

Afghanistan Constitution  
of  
2004

## **Preamble**

In the name of Allah, the Most Beneficent, the Most Merciful Praise be to Allah, the Cherisher and Sustainer of Worlds; and Praise and Peace be upon Mohammad, His Last Messenger and his disciples and followers.

We the people of Afghanistan:

Believing firmly in Almighty God, relying on His divine will and adhering to the Holy religion of Islam; Realizing the previous injustices, miseries and innumerable disasters which have befallen our country;

Appreciating the sacrifices, historical struggles, jihad and just resistance of all the peoples of Afghanistan, admiring the supreme position of the martyrs of the country's freedom; Comprehending that a united, indivisible Afghanistan belongs to all its tribes and peoples; Observing the United Nations Charter as well as the Universal Declaration of Human Rights; And in order to:

Strengthen national unity, safeguard independence, national sovereignty and territorial integrity of the country;

Establish an order based on the peoples' will and democracy;

Form a civil society void of oppression, atrocity, discrimination as well as violence, based on rule of law, social justice, protecting integrity and human rights, and attaining peoples' freedoms and fundamental rights;

Strengthen political, social, economic as well as defense institutions;

Attain a prosperous life and sound living environment for all inhabitants of this land;

And, eventually, regain Afghanistan's appropriate place in the international family;

Have, herein, approved this constitution in accordance with the historical, cultural and social realities as well as requirements of time through our elected representatives in the Loya Jirga, dated January 3, 2004, held in the city of Kabul.

## Chapter 1

### State

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#### **Article 1**

Afghanistan shall be an Islamic Republic, independent, unitary and indivisible state.

#### **Article 2**

The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals.

#### **Article 3**

No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.

#### **Article 4**

National sovereignty in Afghanistan shall belong to the nation, manifested directly and through its elected representatives. The nation of Afghanistan is composed of all individuals who possess the citizenship of Afghanistan. The nation of Afghanistan shall be comprised of Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pachaie, Nuristani, Aymaq, Arab, Qirghiz, Qizilbash, Gujur, Brahwui and other tribes. The word Afghan shall apply to every citizen of Afghanistan. No individual of the nation of Afghanistan shall be deprived of citizenship. The citizenship and asylum related matters shall be regulated by law.

#### **Article 5**

Implementing the provisions of this constitution and other laws, defending independence, national sovereignty, territorial integrity and attaining the security and defense capability of the country shall be the fundamental duties of the state.

#### **Article 6**

The state shall be obligated to create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realization of democracy, attainment of national unity as well as equality between all peoples and tribes and balance development of all areas of the country.

#### **Article 7**

The state shall observe the United Nations Charter, interstate agreements, as well as

international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights. The state shall prevent all kinds of terrorist activities, cultivation and smuggling of narcotics, and production and use of intoxicants.

**Article 8**

The state shall regulate the foreign policy of the country on the basis of preserving the independence, national interests and territorial integrity as well as non-interference, good neighborliness, mutual respect and equality of rights.

**Article 9**

Mines and other subterranean resources as well as historical relics shall be the property of the state. Protection, management and proper utilization of public properties as well as natural resources shall be regulated by law.

**Article 10**

The state shall encourage, protect as well as ensure the safety of capital investment and private enterprises in accordance with the provisions of the law and market economy.

**Article 11**

Matters related to domestic as well as foreign trade shall be regulated by law in accordance with the economic requirements of the country and public interests.

**Article 12**

The Afghanistan Bank shall be independent and the central bank of the state. Currency issuance as well as formulating and implementing the monetary policy of the country shall be, according to provisions of the law, the authority of the central bank. The central bank shall consult the economic committee of the House of People about printing of money. The organization and operation method of Central Bank shall be regulated by law.

**Article 13**

The state shall design and implement effective programs for developing industries, expanding production as well as protecting activities of craftsmen to raise the standard of living of the people.

**Article 14**

The state, within its financial means, shall design and implement effective programs to develop agriculture and animal husbandry, improve economic, social and living conditions of farmers, herders and settlers as well as the nomads' livelihood. The state shall adopt necessary measures for provision of housing and distribution of public

estates to deserving citizens in accordance with the provisions of law and within financial possibilities.

**Article 15**

The state shall be obligated to adopt necessary measures to protect and improve forests as well as the living environment.

**Article 16**

From amongst Pashto, Dari, Uzbeki, Turkmani, Baluchi, Pachaie, Nuristani, Pamiri and other current languages in the country, Pashto and Dari shall be the official languages of the state. In areas where the majority of the people speak in any one of Uzbeki, Turkmani, Pachaie, Nuristani, Baluchi or Pamiri languages, any of the aforementioned language, in addition to Pashto and Dari, shall be the third official language, the usage of which shall be regulated by law. The state shall design and apply effective programs to foster and develop all languages of Afghanistan. Usage of all current languages in the country shall be free in press publications and mass media. Academic and national administrative terminology and usage in the country shall be preserved.

**Article 17**

The state shall adopt necessary measures to foster education at all levels, develop religious teachings, regulate and improve the conditions of mosques, religious schools as well as religious centers.

**Article 18**

The source for the calendar year of the country shall be based upon the migration of The Prophet(PBUH). The basis for state offices shall be the solar calendar. Fridays, as well as the 28th of Asad and 8th of Saur, shall be public holidays. Other holidays shall be regulated by law.

**Article 19**

The flag of Afghanistan shall be made up of three equal parts, with black, red and green colors juxtaposed from left to right vertically. The width of every color shall be half of its length, and at the center of which the national insignia shall be located. The national insignia of Afghanistan shall be comprised of an emblem and a pulpit in white color, at the two corners of which are two flags, inscribed in the top middle the holy phrase "There is no God but Allah and Mohammad is his Prophet, and Allah is Great." This shall be inscribed and superseded on rays of a rising sun, and in its lower part, the

year 1919 in the solar calendar, and the word "Afghanistan" encircled on two sides by sheaves of wheat shall be inscribed. The law shall regulate the use of the flag and insignia.

**Article 20**

The national anthem of Afghanistan shall be in Pashto with the mention of "God is Great" as well as the names of the tribes of Afghanistan.

