

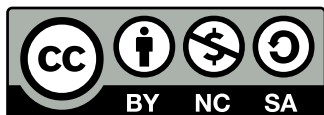
THE CONSTITUTION AND LAWS OF THE TALIBAN 1994–2001

Hints from the Past and Options for the Future



© 2022 International Institute for Democracy and Electoral Assistance

The legal texts contained in Annex A were translated into English from the original Pashtu and Dari. International IDEA has not verified the accuracy of the translated texts. In case of discrepancies, the original-language version will prevail.



With the exception of any third-party images and photos, the electronic version of this publication is available under a Creative Commons Attribution-NonCommercial-ShareAlike 3.0 (CC BY-NC-SA 3.0) licence. You are free to copy, distribute and transmit the publication as well as to remix and adapt it, provided it is only for non-commercial purposes, that you appropriately attribute the publication, and that you distribute it under an identical licence. For more information visit the Creative Commons website: <<http://creativecommons.org/licenses/by-nc-sa/3.0/>>.

International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
Tel: +46 8 698 37 00
Email: info@idea.int
Website: <<https://www.idea.int>>

Cover illustration: Canva
Design and layout: International IDEA
Copyeditor: Curtis Budden

DOI: <<https://doi.org/10.31752/idea.2022.54>>

ISBN: 978-91-7671-572-7 (PDF)

THE CONSTITUTION AND LAWS OF THE TALIBAN 1994–2001

Hints from the Past and Options for the Future

M. Bashir Mobasher, Mohammad Qadam Shah and Shamshad Pasarlay



International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
+46 8 698 37 00
info@idea.int
www.idea.int

Acknowledgements

M. Bashir Mobasher, Mohammad Qadam Shah and Shamshad Pasarlay wrote this guidance note and translated the related legal texts. They also came up with the original idea of making these past Taliban legal texts available for a larger audience. Amanda Cats-Baril and Leena Rikkilä Tamang managed the project on the part of the International Institute for Democracy and Electoral Assistance (International IDEA). Patrick de Vries, from the European Institute for Peace, provided feedback on a draft of the guidance note. Kimberley Phillips, from International IDEA's Asia and the Pacific team, provided editorial input, and Lisa Hagman and Tahseen Zayouna from International IDEA's Publications team supervised the publishing phase.

Contents

Acknowledgements	4
Executive summary	7
Introduction	7
Main findings.....	8
Introduction.....	10
Chapter 1	
The Taliban movement: a brief background	14
Chapter 2	
The Taliban's first government: 1994–2001	18
Chapter 3	
The Taliban's constitutional order: 1996–2001.....	25
Chapter 4	
The Taliban's return to power and the prospects for law-bound governance	32
Chapter 5	
How to use this resource	35
5.1. What do the translations include?	37
Annex A. Translations.....	40
A.1. The Taliban's state and symbolism.....	40
A.2. The Taliban's executive branch.....	53
A.3. The Taliban's legislation.....	93
A.4. The Taliban judiciary	115
A.5. The Taliban's civic education and politics	123
A.6. The Taliban and human rights	130
A.7. The Taliban economy.....	146
References	171
About the authors.....	176
About International IDEA	177

EXECUTIVE SUMMARY

INTRODUCTION

When the Taliban wrestled back control of Afghanistan in August 2021, they reinstated an autocratic system of governance that is reminiscent of their first period of rule in the mid-1990s. In a move that put an end to troubled peace negotiations, they initially seemed bent on bringing back the Islamic Emirate that broadly defined their rule from 1996 to 2001. This resurgence has highlighted a gap in scholarly research regarding the Taliban's possible intended legal frameworks.

Over the past two years, numerous studies have attempted to make sense of the Taliban's constitutional and legal imagination and to draw conclusions about what that may mean for Afghanistan. Previous studies are heavily informed by the Taliban's 2005 Constitution—the first document made public allegedly by the group. This project, which should be viewed as a guide to the Taliban's favoured legal order, presents translations of a wide variety of Taliban-era laws that provide the context for and insight into the Taliban's latest ascent to power. So far, it appears that their recent efforts strongly resemble the methods they used in the 1990s. It seems that religious symbolism is of high importance to the group, in that the state must serve the religion of Islam, guide Muslims to the right path and also appear obviously Islamic in all symbols and language. For example, one translated decree shows that the word 'emirate' has replaced the word 'state', as the former creates an impression of greater religiosity—a political organization headed by Amir al-Mominin, commander of the faithful.

It seems that religious symbolism is of high importance to the group.

MAIN FINDINGS

During the first iteration of the Taliban's hold over Afghanistan, they were initially less interested in establishing a constitutional order than eliminating political rivals through force. Instead, they relied on the uncoded rules of sharia (God's commands/Islamic law), more specifically the *Hanafi fiqh* (Islamic law as developed over centuries by scholars associated with the Hanafi school). In 2021, at the advent of their return to power, the Taliban declared that their new government would revive Afghanistan's 1964 Constitution except for its provisions that do not comply with the sharia. In February 2022, Taliban's Acting Minister for Foreign Affairs 'promised' that Afghanistan's 2004 Constitution—a document ratified after the Taliban were ousted from power in 2001, remained valid. Despite these early declarations, the de facto new rulers instead appear to be imposing an entirely different constitutional and legal framework—a constitutional ordering that departs from Afghanistan's earlier constitutional tradition in significant ways.

The Taliban's approach since their return to power has seen a remarkable departure from that minimal protection afforded to rights in their Constitution as well as a complete backtracking of fundamental rights enshrined in the country's 2004 Constitution.

The Taliban's 1998/2005 Constitution spelled out several basic rights and a subsequent commitment to protecting those rights, under the proviso that the rights and freedoms granted by the Constitution met 'Islamic standards'. In brief, these rights were defined by their compliance with sharia.

By contrast, the Taliban's approach since their return to power has seen a remarkable departure from that minimal protection afforded to rights in their Constitution as well as a complete backtracking of fundamental rights enshrined in the country's 2004 Constitution. Instead, sharia and the *Hanafi fiqh* are reinstated as the supreme law of the land, and a committee of *Hanafi* scholars is appointed to review the laws of the late Islamic republic for compliance with the sharia and to revive those that comply strictly with the sacred law. Despite appointing an interim executive branch reminiscent of the 1999 Council of Ministers, they appear to be steadily replacing the existing legal and judicial personnel (judges, prosecutors and lawyers), installing their own rank-and-file members in their place. The documents translated for this project paint a picture of a highly centralized structure—like that of almost all past governments in Afghanistan—in which power is concentrated largely in the hands

of the Taliban's leader, the Amir; from there, it flows through to the executive, legislative and judicial branches.

Like their first stint in power in the mid-1990s, the Taliban have claimed all state power and afforded no room for different worldviews. However, political stability will hinge on a constitution that makes it possible to address ethno-religious divisions peacefully. Resistance to governmental rule stemming from historical grievances will likewise need to be considered and the substantive inclusion of stakeholders ensured.

At present, the Taliban remain ambiguous about how exactly their current 'Islamic Emirate' will be guided, legally speaking. While it seems certain that they will draft yet another constitution in Afghanistan, it remains to be seen whether they will follow both the classic and modern principles of Islamic governance, and whether rights-based approaches will have any space therein. Nevertheless, the Taliban's official conduct, as manifested in publications by regime insiders and the emerging practices of the fledgling Taliban regime, suggests that the prospects for a rights-friendly regime look bleak at best.

Political stability will hinge on a constitution that makes it possible to address ethno-religious divisions peacefully.

INTRODUCTION

In August 2021 the Taliban stormed to power and took back control of Afghanistan. They have apparently reintroduced an autocratic Islamic Emirate, not unlike the system of governance that defined their first spell in power from 1996 to 2001. The Taliban's swift military triumph put an end to the frail peace negotiations between the late Afghan government and the Taliban. Thereafter, research interest shifted from an inclusive peace dialogue and agreement to the Taliban's constitutional framework. The Taliban provoked even further scholarly inquiry into their constitutional vision when they declared, on 28 September 2021, that their government would implement Afghanistan's 1964 Constitution as an interim basic law (Gul 2021). Further, in February 2022 the Taliban Acting Minister of Justice appeared to claim that Afghanistan's 2004 Constitution is still valid. That document has remained as 'Afghanistan's enforced Constitution' on the website of the Ministry of Justice since the Taliban's return (Pasarlay 2022a). However, despite the Taliban's early nod towards these two relatively liberal constitutions, the Taliban seem ready to impose upon the country an entirely different constitutional order.

Over the past two years, a number of high-quality studies have attempted to make sense of the Taliban's constitutional imagination and the type of constitutional order they may establish for Afghanistan (Rubin 2020; Rahimi 2021; Lombardi and March 2022). These studies draw primarily upon the Taliban's 2005 Constitution, officially the 'Charter of the Islamic Emirate of Afghanistan' (hereinafter the 'Taliban Constitution'), a document that the Taliban drafted and initially enacted in 1998 and then republished in 2005—

four years after the group was ousted from power—and scrutinized Taliban's governance approach through the lens of classical Islamic theory. This Constitution is the first public document that sketches the basic structure of the Taliban's favoured approach to governance and provides a blueprint for a constitutional model that they embraced and wished to form in Afghanistan.

At the start of their first spell in power, in the mid-1990s, the Taliban leaders were less inclined to draft a constitution or enact laws that would guide their government and facilitate the functioning of an effective bureaucracy. They claimed that the uncodified rules of sharia (God's commands/Islamic law) and the *Hanafi fiqh* were their 'only constitution' and that these provided sufficient guidance to enable their government to function (Van Linschoten and Kuehn 2018: 305). In public statements and official declarations, the Taliban pledged to abide by this Islamic 'constitution' and 'implement it in its true spirits' (Van Linschoten and Kuehn 2018: 101). Later, as the Taliban's writ expanded, and the group claimed more territory, they began to gradually formalize their political, religious and societal vision through statutory laws, decrees and directives—the legal documents translated for this research.¹ In October 1996 the Taliban leader (the Amir al-Mominin), Mullah Mohammad Omar, sought the assistance of the Pakistan-based Islamist political party Jami'at-i 'Ulama-ye Islami (Society of Islamic Scholars) in drafting a constitution (Rashid 1998: 87; Van Linschoten and Kuehn 2018: 305). In response to the Amir's request, Jami'at-i 'Ulama-ye Islami 'even drafted a constitution for the Taliban to use' as a starting point (Van Linschoten and Kuehn 2018: 305). Thereafter, the Taliban legislative bodies, the Amir, the leadership councils and the cabinet of ministers, drafted several laws and decrees in hopes of legitimating and consolidating their political vision (rule).

This research project provides English-language translations of some important Taliban-era laws that concern the fundamental aspects of their government. The laws and decrees translated and analysed here along with the 1998 Constitution formed the basic structure and the

In public statements and official declarations, the Taliban pledged to abide by this Islamic 'constitution' and 'implement it in its true spirits'.

¹ Technically, a thorough reading of the Taliban's legislative documents evinces a certain incoherence, and most of these documents demonstrate a limited standard of codification. Substantively, the Taliban laws reveal that the movement remained ideologically underdeveloped when it came to issues of constitutional functions and the nature of the state.

core identity of the Taliban's constitutional vision. Some of the norms written in these laws have apparently been revived by the Taliban's de facto government.

The Taliban Constitution has recently received significant scholarly attention, but the rest of the laws from the Taliban's first period of rule (1996–2001) have remained remarkably understudied. This is partially because the Taliban Constitution is publicly available in multiple languages, whereas most of the other important legal documents are in Dari and Pashto and were not easily accessible in other languages until they were translated for this project.

The Constitution not only is vague and ambivalent but also appears to be incomplete in many respects.

The Taliban Constitution provides an essential lens into the movement's constitutional vision. However, the document falls short of painting a comprehensive picture of the constitutional order that the Taliban envisaged and may install in the future. The Constitution not only is vague and ambivalent but also appears to be incomplete in many respects, chiefly on basic government structures and the nature of institutions that would realise the state's credos and commitments in practice. These missing parts of the Taliban's constitutional order were regulated to a larger extent by other basic laws.

Several studies have tried to compensate for the missing parts of the Taliban's constitutional vision by adding the 2010 *Layeha* (meaning the 'directive' which served as a code of conduct for the Taliban on the battlefield) to the discourse on Taliban views on constitutionalism (Johnson, DuPee and Shaaker 2018: chapter 8; Jackson 2018; Clark 2011). The *Layeha* provides essential details and clues about the way in which the Taliban conducted warfare, organized their strategies, defined their mission and goals, and ordered their hierarchical organizational structures. Other important works on the Taliban draw on various editorials, statements, conference presentations and interviews Taliban leaders gave to national and international media outlets and the Taliban's scholarly opinions published in their own magazines, including the *Shari'at* (Sharia), *Tolo'-ye Afghan* (Rise of the Afghan), *da Shari'at Ghag* (Voice of Sharia) and *Etefaq-i Islam* (Islamic Unity) (Van Linschoten and Kuehn 2018; Ibrahimi 2017; Lombardi and March 2022). These studies make a significant contribution to our understanding of the Taliban movement and their efforts at state formation.

However, this research attempts to bring new resources into the debate on the Taliban's constitutional vision. These resources include, among others, a law on a constitutional council, a decree of the Taliban leader authorizing the Supreme Court to exercise 'Islamic judicial review' (meaning to review the consistency of state law with the sharia and the *Hanafi fiqh*), a law on the authorities of the Taliban Shura (legislative council), a law on the structure and duties of the executive branch, a decree on the jurisdiction of the Supreme Court and the Military Court, a decree on the rights of women and several other laws that range from the teaching of Islamic law to the structure of the feared ministry of *amr bil ma'rof wa nahi'an al munkar* (Ministry of Vice and Virtue).

The hope here is that the translation of these legal documents, which have remained remarkably understudied, will help us understand the Taliban's constitutional vision. These translations should prove valuable particularly because the resurgent Taliban have begun to gradually restore many of these decrees and orders or draw upon them in crafting new legal documents. The December 2021 Decree on the rights of women is exemplary of this venture.

Chapter 1

THE TALIBAN MOVEMENT: A BRIEF BACKGROUND

‘Taliban’ (singular ‘Talib’) is an Arabic word that means students—traditionally, students of religion.

The Taliban movement was essentially formed by students and teachers of religion who had historically studied at the madrasas (religious schools) in Afghanistan and Pakistan. ‘Taliban’ (singular ‘Talib’) is an Arabic word that means students—traditionally, students of religion. In the mid-1980s, when the Soviet Union was invading Afghanistan, those who would later form the Taliban movement joined the mujahidin (holy warriors) parties to fight the Soviets (Roy 1986; Dorronsoro 2005). After the Soviet withdrawal in 1989, most of these would-be Taliban leaders retired to the countryside and resumed the teaching and preaching of Islam in madrasas throughout the country. The Taliban’s founding fathers apparently believed that they had performed their religious duty of partaking in the holy war and defeating infidel invaders, and that their service was no longer required (Mutma’n 2019).

However, after the Soviet withdrawal and the collapse of its installed government in Kabul, the deeply divided, heavily armed and mutually hostile mujahidin factions were unable to formulate a system of governance that would be acceptable to all parties. As a result, a destructive civil war erupted among the mujahidin factions. Freed from the Soviet occupation, Afghanistan then sank into lawlessness, chaos, mayhem and savagery wrought upon the country by its apparent liberators (Goodson 2001; Rashid 2000; Gohari 1999). In the eyes of the Taliban founders, the once holy heroes of Islam had become unholy traitors and had to be eliminated. Therefore, some have argued that the destruction the civil war unleashed upon Afghanistan compelled Mullah Omar, the founder and supreme leader of the Taliban, and his disciples to stage an armed

campaign to liberate the people again and to restore peace and security throughout the country (Davis 1998: 43; Mutma'n 2019). In the summer of 1994 Mullah Omar and his companions scored an important win in their mission when they secured most of Kandahar, the Taliban's birthplace, and swore to free the entire country from the hold of warlords and criminals and to 'restore moral order and justice to Afghanistan' (Crews and Tarzi 2008: 4).

Devastated by the civil war and riding '[o]n a wave of popular anger' at the status quo, a majority of the populace at first (in 1994) embraced the Taliban in many parts of the country (Davis 1998: 43). The general outrage and grievances against the extant situation created a breeding ground from which the Taliban exploded and took control of nearly all the country (Maley 1998a; Rashid 2000; Marsden 1998). However, the Taliban rule did not bring the comfort that people had initially anticipated. Instead, the Taliban only added to the misery of the battered people by instituting a process of brutal oppression and tyranny, killing scores of civilians, forcing religious minorities to leave the country en masse, confining women to their homes, preventing girls from pursuing education and denying them the basic right to work (Rashid 2000: 83). The cruelty with which the Taliban enforced their own brand of Islamic values upon the people swiftly begot popular discontent and resentment inside Afghanistan as well as throughout the world. The Taliban ignored repeated calls from the international community to soften their conduct; if anything, they resorted to even harsher techniques in the pursuit of establishing what they view as 'a purely Islamic society'. Abandoned by the international community, the Taliban effectively became a pariah state and offered sanctuary to global terrorists, including al-Qaeda, which plotted and executed the 9/11 attacks on United States soil—which prompted the USA and its allies to violently remove the Taliban regime in late 2001 (Barfield 2010: 268–70).

The bulk of the Taliban's leaders had studied in Deobandi seminaries (madrasas), a chain of famous Islamic schools in neighbouring Pakistan, which, themselves, were an extension of the parent madrasa, the Dar al-Uloom Deoband, established in 1866 (Barfield 2010: 255). These madrasas trained scores of Afghan students whose families were displaced by the war in Afghanistan. Many Afghan families sent their children to these centres of religious

Devastated by the civil war and riding '[o]n a wave of popular anger' at the status quo, a majority of the populace at first (in 1994) embraced the Taliban in many parts of the country.

The Taliban ignored repeated calls from the international community to soften their conduct; if anything, they resorted to even harsher techniques in the pursuit of establishing what they view as 'a purely Islamic society'.

learning in Pakistan because they provided ‘free room and board along with [religious] education’ (Barfield 2010: 255). These madrasas still serve as major hubs of Islamic learning for a fair number of Afghans who want to pursue religious education, and they have trained many young leaders of the new generation of Taliban. The Taliban’s approach to Islam and Islamic governance has thus been informed largely by Deobandi-style Islamism which taught classical *Hanafi* law (Barfield 2010: 255), and ‘preached a form of conservative orthodoxy’ (Maley 1998b: 14).

The religious curriculum at Deobandi madrasas, especially at the one based in Deoband, India, was centred on the mastery of ‘*manqulat* [revealed Islamic texts], the studies of the Qur’an and the *hadith* ... and *ma’qulat* [logical reasoning], the rational studies of law, logic ... philosophy’ and theology, informed primarily by the works of earlier *Hanafi* scholars (Metcalf 1982: 110). The primary objective of the madrasa in Deoband was to school a class of well-trained Islamic scholars who would be devoted exclusively to Islamic scriptures, advancing the Deobandi brand of ‘reformist Islam’ through edification and the production of scholarship (Metcalf 1978: 111, 117). The teaching materials in the Deobandi madrasa were aimed at reviving Islamic values through novel interpretive approaches and reconciling the classical Islamic texts with the realities of the modern world. The key objective was to ultimately enable the Muslim community (the *umma*) to defy and cope with the pressures generated by the legacies of colonialism (Metcalf 1978: 111, 117), and to brand Islam as a holistic method for bringing a social and political order. Deobandi Islam therefore developed under the shadows of colonialism and its later elaboration would be strictly influenced by that context.

Deobandi Islam in Afghanistan did not spring into action suddenly when the Taliban ascended to power in 1994; in fact, the school had long informed the understanding and interpretation of Islamic scriptures on part of a considerable number of the Afghan clergy, the *ulama*, a class of scholars educated in Islamic scriptures, law and theology (Oleson 1995: 188). Although the Deobandi madrasa’s strong relationship with the Afghan *ulama* suffered a setback during the reign of King Amanullah Khan (1919–1929), who preferred cooperation with ‘the modernist’ madrasa in Aligarh, the Deoband seminary got a second chance to restore its historical relations

with the Afghan ulama in the 1930s (Oleseen 1995: 188). In 1933, in particular, Deobandi scholars visited Kabul and announced their willingness to assist the Afghan state in training a new class of ulama who would be the state's 'sincere' servants and would administer religion under the state's guidance, meaning that the ulama would no longer adjudicate in religious matters independently without the state's oversight (Oleseen 1995: 188). This new cooperation rekindled Deobandi madrasa's ties with the Afghans, but it was not as strong a connection as the Deobandi ulama had forged with religious institutions in Pakistan, where they established a strong network of madrasas along the Afghanistan–Pakistan border. Taliban leaders were largely trained in these centres of religious education.

While the original Deobandi brand of Islam developed against the backdrop of colonialism in the Indian subcontinent, the Taliban reinterpreted the Deobandi tradition and took it 'to an extreme which the original Deobandis would never recognize' (Rashid 2000: 88). The Taliban's approach to sharia and the *Hanafi fiqh* was hardly paralleled in Afghan history or anywhere in the Muslim world in the 1990s (Rashid 2000: 88). Its main features were, among others, adherence to 'strict [*Hanafi*] orthodoxy' (Rasanayagam 2005: 179), opposition to modernist approaches to Islamic legal reasoning and fidelity to a fundamentalist interpretation of the Islamic legal texts inspired the classical jurists. Some have thus called the Taliban's brand of Islam a 'new style fundamentalism' (Rashid 2000: Chapter 6).

With such commitments to religious (*Hanafi*) orthodoxy, the Taliban established a theocratic Islamic emirate—a proto-state governed solely by *Hanafi* law. Although the Taliban codified the *Hanafi fiqh* regarding certain issues, a larger portion of this body of law remained uncoded. For example, the Taliban compiled the norms of the *Hanafi fiqh* on the property rights of rebels and on *murtad* (apostates), people who renounce Islam, and enacted them as positive state law (see Annex A.6.5). This did not mean, however, that the part of the *Hanafi fiqh* that was not codified held no legal weight. In fact, the Taliban leaders ordered the courts, through numerous laws and decrees, to issue decisions based only on the *Hanafi fiqh*, most of which remained uncoded (see Annex A.4.2).

The Taliban leaders ordered the courts, through numerous laws and decrees, to issue decisions based only on the *Hanafi fiqh*, most of which remained uncoded.

Chapter 2

THE TALIBAN'S FIRST GOVERNMENT: 1994–2001

In the middle of 1994, after the Taliban carried out what was then considered to be their first security-related act when they eliminated abusive militias in the vicinity of Kandahar, they moved quickly to take control of southern Afghanistan. Immediately, however, they revealed the religious-autocratic nature of how they would govern while expanding across Afghanistan. At the beginning of their rule, the Taliban were less interested in forming a constitutional government or creating an effective bureaucracy, arguing that they would turn attention to state-building only after they had completed control of the country. Establishing control over the entire country and eliminating existing and future threats to their rule attracted most of their attention. They consistently asserted that their goal was to form what they viewed to be a 'true' or 'pure' Islamic order (Van Linschoten and Kuehn 2018: 115, 134 and 148). Devoted entirely to taking territory, eliminating rivals and consolidating power through brute force, the Taliban leaders seemed not to have entertained the possibility of the role of constitutional government and its machinery in establishing such a political system.

As the Taliban took more territory, including Kabul in 1996, they encountered serious bureaucratic problems, and the need for organized rule and state institutions became clear within the Taliban leadership.

As the Taliban took more territory, including Kabul in 1996, they encountered serious bureaucratic problems, and the need for organized rule and state institutions became clear within the Taliban leadership (Van Linschoten and Kuehn 2018: 73). In reality, by the time of Kabul's capture the Taliban had proven to be more effective warriors, but when it came to the questions of government and how to run state institutions, they proved poor bureaucrats. Even then, the Taliban leaders invariably brushed aside bureaucratic challenges and claimed that Islam and its dictates provided sufficient guidance,

and that a 'true Islamic political order' needed no constitution or other state-enacted laws (Van Linschoten and Kuehn 2018: 92 and 270; Rashid 2000: 107). They continued to spend more time and resources in warfare rather than building a government. The dearth of bureaucratic expertise within the Taliban ranks forced them to turn to 'puritanical morality' in crafting policy and enacting legislative decrees (Nojumi 2008: 111). Therefore, the Taliban approached matters related to governance through the prism of 'virtue versus vice' and 'Islamic versus un-Islamic' (Nojumi 2008: 111), which is reflected clearly in the Taliban laws. In numerous decrees and messages, the Taliban leader reiterated that the purpose of the movement was to 'restore God's religion' (Islam) and do nothing that harmed the sacred faith. They were justified, according to the scholars of the movement, in formulating policies so long as those policies did not violate the sharia and the *Hanafi fiqh*. For example, the Amir stated the following in a decree:

What did [the resistance forces, Taliban's rivals] do? They used tricks and treachery to gain wealth, increase their own militia, and [provide] for their own tribes. [Seeking] such leisure and power led to their misdeeds ... If during Jihad against Russians, 80 per cent of the factions were virtuous and 20 per cent immoral, afterwards the opposite was true. [Now] the ordeal is upon us and, in fact, some of us have already failed in that. Everyone [of you] must take your responsibilities for the deeds of yourselves, your people, and Muslims, as well as Allah's affairs seriously. Your both worlds shall be ruined if you remain reckless about this. (see Annex A.5.8)

In the same decree, the Amir continued:

As we fight them [the resistance forces] and give thousands of sacrifices, [we must bear in mind that] they were also Mujahidin; but because they stopped following Allah's path, Allah authorized Jihad against them. Now it is our turn to follow Allah.

The Taliban leaders continued to hammer away at one important message in their proto-constitutional discourse: only a ‘pure Islamic government would rule Afghanistan’, and that the Taliban was the only movement that could engineer such a government (Van Linschoten and Kuehn 2018: 177) (see Annex A.6.10). For the Taliban, this type of ‘pure’ and ‘true’ Islamic state should have the power and will to apply God’s commands and impose the ‘Qur’anic system [on Afghan] society’ as well as transform ‘all aspects of ... social life’ in line with the Taliban’s understanding of sharia (Van Linschoten and Kuehn 2018: 223).² For the Taliban, sharia and the *Hanafi fiqh* were the de facto law of the land, and their judiciary resolved cases on that basis.

In order to create such a state, the Taliban turned to principles that reflected their interpretation of the medieval Islamic doctrine of shura (consultation/consultative body)—but one in which an absolutist leader (the Amir) sat at the top and had the power to disregard the opinions of the shura. In the nascent Taliban regime, Mullah Omar, the Taliban leader, assumed the role of Amir al-Mominin (commander of the faithful/Muslims, the Amir) and became the head of their Supreme Council (Shura), which was formed and based in Kandahar (Goodson 2001: 116). The Amir was the head of a highly centralized Islamic Emirate (Van Linschoten and Kuehn 2018: 211–13),³ exercising significant legislative and executive authority. In the areas under Taliban control, the Amir wielded extensive discretionary power. Obedience to the Amir’s authority and orders was morally (and religiously) required. The state was obliged to execute those who dared to disregard them (Barfield 2010: 261). Ahmed Rashid, one of the leading authors on the Taliban, reports the following from an interview a senior Taliban official gave to an Arabic-language magazine in 1996:

2 This refrain formed the foundational aspect of the Taliban’s brand of legalism under which everything should be consistent with the principles of sharia.

3 In October 1997 the Taliban leader issued a decree changing the ‘Islamic state/nation’ of Afghanistan into the ‘Islamic Emirate’ of Afghanistan. The Taliban provided absolutely no reasons or explanation for this change. They did not contemplate the political or legal consequences of this shift. They did, however, argue that ‘the word that is closer to the name’ of Amir al-Mominin is ‘Emirate’. What this meant for the way in which sovereignty was exercised or political and legal authority were wielded remained remarkably unclear. See the translation of the Decree of the Office of the Amir on Replacing ‘State’ with ‘Emirate’, *Official Gazette*, No. 10, 1999, in Annex A.1.2.

Decisions [in the Taliban government] are based on the advice of the [Amir al-Mominin]. For us [the Taliban] consultation is not necessary. We believe that this is in line with the [Sharia]. We abide by the Amir's view even if he alone takes [a] view. There will not be a head of state. Instead, there will be an [Amir al-Mominin]. Mullah Omar will be the highest authority and the government will not be able to implement any decision to which he does not agree. [Representative government through] [g]eneral elections [is] incompatible with [Sharia] and therefore we reject them. (Rashid 2000: 102)

Tellingly, this represented the dominant view of governance within the Taliban movement in the 1990s, and it is inherently incompatible with accountable and democratic modes of governance. The Taliban's constitutional ideas are based, partially, on 'premodern [Muslim] jurists' writings on the legal requirements for legitimate governance' (Lombardi and March 2022: 15). They have ostensibly discerned several prevailing approaches to Islamic governance 'from the classical tradition, and particularly from the writings of Hanafi scholars' (Lombardi and March 2022: 15). In theory, these governance norms may be 'interpreted on a spectrum from the (relatively) democratic and liberal to the decidedly authoritarian and antiliberal' (Lombardi and March 2022: 15). During their first spell in power in the 1990s, all evidence suggested that the Taliban had endorsed the latter approach to Islamic governance. Democratic modes of Islamic governance seem to be absent in publications by Taliban regime insiders and the emerging practices of the Taliban regime. During their first rule, they did not trust democratic elections as the proper way to elect the head of state (Nojumi 2002: 152). Today, the Taliban view general elections as a foreign imposition with no value to Islamic governance. Therefore, the authoritarian Amir acted as the supreme lawgiver, was the final judge in important legal and political cases (see Annex A.4.3) and wielded the final legal authority concerning the conformity of the law with sharia and the *Hanafi fiqh* (see Annex A.3.7).

In the Taliban's Islamic Emirate, the Amir exercised supreme power, but ordinary government functions were performed by a different

Democratic modes of Islamic governance seem to be absent in publications by Taliban regime insiders and the emerging practices of the Taliban regime.

body, the Council of Ministers, which was headed by a prime minister (*raees al-wuzara*). The Supreme Council appointed the Council of Ministers and effectively exercised a veto over its decisions (Rashid 2000: 98; Barfield 2010: 261; Ibrahimi 2017: 947–48). The Kandahar-based Supreme Council ‘had two subsidiary branches, [a] Council of Clerics and a Military Council that consulted, respectively, the country’s religious and military affairs’ (Ibrahimi 2017: 952); both councils operated under the direct control and oversight of the Amir. It was the religious branch of the Supreme Council that drafted and proposed to the Amir several of the laws discussed in this project.

The Taliban’s governance system based on shuras proved futile in administering territory, running an administration or ordering the state.

The Taliban’s governance system based on shuras⁴ proved futile in administering territory, running an administration or ordering the state. They thereby restructured their government in 1999 to improve governmental function and adopted the offices of the executive branch that existed during the presidency of Mohammad Daoud Khan (1973–1977), which itself resembled the executive branch under King Mohammad Zahir Shah and the 1964 Constitution of Afghanistan (see Annex A.2.3). This remodelling, however, did not affect the powers of the Supreme Council, and Mullah Omar remained an authoritarian ruler atop all state institutions. Throughout their rule (1994–2001), the Taliban made no further efforts to form an inclusive permanent representative government or to craft institutions that exercised shared political power, claiming instead that war consumed most of their time and resources.

The Council of Ministers was the Taliban government’s executive branch tasked with handling daily affairs of the government. Under the Law of the Council of Ministers which outlined the duties and organization of the cabinet of ministers (see Annex A.2.2), this Council exercised several key functions. It had a duty to enforce sharia law, design and implement domestic and foreign policy and oversee the country’s defensive and military affairs. The Council of Ministers also had the responsibility to design and enhance the country’s social, economic and cultural policies and make

4 In Islamic tradition, shura (consultation) is a key principle of governance. In modern Islamic governance, shura can take many forms so long as it encourages the people to partake in the decision-making processes directly or indirectly through their representatives. It is a principle that should help to create a more accountable and democratic government. But the Taliban deployed this in a manner that only assisted the Amir to exercise his autocratic powers rather than subjecting his power to limits or accountability.

recommendations to the Amir on drafting laws so long as these laws did not contradict the injunctions of sharia (see Annex A.2.2) or the *Hanafi fiqh*. In cases of repugnancy, the Amir would strike them down. Although the Kabul-based Council of Ministers was granted some degree of executive power, all of its decisions were subject to the approval of the Supreme Council helmed by the Amir. Taliban leaders themselves described the functions and powers of the Council of Ministers as secondary in rank (Goodson 2001: 116).

