

The Law on the Preservation of the Historical and Cultural Heritage.

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Ministry of Justice
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Translated
By
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For

United Nations Educational, Scientific and Cultural
Organization

To:

The Minister of Justice,

The board of the Directory of the Revolutionary Council of the Democratic Republic of Afghanistan in its historical session on 29\8\1359 ratified and recommended, within 87 articles, the law for the preservation of the historical and cultural heritage, which was decided by the council of the Democratic Republic of Afghanistan in its decision No: 2602 dated 24\8\1359.

Approval circumstances of the aforesaid has gained the view of his Excellency the Head of the Revolutionary Council of the Democratic Republic of Afghanistan, and under order No: 1311 dated 6\9\1359 of the directory board of the Revolutionary Council, which has reached the Prime minister, you are informed to publish the mentioned Law in the official Gazette.

Sultan Ali Kishtmand

Deputy to the Head of the Revolutionary Council and
Deputy Prime Minister.

Law for Preservation of the Historical and Cultural Heritage.

Chapter I General Orders:

Article 1:

The historical and cultural heritage of Afghanistan belongs to the people of Afghanistan and is the manifestation of their participation in the evolution of the cultural heritage of mankind. It is the duty of the State and the people of the Democratic Republic [Transitional Islamic State] of Afghanistan to protect the historical and cultural heritage.

Article 2:

In this law, the historical and cultural heritage means:

- (a). Any product of mankind, movable or immovable, which has an outstanding historical, scientific, cultural value and is at least one hundred years old.
- (b). The objects, which are less than one hundred years old, but which because of their scientific, artistic and cultural value, should be recognized as worthy of being preserved.

Article No 3:

The scientific, artistic and cultural value mentioned in Art 2(b) will be determined by the Archaeological Committee and is applicable after the approval of the Minister of Information and Cultural.

Article 4:

For the purpose of study and research of the historical and cultural heritage, a committee will be formed and will be named the Archeological Committee. This committee will consist of:

1. Two scientifically competent archeologists chosen by the Ministry of Information and Culture.
2. One scientifically competent member of the Museum [museums] chosen by the Ministry of Information and Culture.
3. One historian, from the Academy of Science, chosen by the Director of the Academy.
4. The Director of the Institute of Archeology is designated as the Head of the Committee.
5. [A lecturer from the Faculty of Social Sciences from the University of Kabul at a higher rank than (*Poohando*)].

6. [One engineer, from the Department for the Preservation of and Rehabilitation of Historical Monuments, chosen by the Minister of Information and Culture].

Article 5:

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

Article 6:

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

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

Article 7:

All historical and cultural properties, movable or immovable, in Afghanistan, discovered or hidden in the earth [or to be discovered], are classified as property of the State [as Public Property and it is the duty of the State to safeguard and protect it].

Article 8:

The owner of the land cannot take possession of unearthed, or excavate hidden, historical and cultural properties by the virtue of ownership.

Article 9:

Whenever, municipalities, urban housing building corporations, irrigation projects, and any other government or private corporations, in undertaking construction, expansion and improvement projects, come across valuable historical and cultural objects, they are bound to stop their work and inform the Institute of Archaeology [the Ministry of Information and Culture] on the issue.

Article 10:

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

Article 11:

Any modification of the structure of a registered monument of historic value is prohibited, without the authorization of the State [Ministry of Information and Culture].

The State [Ministry of Information and Culture] takes proper arrangements for the protection of such monuments.

Article 12:

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

Chapter II

Immovable Historical and Cultural Properties:

Article 13:

Registration of immovable historical and cultural property will be undertaken, after the ratification of the Archaeological Committee [and The Department Historical Monuments] and the approval of the Ministry of Information and Culture, and will be published in the State Newspapers for public knowledge. The Institute of Archaeology is bound to attribute a registration number to the registered historical and cultural property and send copy to the related provinces and municipalities.

Article 14:

Sacred places or historical buildings, which have been registered as historical and cultural property, remain in the custody of the owner, custodian of pious legacies, [Department of Historical Monuments], Institute of Archaeology or the local administrative authority. In this case, the person or the administration [Department of Historical Monuments] is bound to protect them

and take advice for the preservation of their authenticity from the Institute of Archaeology.

