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Law on the Preservation of Afghanistan's Historical and Cultural Artifacts

Islamic Republic of Afghanistan

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His Excellency Attorney Abdul Rahim Karimi, Afghanistan Minister of Justice

This is the Law on the Preservation of Afghanistan's Historical and Cultural Artifacts which is placed in nine (9) chapters and 85 articles and is approved on 16/4/2004 through a meeting that had the presence of all cabinet members.

Action should be taken regarding the publication as an official gazette.

Hamed Karzai
President of the Islamic Republic of Afghanistan

Chapter 1
Law on the Preservation of Afghanistan's Historical and Cultural Artifacts

Article 1:

This law is developed according to the Afghanistan constitution, Chapter One, Article Number Nine (9) for Preservation of Afghanistan Historical and Cultural artifacts.

Article 2:

All Historical and Cultural artifacts belong to the Afghanistan public and are a manifestation of their role and participation in the preservation of cultural and historical artifacts for all humanity.

Article 3:

Historical and Cultural artifacts in this law are as follows:

1. All humanitarian artifacts (Moveable and Immoveable) which have historical, scientific, artistic or cultural value and are at least one hundred (100) years old.
2. All artifacts which are less than 100 years old but have cultural, scientific and artistic value and are determined to be preserve able and valuable artifacts.

Article 4:

The scientific, artistic and cultural value of all artifacts mentioned in 3/2 will be determined by an Archaeology Committee and will be valid after approval of the Afghanistan Ministry of Information, Culture and Tourism.

Article 5:

To evaluate and perform research on historical and cultural artifacts, an official Committee is hereby established which is called the Archaeology Committee and includes the following positions:

1. Chief, Archaeology Committee.
2. Two (2) archaeologists who shall be selected by the Ministry of Information, Culture and Tourism as members of the Committee.
3. One of the members of Afghanistan National Museum who shall be a professional expert will be selected by Afghanistan Ministry of Information, Culture and Tourism as a member of the Committee.
4. One historian from the Afghanistan Sciences Academy who will be selected by the Chief of Sciences Academy, as a member of the Committee.
5. One professor from Kabul University (social sciences faculty) who will be selected by the Principle of Kabul University, as a member of the Committee.
6. One architectural professional from the Historical Artifacts Preservation and Repair Department who will be selected by the Ministry of Information, Culture and Tourism, as a member of the Committee.

Article 6:

When there is doubt as to the authenticity (counterfeit) or originality of an artifact, the final and decisive decision shall be made by the Archaeology Committee.

Article 7:

The Archaeology Institute and the Historical Artifacts Preservation and Repair Department are both responsible to survey, evaluate, determine and record all cultural and historical sites and collect and organize all historical documents related to each specific site. No one can build or perform construction on the recorded historical and cultural site unless approved or granted permission or agreement is issued from the Archaeology Institute.

Article 8:

All moveable and Immovable historical and cultural artifacts and heritage items that are discovered or remain buried and not discovered/excavated in Afghanistan are the property of the Islamic Republic of Afghanistan and any kind of trafficking of such items is considered theft and is illegal.

Article 9:

A property/land owner cannot excavate any historical or cultural artifacts which are found on his/her property.

Article 10:

Whenever municipalities, construction, irrigation or other companies (whether they are governmental or private) find or discover valuable historical and cultural artifacts during the conduct of their projects, they are responsible to stop their project and report any findings to the Archaeology Institute about the discovery.

Article 11:

If a construction project harms a historical or cultural artifact, the project will be stopped until proper measures are taken to preclude such harm.

Article 12:

Destruction of any recorded building which has historical and cultural value is prohibited unless such destruction is approved by the Ministry of Information, Culture and Tourism.

Article 13:

A person who assists a governmental agency in discovering historical and cultural artifacts shall be given proper and valuable rewards and gifts after approval of the Ministry of Information, Culture and Tourism.

Article 14:

1. All immovable historical and cultural artifacts shall be recorded after approval of the Ministry of Information, Culture and Tourism and the Archaeology Committee and will be published in official gazettes and other public information publications.
2. The Archaeology Institute is responsible for placing specific signs on recorded historical and cultural artifacts and for sending a copy of the specific sign to the municipality of the province where the specific historical and cultural artifact exists.
3. Borders around immovable historical sites shall be determined by the Archaeology Committee.