The Taliban judiciary was not a separate, independent or coequal institution either; it functioned under the direct command of the Amir. It included two sets of courts that operated under the country's Supreme Court: sharia courts and military courts (see Annex A.4.2).⁵ Sharia courts presided over normal civil and criminal cases, while the military courts exercised their own distinct jurisdiction. The Taliban's Supreme Court justices were appointed by the Supreme Council after the approval of the Amir. The entire Taliban judiciary, including the Supreme Court, exercised its power under the direction of the Amir. In fact, one of Mullah Omar's decrees directed all courts (civil and military) to consult the Amir before issuing decisions in 'important cases' (see Annex A.4.3). Similarly, no court was allowed to decide cases without consulting the Amir. Finally, this same decree required all courts to brief the Amir ahead of deciding all consequential and important judicial cases.

The Taliban's government (1994–2001) did not include a separate legislative organ such as a parliament or national assembly; in fact, the Supreme Council exercised legislative and oversight functions in practice—also in coordination with the Amir. The only other powerful institution was the Ministry of Vice and Virtue, and it was tasked with furthering the discretionary powers of the Amir, imposing the Taliban's version of Islamic values on society and transforming society accordingly. It was also empowered to implement the Amir's decrees, advice and directives (Nojumi 2002: 154). For example, the

The entire Taliban judiciary, including the Supreme Court, exercised its power under the direction of the Amir.

⁵ Ahmed Rashid discusses a third, more powerful, court, the Islamic Supreme Court, based in Kandahar. Because this Court was located in the Amir's province, Kandahar, it soon became the most powerful judicial body in the country. It assumed the power of appointing religious (Islamic) judges all over the country 'and once [or] twice a year assembled them all in Kandahar to discuss cases and the application of [sharia] law'. The Kabul-based Supreme Court continued to exist alongside the Kandahar-based Islamic Court, although it exercised far less authority than the Kandahar Court. See Rashid (2000: 102–03).

The Ministry of Vice and Virtue then formed committees throughout the provinces to expel from the Taliban ranks those members whose appearance was not in line with the Amir's decree.

Amir decreed that all members of the Taliban were prohibited from trimming or shaving their beards, and that those who shaved their beards should be expelled from the movement's rank and file. The Ministry of Vice and Virtue then formed committees throughout the provinces to expel from the Taliban ranks those members whose appearance was not in line with the Amir's decree. The Ministry of Vice and Virtue exercised a key mandate in the Taliban's quest to 'Islamize' the Afghan society, and it was one of the first institutions that the Taliban revived when they retook control of Afghanistan in August 2021. The law on the Ministry of Vice and Virtue gave this institution the following powers: (1) to promote good and prevent evil in line with the sharia law of the Prophet Mohammad and the *Hanafi fiqh*; (2) to take effective measures to uphold piety, order and righteous behaviour in society; (3) to ensure that individuals adhere to Islam in their personal and social affairs; and (4) to prevent anti-Islamic advertising and campaigning (see Annexes A.2.5 and A.4.5)

In enforcing its mandate, the Ministry of Vice and Virtue was to be independent and became the most feared institution in the country. This Ministry was essentially given the task to effectuate the Taliban's favoured Islamic society—one free of immorality and in which God's laws are applied uniformly. In this quest, the Ministry was given the power to use all the means at its disposal.

Chapter 3

THE TALIBAN'S CONSTITUTIONAL ORDER: 1996–2001

The Taliban's rhetoric claiming that a 'truly' Islamic political order needed no formal constitution changed in mid-1998. At that time, the Taliban Amir convened a grand assembly of the ulama, a body that served as a constitutional convention, under the guidance of the Supreme Court. The Amir ordered the Council to draft a new 'Islamic' constitution for the expanding Taliban Emirate. The Taliban's decision to adopt a constitution at this point was apparently driven by the following factors. First, when the Taliban restructured their bureaucracy and resurrected state institutions that existed under the 1977 Constitution, they noticed that regulating the workings of these institutions was impossible without a constitution that defined certain rules about the functioning of the government and institutions. Hence, they chose to draft a constitution to order their government and outline the fundamental principles of their state. This view is proclaimed clearly in the preamble to the Taliban Constitution, which stated that a 'constitution or a basic law [was] a valuable [instrument] in guiding the functioning of a state' and in defining its basic procedural rules (Afghanistan 1998a: Preamble).

Second, and more importantly, Afghanistan's previous rulers had used constitutions to entrench themselves and their vision of the state, and exclude all rival worldviews. The Taliban initially began to establish their rule through violent means. By 1998, when they had expanded their writ over most of Afghanistan, the Taliban wished to deploy a written constitution as a vehicle to formally entrench their political vision and mute all existing and future challenges to their rule (Rubin 2020). Finally, the Taliban movement viewed its principal aim as one of forging a 'true Islamic order' (Crews and

Afghanistan's previous rulers had used constitutions to entrench themselves and their vision of the state, and exclude all rival worldviews.

Tarzi 2008: 4); this required the Islamization of the legal system by removing laws that the Taliban believed contradicted Islamic values (Rashid 2000; see Annex A.3.4). They drafted a constitution to institutionalize the Islamic identity of their state and guarantee the normative supremacy of sharia and the *Hanafi fiqh*. Thus, for the Taliban legislators, every single regulatory issue had to be consistent with the injunctions of sharia and the teachings of the *Hanafi fiqh*, notwithstanding the latter's limitations in governing a deeply divided society like Afghanistan. In the legal documents translated for this project, there is not a single law in which either Islam or the sharia is not invoked either explicitly (i.e. Islam, sharia or the *Hanafi fiqh* is named) or implicitly (the words 'religion' or 'divine' are used). Any legal norm repugnant to the dictates of sharia and the *Hanafi* school, as elaborated by the Taliban ulama, would be void. The Constitution proclaimed this view decidedly.

Not unlike the Taliban's de facto political framework, the Taliban Constitution also created a loosely structured three-branch government—the executive, legislative (the Supreme Council), and judicial branches—all of which were appointed by the Amir and were answerable to him. In this way, the constitution-making exercise was more about consolidating the system of rule the Taliban had in place rather than an experiment with a constitutionalist venture.

The Taliban's sub-constitutional legislation did not indicate either how the Amir would be chosen.

Under the Constitution the Amir was the head of state as well as the head of government and exercised the powers of the commander in chief. Additionally, the Amir had the power to appoint and remove the prime minister and justices of the Supreme Court, to approve cabinet ministers and to sign laws and issue decrees. However, the Constitution did not settle one of the most important issues: how the Amir should be appointed. The Taliban's sub-constitutional legislation did not indicate either how the Amir would be chosen. The Constitution did, however, clarify that, in case the Amir chose to resign, a committee composed of the chief justice, the leader of the Islamic Council (head of the legislative branch) and the prime minister would decide whether to accept or reject the Amir's resignation. In case Amir's resignation was accepted, or in case of his death, the chief justice would assume the role of acting Amir.

The laws and regulations translated for this project painted a picture of a highly top-down, centralized executive structure of government—like that of almost all previous Afghan governments—in which all political, fiscal and administrative powers were concentrated in the hands of the head of state (Amir in the Taliban state). The Amir sat not only atop the horizontal power structure but also at the apex of vertical power arrangements. He wielded the power to appoint all ministers, governors, provincial heads of departments and district governors. Fiscally, the Amir had the upper hand in making decisions on taxing, planning and budgeting, including budget formulation, allocation and execution. The Amir was the final authority in administrative decisions concerning procurement and other related bureaucratic areas.

Fiscally, the Amir had the upper hand in making decisions on taxing, planning and budgeting, including budget formulation, allocation and execution.

The Taliban Constitution listed a number of basic rights and freedoms and committed to protecting them, but it added a broader veneer of 'under Islamic standards' to them. Put differently, each individual right and freedom (positive and negative rights) was subject to compliance with the provisions of sharia. The scope and content of these rights were thus left to be determined by the Taliban leaders and their courts, perhaps in a way that did not contradict the teachings of the *Hanafi* school. For instance, the right to life, freedom of thought and conscience, the right to privacy, equality before the law, the right to work and the right to education warranted protection so long as they were exercised within the bounds of Islam. What this meant in terms of real governance remained obscure.

Several laws and decrees translated for this project also spoke of an 'Islamic' version of basic rights. For example, one of the Amir's decrees on women's rights provided that '[w]omen have rights under the Islamic Sharia by which their dignity, [high position], and sanctity shall be protected.' However, because of adverse and un-Islamic traditions, women are deprived of their rights and oppressed in different ways (see Annex A.6.2). The decree prohibited some of the harshest customary practices towards women: it banned the practice of *baad* (a form of dispute settlement in the case of murder whereby a female from the perpetrator's family is offered for marriage to the family of the victim) and granted widows free will in entering into marriage (see Annex A.6.2). Similarly, the Amir's other decrees and messages prohibited discrimination based on regional, ethnic or

tribal considerations (see Annex A.6.9), and banned the beating of people (see Annex A.6.7), a practice that was widespread throughout Afghanistan during Taliban rule. In practice, the Taliban showed no respect for these rights, not even under their own version of Islamic framework. They brutalized anyone who disagreed with them, denied women basic rights and carried out numerous arbitrary public executions. Put differently, despite this limited protection of rights, the Taliban created an emirate of whips where people who disobeyed their commands were beaten ruthlessly and were denied all types of protections. This practice essentially undercut the legitimacy of their own laws and violated the basic values that constitutionalism normally protects.

The Taliban laws essentially reinforced the normative supremacy of sharia law and elevated the *Hanafi fiqh* as the principal source of legislation.

Most of the Taliban laws and decrees spoke of the obligations that citizens bore with respect to the ‘Islamic society’ than the rights and freedoms they enjoyed. The purpose of the state and its laws is not to enable individuals to exercise their rights and freedoms. Instead, it is to guide Muslims to the true path ordained by God deploying whatever means it so wishes, up to and including violence. By so doing, the state ensures the salvation of the Muslims, for which the ruled should be thankful.

Islam and sharia appeared throughout the Taliban Constitution and other laws. In fact, almost every aspect of the state and government was expected to be guided by the ‘standards of Islam’ and the injunctions of sharia (see Annex A.3.2). The Taliban laws essentially reinforced the normative supremacy of sharia law and elevated the *Hanafi fiqh* as the principal source of legislation. It advanced a version of Islam that the group had championed since taking control of Kabul in 1996. Article 2 of the Constitution entrenched an overarching governance principle under which God was declared the ultimate sovereign; it stated that ‘the system of [the] Islamic Emirate of Afghanistan is based on the following Qur’anic verse: *in al-hukmo ila lillah* [rule belongs to God only]’ (Afghanistan 1998a: article 2). Islam was the religion of the state, and legislation had to be compatible with the injunctions of the *Hanafi* school. Social life in its entirety was expected to be reconstructed (and transformed) in line with the tenets of Islam as interpreted and understood by the *Hanafi* school. The head of state, the prime minister and all other high-

ranking state officials were required to be male, Muslim and followers of the *Hanafi* school.

The Taliban's sub-constitutional laws also affirmed the supreme status of sharia and the *Hanafi fiqh*. Under these laws (translated for this project), state law would be void if it contradicted the teachings of the *Hanafi* school. For example, the regulation on legislative procedure clarified that all state bodies should first consult the *Hanafi fiqh* in drafting a law or regulation, and if the *Hanafi fiqh* had no relevant provisions, other sources of law had to be studied (see Annex A.3.2: article 18). Similarly, the law on the duties and authority of the Constitutional Council empowered the Council to invalidate state laws and regulations that violated the orders of the *Hanafi* school (see Annex A.3.7). Article 29 of the Taliban regulation on legislative procedure further provided that all new laws and decrees 'must not be contrary to the Hanafi Fiqh' (see Annex A.3.2: article 29). Finally, a Taliban law that was decreed by the Amir after a fatwa (religious legal opinion) issued by the *Hanafi* ulama stated that, when courts make a ruling based on a fatwa delivered in accordance with *Hanafi fiqh*, the court's decision shall not be challenged by any agency (see Annex A.6.5). Therefore, unlike previous Afghan constitutions, which required that state law comply with 'Islam', the Taliban effectively granted the *Hanafi fiqh* normative supremacy.

In the Taliban's constitutional order, international treaties warranted respect only within the bounds of the sharia. In their narratives, Afghanistan was a 'faithful member' of the international community and the United Nations. On paper, the Islamic Emirate indicated that it would adhere to and respect 'all rules and principles ratified by the UN, provided that they do not contradict the teachings of the Islamic *shari'a*' (Van Linschoten and Kuehn 2018: 269). Additionally, the Taliban pledged that they would respect international treaties (including human rights treaties) to which Afghanistan was a party and assured to execute their responsibilities under these treaties if Islamic principles affirmed such duties and obligations (Van Linschoten and Kuehn 2018: 239–40). These statements seemed like nothing but empty promises on the part of the Taliban, made to polish the surface of their regime. In practice, whips and violence were used to Islamize Afghan society.

In their narratives, Afghanistan was a 'faithful member' of the international community and the United Nations. On paper, the Islamic Emirate indicated that it would adhere to and respect 'all rules and principles ratified by the UN, provided that they do not contradict the teachings of the Islamic shari'a'.

Although the Taliban Constitution spoke of no institution that would realize and elaborate the Constitution's Islamic values and principles in practice, their legislators (the Amir, the Council of Ministers and the Supreme Council) enacted laws and decrees that described bodies tasked with interpreting Islam and then judging legislative compliance with it. In one of his decrees, the Amir directed all state institutions, including the ordinary courts and the Attorney General's Office, to seek a ruling by the Council of the Ulama of the Supreme Court on the consistency of state laws with sharia and the *Hanafi fiqh* (see Annex A.4.4). The Council of the Ulama was thus ostensibly vested with the power of concrete Islamic review. Abstract review of the compatibility of state laws with the Constitution, with sharia and with the *Hanafi fiqh* was granted to the Constitutional Council—an institution that was not defined within the Taliban Constitution. Article 8(1) of the law on the Constitutional Council, which was adopted in March 2001, authorized the Council to review the compatibility of state law, legislative decrees and international treaties with the injunctions of sharia and the Constitution (see Annex A.3.7). Under this law, all legislation would have to be reviewed by the Council for compliance with sharia before the Amir approved them. Laws that were struck down as un-Islamic or contradicting the *Hanafi fiqh* would be invalidated after the Amir signed off on them.

Finally, one of the Amir's other important decrees invalidated all existing laws in case they contradicted sharia or the *Hanafi fiqh* (see Annex A.3.4). Article 1 of this Decree stated that '[a]ll those laws, regulations, and charters [of the previous regimes] that are not repugnant to the *shari'a* or the *Hanafi fiqh* shall be binding rules' (see Annex A.3.4: article 1). The Taliban's Attorney General at the time also clarified that '[a]ll laws are being [Islamized]. Those laws repugnant to Islam are being removed' (Rashid 2000: 103). This 'Islamization' of state laws was apparently conducted by a different court, the Islamic Supreme Court in Kandahar. This Court was perhaps the most powerful judicial institution in the Taliban state not only because it performed a crucial task (Islamizing the legal order) but also because it was situated closer to the Taliban leader and, perhaps, had his ear (Rashid 2000: 102–03). Therefore, three different judicial institutions were tasked with executing the Taliban's Islamization and Hanafization of the legal system.

In this way, the Taliban created a constitutional order in which Islam was the only foundational element of the state, the Constitution and other laws. The uncodified norms of the *Hanafi fiqh* were the supreme law of the law, and state law would be invalid if it contradicted these sacred norms. For the Taliban, this was necessary to ensure that a purely Islamic society where divine laws that predated the state would be revealed and applied rather than to be made afresh. In the quest for the creation of such a 'truly Islamic political order' governed only by divine law, the state and the ruler were given an enormous amount of discretionary power and freedom.

Chapter 4

THE TALIBAN'S RETURN TO POWER AND THE PROSPECTS FOR LAW-BOUND GOVERNANCE

The Taliban also embarked upon what seems to be a process of subtle, but immensely consequential, mass replacement of the former legal and judicial personnel (judges and prosecutors) and other bureaucrats.

In August 2021, the world was stunned at the speed with which the Taliban stormed back to power in Afghanistan. Even the Taliban were astounded at the rapid collapse of the Islamic Republic established under the 2004 Constitution. With the Taliban takeover, Afghanistan's 2004 Constitution effectively ceased operation, and sharia and the *Hanafi fiqh* apparently became the supreme law of the land. A month later, the Taliban appointed an interim executive branch, which mirrored the structure of the cabinet they had formed under the 1999 law on the Council of Ministers (see Annex A.2.2). The Taliban also embarked upon what seems to be a process of subtle, but immensely consequential, mass replacement of the former legal and judicial personnel (judges and prosecutors) and other bureaucrats (Daryosh 2021). In their place, the new rulers installed Taliban leaders and other figures from within their own rank and file.

A cursory reading of the Taliban Constitution and other laws translated in this document suggests that, towards the end of their reign, the Taliban had begun to formalize their rule and political vision in a constitution—albeit one that was autocratic and outright undemocratic. The Taliban government in the 1990s may be included in Nathan Brown's 'nonconstitutional world', where a constitution existed, but 'constitutional values', such as limited government or guarantees of rights, were nowhere to be seen (Brown 2002). But will the Taliban this time take a different approach and form a law-bound government—one that is rooted in certain governance principles of Islamic political theory?

The Taliban remain remarkably ambiguous when it comes to the type of Islamic state they want to form in Afghanistan, but it is likely that they will draft a constitution again, and it may be a constitution that trumpets only the Taliban's basic ideology. However, if the Taliban had chosen to follow the principles of Islamic governance, both classical and modern, they would have provided sufficient guidance in forging an (Islamic) law-bound government (Lombardi and March 2022). Such a government may not be democratic or liberal, but it would be bound to respect the well-being of the Muslim community and take measures to guarantee its salvation as required by Islamic norms. For example, article 6(3) of the law on the Council of Ministers compelled the government to 'respect' the social, cultural and historical values of the people in crafting policy in a way that assures the well-being of Islamic society. Similarly, article 7 required that the government conduct its affairs based on the rules of Islam, with the goal of protecting the interests of all citizens (see Annex A.2.2).

However, the Taliban have abandoned Islamic norms that require rulers to act in a way that secures the interests of the umma (the Muslim community). In their rhetoric, the Muslim community is not viewed as an organization of 'sovereign individuals who are making themselves and the world around them' (Rahimi 2022). In this conception, the state is required to compel Muslims to obey the commands of God to 'achieve good life on earth and salvation in the hereafter' (Rahimi 2022). Hence, it should be stressed that the current Taliban government does not recognize any rules that impose restraints on the power of the state. In theory, constraints may gradually come to be enshrined in statutes that will form the basic underpinnings of the Taliban state, but the likelihood of those constraints also remains minimal.

On a practical level, any stable and enduring political order in Afghanistan will need to address and assess grievances that beget resistance to governmental rule and legitimacy; it must envisage institutions that can effectively forge constructive dialogue and reach a minimum agreement capable of sustaining a constitutional order. Any future constitutional arrangements should thus consider mechanisms that widen the basis of governmental legitimacy by encouraging participation, inspiring inclusion and promoting political fairness. Tackling these challenges requires the engineering of

On a practical level, any stable and enduring political order in Afghanistan will need to address and assess grievances that beget resistance to governmental rule and legitimacy; it must envisage institutions that can effectively forge constructive dialogue and reach a minimum agreement capable of sustaining a constitutional order.

political institutions that accommodate ethno-religious diversity and that can mitigate these divisions, not deepen them. The Taliban in the past forged a constitutional path that partially doomed their regime. Not unlike previous governments in Afghanistan, the Taliban themselves witnessed the fall of a government in August 2021 whose leaders were unwilling to establish power-sharing mechanisms and opted to use the constitutional process in the service of self-interested, short-term political goals. The fall of the Taliban's resurrected government may be inevitable if they follow the same path they took in the past—using constitutional and legislative processes to forge an undemocratic authoritarian regime.

Only a conciliatory process may create a new pact and form a constitutional politics that makes all interested groups stakeholders in the constitutional order rather than resorting to violent means of political discourse.

In short, the search for peace and political stability in Afghanistan requires a constitution that creates venues where ethno-religious divisions can be peacefully addressed—a constitution that does not preclude political opposition or alternative worldviews but one that includes all pertinent stakeholders, in both process and substance. Only a conciliatory process may create a new pact and form a constitutional politics that makes all interested groups stakeholders in the constitutional order rather than resorting to violent means of political discourse. Importantly, that effort has to be made in good faith, in a way that is genuinely meant to bring about a peaceful *modus vivendi*, not just to be a show of legality to cloak the same actions the Taliban pursued in the 1990s. Violence may remain the only alternative means of political contestation if a constitution excludes actors who have the power to wreck the constitutional order.

Chapter 5

HOW TO USE THIS RESOURCE

Annex A provides English-language translations of several laws and decrees that the Taliban adopted during their first stint in power, in the 1990s. It does not provide an English translation of the Taliban Constitution because this document has been discussed relatively extensively in the literature, and an English-language translation is available elsewhere.⁶ The legal documents translated in the Annex range from laws that the Taliban shuras adopted to decrees, directives, messages and advice issued by the Taliban leader, the Amir, as well as several key regulations adopted by the executive branch of the Taliban state.

The documents are arranged thematically. We first present translations of several regulations that describe and articulate legislative procedure in the Taliban state and the bodies that are vested with law-making authority. We then provide translations of laws that describe the general principles of the Islamic Emirate of Afghanistan, including, chiefly, the role of Islam and the *Hanafi fiqh* in the legal and political orders. Laws, decrees and regulations related to the powers of the Amir, the Council of Ministers, the legislature, the Supreme Court and the Constitutional Council follow in the section on the general principles of the Islamic Emirate. Legislation on the rights of women, foreign investment, the banking system, and the duties and powers of the Council of the Ulama of the Supreme Court as well as the responsibilities of each ministry are also presented in this section. Finally, regulations and decrees that describe rules about men's beards and hair, the Islamic hijab, the use of turbans, advice on

⁶ A complete English-language translation of the Taliban Constitution is provided in Van Linschoten and Kuehn (2018: 270–90).

how to be a better Muslim and the law on the duties of the much-feared Ministry of Vice and Virtue are also presented. The original Dari and Pashto versions of all these legal documents are provided on International IDEA's website.

These translations of Taliban-era laws are crucial, considering the Taliban's recent ascent to power. Since taking control of Afghanistan in mid-August 2021, the Taliban's initial attempts at government formation have resembled the efforts they made to form a government in the 1990s. In September 2021, for example, the Taliban announced a new interim cabinet that closely mirrored the organizational structure, authority and duties that were articulated in the law on the Council of Ministers that the Taliban had adopted during their first spell in power (a document translated for this project). Likewise, in December 2021 the current Taliban Amir, Mullah Haibatullah Akhunzada, issued a decree on the rights of women that essentially drew on a similar decree the Taliban's founder had published in 1998 (also translated for this project).

One of the first institutions the Taliban revived after taking control of Afghanistan was the Ministry of Vice and Virtue, which seems to exercise the same mandate as it did in the 1990s—Islamizing society. Although the new Taliban government has not clarified the Ministry's mandate, it seems to be operating under a law that the Taliban adopted in the 1990s (also translated in this project).

More importantly, the process of the Islamization of the legal system in line with the Hanafi school is already underway. The Taliban have formed a committee of Hanafi scholars to examine the laws and regulations ratified under the Islamic Republic (2001–2021) for their consistency with the *Hanafi fiqh*. Those that the committee does not find in strict adherence to the sharia and the *Hanafi fiqh* will be removed from the statutes (Pasarlay 2022b). This venture is akin to the way the Taliban made most of the laws translated in this project.

Therefore, at a time when the Taliban are moving to form a permanent government and to draft a new constitution in Afghanistan, we believe that a discussion of the Taliban-era laws and lessons from their first attempts at constitution-drafting should prove enormously valuable, both to the Taliban and to members of

the international community who wish to engage with the Taliban. The translated legal documents should improve our understanding of the Taliban's legal system—an aspect of the Taliban government that has remained remarkably understudied. The documents translated herein offer valuable insights into the Taliban's views about constitutionalism and the formation of what they call a 'viable Islamic political order'. Hence, these resources should provide an important opportunity to critically assess an 'Islamist' movement's attempts at state-building and constitution-drafting in contemporary Afghanistan.

5.1. WHAT DO THE TRANSLATIONS INCLUDE?

Sovereignty, according to the Taliban, belongs to God. Hence, only God's words, sayings of the Prophet and the *Hanafi fiqh* (jurisprudence) are the supreme law of the land. As the head of the state, the Taliban leader, Amir al-Mominin (commander of the faithful), is responsible for upholding God's commands and has the right to issue decrees. In at least one decree, Mullah Omar referred to Islam as 'my Sharia' indicating that he was the arbiter of the religious laws of the nation. He led an executive that was composed of the prime minister and the Council of Ministers as well as provincial governors.

Besides the *Hanafi* jurisprudence and the decrees of the Amir, the regulations issued between 1994 and 2001 were either the codification or an interpretation of the classical *Hanafi* jurisprudential works in local vernaculars or certain procedural laws regulating institutions and their structures, procedures and interactions. Of the 40 laws translated for this project, 19 were enacted to serve some divine purposes, 6 were laws remarkably vague in purpose but seemed to regulate the private life of people, and the rest were procedural laws ordering administrative, regulatory and judicial procedures. There is no single law in which the religion of Islam has not been invoked explicitly (mentioning 'Islam', 'Sharia' or 'Hanafi') or tacitly (mentioning 'religion' or 'divine'). An ideal society, according to the Taliban, is a true Muslim polity that follows a literal interpretation of the Islamic texts closely. Civic engagement and political pluralism were unwarranted as they threatened the unity of minds, souls, and

deeds towards God, which were the primary objective of the state to achieve (*Official Gazette*: A.5.7).

The Taliban laws rarely engaged the public directly as subjects or beneficiaries of these laws. Even when the laws were about the activities and obligations of the people, they were highly likely to confer to the Taliban on how to ensure people's obedience than the people themselves. Thirty-five of the laws translated herein were directed at the Taliban rank and file. The Taliban's governance philosophy did not distinguish between public spaces, which must be regulated by laws and the state, and individuals' private spaces, which could be protected only by laws, mostly against the intrusion of the state. This notion stemmed from their Islamic jurisprudence, which treated moral doctrines and religious suggestions for individuals as binding laws. As a result, it was not individuals but the Taliban's laws that decided whether or not an individual grew a beard, how an individual dressed (*Official Gazette*: A.6.3; *Official Gazette*: A.5.2), whether and when an individual should pray (*Official Gazette*: A.5.9; *Official Gazette*: A.6.3), who an individual could walk with or meet (*Official Gazette*: A.6.3) or even if a girl or woman could walk outside at all. In one decree, Mullah Omar instructed women to wear 'old dresses' so that they would not attract his male 'subjects' (*Official Gazette*: A.6.3). In another decree, Mullah Omar stated the following: 'I order every cleric in the district and provincial courts, as well as every district and provincial governors not to overlook any breach of Allah's rules' (*Official Gazette*: A.5.7).

The Taliban laws had religious tones in several ways. First, in several cases, the laws would seek divine punishments for offenders. Around nine laws specifically invoked divine punishments to offenders; in six of those laws, divine punishment was the only type of punishment that was mentioned in the laws. Similarly, the non-divine punishments mentioned in the laws were also vague and unpredictable. In those cases, the punishments were merely 'sharia punishment', 'punishment by the Emirate' or 'serious punishment' without specifying the type, scale, and scope of those punishments. In at least two cases, while regulating crimes, the laws did not predict any punishment at all (divine or non-divine). Secondly, prayers to Allah and cursing the offenders are often noticeable in the laws of the Taliban. Most laws

would begin with words of greetings like 'Assalamu Alaikum Wa Rahmatullah-wa-Barakat-u' and end with farewells.

Finally, the Taliban laws were more duty-oriented than rights-oriented. Undoubtedly, the rights of one individual mostly trigger duties on the part of another individual or the state, but this is not always the case. Since rights-oriented laws are more protective and inform people of their rights, they have become the standard means of legal codification in the modern and postmodern era. Traditional and religious laws are mostly duty-oriented, as they would instruct individuals as to what they could or could not do. Following this latter approach to legislation, 30 of 32 decrees and regulations were oriented towards the obligations and duties of subjects, while 2 were rights-oriented in terms of their content.

Most importantly, in the laws and regulations translated herein, the reader will see one dominant recurring theme: the purpose of the state (emirate) is to restore the religion of God and to ensure his satisfaction. Therefore, most of the Taliban's laws either were a direct codification of Islamic dictates or were adopted in strict compliance with sharia and the *Hanafi fiqh*.

ANNEX A. TRANSLATIONS

A.1. THE TALIBAN'S STATE AND SYMBOLISM

A.1.1. Introduction

Religious appearance and symbolism seemed to be essential to the Taliban. Not only must the state serve Islam, but it also has to appear Islamic in its name, symbols and language. This explains why the Taliban issued at least three laws about the size and features of their flags and signposts while also destroying all other religious as well as non-religious sculptures and art forms. The flag of the Taliban displays the *كلمة طيبة* (profession of faith) on a white background. Another decree replaced the word 'state' with 'emirate' only because the latter, according to the Taliban, seemed more religious. Furthermore, among many issues requiring legislation, the Taliban enacted another order to replace 'foreign terminologies' with terms in Pashto and Persian. The regulation includes a long list of state departments whose titles had to be replaced since they originally used foreign terminologies.

A.1.2. Decree of the Office of the Amir on the Replacing 'State' with 'Emirate'

Official Gazette: 10

Date: 7/11/1999

Article 1

The name "Islamic State of Afghanistan" shall be replaced with "Islamic Emirate of Afghanistan."

Article 2

The word 'state' shall be replaced with "Emirate" in all legislative documents.

Article 3

All [public] administrations are obliged to prepare their documentations, stamps, regulations, and other [official] documents in accordance with the second article of this decree.

Article 4

This decree is binding from July 11, 1999 and shall be published in the Official Gazette.

A.1.3. Law of the Flag and Emblems of the Islamic Emirate of Afghanistan

Official Gazette: 797

Date: 5/2/2001

*Chapter One***General Provisions****Article 1**

This law shall regulate the determination of the structure of the flag and sign of the Islamic Emirate of Afghanistan.

Article 2

The flag of the Islamic Emirate of Afghanistan shall be in white color and a rectangular shape the length of which shall be one and half size of its width. The holy [كلمة طيبة] 'purity' shall be written in its text in clear terms in black ink. The size of width of the shall be 1.25 centimeters and its length shall be one half the size of its width. The width of table [small] flags shall be 20 centimeters and its length shall be one and half times the size of its width.

Article 3

1. The flag shall be formed of a piece of cloth and hand.
2. In line with Article 2 of this law, the angles of the flag shall be flexible based on consideration of places where the flag is flying.

Article 4

The use of old and colorless cloth in the flag shall be prohibited.

Article 5

1. The handle of the flag is an instrument in the width of the flag over which the flag shall be placed.
2. The handle of the flag is a straight piece of wood or metal at the top of which shall be a dome. The dome of the handle shall be supported by small circles which help flying and lowering the flag.
3. The handle of the flag shall be in golden or silver color.

Article 6

The length of the handle of the flag shall be twice the size of the length of the flag, and it shall be thick enough to withstand the pressure of wind and other weather-related issues.

