PENAL CODE FOR COURTS
[DA MUHAKIMO JAZA'I USULNAMA]

THE BOOK
[KITAB]

Afghanistan Analysts Network

Unofficial AAN translation

February 2026

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In the name of Allah, the Beneficent, the Merciful

Praise be to Allah, the Lord of the Worlds, blessings and peace be upon the Foremost of the Messengers, and on all his family and companions.

PENAL CODE FOR COURTS *[DA MUHAKIMO JAZA'I USULNAMA]*[1]

THE BOOK *[KITAB]*

The Penal Code for Courts consists of an introduction, three chapters, ten sections and one hundred and nineteen (119) articles.[2]

Introduction

The introduction consists of the following articles: what is meant by principles and laws; terminology; and the bodies responsible for implementation.

What is meant by principles and laws

Article 1

In this Code, the term 'principles and laws' refers to those principles and laws which have been ratified and approved by the exalted Commander of the Faithful, Sheikh of Quran and Hadith, Hibatullah Akhundzada, may God Almighty protect him.

Terminology

Article 2

In this Code, the following terms are used in the meaning described below:

1. **The right of Almighty Allah** *[haq Allah]* are those rights which are not specific to any individual, but which benefit the entire population equally. Owing to their important nature and their application to the entire population, they are ascribed to the Almighty.

[1] The Penal Code of the Courts is the exact translation of the name given to the Code by the Islamic Emirate of Afghanistan (IEA), 'penal' being an accurate translation of the word *jaza'i*. The term for 'criminal', as it has been translated elsewhere, would be *janayati.* Moreover, most articles of the Code refer to punishments for crimes, normally the stuff of a penal code.

[2] The IEA wrote that there are 109 articles. In fact, there are 119, so that is the number used here.

2. **The right of the servant** *[haq al-abd]*[3] refers to actions which affect an individual, whether by commission or omission; they are not related to public welfare.[4]
3. **A whip** is the particular instrument used by a judge to inflict a prescribed *[hadd]* or a discretionary *[ta'zir]* punishment.
4. **A just statement** *[khabar-e adl]* is a statement that is based on absolute justice, in which there is no prejudice. A person making such a statement is one who avoids major sins and does not persist in minor ones.
5. **Kidnapping** *[ikhtitaf]* is to take a person away forcefully, either to extract some profit or in order to harm that person.
6. **An affluent person** *[musir]* is one who is financially able to stand on his own feet and is not eligible to receive *zakat*, or prescribed charity.
7. **An impoverished person** *[mu'sir]* is one who is financially unable to stand on his own feet and is therefore eligible to receive zakat.
8. **Innovator** *[mubtadi]* is someone whose beliefs run contrary to those who associate themselves with the sunnah [of the Holy Prophet] and the larger community of Sunni Muslims *[ahl as-sunnah wa'l-jama'ah].*[5]
9. **Deed of sale** *[qabala]* is an official document, drawn up in the light of existing laws, and designed to verify and validate the ownership of immovable property.
10. **Written undertaking** *[wasiqa]* is that reliable document, drawn up in the light of existing laws, prepared by the authorities with the agreement of the person confirming an arrangement *[muqir]* and the confirmation of the person on whose behalf the arrangement is being made *[muqir lahu]*, and ratified by a judge.
11. **Spreader of disorder** *[sa'ii bi'l-fasad] is* someone who does harm to society as a whole, like people who practise magic *[sahir]*, homosexuals *[luti]*, stranglers *[khannaq]*, people who have rebelled against the government *[baghi]* and highway robbers *[qati al-tariq]*. The only remedy for such people is that they should be killed.[6]

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[3] In future, this will be translated as the 'rights of man.'

[4] Haq al-abd, or more commonly its plural form *huquq al-ibad*, is the traditional Islamic term for human rights. However, in this context, where throughout the Code, the original Pashto uses masculine pronouns to generalise about the whole population, 'rights of man' seems more appropriate.

[5] Ahl as-Sunnah wa'l-jama'ah is a term used by Sunni Muslims to describe themselves.

[6] In the footnotes given along with the Code, there is considerable reference to books of jurisprudence, but the actual Quranic verse from which the phrase, *sa'ii bi'l-fasad*, has been extracted, does not seem to have been referenced. It is the 33rd verse of Surah al-Maida (5:33), which reads as follows:

Those that make war against Allah and His Messenger, and spread disorder in the land, shall be put to death or crucified or have their hands and feet cut off on alternate sides, or be banished from the country. They shall be disgraced in this world, and then severely punished in the Hereafter.

12. **Accused** *[mutaham]* is a person regarding whom one just witness – or two witnesses of unknown integrity *[mastur al-hala]* – has given evidence before a judge that he has committed one of the crimes mentioned in this Code.[7]
13. **Guilty person** *[mujrim]* is a person who, according to a court's final decision, has been found guilty of one of the crimes mentioned in this Code.
14. **Forgery and deception** are the fabrication of a false document, certificate or stamp, to forge someone's signature, or by deleting, destroying, or crossing out some writing, or by adding something, taking something out, or in some other similar fashion, to change the meaning of documents and official certificates.
15. **Repeat offender** *[mutakarrir mujrim]* is someone who has committed a crime mentioned in this Code, served his punishment for that crime, then, following the final decision of the court, has committed the offence again.
16. **Specialist medicine** *[irfan dermal]* is any particular medicine used to treat, prevent or diagnose rare diseases. As a result, it is not usually produced or imported, but on the recommendation of the Ministry of Public Health and the Ministry of Agriculture, Irrigation and Livestock, a specific amount may be produced or imported at any particular time.
17. **Health-related products** refer to health equipment and apparatus, medical food items, medical items, medical food products and chemical items that are required in the course of operations or medical examinations, items needed in laboratories and other health-related products that are controlled by the Ministries of Public Health and Agriculture, Irrigation and Livestock.
18. **Typical quality violation** *[da kaifiyat adi takhaluf]* is that violation which, after the testing of a product, causes it to function contrary to its intended function. This harms the machine and is also financially harmful to the person using it.
19. **Intermediate quality violation** *[da kaifiyat mianzanay takhalluf]* is a violation that, in addition to a typical violation, is also harmful for the environment.
20. **Extreme quality violation** *[da kaifiyat shadeed takhaluf]* is that violation which, in addition to intermediate violation, also does harm to people's health.

