

CONFERENCE PROCEEDINGS

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Democracy and Islam in the New Constitution of Afghanistan

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DISTRIBUTION STATEMENT A
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20030529 180

The conference material described in this report was supported by RAND using its own funds.

ISBN: 0-8330-3358-1

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Published 2003 by RAND
1700 Main Street, P.O. Box 2138, Santa Monica, CA 90407-2138
1200 South Hayes Street, Arlington, VA 22202-5050
201 North Craig Street, Suite 202, Pittsburgh, PA 15213-1516
RAND URL: <http://www.rand.org/>

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Preface

As part of a broad program of research and analysis on the Middle East and Asia, on January 28, 2003, RAND called together a group of renowned experts with knowledge in the fields of Islamic law, constitution writing, and democracy, and with specific country and regional expertise.¹

The task was to identify ways in which the constitution of Afghanistan could help put the country on the path to a strong, stable democracy characterized by good governance and rule of law, in which Islam, human rights, and Afghanistan's international obligations were respected. The group was to keep in mind the realities of Afghanistan's current situation and draw from the experiences of other countries, with the aim of identifying practical ideas, particularly about the treatment of Islam in the constitution. The following document offers ideas to those involved in the drafting of the new constitution for Afghanistan. The meeting and document were underwritten by RAND, with its own funds.

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¹Not everyone on the panel necessarily agrees with every statement in this document, but all do agree that the document draws faithfully upon the conversations and that it offers useful analysis.

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1. Introduction

The ability of a constitution to effect political change has limits. The 1964 Constitution of Afghanistan, for example, is and was widely regarded as a well-drafted and progressive document, but it did not produce a democracy. A constitution, however, has several important functions. It will be looked to as a clear symbol of the country's direction, both by its citizens and the international community. It can also provide important safeguards against the government going off track, while laying the groundwork for increased democracy, rule of law, and good governance at a later time when the country stabilizes and those developments become increasingly possible.

While there is much discussion and controversy over the place Islam should take in the text of the Afghan constitution, there are other important issues. How the Afghan constitution addresses the relationship between national and local government, for example, is a critical challenge that needs to be examined very carefully.

The constitution should avoid responding excessively to mutable trends of the day. Also, overly ideological statements do not belong in a constitution because they risk being interpreted in ways that undermine the text. Similarly, "preemptive symbolic language" intended to appease particular interest groups can cost a high price at a later date. In addition, different possible approaches to constitutional issues carry attendant risks, and it is important to guard against possible unintended consequences of specific measures.

Finally, it is important that the drafters be aware of how different sections of the constitution can interact in unforeseen ways. For instance, the status of Islamic law and the matter of judicial review are often discussed separately and addressed in different clauses. But providing for strong language in both areas might have the effect of empowering judges in vague and unanticipated ways to address matters of Islamic law as part of their oversight of the constitutionality of legislation.

2. Islam and Society

The constitutions of many Islamic countries include a statement in the preamble that refers to Islam. A democratic constitution would be expected to include all the principles the country will follow in that statement. A good formulation can be crafted from language in the 2001 Bonn Accord on a provisional government in Afghanistan, "The constitution will embody the basic principles of Islam, democracy, pluralism, social justice, rule of law, and Afghanistan's international obligations." In general, where Islam is mentioned in the constitution, all of the guiding principles should be mentioned in congruity. While some may argue that Islam incorporates the other principles, it is best to mention them explicitly because extreme groups like the Taliban also claimed to be enforcing Islam. **Thus, language in the constitution should always recognize not only the basic principles of Islam, but also the principles of democracy, pluralism, social justice, rule of law, and Afghanistan's international obligations.**

While references to Islam are customary and appropriate, attention should be devoted to clauses that give some specificity to Islam's official status. Islam must be enshrined in a way that it is expressed through normal democratic mechanisms, rather than supplanting them. Afghanistan may choose to define itself as a "Muslim" country or an "Islamic state." The latter term carries significant ideological baggage, especially in the context of today's politicized use of the terminology. It may empower those who wish to erode the position of the elected legislature and the executive, and it may allow for a parallel power structure of politically ambitious clerics, as happened in Iran.

3. Islam and Sources of Law

In the constitutions of Muslim countries, there is often a statement that affirms Islam's role in the law. It can occur early in the constitution when religion is mentioned (for example, The Constitution of Afghanistan, May 28–29, 1990, Article 2) or later when the legislature is discussed (for example, The Constitution of Afghanistan, October 1, 1964, Article 64 (Appendix B of this document), hereinafter called "1964 Constitution"). To improve the prospects for a democratic outcome, it is very important to draft this statement thoughtfully.

The wording of the 1964 Constitution is a good starting point: "There shall be no law repugnant to the basic principles of the sacred religion of Islam and the other values embodied in this constitution." (1964 Constitution, Article 64) First, the wording is fairly progressive, and second, the current Constitution of Afghanistan is composed of the 1964 Constitution along with the Bonn Accord, and so the 1964 Constitution is a referent widely accepted by Afghans today.

However, what is commonly referred to as the "repugnancy clause" represents an inaccurate translation of the word "munaqiz(d)." "Contradictory" is a better translation. But the formulation "No law shall *contradict* the basic principles of Islam" may imply judicial review, which carries significant risks, as discussed below. A more neutral formulation is that "the basic principles of Islam are an inspiration for all legislation."

In the past, groups with political agendas, like the Taliban, forcibly imposed their own eccentric interpretation of Islam on the population. Thus, in deciding on the precise formula, the critical task is to avoid overly restrictive interpretations of Islamic law and to prevent particular groups from maintaining an exclusive right to interpretation. This approach is very much in keeping with the Islamic shari`a itself: the shari`a is not and has never been intended to be a definitive legal code (see Khaled Abou El Fadl, "Islam and the State: A Short History," Appendix A of this document). Instead it is a body of thought that Muslims can draw upon in confronting legal (and other) issues. Understood broadly, this should aid rather than undermine attempts to achieve internal stability, stature in the international community, and national reconstruction.

The constitutions of other Islamic countries use a variety of formulations to express the role of Islamic law. Some mention only "Islam"; others mention specifically "the Islamic shari`a" and still others "the principles of the Islamic

shari`a." Some pose shari`a as "a" source of law; others proclaim it to be "the" source of law. In these formulations, reference to shari`a as "a" source rather than "the" source is preferable in a democracy, because it carries a strong and clear acknowledgment that other sources of law besides the Quran are valid and can continue to be used. (This debate has been strong in Arabic-speaking countries but is less relevant in Afghanistan).

In Afghanistan, the 1964 Constitution does not mention the shari`a but uses the phrase "basic principles of Islam." **Reference to "the basic principles of Islam," as in the 1964 formulation, is to be greatly preferred over reference only to "Islam" or to the "shari`a."** Insertion of the term "principles" contributes to the idea that application of Islamic teachings cannot be mechanistic, based on a frozen interpretation of Islamic law. Moreover, the term "Islam" avoids some of the recent political connotations of the term "shari`a." Currently, in a number of Islamic countries, reforms are being rolled back, democratic structures threatened and extreme applications of Islamic law instituted under the name of shari`a, and the term has been politicized to signal that agenda. It suggests efforts to supplant modern legal structures and impose specific interpretations of Islam, including hudud criminal penalties. The term "principles of Islam" avoids possible misunderstanding. This clause on Islam and the law, however phrased, does not imply that any of Afghanistan's current laws ought to be invalidated.

To safeguard democratic elements in the constitution, statements regarding Islam and the law should make equal mention of the "other values embodied in this constitution," just as the 1964 Constitution does. A more powerful alternative is for the sentence to include all the principles that the law will embody, e.g., "the basic principles of Islam, democracy, pluralism, social justice, rule of law, the values of this Constitution and Afghanistan's international obligations."

4. Judicial Review

Just as important as the language used to refer to Islam is determining who is authorized to speak in its name. In general, this should be seen as a task for the entire community and its elected representatives rather than a monopoly of religious scholars or religiously trained judges.

The ability of an independent judiciary to review whether legislation and executive actions are constitutional can be an important feature of a democracy. However, **allowing judges to review legislation's conformity with Islam carries real risks.** In Pakistan, for example, judges struck down vast portions of the statutory law because it did not conform to their notion of Islam, wreaking havoc in the economy and society generally. Other countries have had similarly negative experiences. Fortunately, Afghanistan has no tradition of judicial review for conformity to Islam, and it may be best not to alter this course.

One approach to address this issue is to make clear that the provision that refers to Islam's influence on the law is addressed to the legislature, not the judiciary. This can be accomplished through a qualifying phrase that immediately follows the sentence on law and Islam, such as "The legislature and the executive branch, acting within their constitutional powers, have the exclusive jurisdiction to make determinations concerning the law's conformity to the basic principles of Islam."

Another possibility is that the constitution could specify precisely, as Malaysia's does, that the jurisdiction of courts to find laws unconstitutional is limited to certain articles of the constitution, like the section on individual rights, and not any of the articles that mention Islam. The downside of this approach is that it may create a dilemma; if only clauses on Islam are excluded, some may charge that the constitution's mandates on Islam are not being taken seriously enough. If the exclusions are broader, it may undermine enforcement of other important provisions.

In the 1964 Constitution, the monarch is named as the protector of the basic principles of Islam. As the country is democratized, one could argue that the authority to protect Islam in the law is transferred to the people, represented by the legislature.

Another possibility is to specifically refer to the principle of "ijma" in the constitution, in order to allow for sovereignty of the people in legislation. Based

on a widely respected hadith, which states that "my community will not agree on an error," the concept is that whatever a community or nation of Muslims agrees on will be the correct Islamic approach. This principle of popular consensus can be invoked to explain that the legislature has the proper authority to determine what is "Islamically" correct and why the judiciary does not have the right to strike down legislation as un-Islamic. However, it must be clear in invoking ijma that the parliament does not have unchecked sovereignty in all areas.

Another guard against judicial overstepping (on the pretext of interpreting Islam) is a comprehensive body of carefully crafted, obligatory, statutory law. This is currently the task of a separate commission in Afghanistan, but these two efforts are interdependent and parallel. A complete body of statutes should be in place as soon as possible after the constitution goes into effect so that arbitrary interpretations by individual, possibly untrained jurists do not substitute for democratically enacted law.

In areas of the law where Afghanistan may be lacking statutes, a useful way to proceed is to survey the landscape of progressive legislation in other Muslim countries (Malaysia is a good example) and start producing recommendations for statutes that pin down rights and duties. Muslim personal law, most vulnerable to hijacking by radical Islamists, should be priority number one.

There may be a temptation to give religious authorities a voice concerning legislation, in response to pressure brought by their lobby. One way to do this is to create a body that advises the legislature or the executive on religious matters, as was done in Morocco and a number of other countries. We understand that the Constitutional Commission may have rejected the idea of mentioning advisory bodies of religious experts in the constitution. Most countries have similarly made the wise choice of not enshrining such a body in the constitution. Such bodies are designed to assist the rulers and not to rule themselves. For that reason, they should not be given constitutional status but can be created according to need.

If the executive chooses to create such a body, it can have definite term limits. But even a purely advisory body of this nature can become difficult to contain. Such bodies have shown a tendency to grow in power and expand their mandates. This happened in Egypt and in Saudi Arabia, where the religious authority has been adept at increasing its authority over the government. Likewise, Iran's Council of Guardians is an example in which such a body has arrogated ever increasing power. The system is now difficult to change because of the council's ability to overrule and block.

Another solution sometimes contemplated is to allot a small number of seats in the legislature to religious scholars. While this would secure their participation in the legislative process, it might also suggest that all legal questions could be resolved only when such scholars have rendered judgment. Also, the pattern in Afghanistan during the current state-building period has been for such inclusionary efforts to quickly escalate, with groups pressing for increasing representation. On balance, there is no need to specify mandatory appointment of religious scholars. In the past, constitutions have allowed the head of state to appoint some members to one house of parliament. Such a clause would permit the executive to exercise political judgment on the desirability of such participation.

To safeguard against efforts to undermine essential principles established in the constitution, certain aspects of the constitution can be declared to be unamendable. This was used in Turkey to safeguard state structures against radical backlash and has held up successfully to challenges.

Another important safeguard is for the President to have ultimate veto power; a line-item veto is more powerful than a whole statute veto. This provides a check against a legislature coopted by extremist elements.

A constitution also should allow for situations that statutes do not cover, to prevent judges from having to create law. For example, a provision could say: "Whenever no provision exists in the constitution or in the law for any case under consideration, the courts shall, by following the basic principles of Islam, democracy, pluralism, social justice, and the rule of law, consistent with Afghanistan's international obligations and within the limitations set forth in this constitution, render a decision that secures justice in the best possible way" (adapted from the 1964 Constitution, Article 102).

When mentioning Islam, most previous constitutions of Afghanistan, including the 1964 Constitution, gave a particular role to the Hanafi school of interpretation (fiqh) followed by Afghanistan's majority Sunni Muslims. Recognition of the minority Shi'a can be achieved in two ways: by mentioning the Ja'fari school that the Shi'a follow in addition to the Hanafi school, or by mentioning no school. If the former method is used, judges should be trained in both the Hanafi and the Ja'fari schools so that all may use the same court system. Omitting any mention of schools is perhaps the best course. Referring simply to "the basic principles of Islam" could allow for an eclectic code that does not designate itself as belonging to a particular school but is an "Afghan legal code" applied to all cases. Of course, the difficulty of drafting a code that satisfies all should not be underestimated.

5. Courts and Judges

An appropriate and mandatory process for selecting judges in Afghanistan is critical. The “who” (who is interpreting the law) is as important as the “what” (what law is being interpreted). **The process for selecting judges must have checks and balances.** For example, the executive branch could nominate, a specialized commission could then review, and finally the legislature could confirm new judges. In no case should the judicial body “nominate itself”—judges should not be nominating other judges, as is the current practice in Afghanistan. This practice does not conform to contemporary international standards, and it does not ensure a politically independent judiciary. Further, judges should be required to meet certain educational requirements, as, for example, the 1964 Constitution specifies.

No court can be allowed to unilaterally take up issues. Judges may only review issues in cases brought to the courts by plaintiffs with proper standing. A clause giving courts jurisdiction only over “cases and controversies” could rule out the possibility that they could act on their own initiative.

Personal Status Law and Shari`a Family Courts

Personal and family law can play as large a part as civil and criminal law in determining the direction society takes, individual quality of life, and the prospects for reconstruction.

Many Muslim countries have separate family courts. These have often become the exercise ground for the most conservative, least qualified judges, with very negative consequences especially for women. On the other hand, in some places these courts offer rare opportunities to female judges. Therefore, disbanding them can have the unintended consequence of discouraging the participation of women in the judiciary.

Family law could fall comfortably under the jurisdiction of civil courts. If there are separate shari`a courts alongside civil courts, however, it is important to train and select the judges very carefully and to assure that they are formally educated in codes of both Islamic personal and family law, and civil law, not just the former. In Malaysia’s “qadi” courts, members are rigorously trained in legal procedures, including procedures of other nations, which has improved the

courts significantly. Likewise, Egypt's "personal status" courts have civil-trained judges.

