

Islamic State of Afghanistan

Ministry of Justice

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Law on the Protection of Historical and Cultural Properties

UNOFFICIAL TRANSLATION

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Chapter 1:

General Orders:

Article 1:

This law was adopted pursuant to article (9) of the Constitution in order to on protect the historical and cultural properties.

Article 2:

The historical and cultural properties of Afghanistan belong to the people of Afghanistan and are the manifestation of their participation in the evolution of the cultural heritage of mankind. It is the duty of the State and the people of Afghanistan to protect the historical and cultural properties.

Article 3:

In this law, the historical and cultural properties means:

- (1) any product of mankind, movable or immovable, which has an outstanding historical, scientific, artistic and cultural value and is at least one hundred years old.

- (2) the objects which are less than one hundred years old, but which because of their scientific, artistic and cultural value, should be recognized as worthy of being protected.

Article 4:

The scientific, artistic and cultural value mentioned in Article 3 item (2) will be determined by the Archaeological Committee and is applicable after the approval of the Ministry of Information and Culture.

Article 5:

For the purpose of study and research of the historical and cultural properties, a committee is formed and named the Archeological Committee. This Committee consists of:

The Director of the Institute of Archaeology, designated as the Head of the Committee.

Two scientifically competent archaeologists chosen by the Ministry of Information and Culture, as members.

One scientifically competent member of the National Museum chosen by the Ministry of Information and Culture, as a member

One historian, from the Academy of Science, chosen by the Director of the Academy, as a member.

A lecturer from the Faculty of Social Sciences from the University of Kabul at a higher rank than “Poohandoi”, chosen by the Director of the Kabul University, as a member.

One engineer/architect, from the Department for the Protection and Rehabilitation of Historical Monuments, chosen by the Minister of Information and Culture, as a member.

Article 6:

In the case of ambiguity, as to whether a historical and cultural property is genuine or is a fake, the decision of the Archaeological Committee will be final.

Article 7:

The Institute of Archaeology and the Department for Protection and Rehabilitation of Historical Monuments are bound to survey and register all historical monuments and sites, specify their area limits and collect and organize all the documentation and references pertaining to them.

No person can build or allow another to construct a building within the registered limits of an archaeological area, without the permission of the Institute of Archaeology.

Article 8:

All historical and cultural properties, movable or immovable, in Afghanistan, discovered or hidden in the earth, are the property of the State by virtue of this law, thus any kind of transfer of such property without permission is considered as theft.

Article 9:

An owner of land cannot take possession of historical and cultural properties unearthed or hidden in the earth, or excavate them, by the virtue of ownership of that land.

Article 10:

Whenever municipalities, urban or residential building corporations, irrigation projects, and any other government or private corporations, in undertaking construction, expansion or improvement projects, come across historical and cultural properties, they are bound to stop their work and inform the Institute of Archaeology on the issue.

Article 11:

In the case that construction work endangers an archaeological property or its site, the project is suspended until a definitive solution is found for their protection.

Article 12:

Any modification of the structure of a registered monument of historic and artistic value is prohibited, without the authorization of the Ministry of Information and Culture. The Ministry of Information and Culture makes proper arrangements for the protection of such monuments.

Article 13:

The Archaeological Committee, after the approval of the Ministry of Information and Culture, will fix and pay reasonable compensation to those who help the State in the discovery of historical and cultural properties.

Chapter 2:**Immovable Historical and Cultural Properties:****Article 14:**

Registration of immovable historical and cultural property will be undertaken, after the ratification of the Archaeological Committee and the approval of the Ministry of Information and Culture, and will be published in the State Newspapers for public knowledge.

The Institute of Archaeology is bound to attribute a registration plate to the registered historical and cultural property and send a copy of this to the related province and municipality.

The boundaries of the immovable historical structure and archaeological area will be determined by the Archaeological Committee.

Article 15:

Sacred places or historical buildings, which have been registered as historical and cultural property, remain in the possession of the owner, custodian of pious legacies, Institute of Archaeology or the local administrative authority. In this case, the person or the relevant administration is responsible for protecting them and for such protection, and for the preservation of their authentic features, shall obtain the advice of the Institute of Archaeology and the Department for Protection and Rehabilitation of the Historical Monuments.