Article 15:

All holy and religious historical sites which are recorded as historical and cultural sites shall be under the control of the Islamic Affairs Department, Archaeology Institute and/or the administrative Department of the related province. The related Department shall be held responsible for the maintenance and preservation of such historical sites according to the consultation conducted with the Archaeology Institute.

Article 16:

Digging wells, ditches, rock blasting, driving over and any other operations which causes destructions of the recorded historical and cultural sites is prohibited without coordination and permission of Archaeology Institute.

Article 17:

The Afghan government, if appropriate, according to recommendation of the Ministry of Information, Culture and Tourism and with the approval of cabinet members will buy such immovable historical and cultural sites that are not government properties.

Article 18:

Claiming ownership by individuals on unrecorded immovable historical and cultural sites is prohibited even if such property has been used by the individuals for any period of time.

Article 19:

1. Any finder or discoverer of historical and cultural sites is obligated to report a find or discovery to the Archeology Institute immediately but not later than one week if it is in the city and not later than 2 weeks if it is in a province. All discovered artifacts are considered public properties and the Government of Afghanistan will pay for all lands and sites which are considered to be of historical or cultural value.
2. Whenever there is an immovable historical and cultural site discovered which includes some movable historical and cultural artifacts, all such movable artifacts are considered public property and the owner of that property will be rewarded according to Article thirteen (13) of this Decree.

Article 20:

The Archaeology Institute is authorized to conduct research and to paint and photograph all immovable historical and cultural sites and artifacts. The landowner is obligated to provide the archeologists with appropriate assistance as necessary.

Article 21:

If a historical and cultural site is located next to privately owned property and the landowner wants to repair, demolish or redesign his building, the owner must receive approval from the Historical and Cultural Artifacts Preservation Department.

Article 22:

Transformation of recorded immovable historical and cultural sites by property owners can take place one (1) month from reporting to the Archaeology Institute and the Historical and Cultural Artifacts Preservation Department. Sending a copy of the new owner's biography to the Archaeology Institute and Historical and Cultural Artifacts Preservation Department is required.

Article 23:

No immovable historical and cultural sites or property can be sold commercially.

Chapter 3 Movable Historical and Cultural Artifacts

Article 24:

All movable historical and cultural artifacts which were discovered or possessed by individuals before establishment and approval of this Decree must be recorded by the Ministry of Information, Culture and Tourism and all individuals who possess moveable historical and cultural artifacts are obligated to report such items to the Archeology Institute in Kabul and to the Information and Culture Departments in provinces. This is to ensure individuals will be able to retain the artifacts as well as preserve their rights.

Article 25:

Provincial Information and Culture Departments are responsible to officially report all recently recorded artifacts to the Archaeology Department within 15 days of recording. The Archaeology Department is responsible for sending a copy of the recording letter to the related provincial Information and Culture Department no later than ninety (90) days after receipt of such letter.

Article 26:

A person who finds or discovers a movable historical and cultural artifact is obligated to report the discovery to the Archaeology Department no later than seven (7) days if he/she lives in the capital city of Kabul, and in the provinces they should report the discovery to the Historical and Cultural Artifacts Preservation Department or Information and Culture Department or to the nearest governmental Department no later than fourteen (14) days.

Mentioned Departments in this article are responsible to report the issue to the Archaeology Department as soon as possible and the discoverer of the artifact will be rewarded according to Article 13 of this Decree.

Article 27:

Whenever the Archeology Institute intends to purchase movable historical artifacts and use them for scientific research purposes they shall be a number one priority and if the owner of the artifact disagrees the Archaeology Institute representatives can transfer the case to the Afghan court system for resolution.

Article 28:

1. The Archaeology Institute is authorized to use private movable recorded historical and cultural artifacts for their scientific research purposes. At the end of the project, the researchers must return the artifacts back to the owners. The Archaeology Institute can publish and televise historical and cultural artifact findings.
2. The Archaeology Institute is authorized to photograph and display any of the historical and cultural artifacts.

Article 29:

All private historical and cultural artifacts can be used by researchers through the Archaeology Institute for research purposes and researchers are obligated to mention the name of the owner in that particular research as the original reference.

Article 30:

If the owner of the recorded movable historical and cultural artifact intends to move the artifact to a different preservation location, the owner is obligated to report such move to the Archaeology Institute as well as to Afghanistan National Museum.