**Article 21**

The capital of Afghanistan shall be the city of Kabul.

## Chapter 2

### Fundamental Rights and Duties of Citizens

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#### **Article 22**

Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.

#### **Article 23**

Life is the gift of God as well as the natural right of human beings. No one shall be deprived of this except by legal provision.

#### **Article 24**

Liberty is the natural right of human beings. This right has no limits unless affecting others freedoms as well as the public interest, which shall be regulated by law. Liberty and human dignity are inviolable. The state shall respect and protect liberty as well as human dignity.

#### **Article 25**

Innocence is the original state. The accused shall be innocent until proven guilty by the order of an authoritative court.

#### **Article 26**

Crime is a personal act. Investigation, arrest and detention of an accused as well as penalty execution shall not incriminate another person.

#### **Article 27**

No deed shall be considered a crime unless ruled by a law promulgated prior to commitment of the offense. No one shall be pursued, arrested, or detained without due process of law. No one shall be punished without the decision of an authoritative court taken in accordance with the provisions of the law, promulgated prior to commitment of the offense.

#### **Article 28**

No citizen of Afghanistan accused of a crime shall be extradited to a foreign state without reciprocal arrangements as well as international treaties to which Afghanistan

has joined. No Afghan shall be deprived of citizenship or sentenced to domestic or foreign exile.

**Article 29**

Persecution of human beings shall be forbidden. No one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention or has been convicted to be punished. Punishment contrary to human dignity shall be prohibited.

**Article 30**

A statement, confession or testimony obtained from an accused or of another individual by means of compulsion shall be invalid. Confession to a crime is a voluntary admission before an authorized court by an accused in a sound state of mind.

**Article 31**

Upon arrest, or to prove truth, every individual can appoint a defense attorney. Immediately upon arrest, the accused shall have the right to be informed of the nature of the accusation, and appear before the court within the time limit specified by law. In criminal cases, the state shall appoint a defense attorney for the indigent. Confidentiality of conversations, correspondence, and communications between the accused and their attorney shall be secure from any kind of violation. The duties and powers of defense attorneys shall be regulated by law.

**Article 32**

Debt shall not curtail or deprive the freedom of the individual. The method and means of recovering debt shall be regulated by law.

**Article 33**

The citizens of Afghanistan shall have the right to elect and be elected. The conditions of exercising this right shall be regulated by law.

**Article 34**

Freedom of expression shall be inviolable. Every Afghan shall have the right to express thoughts through speech, writing, illustrations as well as other means in accordance with provisions of this constitution. Every Afghan shall have the right, according to provisions of law, to print and publish on subjects without prior submission to state authorities. Directives related to the press, radio and television as well as publications and other mass media shall be regulated by law.

**Article 35**

To attain moral and material goals, the citizens of Afghanistan shall have the right to form associations in accordance with provisions of the law. The people of Afghanistan shall have the right, in accordance with provisions of the law, to form political parties, provided that:

1. Their manifesto and charter shall not contravene the Holy religion of Islam and principles and values enshrined in this constitution;
2. Their organizations and financial resources shall be transparent;
3. They shall not have military or quasi-military aims and organizations; and
4. They shall not be affiliated with foreign political parties or other sources.

Formation and operation of a party on the basis of tribalism, parochialism, language, as well as religious sectarianism shall not be permitted. A party or association formed according to provisions of the law shall not be dissolved without legal causes and the order of an authoritative court.

#### **Article 36**

The people of Afghanistan shall have the right to gather and hold unarmed demonstrations, in accordance with the law, for attaining legitimate and peaceful purposes.

#### **Article 37**

Freedom and confidentiality of correspondence, as well as communications of individuals, whether in the form of a letter or via telephone, telegraph, as well as other means, shall be secure from intrusion. The state shall not have the right to inspect personal correspondence and communications, unless authorized by provisions of the law.

#### **Article 38**

Personal residences shall be immune from trespassing. No one, including the state, shall have the right to enter a personal residence or search it without the owner's permission or by order of an authoritative court, except in situations and methods delineated by law. In case of an evident crime, the responsible official shall enter or search a personal residence without prior court order. The aforementioned official, shall, after entrance or completion of search, obtain a court order within the time limit set by law.

#### **Article 39**

Every Afghan shall have the right to travel and settle in any part of the country, except in areas forbidden by law. Every Afghan shall have the right to travel outside Afghanistan and return, according to the provisions of the law. The state shall protect the rights of the citizens of Afghanistan outside the country.

#### **Article 40**

Property shall be safe from violation. No one shall be forbidden from owning property and acquiring it, unless limited by the provisions of law. No one's property shall be confiscated without the order of the law and decision of an authoritative court. Acquisition of private property shall be legally permitted only for the sake of public interests, and in exchange for prior and just compensation. Search and disclosure of private property shall be carried out in accordance with provisions of the law.

#### **Article 41**

Foreign individuals shall not have the right to own immovable property in Afghanistan. Lease of immovable property for the purpose of capital investment shall be permitted in accordance with the provisions of the law. The sale of estates to diplomatic missions of foreign countries as well as international organizations to which Afghanistan is a member, shall be allowed in accordance with the provisions of the law.

#### **Article 42**

Every Afghan shall pay taxes and duties to the state in accordance with the provisions of the law. No taxes or duties shall be levied without legal representation. Tax rates and duties as well as the method of payment shall be determined, with due respect to social justice, by law. This provision shall also apply to foreign individuals and organizations. Every kind of tax, duty as well as paid incomes shall be deposited to a single state account.

#### **Article 43**

Education is the right of all citizens of Afghanistan, which shall be offered up to the B.A. level in the state educational institutes free of charge by the state. To expand balanced education as well as to provide mandatory intermediate education throughout Afghanistan, the state shall design and implement effective programs and prepare the ground for teaching mother tongues in areas where they are spoken.

#### **Article 44**

The state shall devise and implement effective programs to create and foster balanced education for women, improve education of nomads as well as eliminate illiteracy in

the country.

**Article 45**

The state shall devise and implement a unified educational curricula based on the tenets of the sacred religion of Islam, national culture as well as academic principles, and develop religious subjects curricula for schools on the basis of existing Islamic sects in Afghanistan.

