



Islamic Republic of Afghanistan

Criminal Procedure Code

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Justice Sector Support Program (JSSP)
Translated March 9, 2014

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TRANSLATOR'S NOTE

The President endorsed this Criminal Procedure Code (CPC) by Presidential Decree Number 137 on February 23, 2014. The President issued a second Presidential Decree on the same date immediately after endorsing this CPC. The second Decree replaced Article 26 of this CPC (see page -10- of this document) with a new Article 26. The text of the Presidential Decree is provided on this page:

Presidential Decree # 138

Refusal to Provide Testimony and Testimony That Will not be Heard

Article 26:

- (1) The following persons may refuse to testify:
 1. A person whose legal responsibility as stipulated in existing laws may be violated by revealing secrets through the provision of testimony, such as a legal advisor, physician, psychiatrist, experts and similar professional functions.
 2. Ancestors and descendants of the accused up to two levels and husband and wife even if the matrimonial relationship has ended. A relative who has been victimized as a result of the crime in question and/or is a complainant or informant regarding the crime is exempted from this provision.
- (2) Judicial officers, prosecutors and the courts are required to inform any person stipulated in paragraph 1 of this article of their right to refuse to testify.
- (3) When the court determines that the testimony of the persons included under Paragraph 1, Section 1 of this Article is necessary for the proper consideration of a case, to determine the guilt or innocence of the accused, or if the public interest is deemed to be of higher importance than the responsibility to maintain confidentiality, then the court may order to hear the testimony of the witness in a private setting, and, if necessary, without the presence of either party.
- (4) The testimony of the following persons is not admissible:
 1. A defense lawyer who is defending the accused in the case.
 2. A person who is considered an accomplice to the crime and his testimony includes denial of the accusation against himself.
 3. A person who lacks the legal competency [*Ahliyat*] to testify.

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TRANSLATOR’S NOTE:

**The preceding Table of Contents was not contained
in the original document endorsed by the President.
It was added by the JSSP team.**

**Section 1
General Provisions**

**Chapter 1
Purposes and Terminologies**

Basis:

Article 1:

This law has been enacted in accordance with the provisions of article 134 and in compliance with the provisions set forth in Article 123 and Paragraph 1 of Article 75 of the Constitution of Afghanistan.

Purposes

Article 2:

The purpose of this law is:

- 1– The quick and comprehensive detection of crime, identification, arrest and prosecution of the suspect or accused person.
- 2– Investigation of the crime using technical tools and professional methods.
- 3– Initiating claims against the accused person based on incriminating evidence.
- 4– Fair trial, as no innocent shall be punished and no criminal shall be exempt from prosecution.
- 5– To safeguard individual rights of the suspect, accused person, convict, and victim and to protect the rights of the society while executing investigation and prosecution.
- 6– To protect and respect the rights, personality and human dignity of the victim, suspect, accused person, and the convict.
- 7– Retraining criminals to create the ideology to obey the provisions of Shari'ah and the enacted laws, respect religious beliefs and to observe morality, manners and rules to live peacefully in a society.
- 8– Safeguarding public order, security and rule of law in the country.
- 9– Prevention of crime and violation of law.

Scope of Application

Article 3:

The provisions of this Code shall apply in all criminal cases unless special rules of procedure are established by other law.

Terminologies:

Article 4:

The following terms have the following meanings in this law:

- 1– Crime detection: Proceedings taken in order to prevent commission of a crime and identify the perpetrator, method or cause of commission, identify the crime scene and protect crime related evidence and items.
- 2– Judicial officer: person who, in accordance with the law, has the authority to detect, collect incriminating evidence, and question, and they are as follows:
 - Police.
 - National Directorate of Security operatives.
 - Inspectors of the High Office of Inspection.
 - Internal auditors of ministries and governmental institutions.
 - Officials of Anti-Corruption Institution[s].
- 3– Criminal case: demand for punishment of the accused by the prosecutor in accordance with the provisions of this law before the court.
- 4– Crime investigation: comprehensive investigation of a crime and questioning and interrogation of a suspect, witnesses and observers by the prosecutor based on collected evidence and evaluation of collected reasons and evidence in order to prove the commission or non-commission of a crime, identify the criminal, and attribute accusation, in accordance with the provisions of law.
- 5– Inspection: search of buildings, items and documents in order to arrest the accused person, seize items and protect crime evidence.
- 6– Search: to search someone's body, clothes, bags and transportation means in order to preserve and detect criminal evidences.
- 7– Litigants: includes prosecutor, victim, plaintiff or legal representative of victim or plaintiff on one side and the accused person or defendant, on the other side.
- 8– Preservation of files: the decision made by the prosecutor to postpone relevant proceedings (temporary preservation) in order to pave the way for completion of the investigation and filing a criminal lawsuit or issuing a ruling or no prosecution and filing a lawsuit against a suspect or accused person.
- 9– Trial: proceedings of a criminal case, defense and issuance of a verdict by the competent court in accordance with the provisions of law.
- 10– Ruling: authoritative decision made in accordance with the provisions of the law during investigation process by the prosecutor's office or during trial by the court to initiate and prosecute or abandon a criminal case or other related instances.
- 11– Suspect: person who is suspected of committing the crime or before attributing the crime to him/her precautionary measures are taken.
- 12– Interrogation: demand of a statement of truth from the suspect regarding the commission of a crime, method and motivation of the crime in accordance with the provisions of law.
- 13– Accused person: person who is identified as the perpetrator of the crime based on evaluation of the collected evidences during investigation.
- 14– Accusation letter: written document which is, as a result of investigation, prepared by the relevant prosecutor mentioning proof, reasons and law articles to which the crime and specific punishment has been determined based on which the trial of the accused person is requested.

- 15– Indictment: written demand for punishment of the accused person by the prosecutor from an authorized court which mentions the type of crime, characteristics of the accused person, incriminating evidence, legal description of the crime and the law articles specifying the punishment for the specific crime and other claim conditions.
- 16– Victim: person who suffered bodily, physically or intellectually due to the committed crime.
- 17– Relatives: husband or wife and their ancestors and descendants up to the second generation, mother and father and their ancestors up to the second generation and brother, sister, uncle, aunt and their descendants up to the second generation.
- 18– Legal representative: includes defense lawyer, legal aid provider, custodian and legal guardian.
- 19– Temporary confiscation (seizure): temporary holding and control of movable and immovable properties in accordance with the provisions of the law by the relevant authority.
- 20– Permanent confiscation: permanent confiscation of moveable and immovable properties of the convicted person whose ownership will be transferred to the Government in accordance with the provisions of the law and the authorized court decision.
- 21– Plaintiff: person who lost his/her property due to the committed illegal activity and has the right to directly claim compensation from the perpetrator or defendant.
- 22– Defendant: person who allegedly committed the crime or illegal activity and shall be responsible for compensation to the victim.
- 23– Losing party: person against whom a competent court issued a decision in accordance with the provisions of the law.
- 24– Winning party: is a person whom the court issued a decision in favor of in accordance with the provisions of the law.
- 25– Sentence: punishment which the court has ordered to be enforced in accordance with the provisions of the law.
- 26– Acquittal: occurs when the court, due to lack of sufficient evidence for accusation, has delivered a verdict of not guilty and dismissed the accusation for that crime.
- 27– Police custody: police custody and oversight of the suspect by the police during the detection stage at a place dedicated and authorized by law. (Temporary Detention Center)
- 28– Detention: detention and temporary deprivation of freedom of the suspect or accused person in the investigation and prosecution stages in accordance with the prosecutor's or court's order in a place dedicated and authorized by law. (Detention Center)
- 29– Confinement: detaining of a convict with a mental illness or underage at a specific site in accordance with the provisions of the law.
- 30– Evidence: clues, signs, evidences and items found in the crime scene or another place or with the suspect or accused person on his/her clothes that are declared relevant to the crime or criminal as the result of special inspections conducted by the experts.
- 31– Documents: are the papers containing official or personal information, including investigation documents, report of experts, court verdict, writings, books, or other similar items.
- 32– Testimony: statement made during case investigations regarding whatever is seen or heard relevant to the case before an authorized court by taking an "oath". Written and non-verbal expressions by a mute person are considered a statement.

- 33– Expert: professional or technical person who specializes and/or has enough knowledge and experience in a certain field.
- 34– Legal prosecution: proceeding of a criminal case against the perpetrator that includes stages of proceedings, detection and criminal investigation, trial, and enforcement of the court order.
- 35– Confession: admitting responsibility for committing the crime voluntarily and in a sound state of mind without duress before an authorized court.
- 36– Statute of Limitations: expiration of a specific period of legal time in which a criminal claim and enforcement of punishment is nullified based on this law.

Chapter 2

Rights of the Victim, plaintiff, Suspect, Accused and Defendant

Presumption of Innocence

Article 5:

- (1) Presumption of innocence is the original state in which accused persons are innocent unless they are convicted by a final decision of a competent court.
- (2) The prosecutor and judge cannot interpret vagueness of the law or ambiguity of evidence against the suspect or accused person.

Rights of the Victim and Plaintiff during the Legal Prosecution Stages

Article 6:

- (1) During the legal prosecution of the case, the victim and plaintiff have the following rights:
 - 1– Fair behavior, respect of their human dignity and personal honor.
 - 2– Ensured safety.
 - 3– Participating during legal prosecution of a criminal case and directing special questions to the accused person in murder and battery crimes.
 - 4– Request for reimbursement in accordance with the provisions of the law.
 - 5– Access to information concerning the proceedings and prosecution results of the case in different stages of the legal prosecution.
 - 6– Objections to judicial officers, experts, prosecutors and judges performances in accordance with the provisions of the law.
 - 7– Access to necessary legal, physical, medical, psychological, and social services.
- (2) The police, prosecutor’s office and court each shall, within their area of jurisdiction, take and enforce required measures to ensure that the victim has access to his or her rights set forth in paragraph (1) of this article.

Rights of Suspect, Accused Person and Defendant during Different Legal Prosecution Stages

Article 7:

Suspects, accused persons, and defendants are entitled to the following rights during the legal prosecution stages:

- 1– Understanding the crime they are being charged with and receiving descriptions regarding the accusation and case proceedings.
- 2– Immunity from arbitrary arrest or detention and the right to receive compensation for any loss in accordance with the provisions of this law.
- 3– Immunity from insults, contempt, psychological and physical torture and any kind of inhumane behavior.
- 4– Informing his/her family or relatives at the time of arrest by the arresting authority.
- 5– To freely give statements and provide reasons.
- 6– To provide evidence and witnesses; to question the witnesses who have testified against him/her and to ensure the presence of and to hear the witnesses who testify in his/her favor.
- 7– To remain silent and refuse to make any comments.
- 8– To assign a defense lawyer or have a legal aid provider in accordance with the provisions of the law.
- 9– To give comment about seized items and evidence.
- 10– To have a translator.
- 11– Access to a copy of materials contained in the case file in the Primary or Appellate Court, statements of the witnesses and accomplices, physical and documented evidence related to the case, forensic reports, request and order on conducting secret surveillance, search warrant, and sufficient time and opportunity to prepare a defense statement unless the assigned prosecutor, due to reasons such as caution, **the risk of endangering the witness**, interruption in investigation process, obstruction of justice or having negative impacts on national interests, requests the court to deny the access [to such material].
- 12– To object to the proceedings of judicial police officer, experts, prosecutor's office, and court.
- 13– The right to a hearing before the court to request a ruling on the legality of his/her detention.
- 14– To have free and confidential written or verbal communication with his/her legal representative in accordance with this law.
- 15– The right to be prosecuted without delay in accordance with the law.
- 16– The right to an open trial in accordance with the provisions of law.
- 17– The right to be present at trial.
- 18– Closing statements before the court.
- 19– The right to examine witnesses.
- 20– The right to object to the judge, prosecutor, defense counsel, and experts.

Explanation of Rights of Suspects and Accused Persons:

Article 8:

The police at the time of arrest, the prosecutor prior to commencing the investigation and the judge before starting the trial, are obligated to inform the suspect and accused person and their legal representatives of the rights set forth in article 7 of this law, and to put them in the registry and to take his signature and fingerprints.

Defense Rights

Article 9:

- (1) The suspect and accused person may be represented by a legal representative or pro se in any stage of the legal prosecution.
- (2) The suspect and accused person may have up to 3 defense lawyers at the same time.
- (3) A defense lawyer can defend one or several suspects or accused persons in the same case; provided that there is no conflict of interest among the suspects or accused persons.
- (4) When someone is suspected or accused of committing a crime for which the law anticipates long-term imprisonment or a term of longer imprisonment, the presence of defense attorney in the proceedings of legal prosecution is required.

Appointment of Legal Aid Provider:

Article 10:

If the suspect or accused is indigent, or the suspect or accused person is deaf, mute, blind, or has any mental disorders, a legal aid provider shall be appointed for him/her with his/her consent.

Appointment of Translator:

Article 11:

- (1) The police, prosecutor's office and court are required to appoint a translator if the victim, suspect or accused person does not know the language used during legal prosecution or is deaf or mute. A Government-funded translator shall be appointed for the indigents in accordance with the circumstances set forth in article 10 of this law.
- (2) The translator is required to translate the assigned matters accurately and completely; in case of falsifying translations the translator shall be legally prosecuted in accordance with provisions of this law.

Chapter 3

Obstacles to Participation in the Legal Prosecution Stages

Experts Forbidden to Present Their Views

Article 12:

- (1) In the following situations, the expert lacks the authority to present their views:
 - 1- If he/she has relationships with the suspect, accused person, victim or their legal representatives, or they are attorney or client and/or legal advisor to each other, even though the lawyer and client relation or relationships have broken.
 - 2- If in the same case he/she has previously been involved as a judicial officer, prosecutor, defense lawyer, witness and/or judge or he/she has been the victim's doctor.
 - 3- In case the specialty and impartiality of the expert become suspicious.
- (2) If reasons for a lack of authority are revealed after the experts have expressed their views in accordance with paragraph (1) of this article, these views are invalid and another expert shall be appointed instead.

Request on Objection to Expert

Article 13:

The suspect, accused person, victim or their legal representative can present their request on objection to the expert to the prosecutor's office or court for reasons set forth in article 12 of this law. The prosecutor's office or court is obligated to review the issue as soon as possible and if justifying reasons concerning the accuracy of the request are found, it shall appoint another expert.

Prohibition of Prosecutor to Participate in Legal Prosecution Stages:

Article 14:

The prosecutor cannot participate in stages of legal prosecution in the following situations:

- 1– If the crime is committed against him/her or one of his/her relatives.
- 2– If the accused is one of his/her relatives.
- 3– If he/she has previously participated in the same case as lawyer, judge, legal advisor of a party, expert, or witness.

Request for Disqualification of the Prosecutor

Article 15:

The suspect, accused person, victim, plaintiff, defendant, or their legal representatives, in accordance with the situations set forth in article 14 of this law can request the disqualification of the prosecutor to a higher prosecutor at any stage of legal prosecution.

The higher prosecutor shall announce his decision within 48 hours. In case of refusal of request, the claimant can make a complaint against the decision of the prosecutor to the competent court. The court decision in this regards shall be final.

In this case the proceedings of the prosecutor shall be legally invalid.¹

Prohibition of Judge Participation in Criminal Case Proceedings

Article 16:

(1) In the following situations the judge does not have the authority to participate in the criminal case proceedings:

- 1– If the crime is committed against him/her or one of his/her relatives.
- 2– If he/she is a relative of the accused person.
- 3– If he/she was previously involved as a judicial officer, prosecutor or legal advisor for one of the litigants or was an expert or witness and or issued a decision in the same case.
- 4– In any other circumstances that law orders.

(2) In accordance with the situations set forth in paragraph (1) of this article, if the judge participated in the case proceedings and issued a decision, the court's decision shall be nullified.

¹Translator's note: The drafter in Dari apparently intended to say if the objection to the prosecutor is accepted, then the proceedings are invalid. However, the original Dari is accurately translated above.

Judge Disqualification Request:

Article 17:

- (1) The accused person, victim, plaintiff, defendant or their legal representative can request disqualification of the judge in accordance with the conditions set forth in paragraph (1) of article 16 of this law.
- (2) A request for judge disqualification shall be presented to the director of the court where the target judge is a member or it shall be presented to a higher court if the court director is involved in the circumstances supporting the disqualification of request.
- (3) The judge's disqualification request shall be presented during the first court session to a judicial delegation excluding the disqualified judge which shall consider the request. The court decision in this regard shall be final.

Refusal of Expert, Prosecutor or Judge

Article 18:

- (1) Expert, prosecutor and judge can refuse to participate in case proceedings if their disqualification is discussed in accordance with provisions of this law.
- (2) Request for refusal and taking decision in this regard shall be done in accordance with provisions of articles 13, 15 and 17 of this law.

Chapter 4 Incriminating Reasons

Incriminating Evidence:

Article 19:

- (1) Incriminating evidence is:

Confession of the accused;

Testimony of the witnesses;

Documents;

Identification of the suspect via random lineup;

Signs: The following items of evidence, considering their importance in specialized examination, shall be considered as physical evidence:

-- Video and Audio cassettes, visual surveillance or other documents or information obtained through covert surveillance measures.

- Finger, palm and foot prints.
- Bullets, bullet casings and ballistic evidence.
- Traces and signs of metal hardware and other hard objects.
- Pieces of glass.
- Blood.
- Footwear signs.
- Writings.
- Dental evidence.

- Hairs.
 - Chemical, biological and electrical signs.
 - Explosives, firearm and non-firing weapon.
 - Means of transportation.
 - Liquids, textiles, stains, acids and salts.
 - Other materials and clues that have been scientifically proven by the experts to be effective in the detection of crime and criminal identification.
- (2) Relevant evidence set forth in this chapter is applicable in all stages of the criminal case proceedings.
- (3) Signs may provide the basis for an accusation only when they make an accurate and compatible chain of relevant facts and they prove criminal elements with certainty.
- (4) The court cannot issue a decision to convict the accused person based on suspicion or if there is doubt in reasons or evidence.

Collection, Recording, Evaluating and Maintaining Evidence and Documents

Article 20:

The judicial police officer and prosecutor are obligated to take appropriate actions in collecting, recording, evaluating, and maintaining the evidence and documents in order to clarify all case related situations regardless of loss or benefit to the suspect or accused in accordance with the provisions of this law.

Inadmissibility of Evidence and Documents

Article 21:

- (1) The obtained evidence which is inadmissible due to violating the provisions of this law or other enforced laws shall be taken out of the file and stamped. The evidence and documents shall be maintained separately from other evidence and documents.
- (2) In all stages of the case proceedings, the prosecutor's office and court shall ensure the existence and lack of existence of evidence and documents set forth in paragraph (1) of this article.

Prohibition of Taking Statements by Coercion or Enticement

Article 22:

- (1) The judicial police officer, prosecutor and court themselves or through means of another person, in any case, are not allowed to force the suspect or accused to confess using misconduct, narcotics, duress, torture, hypnosis, threat, intimidation, or promising a benefit.
- (2) If the statements of the suspect or accused person are taken in violation of the provision set forth in paragraph (1) of this article, they shall not be admissible.

Priority of Evidence

Article 23:

The court shall assess the evidence and issue its verdict based on evidence provided by a legal authority considering the weakness and strength of the evidence.

Multiple Evidence

Article 24:

- (1) Existence of one sign does not provide sufficient proof to the event, unless the sign provides incontrovertible proof or other evidence confirms or approves it.
- (2) The judicial police officer and prosecutor are obligated to collect as many items of evidence as possible that can prove the crime and accusation of the suspect or accused person.

Chapter 5 Testimony

Summons of Witnesses, Hearing and Recording Testimony

Article 25:

- (1) The person who has information concerning the crime, characteristics of the suspect or accused person and other situations relevant to the criminal case, shall be summoned as a witness.
- (2) The judicial police officer, prosecutor and court shall record the testimony or statements of the witness given by his/her consent, provided that the statements and testimony are relevant to the case.

Forbiddance of Questioning a Witness²

Article 26:

- (1) The following people cannot be questioned as witnesses:
 - 1- A person whose testimony would violate his/her legal responsibility not to reveal secrets related to the organization stipulated in the enforced laws, unless he/she is relieved from his/her responsibilities by the relevant authority.
 - 2- The defense lawyer.
 - 3- An accomplice if their case is proceeding jointly.
 - 4- Relatives of the accused person.
 - 5- Legal advisor, physician, expert, psychiatrist or journalist who is obligated to keep confidential information obtained during performance of their duties, contact with their clients or reporter, unless their responsibility is relieved by the court.
 - 6- A non-discerning child who has not reached the age of seven years.
 - 7- A person who lacks the capacity to testify.
- (2) The judicial police officer, prosecutor's office and court are obligated to inform the individuals set forth in paragraph (1) of this article of their right not to answer questions.
- (3) In cases where reasons exist that deem the testimony to be critical to confirm the criminality or innocence of the suspect or accused person or its social benefits are greater than keeping its confidentiality, the court based on the request of either one of the parties can relieve professional liability of the persons set forth in subparagraph 5 of paragraph (1) of this article. In this case the court shall hear the statement of the witness in a specific room and if necessary without the presence of the litigants.

²Translator's note: This Article was amended/replaced by Presidential Decree. The text of Article 26 on this page may therefore not be valid law. The text of the Decree is set out on page i of this document.