Article 16:

Burial of the dead, digging wells, drains and ditches, burrowing, quarry mining with dynamite, building chimneys, driving heavy vehicles or any other operation, which cause loss and damage to the historical and cultural

property, within the limits of the registered archeological areas, is not allowed without the permission of Institute of Archaeology.

Article 17:

The State can, if necessary, at the instigation of the Ministry of Information and Culture and upon approval from the Council of Ministers, acquire, at a reasonable cost, the ownership of immovable historical and cultural properties and sites.

Article 18:

The claim of having been in possession (zulyadi) of unregistered immovable historical and cultural properties, for a long period of time, is not acceptable and is not proof of ownership.

Article 19:

The finder of immovable historical and cultural properties, or the owner of the land where such properties have been discovered, is bound to inform the local administrative authority of their discovery within one week, in urban areas, and within two weeks, in rural areas. The local administrative authority shall inform the Institute of Archaeology without delay. Such properties are known as Public Property. The State shall acquire, at a reasonable price, the ownership of the land and the premises, on which the historical and cultural property is situated or constitutes a part of.

If the discovered immovable historical and cultural property, as indicated in item 1 of this article, includes movable historical and cultural property, such properties are also regarded as Public Properties and the owner will be given reasonable compensation under Article 13 of this law.

Article 20:

The Institute of Archaeology can study, draw, photograph and mould all immovable properties. The owner is bound to provide necessary facilities to the archeological representative for this purpose.

Article 21:

If a private property is contiguous to that of historical and cultural property, in case the owner wants to build or to modify a building on his/her property, prior permission must be obtained from the Department for Protection and Rehabilitation of Historical Monuments.

Article 22:

The transfer of ownership of a registered immovable historical and cultural property will take effect one month after the Institute of Archaeology and the Department for Protection and Rehabilitation of Historical Monuments have been informed. The notification which includes the identity and a photocopy of the title of the new owner, should be sent to the Institute of Archaeology and the Department for Protection and Rehabilitation of Historical Monuments.

Article 23:

The immovable historical and cultural properties that are Public Property can not be sold.

Chapter 3

Movable Historical and Cultural Properties:**Article 24:**

Movable historical and cultural properties, which have been in the possession of a real or legal person, before the application of this law, are to be registered by the Ministry of Information and Culture. The owners of the movable properties are bound to inform the Institute of Archaeology, in the capital, and the Directorates of Information and Culture, in the provinces. In this case, the private ownership of these properties is preserved.

Article 25:

The Directorates of Information and Culture in the provinces, are bound to inform the Institute of Archaeology officially and send an inventory of the properties for registration, within 15 days. Also, the Institute of Archaeology is bound to send the copy of the registration card to the relevant Directorates of Information and Cultural, within 3 months.

Article 26:

The finder of movable historical and cultural property is bound to inform the Institute of Archaeology, within one week in the capital, and the Office for the Protection of Historical Monuments and Museums of the Directorates of Information and Culture, or the nearest local administration in the provinces, within two weeks of finding it. These Administrations are obliged to inform

the Institute of Archaeology in the shortest delay. A compensation will be awarded to the finder of the historical and cultural property according to Article 13.

Article 27:

In case the Institute of Archaeology feels it necessary to own a movable historical and cultural property, for scientific purposes, it has the right to buy it by preemption. If the owner does not agree, the Institute has the right to take the case to court.

Article 28:

The Institute of Archaeology can request that a registered historical and cultural movable property, which is owned by a private person, be made available for the purpose of studying, drawing, taking a molding, photographing and for scientific and technical use. After the completion of this research, the Institute must return it to the owner within a reasonable delay. Also, the Institute of Archaeology can publish information on such historical and cultural properties.

The Institute of Archaeology can take a mold and take photographs of any historical and cultural object within the country.

Article 29:

Historical and cultural properties that are in the possession of private persons can be entrusted to the researchers via the National Institute of Archaeology for the purpose of scientific use. The researcher is bound to mention the name of the owner as the main reference in his research.

Article 30:

The owner of a registered movable historical and cultural property is obliged to inform the Institute of Archaeology and the National Museum in the case of change of the place of preservation of the property.

Article 31:

All persons, legal and real, that possess registered movable properties, are bound to preserve them according to the instructions of the Institute of Archaeology and the National Museum.

