

Islamic Republic of Afghanistan

Ministry of Justice

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**Law on Organization and
Jurisdiction of Military Courts**

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Law on structure and jurisdiction of Military courts

Chapter 1

General Provisions

Basic

Article 1:

This law has been enacted pursuant to articles 64, 122 and 134 of the Constitution of Afghanistan, for the purpose of establishing organization and jurisdiction of the Afghan National Army's Military Courts.

Terms

Article 2:

- (1) "Military Court" means a court established pursuant to article 122 of the Constitution of Afghanistan to proceed duty related offences of militants and individuals who are subject to military laws.
- (2) "Military Trial" means the proceeding of Afghan National Army cases based on which the duty related offences of national army members shall be proceeded under military laws.
- (3) "Civil employee" means a civilian who is employed in a civil position or in a civil structure by the Ministry of Defense or by a component of the Afghan National Army.
- (4) "Military Judge" means an Afghan National Army officer, who has a bachelor degree or higher in Law or Sharia. He is appointed by the Minister of Defense under this law, after obtaining judicial certificate (Inselak) to proceed the duty related offences of the militants as stipulated in the military laws.
- (5) "Head of Huquq for the General Staff Office" is an administrative officer appointed for Afghan National Army legal affairs.
Huquq Department of the General Staff is an office which provides legal consultations to the General Chief of Staff and Afghan National Army on Afghan National Army laws and regulations or other relevant laws.
- (6) Head of Huquq for the Ministry of Defense is a senior administrative employee of the legal affairs who provides legal consultations to the Minister of Defense and Head Quarter of the ministry.
Huquq Department of the Ministry of defense is an office which provides drafts for laws, regulations, policies and legal Terms of Reference.

Abide by privileges and immunities of citizens

Article 3:

The Military Courts, while proceeding of legal cases abide by privileges and guaranteed immunities of the citizens under Afghan Constitution and other enforced laws of Afghanistan.

Registration of Documents

Article 4:

The Military Primary and Appellate courts are duty bound to register and document all their judicial decisions and proceedings in accordance with the provisions of the law.

Proceeding

Article 5:

- (1) The duty related offences of armed forces personnel are proceeded in two stages – primary and appellate – from point of view of seriousness and nature of the case.
- (2) For accuracy in applicability of the law (in case of overruling or confirmation), the litigant shall appeal to the Supreme Court under the law.
- (3) The judges proceed with the cases in military courts as follows:
 - (a) In first stage, three judges proceed with the case. If the number of judges is less than three, the case may be proceeded with less than three judges.
 - (b) In appellate stage, three judges shall proceed with the case.

Independence

Article 6:

The military courts are independent in their judicial proceedings and they only abide by the provisions of the law.

Objection on decision

Article 7:

The parties to the case may appeal to the upper court against decisions issued by the lower courts in accordance with the law unless they are absolute decisions.

Source of decision

Article 8:

The military courts while proceeding a case, apply the military laws considering the Afghan Constitution and other enforced laws.

Non-refusal of ruling

Article 9:

The military court may not refuse to issue an order on a case that has proceeded. The proceeded case (except for conditions that non-jurisdiction of the court has been identified) may not be taken out of the court unless a decision is made upon.

Prohibition on Political Party Membership

Article 10:

Judges may not be a member of a political party during their tenure.

Immunity of Judges

Article 11:

No one can investigate and punish military judges except provisions of the law. The military judges are independent on their performances and they are only abiding by provision of the law.

Enforceability of decisions and rulings

Article 12:

Decisions and rulings of the upper court regarding re-proceeding of cases are enforceable on lower courts.

Chapter 2

Organization of Military Courts

Organization and Duties

Article 13

Based on article 122 of Afghan Constitution, Military Courts of Islamic Republic of Afghanistan shall be established with the following structure and duties:

- A.
 - 1- Military Primary Courts shall be established in accordance with this law to proceed with the duty related offences committed by Afghan National Army personnel or any other individual subject to this law.
 - 2- Military Appellate Court shall be established under this law to proceed with the appeals to the Appellate Court regarding the verdicts issued by the National Army military primary courts.
- B. Military courts established by this law have the authority to adjudicate all cases within their jurisdiction in the manner prescribed by this law or other applicable military regulations.
- C. Appeals against decisions of military appellate court shall be heard in the Supreme Court of Islamic Republic of Afghanistan.

Appointment and Performances of Prosecutors, Judges and Defense Attorneys

Article 14:

- A.
 - 1- Prosecutors: Prosecution of all cases in the military courts shall be conducted by officers of the Afghan National Army who are appointed as prosecutors.
The Head of Huquq for the General Staff office is obligated to arrange and provide the educational and appointment process of the eligible officers to prosecute cases in the military courts. Moreover, he shall distribute certificates on determination of profession to military officers as military prosecutors.
If a prosecutor does not perform his/her assigned duties honestly, the Head of Huquq for the General Staff office has the authority to disqualify him/her from prosecution of cases.
 - 2- The military judges hearing all cases in the military primary and appellate courts shall be officers of the Afghan National Army holding rank of Lieutenant Colonel or above. The Head of Huquq for the General Staff shall arrange and provide the educational and appointment

process of the qualified officers to hear cases in the military courts as judges. The appointment and transfer of the military judges is subject to recommendation of Head of Huquq for the General Staff and approval of the Minister of Defense under the law.