**Article 46**

Establishing and administering higher, general and specialized educational institutions shall be the duty of the state. The citizens of Afghanistan shall establish higher, general and specialized educational as well as literacy institutions with permission of the state. The state shall permit foreign individuals to establish higher, general and specialized institutions in accordance with the provisions of the law. Admission terms to higher educational institutes of the state and other related matters shall be regulated by law.

**Article 47**

The state shall devise effective programs for fostering knowledge, culture, literature and arts. The state shall guarantee the copyrights of authors, inventors and discoverers, and, shall encourage and protect scientific research in all fields, publicizing their results for effective use in accordance with the provisions of the law.

**Article 48**

Work is the right of every Afghan. Working hours, paid holidays, employment and employee rights and related matters shall be regulated by the law. Choice of occupation and craft shall be free within the bounds of law.

**Article 49**

Forced labor shall be forbidden. Active participation in times of war, disaster, and other situations that threaten public life and comfort shall be among the national duties of every Afghan. Forced labor on children shall not be allowed.

**Article 50**

The state shall adopt necessary measures to create a healthy administration and realize reforms in the administrative system of the country. The administration shall perform its duties with complete neutrality and in compliance with the provisions of the laws. The citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provisions of the law. This right shall have no limit except when harming rights of others as well as public security. The citizens of

Afghanistan shall be recruited by the state on the basis of ability, without any discrimination, according to the provisions of the law.

**Article 51**

Any individual suffering damage without due cause from the administration shall deserve compensation, and shall appeal to a court for acquisition. Except in conditions stipulated by law, the state shall not, without the order of an authoritative court, claim its rights.

**Article 52**

The state shall provide free preventative healthcare and treatment of diseases as well as medical facilities to all citizens in accordance with the provisions the law. Establishment and expansion of private medical services as well as health centers shall be encouraged and protected by the state in accordance with the provisions of the law. The state shall adopt necessary measures to foster healthy physical education and development of the national as well as local sports.

**Article 53**

The state shall adopt necessary measures to regulate medical services as well as financial aid to survivors of martyrs and missing persons, and for reintegration of the disabled and handicapped and their active participation in society, s in accordance with provisions of the law. The state shall guarantee the rights of retirees, and shall render necessary aid to the elderly, women without caretaker, disabled and handicapped as well as poor orphans, in accordance with provisions of the law.

**Article 54**

Family is the fundamental pillar of the society, and shall be protected by the state. The state shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of children, as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam.

**Article 55**

Defending the country shall be the duty of all citizens of Afghanistan. Conditions for compulsory military service shall be regulated by law.

**Article 56**

Observance of the provisions of the constitution, obedience of laws and respect of

public order and security shall be the duty of all citizens of Afghanistan. Ignorance of the laws shall not be considered an excuse.

**Article 57**

The state shall guarantee the rights and liberties of foreign citizens in Afghanistan in accordance with the law. These people shall be obliged to respect the laws of the state of Afghanistan within the limits of the provisions of international law.

**Article 58**

To monitor respect for human rights in Afghanistan as well as to foster and protect it, the state shall establish the Independent Human Rights Commission of Afghanistan. Every individual shall complain to this Commission about the violation of personal human rights. The Commission shall refer human rights violations of individuals to legal authorities and assist them in defense of their rights. Organization and method of operation of the Commission shall be regulated by law.

**Article 59**

No individual shall be allowed to manipulate the rights and liberties enshrined in this Constitution and act against independence, territorial integrity, sovereignty as well as national unity.

### Chapter 3

#### The President

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##### **Article 60**

The President shall be the head of state of the Islamic Republic of Afghanistan, executing his authorities in the executive, legislative and judiciary fields in accordance with the provisions of this Constitution. The President shall have 2 Vice-Presidents, first and second. The Presidential candidate shall declare to the nation names of both vice presidential running mates. In case of absence, resignation or death of the President, the first Vice-President shall act in accordance with the provisions of this Constitution. In the absence of the first Vice-President, the second Vice-President shall act in accordance with the provisions of this Constitution.

##### **Article 61**

The President shall be elected by receiving more than fifty percent of votes cast by voters through free, general, secret and direct voting. The presidential term shall expire on 1st of Jawza of the fifth year after elections. Elections for the new President shall be held within thirty to sixty days prior to the end of the presidential term. If in the first round none of the candidates gets more than fifty percent of the votes, elections for the second round shall be held within two weeks from the date election results are proclaimed, and, in this round, only two candidates who have received the highest number of votes in the first round shall participate. In case one of the presidential candidates dies during the first or second round of voting or after elections, but prior to the declaration of results, re-election shall be held according to provisions of the law.

##### **Article 62**

The individual who becomes a presidential candidate shall have the following qualifications:

1. Shall be a citizen of Afghanistan, Muslim, born of Afghan parents and shall not be a citizen of another country;
2. Shall not be less than forty years old the day of candidacy;
3. Shall not have been convicted of crimes against humanity, a criminal act or deprivation of civil rights by court.

No individual shall be elected for more than 2 terms as President. The provision of this Article shall also apply to Vice-Presidents.

### **Article 63**

Before assuming office, the President shall take, in accordance with special procedures set by law, the following oath of allegiance:

"In the name of God, Most Gracious, Most Merciful, I swear by the name of God Almighty that I shall obey and protect the Holy religion of Islam, respect and supervise the implementation of the Constitution as well as other laws, safeguard the independence, national sovereignty and territorial integrity of Afghanistan, and, in seeking God Almighty's help and support of the nation, shall exert my efforts towards the prosperity and progress of the people of Afghanistan."