Right to Refuse to Answer Questions

Article 27:

- (1) The witness is not obligated to answer any questions that could lead to their or one of their relative's prosecutions. The judicial officer, prosecutor and/or the court shall inform the witness of this right.
- (2) If the testimony could lead to contempt of the witness or present harm to the witness or their relatives, they have the right to demand the court to testify in secret.

Summons of the Witnesses

Article 28:

- (1) In compliance with the provisions set forth in this law (Chapter 4, Section 2), the prosecutor's office and court shall subpoena those witnesses whose statements are necessary for the investigation and court proceedings.
- (2) If the subpoenaed witness does not appear for a judicial session and cannot justify his/her absence, or leaves the place where he/she would be questioned without permission or justifying reason, he/she shall be sentenced to a fine by the court of not more than 2,000 Afghanis if he/she was to testify on a petty crime (obscenity) violation, 5,000 Afghanis if he/she was to testify on a misdemeanor or 10,000 Afghanis if he/she was to testify on a felony.
- (3) If a witness appears before the court and justifies his/her earlier absence or reason for leaving the place of questioning without permission, the witness shall be excused from paying the fine.

Contents of the Subpoena Letter

Article 29:

- (1) The witness subpoena letter must contain the following information:
 - 1- Complete identity of the witness including first name and last name, place of birth, residential area, place of work and his/her physical appearance description.
 - 2- Place, date and time where the witness is to testify.
 - 3- The criminal case for which the witness has been subpoenaed to testify.
 - 4- That he is summoned as witness.
 - 5- Explanation of the consequences for failure to appear.
- (2) Witnesses under the age of 18 years will be subpoenaed through their parents or legal representatives for witness statements and legal testimony. An exception can be requested under emergency and impossible situations.

Expenses for Witness Appearance

Article 30:

Expenses incurred by witnesses subpoenaed to appear shall be verified and paid by the authority that issued the subpoena.

Obligations of the Witness

Article 31:

The witness shall have the testimonial eligibility based on Islamic Sharia Provisions.

The witness is obligated to tell the truth. If the witness fails to tell the truth entirely or partially or gives false testimony, he/she shall be legally prosecuted in accordance with provisions of law.

Preparation of the Testimony Registry

Article 32:

The prosecutor's office and court are obligated to inform the witness that they must tell the truth.

After which the witness shall be requested to state his/her first name, last name and father's name, name of relatives, residential area and work place, place of birth, age and relationship to the victim and convict.

Testimony Hearing Place

Article 33:

(1) The witness shall give his/her statement about the incident based on whatever he/she comprehended or has information about before the prosecutor or court.

(2) If the witness cannot appear due to sickness, old age or any other justifying excuse, the prosecutor or judge shall hear and record his/her statement or testimony in his/her residence or other appropriate place.

Separate Hearing of Testimony

Article 34:

If there is more than one witness available in a case, statements and testimonies of each witness shall be heard and recorded separately and individually without the presence of other witnesses.

Forbiddance of Leading the Witness

Article 35

(1) The witness shall be requested to state all the matters concerning the case in their own words.

(2) Once the witness gives the information, the accused persons or their legal representatives, the prosecutor, and the members of judicial team can question the witness.

(3) The prosecutor, judicial delegation and litigants cannot ask leading or dictating questions during the questioning of the witness.

(4) The litigants or their legal representatives shall state their remarks after the witnesses' statements are heard.

Method of Questioning Witnesses

Article 36:

(1) The witness's status in the community, age, minority, gender and psychological situation will be taken into consideration during questioning.

(2) The prosecutor, defense attorney and court shall not interfere in the personal matters of the witness during questioning, unless it is necessary for collecting reasons and evidence.

(3) Questioning the witness must not cause a psychological inconvenience to him/her.

Preparing Report of Testimonies and Statements

Article 37:

- (1) Witness statements and testimony shall be put in the report without changes, additions, distortions, correction, cleaning, and scratching. The statement and/or testimony will not be valid until confirmed by the witness, prosecutor's office or the court.
- (2) The witness shall sign or put his/her fingerprint on the statements when the entire statement is read to him/her and is confirmed.
- (3) If the witness refuses or is not available to sign or put his/her fingerprint in the registry a reason shall be entered in the registry.
- (4) The statements and testimony shall be written by the witness. If the witness is illiterate, his/her statement and testimony shall be written by another person and put in the registry.
- (5) The registry, which is prepared in accordance with the provisions of this chapter, shall be signed and stamped by the relevant authority.

Recording the Testimony Registry

Article 38:

The following issues shall be recorded in the witness statement or testimony registry:

- 1- Information set forth in subparagraphs 1, 2, and 3[of paragraph (1)] of Article 29 of this law.
- 2- Relationship or lack of relationship between the witness and accused person according to this law.
- 3- Awareness of the right to refuse questioning in the situations set forth in paragraph (1) of article 26 of this law.
- 4- Questions and subsequent answers presented.
- 5- Remarks of the individuals involved in the criminal case.

Testimony of a Minor

Article 39:

- (1) Testimony of a child younger than 14 years of age who is able to recognize the situation and incidents shall be heard for information gaining purposes only without taking an oath.
- (2) A child described in paragraph (1) of this article shall be questioned as a witness by the prosecutor and judge only in the presence of his/her parents or legal representative.
- (3) The litigants may ask the prosecutor or the presiding judge to let them question the witness in relation to the case providing that the questions will not harm the psychological status of the witness.

Testimony of a Person with a Mental Disorder

Article 40:

If there is a question in the psychological and mental status, or thinking ability, of a witness, the prosecutor and court shall hear the witness testimony in the presence of the witness's physician or psychiatrist.

Hearing Testimony Out of the Court

Article 41:

(1) If based on justifying reasons, the witness cannot attend the respective place to testify, prosecutor and the court shall inform the litigants of the issue and his/her testimony shall be heard by the a member of respective judicial team member in the witness's residence area. All parties have the right to participate in the testimony hearing of the witness set forth in clause (1) of this article.

(2) Registered testimony shall be narrated during trial.

(3) If the witness set forth in paragraph (1) of this article is located out of the respective court jurisdiction in which the case is being proceeded, the competent court shall officially request the local court to hear the witness's testimony and send the registry to the competent court.

False Testimony:

Article 42:

If for reasons set forth in article 41, the witness's excuse or reason for absence is proven to be not true, the court can require the witness to compensate the court for all expenses incurred.

Oath or Promise

Article 43:

The witness is obligated to take an oath to Allah prior to providing testimony that he/she will state the truth and nothing but the truth. Non-Muslim persons shall take an oath based on his/her beliefs.

Chapter 6 Experts

Appointing Experts

Article 44:

(1) If the written documents, existing physical evidence, proofs and criminal signs significant to the outcome of a case and identification of the perpetrator requires professional or specialized assessment, the judicial police officer, prosecutor's office or the court can ask for the views of experts, based on the request of one or both parties.

(2) The judicial police officer, prosecutor's office and courts are obligated to identify the type of investigation and other matters in their request to the experts.

(3) The prosecutor's office and courts can consider the views of other people who have the requisite expertise, knowledge and experience pertaining to the issue, in addition to the experts who provided views and are registered with the courts.

Revision of Expert's Views

Article 45:

If an expert's view is proved incomplete or vague or is not satisfactory to the judge or prosecutor, the court shall use another expert.

Supervision on Expert's Views

Article 46:

- (1) During the examinations conducted by the experts, officials from the prosecutor's office or the judge may participate in person and ask questions about the details of the relevant matters. The litigants may attend the examination and opine on the expert's views or object it.
- (2) If the assigned experts need technical or professional assistance from other experts in part of their examinations, they may ask for the assistance of other experts.

List of Experts' Names

Article 47:

- (1) The prosecutor's office, in coordination with relevant agencies, shall every year prepare a list of experts chosen from amongst the qualified individuals based on the highest standards and the list shall be circulated to all relevant authorities.
- (2) Individuals who are selected as expert are required to take an oath before the court with the following phrases:

"I swear in the name of almighty Allah that I will perform the assigned tasks based on professional knowledge and standards and I will carry out my tasks with impartiality and honesty and will not conceal the truth."
- (3) Those experts whose names are not included in the list are required to take the aforementioned oath contained in paragraph 2 of this article before the competent court prior to his/her statement.

Contents of Expert's Views

Article 48:

- (1) The expert is required to provide his/her view within the specified time which is determined by the authorized sources. The experts can ask for an extension of the specified time from competent authority based on justifying reasons.
- (2) The expert shall provide his/her views in writing which shall include the following information:
 - 1- Expert's first name, last name, academic degree, specialization and the position that the expert holds in the relevant profession.
 - 2- First name, last name and other information pertaining to the identity of other persons who were involved in providing the view.
 - 3- Date the view was requested, date the examination was conducted and date the view is provided.
 - 4- A report of the activities conducted and their results.
 - 5- Signature of all experts involved in providing the view.
- (3) Experts that were involved in providing their view in writing and persons that witnessed the examination process shall be subpoenaed by the court when required.

Introduction of the Suspect, Accused Person, or Victim for Examination

Article 49:

- (1) When a felony or misdemeanor has been committed, the judicial police officer, prosecutor's office or court can require the accused person or victim to undergo forensic

medical examinations by a relevant authority and shall submit the fingerprints, blood, hair, X-ray and other relevant evidence found at the crime scene to the relevant agency.

(2) The examinations by the individuals set forth in paragraph (1) of this article shall be conducted by experts of the same gender.

Performing Autopsy

Article 50:

(1) The police, prosecutor's office or courts may transfer the murdered body, body of a person who appears to have been murdered or committed suicide or overdosed to the forensic medicine office for examinations.

(2) The examination of body shall be conducted in presence of the police or prosecutor.

(3) When conducting an examination, in addition to the pathologist, the physician who recently treated the deceased can be requested to attend.

(4) If buried, the body shall be exhumed only after receiving an order from the authorized court and then shall be submitted to the office of forensic medicine. Before the court issues the order of exhumation, it shall seek the views of relevant experts, and the statements of the police and the litigants.

(5) In provinces where there is no forensic medicine office, the forensic medical examinations will be conducted by a relevant specialist assigned by the Public Health Administration in the relevant province.

Results of Examination

Article 51

Copies of the examination report are provided to the litigants. The litigants have the right to comment on the case, ask additional questions, request information from the experts, and request examination be re-conducted and the report re-issued. These issues and objections are recorded in the book.

Expert's Prosecution

Article 52:

If the expert refuses to provide his/her viewpoint without justification or expresses his/her view without considering professional standards or against findings coming from the assessments, he/she shall be fined AFN 10,000. If the expert intentionally and knowingly provides a false statement, he/she shall be prosecuted in accordance with provisions of the law.

Chapter 7 Witness Protection

Protective Measures for Witnesses

Article 53:

(1) The prosecutor's office or court according to circumstances can issue a ruling to take one or more of the following actions to ensure the protection of the witness.

1- Concealing the name, residential address, work place, occupation, official deed, registration book or file or any other information, which could lead to the identity of the witness.

- 2- Forbidding the accused person's defense attorney to disclose the identity of the witness or any information that could lead to the identity of the witness.
- 3- Avoiding the disclosure of any record or document which could lead to the identity of the witness, unless directed otherwise by a competent judge.
 - (2) In conditions set forth in paragraph (1) of this article, the witness is given an alias.
 - (3) Apparent and physical characteristics of the witness are concealed as follows:
 - 1- Testifying behind a nontransparent curtain.
 - 2- Testifying through a technical voice and visual changer device.
 - 3- Live broadcasting of the questioning from another location which will be connected to the court room via closed circuit television.
 - 4- Hearing the statements and testimony of the witness, and questioning of the witness using a pre-recorded video tape ahead of the trial, provided that the accused person's defense lawyer is present while the testimony of the witness is being recorded in a video tape.
 - 5- Removing the accused person from the court room for a temporary period of time if the witness refuses to testify in presence of the accused person or if the witness will not testify truthfully in the presence of the accused person. In such cases the defense attorney can remain in the court room and ask the witness questions. The witness testimony will be narrated to the accused person after he/she returns to the court room.

Witnesses That Will Receive Protective Measures

Article 54:

The prosecutor's office and the court shall protect the following witnesses:

- 1- A witness or a relative of a witness whose security is at risk due to threat, menace or any other similar action.
- 2- A witness that has suffered serious physical or psychological trauma as a result of the crime.
- 3- A witness who suffers from serious psychological conditions.
- 4- A child witness.
- 5- The security forces are required to protect the witnesses mentioned in the above paragraphs based on permission of prosecution office and court until the removal of danger.

Application for Protective Measures for Witnesses

Article 55:

- (1) The witnesses set forth in article 54 of this law may request protective measures to be taken during the investigation and trial process from the prosecutor's office and the court respectively.
- (2) The application shall be submitted to the prosecution office and court in a sealed envelope. Both the prosecutor's office and court shall review the application and make a decision in their relevant areas. Disclosure of this information to others is forbidden.

Section 2 Criminal Case

Chapter 1 Initiating a Criminal Case

Reasons for Initiation

Article 56:

A criminal case shall be initiated based on one of the following reasons:

- 1– Witnessing of a crime while being committed and in other conditions of evident crime.
- 2– Call for help or rescue
- 3– Informing detective or investigation authorities of the occurrence of crime or noticing the signs of crime by individuals or appealing for compensation incurred due to a crime by plaintiff.
- 4– Complaint of agencies or individuals when in accordance with law initiation of a criminal case is dependent upon complaint.
- 5– Request of official agencies in case initiation of a criminal case is dependent upon initiating an official request.
- 6– Notification from an agency, organization or other legal persons that a crime has been committed in the area.
- 7– Observance of signs of a crime by the prosecution office.
- 8– Broadcasting and publication of issues relevant to the committed crime by mass media.
- 9– Individual statements against oneself.

Duties of Citizens and Officials When Informed of a Crime

Article 57:

- (1) The citizens by observing other provisions of this law, when informed of or witness to a crime, are required to inform the police or other judicial officer or prosecutor either verbally or in writing, or with the use of electronic devices.
- (2) Written notification shall contain the identity, signature, date and fingerprint of the reporting individual. Verbal notification shall be recorded in the registry. The reporting individual (if available) and the official who is informed shall sign in the registry.
- (3) Criminal consequences of a false notification shall be communicated to the reporting individual and recorded in the registry.
- (4) A notification without a signature can be a cause for initiating a criminal case only if an accurate investigation is conducted by the relevant authority.

Obligations of Notified Organizations

Article 58:

The notified organization is required to receive the complaints and notifications about the committed crime, make a decision as soon as possible or submit it to the relevant organization for making decision and inform informer of the date and time of the decision along with his/her identity and position.

Initiating a Criminal Case

Article 59

Prosecution office members, in evident crime or a felony after being informed, may go to the crime scene or issue instructions about method of proceedings to relevant authorities.

Crimes Committed by the Presidents of Other Countries or Their Representatives

Article 60

(1) If a crime is committed in Afghanistan by presidents of other countries, international organizations or their representatives or diplomats, a criminal lawsuit shall be initiated against them observing the public international law, agreement of Ministry of Foreign Affairs and written instruction of Attorney General's Office.

(2) If individuals or officials described in paragraph (1) of this article are assaulted, initiating criminal case against the committer shall be dependent upon the request of the aforementioned officials.

Pursuing Crimes of Insulting Governmental Agencies

Article 61

Initiating a criminal case and issuing any decision regarding crimes related to insulting the Presidency, National Assembly, and Judiciary, ~~Attorney General's Office~~, ministries and other governmental agencies shall not be authorized unless requested by the relevant authority.

Withdrawing from the Prosecution of Insulting Crimes

Article 62:

Entities set forth in article 61 of this law can dismiss their application in any stages of the prosecution before the issuance of final verdict. By withdrawing prosecution will be stopped and the accused person (if in detention) will be released.

Preventing the Initiation of a Criminal Case

Article 63:

Initiating a criminal case and making any kind of decision on the crimes set forth in chapters 5, 7, 10, 11, 12, 13, 14, 16, 17, 18, 19, 21, 22, 23, 24, and 25 of the Penal Code 2nd part which involves loss caused by relatives to each other shall not be permissible without a written complaint by the victim.

Multiplicity of Defendants or Victims

Article 64:

(1) If there are multiple suspects or victims, a complaint against one of them is considered a complaint against all of them and withdrawal of a complaint in favor of one of them is considered withdrawal of the case in favor of all of them.

(2) If there are multiple victims, a complaint by one of them to initiate a case is considered a complaint from all the victims.

Incompetent Victim

Article 65:

When the victim is a child or is affected by mental disorders, a complaint shall be filed by his/her legal representative according to the circumstances.

Appointing Representative of the Victim

Article 66:

If the victim does not have a legal representative he/she shall be provided with a representative according to the law.

Victim's Death after Filing a Complaint

Article 67:

If a complaint to initiate a criminal case is contingent upon filing by a victim or his/her legal representative, the victim's death after filing the complaint does not prevent initiating the criminal case, unless their legal inheritors withdraw from criminal case.

Dismissal of Filed Complaint by a Victim or His/Her Representative

Article 68:

- (1) Prior to a final verdict in cases described in Article 63 of this law, a criminal case shall be dismissed upon written request of the victim.
- (2) If there are multiple victims, all must request dismissal in writing before dismissal of the action.

Initiating a Case against Accused Person for Crimes not Adjudicated

Article 69:

While adjudicating a case, if the court finds that there are other people whom a case has not been initiated against or there are incidents in the case which were not attributed to the accused persons, or a felony or misdemeanor is committed which is linked to the attributed accusation of the accused person, the court can issue a ruling to initiate a criminal case for such circumstances.

The court is required to include those reasons in the ruling that form the basis for initiating the criminal case.

Crime Committed in the Court

Article 70:

If a crime is committed during the trial in the court which disturbs the case proceedings, issuance of a decision, affects court prestige, adversely affects the courts judgment, witness testimony or experts view, the court can proceed in accordance with article 226 of this law.

Chapter 2

Dismissal of a Criminal Case and Punishments

Reasons for Dismissal:

Article 71:

Criminal cases and punishments shall be dismissed or stopped for the following reasons:

- 1– In case of statute of limitations.
- 2– In case of the accused person's death.
- 3– In case of general pardon
- 4– In case the law that considered the committed action a crime is repealed.
- 5– In case the victim drops his claim regarding crimes set forth in article 63 of this law.

6- In case the person has been previously tried for the same crime and a final decision was issued in connection to him/her.

7- The statute of limitation is tolled when reasons are beyond the control of authorities. Restarting of statute of limitation period begins when the said reasons are no longer present

Statute of Limitations for a Criminal Case

Article 72:

(1) The criminal case shall be dismissed after the following time periods:

1- Felony, 10years.

2- Misdemeanor, 3 years.

3- Petty crime (obscenity), 1 year.

(2) Crimes provided in the Statute of the International Court of Justice and Final Document of Diplomatic Conference of Rome are exempted from the provision set forth in paragraph (1) of this article.

(3) No reason can interfere with the periods specified for dismissal of a criminal case except in the circumstances stated explicitly in the law.

Calculating the Statute of Limitations

Article 73:

The statute of limitations shall be calculated from the beginning of the criminal act for incomplete crimes or attempted crimes; from the last criminal act committed in habitual and serial crimes; from the date of discovery for embezzlement and forgery cases; and from the date when the crime was committed for other crimes.

End of Duration of a Criminal Case

Article 74:

The duration for criminal case dismissal shall end with conducting investigation, trial and gathering of evidence on condition that the proceedings have been executed in the presence of accused person or he/she has received formal notification of it. The new timeline will be started from the time of recent disconnection.

If the proceeding of criminal case dismissal is disconnected many times, it will start again from the last day of disconnection.

Calculation of Criminal Case Dismissal Period Regarding Other Accused Persons

Article 75:

In case of multiple accused, cessation of criminal case dismissal period for one accused person is also considered cessation of criminal case dismissal period for others.

Statute of Limitations for Punishment

Article 76:

The punishment shall be dismissed after passage of the following time periods after issuance of verdict:

1- If sentenced to execution, after 25 years.

2- If sentenced to continuing imprisonment, after 20 years.

3- If sentenced to long-term imprisonment, after 10 years.

- 4– If sentenced to medium-term imprisonment, after 3 years.
- 5– If sentenced to short-term imprisonment, after 1 year.

Cessation of Legal Proceedings Due to Death of the Accused Person

Article 77:

Prosecution proceedings shall stop at any stage upon the death of the accused person. The victim may pursue his claim for compensation of losses in a civil court. Termination of prosecution proceedings shall not prevent issuance of an order for confiscation of objects used in, or obtained as a result of, commission of the crime and confiscation of items of production, use, preservation, selling and supplying which are considered a crime.

Impacts of Punishment Dismissal on Financial Conviction

Article 78:

Dismissal of non-financial punishment shall not prevent a person from receiving financial punishments. An order of financial punishment on restitution of properties, compensation and confiscation of tools used in the crime and crime proceeds will be enforced on the property of losing party in spite of punishment dismissal.

Amnesty and Its Consequences

Article 79:

- (1) Amnesty is enforced by the law and as a result, the criminal case is dismissed.
- (2) Amnesty drops penalty of principle, consequential, complementary and security measures.
- (3) If amnesty law is issued on one of the punishments of the object of the claim, it will be considered as pardon, and provisions of pardon will be enforced on it.
- (4) Amnesty shall not violate others' rights.