Article 7

The height of the handle of the flag planting on the ground shall not be less than meters.

Article 8

Planting additional matters (things) on the flag shall be prohibited.

*Chapter two***The Sign of the Emirate****Article 9**

The symbol [emblem] of the Islamic Emirate of Afghanistan shall consist of an image of sunrise, beneath that the holy Quran with a white open page on a rail tracks, beneath that Altar and pulpit [Mihrab w Munbar] in white letters, surrounded with two stems of wheat, decorated in white color, under a white ribbon with the date of 1415/1/15 carved on it; beneath that, Islamic Emirate of Afghanistan shall be written in a five pointed, gear shaped [frame] at the joint of ribbon and wheat stems. The emblem is surrounded by two circular swords, from bottom to top.

Article 10

The diameter of the sign of the Emirate shall be in proportional to the flag.

*Chapter 3***The Use of the Flag**

Article 11

To fly and lower the flag, a silver color rope shall be used. The rope shall run all the way from the dome of the flag handle to the box that protects the flag.

Article 12

The protective box of the flag shall be designed such that it protects the flag effectively.

Article 13

The handle of the flag shall be placed at the top or middling of buildings or the biggest entrance door of the buildings.

Article 14

One flag shall be sufficient for buildings which house multiple authoritative organizations (offices).

Article 15

The flag shall be flown with speed and lowered slowly.

Article 16

1. The flying and lowering of the flag in barracks of armed forces shall take place in accordance with the ordinance regulating affairs related to the internal services of the armed forces of the Emirate with the parade of the special section of the armed forces. All the said measures shall be consistent with the Islamic Sharia.
2. In civil administrations, respect to the flag during flying and lowering shall be offered by the responsible officer in line with the sharia.

Article 17

The responsible officer shall position himself close to the handle of the flag during the flying or lower of the flag.

Article 18

The flying of flags over damaged, deserted and under constructive building shall be prohibited.

Article 19

The flying of the flag over the airlines of the Emirate shall not be allowed; instead, special signs with the structure and color of the flag shall be printed on them.

Article 20

In case the flag of the Emirate is positioned next to private flags or the flags of other countries in Afghanistan, the cloth and handle of the private flags or the flags of other countries shall be higher than the Emirate flag. In these cases, the flag of the Emirate shall be flown first and lowered last.

Article 21

1. The flag of the Islamic Emirate shall be flown only during official days, official ceremonies, and national celebrations.
2. The flag of the Emirate shall be permanently flying in the office of the Amir, army bases and border and custom officers.

*Chapter 4***Flying the Flag****Article 22**

The flag of the Emirate shall be flying in the following offices (places of authority):

1. The office of the Amir
2. The place of the Council of Ministers
3. Supreme Court
4. Ministries
5. General and independent administrations
6. Governors' offices
7. National army bases
8. Bases of border police
9. Airports
10. Embassies and consulates
11. Counselor offices
12. Other places determined in the law

Article 23

1. The flag of the Islamic Emirate inside the country shall be flown [used] in a determined proportion in the car of the of Amir;
2. The flag of the Islamic Emirate shall be flown in the cars of ambassadors and general counsels of Afghanistan outside the country in accordance with related regulation.

Article 24

1. Using [flying] the flag in official cars of the personnel of the Islamic Emirate during the reception of friendly nations in Afghanistan shall be allowed in accordance with the related regulation.
2. The use of smaller flags in the caravans of delegates visiting other countries shall be allowed in accordance with related regulation.

*Chapter Five***The Use of the Emirate Flags for the Purpose of Decoration.****Article 25**

1. The flag of the Emirate can be used or carried in national celebrations and official ceremonies by individuals or put on the tables for the purpose of decoration.
2. Smaller models of the flag can also be used in clothing over pockets as decoration.

Article 26

1. The size and proportions of the decorative flag shall be measured in accordance with articles 3 and 11 of this law.
2. The emblem [sign] shall be placed in the middle of the decorative flag.

Article 27

Small decorative flags that are flown [hung] on a handle on the wall shall be prepared in a way that has resistance against powerful wind waves.

Article 28

The distance of the bottom angle of the flag hanging from a wall shall not be less than one meter from the ground.

Chapter Six

Special [Private] Flags

Article 29

Special flags have different colours and signs and represent the identity of the organization. Special flags include sports flag, red cross flag and the flags of other organizations.

Article 30

The charters of organizations (incorporations) shall describe the size, structure and colour of the flags.

Article 31

1. An official who has the authority to fly (use) the flag of the Emirate and has a private (special) flag as well, can use both flags in accordance with article 20 of this law.
2. The flag of the Emirate shall be placed in the right side of the entrance of an office and the private flag shall be place on its left side.
3. Article 20 of this law shall be observed in determining the size, cloth and height of the handle of the flag.

Chapter Seven

Flags of friendly Islamic States and the United Nations

Article 32

In the event of receiving the heads of friendly Islamic states, Afghan officials can use the flags of the guest states next to the flag of the Islamic Emirate.

Article 33

In the event of using the flags of the friendly Islamic states besides (next to) the flag of the Islamic Emirate, the size of the handle and cloth of the other states shall not be larger than the size of the handle and cloth of the flag of the Islamic Emirate of Afghanistan. The flag of the Islamic Emirate shall be placed in the left side of the viewing party to be seen clearly.

Article 34

The representatives of the friendly Islamic states shall have the right to use small flags in their cars based on the directions of the Ministry of Foreign Affairs.

Article 35

In the events of convening global academic conferences and international sports tournaments, the flags of the attending countries and the airlines that utilize the airports of the Islamic Emirate of Afghanistan shall be used next to the flag of the Islamic Emirate in accordance with international practice. In this case, the flags of other countries and airlines shall be placed on the left side of the Emirate flag alphabetically.

Article 37

This law shall become enforceable on the date of the signature of the Amir and published in the Official Gazette. With the promulgation of this law, the law of the flag and emblem published in Gazette No. 683 dated 10/13/1988 shall be abrogated.

A.1.4. Decree of the Office of the Amir on Flag and Signposts

Official Gazette: 31

Date: 9/19/1999

It is to direct all ministries, independent departments, governor offices, and other agencies of the Emirate to design flags and signposts in a way that the backdrop must be in white color and the letters in black.

Wa-Alsalam

The Servant of Islam

Amir-ul-Mo'menin, Mullah Mohammad Omar Mujahid

A.1.5. Decree of the Office of the Amir on the Amendment of the First and the Second articles of the Flag and Emblem Law

Official Gazette: 783

Date: 1997

The first and eighth article of the Flag and Symbol Law of 1997, Official Gazette No. 783, are amended as follows:

Article 1

The flag of the Islamic Emirate of Afghanistan is white and rectangular, with a length the size of one and half of its width, and its content shall be *Kalima* (profession of faith that there is no God but Allah and Mohammad is his Prophet) with one-third of the flag size.

The size of a flag shall be 1.25 cm in width, and one and half of that in length. The size of desk flags is 20 cm in width, and one and half of that in length.

Article 8

The symbol of the Islamic Emirate of Afghanistan shall consist of an image of sunrise, beneath that the holy Quran with a white open page on rail tracks, beneath that Altar and pulpit [Mihrab w Munbar] in white letters, surrounded with two stems of wheat, decorated in white color, under a white ribbon with the date of 1415/1/15; beneath that, Islamic Emirate of Afghanistan shall be written in a five pointed, gear shaped [frame] at the joint of ribbon and wheat stems.

The emblem is surrounded by two circular swords, from bottom to top.

Article 2

This decree shall be published in the Official Gazette and implemented upon its issuance [by the Amir].



A.1.6. Order of the Care-Taker Council of the Islamic Emirate of Afghanistan on Replacing Foreign Terminologies and Titles with Those of Pashto and Dari Term

Official Gazette: N/A

Date: NA

Article 1

All ministries, agencies as well as public and private organizations are obliged to use Pashto and Dari terminologies and titles instead of foreign terminologies and titles in their official and legislative documents as well as their administrative signposts.

Article 2

The Ministry of Justice and other relevant agencies are obliged to prepare and draft legislations for the [better] implementation of the first article of this decree.

Article 3

The index of terminologies prepared by the scholars of the General Directorate of Scientific Research and Kabul University and annexed to this decree shall be implemented.

Article 4

Upon its issuance, this decree shall be binding and published in the Official Gazette.

Wa-Al-Salam

Alhaj Mullah Mohammad Rabani

Chair of Care-Taking Council

Foreign Terminologies and Titles in the Legislative Documents:

The Department of Geodesy and Cartography; The Department of Academy of Sciences; The Institute of History and Ethnography; The Department of the Ancient History of Afghanistan; The Institute of Philosophy and Pedagogy; The Department of Folklore and Oral Literature; The Department of the Ancient Languages; The Department of Colloide Chemistry; The Department of Zoology; The Department of Genetics; The Department of Agronomy; The Department of Ortopedy; The Department of Biochemistry; The Directorate of Geodesy; The Department of Codester Survey; The

Government Department of Geodesy Services; The Department of Thematic Maps; The Department of Thematic Interpretation and Analysis and Universal Photos; The Triangulation Group; The gravimetry Group; Level Group; The Astronomy and Astrophysics Group; Geodesy Group; Topography Group; Photogrammetry; Study and Review Group; Macro-Platting Group; Aviation Triangulation Group; Photo Planning Services Group; Cartography General Management Group; Scribe Team; Driver; Secretary; Archive; Plan; Reference; Cadre and Personnel; Transport; Mechanic; Institute; Department; Journalism; Ethnography; Folklore; Zoology; Genetics; Agronomy; Ortopedy; Biochemistry; Biology; Technician; Microbiology; Informatics; Geology; Mineralogy; Hydrometeorology; Problem; Meteorology; Seismology; Geodesy; Cartography; Survey; Codester; Control; Commission; Photo; Committee; Thematic Map; Process; Triangulation; Grammetry; Level; Astronomy; Maroochydore; Topography; Photorevision; Balancing; Photogrammetry; Platting; Script; Photocopy; Xerox; Bodyguard; Club; Filing; Operator; Indicator; System; metric; Canalization; Shop; Clinic; Doctor; Nurse; Pharmacist; Flasher [medical]; Vaccinator; Parliament; Cooperative; Workshop; Balance; Genopresse; Courier; Dispatcher; Method; Marketing; Norm; Standard; Geophysics; Hydrogeology; Management; Mechanic; Visa; Passport; Sector; Personnel; Board; Check; Warehouse; Liftman; Puncherman; Journal; Logistics; Counterpart; Contain; Cleaner; Lineman; Electromechanic; Technology.

A.1.7. Decree of the Office of the Amir of Afghanistan on Delegation of Authorities to the Care-Taker Council of the Islamic Emirate of Afghanistan

Official Gazette: 118

Date: NA

To All Respected Taliban of Afghanistan,
Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu
The Care-Taker Council of the Islamic Emirate of Afghanistan is delegated with the following authorities:

1. Organizing the meetings of the Council of Ministers as well as monitoring and approving the decisions of the Council [of the Ministers] with its authority under this decree;
2. Appointing, replacing, promoting, extending tenureship, and retiring ranking officials, including second ranking through post-

rank officers, brigadier general to lieutenant general under the law (appointing ministers, deputy ministers, chair of departments, director of independent agencies shall be in the sole jurisdiction of the Amir of the Islamic Emirate of Afghanistan);

3. Issuing official passports based on the law;
4. Approving the academic ranking of research and academic agencies based on the law;
5. Issuing certificates of appreciation to the employees of the Islamic Emirates of Afghanistan based on the law;
6. Issuing loans of 7,000 Afghanis for issues of urgent nature;
7. Proposing amendments to regulations, policies, and charters;
8. Monitoring [the performances of] the Department of Vice and Virtue based on the instructions of the Amir of the Islamic Emirate of Afghanistan;
9. Investigating petitions and complaints seriously;
10. Reporting to the Amir of the Islamic Emirate of Afghanistan about performing their duties based on law and Sharia;
11. Reporting quarterly to the Amir of the Islamic Emirate of Afghanistan about their supervision and monitoring of all Emirate and non-Emirate organizations;
12. Issuing the travel of the [Emirate] delegations abroad and offering them travel stipends with the approval of the Amir of the Islamic Emirate of Afghanistan;
13. Approving scholarships from overseas countries;
14. Submitting foreign contracts and important domestic contracts [involving the Islamic Emirate of Afghanistan] to the Amir of the Islamic Emirate of Afghanistan for his endorsement;
15. Approving the contracts of the ministries and other agencies of the Emirate;
16. Approving the referrals of employees by the agencies of the Emirate for the mandatory and [optional/omra] pilgrimages;
17. In the absence of the chair of the Care-Taker Council of the Islamic Emirate of Afghanistan, the deputy chair will discharge his authorities; and
18. Under the consideration of the Amir and based on the situation, other authorities may be delegated to the Care-Taker Council in special circumstances.
19. This decree will be enforced and published in the Gazette upon its issuances [by the Amir].

Wa-al-Salam
The Servant of Islam
Amir-ul-Mo'menin, Mullah Mohammad Omar Mujahid

A.2. THE TALIBAN'S EXECUTIVE BRANCH

A.2.1. Introduction

A portion of the Taliban-era rules and regulations elaborate on the executive branch of the government. The Taliban adopted several different laws to specify the formation and operation of the Council of Ministers, the formation and tasks of the ministries, the ordering of the activities and procedures of the Ministry of Justice, the structure of the emirate's government, the classification of the workload of the Office of the Amir, the enforcement of laws and regulations in the ministries and the administration of the emirate. The rules and regulations related to the executive structure also specify the authority of the Amir.

These laws suggest a highly top-down, centralized executive structure of government in which all political, fiscal, and administrative powers are concentrated into the hands of Amir-al-Momenin [the Amir]. Politically, the person of Amir-al-Momenin [the Amir] makes almost all major appointments—from ministers to Supreme Court justices to governors and to heads of local entities. Fiscally, the person of Amir has the upper hand in making decisions on taxing, planning, and budgeting (formulation, allocation, and execution). Administratively, the person of Amir also has the final say in administrative decisions such as procurement and other related bureaucratic areas. Amir was involved in administrative and political issues so much so that he had to issue a decree ordering his subordinates and others not to refer ordinary issues to him (A.2.4). This Order requires that citizens refer their petitions to the relevant entity and that the entities make decisions within their legal authority. From a public administration standpoint, this Order allowed the Amir to focus on major issues.

A.2.2. Law of the Council of Ministers

Gazette: 797

Date: 5/2/2001

Chapter One

General provisions

Article 1

This law shall guide and coordinate the activities of the Council of Ministers, enforcing principles of Islamic Sharia, and achieving the following objectives:

1. Realizing the goals of the sacred religion of Islam;
2. Organizing the activities of the Council of Ministers in leading the domestic and foreign policies of the Islamic Emirate of Afghanistan;
3. Improving the activities of the Council of Ministers in implementing their economic and social development plans as well as those of individual ministries and agencies;
4. Extending the reach of Sharia principles in the agencies and activities of the Islamic Emirate; and
5. Strengthening the structure and activities of the Council of Ministers in accomplishing its tasks more effectively.

Article 2

The Council of Ministers of the Islamic Emirate of Afghanistan shall implement its authorities and responsibilities based on the provisions of the Sharia and the laws.

Article 3

The Council of Ministers of the Islamic Emirate of Afghanistan is the highest executive and administrative body of the government.

Article 4

The Council of Ministers shall have the authority to run all affairs related to the administration of the Islamic Emirate of Afghanistan provided that the affairs are not among the prerogatives of the Office of the Amir (the Amir).

Article 5

To enforce laws and legislative decrees, the Council of Ministers shall make legal decisions, take necessary measures, and oversee their enforcement. The entities, the administrators, and the citizens across the territories of the Islamic Emirate of Afghanistan shall be obliged to implement the enactments of the Council of Ministers.

Article 6

The Council of Ministers, within their authority and according to the laws and decrees of the Islamic Emirate of Afghanistan, shall take the following measures:

1. Ensuring economic and social development in accordance with the goals of the Islamic Emirate of Afghanistan.
2. Achieving national economic growth;
3. Ensuring and strengthening Islamic brotherhood and national unity based on respect and serious consideration of the people's cultural and historical values and traditions as well as relying on the principles of the religion of Islam;
4. Strengthening the unity, brotherhood, and alliance of all nationalities, ethnicities, and tribes of Afghanistan.
5. Improving welfare standards and Islamic culture;
6. Adopting measures to ensure security, order, and social comfort, as well as protecting rights and freedom of the citizens;
7. Conducting the affairs of the country in accordance with the Islamic methods and coordinating its administrative units;
8. Leading the country's defense affairs and the Islamic army;
9. Defending the interests of the Islamic Emirate of Afghanistan and strengthening the rule of law in the country;
10. Defending and preserving the independence, national sovereignty, and territorial integrity of the country;
11. Leading and overseeing the executive affairs of the local government entities;
12. Leading and supervising the affairs of the ministries and agencies; and
13. Designing and implementing the country's foreign policies in accordance with the policies of the Islamic Emirate of Afghanistan.

Article 7

Relying on Islamic law and considering the the achievement of the interests of all citizens, the Council of Ministers shall conduct its affairs based on the following principles:

1. Ensuring coordination in leading the governmental entities;
2. Investigating and resolving the collective issues referred to the Council of Ministers; and determining the individual responsibility

of the ministers in implementing the Council's enacted decisions in relevant area;

3. Reviewing the suggestions of the Emirate's administrations in resolving the relevant issues;
4. Reviewing the recommendations of ministries and central entities on the establishment, renewal, and dissolution of enterprises, institutions, and agencies;
5. Using scientific achievements to resolve the problems of the Emirate's administration; and
6. Ensuring the correct and equal implementation and observation of the laws and decrees of the Islamic Emirate of Afghanistan.

Article 8

The Council of Ministers shall consist of the prime minister [raees al-wuzara] and his deputies, the ministers, and the general directors of independent state agencies. Amir ul-Mominin [the Amir] may bring changes in the composition of the Council of Ministers.

Article 9

The Council of Ministers is responsible to the Amir ul-Mominin [the Amir] with regard to its duties and responsibilities.

The Council of Ministers, immediately after its formation, shall present its plan of activities to the Amir ul-Mominin [the Amir] for review.

The Council of Ministers shall have the duty to report to Amir ul-Mominin [the Amir] about its activities.

Chapter Two

Duties and Authorities of the Council of Ministers

Article 10

The Council of Ministers shall have the following duties and authorities in the areas concerning national economic growth:

1. Determining the direction of the national economic growth of the country;
2. Ensuring the planned growth of Emirate [economic] sectors and national economy;
3. Taking measures to encourage private sectors and attracting private investment in the national economy; and

4. Resolving disputes regarding the rational and effective conservation and use of land, mines, water resources, forests, plants, and animals.

Article 11

The Council of Ministers has the following duties and authorities for cultural and social development:

1. Taking and implementing measures to improve the welfare standards of workers, farmers, scientists, businessmen, nomads, and other citizens of the country;
2. Taking measures to ensure the right to work for the citizens, regulating the affairs and use of natural resources, creating a sound and safe work space;
3. Taking measures to further improve the healthcare networks of the Islamic Emirate of Afghanistan to meet people's needs through generally accessible and specialized medical help, ensuring mother's and children's health and providing aid to the physically and mentally disabled [individuals];
4. Providing support to improve physical education and sport in the country;
5. Taking and implementing measures to improve the social needs of the workers;
6. Determining the directions of growth and regulating public and private Islamic education, taking measures to uproot illiteracy, establish orphanages, universities, and other educational centers;
7. Providing support for strengthening and developing the financial foundation of Islamic and cultural institutions, improving the people's artistic and Islamic initiatives, and taking measures to protect Islamic, cultural, and historical monuments;
8. Ensuring the full observation of Islamic dictates by all citizens and protecting mosques, shrines, and other holy places;
9. Taking measures to build Emirate residential buildings and cooperating to build individual houses; and
10. Determining the directions of trade development, encouraging private businesses and livelihood services [basic means] for the people.

Article 12

The Council of Ministers has the following duties and authorities for economic and social growth:

1. Drafting and proposing economic and social growth plans to the Islamic Emirate of Afghanistan; taking measures to implement [those] economic and social plans, and reporting its performance to the Islamic Emirate of Afghanistan; and taking measures to implement the approved economic and social growth plans;
2. Organizing the related affairs of drafting economic and social growth plans by the Ministry of Planning, other ministries, and entities; and ensuring the coordination and stability of plans;
3. Organizing and arranging complex economic growth programmes;
4. Communicating the indicators of long-term and annual plans to the ministries and [other public] agencies; and
5. Leading and organizing affairs of the accounting and statistics unit.

Article 13

The Council of Ministers has the following duties and authorities regarding the financial, credit, and property affairs:

1. Drafting and proposing a budget proposal to the Islamic Emirate of Afghanistan, setting expenditure budget and reporting it to the Emirate;
2. Leading the general system of monetary credentials and letters of credit;
3. Leading and developing monetary relationships between the Islamic Emirate and foreign countries and international monetary institutions in accordance with the Islamic principles;
4. Drafting and proposing necessary measures to regulate the tax system to the Islamic Emirate of Afghanistan; and
5. Ensuring general oversight on the prices of goods.

Article 14

The Council of Ministers has the following duties and authorities regarding workers (cadres), work and salaries:

1. Taking necessary measures to uproot unemployment;
2. Organizing the affairs related to recruiting cadres into state entities, enterprises, institutions, and improving their level of expertise;
3. Taking necessary measures for improving working conditions and assessing safety regulations of work and ensuring the health of employees;
4. Approving the organization of the Emirate's institutions; and
5. Adopting the regulations for paying salaries.

Article 15

The Council of Ministers shall have as the following duties and authorities in the academic and scientific areas:

1. Creating a unified policy regarding science and scientific institutions in the country;
2. Taking measures to improve the modern science and institutions; determining the effective methods to use scientific and industrial achievements in the cultural and economic structure of the Emirate; and
3. Leading the activities of the Academy of Sciences of the Islamic Emirate of Afghanistan.

Article 16

The Council of Ministers shall have the following duties and authorities with regard to ensuring public order and enforcing Islamic law:

1. Proposing drafts of laws and decrees to the Islamic Emirate;
2. Enacting regulations and statutes;
3. Taking measures to ensure security, public order and comfort; and protecting the rights and freedoms of the citizens;
4. Overseeing the enforcement of laws by ministries and their subordinate agencies;
5. Strengthening the basics of Islamic law in the social life and the Emirate; and protecting the legal rights and interests of Emirate and private and social organizations of the citizens;
6. Arranging the activities of the Emirate's entities in protecting public property; and
7. Taking measures to improve laws in accordance with Islamic goals.

Article 17

The Council of Ministers shall have the following duties and authorities in ensuring security and national defense of the country:

1. Heading the defense affairs and forming Afghanistan's Islamic army;
2. Ensuring the protection of the Emirates borders, national independence, territorial integrity, and national sovereignty;

3. Leading the army recruitment and regulating the conscription process;
4. Determining the guidelines to conscript reserved troops and to review military education; and
5. Regulating the citizens' travel to protect Islamic system and defending it against the enemies' plots.

Article 18

The Council of Ministers, in accordance with the provisions of Islamic Sharia, shall have the following duties and authorities regarding international relations:

1. Developing political, economic, scientific, industrial, and cultural relations with other states, based on equal rights and strengthening friendly relations, especially with neighbouring states and all Islamic states;
2. Heading the foreign relations of the Islamic Emirate of Afghanistan with foreign states and international organizations;
3. Representing the Islamic Emirate of Afghanistan, within its authorities, among foreign states and international organizations;
4. Negotiating, within its authorities, the adoption and revocation of international treaties;
5. Heading the foreign relations of the Islamic Emirate of Afghanistan with foreign states and international organizations regarding foreign trade and other areas of international economic cooperation; and
6. Controlling the foreign economic relations including foreign trade and customs affairs.

Article 19

The Council of Ministers has the following duties and authorities in heading the activities of provincial entities and municipalities:

1. Heading and overseeing the activities of administrative units of the provinces;
2. Providing necessary coordination in the activities of the administrative units of provinces with the ministries and other central entities; and
3. Revoking the decisions of administrative units and municipalities in case of contradiction with the laws.

Article 20

The Council of Ministers shall have the following duties and authorities with regard to leading the activities of the ministries and other central entities:

1. Coordinating and regulating the activities of ministries and central entities;
2. Adopting regulations and statutes relevant to ministries and central agencies; and establishing a central authority to coordinate the functioning of ministries and other central state institutions;
3. Approving members of the administrative councils of ministries and other central entities [agencies];
4. Approving the creation, renewal and dissolution of enterprises, institutions, and agencies in accordance with law; and
5. Recommending the establishment or dissolution of ministries and other agencies to the Islamic Emirate.

Article 21

The Council of Ministers shall have the following duties and authorities in controlling and overseeing the activities of ministries and [other] central agencies:

1. Providing permanent oversight over the activities of the ministries and [other] central agencies under its authority;
2. Overseeing the implementation of the assigned duties and authorities of ministries and other central entities as well as resolving other relevant issues;
3. Revoking the orders of ministries and central agencies and their subordinate agencies in case of contradiction with laws;
4. The Council of Ministers shall conduct its controlling and auditing activities through the control and audit office of the general directorate of administrative affairs.

Chapter 3**Ministries and other Entities under the Authority of the Council of Ministers****Article 22**

Ministries shall be considered the central entities of the Islamic Emirate and perform executive functions in their assigned areas.

The ministries shall be responsible for issues that fall within its executive authorities, to ensure the country's needs with regard to manufacturing different products and services, to achieve the political objectives of the Emirate and government, and to promote Sharia principles in the formation and activities of the executive branch of the Emirate.

The ministries conduct their activities based on the provisions of Islamic Sharia, laws, and decrees of the office of Amir, the Law of Main Principles of Formation and Authorities of the Emirate Ministries, and this law; and [the ministries shall] oversee their implementation.

Article 23

The following ministries and general directorates shall be established to lead the administrative functions of the Islamic Emirate:

1. Ministry of Foreign Affairs
2. Ministry of National Defense
3. Ministry of Interior Affairs
4. Ministry of Finance
5. Ministry of Justice
6. Ministry of Information and Culture
7. Ministry of Border Affairs
8. Ministry of Water and Energy
9. Ministry of Mines and Industry
10. Ministry of Higher Education
11. Ministry of Public Benefits
12. Ministry of Agriculture and Animal Husbandry
13. Ministry of Martyrs and disabled
14. Ministry of Planning
15. Ministry of Pilgrimage and Religious Affairs
16. Ministry of Vice and Virtue
17. Ministry of Commerce
18. Ministry of Health
19. Ministry of Telecommunication
20. Ministry of Education
21. Ministry of Civil Aviation and Tourism
22. General Directorate of Central Intelligence
23. General Directorate of Labor and Social Affairs
24. General Directorate of the Study and Topography of Earth

- 25. General Directorate of Transportation
- 26. General Directorate of Physical Education and Sports
- 27. General Directorate of Academy of Sciences
- 28. General Directorate of Rural Development
- 29. General Directorate of Central Statistics

Chapter 4

Regulating the Council of Ministers' Affairs

Article 24

During its sessions, the Council of Ministers shall process and make decisions about the authorities bestowed to them in the previous articles (10-21).

Article 25

The quorum of the Council of Ministers shall be two-third of its members. [The Council] shall hold sessions at least once a week.

Article 26

The decisions in the Council of Ministers shall be made by the majority of the members present in accordance with Islamic principles.

Article 27

The Prime Minister shall head the Council of Ministers; the Prime Minister shall be appointed according to the provisions of law and shall have the following authorities:

1. Proposing the formation of government and presenting it for approval to the Amir of the Islamic Emirate;
2. Proposing the appointment and dismissal of the members of the Council of Ministers to the Amir of the Islamic Emirate;
3. Approving the appointment, transfer, promotion, retirement, and waiving retirement of the first- and second-degree civil servants in accordance with the provisions the Civil Servants Law;
4. Ensuring the principled operation of the activities of the Council of Ministers;
5. Proposing work plan and regulating the activities of the Council of Ministers;
6. Chairing the Council of Ministers;

7. Determining the duties of deputy Prime Ministers and ensuring the coordination of their tasks;
8. Representing the Islamic Emirate of Afghanistan in international relations; and
9. Taking measures in extraordinary situations about administering the Emirate's affairs.

In case of the absence of the Prime Minister, his authorities shall be transferred to one of the deputies who the Prime Minister chooses.

Article 28

The deputies of the Prime Minister shall have the following authorities:

1. Coordinating the activities of the ministries and entities in performing their assigned duties;
2. Reviewing the proposals and draft of bills, regulations, and statutes referred to the Council of Ministers for further examination;
3. Issuing immediate orders to ministries and entities for the implementation of economic and social development plans and the Council of Ministers' adopted decisions on other issues related to their activities;
4. Overseeing the activities of ministries and entities of the Islamic Emirate of Afghanistan; and
5. Performing other duties assigned by the Prime Minister.

Article 29

The Council of Ministers can create commissions to prepare proposals for economic development, to draft the decisions of the Council of Ministers, and to implement the Council of Ministers' orders.

The Council of Ministers shall determine the guidelines on the creation and activities of these commissions.

Article 30

The Council of Ministers can invite assigned individuals or relevant experts to provide explanation and consultation on the issues under consideration.

Article 31

The decisions of the Council of Ministers shall be signed and stamped by the Prime Minister or his deputies who led the session [of the Council].

Article 32

The meeting minutes of the Council of Ministers shall be recorded in the protocol and shall be signed by the Prime Minister or his deputies, who led the session, and the secretary of the Council of Ministers.

Article 33

The secretary of the Council of Ministers is responsible to prepare and convene the sessions of the Council of Ministers and bears personal responsibility in performing his assigned duties.

*Chapter 5***Final Provisions****Article 34**

The General Directorate of the Administrative Affairs of the Islamic Emirate shall provide the necessary services for accomplishing the activities of the Council of Ministers.

Article 35

The Council of Ministers shall have a stamp, which has the names of the Council of Ministers and the sign of the Islamic Emirate of Afghanistan carved on it.

Article 36

The duties and authorities that this law assigns to the Office of Islamic Emirate shall be fulfilled only by the person of the Amir al-Mu'minin [the Amir].

Article 37

This law shall enter into force upon its enactment and shall be published in the Official Gazette. With the enactment of this law, the Law of the Council of Ministers and its amendments published in the Official Gazette 491 on 6 October 1981, shall be abrogated.

A.2.3. Decree of the Office of the Amir of Islamic Emirate of Afghanistan on Restructuring the government Based on [the Government] of Daoud Khan (1977)

Official Gazette: 12

Date: 3/6/1997

To All Respected Taliban of Afghanistan,
This decree is issued by the Amir al-Mominin to the Care-Taker Council of the Islamic Emirate
Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu

The [number and structure of] ministries must be revisited. Those ministries that existed during Daoud Khan [rule], must be maintained. Other ministries must be changed into directorates and departments, and those related to the other ministries [jurisdictionally] must be conferred to those ministries.

On February 27, 1997, a joint meeting of all members of the Care-Taker Council, and rankings of the Judiciary and the Attorney General had a thorough and comprehensive discussion [about the government structure]. As a result, an Executive Council under the chairmanship of his excellency Mullah Nuruldin Turabi, the care-taker minister of justice, joined by Mawlavi Abdul Satar Sediqi, the Deputy-Chief Justice, Mullah Obaidullah Akhund, the care-taker minister of defense, Mawlavi Arefulla Aref, the Deputy-Minister of finance, Mawlavi Hamdullah Zahid, the Care-Taker Minister of the Light Industry and Nutrition, Mawlavi Mohammad Omar Farooqi, the Deputy-Minister of Commerce was authorized [to decide the structure of the government].