### **Article 64**

The President shall have the following authorities and duties:

1. Supervise the implementation of the Constitution;
2. Determine the fundamental lines of the policy of the country with the approval of the National Assembly;
3. Being the Commander in Chief of the armed forces of Afghanistan;
4. Declare war and peace with the endorsement of the National Assembly;
5. Take necessary decisions to defend territorial integrity and preserve independence;
6. Dispatch armed forces units outside of Afghanistan with the endorsement of the National Assembly;
7. Convene the Loya Jirga except in the situation prescribed in Article 69 of this Constitution;
8. Proclaim as well as terminate the state of emergency with the endorsement of the National Assembly;
9. Inaugurate the sessions of National Assembly and Loya Jirga.
10. Accept the resignations of vice-presidents of the Republic;
11. Appoint the Ministers, the Attorney General, the Head of the Central Bank, the National Security Director as well as the Head of the Red Cross with the endorsement of the House of People, and their dismissal and acceptance of resignation;

12. Appoint the Justice of the Supreme Court as well as justices of the Supreme Court with the endorsement of the House of People;
13. Appointing, retiring and accepting the resignation and dismissal of judges, officers of the armed forces, police, national security as well as high ranking officials according to the provisions of law;
14. Appoint heads of political representatives of Afghanistan to foreign states as well as international organizations;
15. Accept credentials of foreign political representatives in Afghanistan;
16. Endorse laws as well as judicial decrees;
17. Issue credential letter for conclusion of international treaties in accordance with the provisions of the law;
18. Reduce and pardon penalties in accordance with the provisions of the law;
19. Bestow medals, insignias as well as honorary titles in accordance with the provisions of the law;
20. Establish commissions to improve the administration of the country in accordance with the provisions of the law;
21. Perform other authorities and duties enshrined in this Constitution.

#### **Article 65**

On important national, political, social as well as economic issues the President can call for a referendum of the people of Afghanistan. The referendum shall not be contrary to the provisions of this Constitution or require its amendment.

#### **Article 66**

The President shall take into consideration the supreme interests of the people of Afghanistan to enforce the authorities enshrined in this Constitution. The President shall not sell or bestow state properties without the provision of the law. During the term of office, the Presidential position shall not be used for linguistic, sectarian, tribal, and religious as well as party considerations.

#### **Article 67**

In case of resignation, impeachment or death of the President, as well as an incurable illness impeding performance of duty, the First Vice-President shall assume authorities and duties of the President. The President shall personally tender resignation to the

National Assembly. Affirmation of an incurable illness shall be verified by an authoritative medical team assigned by the Supreme Court. In such cases, elections for the new President shall be held within 3 months in accordance with Article 61 of the Constitution. The First Vice-President, in acting as interim President, shall not perform the following duties:

1. Amend the Constitution;
2. Dismiss ministers;
3. Call a referendum.

The Vice-Presidents can according to the provisions of this Constitution, nominate themselves as presidential candidates. In the absence of the President, the duties of the First Vice-President shall be determined by the President.

#### **Article 68**

In case any of the Vice-Presidents resign or die, another person shall be appointed by the President with the endorsement of the House of the People. In case of simultaneous death of the President and the First Vice-President, the Second Vice-President, the President of the House of Elders, the President of the House of Representatives and the Foreign Minister shall succeed respectively and, in that order, and, according to Article 67 of this Constitution, shall assume the duties of the President.

#### **Article 69**

The President shall be responsible to the nation as well as the House of People in accordance with the provisions of this Article. Accusations of crimes against humanity, national treason as well as a crime against the President shall be demanded by one-third of all members of the House of People. If this demand is approved by two-thirds of the House of People, the House of People shall convene the Loya Jirga within 1 month.

If the Loya Jirga, by two-thirds majority, approves the accusation, the President shall be released from duty and the issue shall be referred to a special court, which shall be comprised of the President of the House of Elders, three members of the House of People, and three members of the Supreme Court appointed by the Loya Jirga. The case shall be presented by the individual appointed by the Loya Jirga. In such a situation the provisions of Article 67 of this Constitution shall be applied.

**Article 70**

The salary and expenses of the President shall be regulated by law. The President, after completion of his term of service, except when dismissed, shall be entitled to financial benefits of the presidency for the rest of his life in accordance with the law.

## Chapter 4 Government

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### **Article 71**

The Government shall be comprised of Ministers who work under the chairmanship of the President. The number of Ministers as well as their duties shall be regulated by law.

### **Article 72**

The individual appointed as Minister shall have the following qualifications:

1. Shall have only the citizenship of Afghanistan; if the ministerial candidate has the citizenship of another country as well, the House of People shall have the right to approve or reject the nomination;
2. Shall have higher education, work experience as well as a good reputation;
3. Shall not be less than thirty 5 years of age;
4. Shall not have been convicted of crimes against humanity, a criminal act or deprivation of civil rights by a court.

### **Article 73**

The Ministers shall be appointed from amongst members of the National Assembly or outside. If a member of the National Assembly is appointed as Minister, that individual loses membership in the National Assembly and instead, another individual shall be appointed in accordance with the provisions of the law.

### **Article 74**

Before assuming office, the Ministers shall take the following oath in the presence of the President: "In the name of God, Most Gracious, Most Merciful, I swear in the name of God Almighty that I shall protect the Holy religion of Islam, respect the Constitution and other laws of Afghanistan, safeguard the rights of citizens as well as independence, territorial integrity and the national unity of the people of Afghanistan, and, in all my deeds consider the Almighty's presence, performing the entrusted duties honestly."

### **Article 75**

The Government shall have the following duties:

1. Execute the provisions of this Constitution, other laws, as well as the final decisions of the courts;

2. Preserve the independence, defend the territorial integrity and safeguard the interests and prestige of Afghanistan in the international community;
3. Maintain public law and order and eliminate every kind of administrative corruption;
4. Prepare the budget, regulate financial conditions of the state as well as protect public wealth;
5. Devise and implement social, cultural, economic and technological development programs;
6. Report to the National Assembly, at the end of the fiscal year, about the tasks achieved as well as important programs for the new fiscal year;
7. Perform other duties that, in accordance with this Constitution and other laws, fall within the Government responsibilities.

#### **Article 76**

To implement the fundamental lines of the policy of the country and regulate its duties, the government shall devise as well as approve regulations, which shall not be contrary to the body or spirit of any law.

#### **Article 77**

The Ministers shall perform their duties as heads of administrative units within the framework of this Constitution as well as other laws prescribe. The Ministers shall be responsible to the President and House of Representatives for their specified duties.

