A Guide to Researching the Law of

AFGHANISTAN

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This guide is intended to assist researchers in studying the law of Afghanistan through sources available at the University of Michigan Law Library and the Harlan Hatcher Graduate Library. Certain relevant issues relating to international law, such as human rights, are also included. The guide does not purport to provide either a complete discussion of the Afghan legal system or an exhaustive list of sources.

TABLE OF CONTENTS

About the Library’s Afghanistan Collection ..................................................1
History of Afghanistan and the Afghan Legal System ..................................1
    The Afghan Legislative and Judicial Systems as of 1980 ..........................4
Researching the Law of Afghanistan ............................................................4
Secondary Sources .......................................................................................5
    General Secondary Sources .....................................................................5
    Subject-Specific Treatises and Secondary Sources ..................................6
        Civil Rights .........................................................................................6
        Contracts ..........................................................................................6
        Constitutional Law ..............................................................................6
        Courts ................................................................................................7
        Criminal Law ......................................................................................7
        Criminal Procedure .............................................................................7
        Family Law ........................................................................................8
        Foreign Relations ................................................................................8
        History ................................................................................................8
        Human Rights ......................................................................................9
        International Law and Afghanistan ....................................................9
        Islamic Law and Afghanistan .............................................................10
        Labor Law ..........................................................................................10
        Women and the Law ..........................................................................10
Primary Sources ............................................................................................11
    A Note on Translations ...........................................................................11
        Finding Aids for Sources of Primary Materials in English .................11
Legislation .....................................................................................................11
    Constitution ............................................................................................11
    Major Codifications ................................................................................12
        Civil Code ..........................................................................................13
        Code of Civil Procedure .....................................................................13
        Commercial Code ..............................................................................13
        Criminal Code ...................................................................................13
        Code of Criminal Procedure .............................................................13
Session Laws .................................................................................................14
Official Gazette ............................................................................................14
Court Reports ...............................................................................................14
Treaties ................................................................. 15
Administrative Law ...................................................... 15
Special Topics and Sources .............................................. 15
Legal Dictionaries .......................................................... 15
Language Dictionaries ...................................................... 15
LEXIS-NEXIS and WESTLAW .............................................. 16
Selected Afghan Law-Related Internet Sources ............... 16
Further Questions? ............................................................ 17
About the Law Library’s Afghanistan Collection

The Afghanistan collection at the University of Michigan Law Library is limited, due to the unsettled state of Afghan law during the last century and the general lack of publication of Afghan legal materials. The Law Library’s Afghanistan collection includes materials from the 1930s through the 1990s, in print, microform, and electronic formats. The Harlan Hatcher Graduate Library also holds materials on Afghanistan legal topics, which have been included in the discussion of sources, below.

The majority of the Afghanistan collection is in print format, housed in the Legal Research Stacks under call numbers FL8 A2.1 et seq. Because this area of the Library is closed to the public, researchers must either request that books from the Afghanistan collection be paged to them, or receive a pass to enter the closed stacks area. Closed stack pull requests and passes may be obtained at the Circulation Desk.

The official languages of Afghan legal publications are Pushtu (or Pashto, Pushto, or Pushta) and Dari (the Afghan variant of Farsi, or Persian).

History of Afghanistan and the Afghan Legal System

Afghanistan is a mountainous country, which since ancient times has been peopled by tribes of distinct ethnic and linguistic origin, living in relative isolation in the few fertile valleys of the land. Because of its geographic location, bordering on Russia, China, Pakistan and Iran, Afghanistan has long been considered a “crossroads of civilization;” as such, it has been the subject of conquest and subjugation for at least two thousand years. Notable conquerors have included Alexander the Great (4th century B.C.), Genghis Khan (13th century) and Tamerlane (14th century).

In the 18th century the first attempt at a unified state of Afghanistan emerged. This so-called Afghan Kingdom was actually a confederation of tribes, formed under the leadership of Ahmad Shah Durrani, but the empire collapsed after his death in 1773. Afghanistan began to establish itself as a nation again in the mid-19th century; however, colonial ambitions of Great Britain and Russia spawned yet another series of invasions at that time, all of which ultimately failed. The Anglo-Afghan war of 1878-1880 resulted in the creation of an
independent Afghan state, though still under the British sphere of influence.