After several subsequent meetings in 1997, the Executive Council arranged and submitted the following ministries for the approval of his highness, the Amir al-Mu'minin:

1. Prime Minister
2. Supreme Court
3. The Ministry of Defense
4. The Ministry of Foreign Affairs
5. The Ministry of Justice,
6. The Ministry of Education
7. The Ministry of Interior

8. The Ministry of Public Health
9. The Ministry of Finance
10. The Ministry of Agriculture
11. The Ministry of Commerce
12. The Ministry of Minerals and Industry,
13. The Ministry of Communication,
14. The Ministry of Planning
15. The Ministry of Higher Education,
16. The Ministry of Information and Culture,
17. The Ministry of Water and Energy,
18. The Ministry of Public Welfare
19. The Ministry of Border

The Ministry of Transportation shall change to the Department of Transportation

The Ministry of Aviation changed to the Department of Aviation

The Ministry of light industry and nutrition conferred to the Ministry of Minerals and Industry

The Ministry of religious affairs shall change as a department of The Ministry of Work and Social Affair

The Ministry of Repatriation shall change to the Department of Repatriation

The Ministry of Martyrs and Disabled Persons shall change to the Department of Martyrs and the Disabled Persons.

The Ministry of Rural Development shall change to the Department of Rural Development

The Ministry of Urbanization and Housing shall change to the Department of Public Welfare.

The Ministry of Central Statistics shall change to the Department of Central Statistics

The Ministry of Vice and Virtue

The Office of Attorney General shall belong to the Ministry of Justice

The Afghanistan Bank Directorate shall belong to the Ministry of Finance

The Municipality Department

The National Security Directorate shall change to the Intelligence Directorate

The Science Academy Directorate

The Department of Practice and Sports

The Afghanistan Society of Red Cross

The Department of Orphanage shall belong to the Ministry of Education

The Department of Radio and Television shall belong to the Ministry of Information and Culture

The Department of Geodesy and Cartography

The Department of Farmland Management shall belong with of the Ministry of Agriculture

The Anti-Drug Campaign Commission

[The proposal] is approved by the Amir al-Mu'minin as follows: The Proposal is approved, and the Administrative Council is authorized to implement the arrangement.

The Amir of the Islamic Emirate of Afghanistan

Therefore, it is to inform all agencies to prepare their administrations to implement the new structure based on the above decree.

Mullah Mohammad Rabani

The Chair of the Care-Taker Council of the Islamic Emirate of
Afghanistan

A.2.4. The Order of the Office of the Amir on the Prevention of Referring Ordinary Issues to the Office of the Emirate

Official Gazette: 236

Date: 4/13/1999

Although different authorized agencies are designated to address different petitions, complaints, and disputes based on the Complaint Process Law, many regular [administrative] documents and legal complaints are unnecessarily referred to the Amir, consuming His Highness' time. To prevent this illegal procedure, we issue the following rules:

Article 1

All citizens are obliged to refer their complaints and disputes directly to the authorized agencies based on the Complaint Review Law.

Article 2

The designated agencies are obliged to review the petitions and make decisions within their legal authority.

Article 3

Issues and petitions that are subject to the discretion of the Amir only, shall be processed through the Care-Taker Council.

Article 4

Upon its endorsement, this decree shall be binding and published in the Official Gazette.

Wa-al-Salam

The Servant of Islam

Amir-ul-Mo'menin, Mullah Mohammad Omar Mujahid

A.2.5. Law of the General Principles of Formation and Tasks of the Ministries and Administrations of Islamic Emirate of Afghanistan

Official Gazette: 797

Date: 5/2/2001

Chapter One

The Main Goals of Organizing the Activities of the Ministries of the Islamic Emirate of Afghanistan

Article 1

Based on the extraordinary goals of the Emirate, this law is adopted to regulate the duties and activities of the ministries of the Islamic Emirate of Afghanistan.

Article 2

The ministry is defined as a central entity of the Emirate and leads the areas under its jurisdiction.

The ministry is responsible for the condition and development of their respective areas, meeting the needs of the country through manufacturing products, staging the political platforms of the Islamic Emirate, and forming and performing the duties of the government of the Islamic Emirate of Afghanistan.

Article 3

The main duties of the ministries of the Islamic Emirate are as follow:

1. Ensuring extensive growth and completion of their relevant areas including production, marketing, trade, and services provided by institutions, entities, and other Emirate, mixed, private, and national economy sectors;
2. Supporting relevant sectors to strengthen long-term cooperation and effective mutual relations with all private sectors and national enterprises in agriculture, industry, trade, construction, and other public services sectors. In doing so, institutions specific to private sectors shall be created under the directorship of the Ministry's first deputy or the first deputy of the entity;
3. Organizing the registration affairs of individuals engaged in private sector including businesspeople and handicraft workers and organizing the registration of corporate and mixed companies;
4. Ensuring cooperation among private business associations of relevant sectors;
5. Issuing permits to private businessmen of the relevant sector of national economy with the endorsement of the Consultative Economic Council, within the authority of the council of ministers and according to the relevant legislative documents;

6. Regularly organizing and convening the general assemblies, scientific conferences of the representatives of the private sector and organizing the elections of representatives of the private sector as the leading members of the Consultative Economic Council of the council of ministers;
7. Implementing the Emirate's plans in relevant areas;
8. Ensuring the manufacture of high-quality products, improving the effectiveness of production, and rational and admissible use of material and financial resources;
9. Publicizing new improvements of science and industry (technology), modern experiences, and achieving high economic standards of production in relevant areas;
10. Using investments and improving their effectiveness in a rational and lawful manner;
11. Equipping the relevant enterprises and entities of ministries with experienced cadres, creating favorable conditions for better use of knowledge and the worker's experience, and improving their professional levels;
12. Creating riskless conditions of work;
13. Leading the relevant areas considering the comprehensive growth of the national economy in accordance with the plan;
14. Enforcing the government's decisions to select the cadres and training them in the spirit of cooperation among the people and vis-à-vis their work, serious observation of the Emirate's interests and increasing the responsibility of each worker vis-à-vis his assigned duties;
15. Guiding the relevant sectors across the country either directly or through the entities and branches of provincial administrative units;
16. Effective cooperation to arrange and resolve disputes among ministries and entities;
17. Protecting the Emirate's properties in enterprises, institutions and relevant entities;
18. Promoting the basics of the Islamic Sharia in administrative affairs and taking necessary measures to improve production and resolving the defects in the activities of the enterprises, institutions, and entities under their authorities;
19. Regulating the activities of ministries based on social rule by determining the precise responsibility of individuals assigned in performing the duties in the respective area;

20. Proposing the creation, renewal or dissolution of enterprises, institutions, and entities to the government; and
21. Promoting and generalizing religious sciences in the center and provinces through the relevant entities.

Article 4

1. The ministry of the Islamic Emirate shall conduct its activities based on the relevant laws, decrees, regulations, and statutes and shall ensure their correct enforcement.
2. The ministries and general independent directorates of the Islamic Emirate of Afghanistan can conduct their activities regarding investments, collecting the products, granting or taking loans, irrigation, and other financial and economic activities provided they do not contradict with Islamic Sharia and the Hanafi Fiqh (jurisprudence).
3. A minister shall head the ministry of the Islamic Emirate of Afghanistan who shall be appointed in accordance with the provisions of law. The minister shall have a deputy or deputies and the minister shall have the right to distribute the duties among his deputies.

Article 5

1. In each ministry of the Islamic Emirate of Afghanistan, an administrative council shall be formed, which shall consist of the minister as the head, and deputies of ministers and the heads of ministry's agencies.
2. The members of the administrative councils shall be approved by the council of ministers.
3. The administrative council of ministries and entities of the Islamic Emirate have the following duties and authorities:
 - a. Reviewing and analyzing the issues related to fundamental activities and making decisions on relevant issues;
 - b. Reviewing the selection process, training, and identifying the cadres and making decisions about them;
 - c. Guiding the economic effectiveness of the relevant areas;
 - d. Guiding the generalization of developments in religion, science, and modern industry (technology);
 - e. Reviewing the implementation of production plans and making decisions about them;

- f. Reviewing and controlling the rational use of workforce and financial resources and making decisions about them;
- g. Reviewing the rational and lawful use of the main investments and making decisions for improving their effectiveness;
- h. Reviewing the state of oversight, monitoring and inspection of the oriceedubgs in relevant areas;
- i. Hearing reports of the directors of enterprises' branches and relevant entities and issuing necessary directives;
- j. Reviewing and making decisions about all other duties assigned by the minister to the administrative council; and
- k. The decision of the administrative council shall be made with majority of the council members' votes in accordance with Islamic principles and the council's decisions shall be implemented by the entity.

Article 6

1. The minister shall have personal responsibility for performing his duties and obligations assigned to him, and shall determine the responsibilities of the deputies and other directors of the ministry's entities in running their relevant affairs.
2. The minister shall issue orders within his legal authorities.
3. Implementing the minister's orders by enterprises, institutions and entities under the minister's authority is obligatory.

Article 7

1. The ministry of the Islamic Emirate of Afghanistan, based on existing regulations, shall hold training sessions (seminars) and discuss the main issues of development in relevant areas and the betterment of the ministry's performance.
2. The ministry of the Islamic Emirate of Afghanistan shall ensure the precise and timely review of suggestions and complaints and take necessary measures to resolve the shortcomings in the ministry's performance.

Chapter 2

The Duties of Ministries of the Islamic Emirate of Afghanistan

Article 8

The duties of the ministry of the Islamic Emirate of Afghanistan on planning consist of the following:

1. Studying and determining the needs of the national economy in production, sales of goods, and the engagement of the relevant private sector, providing necessary cooperation to satisfy these needs;
 - a. Creating production plans of the relevant private sector in collaboration with production institutions and reflecting them in the annual economic and social plans;
 - b. Planning the growth of the relevant areas; attracting private investments, and making necessary efforts to improve the productivity of national entrepreneurs;
 - c. Planning the methods of science and industry (technology) of the Islamic Emirate of Afghanistan and drafting economic and social development plans of the country in relevant areas;
 - d. Ensuring the rational use and revival of natural resources, considering the country's national economy and the interests of other areas;
 - e. Presenting the expenses of the main development plans and their annual price tags to enterprises, institutions, and entities under their authorities;
 - f. Regulating development plans and creating annual plans of entities, enterprises, and relevant institutions;
 - g. Regulating and overseeing the implementation of the approved plans by all entities, enterprises and institutions;
 - h. Taking necessary measures to sell products generated by entities, enterprises, and institutions;
 - i. Approving or proposing technical and economic criteria, consumption and saving criteria for raw and fuel materials, consumption criteria of energy and electricity in accordance with the provisions of law;
 - j. Approving or proposing the prices and tariffs for the products and services of the Emirate's enterprises and relevant institutions in accordance with the provision of law and oversight of their implementation;
 - k. Regulating the statistics in the entities, enterprises, and relevant institutions and receiving accounting and statistical reports in accordance with the regulations; and
 - l. Proposing and manufacturing different kinds of new and admissible products needed by the national economy.

Article 9

The duties of the ministry of the Islamic Emirate of Afghanistan on sciences and industry consist of the following:

1. Assessing the technical and economic basis of production as well as determining the effective ways of using scientific and industrial developments and achievements;
2. Leading the scientific and research activities of planning institutions and ensuring better conditions for their activities;
3. Taking necessary measures to mechanize and automatize production and the use of economic raw materials;
4. Studying the experience of depreciation and use of manufactured products, taking necessary measures to mitigate the defects of manufacturing products; and
5. Proposing and presenting the plan for purchasing the license of machines, spare parts, materials, and effective industrial tools in accordance with legislative documents and providing necessary cooperation to private businesspeople in purchasing these kinds of licenses.

Article 10

The duties of the ministry of the Islamic Emirate of Afghanistan on public construction shall consist of the following:

1. Running construction affairs in the relevant area, ensuring the effective use of private investments, and thoughtfully replacing new construction projects through plans;
2. Regulating and approving the construction projects of future years in accordance with regulations within the framework of plans;
3. Monitoring and controlling the quality of architectural documents and overseeing the quality of construction work;
4. Financing construction and supplying it with necessary tools and materials;
5. Assigning authoritative commissions for effective use of constructed buildings and institutes; and
6. Regulating the public repair of buildings and institutes and improving their technical and depreciative condition.

Article 11

The duties of the ministry of the Islamic Emirate of Afghanistan for the purpose of providing material and technical supply shall consist of the following:

1. Determining the needs of entities, enterprises, and institutions related to raw materials, fuel materials, tools, and all other issues in accordance with law;
2. Purchasing and distributing necessary materials for the activities of the ministry in accordance with the regulations; and distributing raw materials, fuel materials, tools and all other materials proposed in the plans;
3. Supplying, protecting, and using in the right way raw materials, fuel materials, tools, and other materials by entities, enterprises, and relevant institutions;
4. Holding auctions for extra, unused and raw materials in accordance with the law;
5. Planning and taking measures for the economic use of raw and fuel materials; and
6. Supplying materials, services, and other necessary resources in the relevant private sector in the annual plan for economic and social development to enable the successful performance of activities and further development of private and mixed institutions.

Article 12

The duties of the ministries of the Islamic Emirate of Afghanistan in economic and financial area shall consist of the following tasks:

1. Taking measures to improve the efficiency of the relevant enterprises and institutions as well as controlling the use of financial resources in relevant systems of the ministry;
2. Ensuring the implementation of financial plans, protecting the circular private capitals and timely clearing of the dues of the workers, and completing budgetary accounts;
3. Drafting budgets in accordance with country's financial situation;
4. Regulating the oversight and inspection of the ministry's affairs, inspecting the protection of monetary and non-monetary capitals, and evaluating the accuracy and inaccuracy of reports;
5. Determining and setting the list of criteria and the method of reporting and the accounting of the manufacturing and service institutes of relevant private sectors after submitting the approval of the Central Administration of Encouragement and Development of private investments and the Central Consultative Economic Council to the Central Statistics Administration;

6. Analyzing the economic and manufacturing activities of private business institutions and taking necessary measures as well as providing guidelines to the relevant organs;
7. Calculating and determining [setting] the prices of products, goods, and services for relevant private institutes in national economic area in accordance with the country's enforceable legislative documents and determining criteria for fair profit;
8. Coordinating private enterprises and national businesspeople in receiving loans and other financial assistance from the Emirate; and
9. The Emirate's investment in private enterprise and the introduction of the Emirate representative in the joint administration [enterprise] shall be in accordance with the statutes of the relevant institute.

Article 13

The duties of the ministry of the Islamic Emirate of Afghanistan regarding cadres, employment, and salaries shall consist of the following:

1. Supplying the enterprises and entities with cadres of high expertise, organizing the training of experts and skilled workers, taking measures in improving the expertise of employees and cooperating with the private businesspeople in training cadres for their institutes in universities as well as professional and vocational training institutes inside or outside of the country in accordance with legislative documents;
2. Organizing literacy programmes for illiterate employees of institutes and entities, coordinating the apprentices, who are eligible for education as per their age, to continue their education in schools, and overseeing the observance of the provisions of compulsory education in the relevant private institutes;
3. Proposing and arranging sample organizational charts of the relevant Emirate's organs and entities within their authorities, and presenting proposals and receiving approval;
4. Paying the salaries and bonuses of employees in the relevant organs, entities, and other relevant private institutes on time, overseeing and controlling the reserved funds for salary and the reserved fund for bonuses in the Emirate's organs in accordance with regulations; and

5. Overseeing the observance of labor law, technical safety laws, manufacturing health criteria in private enterprises and entities, issuing orders to resolve and prevent defects, and introducing private manufacturers and businesspeople, who violate laws, to law enforcement entities after the approval of the economic consultative council in case of necessity.

Article 14

The duties of the ministry of the Islamic Emirate of Afghanistan on strengthening the rule of law, legislative affairs, and countering crimes consist of the following:

1. Strengthening the basics of the Islamic Sharia and legality in the life of society and Emirate, and protecting the legal rights and interests of the Emirate as well as the people's economic and social interests;
2. Completing affairs related to combating crimes with cooperation of other Emirate entities.
3. Arranging, planning, and scrutinizing laws, taking measures to complete legislative affairs in accordance with the goals of Sharia;
4. Cooperating for the improvement of legal and Islamic sciences and using scientific achievements in building the Emirate's social and economic infrastructures;
5. Making and keeping international relations regarding legal issues;
6. Keeping the ministries connected with the council of ministers on legislative areas; and
7. Defending the legal interests of manufacturers and private businesses in relevant areas, overseeing compliance of private manufacturers and businesses with legislative documents, including the Labor Law, and the Law of Admissible Profit on Incomes in close cooperation with the General Directorate of Labor and Social Affairs in compliance with the provisions of the Domestic and Foreign Private Investment Law and the Statute of the Economic Consultative Council.

Article 15

The duties of the ministry of the Islamic Emirate of Afghanistan in the field of foreign policy and defense consist of the following:

1. Supporting the United Nations Charter, the Organization of Islamic Conference, the non-aligned movement, the Universal Declaration

of Human Rights, and other accepted principles and regulations as far as they do not contradict with Islamic principles and the interests of the country;

2. Respecting the rights of all nations of the world within the limits of the Islamic Sharia and condemning any violation of their rights and freedom;
3. Siding with the programmes of disarming and banning mass killing by world strong powers within the limits of the provisions of the Islamic Sharia;
4. Building friendly relations and promoting them based on observing the rights of each other; mutually respecting, in the light of the teachings of the glorious religion of Islam, all nations of the world especially those countries, which supported the legitimate cause of the oppressed people of Afghanistan during the Jihad period;
5. Ensuring sovereignty, national independence and the territorial integrity of the country; and
6. Supporting Islamic movements.

Article 16

The duties and responsibilities of the ministry of the Islamic Emirate of Afghanistan in the field of education, information, and culture consist of the following:

1. Taking measures to further develop and improve the educational system, eradicate illiteracy, expand public schools, religious schools, universities, scientific and educational centers, and other social training institutes for children based on the provisions of Sharia;
2. Enhancing and promoting youth discipline, their moral, physical, and intellectual flourishing, and preparing them for a career and a conscious selection of profession;
3. Organizing the affairs of the government to create works of art, helping improve the material foundations of cultural and artistic institutes and protecting historical monuments;
4. Proposing and implementing effective measures for citizens' intellectual training in different areas of social, scientific, cultural, and economical life of the country;
5. Dispersing internal and external information to the citizens in a timely manner;
6. Further developing radio networks in the country;

7. Dispersing publications by the press and improving the level of relevant services; and
8. Facilitating the exchange of cultural and artistic achievements with foreign countries to strengthen the sense of understanding and friendship among Muslim nations.

Article 17

The duties of the ministry of the Islamic Emirate of Afghanistan in the field of hygiene consist of the following:

1. Further improving hygiene to meet the needs of inhabitants through expert medical help accessible to the public and also protecting the health of mothers and children;
2. Taking measures to develop effective preventive affairs for the hygiene of inhabitants and improving the health condition in the country;
3. Satisfying the needs of people and public health infrastructure regarding the procurement of drugs and medical instruments; and
4. Further developing the networks of health infrastructure and scientific research in the medical field and increasing their effectiveness in the country.

Article 18

The duties of the ministry of the Islamic Emirate of Afghanistan in the field of agriculture, animal husbandry, and water and energy shall consist of the following:

1. Creating a modern system to run the affairs of agriculture and animal husbandry;
2. Cooperating to increase the production of all kinds of agricultural products to meet the needs of the country's people for food, supplying the small industrial factories with raw materials and supplying products for exports;
3. Distributing corrected seeds and chemical fertilizer, agricultural tools and machines among farmers and cooperating in the purchase of agricultural products from them;
4. Using forests, water resources, and pastures of the country effectively;
5. Publicizing effective campaigns for the improvement and expansion of agriculture;

6. Developing agricultural irrigation in accordance with the needs of national economy and completing effective use of the existing networks and resources of irrigation;
7. Regulating the rational use of water resources and protecting them from dirt and pollution;
8. Generalizing unique technical methods in irrigation and relevant affairs; and
9. Supplying the needed electricity of the country and its comprehensive expansion.

Article 19

The duties of the ministry of the Islamic Emirate of Afghanistan in the field of telecommunication, transportation, and civil aviation and tourism consist of the following:

1. Developing all kinds of telecommunication of public use to meet the needs of residents, national economy, and defensive affairs of the country;
2. Generalizing a unique technical method, creating and further developing telecommunication instruments, and generalizing the new achievements of sciences, techniques, and modern experiences in the relevant area;
3. Developing a comprehensive system of transportation for public use to meet the transportation related needs;
4. Ensuring safe and riskless transportation of passengers and timely protection and transportation of goods and tools; and
5. Generalizing and implementing the newest advances of science and technology in providing better aviation services.

Article 20

The duties of the ministry of the Islamic Emirate of Afghanistan in the field of commerce shall consist of the following:

1. Improving and developing commerce, guiding the production of materials of public need to meet the needs of the people;
2. Developing and strengthening the material and technical foundations of commerce industry;
3. Designing general measures to improve and develop commercial relations with foreign countries;
4. Designing import and export plans and regulating agreements arising from them;

5. Regulating the import and export activities of the Emirate entities, granting export and import permits, with the approval of the Economic Consultative Council, to private businesspeople of relevant areas, overseeing these activities within the authorities of the related ministries and entities; and
6. Generalizing a unique and suitable technical method in related areas.

Article 21

The duties of the ministry of the Islamic Emirate of Afghanistan in the field of economic, scientific, technological, and cultural relations with foreign countries shall consist of the following:

1. Conducting economic, scientific, technological, and cultural relations with foreign countries according to relevant regulations and enforcing the commitments of the Islamic Emirate of Afghanistan that emanate from signed agreements with foreign countries;
2. Taking measures to develop economic, scientific, and technological cooperation, in the fields related to the national economy of the Islamic Emirate of Afghanistan, with foreign countries;
3. Implementing plans for manufacturing products for export;
4. Taking measures to expand the production of export goods the sale of which has high monetary effectiveness;
5. Taking part in designing and implementing measures related to the export of relevant goods and the import of goods, which are economically optimal to purchase from outside; and
6. Defending the rights of Afghan private manufacturers and businesspeople against the threats of foreign monopolies.

Article 22

The duties of the ministry of the Islamic Emirate of Afghanistan in the field of interior affairs of the country shall consist of the following:

1. Ensuring security and protecting the borders of the country;
2. Maintaining public order, public safety, and countering and preventing crimes in the country; and
3. Performing other duties enshrined in relevant legislative documents.

Article 23

The duties of the ministry of the Islamic Emirate of Afghanistan in the field of Vice and Virtue shall consist of the following:

1. Promoting virtue and preventing evil according to the Sharia of Prophet Mohammad and the Hanafi Fiqh (jurisprudence) in the country;
2. Taking measures to prevent evil [vice] in the country;
3. Taking measures for effectively preach and sermon to prevent vices and promote virtue among the individuals of the society;
4. Ensuring respect, observance, and preservation of the religion of Islam;
5. Preventing anti-Islamic advertising and campaigning; and
6. Accomplishing other duties enshrined in relevant legislative documents.

Article 24

The duties of the ministry of the Islamic Emirate of Afghanistan for checking and assisting the conditions of martyrs' survivors [or relatives], and disabled and regulating the affairs related to the repatriation of immigrants consist of the following:

1. Regulating, determining and paying the salaries and pensions of disableds, the missing ones, captives, and the martyrs' survivors;
2. Regulating affairs related to the health and treatment of disable;
3. Taking measures to repatriate immigrants to the country; and
4. Performing other duties enshrined in relevant legislative documents.

Article 25

The duties of the ministry of the Islamic Emirate of Afghanistan regarding the affairs of tribes and borders consist of the following:

1. Ensuring and strengthening unity, solidarity, and brotherhood of all brother nationalities in the country;
2. Mobilizing all nationalities, ethnic groups, and tribes in defending the borders of the Islamic Emirate of Afghanistan;
3. Reviewing and solving the ethnic problems of ethnic groups and tribes inhabiting the country; and
4. Performing other duties enshrined in relevant legislative documents.

Article 26

The duties of the independent general directorates of the Islamic Emirate of Afghanistan shall consist of the following:

1. In the field of rural rehabilitation and development:
 - a. Attracting technical and material support of foreign countries and international organizations through authoritative sources;
 - b. Making decisions and providing guidance on the generalization of economic developments and appropriate technology in the rural areas;
 - c. Designing effective programmes to rehabilitate and develop rural areas in accordance with concrete needs; and
 - d. Performing other duties enshrined in relevant legislative documents.
2. In the field of statistics:
 - a. Completing reports, comprehensive calculations of numbers and developments of statistical areas and meeting the needs of the country with regard to statistical numbers;
 - b. Designing and determining the goals and the methods of conducting census, surveys, and statistical research according to the plans of the Islamic Emirate of Afghanistan;
 - c. Generalizing and promoting the use of computers according to the needs of the country; and
 - d. Performing other duties enshrined in relevant legislative documents.
3. In the field of physical training and sports:

Generalizing and promoting sports and physical training according to the provisions of Islamic Sharia.
4. In the field of study and topography of the soil level:
 - a. Designing plans to carry out area studies of the soil level, topography, creating and publishing maps of areas (topography) and registering earth maps.

*Chapter Three***Final Provisions****Article 27**

The ministries and the Independent General Directorates of the Islamic Emirate of Afghanistan can propose the enactment of

regulatory measures to regulate the performance and activities of ministries, directorates, and relevant entities to the authoritative officials.

Article 28

The organization and budget of the ministries of the Islamic Emirate of Afghanistan shall be approved by the Council of Ministers.

Article 29

The Ministries and the Independent General Directorates of the Islamic Emirate of Afghanistan shall each have stamps, which contain the emblem of the Islamic Emirate of Afghanistan and the name of the ministry or the independent directorate.

Article 30

This law shall enter into force upon its enactment and publication in the Official Gazette; and with its entry into force, the Law of the General Principles for the formation and Duties of Ministries of the Republic of Afghanistan published in Official Gazette number 453 on May 21, 1980, with all of its amendments, shall be abrogated.

A.2.6. Order of the Care-Taker Council of the Islamic Emirate of Afghanistan on the Enforcement of Laws and Regulations in the Ministries and Administrations of the Emirate

Official Gazette: N/A

Date: NA

For a better implementation of the laws and regulations and a better performance of the ministries and other agencies of the Islamic Emirate of Afghanistan, the following instructions are issued based on inspection delegation of the Ministry of Justice:

All authorities and personnel of the ministries and other agencies of the Islamic Emirate of Afghanistan are obliged to implement all laws and regulations in performing their administrative duties and never violate those laws.

In the event of the violation of a law by an official of a ministry or agency, the employees are obliged to provide a written report to the relevant authorities based on the laws.

If the officials of the ministries and agencies knowingly proceed with the violation of laws, the officials and authorities will be responsible [for that act].

All ministries and agencies of the Islamic Emirate of Afghanistan are obliged to follow the above-mentioned rules.

A.2.7. The Regulation on Organizing the Activities and Procedures of the Ministry of Justice

Recommendation	Ruling
<p>To the Attention of His Highness Amir al-Mominin Greetings, The Regulation Ordering the Activities and Affairs of the Ministry of Justice, which was presented to the Council of Ministers of the Islamic Emirate of Afghanistan for further discussion and revisions, has been approved in the meeting of the Council of Ministers on 08/04/1999. The Council of Ministers decided to send the Rules to the office of the Emirate for signature. Therefore, the said Rules are prepared in (4) chapters and presented to your highness for approval Alhaj Mullah Mohammad Rabbani Head of the Care Taking Council of the Islamic Emirate of Afghanistan</p>	<p>Observed! 13/04/1999 The content of the Recommendation is approved. Server of Islam Amir al-Mominin Mullah Mohammad Omar (Mujahid)</p>

Chapter One

General Provisions

Article 1

This regulation is adopted in accordance with the provision of Article (27) of the Law of Fundamentals of the Organization and Responsibilities of the Ministries of the Islamic Emirate of Afghanistan to regulate the procedures and activities of the Ministry of Justice.

Article 2

The Ministry of Justice of the Islamic Emirate of Afghanistan is a central administration and conducts its designated duties to regulate and complete affairs related to legislation and strengthening of the rule of law; the Ministry shall also be responsible to lead other administrations under its control.

Article 3

The Ministry of Justice is responsible for promoting the political platform of the Islamic Emirate of Afghanistan in order to extend the Islamic system in the country and strengthen legality in the social life of the country.

Article 4

The Ministry of Justice shall perform its responsibilities according to the laws and decrees of the Islamic Emirate, decisions of the government as well as this Regulation and shall guarantee the correct implementation of these laws.

Article 5

The offices of the prosecutors, the General Directorate of Legislation and Legal Research, central administrations, local government branches and other subordinate organs form the Ministry of Justice of the Islamic Emirate of Afghanistan.

Chapter Two

The Main Responsibilities of the Ministry of Justice

Article 6

The main responsibilities of the Ministry of Justice are the following:

1. Strengthening legality, protecting the rights and benefits of all the Emirate-owned, mixed and private corporations as well as all forms of lawful property, rights, wealth and dignity of the people.
2. Arranging and preparing recommendations about completing legislative affairs in accordance with the laws of Islam to buttress the Islamic system.
3. Partaking in affairs to strengthen strategies for combating crimes.
4. Effectively completing the affairs of defense lawyers.
5. Increasing the role of the juvenile correction centers in training children;
6. Cooperating in the promotion of Islamic sciences and using scientific achievements in this respect in economic, social and cultural infrastructures.
7. Maintaining and preserving international relations and regulating procedures for performing international obligations that fall within the Ministry's authorities.
8. Applying the decisions of the Emirate about cadres, attracting talented religious cadres in the Ministry and its related organs, elevating the knowledge of cadres, creating suitable conditions for the usage of scientific achievements.
9. Cooperating with other ministries and organizations in preparing legislative documents, combating corruption and promoting Islamic research as well as resolving cases.
10. Maintaining and strengthening the relationship of the ministries with the Islamic Emirate in legislative affairs.
11. Maintaining and observing the basics of Islam in the organization and activities of the Ministry and its related organs.

Article 7

The Ministry of Justice shall have the following responsibilities:

1. Preparing draft of laws and decrees of the Council of the Islamic Emirate of Afghanistan and the [regulations] of the government based on the recommendation and direction of high ranking officials and issuing opinions about draft bills prepared by other ministries for the review of the High Council and the government.
2. Leading the activities of the General Directorate of Legislation and Legal Research and reviewing legislative plans and overseeing the implementation of the laws.
3. Recommending the drafting of new laws and completing existing laws based on scientific research and experiences.

4. Issuing opinions with regard to the consistency of international treaties, agreements, conventions and foreign commercial agreements with the laws of the Islamic Emirate and preparing recommendations for amending domestic laws as required by international treaties and conventions.
5. Offering advisory opinions to the organs of the Emirate based on their request.
6. Publishing laws, legislative decrees and other legislative documents of the Emirate in the Official Gazette and participating in the publication of laws in other publications [magazines] of the Islamic Emirate.
7. Defending the material benefits of the Emirate and taking effective measures in implementing the ministry's responsibilities vis-à-vis other organs of the Emirate based on their request and, if necessary, bringing cases against the debtors of the Emirate and defending the Emirate in the courts of law.
8. Defending the right to property, the right to work, the rights of families and other civil rights of the citizens based on the complaints of the people, and taking measures to implement the decisions of the courts in civil rights by organs and administration of the Emirate-owned, mixed or private entities.
9. Seriously evaluating petitions and complaints about issues that fall within the authorities of the Ministry of Justice and taking decisions about these issues based on the provisions of the law.
10. Cooperating with the Supreme Court, the Ministry of Interior and other entities in promoting sociological research and using its outcomes in strengthening Islamic legality and enhancing the fight against crimes.
11. Leading the activities of correction centers and regulating the affairs of bodies dedicated for the training and correction of minor offenders based on an Islamic spirit.
12. Leading defense attorneys and preparing draft regulations and principles to provide legal assistance to the people, government entities and defense lawyers as well as taking measures about preparing a comprehensive report on the activities of defense lawyers.
13. Leading the affairs of training cadres in the organs and entities and providing these cadres as well as helping to elevate the ranks of these cadres.