#### **Article 78**

If a Minister is accused of crimes against humanity, national treason or other crimes, the case, in accordance with Article 134 of this Constitution, shall be submitted to a special court.

#### **Article 79**

During the recess of the House of Representatives, the Government shall, in case of an immediate need, issue legislative decrees, except in matters related to budget and financial affairs. Legislative decrees, after endorsement by the President, shall acquire the force of law. Legislative decrees shall be presented to the National Assembly within thirty days of convening its first session, and if rejected by the National Assembly, they become void.

**Article 80**

During their tour of duty, the Ministers shall not use their positions for linguistic, sectarian, tribal, religious or partisan purposes.

## Chapter 5

### National Assembly

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#### **Article 81**

The National Assembly of the Islamic Republic of Afghanistan, as the highest legislative organ, shall manifest the will of its people as well as represent the entire nation.

Every member of the Assembly, when voting, shall judge according to the general interests as well as the supreme benefits of the people of Afghanistan.

#### **Article 82**

The National Assembly consists of two houses: House of People and House of Elders. No individual shall be a member of both houses at the same time.

#### **Article 83**

Members of the House of People shall be elected by the people through free, general, secret and direct balloting. The work period of the House of People shall terminate, after the disclosure of the results of the elections, on the 1st of Saratan of the fifth year and the new parliament shall commence work. The elections for members of the House of People shall be held 30-60 days prior to the expiration of the term of the House of People.

The number of the members of the House of People shall be proportionate to the population of each constituency, not exceeding the maximum of 250 individuals. Electoral constituencies as well as other related issues shall be determined by the elections law. The elections law shall adopt measures to attain, through the electorate system, general and fair representation for all the people of the country, and proportionate to the population of every province, on average, at least two females shall be the elected members of the House of People from each province.

#### **Article 84**

Members of the House of Elders shall be elected and appointed as follows:

1. From amongst each provincial council members, one individual shall be elected by the respective council for a four year term;
2. From amongst district councils of each province, one individual, elected by the

respective councils, for a three year term;

3. The remaining one-third of the members shall be appointed by the President, for a five year term, from amongst experts and experienced personalities, including two members from amongst the impaired and handicapped, as well as two from nomads.

The President shall appoint fifty percent of these individuals from amongst women. The individual selected as a member of the House of Elders shall lose membership to the related Council, and, another individual shall be appointed in accordance with the provisions of the law.

#### **Article 85**

The individual who becomes a candidate or appointed to the membership of the National Assembly, in addition to the completion of the conditions of the election, shall have the following qualifications:

1. Shall be a citizen of Afghanistan or shall have obtained citizenship of the state of Afghanistan at least 10 years prior to candidacy date or appointment;
2. Shall not have been convicted of crimes against humanity, as well as a crime or deprivation from civil rights by a court;
3. Shall have completed twenty-5 years of age on candidacy day for the House of People, and 35 years on candidacy day or appointment for the House of Elders.

#### **Article 86**

Elections credentials of members of the National Assembly shall be reviewed by the Independent Elections Commission in accordance with the provisions of the law.

#### **Article 87**

Each of the two houses of the National Assembly, at the commencement of their work period, shall elect one member as president for the term of the legislature, and two members as first and second deputies and two members as secretary and assistant secretary for a period of one year. These individuals shall form the administrative teams of the House of People as well as House of Elders. Duties of the administrative teams shall be determined by the Regulations on Internal Duties of each house.

#### **Article 88**

Each of the two houses of the National Assembly shall form commissions to study issues under discussion in accordance with the Regulations of Internal Duties.

**Article 89**

The House of People shall have the authority to establish a special commission, on the proposal of one-third of its members, to review as well as investigate the actions of the Government. The composition and method of operation of the aforementioned commission shall be determined by the Regulations on Internal Duties.

**Article 90**

The National Assembly shall have the following duties:

1. Ratification, modification or abrogation of laws or legislative decrees;
2. Approval of social, cultural, economic as well as technological development programs;
3. Approval of the state budget as well as permission to obtain or grant loans;
4. Creation, modification and or abrogation of administrative units;
5. Ratification of international treaties and agreements, or abrogation of membership of Afghanistan in them;
6. Other authorities enshrined in this Constitution.

**Article 91**

The House of People shall have the following special authorities:

1. Decide about elucidation session from each Minister in accordance with Article 92 of this Constitution;
2. Decide on the development programs as well as the state budget;
3. Approve or reject appointments according to provisions of this Constitution.

**Article 92**

The House of People, on the proposal of twenty percent of all its members, shall make inquiries from each Minister. If the explanations given are not satisfactory, the House of People shall consider the issue of a no-confidence vote. The no-confidence vote on a Minister shall be explicit, direct, as well as based on convincing reasons. The vote shall be approved by the majority of all members of the House of People.

**Article 93**

Any commission of both houses of the parliament can question any Minister about special issues. The individual questioned shall provide an oral or written response.

**Article 94**

Law shall be what both houses of the National Assembly approve and the President endorses, unless this Constitution states otherwise. In case the President rejects what the National Assembly has approved, the President shall send it back, within 15 days from the date it was presented, to the House of People mentioning the reasons for rejection, and, with expiration of the period or if the House of People re-approves it with 2 thirds of all the votes, the draft shall be considered endorsed and enforceable.

**Article 95**

The proposal for drafting laws shall be made by the Government or members of the National Assembly or, in the domain of regulating the judiciary, by the Supreme Court, through the Government. Proposals for drafting the budget and financial affairs laws shall be made only by the Government.

**Article 96**

If the proposal for drafting a law includes imposition of new taxes or reduction of state incomes, it shall be included in the work agenda of the National Assembly on condition the compensation source shall also be forecasted in the text of the proposal.

**Article 97**

Proposals for drafting laws shall be first submitted to the House of People by the government. The House of People shall consider the draft laws, including budgetary and financial affairs as well as the proposal for obtaining or granting loans, and, after debate, either approve or reject as a whole. The House of People shall not delay more than one month the draft proposal. The House of People, after approving the proposed draft, shall send it to the House of the Elders. The House of Elders shall decide on it within 15 days. In deciding about the proposed laws, the National Assembly shall give priority to treaties and development programs of the state that, according to the proposal of the government, require urgent consideration. If the proposal for drafting a law is made by ten members of either of the two houses, it shall be, after approval of one-fifth of the House where it was initiated, included in the work agenda of that House.