Chapter 3

Crime Detection, Arrest of the Accused Person and Collecting Evidence

Obligation of Assigned Person in Detecting Crime:

Article 80:

- (1) Detection of a crime, according to circumstances, shall take place by the police and national security operative.
- (2) The police and national security operative after receiving notification about a crime or noticing the signs and traces of a crime shall go to the crime scene observing other conditions contained in this law and carry out the following activities:
 - 1– Observing the crime scene and photographing and identifying the circumstances and conditions that reveals the occurrence of the incident.
 - 2– Identifying the type of crime, perpetrator and victim.
 - 3– Arresting and searching the suspect, if necessary.
 - 4– Identifying evidence, proofs, traces and signs related to the crime, perpetrator and its consequences.

- 5– Identifying the individuals who were present in the crime scene at the time of occurrence of the crime and recording the statements of suspect, victim, and crime scene witnesses.
 - 6– Taking necessary measures for safeguarding traces and seizure of items relevant to the crime.
 - 7– Preparing registry, examining crime scene and conducting other relevant proceedings.
- (3) Police and national security operative are obligated to notify the relevant prosecutor within 24 hours after the detection of the crime.

Arrest by Discovery Organizations:

Article 81:

Police and National Security officer may arrest a person at their discretion in the following circumstances:

- 1– While committing a witnessed felony or misdemeanor punishable by medium-term imprisonment according to law.
- 2– A person identified or introduced as committer of felony and poses flight risk.

Witnessed Crime (In Flagrante Delicto)

Article 82:

A crime can be known as a witnessed crime in one of the following conditions:

- 1– The criminal is seen while committing a crime or is seen right after the committing of a crime and is captured by the people.
- 2– The criminal is recognized or followed by the victim, police or witnesses soon after committing a crime and fleeing.
- 3– When someone is arrested with weapon or other items in the crime scene and the existing situation indicates he is the perpetrator and used the tools to commit the crime.

Obligations of Individuals on Handing Over the Witnessed Criminal:

Article 83:

Any individual can use any preemptive tools and equipment if he/she observes someone committing a crime to prevent him/her from fleeing, and shall hand over the perpetrator to the closest police station or relevant prosecution office. In case of failure, they cannot his required description and notify the relevant authorities in writing or orally about the incident.

Crime Scene Evacuation Forbiddance and People Summons

Article 84

- (1) As soon as reaching the witnessed crime scene, police shall forbid evacuation of those persons who witnessed the crime until the preparation of the registry.
- (2) Police can summon those persons/witnesses whom they feel could provide additional information about the incident.

Recording the Actions:

Article 85:

- (1) Actions taken in the crime scene or afterwards for the purpose of detection shall be recorded by one of the relevant officials in writing as below:

- 1– Activities set forth in paragraph (2) of article 80 of this law.
 - 2– Complete or brief description of the suspect, accused person, victim, witnesses and experts statements obtained during the proceedings.
- (2) The statements of suspect, accused person, victim, plaintiff, witnesses and present people and informer of the crime scene should contain their signatures; if the person is unable to sign he/she should fingerprint the statement.
- (3) If the individual set forth in paragraph (2) of this article refrains from signing the statement or it is not possible to obtain their signatures or fingerprints at the time, the assigned official is obligated to write down the issue and sign it.
- (4) If proceedings set forth in this article are noted and registered by the assigned official as stated above, it shall be considered as an official document.

Arrest Registry of the Suspect

Article 86:

- (1) Police and national security operative shall be duty-bound to prepare a registry for the suspect's arrest. The registry shall contain the following:
- 1– Reason for arrest.
 - 2– Date of arrest (time, day, month, and year).
 - 3– Place of arrest.
 - 4– Primary statements of the arrested person.
 - 5– Details of the incident
- (2) Arrest registry shall be signed by the person who prepares it and other people who were present during the arrest and the suspect's fingerprint shall be obtained.

Case Submission to the Prosecutor

Article 87:

- (1) Police are obligated to officially send the registry of performance along with collected documents, evidence and grounds to the prosecutor's office and also hand over the suspect to the relevant prosecutor's office within 72 hours for investigation, after the suspect is arrested.
- (2) The registry set forth in paragraph (1) of this article shall consist of the following information:
- 1– Type of criminal incident.
 - 2– Place and date of crime and proceeding of arrest of the suspect.
 - 3– Commencement of detection and its completion.
 - 4– Suspect's personal information, fingerprints, photograph and other characteristics.
 - 5– Personal information of case eyewitnesses and others who provided statements and the information obtained from them in this regard.
 - 6– Description of the incident and statements of the victim, suspect, witness and experts report.
 - 7– Stating the number of papers and documents obtained.
 - 8– Detection official's identity and signatures.
 - 9– Other information about the crime which needs to be mentioned.

(3) If the suspect is not initially identified and arrested in a criminal case, the police are obligated to take required measures to identify the suspect, obtain an arrest warrant based on legally obtained evidence from an authorized source, and report the results to the relevant prosecutor's office.

Prosecutor's Authority in Releasing or Detention of the Suspect;

Article 88:

After receiving the registry set forth in article 86 of this law, the prosecutor shall proceed as follows:

- 1- If based on provisions contained in this law detention of the suspect is not necessary the prosecutor shall immediately issue his release order on bail or without bail based on circumstance.
- 2- If the prosecutor deems necessary to detain the suspect for completing the investigation, according to the circumstances, he/she will issue the detention order within the provisions of this law
- 3- If the proceedings requires alternative presence of the accused person, and the accused person is not subject to detention, the prosecutor may ensure the accused person's presence by taking precautionary measures such as enforcing bail, requiring the accused person to report to the police station or not to leave the town or district.

Request to Correct the Proceedings

Article 89:

If the prosecutor after receiving case documents discovers that law provisions have not been observed in preparing registries of detection, and collecting evidence and grounds or sufficient evidence have not been collected justifying further actions, they will write down the points and instruct the detection organizations for sound performance.

Request for Collecting New Reasons

Article 90:

If the prosecutor discovers that the case involves other criminal aspects or other people are involved in the crime as accomplices and evidence has not been collected against them, the prosecutor may commence investigation of the case considering available evidence and meanwhile instruct the police and other relevant authorities to collect new evidence.

Police and National Security Operative Violations

Article 91:

If the prosecutor during an investigation discovers that the police and national security operative have committed legal violations in dealing with a case, they shall report the matter to the concerned competent authority according to the circumstances.

Chapter 4 Summon and Arrest Warrant

Summons

Article 92:

(1) The prosecutor and court may summon anyone if in accordance with provisions of law their statements or appearance is considered useful and effective in legal prosecution. The police issue the summons letter.

(2) If the summoned person does not appear on time without good cause or refrains from coming, the prosecutor and court can issue a summons warrant through police.

Summon and Arrest Warrants

Article 93:

(1) The summons and arrest warrants shall be written in 3 copies out of which 1 copy will be filed in the office and 2 other copies will be submitted to the police officer. The police shall file 1 copy in the office and present the other copy to the summoned person. The issued orders shall contain the following information:

- 1– Name, father's name, job and place of residence of the summoned person.
- 2– Name and address of the administration issuing the summons warrant.
- 3– Causes for issuing summons warrant and the law article which sanctions such order.
- 4– Time, place and date of appearance.
- 5– Obligations of police regarding issuance of the summons warrant and the measures that need to be taken by the police should the summoned person ignore the summons warrant.

(2) The summons warrant shall have a number and date and it shall be registered, signed and stamped by the issuing authority.

Validity Period of Summons

Article 94:

(1) Police are obligated to enforce the orders issued for summons of a person by the authorized bodies.

(2) Orders issued for summons are effective for (180 days) from the issuance date, unless they are rescinded or extended by the authority that has issued the order.

Summons Order Notification

Article 95:

(1) The person shall be notified of the summons order at his/her place of work or residence by the police, and a copy of the order shall be served to him/her and their signature or fingerprint shall be obtained on a copy.

(2) If the person can't be found in his/her work place or residential address, the summons order shall be submitted to one of his/her family members who resides with him/her or to any relatives and their signature and fingerprint shall be obtained; the issue will be stated in the registry otherwise.

(3) If the measures set forth in paragraphs (1) and (2) of this article is not applicable, the summons order shall be submitted to the nearest administrative authority of his/her place of work or residence.

(4) If the residential address of the person is not found, police are obligated to take necessary actions in order to find the residential address or the place of work of the person. If the aforementioned actions fail, the police are obligated to send the summons warrant to administrative authorities that are located in the area of the most recently verified place of residence of the person.

(5) The summons order can also be communicated through telephone or other electronic or communication devices on condition that it includes date, time and identification of the

person on the other end of the line as well as signature of the caller on the phone conversation transcript

Notification of Summons Outside of Residential Place

Article 96:

- (1) If the summoned person is in the prison or detention center, the summons order shall be communicated to him/her through the relevant administration.
- (2) The summons order of employees shall be submitted to their relevant office.
- (3) The summons order of armed forces officials, police, national security and other military forces shall be submitted to their relevant ministry or unit.
- (4) The summons order of legal persons shall be submitted to their central office or nearest branch.
- (5) Summons order of the person that lives abroad shall be communicated by the Ministry of Foreign Affairs through its Political or Consul Offices.

Arrest Warrant

Article 97:

If the summoned person ignores the summons letter without presenting good cause or if there is clear indication of his concealment or flight or his freedom could result in loss of criminal traces and signs of the crime or if he does not have a specific address in that neighborhood, his arrest warrant shall be issued according to the circumstances by the prosecutor, court or the police may arrest him according to the provisions set forth in this law.

Prohibition of Notification at Night

Article 98:

The notification of arrest and summons in one's house at night is prohibited, unless there is risk of escape or destruction or alteration of evidence of a felony.

Chapter 5 Detention

Legitimacy of Detention

Article 99:

- (1) A suspect or accused person may be detained in accordance with the provisions of this law.
- (2) The detention center officials neither can admit a suspect or accused person to a detention center when there is no issued order of the authorities set forth in this law, nor can a detainee be kept for more than the period specified in the detention warrant.
- (3) The prosecutor's office and court may issue the detention warrant of a suspect or accused person in a felony or misdemeanor case in one of the following conditions:
 - 1- When there is evidence that a suspect or accused person has committed a felony.
 - 2- When there is an evident crime (in flagrante delicto)
 - 3- When identity of a suspect or accused person is unknown.
 - 4- When there is a risk of flight or concealment of a suspect or accused person in a misdemeanor crime.

- 5– When fear of losing or alteration of evidence related to the crime exists.
- 6– When a suspect or accused person does not have a permanent address in the relevant neighborhood.

Detention Period during the Investigation

Article 100:

- (1) The prosecutor after taking custody of a suspect, if reasons set forth in paragraph (3) of article 99 of this law exist, can issue a detention warrant for 7 days for misdemeanor crime and 15 days for felony crime taking the circumstances into considerations.
- (2) If the detained person or his/her defense attorney or legal aid provider objects to extension of the detention, or if the prosecutor requests an extension of detention in accordance with paragraph (3) of this article, the prosecutor shall bring the person in detention before the court 3 days prior to expiring of the detention period to issue a ruling on extension of the detention. The accused person, defense counsel or his/her legal aid provider shall have a right of presence and objection at such a hearing.
- (3) In case 7 days for misdemeanor crime and 15 days for felony crime do not suffice for completing the investigation and preparing indictment, the prosecutor can request the relevant primary court, in accordance with the provisions of paragraph (2) of this article, for the following extensions of detention of the accused person:
 - 1– In misdemeanor crime, for up to 10 days.
 - 2– In felony crime for up to 30 days.
- (4) If the need to have the suspect or accused person in detention ends before completion of the period, the detention order will not prevent the release of the accused person on bail or without it.
- (5) If the prosecutor cannot complete the investigation within the period set forth in paragraph (3) of this article and the need for extension of detention period according to the provisions of this law exists, the primary court upon request of prosecution office, after evaluating the reasons of prosecutor and statements of the accused person, shall extend the detention of the accused person for 10 days for a misdemeanor and 30 days for a felony crime. The accused person and his defense counsel or legal aid counsel shall have a right to be present and object at such a hearing.
- (6) Extension of detention of an accused person by a primary court shall in no case exceed 20 days for a misdemeanor and 60 days for a felony.

Detention of the Accused Person after Submission of the Case to the Court

Article 101:

- (1) Once the case is referred to the court, the fate of the accused person in detention is decided by the relevant court. The relevant court can issue the accused person's detention order during the court proceeding according to the following:
 - 1– During the court proceedings in a primary court up to 30 days.
 - 2– During the court proceedings in an appeals court up to 30 days.
 - 3– During the court proceedings in the Supreme Court up to 60 days.
- (2) If the case is returned to the prosecution office by the court based on some deficiencies in investigation, the court is obliged to determine the fate of the accused person according to the authorities stated in paragraph (1) of this article.

(3) The total detention time period in all court proceedings (primary, appeal, and Supreme Court stages) shall not exceed 120 days.

Detention for the Purpose of Hearing the Objection to an Acquittal Verdict

Article 102

If the prosecutor, in felony crime, protests against the primary court's verdict on acquittal of the accused person, the higher court shall consider extension of detention and shall make the necessary decision on detention or release of the accused person prior to hearing the original case. If the higher court does not issue the extension of detention of the accused person within a maximum time period of 15 days, the accused person should be released immediately.

Obligations of Detention Center Officials

Article 103:

(1) Detention center officials are obligated to enforce the accused person's detention order as issued (i.e., according to its terms) by relevant authority and within the time limit specified in this law.

(2) Detention center officials are obligated to release and hand the detainee over to the prosecutor's office immediately when his/her detention time has expired, or the detention order has been nullified, or his/her release order has been issued, or he/she has been acquitted by authorized organizations, considering the provision of this law, unless otherwise a ruling is issued which convicts him/her exceeding served detention time or extends his/her detention.

Notification of Illegal Detention

Article 104:

If a person has information that another person is being detained illegally, or is detained in a place other than a place authorized by law, he/she is obliged to inform the responsible prosecutor's office.

The responsible prosecutor's office is obligated to conduct an investigation and prosecute the perpetrator.

Chapter 6 Temporary Release

Release on Bail

Article 105:

The prosecution office or the court despite of incriminating evidences and observance of conditions set forth in paragraph (3) of article 99 of this law, may issue an order for temporary release of the accused person on bail or without it at their own discretion or based on the request by the person under detention, or his/her legal representative.

Amount of Bail

Article 106:

- (1) In all cases, amount of bail will be determined by the presiding judge of the court.
- (2) The presiding judge shall determine the amount of bail based on the severity of the accusation and incurred loss.
- (3) Amount of bail shall never be set for less than the incurred loss.

Amount of Allocation of Bail

Article 107:

It shall be explained in the bail order that if the person does not appear during the investigation, trial and enforcement of the verdict or in case of any other breach, a quarter of the amount will be deposited to the Government bank account and the rest will be allocated to the execution of cash fines and compensation for losses which the person is likely to be convicted.

Payment of the Bail Amount

Article 108:

(1) The accused person, suspect and any other individual can pay the amount of bail. The amount of bail may be paid through depositing cash or hand over of valuable document (transactional documents) or bank credit in the bank to the account of court or prosecution office. The moveable goods shall be kept in court or prosecution office deposit warehouses after its specifications are determined and a receipt is issued.

(2) If the bail is a vehicle, it shall be guaranteed through a relevant court or a relevant traffic office by a legal deed.

Non-Consideration of Demand for Detention

Article 109:

Demands made by victims or plaintiffs on detention or objection to release or revocation of related orders shall not be heard, except in Qesas and Deyyat in which the case is claimed only by the victim or plaintiff.

Precautionary Measures

Article 110:

(1) If it is proven to the court or prosecutor's office that the accused person is not able to pay the bail, a summons guarantee shall be obtained from him/her. Whenever the guarantor is not someone reliable and credible, he/she can serve as guarantor only when he/she commits to pay the amount of guarantee stipulated in article 106 of this law should he/she fail to bring the guaranteed person. In such case the prosecutor or court may take the following precautions:

- 1– Must reside in a specific location
- 2– Must appear at specified times, according to the circumstances, to a police station, prosecutors office or court.
- 3– Must inform police of leaving the specific location and its length of time.

(2) If there are justified reasons to fear escape of a suspect or an accused person, the court may issue an order banning him/her from leaving the country.

Arrest and Re-Detention

Article 111:

If reasons for the need to detain the accused person are revealed or he/she disregards the conditions set forth in article 110 of this law or there's another legally justifying reason, the temporary release order cannot prevent issuance of arrest or re-detention order of the accused person in accordance with the provisions of the law.

Chapter 7

Covert Surveillance Measures

Legitimacy of Covert Surveillance Measures

Article 112:

- (1) Covert Surveillance measures could be applied to detect crimes stipulated in article 113 of this law and to collect evidence.
- (2) Covert Surveillance measures are as follows:
 - 1– Listening (wiretap), inspecting, or taping the suspect's and the accused person's conversations made through phone, computer, internet and other communication and information technology equipment and collecting information about location, sources, distance, route, time, date, amount, and length of conversation and type of communication.
 - 2– Covert electronic surveillance or recording conversations and activities of individuals in private houses and residences and public spaces.
 - 3– Inspecting financial transactions which take place in banks or other financial and business institutions.
 - 4– Inspecting the official letters, packages, containers and parcels including inspecting the material and technical tools.
 - 5– Allowing the transfer and transit (controlled delivery) of illegal or suspected consignments from Afghanistan territory to one or more countries, with knowledge and under supervision of relevant judicial authorities.

Crime Requiring Covert Surveillance Measures:

Article 113

Covert surveillance measures may be taken against the suspect or accused person of the following crimes:

- 1– Crimes related to terrorism, money laundering and financing terrorism.
- 2– Crimes stipulated in the law against internal and external security.
- 3– Crimes related to drugs and intoxicants.
- 4– Corruption crimes.
- 5– Kidnapping and human trafficking crimes.
- 6– Murder crimes.
- 7– Crimes related to threatening of the witness, judges and prosecutors and family members of each of them under their investigation when committed for the purpose of preventing application of justice.
- 8– Crimes stipulated in Statute of the International Criminal Court and Final Document of Rome Diplomatic Conference.

Conditions for Taking Covert Surveillance Actions:

Article 114

Secret surveillance measures can only be taken by the request of a prosecutor and authorization of a court in the following circumstances:

- 1– When the person is a suspect or accused person of committing one of the crimes set forth in article 113 of this law or is an accomplice in the crime.
- 2– When collecting the required evidence is not readily obtainable by other means or using other approaches may cause problems.
- 3– When a person provides the suspect or accused person with information technology and/or communication equipment with the knowledge that the suspect or accused person uses the equipment in crimes stated in article 113 of this law.
- 4– When a person provides a suspect or accused person with the information related to crime.

Contents of Taking Covert Surveillance Measures and Non-Disclosure
Article 115:

- (1) The judicial officer is obliged to obtain permission from an authorized court through relevant prosecutor for application of covert surveillance actions. The request shall be in writing including the following:
 - 1– Complete personal information of the target person.
 - 2– Type of crime.
 - 3– Type of covert surveillance action.
 - 4– Good causes for application of covert surveillance measures.
 - 5– Time of initiation and period required for application.
- (2) The court shall issue an order authorizing the covert surveillance if the conditions in paragraph (1) are met otherwise the court shall reject the request stating the reasons for doing so.
- (3) If the required conditions based on which surveillance actions were taken changes or is eliminated, the court that issued the ruling may amend or dissolve it.
- (4) In cases indicated in paragraph (3) of this article the judicial officer is obliged to inform the relevant prosecution office immediately and the prosecution office shall inform the court in writing about the changed conditions.
- (5) An order issued in accordance with provisions of this chapter may direct any real or legal person to use or permit the use of covert surveillance measures to monitor and record communications and activities of the persons named in the order.
- (6) A person subject to an order described in paragraph (1) shall not disclose the existence of the order or ongoing covert surveillance to any person other than its legal counsel without the permission of the court.

Time Period for Covert Surveillance Actions
Article 116:

- (1) The time period for surveillance actions shall be (90) days and may be extended if needed.
- (2) Surveillance actions shall be carried out only during detection and investigation proceedings.

(3) The judicial officer shall report on improvements and results achieved in covert surveillance activities every 30 days to the prosecution office. The prosecution office shall report those activities to the court.

(4) In case of need for extension of covert surveillance actions order, the results achieved from carried out surveillance actions or the reasons for not achieving the intended results shall be included in the request for extension.

Listening and Inspection of Conversations and Communications

Article 117:

The judicial officer will listen only to conversations with criminal contents. Whenever parties start other than criminal conversation the judicial officer is obliged to stop listening to the conversation.

Maintaining Documents of the Communication

Article 118:

The documents related to the conversations or communications shall be sealed and locked in a proper case and within 30 days after completion of inspection and listening period shall be handed over to the court that had issued the communication inspection and listening order in order to protect it from theft, demolition and to prevent its illegal disclosure.

Chapter 8 Inspection and Search

Inspection of Houses and Residential Buildings:

Article 119

(1) Police, in-charge officer of the National Directorate of Security, and prosecutor cannot enter and search a residence of a person or other residential buildings without permission of the resident or prior search warrant from the competent court.