Article 15:

Burial of the dead, digging wells, drains and ditches, quarry mining with dynamite, building chimneys, driving heavy vehicles or any other operation, which cause loss and damage to the historical and cultural property, within the limits of the archeological territory, are not allowed without the permission of Institute of Archaeology.

Article 16:

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

Article 17:

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

Article 18:

The finder of immovable historical and cultural properties, or the owner of the land, or rightful user of landed properties, where such heritage properties have been discovered, are bound to inform the administrative authority of their discovery within one week, in urban areas, and within two weeks, in rural areas, and the administrative authority shall inform the Institute of Archaeology without delay. Such properties are known as Public Property.

The State shall acquire, at a reasonable price, the ownership of the land and the habitable premises, on which the historical and cultural property is situated or constitutes a part of.

Article 19:

If, discovered immovable historical and cultural property includes movable historical and cultural property, such properties are regarded as State properties and the owner will be given reasonable compensation under Article 12 of this law.

Article 20:

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

Article 21:

The transfer of ownership of a registered immovable historical and cultural property will take effect one month after the Institute of Archaeology has been informed. The notification will include the identity and a photocopy of the title of the new owner.

New Article. [If a private property is contiguous to that of historical or cultural property, in case of construction or modification of a building, permission must be obtained from the Department for the Preservation and Rehabilitation of Historical Monuments].

Article 22:

No historical or cultural property can be sold.

New article. [The limits of a historical or cultural archaeological site are fixed by a relevant specialist].

Chapter III

Movable Historical and Cultural Properties:

Article 23:

Movable historical and cultural properties, which have been in the custody of a real or legal person, before the application of this law, are registered by the State. For this purpose, from the time of application of this law, the owners of the movable heritages are bound to inform the Institute of Archaeology, in the capital and the Directorate of Information and Culture in the provinces, within three years. In this case, the private ownership of these properties is preserved.

Article 24:

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

relevant administration of Information and Cultural, within 3 months.

Article 25:

The finder of movable properties is bound to inform the Institute of Archaeology, within one week in the capital, and the Office for the Preservation of Historical and Cultural Heritage or to the local administration in the provinces, within two weeks.

The administration is obliged to inform the Institute of Archaeology in the shortest delay. Rewards will be given to the finder of the historical or cultural property according to the Article 12.

Article 26:

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

Article 27:

The Institute of Archaeology can request a registered historical or cultural movable property, which is in the custody of private persons, for the purpose of studying, drawing, molding, photographing and for scientific and technical use. After the completion of this research, the Institute must return it to the owner within a reasonable delay. Also, the Institute the Archaeology can publish such historical and cultural properties.

Article 28:

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

Article 29:

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

Article 30:

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

In case, damage to the this heritage by negligence of the owner, the Institute of Archaeology can repair it scientifically at the cost of the owner.

If it is proved that the owner of the heritage is not capable of its preservation, the Institute of Archaeology can buy it at a reasonable price.

In the case of disagreement upon the price, the Institute of Archaeology has the right to approach the court.

Article 31:

Selling registered movable cultural properties is not permitted to foreigners. If a person wants to sell a registered movable property to an Afghan, he is bound to inform the Institute of Archaeology about complete particulars of the buyer.

If the Institute of Archaeology refrains from buying the heritage, the owner can sell it to a third person.

Article 32:

The officers of the Department for the Preservation of Historical and Cultural Heritage and the persons from the Institute of Archaeology do not have the right to buy or sell historical and cultural properties.

Chapter IV Archaeological Excavations

Article 33:

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

Article 34:

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

Article 35:

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

1. Object of the excavation and work programme.
2. Fix the excavation site and its limits.

Complementary particulars should be provided to the Archaeology Council members.

Article 36:

The permit is issued only for a specific place and or a particular territory.

Article 37:

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

Article No 38:

The director and the members of the excavation council are Provide officially introduced to the Institute of Archaeology and they can not be interchanged unless prior permission is obtained.