Selecting qualified judges will be especially important in Afghanistan, where large numbers of mullahs currently find themselves without a role to play. They may gravitate to personal and family law courts where they could try to monopolize the interpretation of Islamic law without adequate checks.

Other Islamic countries have achieved good success by basing their family law on eclectic sources. It is not necessary for a country to restrict itself to following only one particular school of law. For example, some countries who ordinarily follow the Hanafi school have drawn from the Hanbali school a provision allowing women to put a clause of unilateral divorce, comparable to the right possessed by men, into their marriage contract. Malaysia, by selecting from various Islamic schools as well as from Western law, has produced a superior set of statutes and allowed advances in personal and family law, such as limits on unilateral divorce, more equitable property law, and the permission for women to institute divorce on broader grounds.²

When referring to personal status courts, the phrase "in accordance with the constitution" should be used often and prominently to assure that personal and family law conforms to guarantees of individual rights in the constitution.

If there are Islamic courts, they should be for family and personal status law only. In Pakistan, the introduction of a shari'a bench caused judicial chaos. The economy crashed as hundreds of laws pertaining to economic matters were invalidated, minorities became vulnerable to persecution, and individual and human rights were jeopardized.

Constitutional Court

Afghanistan may be considering the establishment of a separate constitutional court. There are benefits but also disadvantages to this institution. For some transition countries, a specialized constitutional court has been an important arbiter (often in a context in which national political institutions are weak and their legitimacy uncertain) as well as an important guarantor of individual rights.

One concern is that an independent constitutional court would attract the country's top judges and siphon off scarce talent when the country is trying to

²The International Islamic University of Malaysia is a good source of information about contemporary legal reforms across the Islamic world.

rebuild an entire legal system. But a specialized constitutional court need not necessarily divert resources and expertise from the regular judiciary. It could, for example, have judges serving on it as needed (in some countries, the constitutional court is a chamber of the Supreme Court).

Moreover, if judicial review is to be exercised, whether conformity to Islam is included in that review or not, it should be done by a competent and independent body. In the Afghan context, the existing judiciary is in disarray and may not be able to carry out the profound responsibility of judicial review for some time. Responsible exercise of judicial review thus may require a different body of judges. They need to be highly educated in the law, impartial, respected, and not captives of a particular political agenda.

Another concern is that a constitutional court's members may overstep the court's bounds and seek to hear cases on their own initiative. This concern could be addressed by the rules of access and standing and by the limitation of scope of judicial review.

6. Individual Rights

A strong guarantee of individual rights in the new Afghan constitution is essential. These rights should include freedom of expression, freedom of assembly, freedom from torture, and others. The 1964 Constitution provision that "no one shall be punished except by law" is important and should be kept.

On religious freedom, the text could say that "Muslims and others are free to practice and to teach to their children their own respective religions." This, along with guarantees of human rights, freedom of conscience, and freedom of expression, can guard against apostasy and blasphemy convictions.

The phrase "within the limits set by the constitution" should be used frequently in this context. This wording will help prevent an attempt to circumvent legal provisions for criminal punishment in the name of Islamic law, e.g., attempts to implement hudud.

To stem the rise of subversive movements, freedom of assembly and the right to form political parties could be made conditional on respect for the constitution and its provisions. But any such restriction on individual rights can also backfire by giving the state justification for repressive actions.

Equality of women and men and prohibition against discrimination on the basis of gender have already been included in earlier Afghan constitutions and should be retained.

7. Conclusion

The RAND panel extends its good wishes to its colleagues on Afghanistan's Constitutional Commission and stands ready to provide additional information or to review drafts, if desired.

Appendix

A. Islam and the State: A Short History

By Khaled Abou El Fadl

The relationship of Islam to the state, both in theory and practice, has been complex and multifaceted. Islam, as a system of beliefs embodying a multitude of moral and ethical principles, has inspired a wide range of social and political practices, and a diverse set of legal interpretations and determinations known collectively as the shari`a. Muslims believe the shari`a to be divine law, in the sense that the shari`a is based on the human interpretations and extrapolations of the revealed holy book, the Quran, and of the authentic precedents of the Prophet, known as the Sunna. Therefore, the shari`a (which literally means the way to God or the fountain and spring source of goodness) is the sum total of the various efforts of Muslim scholars to interpret and search for the Divine Will as derived from the Quran and Sunna. Importantly, through the course of 14 centuries, Muslim scholars have emphasized that the main objective of the shari`a is to serve the interests and well-being, as well as protect the honor and dignity, of human beings. There is no single code of law or particular set of positive commandments that represent the shari`a. Rather, the shari`a constitutes several schools of jurisprudential thought that are considered equally orthodox and authoritative. In the Sunni world, there are four dominant schools of thought: Shafi'i, Hanafi, Maliki, and Hanbali. In the Shi'i world, the dominant schools are Ja'fari and Zaydi. The Sunni population of Afghanistan is predominately Hanafi, while the Shi'i population is predominantly Ja'fari.

The first Muslim polity was the city-state led by the Prophet Muhammad in Medina. But after the Prophet Muhammad died, no human being or institution was deemed to inherit his legislative, executive, or moral power. In Islamic theology, there is no church or priestly class that is empowered to speak for God or represent His Will. There is a class of shari`a specialists (jurists), known as the "*ulama* or *fuqaha*," who are distinguished by virtue of their learning and scholarship, but there is no formal procedure for ordination or investiture. These jurists are not thought to embody the Divine Will nor treated as the exclusive representatives of God's law. The authoritativeness that a particular jurist might enjoy is a function of his formal and informal education, and his social and scholastic popularity. As to their political and institutional role, in classical

Islamic theory, jurists are supposed to play an advisory and consultative role and to assume judicial positions in the administration of justice. It is an interesting historical fact that until the modern age, jurists never assumed direct political power. Although, historically, jurists played important social and civil roles and often served as judges implementing the shari`a and executive ordinances, for the most part, government in Islam remained secular. Until the modern age, a theocratic system of government in which a church or clergy ruled in God's name was virtually unknown in Islam.

Institutionally, Islam does not dictate a particular system of government, and in theory, there is no inconsistency or fundamental clash between Islam and democracy. The Quran dictates only that governance ought not be autocratic, and that the affairs of government should be conducted through consultation (*shura*). According to the classical jurisprudential theory, governance should be pursuant to a civil contract (*'aqd*) between the governor and the governed, and the ruler should obtain a pledge of support (*bay'a*) from the influential members of society as well as the majority of his constituency. In theory, rulers are supposed to consult with jurists, as well as other representative elements in society, and then, after concluding the consultative process, act upon the best interests of the people. In classical Islam, the consultative body was known as *ahl al-hal wa al-aqd*, and this body was supposed to be representative to the extent that it included the authoritative and popular jurists and other influential members of society. There is substantial disagreement in the classical sources, however, on whether upon concluding the consultative process, the ruler is duty bound to adhere to the judgment of the majority, or whether he may act upon his own discretion, even if his opinion is contrary to the view expressed by the majority. This doctrine was known as *ilzamiyyat al-shura*. There was a strong consensus among the classical scholars that in principle, consultation itself is mandatory, but they disagreed on the extent to which a ruler is free to act in contradiction to the will of the majority as expressed in the consultative process.

Outside this basic framework, the state was supposed to respect the shari`a and seek to fulfill its ultimate objectives in society. Historically, the prevailing form of government in Islam was known as Caliphate, which in reality was dynastic and authoritarian. For about 30 years after the death of the Prophet, Muslims succeeded in establishing a form of government with a strong democratic orientation, but upon the rise of the Umayyad Dynasty the democratic experiment came to an end, and power became concentrated in the hands of particular families or military forces. In premodern practice, to the extent that rulers adhered to the process of consultation at all, the consultative body was usually not representative of the governed, and membership in such a body was

typically the product of political patronage and not the outcome of a democratic elective process.

In the post-Colonial era, after most Muslim nation states achieved independence, the relationship between Islam and the state gained a new sense of urgency. At issue was the extent to which the shari`a would play a role in the legal systems of the newfound nation states, and the extent to which Islam would play a role in affairs of governance. In the period between the 1940s and 1960s, most Muslim countries opted for a nationalist republican secular model in which there is a very strong executive power supported by weaker legislative and judicial branches of government. Some countries, such as Saudi Arabia, continued to be governed by a strong royal family, a consultative branch of limited powers, and a judiciary that implemented a mixture of customary law and shari`a-based law. Most Muslim countries, including Egypt, Iraq, and Kuwait, imported the French civil and criminal codes and organized their legal systems according to the civil-law legal tradition. A few countries, such as Pakistan, Indonesia, and Malaysia, were influenced by the British common-law system, which they supplemented with various statutory laws enacted in specific fields. The extent to which the Islamic legal tradition was integrated into modern legal systems varied widely from one country to another, and also varied in accordance with the particular field of law in question. More specifically, in commercial and civil legal matters, most Muslim countries generated a syncretic system, which was predominantly French, Swiss, or British and was amended by various concepts and doctrines inspired by the Islamic legal tradition. In criminal matters, most countries adopted the French or British systems of criminal justice. Countries such as Saudi Arabia and postrevolutionary Iran rejected Western influences and claimed to base their criminal laws on the Islamic tradition. Most of the countries of the Arabian Peninsula, some African nations, and Iran continued to adhere to the Islamic tradition in matters of personal injury and tort law. This was manifested primarily in the incorporation of blood money (*diyya*) and strict caps on financial liability in cases of personal injury. Personal and family law remained the field most susceptible to Islamic influence. Most Muslim countries created courts of separate jurisdiction to handle matters related to inheritance, divorce, and marriage. In these fields, judges typically implement statutory laws, which were enacted as codifications of Islamic laws.

The periods between the 1960s and 1970s witnessed the emergence of fundamentalist Islamic movements that materially affected the constitutional place of Islam in the various Muslim states. Building on the positions of some premodern theological orientations, most fundamentalist groups, but not all, contended that sovereignty belongs only to God (*al-hakimiyya li'llah*), that

governments ought to represent and give effect to the Divine Will, and that there ought to be a strict adherence to the detailed determinations of religious scholars. The fundamentalist orientations of those decades are most accurately understood as oppositional nationalistic movements dissatisfied with the status quo, and utilizing religious symbolism as a means of claiming authenticity and legitimacy. The problem, however, is that fundamentalists tended to treat the shari`a as if it were a code of law containing unitary and uncontested specific legal determinations and also tended to ignore the highly contextual sociohistorical nature of most of Islamic jurisprudence. The Islamic legal tradition is too diverse, diffuse, and amorphous to yield to the type of narrow treatment afforded to it by fundamentalists. In addition, taken out of its sociohistorical context, parts of Islamic legal tradition become problematic in terms of contemporary international human rights standards.

Although fundamentalist movements did not achieve direct power in most Muslim countries, they generated political pressure toward what might be described as greater symbolic Islamization. As a part of their Islamization efforts, a large number of Muslim countries drafted in their constitutions articles that either stated: "Shari`a is *the* main source of legislation," or "Shari`a is *a* main source of legislation." The former version made Islamic law the near exclusive source of law for the nation, while the latter version mandated that Islamic law be only one of several sources for legislation in the country. However, especially for countries that adopted the former version, the shari`a clause was deemed not to be self-executing. This meant that the shari`a clause was deemed to be addressed to the legislative and executive powers in the country, and not the judiciary. Accordingly, the judiciary would not, on its own initiative, give effect to Islamic law. Rather, the shari`a needed to be implemented or executed by statutory law, and only upon the enactment of such statutory laws would the judiciary be bound to apply it. Effectively, this meant that in most instances the shari`a constitutional clause would remain dormant until made effective by statutory law. Nevertheless, at the political level, shari`a clauses played an important symbolic role. In addition, shari`a clauses were often cited by courts in resolving possible ambiguities in statutory law by referring to the principles of Islamic jurisprudence.

B. The Constitution of Afghanistan 1964¹

GOVERNMENT OF AFGHANISTAN

IN THE NAME OF GOD, THE ALMIGHTY AND THE JUST TO REORGANIZE THE NATIONAL LIFE OF AFGHANISTAN ACCORDING TO THE REQUIREMENTS OF THE TIMES AND ON THE BASIS OF THE REALITIES OF NATIONAL HISTORY AND CULTURE; TO ACHIEVE JUSTICE AND EQUALITY; TO ESTABLISH POLITICAL, ECONOMIC AND SOCIAL DEMOCRACY; TO ORGANIZE THE FUNCTIONS OF THE STATE AND ITS BRANCHES TO ENSURE LIBERTY AND WELFARE OF THE INDIVIDUAL AND THE MAINTENANCE OF THE GENERAL ORDER; TO ACHIEVE A BALANCED DEVELOPMENT OF ALL PHASES OF LIFE IN AFGHANISTAN; AND TO FORM, ULTIMATELY, A PROSPEROUS AND PROGRESSIVE SOCIETY BASED ON SOCIAL COOPERATION AND PRESERVATION OF HUMAN DIGNITY; WE, THE PEOPLE OF AFGHANISTAN, CONSCIOUS OF THE HISTORICAL CHANGES WHICH HAVE OCCURRED IN OUR LIFE AS A NATION AND AS A PART OF HUMAN SOCIETY, WHILE CONSIDERING THE ABOVE MENTIONED VALUES TO BE THE RIGHT OF ALL HUMAN SOCIETIES, HAVE, UNDER THE LEADERSHIP OF HIS MAJESTY MOHAMMED ZAHIR SHAH, THE KING OF AFGHANISTAN AND THE LEADER OF ITS NATIONAL LIFE, FRAMED THIS CONSTITUTION FOR OURSELVES AND THE GENERATIONS TO COME.

TITLE ONE THE STATE

ARTICLE 1

AFGHANISTAN IS A CONSTITUTIONAL MONARCHY; AN INDEPENDENT, UNITARY AND INDIVISIBLE STATE. SOVEREIGNTY IN AFGHANISTAN BELONGS TO THE NATION. THE AFGHAN NATION IS COMPOSED OF ALL THOSE INDIVIDUALS WHO POSSESS THE CITIZENSHIP OF THE STATE OF

¹This text is from Afghanistan Online, *History: Constitutions of the Past (1963): The Constitution of Afghanistan 1963*, <http://www.afghan-web.com/history/const/const1963.html>, accessed February 2003. Note that the constitution was adopted in 1964, which is the date that it is commonly known by and the one that we use here in this text.

AFGHANISTAN IN ACCORDANCE WITH THE PROVISIONS OF THE LAW.
THE WORD AFGHAN SHALL APPLY TO EACH SUCH INDIVIDUAL.

ARTICLE 2

ISLAM IS THE SACRED RELIGION OF AFGHANISTAN. RELIGIOUS RITES PERFORMED BY THE STATE SHALL BE ACCORDING TO THE PROVISIONS OF THE HANAFI DOCTRINE. NON MUSLIM CITIZENS SHALL BE FREE TO PERFORM THEIR RITUALS WITHIN THE LIMITS DETERMINED BY LAWS FOR PUBLIC DECENCY AND PUBLIC PEACE.

ARTICLE 3

FROM AMONGST THE LANGUAGES OF AFGHANISTAN, PASHTU AND DARI SHALL BE THE OFFICIAL LANGUAGES.

