliamentary process and five stages through which each of these bills must pass. Government Bills and Private Members’ Bills from both Houses of the National Assembly pass from (1) drafting through (2) scrutiny, debate and amendment, to (3) approval, (4) endorsement and (5) publication. Along the way, legislation is refined until it becomes law. This Manual has been drafted to assist Afghan lawmakers generally and Members of Parliament and Parliamentary staff of the National Assembly of Afghanistan specifically in that process.