Bodies responsible for implementation

Article 3

The courts of the Islamic Emirate are responsible for implementing this Code.

As for those who come under the category of making war against Allah and His Messenger, the selection of categories of offenders in this Code would seem to be quite wide and arbitrary. According to the authoritative 9th century CE Ḥanafi jurist and theologian and author of *Ahkam al-Quran* (Injunctions of the Quran), Imam Jassas, the two categories of offenders who qualify as waging war against Allah and His Messenger are those who conduct an armed insurrection against the government and highway robbers.

[7] The term, *mastur*, meaning 'covered', is a common way to refer to a woman, ie someone who wears hijab. Here, though, it seems to refer to someone whose condition *(hala)* is obscure.

CHAPTER ONE

PRINCIPLES OF ENFORCING DISCRETIONARY PUNISHMENTS *[TA'ZIR]*; LEVELS AND METHODS; THOSE WHO ARE LIABLE TO SUCH PUNISHMENTS AND RELATED INJUNCTIONS

This chapter consists of three sections:

1. Principles of enforcing discretionary punishments.
2. Degrees and methods of discretionary punishments.
3. Those who are liable to [be given] discretionary punishments and related injunctions.

FIRST SECTION

Principles of enforcing discretionary punishments

Difference between fixed *[hadd]* and discretionary *[ta'zir]* punishments[8]

Article 4

1. A fixed punishment is prescribed and established, whereas a discretionary punishment is up to the leader [Imam].[9]
2. If there is doubt, fixed punishments are waived, whereas discretionary punishments can be enforced, even if there is doubt.

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[8] According to Islamic law, used by the Islamic Republic, as well as the Islamic Emirate, offences and punishments are classified in one of three ways:

Hadd (plural hudud) punishments are viewed as fixed by the Quran or Hadith and are classed as offences against God; they include *zina* (sex outside marriage), accusing someone falsely of zina, drinking alcohol and some types of theft.

Qisas (not mentioned in Terminology, but appearing in the body of the Code) are retributive penalties, equal retaliation in cases of intentional bodily harm, including most types of murder. These crimes may also be forgiven by the victim or their family or resolved between families with blood money.

Ta'zir punishments are for all other offences and are decided according to the discretion of a judge or ruler.

[9] References to 'the Imam' are assumed to be to the Supreme Leader of the Islamic Emirate, Mawlawi Hibatullah Akhundzada.

3. A fixed punishment is not enforced on a child, but a discretionary punishment is given as a lesson.
4. A fixed punishment *[hadd]* applies to both Muslims and *dhimmis*, the latter being non-Muslim minorities living under a Muslim government. As for ta'zir, they are referred to as punishments *[aqubat]* in the case of dhimmis.
5. Hadd can only be administered by the Imam, whereas discretionary punishments may be administered by a husband or the master of a slave *[badar]*.
6. Every Muslim who sees someone sinning in a manner that affects the rights of Allah [huquq Allah], at the time of this misdemeanour, is entitled to administer a discretionary punishment. That is because this comes under the prevention of vice *[nahi an il-munkar].* However, he is not allowed to administer a fixed punishment.[10]
7. Retraction of a confession is not valid in the case of a discretionary punishment, but is valid in all fixed punishments except for the hadd of defamation *[hadd-e qazaf].*
8. In the case of a fixed punishment, if a woman has given evidence against a person, the accused may be held in custody until a check has been conducted on the witnesses. However, in the case of a discretionary punishment, he will not remain in custody.
9. A leader [imam] is not allowed to waive a fixed punishment after it has been proven. However, he may waive a discretionary punishment if the case solely affects the rights of Allah, if he considers it appropriate.
10. Once a case has been proven, no intercession is allowed as far as a prescribed punishment is concerned. In the case of a discretionary punishment, intercession is allowed.
11. Except for the punishment for slander *[hadd-e qazaf],* in cases where witnesses are unable to give evidence, other punishments are waived without any excuse, with the passage of time. However, discretionary punishments are not waived with the passage of time.
12. In cases affecting the rights of man, there is no room for any overlap in discretionary punishments. However, there can be overlap in the case of fixed punishments *[huquq Allah],* when these punishments are all of one kind.
13. Fixed punishments are not inherited by a next of kin, whereas discretionary punishments and equal retribution *[qisas]*[11] are passed on to the next of kin.

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[10] This clause would seem to give authority to any citizen to punish any another citizen in an instance where they feel there has been an offence against Allah, without any recourse to the justice system and without even specifying the offences so covered.

[11] Seeing that qisas is not covered in Terminology, it may be worth noting that it refers to equal retribution, which according to verse number 178 of Surah al-Baqarah (2:178) "is prescribed in cases of murder." [See also FN7].

14. In cases of fixed punishment being imposed in matters that pertain purely to the rights of Allah, it is not permissible for any guarantee to be provided. However, a guarantor can be sought in the case of discretionary punishments.
15. In matters pertaining to the implementation of fixed punishments, equal retribution [qisas] and blood money, only the nature of the crime is borne in mind and the offender's personality is not considered important. With regard to discretionary punishments, the nature of the crime and the offender's personality are both borne in mind.