In case of damage to the property by negligence of the owner, the Institute of Archaeology can repair it scientifically at the cost of the owner. If it is

proven that the owner of the property is not capable of its preservation, the Institute of Archaeology can buy it at a reasonable price. In the case of disagreement upon the price, the Institute of Archaeology has the right to approach the court.

Article 32:

Selling and acquiring ownership of registered movable historical and cultural properties are not permitted to foreigners. If a person wants to sell a registered movable property to an Afghan, he/she is bound to inform the Institute of Archaeology about complete particulars of the buyer before the sale. If the Institute of Archaeology refrains from buying the property, the owner can sell it to a third person.

Article 33:

The officers of the Department for the Protection and rehabilitation of Historical and Cultural Monuments and those from the Institute of Archaeology do not have the right to own, buy or sell historical and cultural properties.

Chapter 4:

Archaeological Excavations:

Article 34:

The right of excavation for the discovery of historical and cultural properties is limited to the Institute of Archaeology. No other Government administrations, private organizations or private persons have the right to excavate, even on their own land, without the permit, which is issued for this purpose according to the provisions of this law.

Article 35:

The Institute of Archaeology can give a permit, after the approval of the Council of Ministers, to local, foreign and international scientific institutions upon their application for a permit for archaeological excavation. This permit is not transferable.

Article 36:

The entity (organization) requesting a permit to excavate should forward the application, with the following elements, to the Institute of Archaeology:

- Object of the excavation and work programmed
- Fix the excavation site and its limits
- Complete particulars of the head and members of the excavation delegation
- The head and the members of the excavation delegation can not be changed without the prior agreement (of the Institute of Archaeology).

Article 37:

The validity of the permit is for five years; the entity requesting the permit to excavate cannot delay the excavation, without prior permission of the Institute of Archaeology, for more than one year. The period of delay is counted in the permit period. If the excavation is delayed, due to accidents or due to the work capacity, the extension of the excavation period is made on the basis of new permits, according to the provisions of this law.

Article 38:

The excavation delegation is bound to observe the laws, customs and habits of the country, particularly in the area of their excavation.

Article 39:

Compensation of any damage caused to the property of the person where the excavation is performed is the responsibility of the excavation delegation.

Article 40:

The foreign excavation delegations are exempt from paying any kind of customs duties for the importation of goods, scientific and technical instruments, and vehicles for their needs, provided that after the completion of the work it is either re-exported from Afghanistan or left to the relevant administrations of the Ministry of Information and Culture gratuitously.

Article 41:

The Institute of Archaeology has the competency of investigation and supervision of all archaeological excavations.

Without the presence of the representatives of the Institute of Archaeology, the contractor (entity requesting the permit) does not have the right to undertake survey and excavation.

Article 42:

Excavation should be performed by the most modern methods and scientific instruments. The excavation delegation is bound to take all necessary technical measures for the protection of the excavation area, until the end of their permit.

Article 43:

The excavation delegation is bound to present, within six months after the end of each period of excavation, its preliminary report including plans, sketches, photographs, drawings and the contents of the discovered properties, to the Institute of Archaeology, in writing or electronic version.

Article 44:

Information relating to the results of the research and development of the work of one season of excavation can be published in writing or electronically. The Institute of Archaeology can also publish the report of the delegations in the name of the excavation delegations.

Article 45:

All properties, which are discovered during survey and excavation, belong to the State of Afghanistan.

Article 46:

The protection of the excavation site and transportation of the discovered properties, under the permit, is the responsibility of the contractor entity. All the discovered movable properties are to be delivered to the Institute of Archaeology before the end of the permit. The Institute of Archaeology, after studying the discovered properties must deliver them to the National Museum within six months.

Article 47:

Temporary exportation of discovered properties for the purpose of research, maintenance and restoration, in case of lack of scientific instruments and

specialized laboratories in the country, and for the completion of information and publishing the results upon the request of foreign excavation delegations, will be allowed upon the permission of the Archaeological Committee and approval of the Minister of Information and Culture.

Article 48:

Excavation delegations cannot transfer transport discovered cultural properties related to their excavation, for temporary research, out of its central area without the permission of the Institute of Archaeology.

Article 49:

The right of publication of the results of scientific research, excavations and surveys is reserved for the excavation delegation. The excavation delegation is bound to publish its final findings within three years after completion of excavations, in the name of Afghanistan's historical and cultural properties. After these three years, the delegation will lose the exclusive right to publish it.