Article 31:

Individuals who possess movable recorded historical and cultural artifacts are obligated to preserve them in the manner to which they are instructed by the Archaeology Institute and the Afghanistan National Museum authorities and if the artifact is damaged, archeologists will repair it and the owner is responsible to pay the repair expenses and if the archeologists realize that the owner is unable to preserve that particular artifact, the Archaeology Institute will purchase that artifact and will pay a reasonable price for it and if the owner disagrees, the archeologists can refer the matter to court.

Article 32:

Sale and possession of movable historical and cultural artifacts to foreigners is an illegal act. When an Afghan individual wants to sell a movable recorded artifact to another Afghan citizen, such citizen is obligated to report such sale to the Archaeology Institute and provide the Institute a complete biography of the buyer and if Archeology Institute disagrees with such sale, the owner can sell such artifact to a third person.

Article 33:

The Archaeology Institute, Afghanistan National Museum and the Historical and Cultural Preservation Department employees and workers are not authorized to sell, buy or own historical and cultural artifacts.

Chapter 4 Archaeology Excavations

Article 34:

All excavations for discovering historical and cultural artifacts are under the oversight of the Archaeology Institute authorities. Other governmental Departments, organizations, private companies and individuals are not authorized to conduct excavations for discovering historical artifacts, even if it is on their own property unless the excavation is approved by the Archaeology Institute and the conditions of such excavation conform to those conditions as specified in this Decree.

Article 35:

The Archeology Institute is authorized to give archeological excavation permission to domestic and international associations and should be approved by the Afghanistan cabinet members and the permission letter shall be permanent.

Article 36:

1. Any association that desires to have excavation permission is obligated to submit a request letter consisting of following issues:
 - a. The reason for the excavation, to include a work plan.
 - b. The specific location of proposed excavation.
 - c. Presenting complete biographies of the head and members of the delegation.
 - d. Head and members of excavation delegation cannot be replaced or changed without approval and agreement of the Archeology Institute.

Article 37:

The permission letter for excavation shall be valid for a maximum of five (5) years and the association which conducts such excavation cannot stop their activities for more than one (1) year unless there is prior coordination between both sides and the period that the association stops its work shall be counted as a work period. The project cannot be updated from the specific period mentioned on the agreement unless a natural disaster or incident causes the project to stop.

Article 38:

The excavation delegation is obligated to follow and respect the tradition and customs of the Afghanistan people, specifically the customs and rules of the environment in which they are conducting their excavation project.

Article 39:

Compensating and paying for the damages which are brought by an excavation team on a private historical and cultural site is the responsibility of the excavation delegation.

Article 40:

International delegations will be not charged any taxes for importing scientific equipment, transportation equipment or any other kind of material that are needed for their activities and whenever the project is completed, they are responsible for removing all equipment from Afghanistan or donating the equipment to the Ministry of Information, Culture and Tourism.

Article 41:

The Archeology Institute is authorized to inspect and oversee all archaeological excavations. A contractor company is not authorized to survey a historical and cultural site without the physical presence of a representative from the Archeology Institute.

Article 42:

Any kind of excavation should be conducted by using the latest scientific methods and equipment. Excavation team is obligated to take proper scientific measures to preserve the historical site through completion of any such project.

Article 43:

The excavation delegation is obligated to develop a briefing every six (6) months and the briefing shall include plans, sketches, photographs, paintings and a list of discovered historical artifacts and then submit such briefing to the Archeology Institute in either hard copy or electronic form.

Article 44:

All information about excavation results can be published by an excavation delegation as well as by the Archeology Institute but should name it to the excavation delegation.

Article 45:

All artifacts which are discovered during a surveying project or an excavation project belong to Afghanistan government.

Article 46:

Preservation and transportation of all discovered historical and cultural artifacts within a contract is the responsibility of the contracted company. All discovered movable artifacts should be submitted to Archeology Institute.

Article 47:

Discovered historical artifacts can be temporarily exported for farther research, repairing and furnishing to foreign countries laboratories, and such export shall be in accordance with the request from the international excavation delegation and approval of the Archeology Institute and the Afghanistan Minister of Information, Culture and Tourism.

Article 48:

The excavation delegation is not authorized to remove discovered historical artifacts from the excavation area to a different location without approval of the Archeology Institute.

Article 49:

All rights for scientific surveys, research, excavations and publication shall be reserved for the excavation delegation, and the excavation delegation is obligated to publish their final research within 3 years and publish it in the name of the Afghanistan National Museum.