Methods of proving a crime

Article 5

Whether it concerns the rights of Allah or the rights of man, a crime is proven, either in the presence of a judge *[qazi],* or according to the decision of a judge, in any of the following ways:

1. With regard to the rights of Allah, confession, proof, conclusive evidence and a just statement *[khabr-e adl]*;
2. With regard to the rights of man, confession, testimony, retracting one's confession *[nukul]* and conclusive evidence. However, retraction of a confession is not considered proof in a case of equal retribution [qisas].

Methods of justifying discretionary punishment

Article 6

1. In cases involving the rights of man, discretionary punishments can be justified in any of the following ways: firstly, confession; secondly, testimony (testimony of males, or females and males together); and thirdly, the retraction of a confession.
2. In cases involving the rights of Allah, discretionary punishments can be justified in any of the following ways: firstly, a just statement; and secondly, conclusive proof.

The validity of the testimony of someone giving a just statement *[khabar-e adl]*

Article 7

1. The testimony of someone providing just evidence is valid under the following conditions: firstly, his evidence should be based on what he has actually seen and knows to be true. It should not be based on speculation; secondly, in cases which require him to have heard and seen what happened, for instance a marriage, transaction, lease, or divorce, his testimony should be based on what he has heard and seen.

   If the testimony mentioned in the first clause of this article is based only on information, then it will be valid under certain conditions: firstly, the witness will have received information about the matters concerned on the basis of a

continuous stream of reports [*mutawatir khabar*],[12] rendering it far-fetched that the reports could be false; secondly, when giving the testimony in the presence of the judge, he will use the word "I bear witness" [*Ash'hadu*]; and thirdly, his testimony will contain proof of the rights of another person.

The testimony of witnesses is not valid where a person has used slanderous words against another

Article 8

If someone uses slanderous words against another, words that would render that person liable to discretionary punishment, then the testimony of witnesses aiming to enable that person to escape discretionary punishment will not be accepted.

SECOND SECTION

Degrees and methods of discretionary punishments

Degrees of discretionary punishment on the basis of class

Article 9

1. Discretionary punishments will vary according to social class *[jani]:*[13]
    i. As far as Islamic scholars *[ulema]* and those of a high social class *[iwar rutba khalk]* are concerned, their discretionary punishments are to be introduced by the judge [Qazi] with words like: "I have heard that you are doing things like this …."
    ii. When nobles *[ashraf]*, like tribal elders and merchants *[tajiran]* are due to be given a discretionary punishment, they should be notified by a judge, and then summoned by the court.

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[12] *Mutawatir* is a word widely used in the study of Hadith. A Hadith of the Holy Prophet becomes authentic when it is based on reports that are mutawatir – a continuous stream of similar reports from different sources, all agreeing with each other.

[13] In my over fifty years of speaking Pashto, and experience with Afghanistan, I have never heard this word—jani—used with reference to social class. The word used for caste is zaat. Interestingly, a mulla is traditionally, in Pashto culture at least, considered to be a low caste, something which does not tally with Hadith, which gives ulema—Islamic scholars—an elevated status, "The ulema are the heirs of the Prophets— العلماء ورثة الانبياء ." In fact there is little concept of class in Afghanistan—the Prophet of Islam preached and it is also stated in the Quran, that the only thing which makes one person excel over another is their level of piety (Surah al-Hujurat, 49:13). There is a caste system functioning in Afghanistan, but there is also a general admission that this comes from Muslims living in proximity to Hindus over the ages, and that it is not justified from an Islamic point of view.

iii. In the case of middle classes *[da tolaney mutawassit khalk],* their discretionary punishment should be marked by them being summoned to the court, and imprisoned.

iv. The discretionary punishment of the lower classes of society *[da teeto khalk]* is marked by threatening language and beating. However, one should keep in mind that if an extreme beating is being inflicted, for instance 39 lashes, then the offender should not be beaten in one place.

2. One should ensure, in the course of this beating, not to beat those parts of the body, which shariah has disallowed in the course of administering punishments, for instance the head or private parts of body.

Types of discretionary punishment according to the crime

Article 10

The following types of discretionary punishment are administered, according to the crime that has been committed:

1. A punishment for a crime in which there has only been an affront to the rights of Allah.
2. A punishment for a crime in which there has only been an affront to the rights of man.
3. A punishment for a crime in which an affront to the rights of man is predominant.

Injunctions regarding discretionary punishment in cases affecting the rights of Allah and the rights of man

Article 11

1. If both the rights of Allah and the rights of man have been affected, then the judge should first pass judgement with regard to the rights of man, owing to the priority given to the rights of man; after that, he will pass judgement with regard to the rights of Allah.
2. A punishment should be handed down in cases affecting the rights of Allah, when it is apparent that, without punishment, the person concerned will not correct his ways. If he has mended his ways without any punishment, then the judge *[qazi]* has the right to waive punishment in his case.
3. In matters affecting the rights of man, if the person whose rights have been violated decides on peace and forgiveness, and puts the matter behind him, then this carries weight.
4. In cases affecting the rights of Allah, punishment does not have to be preceded by any claim *[da'wa]*. A claimant is equivalent to a witness in this case, and a witness to a claimant, so long as they are acting in a just manner. A person offering just testimony *[mukhbir-e adl]* is equivalent to a witness, so long as his testimony is based on certainty, not on what he considers to be most likely.
5. In cases affecting the rights of man, in which the punishment due to the offender is dependent on some claim *[da'wa],* only a judge can administer any punishment.

Fiscal punishment

Article 12

1. Discretionary punishment by way of fines *[ta'zir da mal puh akhistalo]* is not acceptable.
2. A judge is entitled to impose two types of punishment on an offender: firstly, by destroying his property *[bi ahlak al-mal]*; and secondly, if the property is immovable *[ghair manqul],* by withholding his right to make use of his property *[bi habs al-mal]*.[14]

Destroying places associated with decadence

Article 13

As a punishment, a judge may destroy places associated on a day-to-day basis with decadent, disorderly and illicit practices.