14. Cooperating with other related organs in preparing plans for training of academic cadres and legal experts in the country.
15. Using the experiences and knowledge of senior experts in training young cadres and appointing these young cadres to leadership positions.
16. Taking effective measures in order to train the employees of the Emirate in Islamic spirit and honesty to the Islamic Emirate.
17. Establishing and maintaining international relations in line with the authorities of the Ministry and ensuring the implementation of international treaties, convention and legal assistance agreements in related areas.
18. Assisting the promotion of Islamic sciences and using scientific research in economic, social and cultural affairs in line with the Islamic Sharia and cooperating in the preparation of legal training programmes and law books in the schools of Sharia and Law of Kabul University.
19. Cooperating with other organs and administration of the Islamic Emirate of Afghanistan in areas related to their work and convening meetings to tackle related problems.
20. Studying the opinions of ministries and other administrations with respect to the draft bills and regulations prepared by them and attracting talented experts of these ministries and administrations as well academic institutions and soliciting their opinions about the draft bills.
21. Maintaining the needed infrastructures based on regulations and advancing the reconstruction of the buildings of governmental institutions.
22. Regulating affairs related to income, adopting the expenses of the Ministry and overseeing all activities in this respect through accounting and data analysis.
23. Taking measures to complete the organization of the Ministry and other entities under the Ministry and decreasing the expenses of the administration of the Ministry, establishing new branches of the Ministry or dissolving existing branches within the Ministry in accordance with the provisions of the law.

Chapter Three

The Organization and Regulation of the Activities of the Ministry of Justice

Article 8

At the top of the Ministry of Justice is the Minister of Justice who shall be appointed in accordance with the provisions of the law. The Minister of Justice shall perform his duties in accordance with law and this regulation. All other bodies of the Ministry of Justice shall be obliged to implement the orders and directives of the Minister.

Article 9

The Minister of Justice shall have [an assistant and a deputy Minister] who shall be appointed in accordance with the law. The Minister of Justice will determine their duties and responsibilities.

Article 10

The Minister of Justice is personally responsible for work, responsibilities and activities of the Ministry of Justice. The assistant, deputy Minister, directors and managers of the different branches shall be individually responsible for the affairs of their entities.

Article 11

An Administrative Council shall be formed in the Ministry of Justice which shall be composed of the Minister (as the head of the Council), deputies, directors and professional employees of the branches and other related organs.

The composition of the Council shall be prepared and recommended by the Minister of Justice and approved by the government.

Article 12

The Administrative Council of the Ministry of Justice, in addition to overseeing the activities of the Ministry and its other organs, shall review and supervise the activities of the organs of government in the following areas:

1. Reviewing the drafts of major laws prepared by the Ministry of Justice;
2. Buttressing affairs related to defending the rights of the Emirate, property rights, right to work and other civil rights of the citizenry;
3. Reviewing important petitions and complaints of the people;
4. Improving the activities of correction centers;
5. Improving the activities of the Association of Lawyers;

6. Improving the work of the Ministry in training and attracting talented cadres;
7. Reviewing and examining work plans and implementing them; and
8. Hearing reports presented by the directors of the branches of the Ministry, other entities and administrations related to the Ministry as well as issues presented by the Minister of Justice.

Article 13

The decisions of the Administrative Council shall be mandatory on all entities of the Ministry of Justice.

Article 14

The Ministry of Justice shall convene advisory meetings and seminars of its talented cadres in accordance with the law; in these seminars the methods of implementing the decisions of the Islamic Emirate of Afghanistan and government, important issues about legislative affairs shall be evaluated.

Article 15

Matters related to the organization and the number of the employees of the Ministry of Justice shall be presented to the authoritative officials and bodies.

Article 16

The Administrative Council of the Ministry of Justice shall adopt the directive of the duties and activities of the branches of the Ministry of Justice.

*Chapter Four***Miscellaneous Provisions****Article 17**

The Ministry of Justice shall have a stamp in which the emblem of the Islamic Emirate of Afghanistan and the name of the Ministry shall be carved.

Article 18

This regulation shall come to effect upon signature and shall be published in the Official Gazette. With the promulgation of this regulation, the regulation of ordering the activities of the Ministry of

Justice published in Official Gazette number (485) date 23/06/1981 shall be abrogated.

A.3. THE TALIBAN'S LEGISLATION

A.3.1. Introduction

Essentially, the Taliban implemented three types of laws, all of which were referred to as sharia law. First, the *Hanafi fiqh*, which was basically the supreme law of the country, and which disregarded the followers of other religions. In addition to informing and framing all other laws, religious dictates ruled public behaviour directly through the Ministry of Vice and Virtue, which policed the religiosity of the citizenry.

The decrees of the Amir were the second, and in fact the only other, source of law until 1997. In one decree, Mullah Omar referred to Islam as "my Sharia" indicating that he was the arbiter of the religious and laws of the nation. Most decrees issued by Mullah Omar, however, were unusual in style, content and objectives when compared with those of previous presidents, kings and amirs. They did not follow conventional codification standards or guidelines. For instance, many decrees lacked specific dates of issuance and *Official Gazette* numbers. Almost all decrees would begin with greetings to the Taliban rank and file or the Taliban generally, and most would end with some sort of farewell. The decrees would be issued in the form of a message, advice or instructions from the Amir. At times the decrees included the prayers of the amir for his followers; other times, the decrees were about his grievances and frustrations with the movement or some Taliban in the movement because of corruption, looting, sodomy, disunity, fleeing from war, and over expending. Uncodified paragraphs, lengthy and vague sentences, frequent grammar errors, repetitions of points and sentences, use of examples in the middle of decrees, invoking divine interventions, and the use of pronouns such as 'I', 'we', 'you', and 'they' were common features of the decrees. The decrees would almost always refer to the Taliban even if they were intended to regulate the practices and duties of the people. This was rather curious coupled with the fact that the amir never personally interacted with the people of the country that he was ruling.

In mid-1997 a new set of regulations were introduced as a new source of Taliban law. These regulations would be drafted by a ministry, an independent department or jointly by several state institutions, ratified by the Council of Ministers and issued by the Amir. In some cases, the Supreme Court could also introduce a law, which needed the ratification of the Council of Ministers first. The Council of Ministers was chaired by the prime minister, who also needed to approve regulations ratified by the Council. The Ministry of Justice was involved in creating and publishing laws in the *Official Gazette* once they received the endorsement of the Amir.

A.3.2. Regulation on Legislative Procedure

Proposal	Ruling
<p>To the Attention of the His Highness, Amir al-Mominin:</p> <p>Greetings,</p> <p>The Regulation on Legislative Procedure, which was adopted by the Council of Ministers of the Islamic Emirate of Afghanistan within its authorities, has been prepared in (6) chapters and 45 articles. This regulation describes the methods of the adoption of legislative documents. It is presented to Your Highness for approval.</p> <p>Alhaj Mullah Nooruddin (Turabi)</p> <p>Caretaker Minister of Justice</p>	<p>Observed!</p> <p>The Regulation on Legislative Procedure, which is compiled in (6) chapters and (45) articles is approved and shall be published in the Official Gazette.</p> <p>Amir al-Mominin Mullah Mohammad Omar (Mujahid)</p>

Chapter One

General Provisions

Article 1

This regulation is adopted for the purpose of preparing, drafting and ratifying legal documents in a uniform manner.

Article 2

This regulation organizes [regulates] the procedures and proposals for the drafting of those laws the adoption of which requires the ratification of the Amir al-Mominin and the Council of Ministers.

*Chapter Two***Preparing and Drafting Legislation****Article 3**

The preparation of legislation shall take place in accordance with a legislative working plan.

Article 4

Preparing a legislative working plan shall be the duty of the Ministry of Justice of the Islamic Emirate of Afghanistan.

Article 5

Legislation shall be drafted on the recommendation of the ministers, Chief Justice of the Supreme Court, Minister of Justice, independent directorates and heads of independent institutions.

Ministries or other administrations shall review the draft of laws and consider any amendments, revisions, revocation or adoption of the law before attending the meeting in which the law is expected to be adopted.

Article 6

Proposing a legislation shall commence at least three months before the end of the year with a description of the reasons and the necessity of the law to the Ministry of Justice.

The reasons for drafting a law shall include the following:

1. Preparing a list of existing legislation with respect to the issues about which the new law is proposed to be drafted;
2. Stating the reasons for drafting a new law;
3. Presenting the financial and material sources which is necessary for drafting and implementing the new law;
4. Estimating the time for preparing a draft law to the Council of Ministers of the Islamic Emirate of Afghanistan.
5. Providing a written explanation for the adoption of a new law, which shall not exceed three pages.

Article 7

The Ministry of Justice shall have the right to request further information from related institutions about the adoption, revision, amendment or revocation of laws.

Article 8

The Ministry of Justice shall introduce the draft law to the Council of Ministers one month before the end of the year; the Minister of Justice shall remove suggestions and recommendations that may be unnecessary, providing a written explanation about why the Minister of Justice removed certain unneeded materials.

Article 9

An annual legislative plan shall be adopted by the Council of Ministers and approved by the office of the Islamic Emirate of Afghanistan [the Amir].

Article 10

A legislative plan shall include a list of legal documents that should be prepared in a specific period of time. It should also include the names of responsible heads of entities proposing draft laws and the time of introducing the legislation to the Council of Ministers.

Article 11

A legislative plan shall include three sections:

1. List of laws the adoption of which require the ratification of the office of the Islamic Emirate of Afghanistan [the Amir];
2. The list of laws the adoption of which requires the ratification of the Council of Ministers; and
3. List of laws that are related to the amendment of existing laws or are necessary in supplementing existing laws.
4. In case of urgency, the Council of Ministers of the Islamic Emirate of Afghanistan and the Ministry of Justice can amend legislative plans.

Article 12

The Council of Ministers shall inform the Minister of Justice and the responsible head of legislative documents of the inclusion of law in the legislative plan and [the period in which the law shall be prepared for ratification].

Article 13

Maintaining coordination and academic cooperation with ministers and administrations in arranging legislative documents and overseeing the implementation of the legislative plan shall be the responsibility of the Ministry of Justice of the Islamic Emirate of Afghanistan.

Article 14

Proposals for drafting legal documents which are not of general public importance as well as amending, completing, or partially revoking of a legislation that are not part of the legislative plans shall be presented to the Ministry of Justice for approval.

Article 15

The ministries and other administrations that participate in drafting laws shall implement their internal regulations necessary for the enforcement of laws.

*Chapter Three***The Method of Preparing and Coordinating Legislative Documents****Article 16**

1. The minister or the head of an administration who is responsible to draft a law shall appoint an authoritative committee that should include the official of the ministry or the administration and other experts to draft the law.
2. In case in which a draft is prepared by a number of ministries and administrations, a joint expert committee shall be formed by a joint decision of all entities involved. The head of the entity responsible for the drafting of the law shall preside over the meeting of the joint committee.

Article 17

In order to draft important legislation, the Office of the Islamic Emirate of Afghanistan [the Amir] or the Council of Minister shall appoint a committee.

Article 18

The committee designated to draft legislation shall start their work from the Hanafi Fiqh of the Islamic Sharia, existing laws of the

Islamic Emirate, experiences of other countries, academic sources and the people's opinions.

Article 19

While drafting a law, consistency with existing legal norms in issues that the law is expected to resolve in light of the general policies of the Islamic Emirate shall be maintained.

Article 20

1. In preparing draft legislations, it is important to consider the evolution and stability of the legal system in related issues so that future amendments and gaps in the law are avoided.
2. In drafting new laws, the expected outcomes shall be evaluated and it shall be clarified which existing laws need amendments or revocation upon the ratification of new laws.

Article 21

While reviewing (evaluating) and debating the preliminary legislative draft, in addition to the participation of the representatives of the ministries, administrations and interested experts, authoritative representatives of academic institutions and media shall also be invited to partake. The first draft of the law shall also be prepared in light of the opinions of these experts.

Article 22

A legislative document along with a written description of it prepared by a designated minister or administrative officer shall first be sent to the Ministry of Planning, Ministry of Finance and other interested ministries and administrations for approval; the legal document shall then be sent to the Ministry of Justice for further review. Getting approval for a draft law shall take place based on the method crafted by the Council of Ministers.

Chapter Four

The Method of Presenting Legal Documents for Consideration to Authoritative Organs

Article 23

A legislative document [law, decree, regulation, directive] shall be presented (proposed) to the Council of Ministers irrespective of what institutions draft it.

Article 24

1. A legislative document shall be presented (proposed) to the Council of Ministers by the minister or the head of an administration responsible for drafting the law and the Minister of Justice. At the time of presenting (proposing) the legislation to the Council of Ministers, the responsible minister or the head of the administration shall also present a written explanation to the Council of Minister.
2. These explanations shall include the following:
 - a. The necessity and purpose of drafting the law;
 - b. A brief evaluation of existing and related laws;
 - c. A brief analysis of the content of the proposed legislation and the new provisions that would be added into the legal system;
 - d. The expected repercussions of the implementation of the law; and
 - e. A list of the ministries and other administrations who approved the law and some differences that there might have been;

Any explanation shall not exceed five pages.

3. If the implementation of the new law causes considerable financial costs, all economic and financial estimations that justify the adoption of the law along with an evaluation of the Ministry of Finance shall be made available.

Article 25

In the Council of Ministers of the Islamic Emirate of Afghanistan, an original report of the new law shall be presented by the minister or the administrator whose institution drafted the law; the Minister of Justice shall deliver a secondary report to the Council of Ministers about the law. The Minister of Justice can also be the primary rapporteur.

Article 26

Laws, which require the approval of the Office of the Islamic Emirate of Afghanistan [the Amir], shall be presented to the Amir after the approval of the Council of Ministers.

Article 27

The original copy of the laws approved by the Office of the Islamic Emirate of Afghanistan [the Amir] and the Council of Ministers shall be published in the Official Gazette.

*Chapter Five***The Basic Principles of the Structure and Content of Laws****Article 28**

A legislative document must be responsive to the goals and demands of the Islamic Emirate of Afghanistan, the demands of economic, social and cultural progress in the country, strengthening Islamic sovereignty and maintaining the rights and freedoms of the people as well as strengthening legality in the country.

Article 29

A new law must not be contrary to the Hanafi Fiqh of the Islamic Sharia, the Constitution of the Islamic Emirate of Afghanistan, laws, legislative decrees and other legal documents. In case, a new law causes amendments or revocation in an existing law, the reasons for such changes shall be clarified.

Article 30

1. In order to avoid duplication and multiplication of legislation, a law shall regulate all affairs related to a particular area.
2. In case significant amendments are predicted in the legal system with the ratification of a new law, all norms that pass the test of legal consistency shall be included in the draft.

Article 31

In case an existing legislation preserves its value completely and only a few of its provisions demand amendments, a new text of amendment or revocation of its provisions shall be added in the said legislation.

Article 32

In case of necessity, the laws of the Islamic Emirate of Afghanistan shall clearly determine the responsibilities of administrations and individuals who violate the law.

Article 33

The title of a law shall be brief and denote its basic content.

Article 34

1. The articles (and clauses) of laws shall commonly be prepared in sections and chapters; for each chapter there shall be a title.
2. In the most important laws, preliminary provisions, which describe the reasons and purpose of adopting the law, shall be included.

Article 35

The number of articles (clauses) of the law shall be consistent throughout the law.

Article 36

Articles (clauses) of laws shall be linked through a logical sequence.

Article 37

Each article (clause) of the law shall commonly include complete issues and shall consist of only one legal provision.

In cases of necessity and for the purpose of the correct understanding of the law, several related provisions shall be included in one article.

Article 38

References to other articles of the law or to a different legislation that already exists shall only occur when there is a need for a reciprocal mentioning of the laws or in cases of preventing repetition in the law.

Article 39

1. In order to prevent incorrect interpretation and mis-implementation of the law, each law shall be precise, plain and understandable.
2. Technical terms used in a law shall be understood as accepted in the established legal terminologies; in case a term has many meanings, its exact meaning and usage shall be defined in the law.

3. In drafting laws, legal and technical terms shall be used in the official languages of the country.

Article 40

1. The name of ministries, administrations and other entities shall be correctly mentioned in the law in such a way that is consistent with their official names.
2. Abbreviating names in a law shall be permitted only if such abbreviations are officially accepted and established.

Article 41

The final provision of the new laws shall mention all of the existing laws, their chapters or particular provisions and articles that become ineffective or need amendments upon the promulgation of the new law, including their Official Gazette numbers and their dates; laws that have become practically void but are not officially abrogated shall also be mentioned in the new law as ineffective legislation.

Article 42

In case several laws become ineffective or need amendment upon the ratification of the new laws, their list shall be added at the end of the new law.

Chapter Six

Final Provisions

Article 43

A legislative document which is prepared in contradiction with this Regulation cannot be accepted for consideration and will be resent to the entity that has prepared it.

Article 44

The General Directorate for Regulating the Affairs of the Council of Ministers of the Islamic Emirate of Afghanistan shall be responsible for the implementation of this Regulation.

Article 45

This Regulation shall become effective upon the date of ratification and shall be published in the Official Gazette. With the publication of this Regulation in the Official Gazette, the Regulation on the Method

of Preparing and Presenting Legislative Documents published in Official Gazette number (562), dated 31/07/1984 shall be abrogated.

A.3.3. Law on the Promulgation and Implementation of Legislative Documents

Proposal	Ruling
<p>To the Attention of His Highness Amir al-Mominin</p> <p>Greetings,</p> <p>The Law on the Promulgation and Implementation of Legislative Documents of the Islamic Emirate of Afghanistan, which describes the method of the implementation and promulgation of the laws of the Islamic Emirate in 3 chapters and 14 articles, is presented to your excellency for approval.</p> <p>Alhaj Nooruddin Turabi Acting Minister of Justice</p>	<p>Observed!</p> <p>Compiled in 3 chapters and 14 articles, the Law on the Promulgation and Implementation of Legislative Documents is approved. It shall be published in the Official Gazette.</p> <p>Server of Islam Amir al-Mominin Mullah Mohammad Omar (Mujahid)</p>

Chapter One

General Provisions

Article 1

This law is adopted to make all formal and informal administrations and the people of the country aware of the decrees, regulations, charters, directives and other legal documents that have been promulgated and implemented.

Article 2

Legislative documents shall be published in the Official Gazette of the Islamic Emirate of Afghanistan.

Article 3

The Ministry of Justice of the Islamic Emirate of Afghanistan shall be concessionaire of the Official Gazette.

Article 4

The Official Gazette shall be published once in a month and, when necessary, an additional issue of the Official Gazette shall be published.

Chapter Two

The Method of Promulgating Legislative Documents

Article 5

The following documents shall be published in the Official Gazette:

1. The declarations of the Islamic Emirate of Afghanistan that give the public notice about the laws, decrees, and other parliamentary legislation;
2. Decrees and other legislative documents of the Islamic Emirate;
3. International agreements and contracts that the Islamic Emirate of Afghanistan signs as well as decrees about the ratification of these agreements;
4. Legislative documents that the Supreme Court has the power to ratify in accordance with the provisions of the law; and
5. Other legislative documents the publication of which is required by law as well as trademarks and other commercial registration documents.

Article 6

The first section of the Official Gazette shall include an official announcement, promulgating all enacted laws, regulations and other legal acts of the National Assembly [in that Gazette]. The second section of the Official Gazette shall include decrees of the Islamic Emirate of Afghanistan. The third section of the Official Gazette shall comprise decisions, regulations, and charters of the Council of Ministers. The fourth section of the Official Gazette shall be consist of agreements and treaties that the Islamic Emirate of Afghanistan has become party to as well as decrees about their ratification shall. The fifth section shall contain laws, which the Supreme Court has the jurisdiction to ratify. The sixth section of the Official Gazette shall include other issues which require publication in the Gazette by law

as well as the decisions of commercial courts about the registration of trademarks.

Article 7

1. The publication of legislative documents included in Article 5 of this law shall be permitted in other journals after publication in the Official Gazette.
2. In case of urgency, laws and other legislative documents mentioned in clause 1) of this Article can be published through other mass communication means before publication in the Official Gazette.
3. In cases of necessity, laws mentioned in clause (2) of this Article can be announced through telex and telegram as well.

Article 8

Laws mentioned in Article 5 of this Article shall be published in the Pashto and Dari languages.

Article 9

Laws mentioned in Article 5 shall become effective upon publication in the Official Gazette unless provided otherwise in the law itself. International treaties and agreements are subject to the provisions of a special law.

Chapter Three

Final Provisions

Article 10

The Directorate of the Administration of General Affairs of the Islamic Emirate of Afghanistan shall be obliged to send the original copies of the legislative documents mentioned in clauses (1, 2) of this law to the Ministry of Justice for publication in the Official Gazette after they complete all legal procedures.

Article 11

The Directorate of the Administration of the Affairs of the Council of Ministers shall be obliged to send legislative documents mentioned in clause (3) of Article 5 of this law to the Ministry of Justice for Publication in the Official Gazette after they complete all legal procedures.

Article 12

The Supreme Court is obliged to send legislative documents mentioned in clause (5) of Article 5 of this law to the Ministry of Justice for publication in the Official Gazette after they complete all legal procedures.

Article 13

The directorates of the administration of the Emirate and the Council of Ministers shall be obliged to send legislative documents mentioned in clause (5) of Article 5 of this law to the Ministry of Justice for Publication in the Official Gazette after they complete all legal procedures.

Article 14

This law shall become effective upon publication in the Official Gazette and upon its publication, the Law on the Implementation and Promulgation of Legislative Documents (Official Gazette number, 591, Dated 28/08/1985.) shall be void.

A.3.4. Decree of the Office of the Amir on the Implementation of the previous (Pre-Taliban era) Legislations

Official Gazette: 367

Date: 5/12/1997

Article 1.

1. All those laws, regulations, and charters that are not repugnant to Islamic Sharia and Hanafi Fiqh are binding laws.
2. All relevant agencies are obliged to abide by the terms of the first clause of this article.

Article 2.

This decree shall be published in the Official Gazette and implemented subsequent to its approval (by the Amir).

Wa-al-Salam

The Servant of Islam

Amir-ul-Momenin, Mullah Mohammad Omar Mujahid

A.3.5. Law of the Rights and Privileges of the Members of the Academic Cadre of the General Directorate of Legislation and Legal Research

Proposal	Ruling
To His Highness Amir al-Mominin, Greetings, The Charter of the General Directorate of Legislation and Legal Research has been prepared in 10 articles and presented to your excellency for approval. Alhaj Nooruddin Turabi Acting Minister of Justice	Observed! The Law of the Rights and Privileges of the Members of the Academic Cadre of the General Directorate of Legislation and Legal Research compiled in 10 articles is approved. It should be published in the Official Gazette. Server of Islam Amir al-Mominin Mullah Mohammad Omar (Mujahid)

Article 1

1. In light of the method of the Islamic Emirate of Afghanistan in strengthening the Islamic Sharia and the rule of law, necessary measures shall be adopted to develop and promote legislation through drafting and reviewing laws, legislative decrees, regulations and charters. Considering the important role laws and legislative decree play in the social life of the country, the General Directorate of Legislative Affairs and Legal Research shall perform its duties in accordance with this law in promoting a legalistic mindset and elevating legal sciences through explaining, describing and publishing laws.
2. The General Directorate of Legislative Affairs and Legal Research shall be called the Directorate of Legislation in this Law.

Article 2

Members of the Academic Cadre of the Directorate of Legislation, who are appointed in the following positions based on their academic ranks and scientific accomplishments in legislative affairs, shall receive the following additional privileges in addition to their monthly salaries.

1. Qanunyar [legal assistant] (Pohanyar) [teaching assistant] a hundred thousand Afghanis.
2. Qanunmal [senior legal assistant] (Pohanmal) [senior teaching assistant] a hundred and fifty thousand Afghanis.
3. Qanunpal [legal associate] (Pohandoy) [assistant professor] two hundred thousand Afghanis.
4. Qanunwal [senior legal associate] (Pohanwal) [associate professor] two hundred and fifty thousand Afghanis.
5. Qanunpoh [legal expert] (Pohand) [professor] three thousand Afghanis.
6. A candidate for an academic cadre shall not be eligible to receive privileged [additional] salary.

Article 3

Additional [bonus] salary shall be considered part of the ordinary salary. In cases of sickness and legal vacations or other situations under which the members of the academic cadre qualify for their ordinary salaries, they shall also qualify for additional [bonus] salary unless provided otherwise in the law.

Article 4

1. Additional [bonus] salary shall be counted in pension in proportion to the period of service in legislative affairs.
2. Service in the professional cadre of judicial and prosecutorial affairs and service in the academic cadre of universities shall be counted as service in legislative affairs.
3. With any addition in the salaries of the active members of the Directorate of Legislation, the rights of the retired members of the Directorate shall also be increased.

Article 5

A related regulation shall deal with the rights and privileges of the members of the academic cadre who travel abroad for education.

Article 6

In cases of transfer or separation from the Directorate of Legislation, members of the academic cadre shall be eligible for material rights and privileges.

Article 7

The academic cadre of the Directorate of Legislation shall retire at their mandatory retirement age determined by their academic ranks as follows:

1. Qanunpoh [legal assistant] and Qanunwal [senior legal assistant] after reaching the age of sixty five;
2. Qanunpal [legal associate] and Qanunmal [senior legal associate] after reaching the age of sixty;
3. If necessary, the Directorate of Legislation may propose extending the retirement of an academic cadre for five more years.

Article 8

1. Upon the promulgation of this law, the ranks of the members of the Academic Council and other members of the Directorate of Legislation, who have a graduation certificate from a faculty [university school] or above, shall be determined by their experience in legislative affairs, ability to think innovatively, analysis of complex issues, translation of foreign legal documents, sufficient information about the country's legal system and knowledge about foreign legal systems by an authoritative body.
2. The authoritative body shall be composed of the following:
 - a. The Minister of Justice as the head of the body;
 - b. Deputy Minister of Justice as a member;
 - c. General Director of Legislation as a members;
 - d. Deputy of the Academy of Sciences as member; and
 - e. Director of the [legal cases] of the Emirate as member.
3. Approval of the academic ranks mentioned in Article 2 of the law shall be made by the following authorities:
 - a. Qanunyar and Qanunmal by the Minister of Justice; and
 - b. Qanunpal, Qanunwal and Qanunpoh by the government.

Article 9

A separate statute shall regulate the duties, authorities and organization of the Directorate of Legislation as well as the condition for admitting and promoting members of the Directorate.

Article 10

Upon its date of issuance [by the Amir], this law shall become effective and published in the Official Gazette. With the promulgation

of this law, the Law of the Rights and Privileges of the Academic Cadre of the Scientific Institute of Legislative Affairs and Legal Research published in Official Gazette number (485) dated 23/06/1981 shall be abrogated.

A.3.6. Order of the Office of the Amir on Referring Orders and Decrees of the Office of Islamic Emirate of Afghanistan by the Ministers, Governors and Other Officials to the Ministry of Justice

Official Gazette: 239

Date: 7/11/1999

To the Ministers, Governors, and All [Other] Authorities of the Emirate Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu
Although the Amir has issued decrees and instructions to the ministries, [independent] departments, provincial administrations, district administrations, and other civil and military personnel after the success of the Islamic movement, some of the decrees and orders have not been registered in the General Administration of the Emirate to be subsequently submitted to the Ministry of Justice. Therefore, to be aware of all orders and decrees, it is to instruct you to submit their copies to the Ministry of Justice so that they are registered in the Legislation Directorate of the Ministry.

A.3.7. Law of Constitutional Council

Official Gazette No. 797

Date: 5/2/2001

Chapter One

General Provisions

Article 1

This law is promulgated to regulate the duties of the Constitutional Council of the Islamic Emirate of Afghanistan.

Article 2

1. The Constitutional Council shall be established within the organization of the General Directorate of Administrative Affairs of the Islamic Emirate of Afghanistan for the purpose of overseeing the compliance of laws, other legislative documents

and international treaties with the provisions of the Islamic Sharia and the law.

2. The Constitutional Council shall be responsible to the Amir al-Mominin of the Islamic Emirate of Afghanistan [commander of the faithful; reference to the Taliban leader], and it shall be obliged to present reports to him.
3. The Constitutional Council shall present a report about its activities to the high Office of the Islamic Emirate of Afghanistan at the end of each year.

Chapter Two

Organization of the Constitutional Council

Article 3

The Constitutional Council within the organization of the General Directorate for Administrative Affairs of the Islamic Emirate of Afghanistan shall be composed of a president, a vice president, a secretary and other members who shall all be appointed by the Amir al-Mominin of the Islamic Emirate of Afghanistan.

Article 4

1. The president, vice-president and secretary of the Constitutional Council cannot be members of the National Assembly and the Council of Ministers or occupy another position in the Islamic Emirate organs.
2. Members of the Constitutional Council shall be appointed by the Amir al-Mominin from amongst the civil servants or from amongst the experts in accordance with the law.
3. Members of the Constitutional Council shall not be members of other councils or the Council of Ministers during their membership in the Constitutional Council.
4. Suitable compensation will be paid to the members of the Constitutional Council mentioned in clause 2 of this Article for their presence in the meetings of the Constitutional Council. The amount of compensation shall be determined by the High Office of the Islamic Emirate in accordance with the accepted national budget of the government of the Islamic Emirate of Afghanistan.

Article 5

Nationals of the Islamic Emirate of Afghanistan, who have the following qualifications, can be appointed as the members of the Constitutional Council.

Article 6

Members of the Constitutional Council shall have the right to present their resignation to the Amir al-Mominin of the Islamic Emirate of Afghanistan. The Amir of the Islamic Emirate of Afghanistan shall appoint the new members within one month from the resignation of a member of the Constitutional Council.

Article 7

In cases of incurable and durable disease, noncompliance with the Islamic Sharia either in physical appearance or in moral character, or in cases involving a member being deprived of civil and political rights [due to criminal offenses by courts of law], members of the Constitutional Council shall lose membership by the order of the Amir al-Mominin of the Islamic Emirate of Afghanistan.

*Chapter Three***Authorities and Procedure of the Constitutional Council****Article 8**

The Constitutional Council shall have the following authorities:

1. Reviewing the compatibility of laws, legislative decrees and international treaties with the provisions of the Islamic Sharia and the law.
2. Offering legal advice to the leadership of the Islamic Emirate of Afghanistan on issues arising from the Constitution.

Article 9

The Constitutional Council shall have the power to:

1. Study, review and issue an opinion about the compliance of legislation, which is submitted for approval to the Amir of the Islamic Emirate of Afghanistan, with the provisions of Islamic Sharia and the law.
2. Offer particular and concrete recommendations to the Amir of the Islamic Emirate of Afghanistan for the purpose of improving and strengthening legislative affairs in the country.

Article 10

Before the signature and approval of the Amir of the Islamic Emirate of Afghanistan, legislative documents and international treaties shall be submitted to the Constitutional Council for the purpose of reviewing their compatibility with the provisions of the Islamic Sharia and the law. The Constitutional Council shall be obliged to deliver its opinion on the matter within ten days to the Amir of the Islamic Emirate of Afghanistan.

Article 11

1. In cases law enforcement agencies and other administrative affairs organs have reasonable grounds to believe that a legislative document is contrary to the provisions of the Islamic Sharia and the law, they can refer the matter to the Constitutional Council.
2. In case, the Constitutional Council determines that the law in question is repugnant to the provisions of the Islamic Sharia and the law, it shall present its recommendation on the abrogation of the law to the Amir al-Mominin of the Islamic Emirate of Afghanistan.

Article 12

The Constitutional Council shall convene at least one session in a month. Extraordinary sessions of the Constitutional Council shall be convened on the direction of Amir al-Mominin, of the Islamic Emirate of Afghanistan, decision of the president of the Constitutional Council, or with the demand of one-third of the members of the Constitutional Council itself.

Article 13

The quorum for the sessions of the Constitutional Council shall be complete with the presence of two-thirds of its members. In accordance with the principles of Islam, the Constitutional Council shall make decisions by the votes of majority of all members of the session of the Constitutional Council.

Article 14

The president of the Constitutional Council shall preside over the sessions of this Constitutional Council.