(2) If it is deemed necessary to inspect a residence or residential building, police, in-charge officer of the National Directorate of Security, and prosecutor are duty-bound to request permission for inspection from a competent court. The proposal for inspection permission letter contains the following:

- 1– Type of crime.
- 2– Purpose and subject of the inspection.
- 3– Date, time and location of inspection.
- 4– Duration of inspection.

Inspection Authorization

Article 120

The competent court shall allow entering a residence or residential building and inspecting them in the following situations:

- 1– If the person stands against summons or violates enforceable provisions and is staying in the target residence or residential building.
- 2– If the person's arrest warrant has been issued and the person in question is hiding in the target residence or residential building.

3– If crime, felony or misdemeanor has been committed in the residence or residential building and inspection of crime scene requires entry to it.

4– If there are definite indications of hiding a suspect or an accused person in the residence or residential building, or concealing banned objects or objects related to a misdemeanor or felony therein.

Procedure of Inspection

Article 121:

(1) While inspecting the residence or residential building, presence of a policewoman is deemed necessary.

(2) Entrance to the residence or residential building occurs through the door by showing police or prosecutor identification cards and with permission letter from a competent court, in case of impediment, the police shall use the minimum force to enter the residence or residential building.

(3) For collecting evidence, the inspection of residence or residential building can only be conducted to search for objects related to the crime being detected and investigated.

(4) If police, in-charge officer of the National Directorate of Security, and prosecutor, while inspecting notice items which are, based on the provision of law, considered a crime to possess or they may help in the detection of other crimes, they may seize them.

Body Search

Article 122:

(1) Police, National Directorate of Security officer, and the involved prosecutor, based on the provision of law, can do a body search of the person whose arrest is permitted in such situation.

(2) Body search includes inspection of person's exterior body, clothes, and other items that he/she has with him/her.

(3) Searching of the person shall happen with respect to his/her character and human dignity.

(4) Search of a woman shall be conducted by a policewoman and search of a man shall be done by a policeman. If police of the same gender is not available in the search area to search the person who needs to be searched, a police officer can ask another appropriate person of the same gender and instruct him/her in searching.

(5) A body search shall not happen in the presence of persons of the opposite gender.

Situations of Search of a Person

Article 123:

In the following conditions body search of a person may happen without considering the provision set forth in paragraph (1) of article 122 of this law:

1– If security measures require.

2– If the person has been arrested or detained red-handed.

3– If the person carries the banned items or items relevant to the crime or to be used in committing a crime such as a firearm or lacerating weapons that can be used in an attack or that can hurt another person.

Permission to Enter a Residence or Residential Building for a Witnessed Crime (Flagrante Delicto)

Article 124:

(1) In cases of witnessed crimes, whether felony or misdemeanor, without considering the provision set forth in article 121, police, prosecutor, in-charge officer of the National Directorate of Security may enter the residence or residential building of a person and inspect it and confiscate the items and documents that are useful in detection of the crime. The incident shall be recorded in the registry and the signature and fingerprint of the suspect, the accused person or resident of the residence or residential building shall be obtained. In case they refuse to sign or apply their fingerprint, the issue shall be recorded in the registry. If possible, certification of residents or neighbors should be obtained regarding the issue.

(2) In conditions set forth in paragraph (1) of this article, police, prosecutor, and in-charge officer of the National Directorate of Security are obligated to obtain verification for their action from the competent court through the prosecution office within 5 official days.

Presence of the Suspect or Accused Person During Inspection

Article 125:

(1) Inspection of the residence or residential building shall happen in the presence of the suspect, accused person or one of the residence or residential building residents if available.

(2) If there is no other resident in the residence or residential building except for the suspect or accused person, or if the suspect or accused person is also absent, residence or residential building inspection shall happen in the presence of 2 witnesses who are kinfolk, relatives or neighbors to the aforementioned people. In such case, the incident shall be recorded in the registry and signatures or fingerprints of the present individuals obtained.

(3) The registry set forth in paragraph (2) of this article shall contain the following:

- 1- An explanation stating that the resident was informed of his/her legal rights.
- 2- Statements of the present individuals.
- 3- Details as to whether the confiscated items were submitted voluntarily or taken by force.
- 4- Location of confiscation and condition of concealment or place of confiscated documents and items
- 5- Mention of the accurate amount, quality, and other specifications of the confiscated items, and if possible their real values.

Sealing Off Locations

Article 126:

Police, National Directorate of Security officer and prosecutor, can seal off and assign guards to the places where there are evidence, crime results and other items in crime detection; in such case the relevant prosecution office shall be immediately informed of the issue.

Complaint of the Resident or the Landlord:

Article 127:

The resident of the residence or residential building may complain against the executions of police, National Directorate of Security officer or prosecutor; in this case in light of circumstance, the complaint letter shall be submitted to the prosecutor, higher prosecutor or

the court; the prosecutor or the competent court is obligated to take action on the matter immediately.

Recording Crime Detection Facts Supporting Objects in the Registry:

Article 128:

- (1) During inspection of a residence, residential building or search of a person, police, National Directorate of Security officer, and prosecutor may seize weapons, commodities, documents and other things which have been used in committing the crime or which have been obtained as result of the crime, or have been provided with the intention of committing the crime.
- (2) The items set forth in paragraph (1) of this article are brought to the attention of the suspect or the accused person and their opinions shall be taken regarding the matter, the incident is recorded in the registry and a signature and fingerprint of the suspect or the accused person shall be obtained. In case they refuse to sign or apply their fingerprint, it shall be recorded in the registry and certification of a resident of the residence or a neighbor shall be taken.
- (3) If the items set forth in paragraph (1) of this article were confiscated from another person, after being brought to the attention of the suspect or the accused person and his/her opinions were obtained, it shall be recorded in the registry in accordance with the provisions of this law.

Description and Sealing Confiscated Documents

Article 129:

- (1) Police and in-charge officer of the National Directorate of Security are obligated to describe the confiscated documents and items and place them in a closed box which shall be ribbon bound, sealed and stamped. The date of seizure of the items shall be written on the ribbon and the process shall be recorded in the registry.
- (2) Description of the confiscated documents and items are written in 3 copies. The first copy is put in the box, the second is given to the owner whom the items are confiscated from, and the third copy is attached to the relevant documents.

Seal and Stamp Protection

Article 130:

The seal and stamp, completed in accordance with article 129 of this law, may not be opened, unless by the permission of the prosecutor and in presence of the suspect or the accused person and the person whom the documents and items are confiscated from or their legal representatives.

Forbidding the Confiscation of Items and Documents

Article 131:

The prosecutor cannot confiscate documents that the accused person or the suspect intends to submit to an expert for examination, or the correspondences that occur between the suspect or the accused and his/her defense attorney, unless stipulated otherwise in the law.

Issuing Order Regarding Confiscated Items

Article 132:

The prosecutor shall check the confiscated documents and items in the presence of the suspect or the accused or the person whom the items are confiscated from and if presentation

of the items are needed and relevant in the trial process and they are subject to confiscation, the prosecutor may issue an order to retain and attach them to the file or otherwise the prosecutor may issue an order for the items to be delivered to their owner or sender.

Returning a Copy of the Documents to the Owner

Article 133:

In case the person from whom the documents were confiscated needs the documents, an approved copy of the documents is returned to him/her at the applicant's expense, provided that it shall not interfere with the investigation.

Forbiddance to Disclose Information

Article 134:

- (1) Police, National Directorate of Security officer, and prosecutor are obligated to avoid disclosure of the contents of documents and information obtained while discharging their duty.
- (2) During inspection or other prosecution processes, anyone who learns of the contents of the documents and items and discloses that information to someone else other than relevant justice and judicial authorities or somehow abuses them, shall be punished in accordance with the provisions of the law.

Forbiddance of Confiscation of Items and Documents

Article 135:

- (1) Police, National Directorate of Security officer and prosecutors, during inspection, may not confiscate documents and items that have no relation to the criminal case.
- (2) After the items and documents related to the crime are confiscated during the inspection, the police, National Directorate of Security officer and prosecutor are obligated to end the inspection.
- (3) Violations of the provisions set forth in paragraphs (1) and (2) of this article are considered an abuse of authority and the offender shall be punished in accordance with the provisions of the law.

Inspection of Legal Persons' Buildings

Article 136:

Police, National Directorate of Security officer and prosecutor are obligated to inspect the buildings of legal persons in accordance with the provisions of this law in the presence of its legal representative.

Submitting a Copy of the Registry to Participant

Article 137:

After inspection and completing the registry, police, National Directorate of Security officer and prosecutor are obligated to submit 1 copy of the registry to the person that was present during the inspection, based on his/her request and obtain his/her signature or fingerprint.

Chapter 9

Measures Relating to Seized Items

The Order on the Return of Confiscated Items

Article 138:

The prosecutor's office or court may order the return of items confiscated during the detection and investigation with or without the request of the owner, even prior to issuing of verdict, on the condition that the mentioned items are not related to the case proceedings and they are not the items which based on law are not to be confiscated.

Ownership Dispute

Article 139:

In the event of a dispute pertaining to the confiscated items, the prosecutor cannot order their return. In this case, the issue is referred to a competent court for resolution.

Request for the Return of Confiscated Items

Article 140:

The claimant can request that the prosecutor's office return the confiscated items which are his/her property. In case his/her request is rejected by the prosecutor's office, he/she can present his/her reasons and complaints to the competent court.

Returning Confiscated Items

Article 141:

(1) Confiscated items are returned to the person from whom they were seized. If the confiscated items are the subject of the crime or instruments used to commit the crime, they are returned to the person who lost their possessions due to the event of the crime, provided that in accordance with the law he/she has the right to keep them.

(2) An order for the return of the confiscated items shall not preclude the contesting parties from bringing the case before a civil court. If the order is issued based on a request made by one side in the presence of the opposing party and the items were returned to him/her, the opposing party cannot raise a claim.

Confiscated Items and Dropping a Case

Article 142:

Should a ruling be issued dismissing a case, the competent authority is obligated to resolve the question of possession of the confiscated goods.

Time Period for Demanding the Return of Confiscated Items

Article 143:

Should the contesting parties fail to demand the return of the confiscated goods within 3 years from the termination of the case, the goods shall become State property without the issuance of an order.

Perishable Items

Article 144:

If a confiscated item is an item that depreciates over time or its maintenance requires expenses equivalent to its price, it shall be authorized to be sold through auction by the permission of the competent court and the money earned from them deposited in a safe

account in the bank. In this case, the owner can request the amount, which was acquired through the sale of the item within 3 years of the claim's conclusion.

Chapter 10

Investigation of Crime

Performance of Investigation

Article 145:

- (1) Investigation is required for all felony and misdemeanor crimes and it is performed in the presence of the accused person's and suspect's defense lawyer by the prosecutor in accordance with the provisions of this law.
- (2) Purpose of the investigation is to access the facts of the case, achieve certainty on commission of crime and to identify its perpetrator. The prosecutor considers the following conditions for this purpose:
 - 1- Assessing all aspects of the case to determine the capacity of suspect or accused person and to identify the nature and legal description of the committed action, manner of commission and motive behind commission of the crime.
 - 2- Identifying the perpetrator and assessing his/her criminal background and identifying his/her share in causing the effect and manner of investigation of the crime and its causes.
 - (3) The prosecutor is obligated to use any means which legally leads to the identification of the crime, perpetrator, and determination of the relationships and facts. To this end, the prosecutor shall collect and analyze both incriminating and exculpatory evidence equally.
 - (4) The prosecutor shall go to the crime scene for witnessed felony crime in person and shall provide instructions regarding keeping of signs and collecting of incriminating evidence. The prosecutor shall listen to the statements made by the witnesses, victim's comments and statements and other individuals aware of the case. .
 - (5) The prosecutor shall oversee reviews and assessments by the experts, ask specific questions and request necessary explanations.
 - (6) The prosecutor may question anyone related to the criminal case about the crime and shall personally interrogate the accused person.
 - (7) The prosecutor may ask police, National Directorate of Security officers and other authorities for assistance during investigation and shall oversee their performances during investigation.
 - (8) The investigation of crimes, not related to their duties, committed by police, Afghan National Forces, National Directorate of Security officers/employees and the military personnel of Civil Departments which have military personnel within their organizational structures shall be conducted based on provisions of this law.

Assessing the Collected Evidence

Article 146:

Prosecutors shall perform the following during the investigation for determining the collected evidence:

- 1- Interrogation of the accused person.
- 2- Questioning the witnesses separately.
- 3- Cross-examination of the witnesses and comparison of provided statements.

- 4– Examining evidence and items collected at the crime scene.
- 5– Inspection of accounting and finance documents.
- 6– Inspection of residential and other buildings.
- 7– Requesting experts' comments, investigating, accepting or rejecting them, or requesting for further clarifications of the matter.
- 8– Providing necessary instructions on using other methods which support the discovery and do not contravene the provisions of this law.

Prosecutor With Investigative Authority

Article 147:

Investigation of a crime normally falls under the jurisdiction of the prosecutor's office at the crime scene, place where the accused person is arrested and the residential place of the accused person respectively. This shall not prevent other prosecutors from performing investigations in their relevant fields or assignment of a prosecutor by the Attorney General in certain cases.

Attributing a Crime to the Accused Person

Article 148:

The prosecutor is bound to establish the identity of the accused during his first visit, and to inform him/her of the charges attributed to him/her and after notifying him/her of having the right to have a defense lawyer obtain his/her comments regarding the case.

The statements of the accused person shall be entered into the registry and his/her photo shall be attached to a special form.

Time Period for Completion of Investigation

Article 149:

(1) The prosecution office is obligated to complete the crime investigation and file an indictment in the following periods:

- 1– For a petty crime (obscenity), up to 10 days.
- 2– For a misdemeanor, up to 27 days.
- 3– For a felony, up to 75 days.

(2) The prosecutor may rely on detection documents and report on petty crime (obscenity) in which reconciliation is achieved or the accusation is not supported by the collected evidence or the law has only anticipated a fine for that crime.

(3) If the accused person is not under detention, the attorney general can extend the investigation period and time for filing an indictment for a misdemeanor up to 90 days, and for a felony up to 180 days.

Right of the Accused Person to Remain Silent

Article 150:

(1) The accused person may remain silent in response to any question being asked. In case of silence and refusal to answer, the details are logged in to the registry.

(2) Silence of the accused person is not considered his/her statement.

(3) Statement, confession, and testimony taken from the accused person or the witnesses by lure, threat, dismay or coercion are not valid.

Prohibition of Night Summons and Inspection

Article 151:

Questioning, interrogating, obtaining information or statements at night shall not be allowed unless there is a witnessed crime or a fear of evidence getting destroyed or the crime is a felony or a continuing misdemeanor.

Requesting a Defense lawyer

Article 152:

The prosecutor shall prior to investigation request the accused person to have a defense lawyer with him/her. If the accused person refrains from having a defense lawyer, the issue shall be recorded in the registry and the accused person's signature obtained. If the accused person states that he/she is financially unable to have a defense lawyer, he/she shall be introduced to the Legal Aid Department according to provisions of the law and the relevant regulation.

Not introducing a defense lawyer or refraining from having a defense lawyer in misdemeanor crime shall not avert investigation or lead to destruction of evidence.

In a felony crime, the prosecutor shall be duty-bound to assign a defense lawyer for the accused person and if the accused person's indigence is proved, a legal aid or a defense attorney shall be provided for him/her by the Legal Aid Department according to provisions of the relevant regulation.

Multiple Accused Persons in a Single Case

Article 153:

If in a single case, multiple people are accused, each accused person shall be investigated separately and each individual's share in the case shall be determined, and each shall have a penal accountability in respect of his/her cooperation and participation in the case. The prosecutor shall prevent any contacts between the accused persons until the investigation is completed.

Investigation of Multiple Crimes Attributed to a Single Accused Person

Article 154:

If commission of multiple crimes is attributed to a single person, all cases attributed to him/her committed by a single motive, regardless of the place of commission, shall be investigated by the prosecutor's office, wherein its jurisdiction the most severe crime has been committed. In case the criminal cases are not related to each other, the prosecution office of the same jurisdiction is obligated to divide and investigate each case separately.

Separating and Unifying the Cases

Article 155:

- (1) The prosecutor can unify different cases under the following conditions:
 - 1- If multiple crimes have been done by one or more persons to achieve the same goal.
 - 2- If multiple ongoing investigations of perpetrators concerning a single crime are investigated in different districts.
 - 3- If proving evidence is related to different crimes or different people.
- (2) The prosecutor can divide and separate different cases under the following conditions:
 - 1- If ongoing investigation in one district may slow the process of the case.

- 2– If the crime was committed jointly by adults and children.
- 3– If another person is involved in crimes related to duties of police, Afghan National Forces personnel, National Directorate of Security personnel or military personnel of other ministries and departments which have military structures outside the mentioned structures.

Questioning of the Accused Person and His/Her Verbal Statements

Article 156:

The prosecutor is obligated to ask the suspect in the beginning to state his/her role in the crime. If he/she confesses to the material element of the crime or to a part of it, or provides information with respect to the issue, the prosecutor shall request him/her to provide further details as to how the criminal action was committed.

During questioning, the accused person is to be given the opportunity to state his/her reasons for elimination of suspicion and to express the facts that are in his/her favor.

Reading the Recorded Statements of the Suspect

Article 157:

- (1) Statements of the accused person are written verbatim into investigation documents.
- (2) Statements set forth in paragraph (1) of this article shall be given to the accused person or read to him/her by an assigned person. The accused person has the right to confirm, refuse or make changes to the recorded statements. These changes shall be written in the investigation documents and the accused person or his/her legal representative shall sign or apply his/her fingerprint.

Writing the Statements

Article 158:

- (1) The accused person may write his/her statement in his/her own script during investigation or have his legal representative write it down.
- (2) If the accused person is not able to read or write or he/she or his/her legal representative does not want to write the statements, an assigned person shall record his/her statements.

Signing of the Documents

Article 159:

- (1) Investigation documents are prepared in 2 copies and are signed by the prosecutor, the accused person or his/her legal representative or the fingerprint of the accused person is applied on them. A copy of the investigation papers are kept until a binding decision is issued.
- (2) If the accused person refuses to sign or apply his/her fingerprint on the paper or refuses to answer, or he/she does not have a legal representative, the incident is recorded in the investigation document.

Translation of Statements

Article 160:

If the accused person, or other persons whose statements and information are useful for investigation, do not understand the language used in investigation, their statements shall be translated by a translator.

The translator should be fluent in both languages and shall take an oath before carrying out the job that he/she shall translate whatever he/she hears from the speaker completely and

trustworthily and without changing the context, into the investigation language. The translation shall be read to the speaker in his/her language. If it is approved or amended by the suspect, the final translation shall be signed by the speaker or his/her legal representative, the translator and the assigned prosecutor.

Registry of the Investigation

Article 161:

- (1) The prosecutor is obligated to create a registry with a table of contents during investigation which contains the following:
 - 1– Investigation subject.
 - 2– Personal information of the accused person, victim, witnesses, claimant and other persons whose statements or information are included in investigation documents.
 - 3– Personal information of judicial officers and their performances, and the expert if they have been assigned for the case considering the detection registry.
 - 4– Investigation venue.
 - 5– Start and end date of the investigation.
 - 6– Personal information of the prosecutor.
 - 7– Information about the personality of accused person, his/her criminal records, social status, mental condition, occupation, family behavior and other information about the crime incident, method of crime performance, the date and place of the crime committed.
 - 8– The results obtained after completion of investigation regarding the way the acts were committed by the accused person and its impact on the commission of the crime.
 - 9– The grounds and evidence collected which indicate the accused person's involvement and impressions of his/her act in commission of the crime.
 - 10– Indication of the law article in which the committed action has been considered as crime and the applicable punishment.
- (2) The registry shall be signed by the investigating prosecutor and the detection registry shall be attached.

Ruling for Investigation Suspension

Article 162:

- (1) The prosecutor can issue an order to delay the investigation for the following conditions:
 - 1– If the accused person is affected by a disease that prevents the investigation.
 - 2– If the accused person is not identified or arrested and proceedings by detection agencies continue on the case.
- (2) If multiple accused persons are under investigation in relation to a single crime and reasons to delay the investigation apply to some of them, the prosecutor shall delay the investigation concerning those individuals but continue investigating the other accused persons. When the prosecutor delays the investigation, he/she shall notify the victim or their legal representative.
- (3) If a prosecutor delays the investigation of a criminal case, he/she shall obligate the police to take the following actions:

- 1– Locate and arrest the accused person.
- 2– Collect the incriminating evidence and take necessary detection measures.
- (4) If the reasons to delay the investigation are eliminated the prosecutor is obligated to restart the investigation.

Chapter 11

Conclusion of Investigation

Notifying the Conclusion of an Investigation

Article 163:

Investigation of crime ends under the following circumstances:

- 1– After the prosecutor reached the conclusion that the results from investigation are complete and there is no need for further investigation. The prosecutor shall notify the accused person, the victim, and claimant or his/her attorney that the investigation has been completed and the aforementioned people shall be given 3 days to provide any comments or remarks regarding deficiencies of the investigation.
- 2– The accused person, the victim, claimant or his attorney may request the copy of the investigation document at their own expense from the prosecution office.
- 3– If the prosecutor finds that the objections of the accused person, the victim, claimant and his/her attorney are in accordance with the provisions of the law, he/she may conduct complementary investigations.
- 4– Prosecutor may provide the opportunity to the accused person, the victim, claimant and his/her attorney to ask him/her about the upcoming procedures of the case and their responsibilities in prosecution process.