Capital punishment in the public interest

Article 14

1. Where public interest can be served by the death of the following categories of people, then out of expediency, with the permission of the leader [Imam], a judge may order their execution:
    i. Someone who persists with disorderly behaviour *[par fasad dawam kawunkay]*;
    ii. A spreader of disorder *[sa'ii bi'l-fasad]*;[15]
    iii. Someone who uses a heavy object as a murder weapon;
    iv. Someone who defends false doctrines, contrary to Islam;
    v. Someone who seeks to win people over to false doctrines, for example leaders and trend-setters or innovators *[mubtadi'in]* and wrongdoers *[mufsidin]*;
    vi. A magician *[kodgar]*;
    vii. A heretic *[zindiq]*.
2. In the following cases, the Imam may, out of expediency [maslihatan], dispense capital punishment to an offender:
    i. who persistently has intercourse other than through the frontal channel *[qubl]*;
    ii. who repeatedly commits homosexual acts;
    iii. who repeatedly uses strangulation as a method of murder;
    iv. who persistently steals.

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[14] In this and other places, the intent would be more understandable if examples were given of how something might work in practice. Such examples are, however, lacking in this Code.

[15] See FN6.

THIRD SECTION

Those who are liable to discretionary punishments and related injunctions

Discretionary punishments for all classes

Article 15

A discretionary punishment should be given for every crime that does not have a fixed punishment. It makes no difference if the person concerned is a free person or a slave, male or female, Muslim or an unbeliever, adult or a child of sound mind – they are all subject to punishment. However, in the case of a child who has his wits about him, the punishment is imposed for disciplinary purposes.

Punishment for one who speaks disrespectfully regarding the prophets, on whom be peace

Article 16

If a Muslim speaks disrespectfully of the best of mankind *[khair'al-bashar]*,[16] or is disrespectful towards other prophets, or disgraces them in any way, then he is liable to one of the following punishments:

1. If this offence is proved and he has not repented, then with the permission of the leader [Imam], the judge should punish him with death.
2. If he has repented, then after his repentance, a judge should sentence him to six years' imprisonment.

Punishment for disrespect towards sacred days, hallmarks of Islam and Islamic scholars

Article 17

1. A person who disrespects the sacred days of Islam is an offender; a judge should imprison him for three months.
2. A person who ridicules the injunctions of sharia and the hallmarks of Islam is liable to punishment; if it is proven before a judge that he has done this on purpose and wilfully, then he should be sentenced to two years' imprisonment.
3. Anyone who says, wilfully and consciously, that he is not going to implement the Islamic statements of jurists, or says that the verdict of Islamic scholars is not acceptable, and it is proven to a judge that he has said these things wilfully and consciously, should be sentenced to two years imprisonment.

[16] An epithet for the Prophet Muhammad.

Punishment for someone who abuses the Imam

Article 18

A person who abuses the Imam is an offender. As well as condemning him to 39 lashes, a judge should sentence him to one year imprisonment.

Punishment for someone who disobeys the Imam in permissible matters

Article 19

1. When the Imam orders a certain course of action, in matters that are permissible *[mubah]*, then it is incumbent to follow the Imam's order. Whoever demurs from carrying out his orders is an offender and liable to punishment.
2. Similarly, when the Imam forbids a certain course of action, in permissible matters, then it is incumbent to follow the Imam's order and refrain from that action that the Imam has prohibited. Anyone who does not do so is liable to punishment.[17]
3. Those who are in contravention of clauses one and two of this article will face one month imprisonment.

Those who disobey the orders of the exalted Commander of the Faithful, may Almighty Allah protect him, are to be punished by being removed from their posts

Article 20

The punishment of all Emirate employees and civil servants, who contravene the orders issued solely by the Commander of the Faithful, may Allah protect him, is that they should be removed from their posts.

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[17] Since this Penal Code is a legal document, I have stuck as much as possible to a word-for-word translation. Hence I have rendered the word 'mubah' as permissible, which does not quite render the word's full significance. 'Mubah' signifies an action that does not necessarily carry any reward from Allah, as prayer, charity or fasting do. Neither is there anything wrong with it. Examples of such mubah actions (plural *mubahat*) are buying and selling, trading, doing a craft, or indeed pursuing any profession that does not include performing an act that is expressly forbidden in Islam. All such actions and professions are permissible. That means that no one has the right to render them impermissible.

There is a verse of the Quran – it is in Surah al-Taubah (9:31) – which states, with regard to the Christians, that "they have taken their priests and their monks as Lords besides Allah." One Christian who had become Muslim, Adi bin Hatim, came to the Messenger of Allah and contested that the Christians had not taken their clergy and monastic community as Lords. They did not worship them as they worshipped God. The Messenger of Allah clarified to Adi bin Hatim that, by following their priests and monks, when they prohibited what was permissible, and permitted what was prohibited, this constituted worship on their part – ذالك عبادتهم اياهم (Tafsir Ibn Kathir, *Dar al-Ma'arifa*, Beirut, vol II, p 348). The point is that only God has the right to make a permissible thing impermissible, and vice versa. This article of the IEA's Penal Code appears to delegate this sacred right to the Imam. His right to forbid the permissible is spelled out even more clearly in a footnote to article 94 of this Code والله أعلم بالصواب.

Punishment of those who contravene the orders of other superiors

Article 21

If mujahedin, soldiers and other civil servants contravene the orders of their superiors, in any Emirate department, where they have no valid excuse, they will be punished in the following manner:

1. The head of department should admonish them.
2. If they repeat their disobedience, they should be punished in accordance with article 9, clause 1, part 3 of this Penal Code.
3. If the same thing happens for a third time, they should be punished in accordance with article 9, clause 1, part 4 of this Penal Code.