ARTICLE 4

THE FLAG OF AFGHANISTAN IS TRI COLOR (BLACK, RED AND GREEN) ALL PIECES JOINED TOGETHER VERTICALLY FROM LEFT TO RIGHT IN EQUAL PROPORTIONS; THE BREADTH OF EACH STRIP EQUALLING HALF OF ITS LENGTH, HAVING IN THE MIDDLE THE INSIGNIA OF THE MEHRAB (AN ARCH IN A MOSQUE WHERE THE PRAYING CONGREGATION STANDS, FACING THE KAABA IN MECCA) AND THE MENDER (A MANY TIERED PULPIT PLACED TO THE RIGHT OF THE METHRAB IN A MOSQUE, FROM WHICH ADDRESSES ARE DELIVERED) IN WHITE, FLANKED BY TWO FLAGS AND ENSCONCED IN TWO SHEAVES OF WHEAT.

ARTICLE 5

THE CAPITAL OF AFGHANISTAN IS THE CITY OF KABUL.

TITLE TWO THE KING

ARTICLE 6

IN AFGHANISTAN THE KING PERSONIFIES THE SOVEREIGNTY.

ARTICLE 7

THE KING IS THE PROTECTOR OF THE BASIC PRINCIPLES OF THE SACRED RELIGION OF ISLAM, THE GUARDIAN OF AFGHANISTAN'S INDEPENDENCE AND TERRITORIAL INTEGRITY, THE CUSTODIAN OF ITS CONSTITUTION ARE THE CENTER OF ITS NATIONAL UNITY.

ARTICLE 8

THE KING SHALL BE AN AFGHAN NATIONAL, A MUSLIM AND A FOLLOWER OF THE HANAFI DOCTRINE.

ARTICLE 9

THE KING HAS THE FOLLOWING RIGHTS AND DUTIES:

- 1) HOLDS SUPREME COMMAND OF THE ARMED FORCES OF AFGHANISTAN.
- 2) DECLARES WAR AND ARMISTICE.
- 3) SUMMONS AND INAUGURATES THE LOYA JIRGA (GREAT COUNCIL).
- 4) INAUGURATES THE ORDINARY SESSION OF THE SHURA (PARLIAMENT),
- 5) SUMMONS AND INAUGURATES THE EXTRAORDINARY SESSIONS OF THE SHURA (PARLIAMENT).
- 6) DISSOLVES THE SHURA (PARLIAMENT) AND DECREES NEW ELECTIONS, WHICH SHALL BE HELD WITHIN THREE MONTHS FROM THE DATE OF THE DISSOLUTION OF THE SHURA (PARLIAMENT),
- 7) SIGNS LAWS AND PROCLAIMS THEIR ENFORCEMENT.
- 8) ISSUES ORDINANCES,
- 9) GRANTS CREDENTIALS FOR CONCLUSION OF INTERNATIONAL TREATIES, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW.
- 10) SIGNS INTERNATIONAL TREATIES,
- 11) APPOINTS THE PRIME MINISTER AND ACCEPTS HIS RESIGNATION. APPOINTS MINISTERS ON THE RECOMMENDATION OF THE PRIME MINISTER AND ACCEPTS THEIR RESIGNATIONS.
- 12) APPOINTS THE NON ELECTED MEMBERS OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS) AND APPOINTS ITS PRESIDENT FROM AMONGST ITS MEMBERS.
- 13) APPOINTS THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT.
- 14) APPOINTS JUDGES AND HIGH RANKING CIVIL AND MILITARY

OFFICIALS AND GRANTS THEM RETIREMENT IN ACCORDANCE WITH THE PROVISIONS OF THE LAW.

15) ACCREDITS THE HEADS OF AFGHANISTAN'S DIPLOMATIC MISSIONS TO FOREIGN STATES; APPOINTS PERMANENT REPRESENTATIVES OF AFGHANISTAN TO INTERNATIONAL ORGANIZATIONS AND ACCEPTS THE CREDENTIALS OF FOREIGN DIPLOMATIC REPRESENTATIVES.

16) PROCLAIMS AND ENDS THE STATE OF EMERGENCY.

17) REMITS AND PARDONS SENTENCES.

ARTICLE 10

COIN IS MINTED IN THE NAME OF THE KING.

ARTICLE 11

THE NAME OF THE KING IS MENTIONED IN KHUTBAS (THE KHUTBA IS AN ADDRESS DELIVERED AS A RELIGIOUS RITE ON OCCASIONS SPECIFIED IN THE ISLAMIC RELIGION.)

ARTICLE 12

MEDALS ARE AWARDED BY THE KING IN ACCORDANCE WITH THE TERMS OF THE LAW. THE AWARD OF MEDALS SHALL NOT CARRY ANY MATERIAL BENEFIT.

ARTICLE 13

THE ROYAL EXPENDITURES SHALL BE FIXED IN THE STATE BUDGET ACCORDING TO THE LAW OF THE ROYAL EXPENSES.

ARTICLE 14

THE EXERCISE OF RIGHTS AND DUTIES DESCRIBED UNDER THIS TITLE SHALL BE SUBJECT TO THE LIMITS PRESCRIBED BY THE PROVISIONS OF THIS CONSTITUTION.

ARTICLE 15

THE KING IS NOT ACCOUNTABLE AND SHALL BE RESPECTED BY ALL. HE TAKES THE FOLLOWING OATH, IN THE PRESENCE OF THE MEMBERS OF THE ROYAL FAMILY, THE MEMBERS OF THE GOVERNMENT AND THE JUSTICES OF THE SUPREME COURT, IN A JOINT SITTING OF BOTH HOUSES OF THE SHURA (PARLIAMENT). 'IN THE NAME OF GOD, THE GREAT, I SWEAR TO BE CONSCIOUS OF HIS OMNIPRESENCE IN ALL MY ACTIONS, THAT I SHALL PROTECT THE SACRED PRINCIPLES OF THE RELIGION OF ISLAM, SHALL GUARD THE CONSTITUTION, SHALL PROTECT THE INDEPENDENCE AND TERRITORIAL INTEGRITY OF THE COUNTRY AS WELL AS THE LAWS OF THE STATE AND THE RIGHTS OF THE PEOPLE; AND, INVOKING DIVINE ASSISTANCE, SHALL REIGN IN ACCORDANCE WITH THE PROVISIONS OF THE CONSTITUTION OF AFGHANISTAN AND DEVOTE MY EFFORTS TO THE WELL BEING AND PROGRESS OF THE AFGHAN NATION.'

ARTICLE 16

THE SUCCESSION TO THE THRONE OF AFGHANISTAN SHALL CONTINUE IN THE HOUSE OF HIS MAJESTY MOHAMMED NADIR SHAH, THE MARTYR, IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION.

ARTICLE 17

SHOULD THE KING RESOLVE TO ABDICATE, HE SHALL INFORM A COUNCIL CONSISTING OF THE PRESIDENT OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE), THE PRESIDENT OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS), THE PRIME MINISTER, THE CHIEF JUSTICE AND THE MINISTER OF THE ROYAL COURT AND, THEREAFTER, CONVENE A MEETING OF THE LOYA JIRGA (GRAND COUNCIL) WITHIN A PERIOD OF SEVEN DAYS AND ANNOUNCE THEREIN HIS ABDICATION IN PERSON OR THROUGH THE MINISTER OF COURT. IF THE LOYA JIRGA (GREAT COUNCIL) ATTESTS THAT THE ABDICATION HAS STEMMED FROM THE DATE OF THE ATTESTATION.

ARTICLE 18

ON THE KING'S ABDICATION OR DEATH, THE THRONE SHALL PASS ON TO HIS ELDEST SON. IF THE ELDEST SON OF THE KING LACKS THE QUALIFICATIONS SET FORTH IN THIS CONSTITUTION, THE THRONE SHALL PASS ON TO HIS SECOND SON AND SO ON.

ARTICLE 19

WHENEVER THE KING ABDICATES OR DIES WITHOUT A SON POSSESSING THE QUALIFICATIONS TO BECOME THE KING, THE THRONE SHALL PASS ON TO THE OLDEST OF THE KING'S BROTHERS. IN CASE THE OLDEST OF THE KING'S BROTHERS LACKS THE QUALIFICATIONS NEEDED, THE THRONE SHALL PASS ON TO THE SECOND BROTHER IN LINE AND SO ON. IF THE KING DOES NOT HAVE A BROTHER POSSESSING THE QUALIFICATIONS REQUIRED FOR THE KING, HIS SUCCESSOR SHALL BE ELECTED FROM AMONGST THE MALE LINEAL DESCENDANTS OF HIS MAJESTY MOHAMMED NADIR SHAH, THE MARTYR. IN THIS CASE THE KING SHALL BE ELECTED BY AN ELECTORAL COLLEGE CONSISTING OF THE LOYA JIRGA (GREAT COUNCIL), THE GOVERNMENT, AND THE JUSTICES OF THE SUPREME COURT. THIS ELECTORAL COLLEGE SHALL BE SUMMONED BY THE PRIME MINISTER, IN THE CASE OF THE DEATH OF THE KING WITHIN FIFTEEN DAYS FROM THE DATE OF THE DEMISE AND IN THE CASE OF ABDICATION WITHIN SEVEN DAYS FROM THE DATE WHEN THE KING'S ABDICATION BECOMES EFFECTIVE. THE DECISION OF THIS ELECTORAL COLLEGE SHALL BE BY A MAJORITY OF VOTES OF THE MEMBERS PRESENT AND SHALL BE CONSIDERED EFFECTIVE UPON THE CONSENT OF THE PERSON CHOSEN AS THE KING. THE MINISTER OF COURT SHALL ACT AS REGENT FROM THE TIME OF THE DEATH OF THE KING OR THE VALIDATION OF HIS ABDICATION UNTIL THE ELECTION OF HIS SUCCESSOR.

ARTICLE 20

THE KING SHALL, WHEN HE DECIDES TO TRAVEL OUT OF THE COUNTRY, APPOINT ONE OR MORE PERSONS TO ACT AS HIS REGENT OR REGENTS. THIS PERSON OR PERSONS SHALL, DURING THE ABSENCE OF THE KING AND ON HIS BEHALF, DISCHARGE THE ROYAL FUNCTIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION AND WITHIN THE LIMITS OF THE AUTHORITY DELEGATED TO HIM OR THEM

BY THE KING. THE FOLLOWING PERSONS SHALL NOT BE APPOINTED AS REGENT:

- 1) THE PRIME MINISTER
- 2) THE PRESIDENT OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE)
- 3) THE PRESIDENT OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS)
- 4) THE CHIEF JUSTICE

ARTICLE 21

IN CASE THE KING DIES BEFORE HIS SUCCESSOR HAS COMPLETED TWENTY YEARS OF LIFE, THE QUEEN SHALL ACT AS REGENT UNTIL HIS SUCCESSOR REACHES THE STIPULATED AGE. IN CASE THE QUEEN BE NOT LIVING, THE ELECTORAL COLLEGE, PROVIDED UNDER ARTICLE 19 OF THIS CONSTITUTION, SHALL ELECT SOMEONE FROM AMONGST THE MALE LINEAL DESCENDANTS OF HIS MAJESTY MOHAMMED NADIR SHAH, THE MARTYR, TO ACT AS REGENT.

ARTICLE 22

WHENEVER THE KING ABDICATES AND HIS SUCCESSOR HAS NOT COMPLETED TWENTY YEARS OF LIFE, THE ELECTORAL COLLEGE, PROVIDED UNDER ARTICLE 19 SHALL ELECT SOMEONE FROM AMONGST THE MALE LINEAL DESCENDANTS OF HIS MAJESTY MOHAMMED NADIR SHAH, THE MARTYR, TO ACT AS REGENT UNTIL THE SUCCESSOR REACHES THE STIPULATED AGE.

ARTICLE 23

THE REGENT OF THE KING MUST POSSESS THE QUALIFICATIONS SPECIFIED IN ARTICLE 8. THE REGENT SHALL PERFORM THE ROYAL FUNCTIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION. IN THE CASE OF THE QUEEN ACTING AS REGENT, THE EXERCISE OF THE AUTHORITY DESCRIBED IN SECTION TWO OF ARTICLE 9, SHALL TAKE PLACE WITH THE ADVICE OF THE GOVERNMENT. THE REGENT, DURING THE TENURE OF HIS OFFICE, CANNOT ENGAGE IN ANY OTHER PROFESSION. THE PERSON ELECTED AS REGENT BE VIRTUE OF ARTICLES 21 AND 22 OF THIS CONSTITUTION SHALL NEVER BE ELECTED AS THE KING OF AFGHANISTAN. DURING THE PERIOD OF

REGENCY, THE PROVISIONS RELATING TO SUCCESSION UNDER THE TITLE 'KING' OF THIS CONSTITUTION SHALL NOT BE AMENDED.

ARTICLE 24

THE ROYAL HOUSE IS COMPOSED OF THE SONS, THE DAUGHTERS, THE BROTHERS AND THE SISTERS OF THE KING AND THEIR HUSBANDS, WIVES, SONS AND DAUGHTERS; AND THE PATERNAL UNCLES AND THE SONS OF THE PATERNAL UNCLES OF THE KING. IN THE OFFICIAL PROTOCOL OF THE STATE, THE ROYAL HOUSE COMES AFTER THE KING AND THE QUEEN. THE EXPENDITURE OF THE ROYAL HOUSE SHALL BE FIXED IN THE BUDGET OF THE ROYAL EXPENSES. TITLES OF NOBILITY ARE EXCLUSIVELY CONFINED TO THE ROYAL HOUSE AND SHALL BE ASSIGNED IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. MEMBERS OF THE ROYAL HOUSE SHALL NOT PARTICIPATE IN POLITICAL PARTIES, AND SHALL NOT HOLD THE FOLLOWING OFFICES:

- 1) PRIME MINISTER OR MINISTER
- 2) MEMBER OF THE SHURA (PARLIAMENT)
- 3) JUSTICE OF THE SUPREME COURT

MEMBERS OF THE ROYAL HOUSE SHALL MAINTAIN THEIR STATUS AS MEMBERS OF THE ROYAL HOUSE AS LONG AS THEY LIVE.

TITLE THREE THE BASIC RIGHTS AND DUTIES OF THE PEOPLE

ARTICLE 25

THE PEOPLE OF AFGHANISTAN, WITHOUT ANY DISCRIMINATION OR PREFERENCE, HAVE EQUAL RIGHTS AND OBLIGATIONS BEFORE THE LAW.