Chapter Four

Final Provisions

Article 15

Except in cases of obvious crimes, members of the Constitutional Council shall not be pursued and prosecuted without the consent of the Amir of the Islamic Emirate of Afghanistan.

Article 16

The Constitutional Council shall have the right to invite state officials responsible for the implementation of the law and other government organs to its sessions. The invited officials shall only have the right to offer advisory opinions to the members of the Constitutional Council.

Article 17

1. The Constitutional Council shall have administrative departments. The number of these departments shall be determined by the recommendation of the president of the Constitutional Council, approval of the director of the General Directorate of Administrative Affairs and by the decision of the Amir al-Mominin of the Islamic Emirate of Afghanistan.
2. The organization and budget of the Constitutional Council as part of the budget of the General Directorate of Administrative Affairs of the Islamic Emirate of Afghanistan shall be approved by the authorized organization of the Islamic Emirate.

Article 18

The Constitutional Council of the Islamic Emirate of Afghanistan shall have a special stamp in which the name of the Constitutional Council and the sign of the Islamic Emirate of Afghanistan shall be carved.

Article 19

This Law of the Constitutional Council shall come into force after the date of signature by the Amir of the Islamic Emirate of Afghanistan, and its promulgation in the Official Gazette. With the promulgation of this Law, the law of the previous Constitutional Council promulgated in Official Gazette No. 682 dated 20th Jadi 1367 [November 1988] shall be abrogated. [*Translator's note: This is a reference to a similar Constitutional Council Law that existed during the presidency of Mohammad Najibullah under the 1987 Constitution.*]

A.4. THE TALIBAN JUDICIARY

A.4.1. Introduction

In addition to rules and regulations on legislative bodies, the state and symbols, the Taliban adopted certain laws regarding courts and crimes. These rules consisted of six specific decrees and orders issued by the Amir that elaborated on the jurisdiction of the courts, the independence of the judiciary, the superiority of sharia and the *Hanafi fiqh* in the adjudication of cases, procedural rules aimed at protecting individual rights and the prevention of bribery.

As far as the jurisdictions of the courts are concerned, one of the decrees specified the jurisdiction of the military courts as covering crimes 'committed by the employees of the Ministry of Defense, the Ministry of Interior, the Directorate of Intelligence, as well as the employees of relevant agencies during performing their duties'. The same decree considered the jurisdiction of the Supreme Court to cover other criminal cases. It signalled that the Taliban were trying to clarify the jurisdiction of the courts. But the Taliban did not adopt specific criminal codes covering criminal cases. The decrees and orders suggested that the Taliban courts would rely primarily on the rules of sharia and the *Hanafi fiqh* in making decisions.

The Taliban issued another order on the prosecution and arrest of criminals and the responsibilities and authorities of investigative agencies. This order provides some specific criminal procedures on the prosecution and arrest of suspects and criminals and the relevant authorities and responsibilities of the investigative agencies. The order reflects some of the basic procedural rights of suspects and criminals during the investigation and prosecution processes. Some of the main features of these procedural rights include that investigative agencies must investigate suspects within 72 hours of arrest (article 1); that prosecutors must prepare their charge within one week's time and that law enforcement officials cannot keep suspects in jail for more than 72 hours (article 2); that there must be a female administrator for arresting female suspects (article 15); that judges cannot issue an arrest period of more than two months (article 17); that prisoners must receive Islamic training (article 19); that jail and prison officials must provide places for ablution for both

male and female detainees (article 20); and that, based on the *Hanafi fiqh*, no confession may be obtained by coercion (article 22).

A.4.2. Decree of the Office of the Amir on the Jurisdiction of the Supreme Court and Military Court

Official Gazette: 70

Date: 1/28/1999

To avoid the jurisdictional overlap of the civilian (Supreme Court) and military courts, the following arrangements shall be made:

Article 1

Military court shall hear only those crimes that are committed by the employees of the Ministry of Defense, the Ministry of Interior, the Directorate of Intelligence, as well as the employees of relevant agencies during performing their duties, and make decisions in the light of Hanafi Fiqh, Sharia of prophet Mohammad, and other binding laws.

Article 2

In addition to deciding political crimes, the Supreme Court shall hear all regular crimes, including the crimes of all members [officials] of Emirate agencies except the three agencies mentioned above, based on Hanafi Fiqh and the holy Sharia of the Prophet Mohammad.

Article 3

Upon the issuance of this decree, the Supreme Court and the military court shall not interfere in each other's affairs and refer cases to the courts that have the jurisdiction over them.

Article 4

The emergency decrees that were previously issued for the Supreme Court, including decree No. 180 shall be void upon the issuance of this decree.

A.4.3. Decree of the Office of the Amir on non-interference in judicial affairs (affairs of courts)

Official Gazette: 11

Date: 7/11/1999

All courts are obliged to brief the Amir before deciding any ongoing and future disputes involving deserts and mountains.

No case shall be decided without the prior instructions of the Amir.

The Servant of Islam

Amir-ul-Mo'menin, Mullah Mohammad Omar Mujahid

A.4.4. Decree of the Office of the Amir on the Review of Laws (Islamic review) by the Ulama, jurists, of the Supreme Court

Official Gazette: 18

Date: 6/21/1998

To the Ministry of Justice

Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu

To ensure Sharia order in the country (Afghanistan), you must submit all laws and regulations for the review of a council of Ulama presided by the Supreme Court [Justice (s)], rescind all those articles that are unIslamic, and publish them in the Gazette after the approval of the Amir.

Wa-al-Salam

The Servant of Islam

Amir-ul-Mo'menin, Mullah Mohammad Omar Mujahid

A.4.5. Decree of the Office of the Amir on the non-interference of governors in the Affairs of the prisoners (violators) of 'Ministry of Vice and Virtue.'

Official Gazette: 113

Date: 11/19/1998

To All Officials of the Emirate

Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu

To prevent unIslamic activities and to better run [social] affairs, it is to instruct you that all offenders of unIslamic activities shall be arrested and released under the discretion of the authorities of vice and virtue. You shall not intervene [in the vice and virtue affairs] and if the authorities of vice and virtue commit an offense in a particular case, both parties shall meet at a particular time and place and communicate with us via dispatch after which we will issue proper instructions to them.

[You shall] provide this decree to all authorities in the provinces and districts for their better performances.

A.4.6. Order of the Office of the Amir on the Prosecution and Arrest of Criminals and the Responsibilities and Authorities of Investigative Agencies

Official Gazette: 367

Date: 12/1/1997

Based on the decree of the Amir of the Islamic Afghanistan, a delegation, chaired by Alhaj Mullah Nooruddin Turabi, the care-taker minister of justice, and the director of Administrative Council, was tasked to observe the implementation of laws and the method of the Islamic Emirate of Afghanistan by the security officials (personnel of the security sectors, intelligence officers, prosecutions, and courts) in the jails, detention centers, and prisons with regard to the conditions of suspects and criminals; after a survey of all the suspects and prisoners as well as the personnel of relevant agencies, some problems were observed in the performance of agencies' duties.

Based on decree No 367 of his highness, the Amir, those laws that are not in contradiction with the principles of Islamic Sharia shall remain binding; as such, the Law of discover and investigation of crimes [which is a binding law], and particularly its article 10 about the period of arrest and interrogation, are not implemented by any agency. For example, the laws has given 72 hours only for investigation offices to interrogate a suspect, after which [the agency] must turn the suspect to the prosecution office with a report; similarly, prosecutors shall complete their investigations within a week and submit their charging document to the authorized court for a decisions based on Sharia. Based on this law, complicated cases are exceptions to this rule, and an authorized court may extend the arrest period of a suspect for further investigation, but this cannot be extended for more than two months.

Unfortunately, none of the above-mentioned agencies has implemented the [the law] and the officials have treated suspects as they wished. Therefore:

1. Police precincts, missions, officials of crime discovery and investigation of the Ministry of Interior cannot keep a suspect or defendant in jail for more than 72 hours; they are obliged to

complete their investigations and refer the suspect with relevant documents to the prosecutor's office.

2. A prosecutor is obliged to complete their investigation in no more than a week and prepare and submit the charging document to the court for their Islamic decision. Nonetheless, complicated cases shall be an exception [to this rule and a prosecutor] may be able to complete their investigations in a maximum of two months.
3. Officials of the criminal investigation department are obliged to request for an extension of the arrest from an authorized prosecutor or court.
4. A judge is obliged to extend the period of arrest in consideration of the circumstances of the criminal offense as well as the difficulties of the criminal investigation department to complete an investigation. This decision must be based on evidence and convincing arguments of a prosecutor. If there were no arguments or [at least] reasonable argument, [the court] shall order the completion of the investigation [within the designated legal period].
5. Officials of jails and other detention centers are not entitled to keep suspects [longer than legal detention period]; they are obliged to contact the relevant authorities in any which way possible to learn about the future of suspects. If an investigation finds any such jailed persons [with longer than legally authorized time period in jail], there shall be harsh punishment according to Sharia. Officials of jails shall not accept any such suspects.
6. As it has been witnessed, investigators as well as personnel of the Ministries of Defense, Vice and Virtue, police precincts, and head of jail cells arrest individuals and put them in jail without a proper document; as a result, both the prosecutors and suspects face difficulties [dealing with the case]. Therefore, the investigators are obliged to complete their investigations when they arrest a suspect and send both to the authorized agencies. At the same time, prosecutors and authorities of detention centers are obliged not to receive those suspects whose investigations and documents are not completed.
7. When [prosecutors] file charges [against a suspect] in the court, but the suspect does not appear before the court, the court will indict the suspect via radio announcement in addition to sending three subpoena to the suspect at three different times. If the

defendant still does not appear before the court, the court will appoint an attorney for the defendant and issue its holding in the absence of the defendant and in the event of innocence [of the suspect], the court shall order the suspect's release.

8. Oftentimes, it has been noticed that suspects have been kept in jails for a long time without [officials] having a good reason, or their jail time has been extended by a prosecutor or court, but later it has become obvious that the suspect was innocent. In order to avoid such an injustice the prosecutor or judge shall issue a warrant for the arrest [of the suspect]; otherwise, they shall be considered liable.
9. [The prosecutors] suffice with exchanging documents and papers to complete an investigation, and do not perform any tasks themselves, as a result of which suspects remain in jail for a long time. To prevent this kind of injustice, prosecutors are obliged to personally visit relevant agencies and complete investigations, otherwise, they shall be considered responsible.
10. No agency has the Sharia (legal) authority to arrest a person in a civil dispute. If there is a suspicion of a possible flight [from a civil case], a bail of guarantor must be issued.
11. The investigative and jail administrations of the Ministry of Interior are obliged to arrest and jail suspects of crimes. Similarly, intelligence authorities shall be tasked with the investigation of political crimes and can arrest only the suspects of political crimes. But, unfortunately, as it has been noticed, many suspects of criminal offenses are in the detention centers of the intelligence [agencies] and many suspects of political offenses are jailed by the Police Headquarters. Therefore, both administrations are obliged to refer relevant suspects with their files to each other.
12. If the officials of the Ministry of Defense and Taliban search and arrest suspects of political crimes or regular crimes, these officials are obliged to turn the suspect with their arrest evidence to the closest precincts, intelligence department, and other police stations of the province or district. Similarly, officials of the Ministry of Defense cannot arrest and jail civilians in their precincts.
13. Those suspects that are caught with evidence such as money, gun, vehicles, or other stolen items, the arresting agency is obliged to deliver the suspect along with the evidence to the

prosecutors because [the prosecutors] cannot complete the investigation without evidence. If a gun or other military item is found with the suspect, the investigating agencies shall turnover the gun, military equipment, or other items to the directorate of the ammunition depot. The directorate of the ammunition depot shall register the military equipment based on the regulations and preserve other items until a delegation is designated to turn them over to the relevant authorities.

14. Intelligence officials shall not arrest or jail suspects of criminal offenses; similarly, officials of the Police Headquarter of the Ministry of Interior shall not bring suspects of political crimes to their jails. Investigators of each administration are obliged to complete their investigations based on this decree. No administration can interfere in the affairs of the other administration although they shall cooperate.
15. The administrations cannot jail female suspects in their [local] jails; they must turn female suspects to the female jails in whichever way possible. Otherwise, the official shall face a harsh Sharia punishment.
16. Issuing an arrest warrant is within the jurisdiction of the prosecutor based on the law and this decree. If necessary, a request may be submitted to an authorized court to extend the one-week arrest period. A second extension can be requested only by the care-taker minister of justice or by the repeal prosecutor in provinces. However, prosecutors shall submit sufficient reasons for the extension of the arrest.
17. Judges cannot extend the arrest period for more than two months. Based on the reasoning of the prosecutors and parties to the case, judges can issue a jail time of 15 days to two months. Extension beyond this limit [of two months] is illegal.
18. Those defendants sentenced to prison by a court shall be transferred to the general Policherkhi Prison without any delays. Those prisoners whose prison time is less than 6 months based on the decision of a court, may spend their time in the jails with the approval of officials of the jails.
19. Religious teaching must begin for prisoners; if the directorate of religious preaching does not have a special department for this purpose, the Taliban official in-charge shall perform this religious command as this is also a Jihad to spread the words of the religion to the people.

20. All detention officials have Islamic duty to provide places of ablution and shower for men and women prisoners because in the absence of such places, if the prisoners do tayammum (ablution with sand or soil) or do not do tayammum, the officials shall be held responsible on the judgment day.
21. Oftentimes inspection delegations have found that suspects were arrested and transferred to the jails without any investigations and then released with an order of central provincial commanders. To prevent this [illegal] act, it is to instruct that suspect who are jailed shall not be released without the authorization of the attorney general or decision by a Sharia court and the offender [of this rule] shall receive a harsh punishment.
22. Based on the principles of the Hanafi Fiqh, confessions obtained by coercion shall not be the basis of the decision of the courts; therefore, proper evidence shall be gathered and linked to the crime.
23. Prosecutors responsible for overseeing prisons and detention centers are obliged to visit jails and prisons at least twice a month.
24. As it has been noticed, in most provinces, prosecution offices, jails, prisons, and intelligence agencies lack proper records of events, dates, places, and details of crimes as well as [records of] authorized agencies, their activities, full information of suspects, decisions of the courts, dates of arrest and release, and other matters. The designated agencies are obliged to prepare records based on the administrative principles.
25. Courts are obliged to share their decisions to the relevant court and the suspect within the designated period and similarly the Department Vice and Virtue shall submit a file with full information of suspects, their prison period, and the punishments of prisoners to the Police Headquarter along with the prisoners themselves. Prison and jail officials shall not receive any prisoner without a written document as mentioned above.
26. The above-mentioned rules are issued for you. All authorities, agencies and personnel are obliged to take these rules seriously. In the event of the breach of these rules, there shall be a harsh punishment [for the offender].

A.4.7. Decree of the Office of the Amir on the Prohibition of Bribery

Official Gazette: N/A

Date: NA

There is no doubt that treachery, treason, and bribery can significantly affect the goals and aspirations of an Islamic state and cause the dissatisfaction of God and failure of the Islamic state.

The Islamic movement of Taliban has risen to eliminate these misdeeds and to establish an Islamic Emirate. Therefore, to prevent these violations and misdeeds, I order the followings:

Article 1

Any person charged with the crime of bribery in the administrations of the Islamic Emirate, shall be sentenced to five years.

Article 2

The courts of the Islamic Emirate are obliged to enforce the first article of this decree on bribers.

Article 3

Upon its issuance, this decree shall be binding and published in the Official Gazette and public media.

Wa-al-Salam

The Servant of Islam

Amir-ul-Momenin, Mullah Mohammad Omar Mujahid

A.5. THE TALIBAN'S CIVIC EDUCATION AND POLITICS

A.5.1. Introduction

The laws in this section highlight the most defining feature of the Taliban's approach to state and governance. According to the laws translated herein, the purpose of the state (emirate) is to 'restore' the religion of Allah and to ensure his satisfaction (A.5.4). The use of concepts such as 'restoring' or 'spreading' the religion of Allah in the Taliban's laws presumed the absence or decay of 'the religion of Allah' prior to the Taliban's takeover. The Taliban associated all the failures and issues in Afghanistan to the decline of religiosity among its population. The Taliban associated all the failures and issues in

Afghanistan with the decline of religiosity among its population. And, in turn, the Taliban laws linked the decline of religion with the failures of the previous rulers. For instance, in his decree on re-educating children and adolescents (A.5.9), Mullah Omar stated that, because rulers of the past were not interested in religion and sharia, the nation remained 'less informed'. In this context, 'subjects' are to be brought into the fold of 'true Islam' rather than to be protected or served. On the contrary, the state may very well punish and harm the people until their absolute faith is restored. The institution that was authorized by law to enforce religious rules on society was the Ministry of Vice and Virtue. Assigned with religious policing, the Ministry was free from any jurisdictional restrictions, as neither the courts nor other Taliban officials would interfere in investigations, arrests or the execution of punishment.

In addition to the Ministry, all other Taliban were tasked with enforcing religious morals in their own administrative or military jurisdictions. They were specifically ordered not to overlook (A.5.7) or tolerate (A.5.8) failure to pray or other religious offences. The followers of the imams (those offering prayers) were ordered to stay and learn Islamic teachings with commitment. Indeed, in addition to formal institutions, the laws relied on informal institutions such as mullahs, sermon readers and even community members to cooperate in enforcing religious rules not only by preaching to the public but also by reporting on individuals who did not comply. The Amir ordered the clergy and elders of villages to rehabilitate residents who did not pray or inform the relevant agencies so that violators could be punished under sharia law.

A.5.2. Order of the Office of the Amir on Mandating Turbans

Official Gazette: 4494

Date: 3/18/1999

All the sacrifices in Afghanistan have been for the sole purpose of obtaining the satisfaction of Allah and enforcing the Islamic system in this land. But as it has been witnessed, most employees do not follow Sharia principles and do not wear the turban which is a Sunnah (prophet's habit) and an Islamic value in most administrations. Therefore, it is to instruct all authorities again to oblige all their employees to wear turbans when going to their offices. In the event

of violation [of this rule], the offender shall be dealt with according to Sharia.

Wa-al-Salam

Alhaj Mullah Mohammad Rabani

Chair of the Care-Taking Council of the Islamic Emirate of
Afghanistan

A.5.3. Decree of the Office of the Amir on the Better Operation of Vice and Virtue in All Districts

Official Gazette: 150

Date: 12/28/1998

To the Respected District Governors of All Provinces of the Islamic
Emirate of Afghanistan,

Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu

As it has been witnessed, vice and virtue duties have not been
discharged thoroughly in most districts. Therefore, every district
governor is obliged to appoint four of his Andiwalan (Friends) to
perform vice and virtue, pay their expenses from the assigned budget,
and make sure their tasks are performed in accordance with the
regulations of the Department of Vice & Virtue.

Those tasked with the duties of vice and virtue are obliged to
communicate with the Department of Vice & Virtue and perform their
duties according to the instructions and guidance of the Department.

Wa-al-Salam

The Servant of Islam

Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.5.4. Advice and Message of His Highness, Amir al-Mominin [the Amir], to the Taliban on Strengthening the Religion of Allah and Committing to the Goals of the Taliban Movement

Official Gazette: N/A

Date: N/A

Dear Taliban,

Al-Salam Alaikum Wa Rahmat-ul-Allah Wa Barakatu

The purpose of the [Islamic Emirate of Afghanistan] movement has been to restore the religion of Allah. But you are destroying it. I say this to those [of you] who do not go to war, or those [of you] who go to war only to gain vehicles (as spoils), or those [of you] who flee the war with guns and vehicles, or those who fight for power and leisure. Have these been the reasons for why we sacrificed? If [you] do not repent, you shall bear the burden [of their sins] in this world and the next. If you really care about the religion of Allah, you must stand [the fight] as if it is your only [religious] duty. But if you remain reckless about the religion of Allah, Allah will care less about you as well. Then, you shall be punished and there shall be no way for you to repent to rescue yourselves.

Wa-al-Salam

The Servant of Islam

Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.5.5. Advice of the Office of the Amir on the prohibition of un-Islamic and Immoral deeds in the Taliban Movement

Official Gazette: N/A

Date:

To All Civil and Military Officials of the Taliban,
Al-Salam Alaikum Wa Rahmat-ul-Allah Wa Barakatu
If you hire a person in the movement for your tribal and familiar connections, hide guns, steal something else, violate Muslism's rights, oppress them, commit the crime of rape and sodomy, or disregard the direct orders of the Amir, you ruin the religion of Allah. And, if [you] do not repent, and continue doing the same, [e.g. if you] do not return the stolen guns, [you] ruin Allah's religion. We pray to God to unmask [you] and put [you] to shame you in both worlds. If [you are] caught [by the movement, you] shall be punished and removed from the ranks. Thousands of Taliban were martyred, handicapped, blinded, or paralyzed for the religious cause; therefore, I shall curse (damn) and punish [you for neglecting them].

Wa-al-Salam

The Servant of Islam

Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.5.6. Advice and Islamic guidance of the Amir al-Mominin [the Amir], Mullah Mohammad Omar Mujahid, on barring brahna-royan [unbearded boys]⁷ from the Taliban Movement

Official Gazette: NA

Date: NA

To the Officials and Other Taliban Members,
Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu
Although you have been instructed not to accompany any unbearded boy in wars and gatherings, [some of] you have not fully followed the instructions. Some Taliban personnel are still witnessed accompanying unbearded persons. I order every Taliban official and every Talib to expel any unbearded person they see [in their circles]. If someone continuously fails to follow my orders, he shall be punished.

Wa-al-Salam
The Servant of Islam
Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.5.7. Advice and Message of the office of the Amir on Not Ignoring Anyone's Violation of Allah's Commands

Official Gazette: NA

Date: 9/18/1995

To the Ranking and Other Taliban Members,
Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu
First, I pray for your triumph [and success] in both worlds. We have risen up to serve, protect, and spread the religion of Allah on earth. Therefore, to discharge my responsibilities, I order every *Alem* (cleric in the district and provincial courts, as well as every district and provincial governors not to ignore any breach of Allah's rules. If you ignore the violation of Allah's orders by any friend or relative, you shall be held responsible by God on the judgment day. If we learn about your 'ignore any misdeed' in this world, we shall punish you. Our actions must follow our words as the Hadith below suggests:

⁷ To clarify 'Brahna-Royan', the term is used to mean underage boys who have yet to grow beards. It is understood to be mostly used for underage boys who were used for sexual exploitation by warlords, militants, and other powerful individuals. It could also mean those men who trim or shave their beards.

انصر أخاك ظالماً أو مظلوماً

Help your brother whether he is an oppressed or an oppressor.

Wa-al-Salam

The Servant of Islam

Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.5.8. Advice and message of Amir al-Mominin on the Full Attention of Officials in the Affairs of Muslims and Allah Official

Gazette: 168

Date: 10/23/1998

To the Ranking and Other Taliban Members,

Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu

As we fight them (the resistance forces) and give thousands of sacrifices, [we must bear in mind that] they were also Mujahideen; but because they stopped following Allah's path, Allah authorized Jihad against them. Now it is our turn to follow Allah.

What did [the resistance forces] do? They used tricks and treachery to gain wealth, increase their own militia, and [provide] for their own tribes. [Seeking] such leisure and power led to their misdeeds...

If during Jihad against Russians 80 percent of the factions were virtuous and 20 percent immoral, afterwards the opposite was true. [Now] the ordeal is upon us and, in fact, some of us have already failed in that. Everyone [of you] must take your responsibilities for the deeds of yourselves, your people, and Muslims, as well as Allah's affairs seriously. Your both worlds shall be ruined if you remain reckless about this.

Avoid spending excessively as [everyone] shall receive their share based on the regulations whether it is one Afghanis or two. This [mediocre payment] is what our economy allows and [you would] not want us to be slaves to infidels [economic support].

If you control your desire for power, fame, and patronage, everything else shall go well for you. It is because if you do not have such desires, you shall be honored by people and God. Do not tolerate non-worshipping and other inappropriate behavior in your agencies since your agencies and centers are the centers of Jihad. Doing so shall lead to further scarcity as Allah says that he is aware of your deeds. And, you shall follow [our] instructions and implement them.

A.5.9. Message of His Highness, Amir al-Mominin, Mullah Mohammad Omar Mujahid, on the Education of Children and Adolescents by the Ulama

Official Gazette: NA

Date: NA

To the Officials and All Taliban,

Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu

The servants of the holy religion of Islam and the true disciples of the great prophet has been those great Ulama that promoted the divine laws through education in the past 1400 years. Since the rulers of the time were not interested in religion and Sharia [law], the honorable Ulama were not able to fully enlighten the less informed Muslim nation with the lights of the Quran and the knowledge of the religion.

Since today, due to the sacrifices of the Taliban, the opportunity is available to the Ulama to teach the whole Islamic law to children and adults in the light of the teachings of Imam Abu Hanifa [founder of the Hanafi School] so that they are fully aware of Islamic system of our oppressed country. Therefore, it is to order all governors and authorized officials to instruct all sermon readers and Mullahs of the provinces and villages, to discharge their vice-and-virtue responsibilities with intensity. For example, do their prayers at their proper times; after that, based on [Hanafi] sect, teach Islamic faith and principles for 30 minutes. Followers of the Imam (those offering the prayers) are also ordered to stay and learn Islamic teachings with commitment. I order the Ulama and elders of villages to rehabilitate their non-praying and non-religious members, and if they do not learn, inform the relevant agencies to punish them under the Sharia law. Also, a delegation of Ulama will be tasked to investigate and pursue any violations [of not attending Mosques for prayers] and to treat the offenders based on the Sharia law.

Wa-al-Salam

The Servant of Islam

Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.6. THE TALIBAN AND HUMAN RIGHTS

A.6.1. Introduction

The laws in this section highlight a view of the state, society and governance that is limited to a literal interpretation of the Islamic texts. Believing that Islam is a complete religion, the Taliban were confident that all 'Islamic human rights' must be found within the holy texts.

This textualism, therefore, had two bearings on laws relating to human rights. First, a right is only a right if it could be found within the text of the Quran, Hadith and other texts acceptable to Hanafi Jurisprudence. This is exemplified by the decree on the rights of women that was contained with preventing forced marriage but remained silent on child marriage (A.6.2). Secondly, the laws are duty oriented rather than right oriented, which indicates the religious tone of the laws. Following religious traditions, duty-oriented laws tend to emphasise on what individuals can or cannot do whereas more modern laws tend to emphasise on what rights an individual has and need to be protected. Therefore, the decree on women rights obliged men not to marry women in certain specified circumstances instead of pronouncing the women's freedom of choice in marriage generally.

Dhimmis (non-Muslim residents of Afghanistan), apostates and rebels were another group of interest to the Taliban and whose property rights were regulated along with the rights of absentees and missing persons. Based on the law, these individuals would lose the right to their property once a court found them guilty of apostasy or of an association with *Darul-Harb* (warring/infidel land). In the case of apostates, their property would be considered 'war spoils' (*Fiye*). A few other decrees and laws banned 'beating people' (A.6.7), 'forcing labor on prisoners' (A.6.6) and 'preventing ethnic discrimination' (A.6.8). Though these laws banned such actions, the Taliban in practice resorted to all sorts of discrimination and mistreatment of women and ethnic minorities.

A.6.2. Decree of the Office of the Amir on the Rights of Women in the Society

Official Gazette: 104

Date: 9/10/1998

Women have rights under the Islamic Sharia by which their dignity, [high position], and sanctity shall be protected. However, because of adverse and un-Islamic traditions, women are deprived of their rights and oppressed in different ways. Therefore, to prevent this injustice, I order the following:

Article 1

In the event of a murder case, the Muslim people of this country cannot deliver (marry) a woman to the family of the victim for the purpose of making peace or paying the blood price.

Article 2

1. The Muslim citizens of the country cannot force widows to marry a family member of her deceased husband.
2. Under the Sharia, a widow woman can marry based on her own free will.

Article 3

All officials of Emirate and the judiciary are obliged to sentence the offenders [of the above crimes] with capital punishment.

Article 4

Upon its endorsement [by the Amir], this decree shall be published in the [Official] Gazette and enforced.

Wa-al-Salam

The Servant of Islam

Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.6.3. Order of the Office of the Amir on the Treatment and Checkup of Female Patients

Official Gazette: 1844

Date: 11/5/1995

1. Female patients shall visit female doctors for checkup and when they need to visit male doctors, they must be accompanied with a shepherd.
2. Both the female patients and male doctors shall observe Sharia Hijab during the checkup.

3. A male doctor shall not observe or touch any part of a female's body except those affected with disease.
4. The waiting area for female patients shall be covered.
5. In a hospital, there shall be a separate receptionist for female patients and they should be allowed in [for checkup] when there is no male in the room.
6. When a female patient is hospitalized, night shift nurses may not check with the patients without their requests.
7. There shall be no meetups or conversations between male doctors and female nurses or female doctors and male nurses. When there is an urgent need for communication [between the two], they will converse with Hijab.
8. Female doctors are obliged to come to hospitals with their old dresses, and avoid wearing elegant dresses or using makeup.
9. Female employees and nurses shall not visit rooms with male patients.
10. Employees of the hospital are obliged to do prayers at their specific times and authorities of hospitals shall designate a prayer Imam and a prayer place.
11. A team of vice and virtue inspectors shall not be prevented from visiting a hospital or a clinic.

In case of the violation of the above rules, the offender shall receive Sharia punishment.

Wa-al-Salam

The Servant of Islam

Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.6.4. Decree of the Office of the Amir on the Enforcement of the Regulation on the Protection of the Property of Absent, Missing, Apostate, Rebels, and Dhimmis (followers of other religions)

Official Gazette: 10

Date: 6/24/2000

Based on the confirmation of the prime minister (rayes al-wuzara) of the Islamic Emirate of Afghanistan, I endorse the regulation on the Protection of Properties and Real Estate of Missing, Apostate, Rebels, and the Dhimmis [protected non-Mulism residents of Afghanistan].

Upon its endorsement, this regulation shall be binding and published in the official gazette.

A.6.5. Regulation the Protection of Properties and Real Estate of Absentee, Missing, Apostate, Rebels, and the Dhimmis (Followers of Protected Religions)

Gazette: NA

Date: NA

Chapter One

General Principles

Article 1

This regulation is issued based on the Fatwa [formal ruling (legal opinion) by a qualified Islamic scholar] No. 526 10/9/1420 [18/12/199] of the Darul-Iftaa [the department for issuing Islamic law decisions] of the Supreme Court of the Islamic Emirate of Afghanistan in order to regulate issues relating to the properties and real estates of absent, missing, apostate, rebel, and dhimmi individuals.

Article 2

Following terminologies in this regulation mean as follows:

Custodian: is the person who is authorized by the court to take the custody of the affairs of the missing and [incompetent] persons.

Trust: is the property that is deposited to a person for care-taking.

Fiye [arabic]: is the war spoils obtained from infidels.

Trusty: is the person who takes care of the property.

Makfol Laho [arabic (Conservatee)]: is the person who has been designated a guarantor or representative.

Dhimmi: is a non-Muslim person whose life, and property are protected by Muslims based on a contract or promise.

Chapter Two

Absentee and Missing

Article 3

If a person is absent or missing and his life and death is not known, an authorized court shall appoint a custodian to protect the properties and real estates of the absentee or missing persons.

If there is a fear of the destruction or decay of the properties or real estate of an absentee or missing person, and if the custodian does not have enough financial support to protect or repair them, an authorized court may authorize their sale for an appropriate price and the custodian shall keep the amount.

If an absent or missing person has dependent children, spouse, and parents, under the authorization of a court, the custodian shall sell properties and real estate to provide for them; but if an absent or missing person does not have a dependent and there is still fear of the destruction or decay of their properties and real estates, the second paragraph of this article shall be implemented.