Officers proposed for the position of military judges must be member of the Afghan National Army at the time of their nomination. Minister of Defense shall consult with Huquq Department of Ministry of Defense regarding this issue. List of military officers nominated for the position of judge shall be sent to the president through Minister of Defense. Military judges obtain their Judicial certificate (Enselak) based on recommendation of Defense Minister, confirmation of Supreme Court and approval of the president.

If a judge does not carry out his/her assigned duties honestly, he/she shall be disqualified from handling cases under military criminal procedure code.

- 3- Defense Attorney: Military defense attorneys who represent the accused before military court shall be officers of National Army or qualified civilians who register their qualifications under Advocates Law and have been assigned for doing such job in the military primary and appellate courts. The Head of Huquq for the General Staff office is obligated to arrange and provide the educational and appointment process of the eligible officers as defense attorneys in the military courts and distribute certificates on determination of profession to military and civil officers as defense attorneys.

If a defense attorney does not perform his/her assigned duties honestly, the Head of Huquq for the General Staff office takes measures on his dismissal under Advocates Law.

No one shall punish a military defense attorney without permission of Head of Huquq for the General Staff Office. Qualified military or civil defense attorney who performs such duty in Afghanistan Supreme Court or lower courts shall be considered qualified person in military courts as well.

- B. National Defense Minister shall issue written procedures and rules for military courts in conformity with the Afghan Constitution and other laws.

Chapter Three

Jurisdiction of Military Courts

Jurisdiction

Article 15

- A. Military courts have exclusive jurisdiction over duty related offenses of Afghan National Army personnel.
- B. Military courts with civilian courts have jurisdiction in accordance with the law over individuals subject to this law who have committed acts that are offense under civil and military criminal laws.

Chapter Four

Military Primary Courts

Organization of Primary Courts

Article 16:

A: Head of Huquq for the General Staff Office is authorized to organize military primary courts with its personnel and location that meet the requirements of National Army.

B: Military Primary courts shall be established at the level of each corps as follows:

- 1- The qualified judge stated in this law having the rank of Colonel or higher as the presiding judge;
- 2- Two other judges having the rank of Lieutenant Colonel or above as members;
- 3- Correspondence manager having the rank of Major;
- 4- Two officers who assist correspondence manager and the judges in administrative affairs and work as judicial clerks shall have the rank of Captain and First Lieutenant and a Non Commissioned Officer (NCO) with the rank of Sergeant First Class.
- 5- Two custodians and one third degree contract driver

Chapter Five

Military Appellate Court

Organization and proceeding procedure in Appellate Court

Article 17:

- A. Head of Huquq for General Staff Office has the authority to establish and arrange the Military Appellate Court. The Military Appellate Court established based on this law, shall be called "Military Appellate Court".
- B. The Military Appellate court is established and organized as follows:
 - 1- The qualified judge contained in this law holding the Brigadier General Rank as the presiding judge;
 - 2- The qualified judge contained in this law holding Colonel Rank as the Deputy Presiding Judge;
 - 3- Three judges as members, two of them holding colonel Rank and the other one holding Lieutenant Colonel Rank or above;
 - 4- Correspondence manager holding Lieutenant Colonel Rank;
 - 5- Two officers who assist correspondence manager and the judges in administrative affairs and work as judicial clerks shall have the rank of Captain and First Lieutenant and a Non Commissioned Officer (NCO) with the rank of Sergeant First Class.
 - 6- Three persons as custodians and driver holding third degree contract employee or higher(or equivalent according to the civil servants law)
- C. The organization, structure and staffing of Military Appellate Court is carried out by the Head of Huquq for the General Staff Office after approval of the Defense Minister.

First: Jurisdiction of the Military Appellate Court:

- 1- Military Appellate Court has the jurisdiction over the cases on which appeal has been made within the legal time period against Military Primary Court's decision or ruling, unless otherwise stated in the law.
- 2- Military Appellate court may apply the same level of observations (judicial proceedings) as the civil appellate court applies in the similar cases. It may reform, overrule, amend, approve or annul lower court's decisions under law.
- 3- Military Appellate court in accordance with the law has the authority to issue particular rulings on cases being proceeded.

Second: Responsibility:

Presiding judge and other Judges of Military Appellate Court are responsible for the quality, time limit for proceeding of cases, accuracy in implementation of the law, and documentation of their decisions and rulings.