From 1880 through the early 1900s Afghanistan enjoyed relative stability under the rule of Amir Abdur Rahman Khan, who instigated extensive economic and social modernization programs. By the 1920s and 1930s, however, these reforms were reversed by conservative rulers who imposed near-absolute monarchies.

During the 1970s and 1980s Afghanistan became embroiled in civil war, and the government changed hands many times as the result of various coups and insurgencies. In the late 1970s, the Soviet Union invaded Afghanistan and took control of the country under a Communist regime. After intervention by the United Nations beginning in 1982, peace agreements were finally signed in 1988, which led to the withdrawal of Soviet troops. At that time, a coalition of rebel forces set up a fragile interim government, but interethnic tensions and infighting among rival militia led to its eventual collapse.

Currently there is no single group or government that holds sway over the entire country of Afghanistan. The majority of the country, including its major cities, is under the rule of the Taliban Islamic organization, which seeks to create a strict Islamic state. Pakistan, Saudi Arabia, and the United Arab Emirates acknowledge the Taliban government of Afghanistan. The remainder of Afghanistan is controlled by the United Front, which is recognized by the United Nations, the United States, and the rest of the world as the country’s legitimate government. The Taliban have recently declared the country to be an Emirate; however, the United Front and its supporters still refer to the Islamic State of Afghanistan.

The troubled and turbulent history of Afghanistan has led to its overall lack of a modern unified legal system. For centuries, the principal source of Afghan law was Shari’a (the uncodified body of Islamic law and practice, based on the Holy Qu’rān and the Sunnah of the Prophet). The reform movements of the early 20th century gave rise to several essentially unsuccessful efforts to secularize and/or westernize the Afghan legal system. Since that time, the law in Afghanistan has developed into a disunified amalgamation of secular legislation, Shari’a, and local custom, variously applied according to local practice and adherence to governmental authority. Islamic law of the Hanafi School of jurisprudence remains, however, substantially controlling.1

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1 Islam is divided into two major sects: the Shi’a, who believe that Ali, a relative of the Prophet Mohammad, and his descendants are the proper rulers of the Islamic
Afghanistan’s rapidly changing governments have contributed to the general disarray of its legal system. For example, quite a number of dissimilar constitutions have been issued by various regimes over a relatively short period of time. The first Afghan constitution was promulgated in 1923, followed by a similar constitution in 1931; these were extremely non-liberal documents that emphasized Islamic law. In 1964 the first nominally liberal constitution was issued, emphasizing the secularization of Afghan law. Following the coup of 1973, a series of “Republic decrees” served as a constitution until the promulgation of a western-style constitution on February 24, 1977. One year later, a new coup resulted in the abrogation of the 1977 constitution and the issuance of a new set of decrees of the Revolutionary Council of the Democratic Republic of April 30 and May 1, 1978. Three more decrees were then issued, which resulted in a body of “constitutional laws” March 27, 1979. A provisional constitution, the “Basic principles of the Democratic Republic of Afghanistan,” was promulgated on April 21, 1980. A new constitution was enacted in November 1987, and further amendments to it approved in May 1990, but it is unknown whether this constitution was ever officially promulgated. There is currently no constitution in effect throughout Afghanistan.

At present, it is difficult to know exactly what is the law of Afghanistan. Various statutes enacted prior to the Soviet takeover of the country are still technically in force, but they are apparently neither followed nor enforced. Certain Afghan legal publications, including the official gazette and court reports, have now ceased publication; it is unclear whether publication will ever resume. In view of the fact that Islamic law is the one constant that has survived throughout the upheaval in Afghanistan, it seems a safe assumption that Shari’a will continue to play a major role as a primary source of Afghan law.