ARTICLE 26

LIBERTY IS THE NATURAL RIGHT OF THE HUMAN BEING. THIS RIGHT HAS NO LIMITATIONS EXCEPT THE LIBERTY OF OTHERS AND PUBLIC INTEREST AS DEFINED BY THE LAW. THE LIBERTY AND DIGNITY OF THE HUMAN BEING ARE INVOLABLE AND INALIENABLE. THE STATE HAS THE DUTY TO RESPECT AND PROTECT THE LIBERTY AND DIGNITY OF THE INDIVIDUAL. NO DEED IS CONSIDERED A CRIME EXCEPT BY VIRTUE

OF A LAW IN FORCE BEFORE ITS COMMISSION. NO ONE MAY BE PUNISHED EXCEPT BY THE ORDER OF A COMPETENT COURT RENDERED AFTER AN OPEN TRIAL HELD IN THE PRESENCE OF THE ACCUSED. NO ONE MAY BE PUNISHED EXCEPT UNDER THE PROVISIONS OF A LAW THAT HAS COME INTO EFFECT BEFORE THE COMMISSION OF THE OFFENSE WITH WHICH THE ACCUSED IS CHARGED. NO ONE MAY BE PURSUED OR ARRESTED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. NO ONE MAY BE DETAINED EXCEPT ON ORDER OF A COMPETENT COURT, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. INNOCENCE IS THE ORIGINAL STATE; THE ACCUSED IS CONSIDERED TO BE INNOCENT UNLESS FOUND GUILTY BY A FINAL JUDGMENT OF A COURT OF LAW. CRIME IS A PERSONAL DEED. PURSUIT, ARREST OR DETENTION OF THE ACCUSED AND THE EXECUTION OF SENTENCE AGAINST HIM DOES NOT AFFECT ANY OTHER PERSON. TORTURING A HUMAN BEING IS NOT PERMISSIBLE. NO ONE CAN TORTURE OR ISSUE ORDERS TO TORTURE A PERSON EVEN FOR THE SAKE OF DISCOVERING FACTS, EVEN IF THE PERSON INVOLVED IS UNDER PURSUIT, ARREST OR DETENTION OR IS CONDEMNED TO A SENTENCE. IMPOSING PUNISHMENT INCOMPATIBLE WITH HUMAN DIGNITY IS NOT PERMISSIBLE. A STATEMENT OBTAINED FROM AN ACCUSED OR ANY OTHER PERSON BY COMPULSION IS NOT VALID. CONFESSION OF A CRIME MEANS THE ADMISSION MADE BY AN ACCUSED WILLINGLY AND IN FULL POSSESSION OF HIS SENSES BEFORE A COMPETENT COURT WITH REGARD TO THE COMMISSION OF A CRIME LEGALLY ATTRIBUTED TO HIM. EVERY PERSON HAS THE RIGHT TO APPOINT DEFENSE COUNSEL FOR THE REMOVAL OF A CHARGE LEGALLY ATTRIBUTED TO HIM. INDEBTEDNESS OF ONE TO ANOTHER CANNOT CAUSE DEPRIVATION OR CURTAILMENT OF THE LIBERTY OF THE DEBTOR. THE WAYS AND MEANS OF RECOVERING DEBT SHALL BE SPECIFIED IN THE LAW. EVERY AFGHAN IS ENTITLED TO TRAVEL WITHIN THE TERRITORY OF THE STATE AND SETTLE ANYWHERE EXCEPT IN AREAS PROHIBITED BY THE LAW. SIMILARLY, EVERY AFGHAN HAS A RIGHT TO TRAVEL OUTSIDE OF AFGHANISTAN AND RETURN TO AFGHANISTAN ACCORDING TO THE PROVISIONS OF THE LAW. NO AFGHAN SHALL BE SENTENCED TO BANISHMENT FROM AFGHANISTAN OR WITHIN ITS TERRITORY.

ARTICLE 27

NO AFGHAN ACCUSED OF A CRIME CAN BE EXTRADITED TO A FOREIGN STATE.

ARTICLE 28

A PERSON'S RESIDENCE IS INVIOABLE. NO ONE, INCLUDING THE STATE CAN ENTER OR SEARCH A RESIDENCE WITHOUT THE PERMISSION OF THE RESIDENT OR THE ORDERS OF A COMPETENT COURT AND IN ACCORDANCE WITH THE CONDITIONS AND PROCEDURE SPECIFIED BY THE LAW. IN CASES OF WITNESSED CRIMES THE RESPONSIBLE OFFICER CAN ENTER OR SEARCH THE RESIDENCE OF A PERSON WITHOUT THE PERMISSION OF THE RESIDENT OR THE PRIOR WRIT OF THE COURT ON HIS PERSONAL RESPONSIBILITY. THE OFFICER IS BOUND TO GET THE ORDER OF THE COURT WITHIN THE TIME LIMIT SET BY THE LAW AFTER HIS ENTRY INTO THE HOUSE OR ITS SEARCH.

ARTICLE 29

PROPERTY IS INVIOABLE. NO ONE'S PROPERTY CAN BE CONFISCATED EXCEPT IN ACCORDANCE WITH THE PROVISION OF THE LAW AND THE DECISION OF A COMPETENT COURT. EXPROPRIATION IS ALLOWED ONLY FOR SECURING PUBLIC INTEREST, AGAINST AN ADVANCE EQUITABLE COMPENSATION, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. NO ONE SHALL BE PROHIBITED FROM ACQUIRING PROPERTY AND EXERCISING THE RIGHT OF OWNERSHIP OF THE SAME, WITHIN THE LIMITATIONS OF THE LAW. THE WAYS OF UTILIZING PROPERTY SHALL BE REGULATED AND GUIDED BY THE LAW, FOR SECURING THE PUBLIC INTEREST. INVESTIGATIONS AND DECLARATIONS OF A PERSON'S PROPERTY CAN BE MADE ONLY IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. FOREIGN STATES AND NATIONALS ARE NOT ENTITLED TO OWN IMMOVABLE PROPERTY IN AFGHANISTAN. SUBJECT TO THE APPROVAL OF THE GOVERNMENT, IMMOVABLE PROPERTY MAY BE SOLD TO THE DIPLOMATIC MISSIONS OF FOREIGN STATES ON A RECIPROCAL BASIS AND ALSO TO THOSE INTERNATIONAL ORGANIZATIONS TO WHICH THE STATE OF AFGHANISTAN IS A MEMBER.

ARTICLE 30

THE FREEDOM AND SECRECY OF PEOPLE'S COMMUNICATIONS, WHETHER BY WRITING, TELEPHONE, TELEGRAPH OR OTHER MEDIUM, ARE INVIOABLE. THE STATE HAS NO RIGHT TO SEARCH PERSONAL COMMUNICATIONS EXCEPT BY THE ORDER OF A COMPETENT COURT AND IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. IN URGENT CASES, DEFINED BY THE LAW, THE OFFICIAL RESPONSIBLE CAN SEARCH COMMUNICATIONS ON HIS RESPONSIBILITIES, WITHOUT THE PRIOR PERMISSION OF THE COURT. THE OFFICIAL CONCURRENTLY IS BOUND TO OBTAIN, AFTER THE SEARCH, THE DECISION OF THE COURT WITHIN THE TIME LIMIT SET UNDER THE LAW.

ARTICLE 31

FREEDOM OF THOUGHT AND EXPRESSION IS INVIOABLE. EVERY AFGHAN HAS THE RIGHT TO EXPRESS HIS THOUGHTS IN SPEECH, IN WRITING, IN PICTURES AND BY OTHER MEANS, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. EVERY AFGHAN HAS THE RIGHT TO PRINT AND PUBLISH IDEAS IN ACCORDANCE WITH THE PROVISIONS OF THE LAW, WITHOUT SUBMISSION IN ADVANCE TO THE AUTHORITIES OF THE STATE. THE PERMISSION TO ESTABLISH AND OWN PUBLIC PRINTING HOUSES AND TO ISSUE PUBLICATIONS IS GRANTED ONLY TO THE CITIZENS AND THE STATE OF AFGHANISTAN, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. THE ESTABLISHMENT AND OPERATION OF PUBLIC RADIO TRANSMISSION AND TELECASTING IS THE EXCLUSIVE RIGHT OF THE STATE.

ARTICLE 32

AFGHAN CITIZENS HAVE THE RIGHT TO ASSEMBLE UNARMED, WITHOUT PRIOR PERMISSION OF THE STATE, FOR THE ACHIEVEMENT OF LEGITIMATE AND PEACEFUL PURPOSES, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. AFGHAN CITIZENS HAVE THE RIGHT TO ESTABLISH, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW, ASSOCIATIONS FOR THE REALIZATION OF MATERIAL OR SPIRITUAL PURPOSES.

AFGHAN CITIZENS HAVE THE RIGHT TO FORM POLITICAL PARTIES, IN ACCORDANCE WITH THE TERMS OF THE LAW, PROVIDED THAT:

1) THE AIMS AND ACTIVITIES OF THE PARTY AND THE IDEAS OF WHICH THE ORGANIZATION OF THE PARTY IS BASED ARE NOT OPPOSED TO THE VALUES EMBODIED IN THIS CONSTITUTION.

2) THE ORGANIZATION AND FINANCIAL RESOURCES OF THE PARTY ARE OPEN. A PARTY FORMED IN ACCORDANCE WITH THE PROVISIONS OF THE LAW CANNOT BE DISSOLVED WITHOUT DUE PROCESS OF THE LAW AND THE ORDER OF THE SUPREME COURT.

ARTICLE 33

ANYONE WHO, WITHOUT DUE CAUSE, SUFFERS DAMAGE FROM THE ADMINISTRATION IS ENTITLED TO COMPENSATION AND MAY FILE A SUIT IN A COURT FOR ITS RECOVERY. THE STATE CANNOT, EXCEPT IN CASES SPECIFIED BY THE LAW, RESORT TO THE RECOVERY OF ITS DUES WITHOUT THE ORDER OF A COMPETENT COURT.

ARTICLE 34

EDUCATION IS THE RIGHT OF EVERY AFGHAN AND SHALL BE PROVIDED FREE OF CHARGE BY THE STATE AND CITIZENS OF AFGHANISTAN. THE AIM OF THE STATE IS TO REACH A STAGE WHERE SUITABLE FACILITIES FOR EDUCATION WILL BE MADE AVAILABLE TO ALL AFGHANS, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. THE GOVERNMENT IS OBLIGED TO PREPARE AND IMPLEMENT A PROGRAM FOR BALANCED AND UNIVERSAL EDUCATION IN AFGHANISTAN. IT IS THE DUTY OF THE STATE TO GUIDE AND SUPERVISE EDUCATION. PRIMARY EDUCATION IS COMPULSORY FOR ALL CHILDREN IN AREAS WHERE FACILITIES FOR THIS PURPOSE ARE PROVIDED BY THE STATE. THE STATE ALONE HAS THE RIGHT AND DUTY TO ESTABLISH AND ADMINISTER THE INSTITUTIONS OF PUBLIC AND HIGHER LEARNING. OUTSIDE THIS SPHERE, AFGHAN NATIONALS ARE ENTITLED TO ESTABLISH TECHNICAL AND LITERACY SCHOOLS. CONDITIONS FOR THE ESTABLISHMENT OF SUCH SCHOOLS, THEIR CURRICULA AND THE CONDITIONS OF LEARNING IN SUCH SCHOOLS ARE TO BE DETERMINED BY LAW. THE GOVERNMENT MAY GRANT PERMISSION, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW, TO FOREIGN PERSONS TO ESTABLISH PRIVATE SCHOOLS FOR THE EXCLUSIVE USE OF FOREIGNERS.

ARTICLE 35

IT IS THE DUTY OF THE STATE TO PREPARE AND IMPLEMENT AN EFFECTIVE PROGRAM FOR THE DEVELOPMENT AND STRENGTHENING OF THE NATIONAL LANGUAGE, PASHTU.

ARTICLE 36

IT IS THE DUTY OF THE STATE TO PROVIDE, WITHIN THE LIMITS OF ITS MEANS, BALANCED FACILITIES FOR THE PREVENTION AND TREATMENT OF DISEASES FOR ALL AFGHANS. THE WILL OF THE STATE IN THIS REGARD IS TO REACH A STAGE WHERE SUITABLE MEDICAL FACILITIES WILL BE MADE AVAILABLE TO ALL AFGHANS.

ARTICLE 37

WORK IS THE RIGHT AND PRECEPT OF EVERY AFGHAN WHO THE CAPABILITY TO DO IT. THE MAIN PURPOSE OF LAWS DESIGNED TO SYSTEMATIZE LABOR IS TO REACH A STAGE WHERE THE RIGHTS AND INTERESTS OF ALL CATEGORIES OF LABORERS ARE PROTECTED, SUITABLE CONDITIONS OF WORK ARE PROVIDED AND THE RELATIONS BETWEEN THE WORKERS AND EMPLOYERS ARE ORGANIZED ON A JUST AND PROGRESSIVE BASIS. THE CITIZENS OF AFGHANISTAN ARE ADMITTED TO THE SERVICE OF THE STATE ON THE BASIS OF THEIR QUALIFICATIONS AND IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. WORK AND TRADE MAY BE FREELY CHOSEN, WITHIN THE CONDITIONS DETERMINED BY THE LAW. FORCED LABOR EVEN FOR THE BENEFIT OF THE STATE IS NOT PERMISSIBLE. THE PROHIBITION OF FORCED LABOR SHALL NOT BE SO CONSTRUED AS TO AFFECT THE IMPLEMENTATION OF THE LAWS GOVERNING THE ORGANIZATION OF COLLECTIVE WORK FOR THE PUBLIC INTEREST.

ARTICLE 38

EVERY AFGHAN IS BOUND TO PAY TAX AND DUTY TO THE STATE. NO DUTY OR TAX OF ANY KIND SHALL BE LEVIED WITHOUT THE PROVISIONS OF THE LAW. THE RATE OF TAX AND DUTY AS WELL AS THE METHOD OF PAYMENT SHALL BE DETERMINED BY LAW WITH CONSIDERATION FOR SOCIAL JUSTICE. THE PROVISIONS OF THIS ARTICLE ARE APPLICABLE TO FOREIGN PERSONS AS WELL.

ARTICLE 39

IT IS THE SACRED DUTY OF ALL CITIZENS OF AFGHANISTAN TO DEFEND THEIR COUNTRY. ALL CITIZENS OF AFGHANISTAN ARE BOUND TO PERFORM MILITARY SERVICE IN ACCORDANCE WITH THE PROVISIONS OF THE LAW.

ARTICLE 40

IT IS THE DUTY OF ALL THE PEOPLE OF AFGHANISTAN TO FOLLOW THE PROVISIONS OF THE CONSTITUTION; TO BEAR LOYALTY TO THE KING AND RESPECT HIM; TO OBEY LAWS; TO HAVE DUE CONSIDERATION FOR PUBLIC ORDER AND PIECE; TO PROTECT THE INTERESTS OF THE HOMELAND AND TO PARTICIPATE IN THE NATIONS LIFE.

**TITLE FOUR
THE SHURA (PARLIAMENT)****ARTICLE 41**

THE SHURA (PARLIAMENT) IN AFGHANISTAN MANIFESTS THE WILL OF THE PEOPLE AND REPRESENTS THE WHOLE OF THE NATION. THE PEOPLE OF AFGHANISTAN PARTICIPATE THROUGH THE SHURA (PARLIAMENT) IN THE POLITICAL LIFE OF THE COUNTRY. ALTHOUGH ELECTED FROM A PARTICULAR CONSTITUENCY EACH MEMBER OF THE SHURA (PARLIAMENT) SHALL AT THE TIME OF EXPRESSING HIS OPINION, TAKE THE GENERAL INTEREST OF THE WHOLE OF AFGHANISTAN AS THE BASIS FOR HIS JUDGMENT.