- D. Military Appellate court while issuing decisions is duty bound to express the reasons clearly and explicitly and take fair decision.
 - Written copy of the issued decisions shall be kept in the court.
- E. The appeal of the litigant, in cases lying under the jurisdiction of Military Appellate Court, is submitted to the correspondence office of the court in accordance with the provisions of the law. If the Military Appellate Court finds out that it does not have jurisdiction over the case, it shall issue a ruling on referring the case to the competent court or rejection of the appeal.

Duties and Authorities of presiding judge of Military Appellate Court

Article 18:

- A. The duties and authorities of presiding judge of Military Appellate Court are as follows:
 - 1- leading and organizing activities of the court
 - 2- Chairing the judicial meetings of the court.
 - 3- Drafting plans for running the judicial and administrative affairs of the court and giving instructions on date and proceeding method of the cases.
 - 4- Assigning judges for scrutiny of submitted files to the court.
 - 5- Consolidating judicial experiences and issuance of instructions to the primary courts after approval of Head Huquq for General Staff Office.
 - 6- Reporting on activities of the court to Head of Huquq for General Staff Office.
 - 7- In absence of presiding judge of Military Appellate Court, his deputy will apply his authorities.
- B. The permanent location for the Military Appellate court shall be determined and preserved by the Ministry of Defense in Kabul city.

The Military Appellate Court may dispatch a judicial delegation to a city or a province of Afghanistan to proceed with complicated cases in accordance with circumstances.

Duties of the Correspondence Manager

Article 19:

- A. Correspondence manager of Appellate Court is responsible for recoding and preserving documents of court as stipulated in the law or regulation.
- B. Head of Huquq for General Staff Office regulates, publishes and distributes the rulings and verdicts of the court in accordance with the procedures.

Chapter Six

Final Appeal to Supreme Court on Military Cases

Final Appeal

Article 20:

Final appeal on decisions of Military Appellate Court is made to the Supreme Court as stipulated in the Law on Organization and Jurisdiction of Courts of Islamic Republic of Afghanistan.

Chapter Seven

Personal Affairs of Judges

Judicial Cadre Qualifications

Article 21:

Qualified officers meeting the following qualifications shall be appointed in military judicial cadre:

1. Having the citizenship of Islamic Republic of Afghanistan for at least ten years.
2. Having good qualities and reputation and shouldn't have been convicted to felony or intentional misdemeanor by absolute decision of a competent court.
3. Having Bachelor degree or higher in Law or Sharia from Afghanistan or other countries.
4. Not having an illness or disability which hinders a judge from performing his duties.
5. Judges of Primary courts should have completed the age of 25.
6. Judges should have completed the judicial stage successfully or have worked in judicial and justice organizations for at least five years.

Conditions for recruitment of Judges

Article 22:

The judges being recruited in judicial positions, in addition to the requirements set forth in article 21 of this law, shall have completed the professional service period in legal and judicial sections as follows:

1. Presiding judge of Military Appellate court for ten years.
2. Presiding judge of Primary court for eight years.

Transfer of judges and administrative personnel

Article 23:

The transfer of military judges and administrative personnel may happen only in Hoth (March) of each year.

The emergency conditions are an exception.

The privilege of judicial cadre

Article 24:

Judges will receive their privileges according to the law. Determination of cadre degree, conditions for promotion and determining the amount of privilege shall be regulated and enforced under the Legislative Judges Law.

Abide by other laws relevant to personal affairs

Article 25:

Other issues relevant to personal affairs of judges and staff of military courts will be carried out under Labor Law, Civil Servants Law, and Law on Personal affairs of Officers and other legislative documents considering the provisions of this law.

Chapter Eight

Miscellaneous Provisions

Impermissibility of Arrest and Detention

Article 26:

- (1) Arrest or detention of a military judge (Except in a witnessed crime) is not permissible without presidential order.
- (2) Whenever a military judge is accused with a felony, the issue shall be assessed by the military court panel. In case the reasons exist, the request for his dismissal shall be presented to the president through Supreme Court. After approval of the president, the competent prosecution office and court shall investigate, file a lawsuit and prosecute the case.
- (3) Taking disciplinary action toward judges when violating military discipline shall be carried out under a special regulation prepared and processed by the Ministry of Defense.

Enacting rules and procedures

Article 27:

Minister of Defense is obligated to maintain the order and discipline in the Ministry of Defense and in the General Staff Office (GSO) of the National Army. Moreover, He shall enact specific rules and procedures based on the law through relevant legal office to facilitate the work process of the military courts.

Ensuing Security of the Offices

Article 28:

Ensuring security of the courtrooms and carrying out military courts' orders on summoning individuals is the duty of the relevant units.

Stamp

Article 29:

Military courts have special stamp on which the names of Islamic Republic of Afghanistan and the relevant office are engraved.

Uniform

Article 30:

Judges of military courts shall show up in judicial sessions with a particular uniform determined by the regulation.

Enforcement

Article 31:

This law contains 8 chapters and 31 articles and is enforced after approval and endorsement. With the enforcement of this law, the provisions of Law on Military Courts published in official gazette number 866 dated 1384 (2005) and other laws that contradicts this shall be nullified.