Punishment if official work is not accomplished at the proper time

Article 22

Failure to complete government work at the proper time, or in the proper manner, with no excuse valid according to sharia, is an offence requiring punishment. A judge should punish this in accordance with the classes mentioned in article 9 of this Penal Code.[18]

Punishment for those who are aggressive towards civil servants and those associated with the Emirate

Article 23

1. If state employees, or those who have been deployed to carry out official duties, are subjected to aggressive behaviour, or humiliated in any way, or if anyone lays a hand on a soldier or mujahed, or tears off their clothes, or abuses them, or in the event of some instance of contempt of court, or the disturbance of a court in session, then all these actions necessitate punishment in the form of being sentenced by a judge to ten days' imprisonment.
2. If anyone humiliates senior officials attached to the Emirate, a judge should sentence them to 20 lashes, along with six months' imprisonment.

Punishment for those who do not take action, and do not report, opposition activities

Article 24

If someone witnesses the destructive gatherings and consultations [*takhribi majlisuna au mashwaray]*[19] of those opposing the administration or has knowledge of such gatherings,

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[18] By way of confirming what is mentioned in footnote 16, above, a footnote to article 22 of the Penal Code (page 14) quotes a Hadith of the Holy Prophet, "Muslims are bound by their agreements, except for an agreement that permits what is forbidden or forbids what is permitted." فافهم

[19] Since the adjective *takhribin* – destructive – is used, I take this to refer to opposition activities that include violence.

and does not take action against them himself, nor does he inform the appropriate agencies of the Emirate, then both the one who has witnessed such gatherings and the one who knows about them are offenders. A judge should sentence them to two years' imprisonment.

Punishment for those who grant refuge to insurgents, thieves or rebels

Article 25

A person who gives refuge to insurgents, thieves, those who have rebelled against the State, or any similar type of disorderly element, is an offender. A judge should order him to face 39 lashes and imprison him for five years.

Punishment for someone who forsakes the Hanafi school of thought *[mazhab]*

Article 26

Those in Afghanistan who follow the Hanafi school of thought are not allowed to leave this school of thought. If someone does so, and it is proved before a judge, then he should be imprisoned for two years.

Punishment for those who publicise innovations *[bida'at]*[20]

Article 27

A judge should imprison for ten years those innovators who promote their innovations, whether on a public or individual level, and thereby cause personal or financial damage to the government and the public, or endanger public safety.

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[20] Even though bida'at was covered in the terminology section at the beginning of this Penal Code, it is not clear here what is meant by an innovation. An innovation (bida'at) is something new – a novelty – introduced into religion. Its definition is given in two Hadiths that come in *Mishkat al-Masabih* (translated by James Robson) at the beginning of the chapter Reliance on the Book and the Sunna: "If anyone introduces into this affair of ours anything which does not belong to it, it is rejected," and, "To proceed: the best discourse is the Book of Allah, the best guidance is that given by Mohammad, and the worst things are those which are novelties. Every innovation [bida'at] is error." Bida'at is innovation in religion. (Using modern facilities such as watches to tell the time and computers to write and calculate is not bida'at, since they do not directly pertain to religious matters.) From article 2.8, we know, however, that the Emirate considers non-Sunni Muslims to be innovators. Seeing that in their Amr bi'l-Maruf document (translated and reviewed by the author for AAN), the IEA has also classified journalism as a bida'at, when clearly it is not something that pertains to religion, I think concern might be justified that the IEA may stamp the term 'bida'at' on any activity they do not approve of, with possibly dire consequences for the perpetrator.

Punishment for trickster muftis, quack doctors or physicians, and those who are neglectful of their duties

Article 28

1. A judge is duty-bound to discourage quack doctors and fake muftis from their nefarious activities. If they repeat their actions, they should be sentenced to one month imprisonment.
2. As for those official Islamic scholars and teachers who do not extend their utmost effort in teaching Muslims the basic, necessary injunctions and the vital tenets of their faith, as well as those students who are neglectful in attending to their studies of the basic, necessary injunctions and the vital tenets of their faith, a judge should punish them according to their status, as laid out in Article 9 of this penal code.

Punishment for someone who betrays a trust, or cheats the government exchequer

Article 29

1. Someone who betrays the trust that has been placed in them, or refuses to pay their dues, should be imprisoned by a judge until such time as they have paid what they owe.
2. Someone who embezzles or misuses *[khiyanat kawunkay]* public money or equipment is an offender. Along with ordering them to repay the amount they have embezzled, a judge should sentence them to six months' imprisonment.

Punishment for an instructor or teacher who beats children

Article 30

A judge should remove from his post an instructor or teacher who beats a child in such a way that the child's bone is broken or he bleeds or is bruised black and blue.

Punishment for someone who lays a hand on their mother and father

Article 31

Someone who lays a hand on their mother and father and humiliates them is an offender. Along with giving them 30 lashes, a judge should sentence them to five months' imprisonment.

Punishment for a husband

Article 32

If a husband beats his wife so severely that it results in a broken bone, or an open wound, or a black and blue wound appears on her body, and the wife appeals to a judge, then the husband will be considered an offender. A judge should sentence him to 15 days' imprisonment.

Punishment for someone who denies having lain a curse *[la'an]*

Article 33

If a husband denies having lain a curse on his wife, then a judge should imprison him for one year, to see if he continues denying his curse, or once again curses her. If, in the course of one year, he lays a curse on her again, or alternatively denies having done so, then the judge should make a decision accordingly.

Punishment for a wife and her father

Article 34

If a wife, without the permission of her husband, is in the habit of repeatedly visiting her father's, or some other relatives' house, and staying there, and despite the demand of the husband, and the decision of a judge, the father or her other relatives do not hand over the wife to her husband, then the wife, and those who are refusing to give her to her husband, are counted as offenders. A judge should imprison both – the wife and the one who is refusing to hand her over – to three months' imprisonment.