ARTICLE 42

THE SHURA (PARLIAMENT) CONSISTS OF TWO HOUSES:

- 1) WOLESI JIRGA (HOUSE OF THE PEOPLE)
- 2) MESHRANO JIRGA (HOUSE OF THE ELDERS)

ARTICLE 43

MEMBERS OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) SHALL BE ELECTED BY THE PEOPLE OF AFGHANISTAN IN A FREE, UNIVERSAL, SECRET AND DIRECT ELECTION, IN ACCORDANCE WITH THE

PROVISIONS OF THE LAW. FOR THIS PURPOSE AFGHANISTAN SHALL BE DIVIDED INTO ELECTORAL CONSTITUENCIES, THE NUMBER AND LIMITS OF WHICH ARE FIXED BY THE LAW. EACH CONSTITUENCY SHALL RETURN ONE MEMBER. THE CANDIDATE WHO OBTAINS THE LARGEST NUMBER OF VOTES CAST IN HIS CONSTITUENCY, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW, SHALL BE RECOGNIZED AS THE REPRESENTATIVE OF THAT CONSTITUENCY.

ARTICLE 44

MEMBERS OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) SHALL BE ELECTED FOR A PERIOD OF FOUR YEARS, WHICH IS ONE TERM OF THE LEGISLATURE. WHENEVER THE SHURA (PARLIAMENT) IS DISSOLVED, IN ACCORDANCE WITH THE PROVISIONS OF THE CONSTITUTION, A NEW WOLESI JIRGA (HOUSE OF THE PEOPLE) SHALL BE ELECTED FOR ANOTHER LEGISLATIVE TERM. HOWEVER, THE TERMINATION DATE OF THE OUTGOING HOUSE IS SO REGULATED THAT THE ENSUING SESSION OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) COMMENCES ON THE DATE STIPULATED IN ARTICLE 59.

ARTICLE 45

MEMBERS OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS) SHALL BE NOMINATED AND ELECTED AS FOLLOWS:

- 1) ONE THIRD OF THE MEMBERS SHALL BE APPOINTED BY THE KING FOR A PERIOD OF FIVE YEARS FROM AMONGST WELL INFORMED AND EXPERIENCED PERSONS.
- 2) THE REMAINING TWO THIRDS OF THE MEMBERS SHALL BE ELECTED AS FOLLOWS: A) EACH PROVINCIAL COUNCIL SHALL ELECT ONE OF ITS MEMBERS TO THE MESHRANO JIRGA (HOUSE OF THE ELDERS) FOR A PERIOD OF THREE YEARS. B) THE RESIDENTS OF EACH PROVINCE SHALL ELECT ONE PERSON FOR A PERIOD OF FOUR YEARS BY A FREE, UNIVERSAL, SECRET AND DIRECT ELECTION.

ARTICLE 46

QUALIFICATIONS FOR VOTERS SHALL BE SPECIFIED IN THE ELECTORAL LAW. PERSONS APPOINTED OR ELECTED FOR MEMBERSHIP IN THE

SHURA (PARLIAMENT) MUST MEET THE FOLLOWING REQUIREMENTS IN ADDITION TO THEIR QUALIFICATIONS AS VOTERS:

- 1) MUST HAVE ACQUIRED AFGHAN NATIONALITY AT LEAST TEN YEARS PRIOR TO THE DATE OF NOMINATION OR ELECTION.
- 2) MUST NOT HAVE BEEN PUNISHED BY A COURT WITH DEPRIVATION OF POLITICAL RIGHTS AFTER THE PROMULGATION OF THIS CONSTITUTION.
- 3) MUST BE ABLE TO READ AND WRITE.
- 4) MEMBERS OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) MUST HAVE COMPLETED THE AGE OF 25 AT THE TIME OF THE ELECTION AND THOSE OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS) THE AGE OF 30 AT THE TIME OF THEIR NOMINATION OR ELECTION.

ARTICLE 47

THE HEAD AND MEMBERS OF THE GOVERNMENT, JUDGES, OFFICERS AND MEMBERS OF THE ARMED FORCES, OFFICIALS AND OTHER PERSONNEL OF THE ADMINISTRATION CANNOT BE APPOINTED OR ELECTED TO THE SHURA (PARLIAMENT) WHILE THEY ARE IN SERVICE.

ARTICLE 48

NO PERSON CAN BE A MEMBER OF BOTH HOUSES SIMULTANEOUSLY.

ARTICLE 49

ELECTIONS SHALL BE GOVERNED BY THE ELECTORAL LAW SUBJECT TO THE PROVISIONS OF THE CONSTITUTION. NO BILL TO AMEND THE ELECTORAL LAW MAY BE ENTERTAINED ON THE AGENDA OF EITHER HOUSE OF THE SHURA (PARLIAMENT) DURING THE LAST TWO YEARS OF THE LEGISLATIVE TERM OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE).

ARTICLE 50

DOCUMENTS OF MEMBERSHIP ARE AUTHENTICATED IN EACH HOUSE BY THE HOUSE ITSELF. THE PROCEDURE OF AUTHENTICATION SHALL BE SPECIFIED IN THE RULES OF PROCEDURE OF THE HOUSE CONCERNED.

ARTICLE 51

NO LEGAL PROCEEDINGS CAN BE BROUGHT AGAINST A MEMBER OF THE SHURA (PARLIAMENT) FOR EXPRESSING AN OPINION OR IDEA WHILE PERFORMING HIS DUTY INSIDE OR OUTSIDE THE SHURA (PARLIAMENT). WHENEVER A MEMBER OF THE SHURA (PARLIAMENT) IS ACCUSED OF AN OFFENSE, THE OFFICIAL RESPONSIBLE SHALL COMMUNICATE THE MATTER TO THE HOUSE OF WHICH THE ACCUSED IS A MEMBER. THE LEGAL PROCEEDINGS AGAINST THE ACCUSED SHALL BE INITIATED WHEN THE HOUSE VOTES ITS APPROVAL BY A TWO THIRDS MAJORITY OF ITS MEMBERS. THE HOUSE CAN ALSO RESCIND ITS PERMISSION BY A TWO THIRDS MAJORITY VOTE OF ITS MEMBERS. IN THE CASE OF A WITNESSED CRIME THE OFFICIAL RESPONSIBLE CAN START LEGAL PROCEEDINGS AND ARREST A MEMBER OF THE SHURA (PARLIAMENT) WITHOUT THE PERMISSION OF THE HOUSE TO WHICH HE BELONGS. WHENEVER LEGAL PROCEEDINGS DEMAND THE DETENTION OF THE ACCUSED IN ACCORDANCE WITH THE PROVISIONS OF THE LAW, THE OFFICIAL RESPONSIBLE IS BOUND TO COMMUNICATE THE MATTER IMMEDIATELY TO THE HOUSE CONCERNED, AND WITH ITS PERMISSION MAY DETAIN THE ACCUSED. IN CASE THE ACCUSATION OCCURS DURING THE PERIOD WHERE THE HOUSE IS NOT IN SESSION, PERMISSION FOR DETENTION SHALL BE OBTAINED FROM THE EXECUTIVE COUNCIL OF THE HOUSE. THE DECISION OF THE EXECUTIVE COUNCIL SHALL BE PLACED BEFORE THE HOUSE AT ITS NEXT SESSION FOR APPROPRIATE ACTION.

ARTICLE 52

MEMBERS OF THE SHURA (PARLIAMENT) CANNOT UNDERTAKE ANY OTHER PROFESSION. THIS RULE DOES NOT APPLY TO AGRICULTURE AND OTHER FREE ENTERPRISES.

ARTICLE 53

SUITABLE SALARIES SHALL BE FIXED IN ACCORDANCE WITH THE LAW FOR MEMBERS OF SHURA (PARLIAMENT).

ARTICLE 54

EVERY MEMBER OF SHURA (PARLIAMENT) IS ENTITLED TO EXPRESS HIS VIEWS ON THE SUBJECT OF DEBATE IN HIS HOUSE, IN ACCORDANCE WITH THE RULES OF PROCEDURE.

ARTICLE 55

THE TWO HOUSES MEET SEPARATELY BUT AT THE SAME TIME. THE MESHRANO JIRGA (HOUSE OF THE ELDERS) CAN HOLD EXTRAORDINARY SESSIONS TO STUDY THE BUDGET PROPOSALS OF THE STATE DURING THE TIME WHEN THE WOLESI JIRGA (HOUSE OF THE PEOPLE) IS ADJOURNED. A JOINT SESSION OF THE TWO HOUSES OF SHURA (PARLIAMENT) IS HELD WHEN THE KING INAUGURATES THE NEW SHURA (PARLIAMENT) OR ADDRESSES THE ANNUAL SESSION OF THE SHURA (PARLIAMENT).

ARTICLE 56

THE MEMBERS OF THE GOVERNMENT MAY ATTEND THE MEETINGS OF BOTH HOUSES OF SHURA (PARLIAMENT). EACH HOUSE MAY DEMAND THE PRESENCE OF THE HEAD OR MEMBERS OF THE GOVERNMENT AT ITS MEETINGS.

ARTICLE 57

DEBATES IN BOTH HOUSES ARE OPEN EXCEPT WHEN THE GOVERNMENT, THE PRESIDENT OF THE HOUSE OR AT LEAST TEN MEMBERS REQUEST A SECRET SESSION, AND THE HOUSE GRANTS ITS APPROVAL. THE HOUSE CAN, WITH A TWO THIRDS MAJORITY OF THE MEMBERS, CONVENE SECRET PROCEEDINGS INTO OPEN DEBATE. THE PROCEEDINGS OF BOTH HOUSES OF SHURA (PARLIAMENT) ARE RECORDED. NOBODY MAY ENTER THE MEETING PLACE OF THE SHURA (PARLIAMENT) BY FORCE. VIOLATORS SHALL BE PUNISHED ACCORDING TO THE LAW.

ARTICLE 58

EXCEPT IN CASES CLEARLY DEFINED IN THIS CONSTITUTION, DECISIONS IN EACH HOUSE SHALL BE MADE BY A MAJORITY VOTE OF THE MEMBERS PRESENT.

ARTICLE 59

EACH HOUSE OF SHURA (PARLIAMENT) HOLDS ONE ORDINARY SESSION PER YEAR, WHICH OPENS ON THE 22ND OF MEEZAN. THE NUMBER OF ANNUAL SESSIONS CAN BE INCREASED BY LAW. IN SUCH CASES THE LAW SHALL REGULATE THE OPENING DATE OF THE SESSION AND ITS DURATION. THE WORKING PERIOD OF EACH HOUSE OF SHURA (PARLIAMENT) IS SEVEN MONTHS PER YEAR. THIS PERIOD MAY BE EXTENDED BY EACH HOUSE ACCORDING TO THE REQUIREMENTS OF ITS BUSINESS. DURING THE RECESS PERIOD, AN EXTRAORDINARY SESSION OF SHURA (PARLIAMENT) MAY BE SUMMONED BY THE KING; OR ON A REQUEST BY THE GOVERNMENT, THE PRESIDENT OF ONE OF THE HOUSES, OR BY ONE FIFTH OF ITS MEMBERS. THE EXTRAORDINARY SESSION OF SHURA (PARLIAMENT) ENDS BY A ROYAL DECREE ISSUED AFTER CONSULTATION WITH THE PRESIDENTS OF BOTH HOUSES.

ARTICLE 60

THE PRESIDENT OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS) IS APPOINTED FROM AMONGST ITS MEMBERS BY THE KING. THE WOLESI JIRGA (HOUSE OF THE PEOPLE) ELECTS ONE OF ITS MEMBERS AS PRESIDENT OF THE HOUSE. EACH HOUSE ELECTS FROM AMONGST ITS MEMBERS ONE FIRST DEPUTY PRESIDENT, ONE SECOND DEPUTY PRESIDENT, ONE SECRETARY AND ONE DEPUTY SECRETARY. THE ABOVE MENTIONED PERSONS CONSTITUTE THE EXECUTIVE COUNCIL OF THE HOUSE. THE EXECUTIVE COUNCIL OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) IS ELECTED AT THE OPENING OF THE LEGISLATIVE TERM WHILE THE VICE PRESIDENTS, SECRETARY AND DEPUTY SECRETARY OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS) ARE ELECTED FOR ONE YEAR AT THE BEGINNING OF EACH ANNUAL SESSION. THE PRESIDENT OF EACH HOUSE CONDUCTS DEBATES IN THE HOUSE CONCERNED AND ADOPTS NECESSARY MEASURES FOR THE MAINTENANCE OF LAW AND ORDER ON THE PREMISES OF THE HOUSE. OTHER DUTIES OF THE PRESIDENT ARE DEFINED IN THE RULES OF

PROCEDURE FOR THE HOUSE. IN THE ABSENCE OF THE PRESIDENT, THE FIRST DEPUTY PRESIDENT, AND IN THE ABSENCE OF THE FIRST DEPUTY PRESIDENT, THE SECOND DEPUTY PRESIDENT OFFICIATES AS PRESIDENT. THE SECRETARY OF THE HOUSE RECORDS THE PROCEEDINGS OF THE HOUSE AND SUPERVISES THE FUNCTIONS OF ITS SECRETARIAT. IN THE ABSENCE OF THE SECRETARY THE DEPUTY SECRETARY DISCHARGES THE DUTIES OF THE SECRETARY.

ARTICLE 61

EACH HOUSE APPOINTS, IN ACCORDANCE WITH ITS RULES OF PROCEDURE, COMMITTEES FOR MAKING THOROUGH AND DETAILED STUDY OF THE SUBJECTS UNDER CONSIDERATION.

ARTICLE 62

EACH HOUSE FORMULATES ITS OWN RULES OF PROCEDURE.

ARTICLE 63

THE SHURA (PARLIAMENT) MAY BE DISSOLVED BY ORDER OF THE KING. THE DISSOLUTION OF THE SHURA (PARLIAMENT) IS IMPERATIVE UNDER THE CONDITIONS DESCRIBED IN ARTICLE 121. THE DISSOLUTION OF THE SHURA (PARLIAMENT) ENCOMPASSES THE NON ELECTED MEMBERS OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS).

ARTICLE 64

THE SHURA (PARLIAMENT) LEGISLATES FOR ORGANIZING THE AFFAIRS OF THE COUNTRY IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION. THERE SHALL BE NO LAW REPUGNANT TO THE BASIC PRINCIPLES OF THE SACRED RELIGION OF ISLAM AND THE OTHER VALUES EMBODIED IN THIS CONSTITUTION. THE RATIFICATION OF INTERNATIONAL TREATIES, THE DISPATCH ABROAD OF DETACHMENTS OF AFGHAN ARMED FORCES, THE GRANT OF CONCESSIONS IMPORTANT TO THE NATIONAL ECONOMY INCLUDING MONOPOLIES, AND THE AUTHORIZATION TO ISSUE MONEY AND OBTAIN LOANS ARE WITHIN THE COMPETENCE OF THE SHURA (PARLIAMENT). CONCESSIONS WHICH ARE TO BE RATIFIED BY THE SHURA (PARLIAMENT) SHALL BE DEFINED BY THE LAW.

ARTICLE 65

THE GOVERNMENT IS RESPONSIBLE TO THE WOLESI JIRGA (HOUSE OF THE PEOPLE).

ARTICLE 66

THE MEMBERS OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) MAY PUT QUESTIONS TO THE GOVERNMENT. DEBATE ON THE GOVERNMENT EXPLANATION DEPENDS UPON THE DECISION OF THE HOUSE.