Sources: See Reynolds and Flores, Vafai, under “General Secondary Sources, below.
The Afghan Legislative and Judicial System as of 1980

During most of the 20th century Afghanistan was governed by a single ruler in conjunction with the Loya Jirgah, or Grand National Assembly. The Assembly, a national council of notables, tribal chiefs and religious leaders numbering up to 1,000 or more, ratified national constitutions and approved policies of the ruler. The Assembly was not called upon, however, to ratify the constitutions of 1980 or later; the body has been non-functioning since 1995.

The Afghan judicial system consisted of a Supreme Court and a High Central Court of Appeals, which heard appeals from the provincial courts in each of the 28 (or possibly 30) provinces. Theoretically, decisions of the higher courts of appeal were legally binding on lower courts; however, there has never been a defined system of precedent or regular case reports. The Supreme Court and High Central Court of Appeals have been non-functioning since 1993.


Researching the Law of Afghanistan

As is the case with all legal research involving foreign law, the very important first step is to plan a research strategy. Consultation of general secondary sources and research guides will provide citations to likely subject-specific secondary sources, which will in turn provide citations to primary materials. Although there are a very limited number of available primary legal materials relating to Afghanistan, there are several good secondary sources in English that discuss Afghan law in some detail.

Below is a bibliography of the Afghan law sources at the University of Michigan Law Library and the Harlan Hatcher Graduate Library. Sources are in English unless otherwise noted.

Key to Source Listings:

Sources listed below as [selected] have been selected by librarians for addition to the collection but not yet ordered. Sources listed as [on order] have been ordered but not yet received by the Law Library.
Periodically check Lexcalibur to determine the status of these materials.

Sources listed as [in process] have been received and are being prepared for shelving in the Law Library. In process sources may be pulled for patrons’ use; forms are available at the Circulation Desk.

Sources listed as [Grad:] are held at the Harlan Hatcher Graduate Library; sources listed as [Grad/Buhr:] are held in storage at the Buhr facility. Buhr sources are easily recalled; ask at any desk at the Graduate Library.

● **Secondary Sources**

  ● **General Secondary Sources**

    • Reynolds, T. and A. Flores. *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World* (1989-) [Ref Coll: Bibliog Reynolds]. Commonly known as “Reynolds & Flores,” this multi-volume looseleaf set is the definitive tool for foreign legal research. “Afghanistan” appears in Volume 3-A, which includes Asia and the Middle East. Includes historical development of the Afghan legal system; lists of major codifications, other laws, and court reports, including English translations; and a subject index of legislation.


    • *Constitutions of the Countries of the World* (1971-) [Ref Coll: Const]. Includes an extensive legal and political history.

Subject-Specific Treatises and Secondary Sources

- Civil Rights
  - See “Human Rights,” below.

- Contracts

- Constitutional Law


♦ Lux Wurm, P. L’evolution politique de L’Afghanistan et la reforme constitutionnelle (1964) [FL6 F8154n]. In French.

♦ Fundamental principles of the government of Afghanistan (1931) [JX2 G7]. Issued by the British Foreign Office.

• Courts


• Criminal Law

• Criminal Procedure


• Family Law


• Foreign Relations


♦ Schwager, J.  *Die Entwicklung Afghanistans als Staat und seine zwischenstaatlichen Beziehungen* (1932) [JX3 L531ab]. In German.

• History


♦ Nyrop, R. and D. Seekins, eds.  *Afghanistan, a country study* (1986) [FL8 A2.9 A257 C855 S93 1986]. Part of
the Area Handbook series, published by the United States GPO. Includes maps.

♦ Fraser-Tytler, W. Afghanistan: a study of political developments in central and southern Asia (1967) [FL8 A2.9 F8427a 1967].

♦ Nimat Allah (fl.1613-1630). History of the Afghans (translated from the Persian by B. Dorn 1965) [FL8 A2.9 N713m 1965e].

• Human Rights


• International Law and Afghanistan


- Islamic Law and Afghanistan


- Labor Law


- Women and the Law

Primary Sources

A Note on Translations

Unless a researcher is very fluent in Pushtu and/or Persian, the official languages of Afghanistan, it will be necessary to work with translations of primary materials, when available. The most authoritative translation is one that is officially provided by the promulgating source; lacking an official translation, the most reliable alternative is one prepared by a certified legal translator. In the absence of these sources, a respected commercial or unofficial translation must be used.