Article 50:

The excavation delegation is obligated to officially donate fifty (50) copies of their initial briefing, final briefing, essays and other documents related to the excavation and research to Archeology Institute.

Article 51:

The conditions for dissolution of an excavation contract will be mentioned in the contract sheet.

Chapter 5 Museums

Article 52:

1. Establishment of museums for preservation of historical and cultural artifacts and using them for scientific purposes are responsibilities of the Afghanistan government.

Article 53:

Museums in Afghanistan are divided into three categories:

1. A National Museum, which is currently located in capital city (Kabul) of Afghanistan.
2. Regional Museums which will be located in regional provinces and the number and location of those Museums will be determined by the Archeology Institute and the Afghanistan Ministry of Information, Culture and Tourism.
3. All other kinds of special museums can be established by Ministries and Departments after approval of the Afghanistan Ministry of Information, Culture and Tourism.

Article 54:

All historical and cultural artifacts which have scientific value and artifacts of which there are only one in existence can be restored and displayed in the Afghanistan National Museum and all historical and cultural artifacts which there are more than one in existence will be restored and displayed in regional museums where such artifacts were discovered.

Article 55:

Relocating or moving museums from one particular site to another can occur only when it is approved by cabinet members and all historical and cultural artifacts will move under the direct supervision of the Archeology Institute.

Article 56:

Relocating or moving of historical and cultural artifacts from regional museums, when it is necessary, can take place only after approval of the head of the Information and Culture Department and the head of the Historical and Cultural Artifacts Preservation Department.

Chapter 6 Trade of Historical and Cultural Artifacts

Article 57:

1. No one can import or export historical and cultural artifacts unless they have a Historical and Cultural Artifacts trade license issued from the National Museum.
2. A Historical and Cultural Artifacts trade license consists of the following items.
 - a. The complete identification of the license holder.
 - b. The title and location of their business.
 - c. A clear understanding of the customer by the Afghanistan National Museum.
 - d. An expiration date of such license.
3. Such license is valid for 3 years and can be updated, but no one else is authorized to carry or use the license. (Text added in English for understanding: License is nontransferable).

Article 58:

Selling and buying of historical and cultural artifacts are legal only when such sale or purchase does not conflict with this Decree.

Article 59:

A Historical and Cultural trade license holder is obligated to conduct his/her business in the particular location of which is specified in the license and the license holder is authorized to buy historical and cultural artifacts anywhere in Afghanistan.

Article 60:

Historical and cultural artifacts traders are obligated to:

1. Have their trade license with them at all times.
2. Record all sold and purchased historical and cultural artifacts in the special book which is provided by the Afghanistan National Museum and will be given to all traders in Afghanistan.

3. Whenever there is an inspection project by the National Museum, artifact traders shall have all their artifacts ready for inspection by inspectors.
4. Traders should advise and inform all customers about this Decree.

Article 61:

1. The Afghanistan National Museum is authorized to revoke a trader's license who acts illegally. The trader may contest the revocation in an Afghan court of law.

Article 62:

Historical and cultural trade license fees are 4,000 Afs (or \$80.00 US dollars) and whenever the trader wants to update their license a twenty five percent (25%) surcharge shall be collected based on all update costs and whenever an individual loses their license they shall be charged 1,000 Afs(20\$) for a replacement.

Article 63:

The Afghanistan National Museum is authorized to buy private historical and cultural artifacts which are unique and highly valuable. The value for a particular artifact shall be determined by subject matter experts. In the event an owner of an artifact disputes the set value, the representative from the Afghanistan National Museum can refer the matter to court for resolution.

Chapter 7 Exporting and Importing of Historical and Cultural Artifacts

Article 64:

Exporting and importing of historical and cultural artifacts to foreign countries is illegal unless such activity conforms to this Decree.

Article 65:

The Government of Afghanistan is authorized to send historical and cultural artifacts to foreign countries for the following purposes:

1. For display in international exhibitions.
2. For scientific research according to the articles mentioned in this Decree.
3. For repair.
4. For exchange with other historical and cultural artifacts in international exhibitions, after approval of cabinet members.

Article 66:

No historical and cultural artifacts without insurance and the presence of Archeology Institute and Afghanistan National Museum representatives can be sent to a foreign country.

Article 67:

Historical and cultural artifacts are considered exported while being processed for shipment even when such artifacts are still within the country of Afghanistan or in Afghanistan territory.