Contents of the Completed Investigation Registry

Article 164:

The prosecutor is obligated to create a registry upon completion of the investigation, which contains the following:

- 1– Summary of the file contents.
- 2– Notification and explanation of rights to the parties involved in the case upon completing the investigation.
- 3– Notification of the parties involved in the case of the number of presented documents in the file.
- 4– Duration, place and date that the parties involved in the case became familiar with the contents of the case file.
- 5– Summary of requests and petitions presented by parties involved in the case.
- 6– Which individuals were present and absent for orientation with regard to the contents of the file.

Preparation of Charge Sheet

Article 165:

- (1) The charge sheet shall be prepared based on grounds documented in the case files and shall contain a descriptive section and conclusion section.

- (2) Descriptive section of the charge sheet shall include the following:
 - 1– Personal information of the prosecutor, the accused person and the victim.
 - 2– The crime being investigated, place and date of commission.
 - 3– Demands made by claimant.
 - 4– How the crime was committed and roles of each accomplice in causing the criminal action.
 - 5– Mitigating and aggravating tools and factors and motivations for commission of the crime.
 - 6– Grounds proving the crime.
 - 7– Information about the personality of the accused person (social, economic and educational background).
- (3) Conclusion sections shall include the following:
 - 1– Type of accusation attributed to each of the accused persons based on their role in commission of crime.
 - 2– Provision of the article of the law which considers the action to be a crime.
 - 3– Claims made by claimant.
 - 4– Documents supporting proof of the crime.
 - 5– Statement of duration of police custody and detention.

Submitting a Copy of the Charge Sheet to the Accused Person

Article 166:

Charge sheet copies are prepared considering the number of accused persons and a copy is submitted to each of them.

Signing and Referral of Charge Sheet

Article 167:

The charge sheet along with the file shall be immediately referred to the trial prosecutor's office for filing an indictment after being signed by the investigation prosecutor.

Chapter 12 Proceedings of the Trial Prosecutor

Case Review

Article 168:

The trial prosecutor is obligated to take the following actions upon completion of the file review, if required:

- 1– Request the crime related evidence and items.
- 2– Issue an order regarding the proceedings related to detection and investigation against the accused person and determine the characteristics of the crime after modification or revocation of the earlier proceedings.
- 3– Confirm that the charge sheet lists the grounds as documented in the file to prepare the indictment.
- 4– Return the file to complete the investigation and eliminate any flaws.

- 5– Revoke the charge sheet and issue an order to prepare a new charge sheet.
- 6– Revoke the charge sheet and issue an order to dismiss the case in accordance with the provisions of this law.

Ruling on Absence of Grounds for Criminal Case Filing

Article 169:

- (1) If there is no reason for an accusation against the accused person, the prosecutor shall issue an order on the absence of grounds for criminal case filing and if the accused person is not detained due to other cases, he/she shall be released. If the accused person is detained by recommendation of the court, the issue shall be reported to the court.
- (2) If an order is issued for the release of the accused person, a statement of the causes and reasons is necessary. The victim, claimant and their legal representatives must be notified. If one of them passed away, their heirs shall be notified in writing.

Objecting to an Order to Dismiss a Criminal Case

Article 170:

- (1) The prosecutor's order on the lack of case filing does not drop the claims of the plaintiff.
- (2) The victim and plaintiff and their legal representative can submit their objections against an order issued to suspend a criminal case to a higher prosecutor. If the higher prosecutor confirms the order to suspend a criminal case, the victim, plaintiff or their legal representatives can submit their objections to the competent court.
- (3) Objections to the order set forth in paragraph (2) of this article shall be submitted to correspondence office of the court within 30 days after the victim, plaintiff or their legal representatives have been notified of the order and it shall be proceeded with immediately.

Conditions for Issuing a Ruling Dismissing a Case

Article 171:

The prosecutor shall issue an order to dismiss a case for the following conditions:

- 1– If the crime hasn't been committed
- 2– If the instigation of criminal case depends upon victims complaint and he/she withdraws the complaint.
- 3– If the perpetrator's culpability and the outcome of the action are insignificant and its prosecution is not in the public interest
- 4– For conditions set forth in paragraph (1) of article 169 of this law.
- 5– For conditions of dismissal of a criminal case.³

Contents of a Ruling to Dismiss a Criminal Case

Article 172:

- (1) A ruling to dismiss a criminal case shall contain the following:
 - 1– Reasons for suspending the criminal case that comply with the provisions of this law.
 - 2– Nullification of the actions that restricted the rights of the accused person.

³Translator note: This appears to be an attempt to cross reference another article but no article number is referenced in the Dari version.

3– Time, date and place the order was issued.

(2) The ruling set forth in paragraph (1) of this article shall be signed by the prosecutor and is submitted to a higher prosecutor.

Ruling on Confiscated Items

Article 173:

If the criminal case is suspended in accordance with the provisions of this law or the case is dismissed based on the issuance of a dismissal, the confiscated items shall be returned to the owner in accordance with the provisions of this law, unless the items are subject to confiscation, or there is a dispute on their ownership. Claims of confiscation of items shall be filed with the competent court based on civil procedure codeprovisions.

Ruling on Dismissal of a Case

Article 174:

The orders issued by the prosecutor regarding the suspension of a criminal case shall not hinder restart of the prosecution process of the case with justified reasons unless the case expires with passage of time or other grounds.

Chapter 13

Filing a Criminal Case and Referral of the Case File to the Court

Filing a Criminal Case

Article 175:

(1) If the charge sheet is confirmed, the prosecutor is obligated to file a criminal case against the accused person and prepare the indictments for all the accused persons considering the contents of the charge sheet and give a copy of the indictment to each of the accused persons or their defense attorney. The file should be submitted to the competent court within the time limits stipulated in law.

(2) The prosecutor is duty-bound to prepare the list of investigation papers attached to the criminal case file and submit them to the competent court.

(3) The prosecutor is obligated to notify the accused, victim, plaintiff and claimant about submission of the case to the court with details of case number and date.

Notifying Parties Involved in a Case on the Court Agenda

Article 176:

After the submission of the case to the court, the prosecutor is obligated to coordinate the primary review time of the case with the correspondence office of the court and officially notify all persons whose presence is necessary.

Complementary Investigation

Article 177:

If after filing a criminal case or referring a case to the court, the court, due to new evidence, requires a complementary investigation or the court deems it necessary, the prosecutor is obligated to perform it in accordance with the provisions of this law.

Section 3 Trial

Chapter 1 Authority of the Courts in Proceeding with Criminal Cases

Proceeding Authority

Article 178:

All criminal cases shall be processed by the authorized court, unless provided otherwise by another special law.

Territorial Jurisdiction

Article 179:

- (1) The authorized court to hear a case shall be the court located in the area where the crime has occurred, where the accused person has been arrested, or where he lives.
- (2) In attempt crimes, the authorized court shall be the one within whose territorial jurisdiction the last act of the attempted crime has taken place.
- (3) In case of continuing crimes, the location where the crime has ended and in case of addiction crimes, the location where the act resulting in addiction of crime has occurred shall be considered the location of crime.⁴
- (4) The Supreme Court may transfer authority for hearing a case from the authorized court to another court in cases where the security situation or other legal necessity requires and the relevant persons or Attorney General suggest the transfer to the Supreme Court. In such case, the assigned court shall be considered the authorized court.
- (5) In cases where the law has foreseen processing of the case by a special court, the court stated in the special law shall be the considered as the competent court.

Crimes Perpetrated Outside of the Country's Territory

Article 180:

If the crime is committed outside the country's territory, and the provisions of Afghanistan laws are applicable to the crime, and the accused person has not been arrested in Afghanistan or does not have a specific residence in Afghanistan, Kabul province court is the competent court.

End of Criminal Case

Article 181:

- 1) If proceeding with a criminal case depends on proceeding with a personal status case or other criminal case or civil case out of the criminal court jurisdiction, the court shall delay proceeding with the criminal case until issuance of final decision about the civil case and forward the issue to the competent court to resolve the case and keep the accused person, plaintiff, or their legal representatives informed of the proceedings.
- 2) If proceeding with a criminal case depends on proceeding with another criminal case or victim's claim within the jurisdiction of the same court, the court shall first proceed with

⁴Translator note: addiction as used here does not necessarily relate to drug addiction. A person who commits the same crime repeatedly, such as a pick pocket, may be engaged in an "addiction crime." The ambiguity regarding where such a crime has occurred is also in the Dari.

the other criminal case or victim's claim and then in case of existing proof, the criminal case shall proceed.

Chapter 2

Conflict of Jurisdiction

Emergence of Conflict

Article 182:

Conflict of jurisdiction arises when two courts issue rulings on the authority or lack of authority to proceed with a criminal case.

Issuing a Ruling on Lack of Jurisdiction

Article 183:

(1) When it is made obvious in accordance with the provisions of the law that the court does not have the authority to proceed with the case, the court shall issue a ruling indicating the lack of authority to proceed, identify the competent court, and send the case to the relevant prosecutor's office.

(2) The prosecution office shall refer the issue immediately to the court identified as competent and if the referred court also identifies itself without proper authority to proceed with the case, it will issue a ruling on lack of jurisdiction and return the case to the relevant prosecution office.

Entity Resolving Conflict of Jurisdiction

Article 184:

When the courts issuing rulings on lack of jurisdiction set forth in article 183 of this law are located in the jurisdiction of the appeal court of one province, the appeal court of the relevant province is the entity for resolving the conflict of jurisdiction. If the conflict occurred between two courts located in the jurisdiction of appeal courts of two provinces, the Supreme Court shall issue a ruling to resolve the conflict.

Request of Competent Court

Article 185:

(1) The prosecutor and other case litigants can provide the entity which has the authority to resolve the conflict with their opinion to assign a competent court. The request shall be submitted to the court's correspondence office. The office is obligated to notify the relevant individuals of the aforementioned issue. If the litigants have objections, they can submit their objections in writing to the court's correspondence office within (10) days from the date the notification was issued.

(2) The court shall issue a ruling resolving the conflict and assign the competent court within (10) days after the date of receiving the litigants' requests or expiration of time period of the objection. This ruling shall be final.

Chapter 3

Ancillary Cases of Forgery

Forgery Case

Article 186:

(1) Litigants to the case can file a forgery claim on any paper presented concerning the case during detection, investigation, and case filing stages.

(2) In forgery cases, specifying the paper against which the claim is made and stating the reasons are necessary.

Seizure of Proceeding with the Main Case

Article 187:

The court shall send the paper on which the forgery claim has been made to the prosecution office for investigation. If the paper is relevant to the result of the proceeding and decision on the main case, the court will postpone proceeding with the case until resolving the forgery case. If the forgery case is proved to be right, the forged paper loses its legal value and the perpetrator will be prosecuted according to the law. If the claim is not proved the one claiming the forgery will be prosecuted according to the law.

Verdict on Nullification of the Proceedings

Article 188:

If a verdict is issued based on forged papers used during investigation or forged papers are used as a basis for nullification of part of an investigation, and the forged papers or nullified proceeding effected the outcome of the case proceedings and the court's verdict, the court in view of the circumstances will order the amendment or the performance for a second time that part of the investigation or proceedings. The issue shall be written in the registry.

Chapter 4 Private Right Claim

Filing Private Right Claim

Article 189:

- (1) A person who sustains a loss due to a crime can file a claim for compensation together with the criminal case before the primary court that is proceeding with the criminal case.
- (2) In a crime such as murder and battery where the result would be Qisas and Dyat, the plaintiff with a private right has the priority. The court before proceeding with the prosecutor's case shall permit the plaintiff with a privateright to file his claim or end it through settlement or withdrawal from the case.
- (3) The criminal private right suit can be filed in the relevant criminal court and the compensation of loss suit and prosecutor's lawsuit shall be filed in the same court as well.
- (4) The plaintiff with a private right cannot file the compensation of the loss in appellate stages after issuance of criminal verdict by the primary court. In this case, based on the related regulations, the plaintiff can file the case in a civil court after the criminal court's decision has been finalized.

Limitation of Criminal Court's Authority in Private Right Claims

Article 190:

Criminal courts shall adjudicate a private right claimonly if it is associated with a penal action filed in that court and the claim is filed before issuance of any criminal verdict by the court related to the criminal case.

PrivateRight Claims

Article 191:

A private right claim case and compensation of damage shall be disclosed to the accused person by the court in the session where the claim is proceeding and he/she shall be granted

time to prepare his/her defense statement for the hearing. If the accused person does not want to defend and requests more time he/she shall be granted more time and the proceeding with the private right claim shall be postponed.

Incorporating Private Right Claim in a Referral Order

Article 192:

If during the investigation a claimant has already introduced himself/herself as the plaintiff with a private right claim and has filed his/her claim to a prosecution office, then the referral order of the criminal case to the court shall include the private right claim case as well.

Proceeding With a Criminal Case without a Private Right Claim

Article 193:

If filing a private right claim for compensation causes a delay of the proceedings of the criminal case, the court may proceed without the private right claim and the plaintiff shall be provided with the opportunity to file his/her claim in a civil court after a final order on the criminal case is issued.

Assigning a Legal Representative

Article 194:

If the victim is legally incompetent to file a claim and does not have an attorney to represent him during court proceedings, the court adjudicating the criminal case in this circumstance is obligated to appoint an executor or a legal guardian for the victim according to the circumstances to initiate a private claim.

Absolute Legal Competency of the Accused Person

Article 195:

A compensation of loss claim is filed against the accused person if he/she has absolute legal capacity or against the person liable for the private right.

Objecting to Private Right Claimant

Article 196:

- (1) The accused person, defendant and prosecutor may object to the interference of a public right claimant during claims proceedings.
- (2) Objection by the persons described in paragraph (1) of this article about accepting the litigation of a public right claimant may not hinder his/her claim before a criminal or civil court.

Dismissal and Non-Dismissal of a Private Right Claim

Article 197:

- (1) Private right claim for compensation of loss or other financial rights will be dismissed once the time set forth in the law for dismissal of civil cases is lapsed.
- (2) If the criminal case due to any reason is dismissed the private right claim initiated together with it shall not be dismissed.

Withdrawal from Private Right Claim

Article 198:

- (1) A plaintiff may withdraw from his/her claim at any stage if he/she chooses to.

- (2) Withdrawal of a private right suit claim does not affect the criminal case except mitigating circumstances, unless it is stated otherwise in the law.
- (3) If the plaintiff was served with a summons, but does not appear in criminal court or does not send his legal representative or present his/her claim in writing, and does not substantiate his absence, his absence shall be construed in the criminal court as a withdrawal of the private right claim.
- (4) If the plaintiff discontinues his/her claim before the criminal court, he/she can reserve his/her right to bring the case before the civil courts, provided that he/she has not stipulated withdrawal of the right before the criminal court.
- (5) Withdrawal of a claim by a plaintiff excludes the defendant from the suit provided that his/her involvement in the suit was based on the plaintiff's claim.

Transferring a Private Right Claim from a Civil Court to a Criminal Court

Article 199:

- (1) If the victim files a compensation of loss case in the civil court and afterward the criminal case is filed in the criminal court, the victim can file the private right case together with the criminal case provided that the civil court has not issued a verdict.
- (2) Proceeding with the private right case filed in the civil court shall be postponed until the final result of criminal case which has been forwarded to the criminal court before or during its decision provided that the claimed right is relevant to proving the crime.
- (3) If a criminal trial is postponed due to reasons of insanity or any other legal excuses, the private right case shall be proceeded with regardless.

Compliance with the Provisions of this law

Article 200:

Provisions of the related law are applicable to the adjudication of private right case tried in criminal courts.

Effect of Acquittal of the Accused Person on Demand for Compensation

Article 201:

- (1) Acquittal of the accused person in a criminal case does not preclude the party who sustained losses or the plaintiff from demanding compensation from the accused person.
- (2) The accused person can ask the plaintiff for the compensation of the loss incurred to him as a result of a false claim in a criminal court according to the law.

Chapter 5 Preliminary Proceedings

Preparing the Report

Article 202:

- (1) The presiding judge of the primary court shall assign one of the judges of the court after receiving a criminal case to conduct a preliminary assessment and prepare a report.
- (2) During preliminary assessment, the following shall be considered:
 - 1– Subject-matter and territorial jurisdiction of the court.
 - 2– The way the crime was committed and its attribution to the accused person.

- 3– Description of the crime.
 - 4– Criminal liability of the accused person.
 - 5– Social, health and other records of the accused person.
 - 6– Observance of the provisions set forth in this law during investigation and filing of a criminal case.
 - 7– Incriminating evidence about the accused person.
- (3) In order to come to a decision, the assigned judge reads the reports of the proceedings set forth in paragraph (2) of this article to the judicial session members.
- (4) The panel of judges, after hearing and deliberating on the content of the reports come to one of the following decisions, as required:
- 1– Issuance of ruling based on authority and lack of authority of proceeding with a case.
 - 2– Issuance of ruling based on returning the case for completion of investigation.
 - 3– Issuance of ruling based on failure to meet requirements for filing a criminal case.
 - 4– Issuance of ruling based on judicial proceedings.

Ruling Regarding Insufficient Grounds to File a Case
Article 203:

- (1) If it has been proven to the authorized court that the committed action is not punishable in accordance with the law or there is no incriminating evidence against the accused person, or the accusation is minor and it is not punishable, a ruling to discontinue the case shall be issued and the detainee shall be released, provided that the individual is not under detention due to another incident.
- (2) The victim, plaintiff, their legal representatives and the prosecutor can file their objections to the court ruling directly or through the court that has issued the ruling to the relevant appeal court within 14 days.
- (3) The objection is heard by the appellate court within 7 days. In case of a justified objection, the appellate court shall issue a ruling on prosecution of the accused person and extend his detention in view of necessity.

Suspending Prosecution or Trial
Article 204:

- (1) Prosecution of the accused person in petty crime (obscenity) cases can be conditionally suspended for 1 year. If the accused person does not commit a crime during the conditional suspension, the criminal claim shall be dismissed.
- (2) If the accused person during the suspension period commits a new crime, he shall be prosecuted for both crimes.

Suspension of Verdict Enforcement
Article 205:

- (1) The court shall make a decision on suspension of enforcement of verdict in misdemeanor cases if the following requirements are met:
- 1– The crime is due to carelessness or neglect in duty or misunderstanding of law interpretation.
 - 2– The accused person in a traffic accident has helped the injured and has not escaped.

- 3- The perpetrator has never been convicted of committing a crime.
 - 4- The court finds that the accused person does not have any criminal record and he himself has informed or has surrendered to the relevant authorities and his behavior suggests that he/she will follow the law in the future.
 - 5- The plaintiff has dropped the charges or the accused person compensated the incurred loss voluntarily.
- (2) The period for suspension is 3 years and it commences from the date the decision was delivered.
 - (3) When the decision regarding suspension of the case is made, based on the circumstances the court shall obligate the perpetrator to perform one or more of the following:
 - 1- Not travel out of the city of his residential area without police permission.
 - 2- Appear every week or month to the police office.
 - 3- Avoid carrying a firearm and/or non-firing weapons.
 - 4- Avoid driving for the period of time that court has forbidden.
 - 5- Comply with his family, social and moral obligations
 - 6- Not initiate activities that may result in injury to the victim.
 - 7- Other conditions that the court deems necessary.
 - (4) In case the perpetrator violates the above conditions or commits a misdemeanor or felony during the time period of suspension, the suspension of enforcement shall be nullified and he/she shall be punished.

Chapter 6

Notification of Appearance to the Court

Summons

Article 206:

The court demands the appearance of the accused person, victim's defense attorney, public rights claimant or his representative, and other people if their appearance in judicial session is deemed necessary and useful.

Deadline for Obligation to Appear

Article 207:

The Court shall order litigants to appear in court at least (5) days prior to the beginning of the judicial session. These periods don't include time spent traveling.

Notification

Article 208:

The notification considering the provisions set forth in article 95, 96, 97 and 98 of this law will be issued and submitted.

Delay of Proceedings

Article 209:

- (1) For petty crimes (obscenities), if the accused person does not appear for the judicial session on the due date in spite of having been notified, the court can issue a decision in his/her absence.
- (2) For misdemeanor and felony crimes, if the accused person does not appear for the judicial session on the due date in spite having been notified, the court shall suspend the case proceedings and issue a summon or arrest warrant. If the accused person does not appear for a second time, he/she is notified by an announcement. If he/she still does not appear within the period of time announced, the court shall appoint a legal aid provider to him and issue a decision.

Sending a Notification to an Accused Person Who Lives Abroad

Article 210:

If the accused person lives abroad, notification shall be sent to his/her place of residence (if known) 1 month prior to the date of the session. In case of absence of the accused person, his/her case is proceeded with and a decision shall be issued.

Reading of Documents

Article 211:

During proceedings with the accused person absent, the documents related to the notification and summons shall be read during the judicial court session.