Finding Aids for Sources of Afghan Primary Materials in English


♦ See also world-wide compilations of laws in translation:


Legislation

• Constitution


English text of the 1964 constitution in *Constitution of Afghanistan* (1964) [FL8 A2.18 1964].


French text of the 1964 constitution in *Constitution de l’Afghanistan, 1er octobre 1964* (1965) [FL6 F8145n].


Italian text of the 1931 constitution in Giannini, A. *Le costituzioni degli stati del vicino Oriente: Afghanistan, Egitto, Higiaz, Iraq, Libano e Siria, Palestina, Persia, Transgiordania, Turchia* (1931) [FL7 18 G433c 1931].

Also available on the Internet (see “Selected Internet Sources for Afghan Law,” below).

- **Major Codifications**

  The laws discussed below are at least technically still in force in Afghanistan; however, it is unknown to what extent they are currently followed or enforced.
♦ Civil Code

Afghanistan’s civil code is generally based on Islamic law and the Hanafi School of jurisprudence, but shows influence of the French civil code in matters relating to official documentation.


♦ Code of Civil Procedure


♦ Commercial Code

The commercial law of Afghanistan, enacted in 1955, is essentially an Afghan translation of the Ottoman commercial code of 1850, including some later Turkish amendments.

- English text in *The law of commerce (commercial law of Afghanistan)* (1967) [FL8 A2.353 1967e].

♦ Criminal Code

The criminal code enacted in 1976, influenced by the French penal code, signaled a departure from Islamic criminal justice in favor of European criminal systems.


♦ Code of Criminal Procedure

• Islamic Laws


• Session Laws

Afghanistan does not publish any equivalent of American session laws.

• Official Gazette

The official gazette of Afghanistan is the *Resmi jarīdah Da Adli Vizarat*. This was published starting in 1963, but has been inactive since at least 1980.

♦ *Resmi jarīdah Da Adli Vizarat* [selected].

• Court Reports

Afghanistan has no official or systematic method of reporting judicial decisions. The *Afghan judicial reports*, an official government publication that began in 1976, is no longer published.


• Treaties

Afghanistan has no publications of treaties.


♦ *Turkey-Afghanistan Treaty of 1921*
  <http://www.mfa.gov.tr/turkce/gruph/ikili/03.htm>
  In Turkish.

♦ *Also available* on the Internet (see “Selected Internet Sources for Afghan Law,” below).

• Administrative Laws

Afghanistan has no published body of administrative law.

♦ *Special Topics and Sources*

  ➢ *Legal Dictionaries*


  ➢ *Language Dictionaries*


  ▪ Gilani, D. *An English-Persian dictionary* (1999) [selected].

**LEXIS-NEXIS and WESTLAW**

Specific information on Afghan laws is not available on LEXIS nor on WESTLAW.

**Selected Afghan Law-Related Internet Sources**

This list focuses on web sites that provide free access to Afghan primary materials and on gateway sites that provide directories of Afghan legal information sources available on the Internet.

- **Online Center for Afghan Studies**
  <http://www.afghan-politics.org> Includes scanned images of original constitutions from 1964, 1976, 1990 and others. Also includes texts of various treaties and accords, as well as sections on human rights and women’s rights, among others. In English.

- **Law Library of Congress Guide to Law Online: Afghanistan**
  <http://lcweb2.loc.gov/glin/afghanis.html> Annotated compendium of internet sources of law-related information and government bodies. The “Legal Guides and Miscellaneous” directory points to research guides available online. In English.


- **Internet Law Library (Pritchard Law Webs)**
Further Questions?

If you have further questions or need additional help researching the law of Afghanistan, please ask a librarian! The Law Library is open daily from 8 a.m. till midnight. The Reference Desk is staffed daily from 9 a.m. till midnight, and professional reference librarians are either at the Desk or available to assist you from 9 a.m. till 6:00 p.m., Monday through Friday. (Hours may vary during holiday and interim term periods; call the Reference Desk at (734) 764-9324 to verify the Library’s schedule.)

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