**Article 98**

The state budget and development program of the government shall be submitted, through the House of Elders to the House of People along with its advisory views.

The decision of the House of People shall be implemented without presentation to the

House of Elders, after endorsement by the President. If for some reasons the budget is not approved before the beginning of the new fiscal year, the budget of the year before shall be applied pending the passage of the new budget. The Government shall present during the fourth quarter of the financial year the budget for the next year, with the brief account of the current year budget, to the National Assembly. The precise account of the previous year financial budget shall be presented to the National Assembly during the next 6 months according to the provisions of the law. The House of People shall not delay approval of the budget for more than 1 month after receiving it and give permission to obtain or grant loans not included in the budget, for more than 15 days. If the House of People during this period does not decide on obtaining or granting loans, the proposal shall be considered approved.

#### **Article 99**

If, during the sessions of the National Assembly, the annual budget, or development program, or issues related to national security, territorial integrity and independence of the country is under discussion, the sessions of the Assembly shall not end pending decision of the matter.

#### **Article 100**

If one House rejects decisions of the other, a joint commission comprised of an equal number of members from each House shall be formed to solve the difference. The decision of the commission, after endorsement by the President, shall be enforced. If the joint commission does not solve the difference, the decision shall be considered rejected. In such situation, the House of People shall pass it with two-thirds majority in its next session. This decision, without submission to the House of Elders, shall be promulgated once endorsement by the President.

#### **Article 101**

No member of the National Assembly shall be legally prosecuted for reasons of voting or views expressed during performance of duty.

#### **Article 102**

If a member of the National Assembly is accused of a crime, the responsible official shall inform the House of which the accused is a member, and the accused shall be legally prosecuted. In case of an evident crime, the responsible official shall legally pursue and arrest the accused without the permission of the House of which the accused is a member.

In both cases, if the legal prosecution requires detention, the responsible official shall immediately inform the respective House and obtain its approval. If the accusation takes place during an Assembly recess, the permission for arrest or detention shall be obtained from the administrative board of the respective House, and the issue shall be referred to the first session of the aforementioned House for decision.

#### **Article 103**

The Ministers can participate in the sessions of either House of the National Assembly. Either House of the National Assembly can demand the participation of the Ministers in its session.

#### **Article 104**

Both Houses of the National Assembly shall convene their sessions concurrently, but separately. Sessions of the two Houses shall be held jointly under the following circumstances:

1. When the legislative term or annual sessions are inaugurated by the President;
2. When deemed necessary by the President.

The President of the House of People shall preside over the joint sessions of the National Assembly.

#### **Article 105**

The sessions of the National Assembly shall be open unless the President of the Assembly or at least 10 members of the National Assembly request their secrecy and the Assembly grants their request. No one shall enter the National Assembly building by force.

#### **Article 106**

The quorum for voting of each House of the National Assembly shall be complete with the majority presence of members and decisions shall be taken with the majority of votes of members present, unless this Constitution states otherwise.

#### **Article 107**

The National Assembly shall hold 2 regular sessions annually. The term of both regular sessions shall be 9 months every year, and when needed, the Assembly shall extend its term. Extraordinary sessions of the Assembly during recess shall be convened by Presidential order.

**Article 108**

In cases of death, resignation, and dismissal of a member of the National Assembly or disability or handicap, which impedes permanent performance of duty, the placement of the new representative for the remaining period of the legislative term shall be in accordance with provisions of the law. Matters related to the presence and absence of members of the National Assembly shall be regulated by the Internal Duties Statute.

**Article 109**

Proposals for amending elections law shall not be included in the work agenda of the National Assembly during the last year of the legislative term.

## Chapter 6

### Loya Jirga

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#### **Article 110**

The Loya Jirga is the highest manifestation of the will of the people of Afghanistan. The Loya Jirga consists of:

1. Members of the National Assembly;
2. Presidents of the provincial as well as district assemblies.

Ministers, Chief Justice and members of the Supreme Court as well as the attorney general shall participate in the Loya Jirga sessions without voting rights.

#### **Article 111**

The Loya Jirga shall convene in the following situations:

1. To decide on issues related to independence, national sovereignty, territorial integrity as well as supreme national interests;
2. Amend provisions of this Constitution;
3. Impeach the President in accordance with the provisions of Article 69 of the Constitution.

#### **Article 112**

In its first session, the Loya Jirga shall elect, from amongst its members, a Chairperson, a Deputy-Chair, and a Secretary and an Assistant Secretary.

#### **Article 113**

The quorum of the Loya Jirga shall be complete for voting with the presence of the majority of members. The decision of the Loya Jirga, except in situations explicitly stated in this Constitution, shall be adopted by a majority of members present.

#### **Article 114**

Sessions of the Loya Jirga shall be open unless one-fourth of its membership demand secrecy, and the Loya Jirga accept this demand.

#### **Article 115**

During the sessions of the Loya Jirga, provisions of Articles 111 and 112 of this Constitution shall be applied to its members.

## Chapter 7 The Judiciary

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### **Article 116**

The judiciary shall be an independent organ of the state of the Islamic Republic of Afghanistan. The judiciary shall be comprised of one Supreme Court, Courts of Appeal as well as Primary Courts whose organization and authority shall be regulated by law. The Supreme Court shall be the highest judicial organ, heading the judicial power of the Islamic Republic of Afghanistan.

### **Article 117**

The Supreme Court shall be comprised of nine members, appointed by the President and with the endorsement of the House of People, and in observance of the provisions of clause three of Article 50 as well as Article 118 of this Constitution, shall be initially appointed in the following manner:

Three members for a period of four years, three members for seven years, and three members for ten years. Later appointments shall be for period of ten years. Appointment of members for a second term shall not be permitted.

The President shall appoint one of its members as Chief Justice of the Supreme Court. Members of the Supreme Court, except under circumstances stated in Article 127 of this Constitution, shall not be dismissed till the end of their term.