ARTICLE 67

THE MEMBERS OF THE SHURA (PARLIAMENT) MAY ASK QUESTIONS FROM THE PRIME MINISTER OR THE MINISTERS ABOUT SPECIFIC SUBJECTS. PERSONS THUS ASKED ARE BOUND TO FURNISH A VERBAL OR WRITTEN ANSWER. THIS ANSWER SHALL NOT BE MADE SUBJECT OF DEBATE.

ARTICLE 68

THE WOLESI JIRGA (HOUSE OF THE PEOPLE) IS COMPETENT TO APPOINT, ON PROPOSAL FROM ONE THIRD OF ITS MEMBERS, AN ENQUIRY COMMISSION TO INVESTIGATE AND STUDY THE CONDUCT OF THE GOVERNMENT AND THE ACTIONS OF THE ADMINISTRATION. THE COMPOSITION OF THE ENQUIRY COMMISSION AND ITS METHOD OF FUNCTIONING SHALL BE DEFINED IN THE RULES OF PROCEDURE OF THE HOUSE.

ARTICLE 69

EXCEPTING THE CONDITIONS FOR WHICH SPECIFIC PROVISIONS HAVE BEEN MADE IN THIS CONSTITUTION, A LAW IS A RESOLUTION PASSED BY BOTH HOUSES, AND SIGNED BY THE KING. IN THE AREA WHERE NO SUCH LAW EXISTS, THE PROVISIONS OF THE HANAFI JURISPRUDENCE OF THE SHARIAAT OF ISLAM SHALL BE CONSIDERED AS LAW.

ARTICLE 70

A LEGISLATIVE BILL MAY BE INTRODUCED TO THE SHURA (PARLIAMENT) BY THE GOVERNMENT OR THE MEMBERS OF THE SHURA (PARLIAMENT). BILLS RELATING TO JUDICIAL ADMINISTRATION MAY ALSO BE INTRODUCED BY THE SUPREME COURT. BILLS RELATING TO BUDGETARY AND FINANCIAL LEGISLATION MAY ONLY ORIGINATE FROM THE GOVERNMENT.

ARTICLE 71

A LEGISLATIVE BILL MAY TO INTRODUCED TO EITHER OF THE TWO HOUSES BY THE GOVERNMENT OR THE SUPREME COURT.

ARTICLE 72

WHEN A BILL IS INTRODUCED BY MEMBERS OF ONE OF THE TWO HOUSES, IT IS PLACED ON THE AGENDA OF THE HOUSE ONLY AFTER IT IS SUPPORTED BY AT LEAST TEN MEMBERS OF THE HOUSE CONCERNED. A BILL WHICH INVOLVES NEW FINANCIAL COMMITMENTS OR A REDUCTION IN STATE REVENUE MAY BE PLACED ON THE AGENDA OF EITHER HOUSE ON CONDITION THAT THE BILL PROVIDES FOR THE SOURCES OF FINANCING FOR THE COMPENSATION OF THE LOSS. THIS PROVISION DOES NOT APPLY TO BILLS INTRODUCED BY THE SUPREME COURT.

ARTICLE 73

WHEN A BILL IS PLACED ON THE AGENDA OF EITHER OF THE TWO HOUSES, IT IS FIRST REFERRED TO THE COMMITTEE CONCERNED, AND AFTER IT HAS BEEN COMMENTED UPON BY THE COMMITTEE, THE BILL IS READ IN THE HOUSE ALONG WITH THE COMMENTS OF THE COMMITTEE, AND DEBATED UPON, FOLLOWED BY VOTING ON EACH ARTICLE. AFTER THIS THE DRAFT IS READ FOR THE SECOND TIME AND PUT BEFORE THE HOUSE FOR REJECTION OR APPROVAL AS A WHOLE.

ARTICLE 74

WHEN AN ENACTMENT OF ONE HOUSE IS REJECTED BY THE OTHER, A JOINT COMMITTEE CONSISTING OF AN EQUAL NUMBER OF MEMBERS

FROM BOTH HOUSES IS SET UP, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW, TO SETTLE THE DIFFERENCES. THE VERDICT OF THE COMMITTEE BECOMES EFFECTIVE AFTER IT RECEIVES THE ROYAL ASSENT. WHEN THE JOINT COMMITTEE FAILS TO RESOLVE THE DIFFERENCES, THE ENACTMENT IS CONSIDERED INVALID. IF THE ENACTMENT IS FROM THE WOLESI JIRGA (HOUSE OF THE PEOPLE), IT MAY BE APPROVED AGAIN BY A MAJORITY OF VOTES DURING THE NEXT TERM OF LEGISLATION. THE ENACTMENT, WITHOUT REFERENCE TO THE MESHRANO JIRGA (HOUSE OF THE ELDERS), THEN BECOMES LAW AFTER IT IS SIGNED BY THE KING. WHEN THE DIFFERENCES BETWEEN THE TWO HOUSES OF THE SHURA (PARLIAMENT) RELATE TO FINANCIAL BILLS AND ARE NOT RESOLVED BY THE JOINT COMMITTEE, THE WOLESI JIRGA (HOUSE OF THE PEOPLE) MAY MOVE THE BILL AGAIN IN THE FOLLOWING SESSION AND APPROVE IT BY A MAJORITY VOTE. THIS ENACTMENT, WITHOUT REFERENCE TO THE MESHRANO JIRGA (HOUSE OF THE ELDERS), BECOMES LAW AFTER IT IS SIGNED BY THE KING.

ARTICLE 75

THE STATE BUDGET IS PRESENTED TO THE WOLESI JIRGA (HOUSE OF THE PEOPLE) THROUGH THE MESHRANO JIRGA (HOUSE OF THE ELDERS) TOGETHER WITH THEIR ADVISORY COMMENTS. THE PRESIDENT OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) REFERS THE BUDGET PROPOSAL, ALONG WITH THE COMMENTS OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS), TO THE COMMITTEE CONCERNED. AFTERWARDS, THE BUDGET PROPOSAL, TOGETHER WITH THE COMMENTS OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS) AND OF THE COMMITTEE CONCERNED, ARE PRESENTED TO THE HOUSE FOR CONSIDERATION AND DECISION. THIS DECISION IS NOT SUBMITTED TO THE MESHRANO JIRGA (HOUSE OF THE ELDERS) AND BECOMES EFFECTIVE AFTER IT IS SIGNED BY THE KING. THIS PROVISION ALSO APPLIES TO DISCUSSIONS ON THE DEVELOPMENT PLANS OF THE GOVERNMENT IN THE WOLESI JIRGA (HOUSE OF THE PEOPLE). WHENEVER FOR ANY REASON THE PASSAGE OF THE BUDGET DOES NOT MATERIALIZE BEFORE THE BEGINNING OF THE NEW FISCAL YEAR, THE BUDGET OF THE PREVIOUS YEAR IS APPLICABLE UNTIL THE NEW BUDGET IS ADOPTED. THE GOVERNMENT IS BOUND TO SUBMIT TO THE WOLESI JIRGA (HOUSE OF THE PEOPLE) FINAL ACCOUNTS OF THE BUDGET OF THE PREVIOUS

YEAR AT LEAST ONE MONTH BEFORE THE SUBMISSION OF THE NEW BUDGET.

ARTICLE 76

WHEN THE MESHRANO JIRGA (HOUSE OF THE ELDERS) DOES NOT GIVE ITS DECISION ON AN ENACTMENT REFERRED TO IT BY THE WOLESI JIRGA (HOUSE OF THE PEOPLE) WITHIN SIX MONTHS FROM THE DATE OF ITS RECEIPT, THE ENACTMENT IS CONSIDERED TO HAVE BEEN ADOPTED. IN CALCULATING THIS TIME, THE PERIOD OF ADJOURNMENT IS NOT TAKEN INTO ACCOUNT.

ARTICLE 77

DURING ADJOURNMENT OR DISSOLUTION OF THE SHURA (PARLIAMENT) THE GOVERNMENT MAY FORMULATE ORDINANCES FOR REGULATING URGENT MATTERS IN RESPECT TO PARAGRAPH ONE OF ARTICLE 64. THESE ORDINANCES SHALL BECOME LAW AFTER BEING SIGNED BY THE KING. THE ORDINANCES SHALL BE SUBMITTED TO THE SHURA (PARLIAMENT) WITHIN THIRTY DAYS OF THE FIRST MEETING OF THE SHURA (PARLIAMENT). IF REJECTED THE ORDINANCES SHALL BECOME INVALID.

TITLE FIVE THE LOYA JIRGA (GREAT COUNCIL)

ARTICLE 78

THE LOYA JIRGA (GREAT COUNCIL) CONSISTS OF MEMBERS OF THE SHURA (PARLIAMENT) AND THE CHAIRMAN OF THE PROVINCIAL COUNCILS. IN THE EVENT OF THE DISSOLUTION OF THE SHURA (PARLIAMENT) ITS MEMBERS RETAIN THEIR POSITION AS MEMBERS OF THE LOYA JIRGA (GREAT COUNCIL) UNTIL A NEW SHURA (PARLIAMENT) COMES INTO BEING.

ARTICLE 79

SUBJECT TO THE PROVISIONS OF ARTICLES 19, 21 AND 22 OF THIS CONSTITUTION, THE LOYA JIRGA (GREAT COUNCIL) IS SUMMONED BY A ROYAL PROCLAMATION.

ARTICLE 80

WHEN THE LOYA JIRGA (GREAT COUNCIL) IS IN SESSION, THE PROVISIONS OF ARTICLE 51 ARE APPLICABLE TO ITS MEMBERS.

ARTICLE 81

THE DELIBERATIONS OF THE LOYA JIRGA (GREAT COUNCIL) ARE OPEN UNLESS THE GOVERNMENT OR AT LEAST TWENTY MEMBERS OF THE LOYA JIRGA (GREAT COUNCIL) REQUEST A SECRET SESSION AND THE LOYA JIRGA (GREAT COUNCIL) APPROVES THIS REQUEST.

ARTICLE 82

THE PRESIDENT OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE), AND IN HIS ABSENCE, THE PRESIDENT OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS) PRESIDES OVER THE LOYA JIRGA (GREAT COUNCIL). THE LOYA JIRGA (GREAT COUNCIL), AT ITS FIRST MEETING, ELECTS ONE OF ITS MEMBERS AS SECRETARY.

ARTICLE 83

EXCEPT IN CASES CLEARLY DEFINED IN THIS CONSTITUTION, THE DECISIONS OF THE LOYA JIRGA (GREAT COUNCIL) SHALL BE BY A MAJORITY OF THE VOTES OF ITS MEMBERS PRESENT. THE PROCEDURE OF THE LOYA JIRGA (GREAT COUNCIL) SHALL BE REGULATED BY LAW, SUBJECT TO THE PROVISIONS OF THIS CONSTITUTION.

ARTICLE 84

THE LOYA JIRGA (GREAT COUNCIL) ENJOYS THE POWERS DEFINED IN THIS CONSTITUTION.

**TITLE SIX
THE GOVERNMENT****ARTICLE 85**

THE GOVERNMENT OF AFGHANISTAN CONSISTS OF THE PRIME MINISTER AND THE MINISTERS. THE PRIME MINISTER IS THE HEAD AND

THE MINISTERS ARE THE MEMBERS OF THE GOVERNMENT. THE NUMBER OF MINISTERS AND THEIR FUNCTIONS SHALL BE REGULATED BY LAW.

ARTICLE 86

ANY PERSON WHO, IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION, IS ELIGIBLE FOR ELECTION TO THE WOLESI JIRGA (HOUSE OF THE PEOPLE) MAY BE APPOINTED AS THE HEAD OR MEMBER OF THE GOVERNMENT. THE HEAD OF THE GOVERNMENT SHALL BE AN AFGHAN BY BIRTH. THE HEAD AND MEMBERS OF THE GOVERNMENT MAY BE APPOINTED FROM THE MEMBERS OF THE SHURA (PARLIAMENT) OR OUTSIDE OF IT. ANY MEMBER OF THE SHURA (PARLIAMENT) APPOINTED AS THE HEAD OR A MEMBER OF THE GOVERNMENT SHALL CEASE TO BE A MEMBER OF THE SHURA (PARLIAMENT).

ARTICLE 87

THE PRIME MINISTER AND THE MINISTERS CANNOT ENGAGE IN ANY OTHER PROFESSION DURING THEIR TENURE OF OFFICE.

ARTICLE 88

SUITABLE SALARIES SHALL BE FIXED BY LAW FOR THE HEAD AND MEMBERS OF THE GOVERNMENT.

ARTICLE 89

THE GOVERNMENT SHALL BE FORMED BY THE PERSON DESIGNATED AS PRIME MINISTER BY THE KING. THE MEMBERS AND POLICY OF THE GOVERNMENT ARE PRESENTED BY THE PRIME MINISTER TO THE WOLESI JIRGA (HOUSE OF THE PEOPLE), WHICH, AFTER DEBATE, RESOLVES ON A VOTE OF CONFIDENCE IN THE GOVERNMENT. WHEN THE VOTE OF CONFIDENCE IS GIVEN, THE KING ISSUES A ROYAL DECREE APPOINTING THE HEAD AND MEMBERS OF THE GOVERNMENT. AFTERWARDS THE PRIME MINISTER ACQUAINTS THE MESHRANO JIRGA (HOUSE OF THE ELDERS) WITH THE POLICY OF THE GOVERNMENT.

ARTICLE 90

WHENEVER A GOVERNMENT FALLS BECAUSE OF THE DEATH OR RESIGNATION OF THE PRIME MINISTER DURING THE DISSOLUTION OF THE SHURA (PARLIAMENT), A NEW GOVERNMENT SHALL BE APPOINTED BY A ROYAL DECREE. THE PRIME MINISTER SHALL INTRODUCE THE MEMBERS OF THE GOVERNMENT AND ITS POLICY TO THE WOLESI JIRGA (HOUSE OF THE PEOPLE) AT THE OPENING OF THE NEW TERM OF SHURA (PARLIAMENT) AND SHALL ASK FOR A VOTE OF CONFIDENCE.

ARTICLE 91

THE GOVERNMENT FALLS IN THE FOLLOWING CIRCUMSTANCES:

- 1) ON THE PRIME MINISTER'S RESIGNATION OR DEATH.
- 2) ON A VOTE OF NO CONFIDENCE AGAINST THE GOVERNMENT BY THE WOLESI JIRGA (HOUSE OF THE PEOPLE).
- 3) ON THE CHARGE OF HIGH TREASON AGAINST THE HEAD OR ALL MEMBERS OF THE GOVERNMENT, AS STIPULATED IN ARTICLE 93.
- 4) ON THE DISSOLUTION OF THE SHURA (PARLIAMENT). 5) ON THE TERMINATION OF THE LEGISLATIVE TERM.