Chapter 7 Judicial Proceedings

Presence of the Prosecutor and Accused Person during a Judicial Session

Article 212:

- (1) The presence of the prosecutor and the accused person or his/her defense attorney in a criminal session of misdemeanor or felony is a fundamental condition for conducting a judicial session, unless stated otherwise in this law.
- (2) No one can represent or defend the absent accused person except the defense attorney. The relatives of the accused person are exempted from this provision.
- (3) The accused person who is in the detention center attends the court session under the protection of police and remains until the end of the session.
- (4) The accused person appears in the judicial session without handcuffs and chains, unless there is a risk of flight, or hurting himself or others.
- (5) If the defense attorney of the accused person does not appear in judicial session where his presence is indispensable or the accused person himself does not show up on various occasions, the issue shall be notified to the accused person and the session shall be postponed. If the accused person does not show up frequently, the session will be proceeded with as if the accused person is present.
- (6) If the accused person leaves the judicial session after making statements or purposely does not appear for the session despite having been notified of the date of the judicial session, or service of his/her summons is impossible, the court may proceed with the judicial session in his/her absence. In this case, the trial is carried out as if the defendant was present during the trial.

Openness of Judicial Hearing

Article 213:

Judicial Trial shall be open and anyone can attend the session, unless the judge holds a closed trial in part or in general due to ethical reasons, family secrets, or preservation of public order.

Issuing ID Cards

Article 214:

Considering the capacity of the courtroom, the judge can limit the number of people attending the trial and shall issue special ID cards for entry.

Permission to Enter a Judicial Session

Article 215:

- (1) Any person who does not have absolute legal competency shall not have the right to enter the judicial session. The accused person, victim, and witnesses in the case are an exception to this rule.
- (2) Armed individuals do not have the right to enter a judicial session.
- (3) Providing Radio and TV reports, video recording and photographing from trial proceeding and its broadcasting may be done only after acquiring permission from the presiding judge.

Judicial Session Order

Article 216

- (1) Presiding judge will appoint a staff member to explain the rules, formalities and observance of the session to the participants before entrance of the judicial panel members. Presiding judge shall administer the judicial session and maintain order.
- (2) Participants of a judicial session shall be seated in their specific places before entrance of the judicial panel members and everyone in the court room is obligated to stand up during entrance and exit of the judicial panel and stand up when answering the court's questions.
- (3) Participants are obligated to obey the presiding judge's orders to maintain the order of the judicial session.

Commencing the Judicial Session

Article 217

- (1) The judge begins the trial by stating the following sentence:
"I begin this judicial session in the name of the righteous and almighty Allah."
- (2) The trial begins by loudly addressing the parties of litigation as well as the witnesses by their names. Name, last name, age, occupation, place of birth, residence and identification card number of the accused person and individuals involved in the case will be asked and they will reply themselves loudly in turn and then the indictment shall be recited by the prosecutor. The victim, plaintiff, defendant or their legal representatives may present their claims and the accused person shall be questioned for the charges attributed to him/her.
- (3) If the accused in a trial willingly confesses to committing the crime, the court issues a sentence in accordance with the provision set forth in article (30) of the constitution of Afghanistan and other enforced laws.

Questioning of the Witness

Article 218

The witness first shall be questioned by the judge and shall be advised to take the following oath before testifying: "I will say nothing but the truth". Afterward the prosecutor, victim, plaintiff, the accused person, and the defendant or their legal representatives shall question the witness. They may once again question the witness to clarify the incidents mentioned in the first testimony.

Hearing Order of Witness Testimonies

Article 219:

- (1) First the prosecution witness testimony and then defense witness testimony shall be heard.
- (2) Both parties to the litigation may question the witness a second time, to testify on details of the incident mentioned in his/her first testimony or ask for testimonies of new witnesses for the same cause.

Addressing Questions to Witnesses

Article 220

- (1) The court may, for the exposure of truth direct any questions to the witnesses or let the litigation parties do so.
- (2) The court is obligated to prevent questions which are not related to the case or are not legitimate questions to be asked from the witnesses.
- (3) The court is bound to prohibit the making of any figurative or clear-cut statements, or gesture, which may confuse the thoughts of or frighten the witness.
- (4) The court may reject the testimony of witnesses with reasons on incidents that are sufficiently clear to the court.

Questioning the Accused Person in Court

Article 221:

- (1) During the judicial trial questioning of the accused person in compulsory manner is not permissible.
- (2) If in the course of the trial, a situation arises which necessitates due explanation on the part of the accused person, the court may draw his attention to the matter and let him give the required explanation.
- (3) If the accused person refuses to answer the question or his statements made during the session contradict those already made during the stages of evidence collection and investigation, the court may order that his first statement be read.

Assigning Experts

Article 222:

The court, based on the demand of one or both of the litigants or as required, may assign experts to provide necessary explanations on the statements already made to the court.

Chapter 8

Judicial Session Order

Disturbing the Order of a Judicial Session by the Accused Person

Article 223

If the accused person during the judicial session disturbs the order of the court or disobeys the orders of the presiding judge, the presiding judge shall give him a warning. If repeated, the presiding judge shall remove him from the court room. Upon reappearance, the court is obligated to inform the accused person of the measures taken in his absence.

Disturbing the Order of a Judicial Session by the Prosecutor or Defense lawyer

Article 224:

If the prosecutor or defense lawyer disturbs the order of the session or disobeys the legal orders of the presiding judge, first, a warning shall be given to them. If repeated, the proceedings shall be postponed and the disturber shall be introduced to the relevant administration for disciplinary action.

Disturbing the Order of a Judicial Session by the Court Staff

Article 225:

- (1) If the order of the court is disturbed by a court employee the presiding judge may reprimand him in accordance with the provisions of the law.
- (2) If other individuals present in the session disturb the session or disobey the orders of the presiding judge, the presiding judge may have them removed from the court room or sentence them to a cash fine of up to (5000) AFN.

Committing a Crime during a Judicial Session

Article 226

- (1) If someone commits a petty crime (obscenity) during the judicial session, the court may obligate the prosecutor to file a lawsuit against the accused person in the same session and issue the order after hearing the statements of the prosecutor and the accused person.
- (2) If an individual commits a misdemeanor or felony crime during the judicial session, the court shall record the incident in the registry and send the accused person and the prepared registry to the prosecutor's office for prosecution.
- (3) The court, for any circumstances that happens during the proceeding, shall make registry of the incident and if found necessary, shall issue a warrant of arrest of the accused person.

Chapter 9

Judicial Contemplation and Discussion

Judicial Discussion

Article 227

- (1) The court starts the judicial contemplation and discussion after hearing the prosecutor's suit, the defendant's plea, experts and witness statements and defense.
- (2) Judicial contemplation and discussion includes the prosecutor's suit, the defendant's plea, pleadings of the litigants and other individuals involved in the criminal suit and other documents of the case investigation.

Litigants' Speech

Article 228:

- (1) The prosecutor, the accused person and other individuals involved in the lawsuit may speak after hearing the statements of prosecution witnesses and defense witnesses.
- (2) During the case proceedings, the presiding judge shall give the accused person the opportunity to speak, during which time, questioning of the accused person is not permitted.
- (3) If the accused person or his/her legal representative carries on irrelevantly, the court may stop him/her from doing so.

Preparing Session Minutes:

Article 229:

- (1) Minutes and proceedings of the judicial session, which contain the following issues shall be written and prepared by the Court Clerk under the direction of presiding judge.
 - 1– Name of the court and identification of the judicial panel
 - 2– Identification of the accused person, victim, plaintiff, defendant, their legal representatives, clerk, prosecutor and translator
 - 3– Date and the place where the session is held
 - 4– Starting time of the session
 - 5– Break time and conclusion of the session.
 - 6– Case file number.
 - 7– Information about the personality of the accused person.
 - 8– The presentation of indictment.
 - 9– The presentation of defense statement.
 - 10– Description of the rights and obligations of the parties involved in the case.
 - 11– Orders on disturbance cases during the session
 - 12– Complete contents of the trial proceedings and discussion of interested persons.
- (2) The minutes of the judicial session shall be signed and recorded by the judicial panel and Court Clerk.

Chapter 10

Preparing the Sentence and Its Announcement

Announcement of the Judicial Session Conclusion

Article 230

- (1) After hearing the last speech of the accused person, the judicial panel announces the conclusion of the judicial session and retires to the deliberation room for decision making and writing the sentence.
- (2) The sentence is approved and written confidentially by a unanimous or majority vote of the judicial panel.
- (3) The presiding judge and members of panel of judges have equal rights during voting.
- (4) The presiding judge announces the sentence before the parties involved in the case are dismissed, or notifies the attendees of the time of announcement.

Dissenting Vote

Article 231:

- (1) If one of the members of the judicial panel does not agree with the other members, he/she is obligated to record their vote and reasons after the decision is written.
- (2) The judge cannot abstain from voting.

Issuance of the Sentence

Article 232:

- (1) The sentence in the court is issued beginning with the name of Allah.
- (2) Upon announcing the sentence during the judicial session, the satisfaction or dissatisfaction of the accused person or his/her legal representative is written down on the sentence paper.

Issuance of the Sentence Based on Reasons Proposed During the Trial

Article 233:

- (1) The court issues a sentence based on the evidence presented during the trial. However, it cannot issue a sentence based on evidence not presented in the court or based on personal information.
- (2) The court cannot issue a sentence based on papers and documents if basic principles were not observed in their collection in accordance with the provisions of this law.

Open Sentence Announcement

Article 234:

- (1) The sentence shall be announced openly in any case even if the trial was a closed session.
- (2) The court may take measures to ensure that the accused person is present while the sentence is announced. These measures may include arrest warrant and detention of the accused person.

Acquittal of the Accused Person

Article 235:

If the court reaches a conclusion that no crime was committed or the collected evidence for accusation are either insufficient or not attributed adequately to the accused person, it shall issue an acquittal verdict and he/she shall be released if he/she has not been detained for committing another crime.

Limitation of Verdict on the Contents of Litigation

Article 236:

The accused person shall not be punished for offenses which are not included in the indictment; nor shall a person be punished against whom no indictment was issued.

Altering the Nature of Accusation

Article 237:

- (1) The court can alter the criminal charge attributed to the accused person in its decision. It can also amend the mitigating or aggravating factors which were identified during the investigation or during the trial, even if it is not listed in the indictment.

(2) The court may make corrections and eliminate mistakes that appear in the phrasing of the indictment.

(3) The court is obligated to inform the prosecutor and the accused person in writing of any corrections and amendments made to the indictment. If the prosecutor or the accused person or his/her legal representative ask time to prepare objection or defense statement for alteration in crime attribution and its nature or amendment of accusation, the court will give them time.

Decision Based on Demands of the Plaintiff's Right

Article 238:

In addition to observance of other provisions set forth in this law, the court is obligated to render a decision on demands of plaintiff's right while issuing a verdict for the criminal case.

Stating Grounds for Sentence

Article 239:

(1) It is necessary to include the grounds for a sentence in a decision.

(2) A sentencing decision shall include the incident deserving punishment, its manner and the articles of law based on which the sentence is issued.

Proceeding With the Presented Claims

Article 240:

The court is obligated to proceed with the demands presented by the litigants as a secondary claim after stating the grounds for sentence.

Time Limit for Writing, Signing and Stamping the Decision

Article 241:

The sentence shall be written within (10) days from its issuance. It shall be signed, stamped and issued by both the presiding judge as well as the panel of judges.

Assigning Another Judge to Sign and Stamp

Article 242:

If a decision is issued and announced by the primary court, and the primary court's judge has written the grounds and summary of the decision in his/her own handwriting but due to an excuse cannot sign the copies of the decision, the director of the appeals court while observing the provisions of law can assign another judge to sign and stamp it. This provision is applicable only when there is no more than one judge assigned in the court.

Contents of Decision

Article 243:

(1) A court decision contains an introduction, description, evidence and summary of the decision.

(2) The introduction contains the following:

1– Date of court hearing.

2– Court name, names of the judges, prosecutor and defense attorney.

3– Personal information of the accused person, date (day, month, year) and place of birth, nationality, level of education, place of residence, place of work, marital status, health status, criminal record and other significant information.

- (3) The description contains the following:
 - 1– Description of the crime and its evidence.
 - 2– Location of the crime, time and the way the crime was committed.
 - 3– Aggravating and mitigating circumstances of the criminal act.
 - 4– Outcome of the crime.
 - 5– Complete personal information of the accomplices of the crime.
 - 6– Behavior of the accused person before committing the crime.
 - 7– The evidence based on which the court came to a conclusion.
 - 8– Reasons based on which the court excludes some of the evidence of accusation.
 - 9– Court’s arguments on changing of the legal attribution of the crime if the criminal charge was amended.
 - 10– Determination of the extent of the punishment considering the aggravating and mitigating circumstances of the crime.
- (4) The summary of the decision contains the following:
 - 1– Name of the accused person.
 - 2– Citation of the articles of the law.
 - 3– Defining the principle and complementary punishments, and the specifications and circumstances for implementation.
 - 4– Observing and accounting for the amount of time previously spent in detention or jail in calculation of punishment.
 - 5– Description of security precautions, if required.
 - 6– Describing and identifying the goods to be confiscated or returned and making a decision with regard to the seized goods if the necessary grounds exist.
 - 7– Decision on private rights claim.
- (5) If the court acquits the accused, it is obligated to state the reasons for acquittal and dismissal of the prosecutor’s accusation.

Disqualification of Convict From Possession of Property

Article 244:

- (1) If a person based on his/her legally deemed presence,⁵ is convicted of a felony, shall be deprived of the right to possess and manage his/her properties and of filing a lawsuit under his/her name. All of his/her rights of possession and obligations shall be considered nullified.
- (2) By the request of the prosecutor’s office, the court that has jurisdiction over where the convict’s property is located, can designate a person as guardian for the convict’s property and obligate him/her to provide a guarantee. This person is held liable by the court for all affairs related to the care of the property and accountings. In accordance with the provisions of the law, financial obligations of the convict shall be paid from the convict’s property.

⁵ Translator note: the phrase is used to describe a person who is physically absent.

Removal of Disqualification of Possession by the Permission of Court

Article 245:

- (1) When necessary, deprivation of losing party from control and possession of property may be temporarily suspended with the court's permission.
- (2) The validity of any commitment made by the convict without the court's permission is dependent upon the court's permission.

Chapter 11

Case Proceedings in an Appeals Court

Objecting to the Primary Court's Decision

Article 246:

- (1) If the accused or their legal representative and the prosecutor are not satisfied with the primary court's decision, they shall present their objections directly or through a deciding court to a relevant appellate court according to the provisions of law.
- (2) Objections to the primary court's decision for obscenities shall be made in the following instances:
 - 1- Objection by the convict shall be made in case the verdict has been issued on other than cash fine.
 - 2- Objection shall be made by the prosecutor in case the acquittal decision of the accused has been issued.
- (3) Objection to the primary court's decision for misdemeanors shall be made in the following instances:
 - 1- Objection by the convict shall be accepted when imprisonment or cash fine or both have been anticipated in the law and the court has issued the imprisonment order.
 - 2- Objection by the prosecutor to the court decision when imprisonment or cash fine or both have been anticipated in the law and the court decision includes only a cash fine or less than half of maximum punishment anticipated in the law.
- (4) Other than conditions set forth in paragraphs (2) and (3) of this article, the accused person and the prosecutor cannot appeal the decision, unless the objectionable decision is in contradiction with the law or there is an error in its implementation or interpretation, or the decision is revoked or the proceeding that affected the sentence is revoked.

Objection in Indivisible Crimes

Article 247:

- (1) An objection to a decision on indivisibly related crimes can be made, although the objector may only have the right to object over some of these crimes.
- (2) The accused person's objections are valid only for the objector.
- (3) If a single crime includes multiple defendants and the cases are investigated jointly, anyone of them can partake in each other's objection by submitting a request.

Objecting Authority or Lack of Authority

Article 248:

One or more than one accused in a single case may contest the verdict issued by a non-competent court. These objections are applicable to all of the accused of the case.

Objection Over Procedural Orders

Article 249:

Objecting to procedural and preliminary orders prior to resolving a case is not permitted. However, objection concerning a preliminary order that resolves the case is permitted. The objection to the order on the main issue incorporates the objection against the preliminary orders.

Objection Over Private Right Case as a Result of a Criminal Case

Article 250:

If the plaintiff, defendant, victim, or their legal representatives do not agree with the primary court decision on the private right case as a result of a criminal case, they can submit their objection to the appeal court directly or through deciding court.

Objection Over Private Right Claim

Article 251:

Objections over the decisions on a private right claim, issued by the primary court, is only permitted by the plaintiff, defendant, the accused or their legal representatives if the requested compensation is more than the specified amount, which is determined for the finalization of the primary court's decision in civil cases.

Deadline for Submitting the Objection

Article 252:

- (1) Objecting to the primary court's decision shall be made in writing or orally.
- (2) Parties involved in the criminal case, who in accordance with the provisions of this law have the right to appeal, can directly express their objection in the judicial session after being notified of the decision. In this case, their statements are recorded in the registry.
- (3) The convict's disagreement with the issued sentence represents their objection.

Objection Issues

Article 253:

- (1) An objection against the court's decision contains the following information:
 - 1- Name of the court that issued the contested decision
 - 2- Complete personal information of the person making the objection.
 - 3- Number of court decision or sentence sheet.
 - 4- Clear and explicit reasons for the objection in accordance with the provisions of law.
- (2) An objection against the decision by the accused person, plaintiff, defendant or their legal representatives and the prosecutor shall be made to the appeal court's correspondence office within 20 days after notification of the decision and the objection shall be verified by the court's correspondence office and a receipt shall be issued.
- (3) In those circumstances where the prosecutor is allowed to appeal against the primary court's decision in criminal cases according to the provision of this law, the Head of Appellate Prosecution Office can appeal against the primary prosecutor's decision in misdemeanor and felony cases within 10 days after the order is received by the correspondence office, and in felony cases against the decision of the Head of

Appellate Prosecution Office within 20 days after the order is received by the correspondence office. The reason for objection should also be submitted within this time limit.⁶

(4) The time limit for presenting an appeal in misdemeanor and felony cases will be counted from the time that the verdict is officially notified to the convict based on the provisions of this law.

Extending the Objection Period

Article 254:

If one of the litigants presents their objection against the decision on the last hours of last official day of the specified period set forth in paragraphs (2) and (3) of article 253 of this law, the objection period of the opposing party shall be extended for another 5 days after the expiration date of the primary deadline for the purpose of presenting reasons or rejecting them.

Setting the Date of a Hearing Session

Article 255:

When the objection is submitted to the appeals court, the relevant correspondence office is obligated to record the date the objection was submitted and to set a hearing session date for the objection observing paragraphs (2) and (3) of article 253 of this law.

Presence of Parties

Article 256:

Provisions related to the presence of the parties in the primary court's judicial sessions are also applied to their presence in the appeals court.

Circumstances for Refusing the Objection

Article 257:

The court shall refuse the objection in the following situations:

- 1– If the person submitting the objection according to this law does not have the right to appeal.
- 2– If the appealed matter is not included in the issued decision.
- 3– If the objection request is submitted after the expiration of the specified legal period.

Withdrawal of Appeal

Article 258:

- (1) Until the end of judicial session, the objector can withdraw their appeal by submitting a request to the relevant appeal court.
- (2) Legal representative of the accused person cannot withdraw from its objection against the order without the accused person's approval.

⁶Translator note: The right of the Head of the Appellate Prosecution Office to appeal the decision of the Head of the Appellate Prosecution Office is contained in the Dari. A previous version provided that the AGO had the right to appeal the decision of the Head of the Appellate Prosecution Office and there may have been an error resulting from the inadvertent removal of the "AGO" from the Article in the Dari version.

Generating a Primary Report

Article 259:

If the objection is accepted by the appeals court, one of the judges from the relevant division is assigned to generate a report to include the following information:

- 1– Summary of the case incidents.
- 2– Summary of assessments and proceedings of authorized courts.
- 3– Reasons and evidence for decision.
- 4– Other issues included in the investigation and judicial proceedings and identified as relevant to the decision.

Application of the Prosecutor or Parties of the Case for Appeal

Article 260:

If an appeals application is filed only by the prosecutor or both by the prosecutor and accused person, the court can confirm the decision or overrule the decision and issue a decision to repeal or amend it, and/or increase or decrease the punishment. Repealing the verdict on acquittal shall take place on unanimous votes of the judges.

Application of the Accused Person for Appeal

Article 261:

When the application for appeal is only filed by the accused person, the court can only issue a decision to confirm the verdict, mitigate the punishment or acquit the accused person; however it cannot decide to increase the punishment.

Prosecutor's Disagreement and Out-Of-Turn Proceedings

Article 262:

- (1) If the accused person is under detention and the primary court acquits the accused person or sentences the accused person to prison for the period of time that he/she has already served it in detention or the detention period has been deemed adequate for him/her and the prosecutor appeals against such a decision, the prosecutor is obligated to submit the appeals application to the appeals court immediately and issue the accused person's transfer order to a detention center or prison that is located in the jurisdiction of appeals court.
- (2) The appellate court is obliged to proceed with the prosecutor application for appeal immediately and out of turn.
- (3) If the court finds the prosecutor's reasons to be well founded, the court shall issue an order to extend the accused person's period of detention; otherwise the court shall release the accused person from detention prior to proceeding with the case.