Article 50:

The excavation delegation is bound to officially deliver 50 copies of all its publications in writing or electronically, such as the preliminary report, final report, articles and pamphlets written, relating to the excavation and research, free of charge, to the Institute of Archaeology.

Article 51:

The terms of revocation of the excavation permit are clearly assigned from both sides in the related permit.

Chapter 5

Museums:

Article 52:

Establishment and administration of museums, for the purpose of preservation and maintenance of historical and cultural properties and for their scientific use, is the responsibility of the State.

This order in section 1 of this Article should not hinder real and legal persons, to possess such properties or collections.

Article 53:

In Afghanistan, museums are divided into three categories:

- The National Museum, which is located in the capital of the country.
- Local Museums, whose number, place and location are fixed by the suggestion of the Archaeological Committee and the approval of the Minister of Information & Culture.
- Special Museums are established at the suggestion of the Ministries, desirous administrations and institutions, after ratification of the Council of Ministers.

Article 54:

In the National Museum, all the most valuable scientific and artistic properties, and all other properties of which there is a unique example available in Afghanistan, are conserved and put on display. Other historical and cultural properties, of which there is more than one example available, are kept in local museums where the mentioned properties were discovered.

The distribution and classification of the available and discovered properties among different museums of the country is to be accomplished by the Archaeological Committee with the participation of the National Museum and local museums officers.

Article 55:

Except for the case mentioned in Article 54 of this law, shifting the location of the National Museum or a part of its collections, without excessive needs and the ratification of the Council of Ministers, from its specific place to another place is prohibited. Transportation of the historical and cultural properties takes place under the supervision of the Institute of Archaeology, under the best possible conditions to protect them from being stolen, broken, spilled or suffering any other damages, and the best conditions are provided for their preservation in the new place.

Article 56:

Transfer of a local museum's collections takes place under excessive needs on the basis of joint ratification of the local officer, Information and Culture

Minister's officer and the province officer of the Department for the Protection and Rehabilitation of Historical and Cultural Monuments, by observing the rules of article 55 of this law.

Chapter 6:

Trading of (Objects Corresponding to) Historical and Cultural Properties

Article 57:

No one, without a trading permit issued by the National Museum, can engage in trading of (objects corresponding to) historical and cultural properties.

A trading permit of section 1 of this article contains the following information.

- Complete particulars of the applicant
- Address/Title and location of the business
- Full identification of the trader should be kept by the National Museum.

The validity of the above mentioned permit is three years and it is extendable. The transfer of the permit to another person is not allowed.

Article 58:

Selling and buying of properties that have a historical and cultural value, are permitted under the condition that they are registered and recorded on the basis of this law.

Article 59:

A person who holds a permit for the trading of (objects corresponding to) historical and cultural properties is obliged to offer for sale these properties only in the zone specified in the license. The holder of the permit can buy (objects corresponding to) historical and cultural properties from any place in Afghanistan.

Article 60:

A trader of (objects corresponding to) historical and cultural properties is bound to:

1. Display the trade permit in the place where trading is conducted.
2. Register all dealings, sales and purchases of (objects corresponding to) historical and cultural properties in the registration book, which is given to the trader, at a cost, by the National Museum.
3. During an investigation by a representative of the National Museum the trader shall show any historical and cultural properties, which he possesses, to the investigator for verification.
4. Inform the seller about the provisions of this law.

Article 61:

In case of violation the National Museum administration has the right to cancel the permit of the trader. The trader can approach the court if he is not satisfied.

Article 62:

The trading permit for (objects corresponding to) historical and cultural properties is issued against four thousands Afghani and in case of renewal the trader must pay 25% of the original price of the permit. In case of loss of the permit, a duplicate will be delivered against one thousand Afghani.

Article 63:

The National Museum, while registering historical and cultural properties, has the authority to purchase, at a reasonable rate established by professionals, any property which has a historical and cultural value and is in the possession of a trader. In case of disagreement over the rate, the National Museum can approach the court.

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Chapter 7

Export and Import of Historical and Cultural Properties

Article 64:

Export of historical and cultural properties, is prohibited except in conformity with this law.

Article 65:

In the following conditions, the State can send historical and cultural properties abroad:

for international exhibitions

for scientific research, according to the provisions of this law

for restoration of the property

in exchange for historical and cultural properties conserved in foreign museums, upon the approval of the Council of Ministers

Article 66:

No historical and cultural property can be sent abroad, unless fully covered by insurance and in the presence of the representatives of the Institute of Archaeology and the National Museum.