Article No 39:

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

Article 40:

Settlement of torts and compensation of any damage caused to the land of the person where the excavation is performed, is the responsibility of the excavation council.

Article 41:

The foreign board of excavation is exempted from paying any kind of customs duties for the importation of goods, scientific and technical instruments, vehicles for their need, provided that after the completion of the work it is either re-exported from Afghanistan or left to the government organizations gratuitously.

Article No 42:

The right of investigation and supervision of all archaeological excavation is reserved to Institute of Archaeology. Without the presence of the representative, or representatives of the Institute of Archaeology, the contractor organization does not have the right to undertake survey and excavation.

Article 43:

Excavation should be performed by the most modern methods of scientific instruments.

Article 44:

The excavation board is bound to adopt all necessary technical plans for the protection of the area until the end of the contract.

Article 45:

The excavation board is obliged to present, within six months after the end of each season of excavation, its preliminary report including plans, sketches, photographs, drawings and the contents of the discovered heritage, to the Institute of Archaeology.

Article 46:

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

Article 47:

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

Article 48:

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

Article 49:

Temporary exportation of discovered cultural properties for the purpose of research, maintenance and restoration, in case of lack of scientific instruments and specialized laboratories in the country, and for the completion of information and publishing the results, will be allowed upon the request of Archaeology Committee and approval of the Minister of Information and Culture. [With the permission of the Archaeology Committee and the Minister of Information and Culture and the approval of the Council of Ministers].

Article 50:

The excavation board cannot transport discovered cultural properties, for temporary research, out of its central office without the permission of the Institute of Archaeology.

Article 51:

The right of publication of the results of scientific excavations and surveys is reserved for the board of excavation.

The excavation board is bound to publish its final research within five years [three years] after completion of excavations in the name of Afghanistan's historical and cultural heritage. After five years the board loses the right of monopoly of publishing.

Article No 52:

The excavation board is bound to officially deliver, 50 [150] copies of all its publications, such as the preliminary report, final report,

articles and pamphlets [written or electronically] relating to the excavation and research, free of cost to the Institute of Archaeology.

Article 53:

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

[New Article: In any development of excavation activities and archaeological research, which is undertaken by foreign organizations in Afghanistan, the delegation of the National Institute of Archaeology has the right to participate in the scientific research and publishing programs.

Chapter V Museums:

Article 54:

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

This order should not hinder the real and legal persons, who possess such properties or collections, in accordance with the provisions of the law.

Article 55:

In Afghanistan, museums are divided into three categories:

1. The National Museum, which is located in the capital of the country.
2. Local Museums, whose number, place and location are fixed by the suggestion of the Institute of Archaeology and the approval of the Minister of Information and Culture.
3. Special Museums are established at the suggestion of the ministries, desirous organizations and ratification of the Council of Ministers.

Article 56:

In the National Museum, all the No. 1 valuable scientific and artistic properties, and all other properties of which there is a unique example available in Afghanistan, are conserved and put

on display. All the historical and cultural properties, of which there is more than one example available, are kept in local museums where the mentioned properties were discovered.

The distribution of the available and discovered properties among different museums of the country is decided by the Archaeology Committee with the participation of the national and local museum officers.

Article 57:

Except for the case, mentioned in Article 56 of this law, shifting the National Museum or a part of its collections, without excessive need and the ratification of the Council of Ministers from its specific place to another place is prohibited.

Transportation of the properties takes place under the supervision of the Institute of Archaeology, under the best possible conditions to protect them from being stolen, broken, spilled or suffering any other damages, and the best conditions are provided for its preservation in the new place.

Article 58: Shifting of a local museum's collections takes place under excessive need on the basis of joint ratification of the local officer, information and culture minister's officer and education and training officer by observing the rules of article 57 of this law.

Chapter VI

Trading of the historical and cultural heritages.

Article 59:

According to the rules of this law, no person can engage in trading of such properties, without obtaining the trading permit of historical and cultural properties from the Institute of Archaeology.

New amendment: [According to the rules of this law, a person can engage in trading of such properties by getting the trading license of handicrafts from the National Museums].