Article 68:

1. For returning the historical and cultural artifact a commission will be established which shall include the Minister of Information, Culture and Tourism as the head of the commission, a representative from the Ministry of Justice, the Director of the Archeology Institute and the Director of the Afghanistan National Museum as members.
2. The Commission is authorized to make decisions regarding the return of stolen or illegally exported artifacts according to the Chapter 2 and the Third Convention (3rd) of the International Institute for the Unification of Private Law ((UNIDROIT).

Article 69:

Whenever an artifact is specified by a UNESCO member country, according to the convention about prohibition of exporting and importing and illegal trafficking of cultural properties which is considered cultural Heritages of that country and it is illegal to export it, so to import it to Afghanistan is an illegal action and the artifact is returnable.

Article 70:

Requests for returning of historical and cultural artifacts which are illegally exported to Afghanistan from one of the United Nations Educational, Scientific and Cultural Organization (UNESCO) member countries will be submitted to the Ministry of Information, Culture and Tourism. The commission which will be established for investigation of this particular case is authorized to issue an order through related organizations to seize the returnable artifact and restore it in the related Department of Ministry of Information, Culture and Tourism.

Article 71:

All historical and cultural artifacts which will be exported by the government of Afghanistan shall be exempt from any customs charges.

Article 72:

Individuals, scientific associations and all other associations who import historical and cultural artifacts are obligated to submit a detailed list of their imported artifacts to the Afghan Customs Department. The Customs Department is obligated to send a copy of the detailed list to the Archeology Institute and the Archeology Institute is obligated to photograph and analyze the artifacts and to review the list. After this process is over the owner has the authorization to remove the artifacts from Customs Department possession.

Article 73:

Whenever a foreigner brings their own historical and cultural artifacts into Afghanistan and intends to return them back to their homeland, than that person shall not be charged customs tax. If they intend to sell the artifacts in Afghanistan then they are obligated to report such activity to the Customs Department and to the Archeology Institute before such sale is conducted.

Chapter 8 Punishments

Article 74:

Individuals who deliberately destroy historical and cultural artifacts will be fined and according to the level and kind of destruction, they shall be incarcerated from one (1) month minimum to a maximum of ten (10) years.

Article 75:

Whenever individuals who discover historical and cultural artifacts do not report such discoveries to the related Departments within the specified period according to Articles 19 and 26 of this Decree, they will be incarcerated for a minimum of one (1) month but not more than a maximum of three (3) months.

Article 76:

Whenever the owner or preserver of a historical and cultural artifact does not maintain the artifact properly and violates Article 31 of this Decree and the artifact is found to be damaged, in addition to a fine, that individual shall be incarcerated for one (1) year up to a maximum of three (3) years, according to the importance of the artifact and level of damage.

Article 77:

Whoever violates Article 66 of this Decree and traffics in the removal of historical and cultural artifacts out of Afghanistan, in addition to returning the artifacts to government of Afghanistan such individuals shall be incarcerated for six (6) months to a maximum of ten (10) years, according to the importance and type of artifact.

Article 78:

Whoever steals or counterfeits National Museum related excavation areas or historical and cultural artifacts, in addition to paying the costs of such artifact, such individuals shall be incarcerated for no less than three (3) months to a maximum of ten (10) years according to the importance and type of artifact and crime.

Article 79:

All those who violate the rules and articles of this Decree shall be punished by court according to the importance and type of the crime committed.

Article 80:

Whoever traffics in importing prohibited historical and cultural artifacts to Afghanistan shall be punished according to Article 346 of the punishment law.

Chapter 9
Final Orders

Article 81:

All mutual contracts and agreements on historical and cultural artifacts can take place based on this Decree and mutual consent.

Article 82:

The mounting and installation of public historical and cultural artifacts in any other location other than museums, to include palaces and government buildings, is not authorized.

Article 83:

Associations for the preservation of historical and cultural heritages and artifacts may be established based on an agreement and a license issued by the Afghanistan Ministry of Information, Culture and Tourism.

Article 84:

To improve implementation of this Decree, the Ministry of Information, Culture and Tourism is authorized to develop and implement a guiding regulation.

Article 85:

This law shall be published in the official Gazette and implemented for the better preservation of Afghanistan's historical and cultural artifacts. By publishing this Decree the official Gazette Number 469, dated 30/ 9/ 1359 (10/ Dec/ 1980), is officially superseded.