Proceeding in Appellate Court

Article 263:

- (1) If the appeals court determines previously completed proceedings sufficient for making an appeals decision, it may issue a decision in the case without rehearing the witnesses and reviewing the experts' views.
- (2) If the appellant could not file the objection within the time limit determined by law, the court can proceed with the case based on the appeal application.
- (3) If the appellant is sentenced to imprisonment but the order of imprisonment has not been enforced yet, the appellate court can only proceed with case if the convict surrenders

himself to the related organ for the enforcement of the punishment before the trial, otherwise his right to appeal will be nullified, unless otherwise the convict is released on bail.

Appeals Court Proceedings During a Case:

Article 264:

- (1) The appeals court shall have all of the primary court's powers during the proceeding of the case in the appeal stage.
- (2) The appeals court decides the case in the following order:
 - 1– Hearing of the primary report that is prepared by the judicial member of related court division.
 - 2– Hearing the statements and represented reasons of the appellant.
 - 3– The prosecutor statement on main accusation and reasons for objection, if the objector is losing party.
 - 4– Hearing the statement of the accused person and other involved parties in the case.
 - 5– Hearing the witnesses' statements and statements of other involved parties in the case and necessary questions.
 - 6– Hearing the statements of the accused person as a last speaker.
 - 7– Proceeding with the case by the court and issuing a sentence.
 - 8– Hearing of statements by experts.⁷

Stipulating the Articles of Law in the Ruling or Verdict

Article 265:

If the appeals court confirms, overrules, amends, corrects or revokes the primary court's decision, it shall stipulate the reasons in accordance with articles of the law that the court relied on in its verdict or ruling.

Correcting an Error and Proceeding with the Original Case

Article 266:

- (1) If the primary court has issued a decision on the original matter and the appeals court identifies that there was an error in the verdict, the decision will be revoked and it shall proceed with the original case and issue a verdict.
- (2) If there is an error in the proceedings, the court shall correct the error and confirm the verdict, provided that the error does not cause the nullification of the proceedings and does not affect the verdict.

Decision Taking

Article 267

At the end of the case proceeding, the appeals court shall render one of the following decisions:

- 1– Issuing a verdict confirming the primary court's decision.
- 2– Overruling the primary court's decision and issuing a new decision.
- 3– Amending the primary court's decision.

⁷Translator note: this mistake in the order is present in the Dari version.

- 4– Correcting the primary court’s decision, if there is a misspelling or mistake in numbers or quantity and does not affect the verdict and result of the verdict.
- 5– Revoking the primary court’s decision and turning it over to the authorized court for issuing a new decision along with stating the nullified instances.
- 6– Issuing a ruling for further investigation, if there are defects and gaps in the investigation or documents that can affect the verdict.

Contents of the Appeals Court Decision:

Article 268:

The appeals court’s decision shall include the following:

- 1– Name and division of the appeals court.
- 2– Time and place the verdict was issued.
- 3– Name of the prosecutor who participated.
- 4– Personal information of the accused person and their legal representative.
- 5– Summary of the contents of the primary court’s decision.
- 6– Contents of the objection.
- 7– Summary of statements of witnesses, the accused person, prosecutor and other involved parties of the case and evaluation of each.
- 8– Conclusion and analysis of the relevant assessments in light of the provisions of law.
- 9– Text of the verdict.

Remanding the Case for a Second Review

Article 269

If the primary court has issued a decision on lack of authority or on accepting a secondary defense which prevents the proceeding of the case, the appellate court shall repeal the verdict and refer the case to the competent court to decide on the main issue of the case.

Chapter 12 Appeal to the Supreme Court

Appeal to the Supreme Court

Article 270:

- (1) The Supreme Court shall review the Appeals Court decision in felony and misdemeanor criminal cases based on appeal of the prosecutor, convict, plaintiff and defendant in one of the following instances:
 - 1– When the appealable decision contradicts the law or there is an error in implementation or interpretation of the laws.
 - 2– When the court decision is a nullity.
 - 3– When there are nullities in the proceedings that may affect the court decision.
 - 4– If the decision has been issued for death penalty of the person, the prosecutor based on the provisions of the law shall submit the case to Supreme Court, although the decision does not conform with subparagraphs 1, 2, and 3 of this article.

(2) In a criminal case, the plaintiff and defendant can object before the Supreme Court only if the individual right issues are related to them.

(3) The Supreme Court shall accept the circumstances in which relevant proceedings are in accordance with the law as the actual circumstance.

Appeal to Supreme Court in Absentia Decisions

Article 271

The prosecutor, plaintiff and defendant, in criminal cases which the decision has been issued in the absence of the accused person, may object to the issued decision before the Supreme Court on the issues related to them.

Appeal on Preliminary Subject

Article 272

A ruling or an order that is issued before the resolution of a case cannot be appealed to the Supreme Court, unless due to the mentioned order the case proceeding is adjourned.

Procedure of Appealing to Supreme Court

Article 273

(1) An application on appellate court decision shall be submitted to the correspondence office of the deciding court or directly to the Supreme Court and should have the signature and fingerprint of the applicant.

(2) Appealing to the Supreme Court shall be done within 30 days from the date of notifying the convict about the decision in the present case or notifying the convict about the decision in absentia.

(3) The reasons supporting the appeal shall also be submitted within the period set forth.

Appeal to Supreme Court by Prosecutor

Article 274

If the appeals court prosecutor who attended the judicial session appeals to the Supreme Court, it is necessary that the application and reasons for objection are confirmed by the Supreme Court prosecutor.

Overruling a Verdict

Article 275

If the Supreme Court found the reasons for objection justifiable and overrules the verdict, it shall refer the case back to the authorized court for re-judgment along with the reasons for overruling. The competent court shall review the case with the participation of members who did not participate in the previous decision and issue a decision. If once again, in accordance with the law the Supreme Court overrules the decision, the Supreme Court refers it to a similar court for re-adjudication.

Partial or Total Overruling of the Decision

Article 276

Unless the verdict is indivisible, Supreme Court shall only overrule the part of the decision to which appellant's valid reasons apply.

If the application to appeal is not made by the prosecutor, only the decision about the accused person who submitted the application shall be overruled, unless reasons also apply to other accused persons.

Relying on Submitted Reasons within the Specified Period

Article 277

To overrule a decision, the Supreme Court shall rely on the objection and reasons submitted by the appealing party during the specified period for appeals to the Supreme Court set forth in this law. Applications and reasons submitted afterwards are not valid.

Re-applying

Article 278

If the objection is rejected due to its context by the Supreme Court or the Supreme Court confirms the appeals court decision, objection against the same decision shall not be accepted for any reason. Revisions are exempted from this provision.

Overruling Court's Decision

Article 279

If the Supreme Court determines that the appeals court decision is issued in contradiction with the law, or is in error in its implementation or interpretation, or the deciding court was not established in accordance with the provisions of the law, or it did not have the authority to proceed with the criminal case, or another law became enforceable that is in favor of the accused person after the order was issued, the Supreme Court shall overrule the decision and refer it to the lower court for a revised verdict, although the mentioned reasons are not stated by the appealing side.

Lack of Objection by Appellant to the Verdict⁸

Article 280

The Supreme Court shall issue its decision regarding the objection of the appellant after the Court is satisfied with the report provided by the judicial advisors with regard to the order being appealed.

Rejection of Appeal

Article 281

In the following instances, the Supreme Court shall reject the appeal:

- 1– If the decision of appeal court is absolute based on provisions of the law or appeal of the issue to the Supreme Court is not permitted.
- 2– If the application for appeal or the relevant reasons are submitted after the determined period of time.
- 3– If the decision is issued for imprisonment and the losing party has not presented himself to relevant authorities for enforcement of decision, unless the convict was released on bail.

⁸Translator note: The inconsistency between the title and content of the article is present in the Dari version.

Chapter 13

Revision on Final Decisions of Courts

Application for Revision

Article 282

Appeals on absolute decisions of the courts for misdemeanor and felony cases may be requested in the following conditions:

- 1– If the accused person was convicted of murder and afterwards, the individual who was allegedly murdered, is found alive.
- 2– If a person is convicted of being accused of committing a crime and afterwards another person is convicted of being accused of committing the same crime, and there is a contradiction between the 2 verdicts that acquittal of one of the 2 convicts is proven.
- 3– If the witnesses or the experts are found guilty and sentenced to punishment in accordance with the provisions of the law for coerced (false) testimony or reports, or a verdict for forgery of documents presented during case proceeding is issued, or in Hudud crimes, the witness revoked his statement willingly, provided that the mentioned testimony affects the issued decision.
- 4– If the criminal court's decision was based on the civil court's decision and the civil court's decision has been revoked.
- 5– If after the absolute decision, events happen or appear, or evidence is presented which was unknown during the trial or not presented to the court and these events and evidence could cause the convict's acquittal.
- 6– If at the end of the judicial session the decision is issued without officially notifying the accused person.
- 7– If during the trial convict was not given the right to appear in court and the right to defend.

Parties Who Apply for Revision

Article 283

- (1) In circumstances set forth in article 282 of this law, the attorney general, convict, legal representative, relatives, and in case of death, their heirs can request revision.
- (2) If the one requesting the revision set forth in paragraph (1) of this article is someone other than the prosecutor, the application shall be presented to the Attorney General's Office. In this appeal application the decision upon which appeal is requested and the grounds for appeal are mentioned.
- (3) The attorney general will submit his view and the grounds upon which the revision is based together with the revision application to be filed by himself/herself or another person to the Supreme Court.
- (4) The attorney general will submit the appeal application to the Supreme Court within (30) days from the date it is received.
- (5) The revision application does not prevent the enforcement of a contested decision. Capital punishment (death penalty) is an exception to this Rule.

Revision Proceedings

Article 284:

- (1) The revision application is considered by the Supreme Court according to the provisions of law.
- (2) If the revision application is rejected, the convicted cannot request a revision based on the same previous reasons.
- (3) If the revision application is accepted by the Supreme Court, the Supreme Court shall assign a case proceeding date and notify the convict or his/her legal representative and Attorney General's Office at a minimum of (10) days prior to commencing the session. The Attorney General, convict or his/her legal representative has the right to attend the revision trial and present their opinions.

The Attorney General, convict or his/her legal representative has the right to attend the revision trial and present their opinions.

- (4) If the Supreme Court confirms the objection and finds the presented grounds are valid, it shall overrule the earlier decision and issue a new decision.
- (5) If the Supreme Court proves that the grounds need further investigations, it may refer the case file along with necessary instructions to a lower competent court.
- (6) If the convicted is acquitted based on decision after revision, an order for reimbursement of whatever the convicted was obligated to pay is also issued.

In case of the convicted person's death, the reimbursement amount shall be given to his/her heirs.

Case Revision of a Deceased Convict

Article 285:

If the revision appeal, after the death of the convict, is filed by his/her relatives, the Supreme Court shall proceed with the case; if his innocence is proved the Supreme Court shall issue a verdict for restitution of the deceased's prestige.

Publishing a Verdict of Acquittal

Article 286:

If the conviction verdict of the accused person was already published in the mass media, and the revision results in acquittal of him/her, the prosecutor's office is obligated to publish his verdict of acquittal in the same mass media at the expense of Government.

Non-Conviction to a More Severe Punishment

Article 287:

If the revision application is submitted in favor of the convict, they cannot be sentenced to a more severe punishment than the sentenced punishment.

Compliance With the Provisions of the Civil Procedure Code

Article 288:

The revision and the execution method of the issued sentence regarding financial issues of individual right resulting from crime must adhere to the provisions of the civil procedure code.

Section 4 Cancellation of Proceedings and Enforcement of Decisions

Chapter 1 Cancellation of Proceedings

The Consequences of Noncompliance With the law During Basic Proceedings

Article 289:

- (1) Noncompliance with provisions of the law during one of the basic proceedings will result in its nullification.
- (2) Basic proceedings involves observing the provisions of the law regarding the court formation, its territorial or subject matter jurisdiction, arrest, search, investigation, expert examination and the right to have an attorney.
- (3) In case of non-compliance with the law regarding one of the matters stipulated in paragraph (2) of this article, the court is obligated to issue an order to nullify the proceedings and overrule the decision – even though no request was made concerning the matter. The previous proceedings will be nullified and new proceedings according to the provisions of the law will be conducted.

Dismissing the Accused Person’s Right to Defend Regarding Nullification

Article 290:

For reasons other than the conditions set forth in paragraph (2) of article 289 of this law, if proceedings related to evidence collection or investigation of misdemeanor and felony crimes are performed in the presence of the accused person or their defense attorneys and they did not object to it, the accused person’s right to defend the nullification of the proceedings shall be dismissed.

Summons Amendment

Article 291:

If the accused person or their defense attorneys personally appear in court, they cannot request that the summons be nullified; in this case they can ask that the summons be amended or ask for time to prepare a defense prior to commencing the proceedings of the case. In this case the court is obligated to accept the demand.

Nullifying a Section of the Proceedings and Its Effects

Article 292:

- (1) The court can order the amendment of any portion of the proceedings where there is a non-compliance with law or based on the parties request or at its own discretion, provided that the proceedings are not exposed to complete nullification.
- (2) Once nullifying a portion of the proceedings has been confirmed, all the effects which are directly relevant to it are also nullified.

Rectifying an Insignificant Error by the Deciding Court

Article 293:

If an error was made in the decision or ruling issued by the court and it did not result in its nullification, the court at its discretion or as per the demand of one of the parties in a dispute, rectifies the decision after summoning the parties and hearing their statements, and notes it on

the margins of the issued decision or ruling. Rectifying personal information of the accused person shall also be subject to this provision.

Chapter 2

Values of Absolute Decisions of the Courts

Non Allowance of Objection to Absolute Decision

Article 294:

When absolute decision regarding a criminal case is issued, an appeal is only allowed through revisions set forth in this law.

Prohibition of Repeated Trials

Article 295:

After issuing an absolute decision in a criminal case, the convicted person cannot be tried again due to the appearance of new reasons or evidence or due to change in the legal characteristics of the same crime.

Lack of Impact of Criminal Court's Decision on A Civil Suit

Article 296:

When a civil suit is tried along with a criminal case before a criminal court, and if the accused person is acquitted by the criminal court or a verdict of not guilty is issued, this decision shall not affect the civil suit which has yet to be definitively resolved.

Recognition of a Private Right Claim as Civil Case by a Criminal Court

Article 297:

If the criminal court recognizes the claim initiated by the private claimant as a civil case, the civil court shall proceed with the case independently and separate from the criminal case, and proceed in accordance with the provisions of the civil procedure code.

Impact of a Criminal Decision Before a Civil Court

Article 298:

A conviction or an acquittal of the accused person in a criminal case is significant in the judgment of the civil court concerning the occurrence of the crime, legal characteristics of the crime, and its attribution to the perpetrator; in this case, a decision of acquittal is valid if it is issued based on a dismissal of accusation or inadequate reasons for accusation. The criminal court decision is not significant regarding the object of judgment if the decision deems that the alleged action is not punishable.

Impact of a Civil Decision Before a Criminal Court

Article 299:

A decision issued in cases of financial transactions by a civil court is not significant regarding the object of judgment in a criminal court concerning the occurrence of the crime and its attribution to the perpetrator.

Significance of a Decision in Personal Matters

Article 300:

A decision issued on personal matters by a court is significant regarding the object of judgment in a criminal court for cases related to resolving a criminal case.

Chapter 3

Enforceable Decision

Enforcement of Decisions

Article 301:

- (1) Absolute decisions of the courts are enforceable, except an order for execution (death penalty) of a person, which shall be enforced after the President's approval.
- (2) In issuance of a decision to execute a convicted person, a unanimous vote by the judicial delegation of the Supreme Court is required. In the absence of a unanimous vote, the accused person is considered to be sentenced to maximum continued imprisonment.

Enforcement of Punishments

Article 302:

- (1) Anticipated punishments in the law shall not be enforced on anyone, unless a decision has been issued by a competent court.
- (2) Enforcement of all types of punishments and security measures against a convicted person shall be executed in a humane manner and with respect to human dignity. Torture, inhumane or humiliating the convicted is not permitted.
- (3) Civil rights and freedoms of the convicted person shall not be taken or restricted, unless a custodial order by competent court is issued.

Enforcing Decisions Issued by the Courts

Article 303:

- (1) Prosecutors and police are obligated to enforce the courts' criminal decisions in accordance with the provisions of this law.
- (2) Police are obligated to implement the prosecutor's issued rulings and orders related to courts decisions.

Enforcing Issued Decisions in a Civil Suit

Article 304:

Enforcing decisions of the criminal court in a civil suit is based on the plaintiff, the victim or their legal representatives' demand in accordance with the provisions of civil procedure code.

Immediate Enforcement of a Decision

Article 305:

- (1) A court's decision for payment of a cash fine and compensation or imprisonment of more than 5 years, for a repetitive offender or a convicted person who does not have a specific residential address in Afghanistan, shall be enforced immediately – even if they have appealed to a higher court.
- (2) A court's decision regarding imprisonment for other matters is also immediately enforceable unless the accused person is released on bail or a reliable guarantee is given based on which the accused person appears and does not violate the issued decision. Reliable guarantee is that the guarantor commits if he/she could not bring the guaranteed person before court then he/she will pay the amount committed.

(3) If the accused is under detention, the court can issue a ruling for extension of the detention or release of the accused before the decision of the court based on provisions of this law.

Transfer of Bail Amount to the Government's Revenue Account

Article 306:

(1) If by an absolute decision of the court the accused person is sentenced to return the goods, cash fine or compensation from the amount of bail, after deducting the court expenses, return of the goods, compensation and cash fine shall be accounted accordingly.

(2) If the accused person is acquitted or not sentenced to pay a cash fine, the amount paid for bail, after deducting the court expenses and the consequences of violating the provisions of this law on summoning, is reimbursed to the owner or the guarantor who has paid the amount.

Enforcement of a Complementary Punishment

Article 307:

If in accordance with the provisions set forth in this law a sentence of imprisonment is enforced, complementary punishments and security measures included in the court's decision along with the imprisonment shall also be enforced.

Immediate Release of the Accused Person

Article 308:

If the accused person is in detention and the court issues a decision for his/her acquittal, or he/she is sentenced to punishment which does not include imprisonment, or in the decision suspension of enforcement is ordered, or the accused person has completed the sentenced time in detention, he/she shall be released immediately even if the decision has been objected to, unless the upper court based on the request of the prosecutor orders an extension of the detention or nullification of the suspension of enforcement.

Temporary Enforcement of All or Some of the Sentenced Fine

Article 309:

If the court issues a decision for a monetary guarantee of the plaintiff, the defendant, or victim, the court can order a temporary enforcement on all or some of the sentenced fine by payment of bail. However, if an objection is made, the court can exempt the winning party from paying the bail.

Chapter 4

Enforcement of Execution Punishment

Approval of an Execution Order

Article 310:

Whenever the execution order of the accused person is absolute in accordance with the provisions of this law, the Supreme Court shall present the case documents with the relevant decision to the president within (14) days from its date of issuance. If the president approves the court sentence, it shall be enforced.

Custody of a Person Sentenced to Death Penalty

Article 311:

The person sentenced to death shall be held in prison until the sentence is carried out.

Notifying Relatives of the Convicted Person

Article 312:

(1) The prison administration is obligated to notify the relatives and defense attorney of the person convicted to death penalty about the date of the execution.

(2) The relatives of a convicted person can visit him/her 1 day prior to the implementation of the execution order; the relatives of the convict are not allowed to be present during the implementation of the order.

Providing Facilities for Performing Religious Rituals

Article 313:

If the religion of the convicted person sentenced to death requires religious ceremonies or practices, the prison administration officials are obligated to provide him/her with the necessary services.

Place of Execution

Article 314:

The execution takes place inside the prison in a covered location in accordance with the provisions of this law, except otherwise in circumstances which public edification is needed.

Presence of Officials During the Execution

Article 315:

(1) The execution is carried out by the assigned expert person, in the presence of the prosecutor, warden, religious scholar and assigned physician who are designated by relevant departments.

(2) While the execution is carried out, the presence of the witness, defense attorney and claimant is necessary, unless despite notification they do not appear.

Narration of Execution Order

Article 316:

(1) At the place of execution, a text of the issued decision and the accusation which resulted in the issuing of this sentence shall be narrated by the prosecutor before the execution is carried out.

(2) If the convict wants to make a statement, the assigned representatives are obligated to record the statement in the registry.

(3) After the execution is carried out, the assigned representatives are obligated to obtain the physicians confirmation of the convict's death and record the time of death in the registry and sign it.

Executions Shall Not Be Carried Out on Holidays

Article 317:

Execution is not permitted to be carried out on national and religious holidays.

Enforcement of the Death Penalty

Article 318:

- (1) The death penalty is enforced (10) days after the order is approved by the president.
- (2) If the person sentenced to death is pregnant woman, enforcement of her punishment is postponed for 2 years after the date of delivery. In this case, the convicted person is kept in prison until the implementation of punishment.

Method of Implementation of Execution

Article 319:

The death penalty is carried out in a way that the convicted person feels the least pain.

Releasing the Body to Relatives

Article 320:

- (1) The body of the executed person is to be handed over to their relatives after enforcement of the sentence.
- (2) If the executed person does not have any relatives, or their relatives refuse to receive the body, the body is buried in accordance with the provisions of Islamic Sharia.
- (3) The body is buried without holding a gathering.

Chapter 5

Enforcement of Imprisonment

Enforcement Authority of Imprisonment

Article 321:

Absolute decisions of the courts regarding sentencing of a person to imprisonment shall be enforced in the prisons under the supervision of the prosecutor's office.