Article 60:

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

Article 61:

A person who wants to engage in trading of the historical and cultural properties must present an application for a permit, containing the following elements to the Institute of Archaeology:

1. Complete identification of the applicant.
2. Address and the place of the trade.

Article 62:

The trade license is issued for a period of three years and is extendable. This license is not transferable.

Article 63:

The license for trading historical and cultural properties [handicrafts] is issued to those persons, who are Afghans and have complete legal rights.

[A foreigner can engage in the trade of the handicrafts according to the laws in force in the country, if he gets a permit.]

Article 64:

A person who holds a permit for the trading of historical and cultural properties is obliged to offer for a sale the mentioned properties only in the areas mentioned in the license.

The holder of the permit can buy heritages from any place in Afghanistan.

Article 65:

A trader of cultural properties is bound to:

1. Fix the trade permit in the trading place.
2. Not to store any unregistered property for more than one month in any place other than the place of the permit.
3. To register all dealings, sales and purchases of historical and cultural properties in the register book, which is given to the trader, at a cost, by Institute of Archaeology.
4. During an investigation by a representative of the Archaeological Institute [or museum] the trader should show any historical and cultural properties, which he possesses to the investigator for verification.

Article 66:

The Archaeology Committee can photograph and mould any historical and cultural property, which is available in a trading house.

Article No 67:

In case of violation the Archaeology Committee has the authority to cancel the permit of the trader. The trader can approach the court if he is not satisfied.

Article 68:

In case of nullification of the license, under Article 67, it cannot be renewed. In this case, a period of six months will be fixed for the trader to sell or register the historical and cultural properties in his own name.

Article 69:

The license for the trade of historical and cultural properties is issued against six thousands Afghanis [at a reasonable rate] and in case of renewal [after three years] a rate 25 percent of the amount is charged from the trader. If the license is lost, a duplicate is issued against one thousand [10 percent] Afghani.

Article 70:

The Institute of Archaeology while registering historical and cultural properties has the authority to purchase, at a reasonable rate, any heritage, which has a scientific value and is in the custody of the merchant.

In case of disagreement over the rate, the Institute of Archaeology can approach the court.

Chapter VII Penalties:

Article 71:

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

Article 72:

If the persons mentioned in Articles 18 and 25 of the law, omit to inform the related authorities of the discovery of a cultural property within the fixed period, they are sentenced from one week [month] up to one-month [three months] imprisonment, or to cash penalties from five hundred [one thousand] up to one thousand and five hundred [three thousand] Afghanis.

Article 73:

Whenever, the owner, custodian or protector of historical and cultural properties does not take care of their protection, or when there is a violation to Article 30, and in effect, damage is caused to the property, in addition to compensation, the violator is sentenced to one month [year] up to one year [three years] imprisonment.

Article 74:

A person, who contrary to Article 31, exports or takes a cultural property out of the country, in addition to seizure of the property, is sentenced to six months up to three years imprisonment or cash penalty of three thousands up to five thousand Afghani.

Article 75:

A person who resorts to stealing, abducting or forging properties from museums or excavation sites, in addition to paying the price of the properties, is sentenced to three [six] months up to ten years imprisonment.

Article 76:

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

**Chapter VIII
Miscellaneous Orders**

Article 77:

Export of the registered historical and cultural properties by a merchant, or all other persons, is prohibited except in conformity with this law.

Article 78:

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

1. For international exhibitions.
2. For scientific research, according to the provisions of this law.
3. For maintenance of the property.
4. In exchange for historical and cultural properties conserved in foreign museums, upon the approval of the Council of Ministers.

Article 79:

No historical and cultural property can be sent abroad, unless fully covered by insurance [and accompanied by a representative of the Ministry of Information and Culture.]

Article 80:

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

Article 81:

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

Article 82:

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

Article 83:

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

Article 84:

The Council of Ministers authorizes and supports the establishment of the voluntary associations for conservation and preservation of historical and cultural properties.

Article 85:

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

Article 86:

For the best implementation of this law, regulations will be adopted.

Article 87:

The present law will come into enforcement, after its publication in the Official Gazette.