Punishment for a father and a grandfather

Article 35

1. A father and a grandfather are considered the bedrock of a family. They are not considered accountable – nor liable to imprisonment – on account of a loan incurred by their offspring, for example their son or grandson. However, if a father and grandfather do not provide sustenance for an infant child, a disabled child, a pubescent child, an orphan, or an unmarried daughter, then a judge should imprison the father and the grandfather for three months.
2. A child who does not have any father or benefactor *[wasi]* – someone who will make a bequest on his behalf – will not be imprisoned on account of a debt incurred by someone who has passed away *[istihlak]*, even if he is the owner of land and material possessions. However, if a child has a father and a benefactor, and the father prevents the child from paying off the debt from his property, then instead of the child, the judge should imprison the father and the benefactor for two months.

Punishment for someone who calls a Muslim a pervert *[fasiq]* or some other such name

Article 36

A person who calls a Muslim a pervert, evil *[khabis]* or an infidel, or accuses someone of having intercourse with a cow or a donkey, or calls someone a cow or a donkey, or says something similar, is an offender. A judge should sentence him to one-and-a-half months imprisonment.

Punishment for someone who has illicit relations with an unrelated woman

Article 37

Anyone who forges illicit relations with an unrelated woman, for instance by kissing her, fondling her or embracing her, should be imprisoned for one year by a judge.

Punishment for a person who looks at a woman who is his neighbour

Article 38

Looking at a woman who is one's neighbour, making signals to her, describing her body to others in the course of conversation, or asking after her, are all offences. Anyone committing these offences should be sentenced by a judge to a term of one month's imprisonment.

Punishment for someone who harasses his neighbour

Article 39

Harassing one's neighbour, for instance abusing him, throwing rubbish in front of his house, locking the door of his house after him, and other such actions are offences. First-time offenders should be imprisoned for one month. If the offence is repeated, the offender should be imprisoned for two months.

Punishment for someone who associates with evil elements

Article 40

A person who is seen frequenting slanderous places, for example, who sits in the company of decadent people, thieves, liquor drinkers, or is seen in their company while they are conducting their nefarious activities, should be imprisoned for one month. If he repeats his offence, his punishment should be doubled.

Punishment for someone who does not fast during Ramadan, and who drinks alcohol in the course of the holy month

Article 41

1. If a Muslim, on whom the injunctions of Islam are incumbent *[mukallaf Musalman],* does not observe the fast of Ramadan, then a judge should order him to be lashed twenty times, and sentence him to two months imprisonment.
2. If a Muslim, on whom the injunctions of Islam are incumbent, drinks alcohol during the day during Ramadan, along with enforcing the fixed punishment *[hadd]*, a judge should sentence him to twenty lashes discretionary punishment.[21]

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[21] A fixed punishment has been mentioned here, but it has not been specified what that fixed punishment – hadd – should be. For clarity on this, I turned to the footnote below article 41 in the original version of this Penal Code, published by the IEA (page 20, footnote 1). It reads as follows:

Imam Ahmad has transmitted that the poet Najashi came to Ali, may Allah be pleased with him. It so happened that he had drunk wine during Ramadan. As a result, he was beaten 80 times; then this was followed by 20 more

Punishment for abduction

Article 42

1. Abduction may be of an adult or a child. It may be for financial gain or in order to harm the abducted person. In any case, a judge should sentence the abductor to ten years' imprisonment.
2. If the abductor murders the abducted person, then, in accordance with the order of the court, he will be sentenced to death.

Punishment for smuggling

Article 43

A person who commits the crime of human smuggling should be sentenced by a judge to one year's imprisonment for the first offence. If he offends again, he will be sentenced to two years' imprisonment, and if he offends for a third time, his sentence will be three years' imprisonment.

Punishment for murder

Article 44

1. A judge has the power – even if the perpetrator of an intentional murder has been forgiven[22] – in case the murderer is a well-known miscreant *[mash'hur bi'l-fasad],* to imprison him for one year.
2. It is for a judge to imprison the assistant *[mu'awin]* of a murderer for one year.
3. Wilful murder is not proven by retraction *[nukul]* of evidence. Someone who is accused of intentional murder *[qatl-e amad]* will be detained by the judge for one year. During this time, he will have the opportunity either to confess or to swear an oath that he had not committed the murder. If, during the course of the year, he either confesses or swears an oath, then the judge will make his decision accordingly.

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lashes the next day. However, it is mentioned in Al-Fath al-Qadir that the 20 lashes, on top of the 80 that had already been administered, was for him having broken the fast of Ramadan.

The 20 lashes mentioned in the article, then, would seem to be this extra 20 lashes. This counts as discretionary punishment, while the 80 lashes are the fixed punishment – hadd – given for drinking wine. و الله اعلم

[22] This is specified in the Quran (Surah al-Baqarah, 2:178): "If the offender is granted some forgiveness by the heir of the slain person, the agreed penalty should be equitably exacted and should be discharged in a handsome manner."

Punishment for someone administering intoxicating substances, or poison

Article 45

1. A person who administers some intoxicant to another, and in this way takes some valuables away from him, is an offender. Along with recovering the stolen items from that person, a judge will also condemn him to five years' imprisonment.
2. If someone administers poison to another, in their food or their drink, and once consumed, it causes that person's death, then the person who has administered the poison is an offender. A judge should sentence him to five years' imprisonment.[23]

Punishment for a person who wounds another

Article 46

If one person wounds another, in such a way that it necessitates a splint or bandage *[ursh],* then a judge should sentence him to six months' imprisonment. This is so that he can be seen to repent for what he has done.

Punishment for a well-known miscreant

Article 47

1. If a person is accused, and indeed well-known for robbery, murder or fornication, or it is common knowledge that he is engaged in destroying people's lives, along with their property and livestock, then a judge should imprison him for one year. This is so that he can be seen to have repented of his actions.
2. Those offenders who continually pose a threat to people's lives and property deserve to be punished by imprisonment. A judge may extend their imprisonment for as long as it takes for them to show clear signs of repentance.
3. Even after the fixed punishment [hadd] has been enforced in his case, a judge may imprison a thief *[sariq]* for three months.[24] This is so that he may repent of his actions.