Calculating From the Enforcement Date

Article 322:

The day on which enforcement begins, shall be calculated as the imprisonment of the convicted person and the convict shall be released 1 day after the punishment is completed.

If the release day falls on a holiday; the convict shall be released on the last working day before the holiday.

Calculating Custody and Detention Periods of Imprisonment

Article 323:

- (1) Custody and detention time including the day of arrest shall be counted against the imprisonment period of the convicted person.
- (2) If a person is acquitted during the investigation due to lack of evidence by the ruling of prosecution office, court decision, or a verdict has been issued finding that the initiation of a claim is not necessary, he will be compensated by the Government for each day he has spent in the detention proportionate to the daily income and a fixed amount for an unemployed person. The amount will be determined by a competent court.

Calculation of Imprisonment Sentence Due to Multiple Crimes

Article 324:

If a person is sentenced to imprisonment for multiple crimes based on separate provisions of law, the imprisonment time is counted from the lesser punishment.⁹

Chapter 6

Alternative Penalty to Imprisonment

Application for Alternative Penalty to Imprisonment

Article 325:

- (1) A person, who is sentenced up to 3 years of imprisonment, can request the Minister of Justice to assign him/her to do community service outside the prison instead of enforcing the imprisonment.
- (2) Alternative penalty to imprisonment is applicable to the following convicts:
 - 1– The convicted sentenced to prison is a school student, university student or teacher and or breadwinner of a child or an old person, or a woman who does not have occupation outside the house.
 - 2– The behavior of convicted person was good enough in the past and he is guaranteed by a reliable person.
 - 3– If an alternative penalty to imprisonment is approved, the convict shall be introduced to an organization providing community services to perform community service.
 - 4– The convicted is obligated to comply with the rules and regulations of the organization providing the services during the sentenced term in lieu of imprisonment.

Manner of Performing the Services

Article 326:

- (1) The convict shall show commitment to performance of the services in the specific time in a good manner with receiving only 30% of the original wage and observe all terms and conditions set forth in paragraph (4), article 325 of this law.
- (2) If the source providing community services is a private organization or business, it is obliged to transfer the 70% of the remaining wage to the Government account.
- (3) Other conditions related to performing the community service shall be regulated by a separate regulation.

Abolishment of Alternative Penalty to Imprisonment

Article 327:

If the convict engages in absenteeism, performs low quality service or violates the terms and conditions set forth in paragraph (3) article 325 of this law or a relevant regulation, the organization providing the service is obligated to report the issue to the relevant ministry. In this case, the relevant ministry of justice shall revoke the alternative penalty to imprisonment and the prosecution office shall send the convict back to prison to serve time for the remaining imprisonment term. The service term served out of the prison is counted towards his/her imprisonment term.

⁹Translator note: “counted from the lesser punishment” is translated literally. Its meaning in Dari is unclear.

Substitution of Alternative Penalty to Imprisonment Into Labor

Article 328:

- (1) A State employee's imprisonment is substituted with labor in the capital by the relevant minister's request or in the provinces by the governor's request, after the approval of the minister of justice. Those who are convicted to administrative corruption are exempted from this provision.
- (2) Other individuals' imprisonments are substituted with labor at the prosecutor's request, confirmation of the relevant provincial governor and the approval from the minister of justice.
- (3) The relevant administrative authorities determine what type of labor will be substituted for the convict's imprisonment, after approval from the minister of justice.

Calculation of Prisoner's Work During the Punishment Period

Article 329:

The duration of community services of the prisoner is counted in the imprisonment period while his/her absenteeism is not counted.

Chapter 7

Postponement of Sentence Enforcement

Postponement of Sentence Enforcement of a Pregnant Woman

Article 330:

If a woman, who is pregnant for (6) months or more, is sentenced to up to (5) years of imprisonment, the prosecutor shall request the sentencing court to postpone the sentence enforcement until (3) months after the delivery.

Postponement of Sentence Enforcement of Parents Who Have Children

Article 331:

If a husband and wife who are looking after a child under 15 are sentenced to up to (5) years of imprisonment at the same time, the prosecutor shall request the sentencing primary court to postpone the enforcement for imprisonment on one of them, given that the person to be released is not a repetitive offender. If the parents are recidivists, article 242 of civil code shall be applied regarding the guardianship of the child under 15.

Postponement of Sentence Enforcement Due to Sickness

Article 332:

- (1) If a person sentenced to imprisonment be affected by a disease which by itself or due to enforcement of the sentence may threaten his/her life, it is permitted to postpone the enforcement of the sentence until the sickness danger is eliminated.
- (2) If a person sentenced to imprisonment be affected by psychological diseases, the enforcement of the sentence is postponed and the prosecutor can issue a transfer order to one of the psychiatric treatment facilities. In such cases, the examination and treatment time is deducted from their prison term.
- (3) The determination of dangerous diseases or mental diseases in such conditions is carried out by experts.

Bail

Article 333:

For reasons permitting a postponed enforcement of a sentence, in accordance with the provisions of this law, the prosecutor can ask the amount of bail to be determined by the court. If required, the prosecutor can also ask the court for taking other precautionary measures to prevent person sentenced to imprisonment from fleeing after removing excuse.

Chapter 8 Parole

Parole Request

Article 334:

Parole takes place in accordance with the provisions set forth in this chapter by the request of the convicted person.

Parole Request

Article 335:

(1) If a person is convicted by an absolute decision and he/she has served 3 quarters (3/4) of his/her entire sentence and is proven to be reformed by exemplary good behavior, an order for his/her parole is permitted.

(2) A decision regarding the parole of a convicted prisoner is made by a competent court where the prisoner is imprisoned in its jurisdiction and is based on a proposal by the warden and confirmation of general director of prisons and detention centers through the prosecution office.

(3) The court, in its decision of parole, states the behavior, conduct and conditions that shall be observed by the convicted person in the future. These conditions are:

- Specific place of residence
- Giving attendance at particular times to police office
- Use of surveillance hand cuff
- Guarantee of good behavior

(4) The local police are obligated to monitor the parolees' conduct and behavior and shall report to the relevant prosecutor office about their behavior on timely basis.

Calculating the Commutation Period

Article 336:

If the convict benefits from a commutation order, the time period after applying commutation time is his/her total imprisonment term.

Parole for a Conviction of Multiple Crimes

Article 337:

(1) If a person be convicted for multiple crimes committed before imprisonment, the parole shall be counted based on the total period of the combined sentence.

(2) If a convicted person commits a crime while serving his/her sentence in the prison and he/she is also sentenced to imprisonment for this action, the term for his/her parole shall be based on the time remaining from his/her initial sentence at the time the crime was committed and the sentence on his/her later charge from committing the crime in the prison.

Submitting an Order for Parole to the Prison Administration

Article 338:

A prisoner's order for parole shall be submitted to the relevant prison administration to proceed with enforcement of the order and to issue a certificate that specifies the type of punishment under the sentence, parole term and enforcement date. The certificate shall also include the conditions and obligations that shall be followed by the parolee. The certificate shall also state that if the parolee does not adhere to the conditions and obligations or commits an action which is construed as misconduct, the parole is to be revoked.

Calculating the Term If the Parole Is Revoked

Article 339:

If the order for parole is revoked, half of the term spent on parole is counted towards the imprisonment time. If parole is granted a second time, the prisoner may use it and the term shall be considered as the remaining time of imprisonment.¹⁰

Eligibility for Parole

Article 340:

Parole is applicable for a convicted person who has paid the monetary fines charged to him/her due to committing a crime, unless it is impossible to obtain the monetary fines from the convicted person based on the provisions of the law.

Court Decision About Parole or to Revoke Parole

Article 341:

If a parolee fails to follow one of the conditions or obligations imposed thereon, the primary court under whose jurisdiction the prison is located may decide to continue the convict's order for parole or to revoke it based on the proposal of relevant prosecutor after hearing the statements made by the convict and the prosecutor. This decision will not be appealable.

If the parole is revoked, the parolee shall be returned to prison.

Irrevocability of Parole

Article 342:

If the parole order is not revoked prior to completion of the sentenced term, it becomes irrevocable.

Parole does not affect complementary punishments.

For continued imprisonment, the parole becomes irrevocable 3 years from the date the order was issued.

Chapter 9

Enforcement of Provisions of Financial Disbursements

Enforcement of Cash Fines

Article 343:

Enforcement of absolute decisions of courts regarding return of property, cash fine, payment for reimbursement and compensation of losses is carried out in accordance with the

¹⁰ The second sentence of the Dari version of this article is ambiguous; the translation is only an approximation of what may have been intended and should not be relied on as conclusive.

provisions of civil procedure code and other legislative documents with the order of prosecution office. Amount of money payable to the Government is calculated according to the administrative rules of obtaining taxes and Government liabilities.

Payment Procedure of Cash Fine

Article 344:

If a decision for payment of a cash fine and compensation of losses is issued simultaneously and the convicted person's personal property is insufficient to pay all of them, first, whatever necessities needed by the claimant to be returned shall be paid,¹¹ and the remaining amount of money shall be paid in this order: expenses, compensation of losses, and cash fine.

Cash Received From the Convict's Property

Article 345:

If a financial payment order is entered due to commission of several crimes, the received cash amount or the cash received from the convict's property via sale shall be used to pay the sentenced penalties for felonies, misdemeanors, and petty crimes (obscenities) respectively.

Crediting Detention in Lieu of Fine

Article 346:

- (1) If an individual is detained and sentenced to pay a monetary fine as a result of the court's decision, the days served in detention shall be calculated based on the convict's daily income before detention and shall be credited to him/her. This rule does not affect the compensation to the winning party.
- (2) When the sentence contains both imprisonment and a monetary fine, and the time served in detention is more than the sentenced time, the additional time served by the convict shall be credited to them according to the provision of paragraph (1) of this article.

Placing a Moratorium or Designating Installments for Payment of the Sentenced Amount

Article 347:

- (1) In exceptional circumstances, as per the convict's request and the prosecutor's agreement, the sentencing court can place a moratorium or designate installments for the payment of the amount to the Government to which the convict is obligated.
- (2) The ruling regarding the acceptance or rejection of the request set forth in paragraph (1) of this article is not subject to objection.
- (3) Should the convict fail to pay 2 or more installments without justified reasons, per the prosecutor's request, the court can issue a ruling to abolish the installments.

Chapter 10 Commutation and Pardon of Punishment

Pardon

Article 348:

- (1) A pardon shall be carried out by the decree of the president and based on the decree some or all of the final punishments of the convicted person shall be dismissed or shall be reduced to a lighter punishment as anticipated by the law.

¹¹ Translator note: The phrase "Whatever necessities...to be returned" is not defined in the Dari.

(2) A pardon shall not dismiss consequential and complementary punishments and security measures and consequences of criminal charges and does not affect previously applied punishments, unless the issued pardon decree states otherwise.

Non-Violation of Real and Incorporeal Persons' Rights

Article 349

Pardon does not cancel others' financial rights.

Obstacles to Commutation and Pardon

Article 350

(1) Punishment for the convicts of the following crimes is not included in the pardon and commutation:

- 1– Hudud
- 2– Qesas
- 3– Diyat unless the victim does not have an inheritor

(2) Imprisonment punishment for the convict of the following crimes may not be pardoned:

- 1– Intentional murder
- 2– Kidnapping for receiving property or benefit
- 3– Taking hostage
- 4– Administrative corruption
- 5– Drug trafficking
- 6– Repetitive criminals
- 7– Other crimes as determined by the president

(3) Commuting the imprisonment punishment of the convicts of the crimes set forth in subparagraphs (1 and 2) of paragraph (2) of this article maybe commuted if, in murder crime, the inheritors of victim waive the convict's punishment and, in kidnapping crime, the property or benefit obtained is returned to the victim.

(4) Commuting the punishment of convicts of the crimes set forth in paragraph (2) observing the provision of paragraph (3) of this article shall not exceed $\frac{3}{4}$ of the punishment.

Prohibition of Pardon and Commutation of Suspended Punishment

Article 351

Commutation and pardon of the punishments where the court has issued a verdict of suspension is not permissible.

Amendment of Execution to Continued Imprisonment

Article 352

(1) If a person is convicted to execution based on the binding verdict of the court and the president does not approve the court's verdict, execution sentence shall be amended to the maximum punishment-continued imprisonment.

(2) Punishment for the convict set forth in paragraph (1) of this article may be commuted if the inheritors of the victim waive the convict's punishment or the convict has paid the diat (blood money).

Amendment of Punishment in Case of Extradition and Pardon and Commutation

Article 353

Afghan citizens who are sentenced to imprisonment exceeding 20 years by a foreign court, and who are extradited to Afghanistan, may have their punishment decreased if permitted by provisions of enforced law.

Occasions for Pardon and Commutation

Article 354

Commutation and pardon shall be done on the occasion of the following events:

- 1– Birthday of Prophet Muhammad.
- 2– Eid ul Fitr.
- 3– Eid ul Adha.
- 4– 8th of Sawr, victory of Afghan People's Jihad.
- 5– 28th of Assad, Afghanistan Independence Day.
- 6– Other occasions based on the President's volition.

Chapter 11

Problems in Enforcement

Authority to Address the Problems

Article 355:

Should any problem be faced during the enforcement of financial payment, the case shall be submitted to the primary court which has territorial jurisdiction over the enforcement of the sentence.

Presence of Interested Parties

Article 356:

- (1) The problems in enforcement shall be immediately referred to the court by the prosecutor's office and the interested parties are obligated to appear in the session designated to resolve the issue.
- (2) The court, after hearing the statements of the prosecutor, the convicted or their legal representative and interested parties, shall proceed to resolve the matter and issue an order. In this regard, the court's order is final.

Postponement of Enforcement

Article 357:

The court in case of need for further information to resolve enforcement problems, shall issue an order to postpone the enforcement of verdict.

Third Party Claim

Article 358:

If during sentence enforcement over the property of a convict a third party ownership claim is made on the convicted person's property, the matter shall be resolved in accordance with the provisions of law through a competent civil court.

Chapter 12

Cessation of Execution of Criminal Verdict

Cessation of the Verdict

Article 359:

If a convict dies after final decision, execution of criminal verdict shall be terminated.

Termination of Execution of Verdict Has No Effect on Financial Obligations

Article 360:

Cessation of execution of criminal verdict due to death of the convict shall not prevent enforcement of the verdict on financial obligations.

Obtaining Financial Obligations of the Deceased

Article 361:

Financial obligations of the deceased convict shall be withdrawn from his inheritance as a debt.

Chapter 13

Restoring Prestige

Eligibility for Restoring Prestige

Article 362:

A person convicted and sentenced to a punishment due to a felony or misdemeanor may be eligible to have his/her prestige restored after full enforcement of the sentenced punishment or being pardoned.

Full enforcement of the sentence shall also include compensation of losses incurred to the victim ordered by the court.

Request to Restore Prestige

Article 363:

In case of death of the convict his/her heirs may request the primary court that first convicted him/her to restore his/her prestige in accordance with the provisions of this law.

Time of Request for Restoring Prestige

Article 364:

The request for restoring prestige shall be made in the following times:

- 1— In a felony crime, from the end date of the sentence enforcement or pardon after elapse of 6 years
- 2— In a crime of misdemeanor, from the end date of sentence enforcement or pardon after elapse of 3 years
- 3— In case of conviction of repeated felonies or misdemeanors, the interval set forth in subparagraphs (1 and 2) of this article shall be doubled.

The Time Period to Restore Prestige of the Released Convict on Parole

Article 365:

If the convict was released on parole, the time frame to restore prestige is calculated from the date the parole was finalized.

The Order to Restore Prestige in Multiple Criminal Verdicts

Article 366:

If a person requesting for his prestige to be restored is sentenced to multiple punishments in a way that each punishment is followed by the other, the timeline to restore his prestige shall be calculated from the date his last punishment is executed.

Contents of the Request to Restore Prestige

Article 367:

A request to restore prestige shall contain the following:

- 1– Applicant's identity and residential address
- 2– Name of Court that issued final decision for punishment, issuance date and a summary of the decision text issued regarding the applicant.
- 3– The alleged crime and article of the law that considered the act attributed to him as a crime that was referred to by the court
- 4– The time period since enforcement of the issued order or the finalization date of the conditional release order

Reviewing Contents of a Request

Article 368:

The request for restoring prestige shall be submitted to the relevant prosecutor office. The prosecutor shall review the application as required and expressing his opinion along with the justified reasons shall refer the application to the relevant court within 1 month attaching the following documents:

- 1– A copy of the court verdict.
- 2– The records of the convict.
- 3– A report of investigation of the contents of the request.

Resubmitting of the Request to Restore Prestige

Article 369:

If the request to restore prestige is rejected due to lack of legal basis, it may be re-submitted after 1 year.

Addressing the Request

Article 370

- (1) The prosecutor shall be duty-bound to inform the applicant at least 7 days prior to the courts hearing session taking into consideration the distance.
- (2) The court while addressing the request for restoring prestige shall hear the statements of the applicant and the prosecutor

Issuing an Order to Restore Prestige

Article 371:

- (1) If it is proved for the court that the applicant meets conditions set forth in this chapter, the court may issue a ruling to restore the applicant's prestige. With the issuance of the ruling, it shall be presumed that the convict has never committed the crime.
- (2) The ruling to restore prestige shall be registered in the police and prosecutor's offices.

Revoking the Ruling to Restore Prestige

Article 372:

- (1) If it is proved that another verdict has been issued against the convict about which the court did not know while addressing the request for restoration of prestige or if the convict, after issuance of ruling on restoration of prestige is sentenced to a punishment for commission of a crime prior to issuance of the ruling on restoration of prestige, the court may revoke its verdict on prestige restoration.
- (2) Revoking the ruling to restore prestige shall be decided by the court based on the prosecutor's request.

Restoring Prestige in Accordance With Provisions of the law

Article 373:

Based on the law, restoration of prestige is granted if the person is not convicted of committing a felony or misdemeanor during the following time periods:

- 1- In a felony crime if 10 years pass from the end date of sentence enforcement or pardon.
- 2- In a misdemeanor crime if 5 years pass from the end date of sentence enforcement or pardoning.

No Objection to a Ruling to Restore Prestige

Article 374:

An order issued by a primary court to restore prestige is considered final and shall not be objected or appealed against.

Chapter 14 Proceedings Regarding Loss of Documents and Orders

Loss of Investigation Documents

Article 375:

If documents from an investigation are lost before filing a case or if an original verdict is partially or fully lost before being enforced, the following proceedings shall occur:

- 1- A duplicate of the investigation or verdict documents shall be used as substitution.
- 2- Should an organization or a person be in possession of the duplicate, the prosecutor may ask the court that ordered the service of the duplicate to the person or the organization to reissue another duplicate and the person from whom the duplicate was taken shall be accommodated with another duplicate of the documents without charging a fee.

No Retrial

Article 376:

Loss of the original copy of the verdict does not require retrial; judicial proceeding until the issuance of the final decision shall be an exception to this provision.¹²

¹²Translator note: the ambiguity of the second half of the sentence is present in the Dari version

Retrial

Article 377:

Whenever the case is under the review of the Supreme Court and it is impossible to recover a copy of the verdict, the relevant division may then order a retrial provided that the verdict has gone through all the stages of legal protests.

Loss of Investigative Documents

Article 378:

If investigative documents are lost in part or in full prior to filing a case or dismissal of case, the part of the investigation affected by the lost documents shall be conducted anew.

Loss of Investigative Documents Before Verdict Has Been Issued

Article 379:

If investigative documents are lost before a court verdict is issued, the court shall issue a decision to repeat the investigation.

Loss of Investigative Documents After a Verdict Has Been Issued

Article 380:

Whenever investigative documents for a case, which is under review by relevant divisions of the Supreme Court, are lost in part or in whole, but not the court verdict, no part of the proceedings can be retried unless required by the relevant division of the Supreme Court.

Chapter 15 Final Provisions

Estimating Timelines Based on Calendar

Article 381:

Times mentioned in this law shall be calculated in accordance with Hajri Shamsi Calendar [Solar Calendar]. Day is defined as an official (working) day in this law.

Enforcement Date

Article 382:

- (1) This law shall come into force 1 month after its publication in the Official Gazette.
- (2) With the application of this law, the Criminal Procedure Code which was published in the Official Gazette No. 26 dated 1344/03/15 with its amendments which were published in Official Gazettes No. 45 dated 1344/11/16, No. 90 dated 1346/07/18, No. 268 dated 1353/01/15, No. 547 dated 1362/10/15, No. 657 dated 1366/10/22, and No. 763 dated 1370/12/17, the law on Detection and Investigation of Crimes and Oversight by the Prosecutor's Office on the Legality of Its Implementation published in Official Gazette No. 424 dated 1358/01/15 with all its amendments published in Official Gazettes No. 498 dated 1360/10/01, No. 688 dated 1368/01/15, No. 737 dated 1369/12/30, Interim Criminal Procedure Code for Courts published in Official Gazette No. 820 dated 1382/12/06 and amendment of article 83 (3) of Interim Criminal Procedure Code for Courts published in Official Gazette No. 1013 dated 1388/12/20 and the provisions of articles 161–171 of Penal Code published in Official Gazette No. 347 dated 1355, shall be repealed, ~~and the provisions contrary to the provisions of this law shall be annulled.~~