Chapter Three

Apostate [One who converts from Islam to another religion]

Article 4

1. Courts shall not hold a hearing on the properties and real estates of an apostate person whose life and death is not known.
2. If an apostate is alive and resides in a non-Islamic state, and if the court decides that he is associated with Dar al-Harb (warring party, land of the belligerent), the following rules shall be implemented:
 - a. The properties and real estates that the person had earned while Muslim shall be transferred to his Muslim heirs;
 - b. The properties and real estates that the person earned while apostate shall be transferred to the treasury as a Fiye (war spoils);
 - c. It is essential to distinguish properties and real estates earned during Muslimhood and apostasy [of a person] so that the [inheritance] rights of the heirs are not breached.
3. After being associated with Dar al-Harb [by a court decision], if an apostate returns to the country as a Muslim, the person can reposses his properties from heirs, but if the person returns as an apostate, his properties shall be transferred to his heirs based on paragraph 2 of this article.
4. If an apostate is rehabilitated to return to Islam, if his return occurs before any decision by the court about his belonging to

Dar al-Harb, the apostasy rules shall not apply to his properties like he has always been a Muslim.

5. Heirs for the purpose of this regulation shall respectively consist of Zoe al-forooz [heirs whose inheritance shares are explicitly mentioned in Quran such as son, daughter, spouse, and mother], 'Asaba' [those heirs whose inheritance is secondary to Zoe al-Forooz such as father and grandfather] and Zoe al-Arham [those heirs who are member of neither Zoe al-forooz nor Zoe al-Arham but are related to late individual through other relatives or through friendship such as aunt and godfather].

Chapter Four

Absent Rebel

Article 5

The following rules shall apply with regard to the properties and real estates of a absent rebel:

1. Properties and real estates [of an absent rebel] shall be maintained by the Emirate;
2. If a rebel lays his arm down and there is no sedition, the properties and real estate [of a rebel] shall be returned to him
3. Perishable property can be sold by an authoritative committee with the permission of a court.
4. If an absent rebel has heirs (dependent or independent) who are in custody of hir properties and real estates, they are entitled to use the property and real estate to provide for themselves. If they do not have the custody of his properties and real estates, they are entitled to request alimony from the court and the court shall assign them an alimony. To obtain alimony from a court, an official request is essential.
5. If the properties and real estates of an absent rebel is in the custody of a debtor or someone else and that debtor or custodian returns the properties or real estates to the heirs of the missing rebel, that person shall be recognized as a guarantor, otherwise that shall not be a guarantor.
6. The expenses and livelihood of adult prisoners, in case they are rich, shall not be burdened on the wealth of the absent person.
7. If a rebel dies, hir properties and real estates shall be transferred to hir heirs.

Chapter Five

Dhimmis

Article 6

If a dhimmi leaves the country and does not breach promises to the Islamic Emirate of Afghanistan, and the court has not decided about his belonging to the Dar al-harb [land of the belligerent], the provisions of article four of this regulation shall be applicable to him.

Article 7

Contracts of the apostates, including sales, purchases, and lease and other contracts that are sealed at the time of their apostasy shall be considered void. If the apostates convert back to Islam, their contracts shall be valid, but if they die or are murdered as apostates or join Dar al-harb [land of the belligerent], their contracts shall not be valid.

Contracts of Dhimmis in all dealings shall be valid like the contracts of Muslims unless the Dhimmis join Dar al-harb [land of the belligerent], after which their contracts shall not be invalid.

Chapter Six

Ancillary Rules for the Absent Persons

Article 8

If absent persons are not rebels, apostates, and missing and their residence in foreign countries is known, the Emirate is obliged to protect their properties and real estate; and when their properties are at risk of destruction and decay, [the Emirate] shall sell and transfer the money to the bank account registered in their names; and in case of communications with the absentee, his properties shall be transferred to him; if the absentee has a heir or a custodian, the Emirate shall not take away the properties or real estates from his heir or custodian.

If an absentee had appointed a representative before his absence, his representative shall possess the properties and real estate in his absence.

Article 9

If an orphan goes absent along with his guardians, the rules about his properties shall be the same as those for other absentees, if the

orphan does not remain with his parents, the court shall authorize a person as the guardian who shall protect the properties of the orphan.

No person shall seize the properties of an orphan without authorization. In case the properties are at risk of destruction or waste, the court shall authorize its sale and transfer of the money to the guardian [of the orphan] for protection.

Article 10

The endowments of the absent persons shall be removed from the possession of the endower under the following conditions:

1. When the property is endowed for a Mosque;
2. When a court decides that the property is endowed;
3. When the endowment is conditioned to the dead of the endower;
and
4. When the enforcement of the endowment is permanently conditioned to after the death of the endower.

Article 11

1. Court cannot pay any debts from the incomes of the properties and real estates of an absentee even though the creditor establishes the debt because doing so would be judgment on a person without his presence which is prohibited, except under the following conditions:
 - a. When the [absentee] purchases the property with consent, but disappears;
 - b. When a [representative makes a purchase for hir client], but the purchaser hides himself;
 - c. When the defendant promises to pay the debt but the creditor disappears;
 - d. When the husband promises that if he does not pay for the expenses of the wife, he shall give up on her control unto herself, but the wife disappears; and
 - e. When the plaintiff flees.
2. The court cannot sell properties or real estates of an absentee for the purpose of compensating for the living expense of the absentee.

Article 12

The court may make judgment based on four reasons:

1. Testimony of two sane, adult, just, and non-qazaf Muslims [those Muslims who have not falsely accused others of adultery];
2. The confession of a sane and adult person;
3. Refrain of the respondent from oath; and
4. The oath of the respondent.

Article 13

Properties and real estates of an absentee, when they come under protection, shall not be leased in amounts lower than the common rate.

Article 14

When the courts make a decision based on a Fatwa [formal ruling issued by a qualified Muslim scholar] issued in accordance with Hanafi Fiqh, this decision shall not be challenged by any agency.

Article 15

When the delegation mentioned in article 16 of this regulation, is judicially authorized by the Amir to receive witnesses, and make decisions, the Building Inspection Delegations may decide cases based on the Sharia principles; otherwise, no agency but the judiciary is entitled to decide cases.

Chapter Seven

Implementation Procedure

Article 16

1. To properly implement the rules of this regulation in the capital and provinces, an Inspection Delegation for Protection of Properties and Real Estates of Absentees, Missing persons, Apostates, Rebels, and Dhimmis shall be formed with the following composition:

In the Capital

- a. An authorized, trustworthy, and experienced representative of the Administrative Office of the Amir as the director [of the delegation]
- b. An authorized representative of the Department of Emirate on Civil Cases of the Ministry of Justice as the deputy director [of the delegation]

- c. An authorized representative of the municipality as a member [of the delegation]
- d. An authorized representative of the Ministry of Agriculture and Farming as a member [of the delegation].
- e. An authorized representative of the Ministry of Interior as a member [of the delegation].

In provinces

- f. The director of the Department of Civil Cases of the Emirate as the chair [of the delegation].
 - g. An authorized representative of the governor as a member [of the delegation].
 - h. An authorized representative of the municipality as a member [of the delegation].
 - i. An authorized representative of the provincial Department of Agriculture and Farming as a member [of the delegation].
 - j. An authorized representative of the HQ Chief of Police as a member [of the delegation].
2. In provinces that do not have Department of Civil Cases of the Emirate, the director of their appellate prosecution office shall implement this regulation as the chair of the delegation.

Article 17

1. Sharia and legal power of attorney letters shall be deemed valid under the following conditions:
- a. [When the power of attorney letter] is issued by the court;
 - b. [When the power of attorney letter] is registered and maintained in the records of the judiciary; and
 - c. [When the power of attorney letters] are issued by the official delegates of the Emirate abroad.
2. Those power of attorney that are prepared abroad shall be valid under the following conditions:
- a. Those who issued the power of attorney letter must be political delegates or Consulate Offices of the Emirate;
 - b. The power of attorney letter must be confirmed by the Ministry of Foreign Affairs; and
 - c. Sharia rules must be followed in preparing a power of attorney letter.

Article 18

1. The delegation may request detailed information from relevant agencies and witnesses for further clarification of facts about the properties and real estates of the persons mentioned in this regulation.
2. If the delegation finds, during its investigation, that the power of attorney letter is valid, the delegation shall declare its written decision to the owner or his attorney.

*Chapter Eight***Leasing the Protected Real Estate****Article 19**

1. After gathering [sufficient] information, the delegation is obliged to request the authorization of the court to attain the real estate.
2. Upon the authorization of the court, the delegation shall rent or lease the real estate to qualified persons under the supervision of the director of the Administrative Office of the Amir, and in provinces, under the supervision of the governor.
3. A full description of the qualified tenant and his occupation shall be included in the contract.

Article 20

1. Based on the agreement, the rental or leased amount shall be transferred to the bank account of the persons mentioned in this regulation by the tenant who shall submit the receipt [of the transfer] to the delegation.
2. The amount mentioned in the first paragraph of this article shall be paid based on banking norms only on the request of the owner or his designated legal representative with the approval of the director general of administrative affairs office in the capital or with the approval of the governors in the provinces.

Article 21.

Under the supervision of the Director of the Administrative Office of the Amir in the capital and under the supervision of the governors in provinces, the delegate is obliged to lease the attained houses for a year only and the real estates based on the [current] legislation.

Article 22.

1. The delegation is obliged to list all moveable and immovable items as well as fruit bearing and non-fruit bearing trees of houses or real estates in the presence of a selected delegation and tenant and store the items [when possible] in a room. [the delegation] shall share copies of the lists with the tenant, the [selected] delegation, and security agencies.
2. The deteriorating properties which are likely to lose their qualities with time shall be sold by the delegate, based on the decision of the court and under the supervision of selected representatives, and their amount shall be transferred to the bank account of the owner.

*Chapter Nine***The Duties of the Tenant****Article 23**

The tenant is obliged to perform the following tasks:

1. Protecting the properties and real estate as they were received
2. Protecting the listed [and stored] items belonging to the house or real estate
3. Paying electricity bill
4. Paying water bill
5. Paying maintenance bill
6. Paying garbage bill
7. Paying property tax
8. Performing other duties listed on the contract

Article 24

When returning the house or real estate to the owner or delegation as they were received, the tenant shall turnover the recipes of electricity, water, and maintenance payments to the owner or his representative in order to receive an evacuation receipt.

Article 25

1. A tenant cannot sublet a unit to another person.
2. If it is proven that the tenant has rented the house to another person, the contract shall be void and the unit shall be returned with additional payments.
3. A tenant shall be liable for compensation, should he leave the unit or real estate without informing the delegation.

4. A tenant cannot delay the rent or lease payment for more than two months. Otherwise, the contract shall be void and the tenant shall be liable to make the rest of the payment.

Chapter Ten

Cancellation of Attainment

Article 26

In the event of the cancellation of attainment of units and real estates based on the decision of the courts, all the rent or lease payments as well as that of property sales shall be returned to the owner or hir Sharia and legal representative under the provisions of this regulation.

Article 27

1. At the request of the owner or hir representative, the delegation may request the cancellation of attainment of the property to the court.
2. The court shall decide about the [cancellation] request in a maximum of two days and declare its decision to the delegation.
3. Upon the cancellation of the attainment [of the property], the rental contract of the unit shall be cancelled. The local custom shall inform the terms of the cancellation.

Chapter Eleven

Ancillary Provisions

Article 28

Disputes shall be referred to the courts for resolutions.

Article 29

The attainment of real estate and its cancellation shall be based on the request of the delegation and the decision of an authorized court.

Article 30

To implement the provisions of this regulation properly, security, intelligence, municipality, and other relevant agencies are obliged to cooperate with the delegation.

Article 31

The delegation designated by this regulation shall perform its duties impartially, justly, and responsibly; in the event of any violation [by the delegation], it shall be punished based on the Sharia principles.

Article 32

Upon its endorsement [by the Amir], this regulation shall be binding and published in the Official Gazette; and, upon its implementation, the regulation of the Commission of Unit and Real Estate Inspection, which was issued by the Care-Taker Council in 26/9/1376 (G. No. 2128) shall be void.

A.6.6. Decree A of the Office of Amir on Forcing Labour on Prisoners

Official Gazette: 797

Date: 12/28/2000

To All Officials of Political and Criminal Prisons
 Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu
 Prisoners, whether political or criminal inmates, shall not be forced to do labour for anyone even if they are satisfied and get paid. Now, if someone holds the prisoners, he must return them to the prison because if the inmates are satisfied the purpose of the prison is not fulfilled and if they are not satisfied, the prisoners are given additional punishments to the ones they were already sentenced to.

Wa-al-Salam
 The Servant of Islam
 Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.6.7. Advice and Islamic guidance of the Amir al-Mominin about not beating the people

Official Gazette:

Date:

Dear Taliban,
 Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu
 Do not oppress people and do not waste *Bayt Al-mal* (the Islamic equivalent to the government treasury). For example, upon the arrest of two burglars, the Taliban beat them to death. As a result, the Court decided to charge the *Bayt Al-mal* 200,000 [Afghanis] for their

act. Similar events have taken place where the Taliban have lashed people. The Court decided that such punishments cannot happen without the prior decision of the Amir; otherwise, the court will consider Qisas for the act. You must bear in mind that in my Sharia, I do not allow this kind of pagan law where people will be beaten, and their dignity be taken away.

Wa-al-Salam
The Servant of Islam
Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.6.8. Advice and message of the Office of the Amir on the Prohibition of 'Ethnic' Discrimination

Official Gazette: N/A

Date: 6/25/1996

To the Ranking and Other Taliban Members,
Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu
We are advising you for the sake of God.

Some people have got the disease of tribalism. These people have stopped preaching Islam because tribalism has become more important to them-like blood circulations in their body. While the Prophet (PBUH) has hope in these people, they have got the disease of hating each other, releasing criminals, and not tolerating one another because of their tribes. These people are responsible for any ill in the religion. Our message to these sick people is not to harm the religion, and we pray to God to send to hell any person who does it. I have written this message for you but I am not sure you will abandon this act [of tribal discrimination] because some [of you] may deny discriminating against another person, others justify their acts of discrimination. You must look at your hearts and examine what is in there. If you do not do so, God shall punish you.

Wa-al-Salam
The Servant of Islam
Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.6.9. Guidance of His Highness, Amir al-Mominin, to All Civil and Military Officials of Taliban on the Prevention of Tribal and Regional Discrimination

Official Gazette:

Date:

To the Ranking and All Other Taliban,
Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu
There is no regionalism or tribalism in the charter of the Taliban. We select individuals for different responsibilities based on their religious devotion and merits to serve the religion and the nation regardless of their regions and tribes. But recently we hear that some people are corrupted with these thoughts. They must put aside these corrupt thoughts, but if they do not do so, they will be disgraced in both worlds. In addition to this being an order and obligation on you [not to discriminate], you can also prevent significant harm to the religion and nation by doing so.

Wa-al-Salam
The Servant of Islam
Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.6.10. The Decree of the Office of the Amir on the Dissolution of Organizations

Official Gazette: N/A

Date: N/A

To All Respected Taliban of Afghanistan,
Al-Slam Alaikum Wa Rahmat-ul-Allah Wa Barakatu
Before this great Islamic movement of the Taliban, these enlightened Taliban were part of different factions, attempting to bring Islamic system individually. Finally, with a deeper understanding of the history, they decided to begin a united Islamic movement. The needs and circumstances of our Islamic society necessitated such a great, religious, and progressive movement. With the help of God, the movement achieved numerous great successes and the organizations and parties that had desired to establish an Islamic state joined the Islamic movement of Taliban, dissolving their own factions.

If some factions have not yet dissolved their organizations to cause anarchy under the instructions of foreigners or for the purpose of keeping their leadership, they are rebels of the Islamic state. Therefore, it is to warn these people not to repeat this unforgivable defiance. Otherwise, they will be punished.

Wa-al-Salam

The Servant of Islam

Amir-ul-Mominin, Mullah Mohammad Omar Mujahid

A.7. THE TALIBAN ECONOMY

A.7.1. Introduction

Finally, a portion of the Taliban's laws, regulations and decrees elaborated on economic regulations. There are only three laws in this section: the Law on Control and Audit, the Domestic and Foreign Private Investment Law of the Islamic Emirate of Afghanistan, and the Regulation on Ordering the Performance and Activities of Central Administration for Encouraging and Promoting Private Investment. Unsurprisingly, these laws and regulations share the common characteristics of the Taliban's approach: the centrality of sharia in economic affairs and strong control on the part of the central government over economic and fiscal affairs.

The Law on Control and Audit basically introduced a government-led financial control and auditing system that encompassed all economic and financial activities. As was typical of the Taliban's approach to governance, the government controlled and audited the activities of both public sector (governmental) and private sector entities. On top of that, the law emphasized compliance with the rules of sharia in devising and implementing control and audit rules. The Domestic and Foreign Private Investment Law of the Islamic Emirate of Afghanistan and the Regulation on Ordering the Performance and Activities of Central Administration for Encouraging and Promoting Private Investment provided a framework for domestic and foreign private investment. Together, the law and the regulation pursued goals such as improving the productivity of the public and private sectors and of the national economy by encouraging and supporting domestic and

foreign investment, as well as ensuring the necessary cooperation between the emirate and private investors.

A.7.2. Law of Control and Audit

Gazette: 797

Date: 5/2/2001

Chapter one

General Provisions

Article 1

This law shall regulate the control and audit of the financial and accounting affairs of public properties.

Article 2

The fundamental goals of control and audit shall consist of the following:

1. Ensuring the accurate accounting of public properties;
2. Effective control of financial and accounting affairs of organizations, institutes, and public-private (mixed) companies of the Emirate;
3. Controlling the collection of Emirate's revenues and its accurate expenditure;
4. Ensuring the implementation of economic and social growth plans and controlling the expenditure of the Emirate's development budget;
5. Conducting control and audit in a way that results in strengthening and developing the national economy and social growth; and
6. Protecting the public properties through control and audit.

Article 3

The following terms shall be understood as follows:

Control is a process, which ensures the accuracy of conduct and activities in different areas of financial and accounting affairs of public entities.

The control, enshrined in this provision, can take the following forms:

Pre-control: It is a process, which is conducted before the start of activities to prevent the shortcomings and breaches of financial and accounting affairs.

Ongoing control: It is a process, which is conducted during the operation to identify and prevent future breaches and shortcomings of the financial and accounting affairs.

Post-control: It is a process, which is conducted at the end of activities to compare and evaluate the performed activities and what shall have been performed in the financial and accounting affairs.

Audit: it is conducted at the end of fiscal year to oversee the financial and accounting documents.

Auditor is a vocational official who conducts the control and audit affairs.

Article 4

The ministries, entities, Emirate institutions, public-private companies, agricultural cooperatives and Emirate enterprises, banks, municipalities, commerce and industry chambers, Red Crescent, and the like are considered as “entities under control and audit” in this law.

Article 5

The Control and Audit Office is the highest Emirate entity to oversee financial and accounting affairs.

The Control and Audit Office conducts its financial and accounting affairs in accordance with the basics of Islamic Sharia, this law, and enforceable legislative documents.

Chapter Two

Organization

Article 6

The Control and Audit Office shall consist of General Director, Deputies, and Heads of specialized sectors.

Article 7

The General Director and Deputy Directors shall be appointed in accordance with the provision of law.

Article 8

The General Director shall have personal responsibility in conducting the duties and obligations assigned to the Control and Audit Office.

The scope of authorities and responsibilities of deputies and the head of specialized sectors of the Control and Audit Office shall be determined by separate regulations.

Article 9

The Control and Audit Office shall appoint qualified individuals with higher and technical education and experts, who have experience in control and audit and have no criminal records, as auditor.

Article 10

The Control and Audit Office shall make necessary proposals to authoritative officials to improve the economic activities to resolve the shortcomings, which are revealed during the control and audit process.

Article 11

The Control and Audit Office shall conduct the following oversights:

1. Overseeing the budgetary accounts of the Emirate;
2. Overseeing the observance of the enforced financial and economic laws of the country in the formation and the budget of entities;
3. Overseeing revenues, expenditure and better use of public properties; and
4. Overseeing the performance of internal audit entities to coordinate for effectiveness and completion of their activities.

Article 12

Internal audit entities operate as a unit under the direct authority of ministers and first-degree officials and can provide support in overseeing the financial and economic affairs of the Control and Audit Office.

Article 13

The internal auditors of Emirate are obligated to provide reports on the implementation of their plans to the Control and Audit Office.

Article 14

The Control and Audit Office has the authority to reevaluate the documents and issues overseen by the internal audit entities of the Emirate.

Chapter Three

Duties and Authorities

Article 15

The auditor of the Control and Audit Offices shall have the following authorities:

1. Overseeing the revenues and expenditure of cash, letters of credit, and material properties [goods] of entities;
2. Conducting objective audit of procurement, protection, distribution and use of goods, tools, and other economic values and their effective use;
3. Making payments in cash, property, letters of credit, and economic values, and stamping and locking safes and delivery places in emergency situations;
4. Obtaining preliminary information from officials and employees of entities; Requesting necessary documents from officials and employees, and reports and explanations about the results of previous oversights;
5. Providing specific, constructive suggestions to the Control and Audit Office to resolve the shortcomings of entities under control and Audit;
6. Providing timely suggestions to the Control and Audit Office regarding employees and individuals who have violated rules through abuse and illegal expenditures;
7. Temporarily keeping illegal documents, in case their illegality is determined, until submission to relevant authority;
8. The reciprocal oversight, which consists of accurate comparison of documents and books, and the relevant issues of one sector to another, shall be conducted inside and outside the entities;
9. Issuing orders for stopping illegal acts of the entity under control and audit, and providing suggestions to the Control and Audit Office as soon as possible;
10. Controlling the manufacturing of products during the manufacturing process, and conducting experimental measurements for the enforcement of labor in accordance with the planning and quality control.

Article 16

The auditor of the Control and Audit Office shall have the following duties:

1. Impartially performing the duties in accordance with plan and work agenda;
2. Providing accurate, clear, concise, reasoned, and legal suggestions;
3. Determining deadline for providing necessary information and explanations, considering the specifics of the issues, for entities;
4. Specifying the rational use of reserves and properties of entities to improve the effectiveness of their activities; and
5. Determining the factors and conditions causing wastes, shortages, and embezzlement.

Article 17

The auditor shall be hold responsible in the following cases:

1. Failing to report illegal conduct and activities;
2. Failing to notify and flag suspicious letters and documents;
3. Failing to notify lost documents and registrars;
4. Hiding and wasting letters and documents for the sake of abuse;
5. Accusing individuals without providing evidence and reasons;
6. Forging and falsifying documents;
7. Any action causing damage to the Emirate; and
8. Deviating from laws, decrees, and regulations.

Article 18

The Control and Audit Office shall have the following duties:

1. Providing systematic reports about the oversight reports, which require decisions by authorized officials;
2. Taking necessary measures to resolve the identified defects in economic, financial, and accounting areas;
3. Providing suggestions to authorized officials to amend the financial and accounting sectors, guidelines, and bills of entities under control and audit;
4. Sending constructive comments in financial and accounting sectors to entities' officials to take measures to prevent violations and resolving defects revealed during the control and audit process;
5. Urgently informing the authorized officials to prevent financial and accounting violations;
6. Following up on the implementation of the constructive comments and suggestions offered regarding the entities' activities;

7. Conducting consecutive oversight of entities based on the provisions of this law in special circumstances;
8. Holding sessions, courses and seminars, academic conferences, and publishing journals to improve the activities and promote the educational and vocational level of auditors and employees; and
9. Making connections with international institutions, based on memorandum of understanding and through authorized officials, to attract professional and technical cooperation and promote the level of knowledge of auditors and employees.

Article 19

The entities under control and audit have the following obligations:

1. Providing necessary facilities for the auditors of the Control and Audit Office during the inspection;
2. Introducing specialists, technical employees and experts through entities and institutes, based on request from the Control and Audit Office, to cooperate with the assigned auditor;
3. Providing necessary information and explanations, pursuant to article 16(3) of this law, to the audit team;
4. Obtaining the opinion of the Control and Audit Office in drafting financial and economic regulations and bills; and
5. Providing reports on informed results of the audit to the Control and Audit Office within the specified time.

Chapter Four

Final Provisions

Article 20

To protect public properties, the Control and Audit Office, in issues over which it exercises control and audit oversight, shall also contribute in the discovery of criminal acts [behavior].

Article 21

1. The legal entities are obliged to officially inform the Control and Audit Office of the results of their performance regarding issues referred to them by the Control and Audit Office for prosecution.
2. The legal entities, in case of objection, shall return the case to the Control and Audit Office to resolve the objection.
3. The legal entities shall inform the Control and Audit Office of the reasons for not prosecuting or keeping the case.

Article 22

The representative of the Control and Audit Office, as per their job obligations and after being called on and approved by the authorized official, can be part of the delegation of ministries, entities, and Emirate institutes to travel outside Afghanistan to sign financial and economic contracts.

Article 23

The Control and Audit Office, based on authorized official's requests, can oversee the activities of Emirate entities outside Afghanistan based on the principle of rational expenditure.

Article 24

The auditor of the Control and Audit Office shall not be assigned to other duties than those enshrined in this law. The orders of the authorized official are exceptions to this rule.

Article 25

The Control and Audit Office shall bestow identity cards to the auditors of the office.

Article 26

The other Emirate entities and institutes including the attorney general's office shall not resort to the authorities listed in this law to prevent intervention in affairs of the Control and Audit Office. Pre-controllers and specialized controllers are obliged to perform their assigned duties in accordance with the provisions of the law.

The provisions of this law cannot disrupt the important responsibilities and duties of prosecution offices.

Article 27

This law shall enter into force upon the date of its enactment and shall be published in the official Gazette. With the enactment of this law, the Law of Control and Audit published in Official Gazette number 780 on August 4, 1995 and its contradictory provisions shall be abrogated.

A.7.3. The Domestic and Foreign Private Investment Law of Islamic Emirate of Afghanistan

Gazette: 797

Date: 5/2/2001

Chapter One

General Provisions

Article 1

This law is adopted for improving and developing the manufacturing and service activities of the private and public-private sectors, national economy by encouraging, supporting, and guiding the domestic and foreign private investments; and ensuring the necessary cooperation among the Emirate and private investments with the cooperation of the consultative economic council for economic development and enhancing the level of the citizens' lives.

Article 2

The establishment of private enterprise shall be approved to ensure the majority of the following goals:

1. The maximum use of domestic raw materials.
2. Paving the ground to recruit qualified individuals.
3. Improving the quality and quantity of manufacture and services.
4. The effective use of savings and domestic financial resources.
5. Reducing and changing importations and increasing exportations through increase in domestic manufacturing.
6. Balanced development of rural and urban areas in compliance with social and economic plans.
7. Increasing revenues and improving the citizens' conditions of life.
8. Increasing the currency revenues.
9. Attracting modern science of industry (technology) to the country.

Article 3

The private enterprises shall be established by individuals with real and legal personality who have the authority to contract and implement business deals.

Article 4

The below terms shall have the following meanings in this law:

1. Private enterprise is the real and legal personality, which is established to manufacture and provide goods and services in accordance with the provisions of this law.
2. Manufacturing enterprise is an enterprise, which has manufacturing activities and can change the shape or quality of raw or half-manufactured materials after conducting necessary processing.
3. Service enterprise is an enterprise, which provides services for the betterment of quality and value of manufacturing goods and providing industrial, agricultural, transportation, and construction services.
4. Investment refers to the cash and capital goods and martials, which are used to establish private enterprise in accordance with the provisions of this law.
5. Investor is a real and legal personality who invests in private enterprises.
6. Capital goods refers to those capital goods, which are used as fixed assets in the manufacturing process and are regularly and gradually depreciated because of use within more than one year.
7. Capital Investment refers to an investment, which gets approved with the proposal of the Domestic and Foreign Private Investment Administration (the Administration), confirmation of the coordination board, and approval of the High Commission of Investment based on the specific criteria in each year.
8. Investment License refers to a license, which gets issued for the approved enterprise in accordance with the provisions of article 10 of this law.

Article 5

Investment in manufacturing and services can happen in all sectors and areas of economy including agriculture and animal husbandry, industry, mines, banking, insurance, telecommunication, transportation, tourism, hotel business, production and transfer of energy, irrigation and water resources, and engineering and consulting services.

Article 6

Investment in private enterprise shall take one of the following forms:

1. 100% domestic private capital.
2. 100% foreign private capital.

3. Mixed private, domestic, and Emirate investment with minimum 51% of domestic private capital.
4. Mixed private, domestic, foreign, and Emirate investment in which the Emirate's share and the foreign share reaches no more than 33% and 49% respectively.

Chapter two

The responsible entities

Article 7

1. The Investment Commission, which is the highest entity to make decision on the establishment, support, encouragement, and development of the activities of private enterprises and their dissolve in the Islamic Emirate of Afghanistan, consist of:
 - a. The economic deputy of the prime minister [Raees-ul-Wuzara] as the head of the commission
 - b. The minister of commerce as deputy of the commission.
 - c. The Minister of Planning as member.
 - d. The Minister of Agriculture and Animal Husbandry as member.
 - e. The Minister of Mines and Industries as member.
 - f. The Minister of Finance as member.
 - g. The Minister of Public Benefits as member.
 - h. The Head of the Administrative Affairs Office of the Emirate as member.
 - i. The Head of Domestic and Foreign Investment Administration as secretary.
2. The sessions of the commission shall be convened with the presidency of the head or his deputy in case of the absence of the head.
3. The session shall be convened with the suggestion of the secretary and the quorum for sessions is the presence of the majority of the members.
4. The decisions shall be made based on the majority of the members present in the session in accordance with the Islamic principles.
5. The internal duties of the commission shall be regulated through a separate bill of which approval is the authority of the Economic Deputy of the Prime Minister.

Article 8

1. A board of coordination of private investment shall be established to scrutinize projects and provide technical and economic comments about private enterprises. This board shall thereafter be called the board of coordination in this law.
2. The Board of Coordination ensures cooperation between ministries and interested Emirate entities, and the approved enterprises and shall have the following composition:
 - a. The head of General Investment as head.
 - b. The head of Industrial Development Bank as deputy.
 - c. The representative of the Economic Consultative Council as member.
 - d. The representative of the Ministry of Finance as member.
 - e. The representative of the Ministry of Telecommunication as member.
 - f. The representative of the Ministry of Mines and Industries as member.
 - g. The representative of the Ministry of Agriculture and Animal Husbandry as member.
 - h. The representative of the Ministry of Public Affairs as member.
 - i. The representative of the Ministry of Water and Energy as member.
 - j. The representative of the Chamber of Commerce and Industry as member.
 - k. The representative of the national Economy and Reconstruction Administration of the Administrative Affairs Office as member.
 - l. The head of the Investment Analysis Sector as secretary.
3. The sessions of the Coordination Board shall be convened with the presidency of the head and, in case of his absence, under the presidency of the board's deputy.
4. The session shall be convened with the secretary's proposal and the quorum is the presence of the majority of the board members.
5. The decisions shall be made based on the majority of the present members in accordance with Islamic principles.
6. The duties of the Coordination Board shall be regulated through a separate bill.

Chapter three

The phases of Investment Approval

Article 9

1. The investment application shall be submitted to the Domestic and Foreign Private Investment Administration in accordance with the provisions of this law and in the format and content determined by the investment administration.
2. The Investment Administration, after receiving the application on the requested projects, shall proceed as follows:
 - a. The small projects shall be assessed within 10 days and shall be approved by the Administration of Encouragement and Development of Domestic and Foreign Private Investment after the confirmation of the Coordination Board.
 - b. The medium and large enterprises shall be assessed within 20 days and shall be approved by the Investment Commission. The Board's session can be convened in less than 30 days in exceptional situations.
 - c. For the ease of the enterprises regarding the projects being constructed in provinces, the enterprises' documents shall be assessed by the relevant provincial entities (the Directorate of Mines and Industries, Commerce, Industry, Planning, Public Finance, and Agriculture Chambers) under the supervision of the Directorate of Encouragement and Development of Domestic and Foreign Private Investment; and shall be approved within 20 days by the provincial governor.
 - d. The copy of the relevant documents shall be sent to the center and the relevant entities.
 - e. To facilitate the activities of the enterprises as per necessity, the Directorates of Private Investments shall be established in the provinces within the Administration of Encouragement and Development of Domestic and Foreign Private Investment.