Article 67:

An historical and cultural property is considered to be exported when the process by which it is to be removed from Afghanistan has commenced, even though it has not left the territory of Afghanistan.

Article 68:

For the return of historical and cultural properties a commission shall be appointed as, composed of the following persons: Minister of Information as a Head of the Commission, representative of the Ministry of Justice, Head of the Institute of Archaeology and Head of the National Museum.

The above mentioned Commission has the authority to take and implement decisions regarding the return of stolen and illicitly exported historical and cultural properties according to the provisions of chapters two and three of the UNIDROIT Convention of 1995.

Article 69:

Where an object considered by a State Party to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property to be part of its cultural heritage, and whose export is prohibited, is imported into Afghanistan, its importation is illegal and it shall be returned.

Article 70:

A request for return of historical and cultural property alleged to have been unlawfully exported from a State Party to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property shall be directed to the Ministry of Information and Culture.

The appointed tribunal in section 1 of Article 68 has the authority to order the seizure of the object, liable to restitution, through the relevant organs. The object will be placed under the protection of the Ministry of Information and Culture.

Article 71:

The historical and cultural properties, which are imported by the State, are exempt from custom duty.

Article 72:

Persons, scientific and private institutions/organizations importing historical and cultural properties, are bound to deposit them along with a detailed inventory with the custom office and receive a receipt. The custom administration is bound to send a copy of the inventory, as soon as possible, to the Institute of Archaeology. The Institute of Archaeology, checks and photographs the contents and gives customs clearance within a short delay, after comparing the inventory with the contents.

Article 73:

If a foreigner imports his own historical and cultural property into the country, he is exempt from paying custom duty, on the condition that the property is re-exported with the foreigner. In case the owner sells the property inside Afghanistan, he is bound to inform the customs administration and the Institute of Archaeology before selling it.

Chapter 8:

Penalties:

Article 74:

Any person, who deliberately destroys or damages an historical and cultural property, in addition to paying compensation, is sentenced to imprisonment, from one month up to ten years.

Article 75:

If the persons mentioned in Articles 19 and 26 of the law, omit to inform the related authorities of the discovery of a cultural property within the fixed period, they are sentenced to imprisonment from one month up to three months.

Article 76:

Whenever the owner, administrator or protector of historical and cultural properties does not properly preserve and protect such property, or when there is a violation of Article 31, and in effect, damage is caused to the property, in addition to compensation, the violator is sentenced to imprisonment from one year, up to three years.

Article 77:

A person, who contrary to Article 66, exports or takes an historical and cultural property out of the country, in addition to seizure of the property, is sentenced to imprisonment from six months, up to ten years.

Article 78:

A person who steals, embezzles or makes a fake of historical and cultural properties from museums or excavation sites, in addition to paying the price of such properties, is sentenced to imprisonment from six months, up to ten years.

Article 79:

For all other violations of the rules of this law, the court fixes a proper penalty according to the nature and gravity of the crime.

Article 80:

Any person who imports prohibited historical and cultural properties into Afghanistan will be sentenced to the penalty of Article 346 of Afghanistan's Penal law.

Chapter 9:

Miscellaneous Orders:

Article 81:

Bilateral contracts and agreements concerning historical and cultural properties, whose articles are contrary to this law, are, with the agreement of the parties, to be put into conformity with the provisions of this law.

Article 82:

Displaying and hanging (for exhibition) original historical and cultural properties, belonging to the State, outside the museums, is prohibited, including in palaces and the State authorities.

Article 83:

Voluntary associations for preservation and presentation of Afghanistan's historical and cultural properties can be established with a permit which will be issued by the Ministry of Information and Culture.

Article 84:

For a better implementation of this law, the Ministry of Information and Culture can propose further provisions.

Article 85:

The present law will come into enforcement, after its publication in the Official Gazette. And this law shall abolish the Law on the Protection of the Historical and Cultural Heritage Published in the official Gazette No. 469 dated 30/09/1359 (21 December 1980).

Signed by:

The minister of Information and Culture

Ministry of Interior Affairs

Ministry of Women Affairs

Ministry of Foreign Affairs

Ministry of Justice