IN THE LAST TWO CASES, THE GOVERNMENT SHALL CEASE TO EXIST WITH THE FIRST MEETING OF THE NEW WOLESI JIRGA (HOUSE OF THE PEOPLE). IN THE CASE OF RESIGNATION OF THE PRIME MINISTER, THE GOVERNMENT CEASES TO EXIST AFTER THE ACCEPTANCE OF THE RESIGNATION BY THE KING. IN THE EVENT OF THE PRIME MINISTER'S DEATH, ONE OF THE MINISTERS, ON ORDERS FROM THE KING, DISCHARGES THE DUTIES OF PRIME MINISTER UNTIL A NEW GOVERNMENT IS FORMED. WHEN THE GOVERNMENT FALLS DUE TO THE ALLEGATION OF HIGH TREASON, UNDER THE PROVISION OF ARTICLE 93, THE PERSON APPOINTED BY THE KING AS THE PRIME MINISTER CAN CONTINUE HIS DUTIES WITHOUT RECEIVING A VOTE OF CONFIDENCE UNTIL THE FIRST MEETING OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) FOLLOWING THE DECISION OF THE LOYA JIRGA (GREAT COUNCIL) ON THE ALLEGATION. IN ALL OTHER CASES THE OUTGOING GOVERNMENT SHALL CONTINUE IN OFFICE UNTIL A NEW GOVERNMENT IS FORMED.

ARTICLE 92

THE VOTE OF NO CONFIDENCE AGAINST THE GOVERNMENT SHALL BE SPECIFIC AND DIRECT. IN THE TWO LEGISLATIVE TERMS FOLLOWING THE PROMULGATION OF THIS CONSTITUTION, A VOTE OF NO CONFIDENCE AGAINST THE GOVERNMENT SHALL BE BY A TWO THIRDS MAJORITY OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) AND FOR GOVERNMENTS AFTER THAT PERIOD, BY A MAJORITY VOTE OF THE MEMBERS.

ARTICLE 93

WHEN MORE THAN ONE THIRD OF THE MEMBERS OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) DEMAND THE IMPEACHMENT OF THE PRIME MINISTER OR OF A MAJORITY OF THE MEMBERS OF THE GOVERNMENT ON A CHARGE OF HIGH TREASON, AND THE WOLESI JIRGA (HOUSE OF THE PEOPLE) APPROVES THIS DEMAND BY A TWO THIRDS MAJORITY OF THE MEMBERS, THE GOVERNMENT FALLS AND A MEETING OF THE LOYA JIRGA (GREAT COUNCIL) IS CALLED TO APPOINT AN ENQUIRY COMMISSION. IF AFTER STUDYING THE REPORT OF THE COMMISSION, THE LOYA JIRGA (GREAT COUNCIL) DECIDES BY A TWO THIRDS MAJORITY VOTE OF THE MEMBERS THAT PROSECUTION IS NECESSARY, IT COMMISSIONS A MEMBER OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) TO FILE A SUIT AGAINST THE ACCUSED IN THE SUPREME COURT. THE ABOVE PROVISION SHALL ALSO APPLY TO ONE OR A FEW MINISTERS NUMBERING LESS THAN HALF WHO ARE ACCUSED OF HIGH TREASON. AS A RESULT OF THE ACCUSATION, THE ACCUSED SHALL BE RELIEVED OF HIS DUTIES BUT THE GOVERNMENT SHALL NOT FAIL.

ARTICLE 94

IMPLEMENTATION OF THE PROVISIONS OF THIS CONSTITUTION AND ALL THE LAWS, ENFORCEMENT OF THE FINAL JUDGMENTS OF THE COURTS, ADOPTION OF NECESSARY MEASURES FOR THE MAINTENANCE OF PUBLIC ORDER AND SECURITY, REGULATION OF FINANCIAL AFFAIRS OF THE STATE, PROTECTION OF PUBLIC PROPERTY, DEVELOPMENT OF THE SOCIAL, CULTURAL AND ECONOMIC CONDITION OF THE PEOPLE, PRESERVATION OF INDEPENDENCE, DEFENSE OF TERRITORIAL INTEGRITY AND PROTECTION OF THE INTERESTS AND PRESTIGE OF AFGHANISTAN IN THE INTERNATIONAL

COMMUNITY ARE THE DUTIES OF THE GOVERNMENT. TO REGULATE ITS FUNCTIONS, THE GOVERNMENT SHALL MAKE REGULATIONS BASED ON LAWS. NO REGULATION SHALL BE REPUGNANT TO THE LETTER OR SPIRIT OF ANY LAW.

ARTICLE 95

THE COUNCIL OF MINISTERS LAYS DOWN THE BASIC LINES OF THE POLICY OF THE GOVERNMENT AND APPROVES THOSE REGULATIONS WHICH ARE WITHIN THE COMPETENCE OF THE GOVERNMENT. THE PRIME MINISTER PRESIDES OVER THE COUNCIL OF MINISTERS, DIRECTS AND GUIDES THE ACTIVITIES OF THE GOVERNMENT AND SECURES COORDINATION IN ITS WORK. THE PRIME MINISTER IS ALSO RESPONSIBLE FOR MAINTAINING LIAISON BETWEEN THE GOVERNMENT, ON THE ONE SIDE, AND THE KING AND THE SHURA (PARLIAMENT) ON THE OTHER SIDE. THE MINISTERS DISCHARGE THEIR DUTIES, AS HEADS OF THE ADMINISTRATIVE UNITS, AND AS MEMBERS OF THE GOVERNMENT, UNDER THE ORDER AND GUIDANCE OF THE PRIME MINISTER WITHIN THE LIMITATIONS ESTABLISHED BY THIS CONSTITUTION AND THE LAWS.

ARTICLE 96

THE PRIME MINISTER AND THE MINISTERS ARE COLLECTIVELY RESPONSIBLE TO THE WOLESI JIRGA (HOUSE OF THE PEOPLE) FOR THE GENERAL POLICY OF THE GOVERNMENT, AND INDIVIDUALLY FOR THEIR PRESCRIBED DUTIES. THE PRIME MINISTER AND THE MINISTERS ARE ALSO RESPONSIBLE FOR THOSE ACTIONS OF THE GOVERNMENT CONCERNING WHICH THEY OBTAIN A ROYAL DECREE, IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION.

TITLE SEVEN THE JUDICIARY

ARTICLE 97

THE JUDICIARY IS ALL INDEPENDENT ORGAN OF THE STATE AND DISCHARGES ITS DUTIES SIDE BY SIDE WITH THE LEGISLATIVE AND EXECUTIVE ORGANS.

ARTICLE 98

THE JUDICIARY CONSISTS OF A SUPREME COURT AND OTHER COURTS, THE NUMBER OF WHICH SHALL BE DETERMINED BY LAW. IT IS WITHIN THE JURISDICTION OF THE JUDICIARY TO ADJUDICATE IN ALL LITIGATION BROUGHT BEFORE IT ACCORDING TO THE RULES OF LAW, IN WHICH REAL OR LEGAL PERSONS, INCLUDING THE STATE, ARE INVOLVED EITHER AS PLAINTIFF OR DEFENDANT. UNDER NO CIRCUMSTANCES SHALL A LAW EXCLUDE FROM THE JURISDICTION OF THE JUDICIARY, AS DEFINED IN THIS TITLE, A CASE OR SPHERE, AND ASSIGN IT TO OTHER AUTHORITIES. THIS PROVISION DOES NOT PREVENT THE ESTABLISHMENT OF MILITARY COURTS; BUT THE JURISDICTION OF THESE COURTS IS CONFINED TO OFFENSES RELATED TO THE ARMED FORCES OF AFGHANISTAN. THE ORGANIZATION AND JURISDICTION OF THE MILITARY COURTS SHALL BE DETERMINED BY LAW.

ARTICLE 99

THE JUDGES ARE APPOINTED BY THE KING ON THE RECOMMENDATION OF THE CHIEF JUSTICE. WHENEVER A JUDGE COMMITS AN OFFENSE, THE SUPREME COURT CONSIDERS THE CASE OF THE JUDGE, AND AFTER HEARING THE DEFENSE OF THE JUDGE CAN RECOMMEND HIS DISMISSAL TO THE KING. IN CASE THE RECOMMENDATION IS APPROVED BY THE KING, THE JUDGE IS DISMISSED FROM OFFICE. TRANSFERS, PROMOTIONS, CALLING TO ACCOUNT, AND RECOMMENDATIONS FOR RETIREMENT OF THE JUDGES ARE WITHIN THE COMPETENCE OF THE SUPREME COURT, IN ACCORDANCE WITH THE PROVISION OF THE LAW. SUITABLE SALARIES FOR THE JUDGES ARE FIXED BY LAW. JUDGES CANNOT ENGAGE IN OTHER OCCUPATIONS DURING THEIR TENURE OF OFFICE.

ARTICLE 100

IN THE COURTS OF AFGHANISTAN TRIALS ARE HELD OPENLY AND EVERYONE MAY ATTEND IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. THE COURT MAY IN EXCEPTIONAL CASES SPECIFIED IN THE LAW HOLD CLOSED TRIALS. HOWEVER, THE JUDGMENT SHALL ALWAYS BE OPENLY PROCLAIMED. THE COURTS ARE BOUND TO STATE IN THEIR JUDGMENTS THE REASONS FOR THEIR VERDICTS.

ARTICLE 101

THE ENFORCEMENT OF ALL FINAL JUDGMENTS OF THE COURTS IS OBLIGATORY EXCEPT IN THE CASE OF A DEATH SENTENCE WHERE THE EXECUTION OF THE COURT DECISION IS SUBJECT TO THE KING'S SIGNATURE.

ARTICLE 102

THE COURTS IN THE CASES UNDER THEIR CONSIDERATION SHALL APPLY THE PROVISIONS OF THIS CONSTITUTION AND THE LAWS OF THE STATE. WHENEVER NO PROVISION EXISTS IN THE CONSTITUTION OR THE LAWS FOR A CASE UNDER CONSIDERATION, THE COURT SHALL, BY FOLLOWING THE BASIC PRINCIPLES OF THE HANAFI JURISPRUDENCE OF THE SHARIAAT OF ISLAM AND WITHIN THE PROVISIONS SET FORTH IN THIS CONSTITUTION, RENDER A DECISION THAT IN THEIR OPINION SECURES JUSTICE IN THE BEST POSSIBLE WAY.

ARTICLE 103

INVESTIGATION OF CRIMES SHALL BE CONDUCTED, IN ACCORDANCE WITH THE PROVISIONS OF THE LAW, BY THE ATTORNEY GENERAL, WHO IS A PART OF THE EXECUTIVE ORGAN OF THE STATE.

ARTICLE 104

SUBJECT TO THE PROVISIONS OF THIS CONSTITUTION, RULES RELATING TO THE ORGANIZATION AND THE FUNCTION OF THE COURTS, AND MATTERS CONCERNING JUDGES SHALL BE REGULATED BY LAW. THE PRINCIPAL AIM OF THESE LAWS SHALL BE THE ESTABLISHMENT OF UNIFORMITY IN JUDICIAL PRACTICE, ORGANIZATION, JURISDICTION, AND PROCEDURES OF THE COURTS.

ARTICLE 105

THE SUPREME COURT CONSISTS OF NINE JUDGES APPOINTED BY THE KING. THE KING SHALL APPOINT THE MEMBERS OF THE SUPREME COURT FROM AMONGST PERSONS WHO SHALL:

- 1) HAVE COMPLETED 35 YEARS.

2) BE ELIGIBLE FOR ELECTION TO THE SHURA (PARLIAMENT) IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 46.

3) HAVE SUFFICIENT KNOWLEDGE OF JURISPRUDENCE, THE NATIONAL OBJECTIVES, AND THE LAWS AND LEGAL SYSTEM IN AFGHANISTAN. THE KING APPOINTS ONE OF THE JUDGES OF THE SUPREME COURT, WHOSE AGE IS NOT LESS THAN 40 AND NOT OVER 60 YEARS, AS THE CHIEF JUSTICE. THE KING CAN REVIEW THE APPOINTMENT OF THE CHIEF JUSTICE AND THE JUDGES OF THE SUPREME COURT AFTER THE LAPSE OF TEN YEARS FROM THE DATE OF THEIR APPOINTMENT TO THE SAID OFFICES. SUBJECT TO THE PROVISIONS OF THIS ARTICLE AND OF ARTICLE 106, THE CHIEF JUSTICE AND JUDGES OF THE SUPREME COURT SHALL NOT BE REMOVED FROM THEIR OFFICES BY ANY OTHER MEANS. EXCEPT IN THE CASE MENTIONED IN ARTICLE 106, THE CHIEF JUSTICE AND JUDGES OF THE SUPREME COURT SHALL, AFTER THEIR TENURE IN OFFICE, ENJOY FOR THE REST OF THEIR LIVES ALL THE FINANCIAL PRIVILEGES PERTAINING TO THE TERM OF THEIR SERVICES. THE CHIEF JUSTICE AND JUDGES OF THE SUPREME COURT SHALL NOT, AFTER THE TERMINATION OF THEIR SERVICES, BECOME PRIME MINISTER OR MEMBERS OF THE GOVERNMENT, MEMBERS OF THE SHURA (PARLIAMENT) OR GOVERNMENT OFFICIALS. THE CHIEF JUSTICE AND MEMBERS OF THE SUPREME COURT SHALL NOT PARTICIPATE IN POLITICAL PARTIES DURING OR AFTER THEIR TENURE OF OFFICE.

ARTICLE 106

SHOULD MORE THAN ONE THIRD OF THE MEMBERS OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) DEMAND THE IMPEACHMENT OF THE CHIEF JUSTICE OR ONE OR MORE JUDGES OF THE SUPREME COURT ON A CHARGE OF A CRIME STEMMING FROM THE PERFORMANCE OF THEIR DUTIES, AND THE WOLESI JIRGA (HOUSE OF THE PEOPLE) APPROVE THIS DEMAND BY A MAJORITY OF TWO THIRDS OF ITS MEMBERS, THE ACCUSED IS SUSPENDED FROM OFFICE AND A MEETING OF THE LOYA JIRGA (GREAT COUNCIL) IS CALLED TO APPOINT A COMMISSION OF ENQUIRY. IF THE LOYA JIRGA (GREAT COUNCIL), AFTER STUDYING THE REPORT OF THE COMMISSION, DECIDES BY A TWO THIRDS MAJORITY OF ITS MEMBERS THAT THE PROSECUTION OF THE ACCUSED IS NECESSARY, IT SHALL APPOINT ONE OF ITS MEMBERS TO FILE A SUIT AND SHALL APPOINT A PANEL OF EIGHT PERSONS TO ACT AS A TRIBUNAL. THE TRIBUNAL, PRESIDED OVER BY THE PRESIDENT OF THE MESHRANO JIRGA (HOUSE OF THE ELDERS), SHALL TRY THE ACCUSED

IN ACCORDANCE WITH THE CRIMINAL PROCEDURES OF THE SUPREME COURT. THE ACCUSED, IF PROVED GUILTY, SHALL BE DISMISSED FROM OFFICE AND PUNISHED.