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[23] I was astounded that the Penal Code would not consider such a person, who had wilfully caused the death of another, to be liable to equal retribution *(qisas),* unless his next of kin forgave the crime (see FN21). I consulted the footnote below article 45 of the Penal Code. It quoted a book of jurisprudence by the name of *Nisab al-Ihtisab* (a comprehensive 13th-14th century Hanafi legal manual on *hisba* – market regulation and moral policing – by Umar bin Muhammad al-Sunami) which said that if the poison had been administered in a person's drink and the person drank it, then no blood money – and presumably no equal retribution – would be incumbent on the killer "because he – the victim – drank it of his own free will." There would appear to be a mixed message here for any would-be murderer: choose poison as your murder weapon and, if caught, you can escape with your own life and pay the relatively lenient price of five years' imprisonment.

[24] The fixed punishment for a thief is found in Surah al-Maida (5.38):

Thieves - male or female - cut off their hands as a punishment for what they have done, and a deterrent from Allah. Allah is Almighty and Wise.

4. If a thief, already mentioned in the third clause of this article, receives a fixed punishment for theft twice, then steals for a third time, a judge should not, in this case, impose a fixed punishment, but imprison him for five years.

Punishment out of expediency *[maslihat]*

Article 48

A punishment may also be given, without a crime having been committed, but out of a sense of expediency. For instance, a father is allowed to punish his ten-year-old child due to the neglect of his prayer, and other such instances. However, punishment should be administered in accordance with the classes mentioned in article 9 of this Code.

Punishment for a judge

Article 49

1. If a judge delays judgement in a case, even after the conditions of passing judgement have been fulfilled, and without having any valid [shar'i] proof, then he should be imprisoned for ten days, by some other, nearby court.
2. If a judge decides a case incorrectly, turning it into fun and joke, then he should be imprisoned for three months by another nearby court.

Punishment for a plaintiff *[mud'i]*, and the one against whom a case has been made *[mud'i alaihi]*

Article 50

If these two – the one who has made a case, and the one against whom a case has been made – exchange words or blows, either in front of the judge or in the courthouse – then this will render them both liable to punishment. A judge should sentence the person who started the quarrel to five days, and the other party to three days' imprisonment.

Punishment for someone who admits that he made a false case

Article 51

If someone admits, in the presence of the judge, that the case he launched was a false one, then the judge should imprison him for one month.

Punishment for someone who makes a false case

Article 52

If the one against whom a case has been made *[mud'i alaihi]* proves that the case of the plaintiff *[mud'i]* is false, then, along with having to repay any expenses incurred by the one against whom the case was made, the judge should also sentence the plaintiff to three months' imprisonment.

Punishment for someone who gives false evidence

Article 53

Anyone who gives false evidence is an offender. A judge should publicise *[tash'hir]* the fact that his evidence was false and also sentence him to receive forty lashes.

Punishment for someone who does not accept and rebels against the final decision of a judge

Article 54

1. A judge should sentence anyone who, in an unprincipled manner *[da usulo khalaf],* does not accept his final decision to one month's imprisonment.
2. If a person does not present himself to the court, and the judge is presented with proof that he has done this out of contempt, then the judge should sentence him to one month's imprisonment.

Punishment for a person who refuses to fulfil his responsibility to provide someone else with their expenses

Article 55

A person who is responsible for providing someone with their expenses and, despite being able to do so withholds those expenses, is an offender. A judge should sentence him to one years' imprisonment.

Punishment for a personal guarantor *[kafil bi'n-nafs]*[25]

Article 56

1. In case a personal guarantor does not present a person for whom he has responsibility to the court at the agreed time, he should be imprisoned for three months by the judge.
2. If the location of the person for whom he is responsible *[makful]* is not known, then the guarantor is not responsible for presenting him. However, if his location is known, then the judge should give the guarantor *[kafil bi'n-nafs]* time to go there and return. If he fails to present him, then the guarantor is liable to three months' imprisonment.
3. If the guarantor becomes indebted, due to his efforts to present the person for whom he is responsible, then at the demand of the guarantor, the judge should imprison the original person *[asil]* – the person for whom he provided the guarantee – for four months.

[25] A *kafil bi'n-nafs* is a personal guarantor, someone who undertakes responsibility for the physical presence of another person, for instance a debtor or defendant), before a court or creditor.

Punishment for someone who takes bribes, and the one who bribes

Article 57

1. Both the taker and the giver of bribes are offenders. Along with removing the bribe-taker from his position, a judge should sentence both to one year's imprisonment.
2. The judge should sentence the person who has acted as an intermediary between the briber and the bribed to six months' imprisonment.

Punishment for a woman who becomes an apostate

Article 58

A judge should imprison a woman who turns apostate indefinitely. This is so that she may once again accept Islam. Furthermore, she should receive ten lashes every three days.[26]

Punishment for dancing

Article 59

Boys and girls who dance, their choreographer and spectators are all offenders. A judge should sentence each one of them to two months' imprisonment.

Punishment for a homosexual

Article 60

Anyone who is proved, in the presence of a judge, and in a manner acceptable in sharia, to have committed a homosexual act, is an offender. The judge should sentence such a person to two years' imprisonment. If the person concerned is a habitual homosexual, then with the permission of the leader [Imam], he may be put to death.

Punishment for someone who destroys public property

Article 61

Someone who destroys public property, for instance, leisure spots, roads, and other such places, is considered an offender. Along with ordering him to repay the damage he has caused, a judge will sentence him to two months' imprisonment.