### **Article 118**

Supreme Court members shall have the following qualifications:

1. At time of appointment the age of the Chief Justice of the Supreme Court and its members shall not be less than forty years.
2. Shall be a citizen of Afghanistan.
3. Shall have higher education in legal studies or Islamic jurisprudence as well as expertise and adequate experience in the judicial system of Afghanistan.
4. Shall have good character as well as good reputation.
5. Shall not have been convicted, by a court, for crimes against humanity, crimes, or deprivation of civil rights.
6. Shall not be a member of any political party during his term of duty.

**Article 119**

Members of the Supreme Court shall take the following oath of office in the presence of the President:

"In the of God, Most Gracious, Most Merciful, I swear in the name of God Almighty to attain justice and righteousness in accordance with tenets of the Holy religion of Islam, provisions of this Constitution as well as other laws of Afghanistan, and to execute the judicial duty with utmost honesty, righteousness and impartiality."

**Article 120**

The authority of the judicial organ shall include consideration of all cases filed by real or incorporeal persons, including the state, as plaintiffs or defendants, before the court in accordance with the provisions of the law.

**Article 121**

At the request of the Government, or courts, the Supreme Court shall review the laws, legislative decrees, international treaties as well as international covenants for their compliance with the Constitution and their interpretation in accordance with the law.

**Article 122**

No law shall, under any circumstances, exclude any case or area from the jurisdiction of the judicial organ as defined in this chapter and submit it to another authority. This provision shall not prevent formation of special courts stipulated in Articles 69, 78 and 127 of this Constitution, as well as cases related to military courts. The organization and authority of these courts shall be regulated by law.

**Article 123**

With respect to the provisions of this Constitution, statutes related to the formation, authority, as well as proceedings of courts and matters related to judges, shall be regulated by law.

**Article 124**

Provision of Laws related to civil servants as well as other administrative staff of the state shall also apply to the officials and the administrative personnel of the judiciary; but the Supreme Court in accordance with the law shall regulate their appointment, dismissal, promotion, retirement, rewards and punishments.

**Article 125**

The budget of the judiciary shall be prepared by the Supreme Court in consultation

with the Government, and shall be presented to the National Assembly as part of the national budget. The Supreme Court shall implement the budget of the judiciary.

**Article 126**

Supreme Court judges shall receive lifetime pensions at the end of their term of service provided they do not hold state and political offices.

**Article 127**

If more than one-third of the members of the House of People demand the trial of the Chief Justice of the Supreme Court or any of its members accused of a crime related to job performance or committing a crime, and, the House of People approves this demand by two-thirds majority of all members, the accused shall be dismissed and the issue referred to a special court. The formation of the court and procedure of the trial shall be regulated by law.

**Article 128**

In the courts in Afghanistan, trials shall be held openly and every individual shall have the right to attend in accordance with the law. In situations clarified by law, the court shall hold secret trials when it considers necessary, but pronouncement of its decision shall be open in all cases.

**Article 129**

In issuing decision, the court is obligated to state the reason for its verdict. All final decisions of the courts shall be enforced, except for capital punishment, which shall require Presidential approval.

**Article 130**

In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.

**Article 131**

The courts shall apply the Shia jurisprudence in cases involving personal matters of followers of the Shia sect in accordance with the provisions of the law. In other cases, if no clarification in this Constitution and other laws exist, the courts shall rule according to laws of this sect.

**Article 132**

Judges are appointed at the proposal of the Supreme Court and approval of the

President. Appointment, transfer, promotion, punishment and proposals for retirement of judges, carried out according to provisions of the laws, shall be within the authority of the Supreme Court. To better regulate judicial as well as judicial administrative matters and attain necessary reforms, the Supreme Court shall establish the Office of General Administration of the Judiciary.

**Article 133**

When a judge is accused of a crime, the Supreme Court shall, in accordance with the provisions of the law, consider the case. After hearing the defense, if the Supreme Court considers the accusation valid, it shall present a proposal to the President for dismissal of the judge. After Presidential approval, the accused judge shall be dismissed and punished according to the provisions of the law.

**Article 134**

Discovery of crimes shall be the duty of police, and investigation and filing the case against the accused in the court shall be the responsibility of the Attorney's Office, in accordance with the provisions of the law. The Attorney's Office shall be part of the Executive organ and shall be independent in its performance. The organization, authority as well as method of work of the Attorney's Office shall be regulated by law. Special law shall regulate discovery and investigation of crimes of duty by the armed forces, police and officials of national security.

**Article 135**

If a party in lawsuit does not know the language, the right to know the materials and documents of the case as well as conversation in the court, shall be provided in the party's mother tongue through a translator appointed by the court.

## Chapter 8 Administration

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### **Article 136**

The administration of the Islamic Republic of Afghanistan, based on the units of the central government and local offices, shall be regulated according to the law. The central administration shall be divided into several administrative units, each headed by a Minister. The local administrative unit shall be a province. The number, area, divisions and related provincial organizations as well as number of offices shall be regulated on the basis of population, social and economic conditions, as well as geographical location.

### **Article 137**

The government, in preserving the principles of centralism, shall transfer necessary powers, in accordance with the law, to local administrations in order to accelerate and improve economic, social as well as cultural matters, and foster peoples' participation in developing national life.

### **Article 138**

There shall be a provincial council in every province. Members of the provincial councils according to law, shall be elected for four years by the residents of the province, proportionate to the population, through free, general, secret as well as direct elections. The provincial council shall elect one of its members as President.

### **Article 139**

The provincial council shall participate in the attainment of the development objectives of the state and improvement of the affairs of the province in the manner prescribe by laws, and shall advise the provincial administrations on related issues. The provincial assembly council shall perform its duties with the cooperation of the provincial administration.

### **Article 140**

Councils shall be established to organize activities as well as attain active participation of the people in provincial administrations in districts and in villages, in accordance with the provisions of the law. Local residents shall elect members of these councils for 3 years through free, general, secret as well as direct elections. Participation of nomads in these local councils shall be regulated in accordance with the provisions of the law.