ARTICLE 107

THE SUPREME COURT IS THE HIGHEST JUDICIAL AUTHORITY IN AFGHANISTAN. THE SUPREME COURT REGULATES THE ORGANIZATION AND FUNCTIONS OF THE COURTS AND THE JUDICIAL AFFAIRS OF THE STATE IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION AND THE LAW. THE SUPREME COURT ADOPTS NECESSARY MEASURES TO ORGANIZE THE ADMINISTRATIVE AFFAIRS OF THE COURTS. THE BUDGET OF THE JUDICIARY IS PREPARED BY THE CHIEF JUSTICE IN CONSULTATION WITH THE GOVERNMENT AND, AFTER THE APPROVAL OF THE SUPREME COURT, IS PRESENTED BY THE GOVERNMENT TO THE SHURA (PARLIAMENT) AS A PART OF THE STATE BUDGET. THE SUPREME COURT ADMINISTERS THE BUDGET OF THE JUDICIARY. THE PROVISIONS OF THE LAW RELATING TO CIVIL SERVANTS AND OTHER ADMINISTRATIVE EMPLOYEES OF THE STATE ARE APPLICABLE TO THE CIVIL SERVANTS AND OTHER ADMINISTRATIVE EMPLOYEES OF THE JUDICIARY. HOWEVER, THEIR APPOINTMENT, PROMOTION, DISMISSAL, RETIREMENT, AND CALLING TO ACCOUNT SHALL BE WITHIN THE COMPETENCE OF THE SUPREME COURT, IN ACCORDANCE WITH THE LAW.

TITLE EIGHT THE ADMINISTRATION

ARTICLE 108

THE ADMINISTRATION OF AFGHANISTAN IS BASED UPON THE PRINCIPLE OF CENTRALIZATION, IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE. THE CENTRAL ADMINISTRATION SHALL BE DIVIDED INTO A NUMBER OF ADMINISTRATIVE UNITS EACH HEADED BY A MINISTER, AS PROVIDED IN THE LAW. THE UNIT OF LOCAL ADMINISTRATION IS THE PROVINCE. THE NUMBER, AREA, SUBDIVISIONS AND ORGANIZATION OF THE PROVINCES SHALL BE FIXED BY LAW.

ARTICLE 109

IN EACH PROVINCE A PROVINCIAL COUNCIL SHALL BE FORMED. THE MEMBERS OF THE PROVINCIAL COUNCIL SHALL BE ELECTED BY THE RESIDENTS OF THE PROVINCE IN A FREE, UNIVERSAL, DIRECT AND SECRET ELECTION. THE PROVINCIAL COUNCIL SHALL ELECT ONE OF ITS MEMBERS AS CHAIRMAN. THE PROVINCIAL COUNCILS SHALL TAKE PART IN THE REALIZATION OF THE DEVELOPMENT TARGETS OF THE STATE IN THE MANNER SPECIFIED BY LAW. SIMILARLY, THE PROVINCIAL COUNCILS SHALL ADVISE THE PROVINCIAL GOVERNMENT ON MATTERS PERTAINING TO THE BETTERMENT OF THE CONDITION AND THE GENERAL DEVELOPMENT OF THE PROVINCE. THE PROVINCIAL COUNCIL SHALL DISCHARGE ITS DUTIES IN COOPERATION WITH THE PROVINCIAL GOVERNMENT. SUITABLE SALARIES FOR THE MEMBERS OF THE PROVINCIAL COUNCILS SHALL BE FIXED BY LAW.

ARTICLE 110

LAWS SHALL BE FRAMED IN ACCORDANCE WITH THE PRINCIPLES OF THIS TITLE TO ORGANIZE THE WORK OF THE LOCAL ADMINISTRATION. ONE OF THE OBJECTIVES OF THESE LAWS SHALL BE THE EXTENSION OF THE COUNCILS TO THE VILLAGE LEVEL AND THEIR EVER INCREASING PARTICIPATION IN THE LOCAL ADMINISTRATION.

ARTICLE 111

MUNICIPALITIES SHALL BE ORGANIZED TO ADMINISTER THE AFFAIRS OF THE CITIES. MUNICIPAL COUNCILS SHALL BE ESTABLISHED BY FREE, UNIVERSAL, DIRECT AND SECRET ELECTION. SUBJECT TO THE PROVISIONS OF THIS TITLE, MATTERS RELATING TO THE MUNICIPALITIES SHALL BE REGULATED BY LAW.

ARTICLE 112

THE FUNCTIONS OF THE ADMINISTRATION SHALL BE CARRIED OUT BY THE CIVIL SERVANTS AND OTHER ADMINISTRATIVE EMPLOYEES. SUITABLE SALARIES SHALL BE FIXED BY LAW FOR THE CIVIL SERVANTS AND OTHER ADMINISTRATIVE EMPLOYEES. THE RIGHTS AND DUTIES OF THE CIVIL SERVANTS AND OTHER ADMINISTRATIVE EMPLOYEES SHALL BE REGULATED BY LAW.

TITLE NINE STATE OF EMERGENCY

ARTICLE 113

WHENEVER THE PRESERVATION OF INDEPENDENCE AND THE CONTINUANCE OF NATIONAL LIFE BECOME IMPOSSIBLE THROUGH THE CHANNELS PROVIDED FOR IN THIS CONSTITUTION DUE TO WAR, DANGER OF WAR, SERIOUS DISTURBANCES, OR SIMILAR CONDITIONS WHICH ENDANGER THE COUNTRY, A STATE OF EMERGENCY SHALL BE DECLARED BY THE KING. SHOULD A STATE OF EMERGENCY CONTINUE FOR MORE THAN THREE MONTHS, THE CONCURRENCE OF THE LOYA JIRGA (GREAT COUNCIL) IS IMPERATIVE FOR ITS EXTENSION.

ARTICLE 114

IN A STATE OF EMERGENCY, THE KING MAY TRANSFER ALL OR PART OF THE POWERS OF THE SHURA (PARLIAMENT) TO THE GOVERNMENT.

ARTICLE 115

IN A STATE OF EMERGENCY, THE GOVERNMENT, AFTER OBTAINING THE CONCURRENCE OF THE SUPREME COURT, MAY, BY ORDINANCES, SUSPEND OR IMPOSE RESTRICTIONS UPON THE FOLLOWING PROVISIONS OF THIS CONSTITUTION:

- 1) SECTION ONE OF ARTICLE 28.
- 2) SECTION THREE OF ARTICLE 29.
- 3) SECTION TWO OF ARTICLE 30.
- 4) SECTION ONE OF ARTICLE 32.
- 5) SECTION ONE OF ARTICLE 33.

ARTICLE 116

THE KING MAY, IN A STATE OF EMERGENCY, TRANSFER THE CAPITAL TEMPORARILY FROM THE CITY (KABUL) TO ANOTHER PLACE.

ARTICLE 117

SHOULD THE LEGISLATIVE TERM OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) OR THE TERM OF OFFICE OF A PART OF THE MEMBERS OF THE

MESHHRANO JIRGA (HOUSE OF THE ELDERS) COME TO AN END DURING THE STATE OF EMERGENCY, THE KING MAY POSTPONE THE HOLDING OF NEW ELECTIONS AND EXTEND THE LEGISLATIVE TERM OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) OR THE TERM OF OFFICE OF THE SAID MEMBERS OF THE MESHHRANO JIRGA (HOUSE OF THE ELDERS), UNTIL THE STATE OF EMERGENCY COMES TO AN END. ELECTIONS SHALL BE HELD IMMEDIATELY AFTER THE TERMINATION OF THE STATE OF EMERGENCY.

ARTICLE 118

THE CONSTITUTION SHALL NOT BE AMENDED DURING A STATE OF EMERGENCY.

ARTICLE 119

AT THE END OF A STATE OF EMERGENCY, THE MEASURES ADOPTED UNDER ARTICLE 115 BECOME IMMEDIATELY INVALID. MEASURES ADOPTED BY THE GOVERNMENT IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 114 SHALL BE SUBMITTED TO THE SHURA (PARLIAMENT) WITHIN ONE MONTH FROM THE DATE OF ITS FIRST MEETING FOLLOWING THE END OF THE STATE OF EMERGENCY. THESE MEASURES BECOME NULL AND VOID IF THE SHURA (PARLIAMENT) REJECTS THEM. WHENEVER DURING A STATE OF EMERGENCY A GOVERNMENT HAS BEEN FORMED WHICH HAS NOT OBTAINED A VOTE OF CONFIDENCE FROM THE WOLESI JIRGA (HOUSE OF THE PEOPLE) UNDER THE PROVISION OF ARTICLE 114, A MOTION FOR A VOTE OF CONFIDENCE SHALL BE PUT IMMEDIATELY BEFORE THE WOLESI JIRGA (HOUSE OF THE PEOPLE) AFTER THE END OF THE STATE OF EMERGENCY, FOR DEBATE AND DECISION THEREON.

TITLE TEN AMENDMENT

ARTICLE 120

ADHERENCE TO THE BASIC PRINCIPLES OF ISLAM, CONSTITUTIONAL MONARCH IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION, AND THE VALUES EMBODIED IN ARTICLE 8 SHALL NOT BE SUBJECT TO AMENDMENT. AMENDMENTS TO OTHER PROVISIONS OF

THE CONSTITUTION MAY BE INITIATED BY THE COUNCIL OF MINISTERS OR ONE THIRD OF THE MEMBERS OF THE WOLESI JIRGA (HOUSE OF THE PEOPLE) OR THE MESHRANO JIRGA (HOUSE OF THE ELDERS), IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE.

ARTICLE 121

THE PROPOSAL FOR AMENDMENT IS DISCUSSED BY THE LOYA JIRGA (GREAT COUNCIL), AND IN CASE A MAJORITY OF THE MEMBERS APPROVES ITS NECESSITY, A COMMITTEE FROM AMONGST ITS MEMBERS SHALL BE APPOINTED TO FORMULATE THE AMENDMENT. THE COMMITTEE SHALL FORMULATE THE AMENDMENT WITH THE ADVICE OF THE COUNCIL OF MINISTERS AND THE SUPREME COURT, FOR SUBMISSION TO THE LOYA JIRGA (GREAT COUNCIL). IN CASE THE LOYA JIRGA (GREAT COUNCIL) APPROVES THE DRAFT AMENDMENT WITH A MAJORITY VOTE OF ITS MEMBERS, IT IS SUBMITTED TO THE KING. THE KING SHALL DISSOLVE THE SHURA (PARLIAMENT), CIRCULATE THE DRAFT AMENDMENT TO THE PUBLIC AND PROCLAIM THE DATE OF THE NEW ELECTIONS. THE NEW ELECTIONS SHALL TAKE PLACE WITHIN FOUR MONTHS FROM THE DISSOLUTION OF THE SHURA (PARLIAMENT).

ARTICLE 122

FOLLOWING THE OPENING OF THE SHURA (PARLIAMENT) AND THE FORMATION OF THE GOVERNMENT THE KING SUMMONS THE LOYA JIRGA (GREAT COUNCIL), WHICH, AFTER CONSIDERATION, APPROVES OR REJECTS THE TEXT OF THE DRAFT AMENDMENT. THE DECISION OF THE LOYA JIRGA (GREAT COUNCIL) IN THIS RESPECT SHALL BE BY A TWO THIRDS MAJORITY VOTE OF ITS MEMBERS AND SHALL BE ENFORCED AFTER IT HAS BEEN SIGNED BY THE KING.

TITLE ELEVEN TRANSITIONAL PROVISIONS

ARTICLE 123

SUBJECT TO THE PROVISIONS OF THIS TITLE, THIS CONSTITUTION SHALL COME INTO FORCE FROM THE DATE IT IS SIGNED AND PROCLAIMED BY THE KING.

ARTICLE 124

AFTER THE KING PROCLAIMS THIS CONSTITUTION, THE NATIONAL ASSEMBLY AND THE SENATE ARE CONSIDERED TO BE DISSOLVED.

ARTICLE 125

THE NEW SHURA (PARLIAMENT) SHALL BE INAUGURATED ON MEEZAN 22, 1344, A. H. THE PERIOD BETWEEN THE PROCLAMATION OF THIS CONSTITUTION AND THE INAUGURATION OF THE NEW SHURA (PARLIAMENT) SHALL BE CONSIDERED THE INTERIM PERIOD. DURING THE INTERIM PERIOD, THE POWERS OF THE SHURA (PARLIAMENT) ARE TRANSFERRED TO THE GOVERNMENT. ORDINANCES ISSUED DURING THE INTERIM PERIOD, UNDER THE PROVISIONS OF THIS TITLE, SHALL BE SUBMITTED TO THE WOLESI JIRGA (HOUSE OF THE PEOPLE) IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 77. IF DURING THE INTERIM PERIOD A SITUATION ARISES, WHICH, IN ACCORDANCE WITH THE PROVISIONS OF THIS CONSTITUTION, NECESSITATES THE CONVENING OF THE LOYA JIRGA (GREAT COUNCIL), THE DISSOLVED NATIONAL ASSEMBLY AND THE SENATE SHALL BE SUMMONED AND THE LOYA JIRGA (GREAT COUNCIL) CONSTITUTED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 78. IF THE PROVINCIAL COUNCILS ARE NOT IN EXISTENCE WHEN ONE OF THE ABOVE MENTIONED SITUATIONS ARISES, THE LOYA JIRGA (GREAT COUNCIL) SHALL BE CONSTITUTED WITHOUT THE CHAIRMEN OF THE PROVINCIAL COUNCILS.

ARTICLE 126

THE FOLLOWING SHALL BE AMONG THE DUTIES OF THE GOVERNMENT DURING THE INTERIM PERIOD:

- 1) TO PREPARE ORDINANCES RELATING TO ELECTIONS, BASIC ORGANIZATION OF THE STATE, THE PRESS, AND JUDICIAL ORGANIZATION AND JURISDICTION, AND TO SUBMIT THE SAME TO THE KING FOR HIS SIGNATURE.
- 2) TO PREPARE DRAFTS OF BILLS RELATING TO POLITICAL PARTIES AND PROVINCIAL COUNCILS, AND TO SUBMIT THEM TO THE SHURA (PARLIAMENT), CONVENED AFTER THE INTERIM PERIOD.

3) TO ADOPT NECESSARY MEASURES AND PREPARE THE GROUND FOR THE IMPLEMENTATION OF THE PROVISIONS OF THIS CONSTITUTION.

ARTICLE 127

THE SUPREME COURT SHALL COME INTO EXISTENCE ON THE 22ND DAY OF MEEZAN, 1346 A.H. IF IN THE INTERIM THE APPLICATION OF THE PROVISIONS OF ARTICLES 15, 17, 19, 21, 22, AND 115 OF THIS CONSTITUTION IS CALLED FOR, THE PROVISIONS OF THE SAID ARTICLES SHALL BE ENFORCED WITHOUT THE PARTICIPATION OF THE SUPREME COURT OR THE CHIEF JUSTICE. DURING THE TIME BETWEEN THE PROCLAMATION OF THIS CONSTITUTION AND THE ESTABLISHMENT OF THE SUPREME COURT, THE KING HAS THE AUTHORITY TO TAKE NECESSARY MEASURES FOR SECURING THE PERFORMANCE OF THE FUNCTIONS OF THE SUPREME COURT.

ARTICLE 128

LAWS, ISSUED PRIOR TO THE PROCLAMATION OF THIS CONSTITUTION SHALL BE CONSIDERED EFFECTIVE PROVIDED THEY ARE NOT REPUGNANT TO THE PROVISIONS OF THIS CONSTITUTION AND ARE NOT NULLIFIED BY NEW LAWS.