Article 10

License:

1. The investment license is a legal document, which introduces the real and legal personality of the private enterprise. It shall be valid up to three years since its date of issue and is extendable. The private enterprise can conduct its activities based on the investment license.
2. The investment licenses shall be issued by the Administration of Encouragement and Development of Private Investment in the

provinces and by the Directorates of Private Investment in the provinces.

Article 11

The investment application for the diversity and expansion of the activities of the approved enterprise shall follow the same procedure as for new investment application enshrined in this law. The diversity and expansion of the activities in the same line of enterprise and up to 35% of the investment shall follow the provisions of article 9 of this law.

Chapter four

Privileges, exemptions and aids

Article 12

The approved domestic, foreign, and mixed enterprises shall benefit from the following privileges, exemptions, and aids:

1. Lack of responsibility to pay on the revenue added on revenues, revenue added on depreciative materials, and the revenue added on for profit contracts arise from the annual profit of the approved enterprise.
2. Lack of responsibility to pay tariffs for capital goods.
3. Lack of responsibility to pay tariffs for the production of the approved enterprise.
4. Lack of responsibility to pay for the tolls imposed on commercial documents, checks, the receipts of Emirate institutes including municipalities.
5. The cost property services (property tax) of the private enterprise, as a privilege, shall be collected equivalent to residential houses by the municipality.

Article 13

1. The exemption period mentioned in article (1) (1) of this law consists of 2-8 consecutive months, which shall be counted when the enterprises start their activities.
2. The issue date certifying the activities of the private enterprises, which is issued by a central entity, shall be counted as the starting date of the activities of the private enterprise.
3. The exemption period enshrined in this article shall be determined by the investment commission based on the conditions of the

approved enterprise and with the consideration of the predicted financial technical complexities, the enterprise's degree of participation in achieving the goals of article 2 of this law, together with the enterprise's approval and based on the bill.

Article 14

The approved exemption period for the enterprise can be extended for one time and not more than half the main period through the written request of the investor and presenting plausible reasons, and based on the central entity's suggestion and the approval of the investment commission.

Article 15

1. The extra, supplementary, and exchange machines of the private enterprises shall benefit 80% exemption on tariffs.
2. The spare parts of the enterprise's machines shall benefit 50% exemption on tariffs.
3. The approved enterprises can import their necessary raw, half-done, or complete materials, which they use for manufacturing and providing services without consideration of the determined share of importation.
4. This tariff shall by no means be more than 10% of the final price of the item that arrives in a particular customs' office.
5. The approved enterprise shall benefit from equal and fair treatment enshrined in the laws, regulations, and policies of the Emirate unless otherwise provided by the law.

Article 17

1. All the investor's legal properties invested in the approved enterprise shall be secure from acquisition and nationalization unless the investor agrees otherwise, or the law provides in accordance with the provisions of Sharia.
2. No acquisition shall happen without Sharia permission and fair substitute.

Article 18

The foreign investor who has invested in the approved enterprise shall have the right to transfer the following assets in ordinary forms through the central bank:

1. All the prices of shared investment in the original currency of investment after completing the legal processes and paying off all the debts and transactions.
2. The remaining share of the foreign investor after calculation and fulfilling other obligations of the approved enterprise in situations such as insolvency, dissolution, or bankruptcy of the enterprise in the same currency invested in the enterprise in accordance with the provisions of law.
3. The achieved revenue from the share of the investor in the approved enterprise based on the verified balance sheet.
4. The payable cash to the foreign investor in accordance with the signed contract to provide technology, technical support, assistance in management and marketing services, the right to use industrial and commercial assets in different forms such as patent, services signs, technical knowledge, and other forms of goods and services made accessible to the approved enterprises. The condition is that this type of contract and the form of its payable currency be part of the foreign investor's initial request or be approved by the investment commission after the investor's later request.
5. Cash amounts for the loan's principal in accordance with the signed and approved contract.
6. Payable cash amounts by the approved enterprise to the foreign investor in case of sale or transferring the share of the foreign investor or other domestic or foreign individuals provided that such sale or transfer in the form of payable currency be approved by the investment commission.

Article 19

The transferable payments enshrined in article 18 of this law shall be transferred with foreign currencies based on the up-to-date rate of the central bank.

Article 20

1. The Islamic Emirate shall provide the following necessary cooperation to support and encourage investment:
 - a. Sponsoring and promoting [developing] industrial parks.
 - b. Infrastructural facilities.
 - c. Supporting services.
 - d. Providing the needed land at a reasonable price.

- e. Other legal and legitimate facilities.
- 2. The foreign investor does not have the right to own immovable property. The foreign investors can receive and use their needed immovable property through lease in accordance with Sharia.

Chapter Five

The Obligations of the Investor and the Approved Enterprise

Article 21

The approved enterprises, after receiving licenses, shall run their enterprises as per approved conditions without delay. The enterprises, when they receive the land, shall initiate the construction of fundamental buildings within three months, complete them within one year, and equip and prepare them for activities within one and a half years; otherwise, the project and its license shall be revoked. These time periods can be extended with the comments and agreement of the industrial parks of the Ministry of Mines and Industries and the approving authority (the investment commission).

Article 22

The approved enterprise shall have regular accounting records in accordance with the provisions of law and the guideline of the Ministry of Finance.

Article 23

The approved enterprise shall submit its annual and periodic reports to the central administration and relevant entities in accordance with regulations, directives, and instructions.

Article 24

The administration, in case of necessity, shall propose the control and inspection of the approved enterprise to the investment commission, and implement it after approval.

Chapter six

The specific duties of the administration

Article 25

The administration shall prepare a report on the status of the private sector and submit it to the investment commission.

The report shall consist of the list of new investments and the same list shall be reported for the use of the private sector.

Article 26

The administration shall provide the necessary services regarding the investments performed based on this law.

Chapter seven

Dispute resolution

Article 27

The disputes arising out of the enforcement of the provisions of this law among the ministries and entities on the one hand, and among the enterprises on the other hand shall be resolved through one of the following methods:

1. Each one of the parties shall inform the other party of their specific opinion, in written form and within 60 days, regarding the dispute and endeavor to resolve it through understanding and exchange of opinion.
2. Whenever the dispute is not resolved through understanding and exchange of views, the parties have the right to refer their dispute, in written form, to the joint commission consisting of the Central Administration of Economic Consultation Council and Commerce and Industries Chambers for resolution. The joint commission shall officially inform the parties of its decision within the period not exceeding 60 days from the receipt of the parties' written request.
3. In case of the parties' dissatisfaction with the joint commission's decision, enshrined in section two of this article, the issue shall be referred to an authoritative court of which final decision shall be enforceable.

Article 28

The disputes related to domestic investments—in case one of the parties be the approved enterprise of which ownership completely belong to an Afghan citizen, or in case the investor has Afghan citizenship and be the opposing party of the ministry or and Emirate entity—shall be resolved through one of the following methods:

1. Each one of the parties shall inform the other party of their specific opinion, in written form and within 90 days, regarding the

dispute and endeavor to resolve it through understanding and exchange of opinion.

2. Whenever the dispute is not resolved through understanding and exchange of views, the parties have the right to refer their dispute, in written form, to the commission enshrined in article 27(2) of this law for resolution. The commission shall inform the parties of its decision in written form.
3. In case of the parties' dissatisfaction with the joint commission's decision, enshrined in section two of this article, the issue shall be referred to an authoritative court of which final decision shall be enforceable.

Article 29

The disputes related to domestic investments—in case one of the parties be the approved enterprise of which ownership completely or in part belong to the foreign investor and the other party be Afghan citizen, and also disputes arising out of relevant contracts related to the approved enterprise, which a foreign or an Afghan party has signed—shall be resolved through one of the following methods:

1. Each one of the parties shall inform the other party of their specific opinion, in written form and within 90 days, regarding the dispute and endeavor to resolve it through understanding and exchange of opinion.
2. Whenever the dispute is not resolved through the method enshrined in subsection 1 of this article, the dispute shall be referred to a domestic court or one of the Islamic courts.
3. The standards and principles of international conventions, covenants, which the Islamic Emirate has officially signed or acceded to shall be observed with regard to foreign investments provided that they do not contradict the provisions of Islamic Sharia.

Chapter eight

Final provisions

Article 30

The regulations shall be adopted to better enforce this law,

Article 31

The existing enterprises, which have already been approved in accordance with this law and have not completed their exemption period, are entitled to request the use of applicable privileges, exemptions, and cooperation enshrined in this law.

Article 32

Whenever any provision of this law contradicts with any provision of other laws of the Islamic Emirate of Afghanistan regarding private enterprises, the provisions of this law shall apply.

Article 33

This law shall enter into force upon the date of its enactment and shall be published in the official Gazette. With the enactment of this law, the Domestic and Foreign Private Investment Law published in Official Gazette # 774 on May 6, 1995 shall be assumed abrogated.

A. 7.4. Regulation on Ordering the Performance and Activities of Central Administration for Encouraging and Promoting Private Investment

Official Gazette: 797

Date: 5/2/2001

*Chapter One***General provisions****Article 1**

This regulation shall be adopted to regulate the performance and activities of the Central Administration for Encouraging and Promoting Private Investment.

Article 2

The Central Administration for Encouraging and Promoting Private Investment shall hereafter be called the Central Administration in this regulation.

Article 3

The Central Administration shall encourage and support domestic and foreign private investments including manufacturing and services investments in the country to promote the citizens' level of

life. The Central Administration shall also facilitate the promotion of investment in accordance with the provisions of this law.

Chapter Two

Duties and Authorities

Article 4

The Central Administration shall have the following duties and authorities:

1. Reviewing the annual plans and prospective plans of the affairs related to private investments presented by sectorial branches and taking required measures.
2. Informing the entities and enterprises of the approved plans in written form.
3. Overseeing the achievement of goals considered for the private sector for the development of the national economy with the participation of ministries and sectorial entities.
4. Taking measures for the extensive and effective use of the existing capacity of active, private enterprises; and rehabilitating the inactive enterprises.
5. Organizing the development plans of private enterprises in accordance with the programmes of the Islamic Emirate regarding the private investments with the participation of ministries, sectorial entities, and relevant enterprises; and presenting them to the Ministry of Planning.
6. Guiding and providing comprehensive cooperation to domestic and foreign enterprises regarding the issues related to investment and establishing private enterprises.
7. Collecting the statistical numbers and figures related to small industries and medium industries within the economic and social development programme of the Islamic Emirate of Afghanistan with the help of the Central Administration of Statistics and other relevant entities.
8. Overseeing the quality control results of private manufacturing companies conducted by sectorial branches.
9. Protecting the private enterprises about providing services and implementing their manufacturing programmes with the cooperation of sectoral ministries.

10. Assigning a commission to study the modality of project completion of the private enterprises and awarding the certification for the activation of the project for utilization.
11. Taking part in determining the sales price of products and manufactured items, providing services of private enterprises, and overseeing the evaluation results of special branches in enforcing the determined prices.
12. Using new and modern systems of business administration in different affairs of the Central Administration.
13. Issuing permits to private enterprises for transferring the share of shareholders in accordance with the provisions of law.
14. Processing the request of domestic and foreign investors for investment in manufacturing and service institutes within the country's social and economic development programme.
15. Conducting economic and technical analysis of new private investment projects of which establishments are proposed by private enterprises in accordance with the investment law and considering the development of the national economy; and presenting them to the coordination board for approval.
16. Reviewing the possibilities to find new manufacturing and service areas for investment considering the existing capacities and the needs of the country with the cooperation of relevant institutes and sectoral branches.
17. Attracting individuals, organizations and foreign resources for investment and encouraging them to take part in the development of the country.
18. Overseeing the established private enterprises to ensure their normal operations.
19. Preparing and procuring technical cooperation and facilitating the procedure of obtaining passport and exemption of conscription for the employees of private enterprises in accordance with the provisions of law.
20. Ensuring effective cooperation among the Central Administration, sectoral branches of the Consultative Economic Council, Chambers of Commerce and Industry and other relevant private entities.
21. Publishing the list of the newly approved private enterprise through public social media 15 days after the commission's approval.

22. Processing the issues and disputes related to private enterprises and enforcing them based on the investment law.
23. Regulating and coordinating the activities of branches and relevant sections of the Central Administration.
24. Recruiting experienced cadres for the Central Administration and providing the ideal conditions for promoting the level of vocational skills, effective use of knowledge and experience for the employees; and taking necessary, encouraging, material, and intellectual measures for them.

Chapter Three

Regulating the Activities Central Administration for Encouraging and Promoting Private Investment

Article 5

The Central Administration shall be led by the head of the administration. The head of the Central Administration, in this regulation, shall implement his duties in accordance with the provisions of law.

Article 6

The Central Administration shall have directors, a deputy and managers of branches [agencies] whose duties and obligations shall be determined in accordance with their job descriptions.

Article 7

The head of Central Administration shall be responsible to fulfill the duties and obligations of the Central Administration. The deputy, directors, and managers of branches of the Central Administration shall have personal responsibility in performing their assigned duties and shall fulfill the orders of the head of the Central Administration.

Article 8

A coordination board shall be established within the Central Administration to scrutinize new projects and provide technical and economic opinions about the private enterprises. The board shall consist of the following members: the head of the Central Administration as the president, the head of the Industrial Development Bank as deputy, the expert representatives of the ministries of planning, finance, commerce, mines and industries,

agriculture and animal husbandry, public benefits, and the Consultative Economic Council as members.

Article 9

The Coordination Board of the Central Administration shall have the following duties:

1. Analyzing and evaluating the private enterprises the preliminary review of which has been conducted by relevant branches of the Central Administration.
2. Commenting on the presented projects within two weeks and sending it to the Central Administration for next steps.
3. Commenting on the proposal for extending the exemption for the approved private enterprises in unexpected circumstances.
4. Commenting on the dissolution of private enterprises the continuation of which would be excused based on rational reasons.
5. Commenting on all issues arising out of investment law deferred to the coordination commission by the Central Administration and the coordination commission.

Article 10

The Coordination Commission can invite the representatives of ministries and entities to complete information and review the issues at hand.

Article 11

The decisions of the coordination board, after the approval of the coordination commission, shall be observed by all sectorial entities and relevant branches of the Central Administration.

Chapter Four

Final Provisions

Article 12

The bill of duties of internal branches of the Central Administration shall be prepared and approved by the head of the Central Administration in accordance with the regulations.

Article 13

The Central Administration shall have a stamp, which has the name and emblem of the Central Administration carved in it.

Article 14

This law shall enter into force upon the date of its enactment and shall be published in the official Gazette. With the enactment of this law, the Regulation on Regulating the Performance of the Central Administration for Encouraging and Promoting Private Investment Dependent on the Council of Ministers, published in Official Gazette No. 679 on December 6, 1988, shall be assumed abrogated.

Order of the Office of the Amir on Taxations**Official Gazette: 1844**

Based on the special decree of the Amir, the following rules shall be implemented:

1. Fines shall be pardoned until March 21, 1998.
2. There shall be taxes of 5 percent for every two months, and taxes for years of 1996 and 1997 shall also be collected.
3. The value of dollars shall be determined by the [Central] Bank and taxes shall be collected based on the current currency value.
4. Prices shall be determined by the Ministry of Finance and the Ministry of Commerce
5. Commercial license shall be issued according to the law.
6. per cent [income tax] shall be for two years as guarantee not as final, fixed [mandatory amount of taxes].
7. The six above-mentioned decisions shall be implemented and reported to the relevant agencies.

References

- Afghanistan, Islamic Emirate of, Advice and Message of the Office of the Amir on Not Ignoring Anyone's Violation of Allah's Commands, *Official Gazette*, 18 September 1995a
- , Order of the Office of the Amir on the Treatment and Checkup of Female Patients, *Official Gazette*, No. 1844, 5 November 1995b
 - , Advice and Message of the Office of the Amir on the Prohibition of 'Ethnic' Discrimination, 25 June 1996
 - , Decree of the Office of the Amir on the Amendment of the First and the Second Articles of the Flag and Emblem Law, *Official Gazette*, No. 783, 1997a
 - , Decree of the Office of the Amir of Islamic Emirate of Afghanistan on Restructuring the Government Based on [the Government] of Daoud Khan (1977), *Official Gazette*, No. 12, 6 March 1997b
 - , Decree of the Office of the Amir on the Implementation of the Previous (Pre-Taliban Era) Legislations, *Official Gazette*, No. 367, 12 May 1997c
 - , Order of the Office of the Amir on the Prosecution and Arrest of Criminals and the Responsibilities and Authorities of Investigative Agencies, *Official Gazette*, No. 367, 1 December 1997d
 - , Taliban Constitution, Charter of the Islamic Emirate of Afghanistan, 1998a
 - , Decree of the Office of the Amir on the Review of Laws (Islamic Review) by the Ulama, Jurists, of the Supreme Court, *Official Gazette*, No. 18, 21 June 1998b
 - , Decree of the Office of the Amir on the Rights of Women in the Society, *Official Gazette*, No. 104, 10 September 1998c
 - , Advice and Message of Amir al-Mominin on the Full Attention of Officials in the Affairs of Muslims and Allah, *Official Gazette*, No. 168, 23 October 1998d
 - , Decree of the Office of the Amir on the Non-interference of Governors in the Affairs of the Prisoners (Violators) of 'Ministry of Vice and Virtue', *Official Gazette*, No. 113, 19 November 1998e
 - , Decree of the Office of the Amir on the Better Operation of Vice and Virtue in All Districts, *Official Gazette*, No. 150, 28 December 1998f
 - , Decree of the Office of the Amir on the Jurisdiction of the Supreme Court and Military Court, *Official Gazette*, No. 70, 28 January 1999a

- , Order of the Office of the Amir on Mandating Turbans, *Official Gazette*, No. 4494, 18 March 1999b
- , The Order of the Office of the Amir on the Prevention of Referring Ordinary Issues to the Office of the Emirate, *Official Gazette*, No. 236, 13 April 1999c
- , Decree of the Office of the Amir on the Replacing 'State' with 'Emirate', *Official Gazette*, No. 10, 11 July 1999d
- , Decree of the Office of the Amir on Non-interference in Judicial Affairs (Affairs of Courts), *Official Gazette*, No. 11, 11 July 1999e
- , Order of the Office of the Amir on Referring Orders and Decrees of the Office of Islamic Emirate of Afghanistan by the Ministers, Governors and Other Officials to the Ministry of Justice, *Official Gazette*, No. 239, 11 July 1999f
- , Decree of the Office of the Amir on Flag and Signposts, *Official Gazette*, No. 31, 19 September 1999g
- , Decree of the Office of the Amir on the Enforcement of the Regulation on the Protection of the Property of Absent, Missing, Apostate, Rebels, and Dhimmis (Followers of Other Religions), *Official Gazette*, No. 10, 24 June 2000a
- , Decree of the Office of Amir on Forcing Labor on Prisoners, *Official Gazette*, No. 797, 28 December 2000b
- , Law of the Flag and Emblems of the Islamic Emirate of Afghanistan, *Official Gazette*, No. 797, 2 May 2001a
- , Law of the Council of Ministers, *Official Gazette*, No. 797, 2 May 2001b
- , Law of the General Principles of Formation and Tasks of the Ministries and Administrations of Islamic Emirate of Afghanistan, *Official Gazette*, No. 797, 2 May 2001c
- , Law of Constitutional Council, *Official Gazette*, No. 797, 2 May 2001d
- , Law of Control and Audit, *Official Gazette*, No. 797, 2 May 2001e
- , The Domestic and Foreign Private Investment Law of Islamic Emirate of Afghanistan, *Official Gazette*, No. 797, 2 May 2001f
- , Regulation on Ordering the Performance and Activities of Central Administration for Encouraging and Promoting Private Investment, *Official Gazette*, No. 797, 2 May 2001g
- , Decree of the Office of the Amir of Afghanistan on Delegation of Authorities to the Care-Taker Council of the Islamic Emirate of Afghanistan, *Official Gazette*, No. 118, [n.d.a]
- , Order of the Care-Taker Council of the Islamic Emirate of Afghanistan on Replacing Foreign Terminologies and Titles with Those of Pashto and Dari Term, [n.d.b]

- , Order of the Care-Taker Council of the Islamic Emirate of Afghanistan on the Enforcement of Laws and Regulations in the Ministries and Administrations of the Emirate, [n.d.c]
 - , The Regulation on Organizing the Activities and Procedures of the Ministry of Justice, [n.d.d]
 - , Regulation on Legislative Procedure, [n.d.e]
 - , Law on the Promulgation and Implementation of Legislative Documents, [n.d.f]
 - , Law of the Rights and Privileges of the Members of the Academic Cadre of the General Directorate of Legislation and Legal Research, [n.d.g]
 - , Decree of the Office of the Amir on the Prohibition of Bribery, [n.d.h]
 - , Advice and Message of His Highness, Amir al-Mominin [the Amir], to the Taliban on Strengthening the Religion of Allah and Committing to the Goals of the Taliban Movement, [n.d.i]
 - , Advice of the Office of the Amir on the Prohibition of Un-Islamic and Immoral Deeds in the Taliban Movement, [n.d.j]
 - , Advice and Islamic Guidance of the Amir al-Mominin [the Amir], Mullah Mohammad Omar Mujahid, on Barring Unbearded Individuals from the Taliban Movement, [n.d.k]
 - , Message of His Highness, Amir al-Mominin, Mullah Mohammad Omar Mujahid, on the Education of Children and Adolescents by the Ulama, [n.d.l]
 - , Regulation on the Protection of Properties and Real Estate of Absentee, Missing, Apostate, Rebels, and the Dhimmis (Followers of Protected Religions), [n.d.m]
 - , Advice and Islamic Guidance of the Amir al-Mominin about Not Beating the People, [n.d.n]
 - , Guidance of His Highness, Amir al-Mominin, to All Civil and Military Officials of Taliban on the Prevention of Tribal and Regional Discrimination, [n.d.o]
 - , The Decree of the Office of the Amir on the Dissolution of Organizations, [n.d.p]
- Barfield, T., *Afghanistan: A Cultural and Political History* (Princeton, NJ: Princeton University Press, 2010), <<https://doi.org/10.23943/princeton/9780691145686.001.0001>>
- Brown, N., *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government* (Albany, NY: SUNY Press, 2002)
- Clark, K., 'The Layha: Calling the Taliban to Account', Afghanistan Analysts Network, 2011, <<https://www.afghanistan-analysts.org/>

- wp-content/uploads/downloads/2012/10/20110704_CKlark_The_Layha.pdf>, accessed 16 October 2022
- Crews, R. and Tarzi, A., 'Introduction', in R. Crews and A. Tarzi (eds), *The Taliban and the Crisis of Afghanistan* (Cambridge, MA: Harvard University Press, 2008), <<https://doi.org/10.2307/j.ctvk12qf0>>
- Daryosh, F., 'Supreme Court appoints 69 provincial Judges', Tolonews, 16 December 2021, <<https://tolonews.com/afghanistan-175920>>, accessed 21 June 2022
- Davis, A., 'How the Taliban became a military force', in W. Maley (ed.), *Fundamentalism Reborn: Afghanistan and the Taliban* (New York: New York University Press, 1998)
- Dorronsoro, G., *Revolutions Unending: Afghanistan, 1979 to the Present* (New York: Columbia University Press, 2005)
- Gohari, M. J., *The Taliban: Ascent to Power* (Oxford: Oxford University Press, 1999)
- Goodson, L., *Afghanistan's Endless Wars: State Failure, Regional Politics, and the Rise of the Taliban* (Seattle and London: University of Washington Press, 2001)
- Gul, A., 'Taliban say they will use parts of monarchy constitution to run Afghanistan for now', Voice of America, 28 September 2021, <<https://www.voanews.com/a/taliban-say-they-will-use-parts-of-monarchy-constitution-to-run-afghanistan-for-now/6248880.html>>, accessed 17 June 2022
- Ibrahimi, S. Y., 'The Taliban's Islamic Emirate of Afghanistan (1996–2001): "war-making and state-making" as an insurgency strategy', *Small Wars & Insurgencies*, 28/6 (2017), pp. 947–72, <<https://doi.org/10.1080/09592318.2017.1374598>>
- Jackson, A., 'Life under the Taliban Shadow Government', Overseas Development Institute Report, June 2018, <<https://cdn.odi.org/media/documents/12269.pdf>>, accessed 12 September 2021
- Johnson, T., DuPee, M. and Shaaker, W., *Taliban Narratives: The Use and Power of Stories in the Afghanistan Conflict* (Oxford: Oxford University Press, 2018), <<https://doi.org/10.1093/oso/9780190840600.001.0001>>
- Lombardi, C. and March, A., 'Afghan Taliban Views on Legitimate Islamic Governance: Certainties, Ambiguities, and Areas of Compromise', United States Institute of Peace, Peaceworks Report No. 182, February 2022, <<https://www.usip.org/publications/2022/02/afghan-taliban-views-legitimate-islamic-governance>>, accessed 19 July 2022
- W. Maley, (ed.), *Fundamentalism Reborn? Afghanistan and the Taliban* (New York: New York University Press, 1998a)

- , 'Introduction: Interpreting the Taliban', in W. Maley (ed.), *Fundamentalism Reborn? Afghanistan and the Taliban* (New York: New York University Press, 1998b)
- Marsden, P., *The Taliban: War, Religion and the New Order in Afghanistan* (London: Zed Books, 1998)
- Metcalf, B., 'The madrasa at Deoband: a model for religious education in modern India', *Modern Asian Studies*, 12/1 (1978), pp. 111–34, <<https://doi.org/10.1017/S0026749X00008179>>
- , *Islamic Revival in British India: Deoband, 1860–1900* (Princeton, NJ: Princeton University Press, 1982)
- Mutma'n, A. H., *Taliban: A Critical History from Within* (Berlin: First Draft Publishing, 2019)
- Nojumi, N., *The Rise of the Taliban in Afghanistan: Mass Mobilization, Civil War, and the Future of the Region* (London: Palgrave, 2002), <<https://doi.org/10.1007/978-0-312-29910-1>>
- , 'The rise and fall of the Taliban', in R. Crews and A. Tarzi (eds), *The Taliban and the Crisis of Afghanistan* (Cambridge, MA: Harvard University Press, 2008)
- Olesen, A., *Islam and Politics in Afghanistan* (Abingdon: Routledge, 1995)
- Pasarlay, S., 'Dead or alive? The Taliban and the conundrum of Afghanistan's 2004 Constitution', Iconnect: Blog of the International Journal of Constitutional Law, 23 March 2022a, <<http://www.iconnectblog.com/2022/03/dead-or-alive-the-taliban-and-the-conundrum-of-afghanistans-2004-constitution/>>, accessed 4 November 2022
- , 'Afghanistan's unwritten Constitution under the Taliban', Iconnect: Blog of the International Journal of Constitutional Law, 17 May 2022a, <<http://www.iconnectblog.com/2022/05/afghanistans-unwritten-constitution-under-the-taliban/>>, accessed 4 November 2022
- Rahimi, H., *A Constitutional Reckoning with the Taliban's Brand of Islamist Politics: The Hard Path Ahead* (Kabul: Afghan Institute for Strategic Studies, 2021), <<https://policycommons.net/artifacts/1545360/a-constitutional-reckoning-with-the-talibans-brand-of-islamist-politics/2235169/>>, accessed 12 September 2021
- , 'Afghanistan's Laws and Legal Institutions under the Taliban' (Melbourne: Melbourne Asia Review, 10th edition., 2022), <<https://doi.org/10.37839/MAR2652-550X10.17>>
- Rasanayagam, A., *Afghanistan: A Modern History* (London and New York: I. B. Taurus, 2005)

- Rashid, A., 'Pakistan and Taliban', in W. Maley (ed.), *Fundamentalism Reborn? Afghanistan and the Taliban* (New York: New York University Press, 1998)
- , *Taliban: Militant Islam, Oil, and the New Great Game in Central Asia* (London and New York: I. B. Taurus, 2000)
- Roy, O., *Islam and Resistance in Afghanistan* (Cambridge: Cambridge University Press, 1986), <<https://doi.org/10.1017/CBO9780511563553>>
- Rubin, B., 'Constitutional Issues in the Afghan Peace Negotiations: Process and Substance', Special Report No. 488, United States Institute of Peace, November 2020, <https://www.usip.org/sites/default/files/2020-11/20201116-sr_488-constitutional_issues_in_the_afghan_peace_negotiations_process_and_substance-sr.pdf>, accessed 12 September 2022
- Van Linschoten, A. S. and Kuehn, F., *The Taliban Reader: War, Islam and Politics in their words*, (New York: Oxford University Press, 2018), <<https://www.doi.org/10.1093/oso/9780190908744.001.0001>>

About the authors

M. Bashir Mobasher is a postdoctoral fellow at the American University's Department of Sociology. Before the fall of Kabul, he was an assistant professor of political science, an adjunct faculty of law, a legal consultant and an author. He has had affiliations with the American University of Afghanistan, Western Washington University, Max Planck Institute of International Peace and the Rule of Law and International IDEA. Earlier, he worked with the United States Agency for International Development's rule of law project, and International Narcotics and Law Enforcement Affairs (INL) legal education reform project. Bashir is an expert in constitutional law and electoral designs in divided societies. His recent research projects are centred around Islam and constitutionalism, voting rights of the displaced population, criminal justice and minorities, and divided legal systems. Bashir obtained his BA (2007) from the School of Law and Political Science at Kabul University and his LLM (2010) and PhD (2017) from the University of Washington School of Law.

Shamshad Pasarlay is a visiting lecturer at the University of Chicago Law School. Prior to August 2021, he worked as a lecturer in Herat University School of Law and Political Science in Afghanistan. He holds a BA degree from Kabul University School of Islamic Law and an LLM and PhD in comparative law from the University of Washington School of Law. He has worked in the Law Library of Congress and the United Nations Headquarters in New York. Shamshad Pasarlay's research interests involve comparative constitutional law and Afghanistan's constitutional history. His scholarship on judicial politics, religion and constitution-making and design in deeply divided societies has appeared in numerous journals, including the *Asian Journal of Comparative Law*, *Michigan State International Law Review*, *Australian Journal of Asian Law* and *Washington International Law Journal*.

Mohammad Qadam Shah has been an Assistant Professor of Global Development at the Seattle Pacific University (SPU) School of Business, Government, and Economics since 2020. He received his PhD (with distinction) from the University of Washington where he concentrated on International Development and Public Policy Management. He completed his LLM in Asian and Comparative Law at the University of Washington. Before pursuing his graduate studies in the USA, Qadam Shah lived in Afghanistan where he earned his BA in legal studies. Qadam Shah's research and publications focus on the political economy of state-building, development management, anti-corruption reforms, and policy analysis and evaluation. He is working on a book (in collaboration with Jennifer Murtazashvili) on the consequences of centralized, Soviet-influenced governance institutions on conflict and state-building in Afghanistan as well as Iraq, Somalia, Syria and Yemen. He has previously served as an Assistant Professor at the School of Law and Political Sciences at Balkh University, Afghanistan.

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

What we do

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work. International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on democratic practices; offers technical assistance and capacity building on reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

Where we work

Our headquarters are located in Stockholm, and we have regional and country offices in Africa, Asia and the Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

[<https://www.idea.int/>](https://www.idea.int/)



International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
+46 8 698 37 00
info@idea.int
www.idea.int

In August 2021, the Taliban stormed to power and took back control of Afghanistan. They have apparently reintroduced an autocratic Islamic Emirate, not unlike the system of governance that defined their first spell in power from 1996 to 2001. The Taliban's swift military triumph put an end to the frail peace negotiations between the late Afghan government and the Taliban.

At present, the Taliban remain ambiguous about how exactly their current 'Islamic Emirate' will be guided, legally speaking. While it seems certain that they will draft yet another constitution in Afghanistan, it remains to be seen whether they will follow both the classic and modern principles of Islamic governance, and whether rights-based approaches will have any space therein. Nevertheless, the Taliban's official conduct, as manifested in publications by regime insiders and the emerging practices of the fledgling Taliban regime, suggests that the prospects for a rights-friendly regime look bleak at best.

ISBN: 978-91-7671-572-7 (PDF)