**Article 141**

To administer city affairs, municipalities shall be established. The mayor and members of municipal councils shall be elected through free, general, secret and direct elections. Matters related to municipalities shall be regulated by law.

**Article 142**

To implement the provisions as well as attain values enshrined in this Constitution, the state shall establish necessary offices.

**Article 143**

If because of war, threat of war, serious rebellion, natural disasters or similar conditions, protection of independence and national life become impossible through the channels specified in this Constitution, the state of emergency shall be proclaimed by the President, throughout the country or part thereof, with endorsement of the National Assembly. If the state of emergency continues for more than two months, the consent of the National Assembly shall be required for its extension.

**Article 144**

During the state of emergency, the President can, in consultation with the presidents of the National Assembly as well as the Chief Justice of the Supreme Court, transfer some powers of the National Assembly to the government.

**Article 145**

During the state of emergency, the President can, after approval by the presidents of the National Assembly as well as the Chief Justice of the Supreme Court, suspend the enforcement of the following provisions or place restrictions on them:

1. Clause two of Article 27;
2. Article 36;
3. Clause two of Article 37;
4. Clause two of Article 38.

**Article 146**

The Constitution shall not be amended during the state of emergency.

**Article 147**

If the presidential term or the legislative term of the National Assembly expires during the state of emergency, the new general elections shall be postponed, and the

presidential as well as parliamentary terms shall extend up to 4 months. If the state of emergency continues for more than four months, the President shall call the Loya Jirga. Within two months after the termination of the state of emergency, elections shall be held.

**Article 148**

At the termination of the state of emergency, measures adopted under Article 144 and 145 of this Constitution shall be void immediately.

## Chapter 9 Amendments

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### **Article 149**

The principles of adherence to the tenets of the Holy religion of Islam as well as Islamic Republicanism shall not be amended. Amending fundamental rights of the people shall be permitted only to improve them. Amending other Articles of this Constitution, with due respect to new experiences and requirements of the time, as well as provisions of Articles 67 and 146 of this Constitution, shall become effective with the proposal of the President and approval of the majority of National Assembly members.

### **Article 150**

To process the amendment proposals, a commission comprised of members of the Government, National Assembly as well as the Supreme Court shall be formed by presidential decree to prepare the draft proposal. To approve the amendment, the Loya Jirga shall be convened by a Presidential decree in accordance with the provisions of the Chapter on Loya Jirga. If the Loya Jirga approves the amendment with the majority of two-thirds of its members, the President shall enforce it after endorsement.

## Chapter 10

### Miscellaneous Provisions

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#### **Article 151**

The President, Vice-Presidents, Ministers, Chief Justice and members of the Supreme Court, the Attorney General, Heads of the Central Bank and National Directorate of Security, Governors and Mayors, during their term of offices, shall not engage in any profitable business with the state.

#### **Article 152**

The President, Vice-Presidents, Ministers, Chief Justice and members of the Supreme Court, Presidents and members of the National Assembly, the Attorney General and judges shall not engage in other jobs during their term of office.

#### **Article 153**

Judges, Attorneys, Officers of the Armed Forces, Police and officials of the National Security shall not become members of political parties during their term of office.

#### **Article 154**

The wealth of the President, Vice-Presidents, Ministers, members of the Supreme Court as well as the Attorney General, shall be registered, reviewed and published prior to and after their term of office by an organ established by law.

#### **Article 155**

Suitable salaries shall be fixed for Vice-Presidents, Ministers, Presidents, as well as members of the National Assembly and Supreme Court, judges, and Attorney General in accordance with the provisions of the law.

#### **Article 156**

The Independent Elections Commission shall be established to administer and supervise every kind of elections as well as refer to general public opinion of the people in accordance with the provisions of the law.

#### **Article 157**

The Independent Commission for supervision of the implementation of the Constitution shall be established in accordance with the provisions of the law. Members of this Commission shall be appointed by the President with the endorsement of the House of People.

## Chapter 11

### Transitional Provisions

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#### **Article 158**

The title of the Father of the Nation and privileges bestowed upon His Majesty Mohammad Zahir Shah, the former King of Afghanistan, by the Emergency Loya Jirga of 1381 (HS), (2002), with due respect to provisions of this Constitution, shall be preserved during his lifetime.

#### **Article 159**

The interim period between the adoption of the Constitution and the inauguration of the National Assembly shall be considered the transition period.

The Islamic Transitional Government of Afghanistan, during the transitional period, shall perform the following duties:

1. Issuing legislative decrees related to elections of the President, National Assembly as well as local councils within six months;
2. Issuing decrees regarding the organization and authority of courts as well as the commencement of work on fundamental organizations law in less than one year;
3. Establishing the Independent Elections Commission;
4. Completing necessary reforms to better regulate executive as well as judicial affairs;
5. Adopting necessary measures to prepare the ground for implementing provisions of the Constitution.

#### **Article 160**

The first President-Elect shall, according to provisions of this Constitution, commence work thirty days after election results are declared. Multilateral efforts shall be made to hold presidential as well as National Assembly elections concurrently and simultaneously. Pending the establishment of the National Assembly, its powers, enshrined in this Constitution, shall be submitted to the government, and the interim Supreme Court shall be established by presidential decree.

#### **Article 161**

Immediately after inauguration, the National Assembly shall exercise its powers in accordance with the provisions of this Constitution. After inauguration of the first

session of the National Assembly, within thirty days, the government as well as the Supreme Court shall be inaugurated in accordance with the provisions of the Constitution. The President of the Islamic Transitional Government of Afghanistan shall perform his duties until the inauguration of the President-Elect. The executive and judicial organs of the state, in accordance with clause four of Article 159 of this Constitution, shall continue with their duties pending the formation of the government as well as the Supreme Court. Legislative decrees enforced from the beginning of the interim period shall be referred to the first session of the National Assembly. These decrees shall be enforceable unless annulled by the National Assembly.

**Article 162**

This Constitution shall be enforced from the date of approval by the Loya Jirga, and endorsed and proclaimed by the President of the Islamic Transitional Government of Afghanistan. Upon the enforcement of this Constitution, laws and legislative decrees contrary to its provisions shall be invalid.