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[26] This begs the question: what happens to a man who turns apostate? To find out the answer, I turned to the footnote below this article – footnote 4, page 25: "Dar al-Qutni has transmitted on the authority of Ali, may Allah be pleased with him, 'The repentance of a woman who turns apostate should be sought; she should not be killed.'" It is stated in *Al-Fiqh al-Islami wa Adillatuhu* that the Hanafis are of the opinion that a woman who turns apostate should not be killed, but should be forced to return to Islam. She is forced by being imprisoned until she either submits to Islam or dies. This is because she has committed a great sin. Furthermore, she should be whipped every three days in order to put more pressure on her to accept Islam." So the suggestion is that a man who turns apostate should be put to death.

Punishment for someone who buys or sells human parts

Article 62

It is an offence to buy or sell human parts, such as kidneys, hair, or any other part of the human body. A judge should sentence both buyer and seller to one year's imprisonment.

Punishment for someone who enters the sanctuary of another without permission

Article 63

If someone enters the private sanctuary of another person, for instance his home or residence, without permission of the owner, or without some valid reason in the eyes of sharia, then a judge should sentence him to two months' imprisonment.

Punishment for someone who steals from a house that he has been allowed to enter

Article 64

If a person enters another's private sanctuary with permission, then steals from it and it is proven that he stole, a judge will require him to return the stolen property and, in addition, sentence him to two years' imprisonment.

Punishment regarding theft along with a gang of thieves

Article 65

If a gang of thieves conspire to steal someone's property, and the actual thief cannot be identified, then a judge will sentence the whole gang to two years' imprisonment.

Punishment for gamblers

Article 66

Gambling in all its forms is an offence in the eyes of sharia. A judge should sentence a gambler to four months' imprisonment.

Punishment for false accusers of adultery

Article 67

A person who accuses those listed below of adultery is an offender and should be imprisoned for two months by a judge:

1. A child;
2. A mad person;
3. An unbeliever;
4. One who is limited, and not able to commit adultery *[mahdud fi'l-zina]*;

5. A woman who has been left with a child due to mutual imprecation or cursing *[mula'inatu bi'l-walad]*;[27]
6. A woman who has a child, but the child's father is not known.

Punishment for someone who, without justification, harasses the household of an offender

Article 68

It is an offence to harass, without any reason, the household of an offender because of his crime. A judge should sentence anyone who does this to three months imprisonment.

Punishment for someone who intentionally relieves a person of his debt

Article 69

If someone is in debt to another person, it is an offence for another person to relieve him of his debt, so that the indebted person can make his escape. A judge should sentence anyone who does this to one month imprisonment.[28]

Punishment for someone who makes animals fight with each other

Article 70

A person who makes animals – such as dogs, camels, sheep and other such animals – and birds – for instance cocks, jays and crows – fight against each other, is an offender. A judge should sentence him to five months' imprisonment.

Punishment for a hoarder

Article 71

A judge is duty-bound to force a hoarder to sell the goods that he has hoarded. If the hoarder refuses, he will be considered an offender and sentenced to one month's imprisonment.

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[27] The term *mula'inatu bi'l walad* originates from a Hadith, transmitted by both Bukhari and Muslim, in which the Prophet of Islam made a man and woman invoke curses on each other after the man had disowned his child, after which the Prophet separated the pair and attributed the child to the woman. So a woman who has been left with a child after such mutual imprecation or cursing should not be accused of adultery.

[28] Unable to work out how this might work in practice, I consulted a footnote below article 69 in the original IEA version of the Penal Code. There, it was slightly clearer, but not entirely so: "On the authority of a book of jurisprudence entitled *Al-Hudud wa al-Ta'azir*, it was written (page 28, footnote 2): 'If a man took a debtor of his, and a man came and snatched the debt from his hand to let the debtor flee, he would be punished for the crime.'" So it appears that the picture is something like this: a person is being paid back by his debtor. While he is handing over the cash, another person comes and snatches the cash from his hand, enabling the debtor to run away. One is reminded of an Afghan saying, "Don't tell a madman not to set fire to a haystack, since he is likely to do that very thing." Some of the clauses in this Penal Code – including this one – rather than averting crime, might be giving people ideas.

Punishment for an escapee prisoner

Article 72

1. If a prisoner escapes from prison, or is planning to do so, a judge should punish him with 20 lashes.
2. If he considers it expedient, a judge may also punish the prisoner by putting him in solitary confinement for ten days.

Punishment for one who is required to swear a solemn oath *[qisama]* and refuses to do so

Article 73

If a person is required to swear a solemn oath and refuses, a judge may imprison him for one year. This will enable him to either confess to the crime or swear a solemn oath that he has not committed the crime, upon which the judge will be able to make his decision.[29]

Punishment for someone who appropriates the property of another

Article 74

A person who appropriates something belonging to another and then refuses to return it to its owner, is an offender. A judge should sentence him to one year's imprisonment. If, during the course of the year, he returns the appropriated item to its proper owner, then still he has to serve his full year's imprisonment.

Punishment for a security guard

Article 75

If a prisoner who still has time to serve escapes from prison with the help of a security guard and is not recaptured, a judge should order the security guard to serve the remainder of the prisoner's sentence.

Punishment for someone who afflicts another with the evil eye *[nazari]*[30]

Article 76

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[29] A *qisama* – referred to in this article – is when the accused – usually in a murder case – is required to swear a solemn oath to deny involvement in the murder. Some courts might interpret his refusal to swear a solemn oath to be itself an admission of guilt, not, it seems, the courts of the IEA.

[30] The evil eye is considered an established fact of life in Islamic societies and is mentioned in both the Quran (Surah al-Qalam, 68:51) and Hadith. It is akin to the modern concept of something being 'jinxed'. Something becomes jinxed when you talk about it in glowing terms, arousing envy in others. In order to avoid a thing being jinxed or afflicted with the evil eye, it is best to also say the words '*masha Allah*' (Surah al-Kahf, 18:39), or '*insha Allah*' (Surah al-Kahf, 18:23). The verse of the Quran that I mentioned – from Surah al-Qalam – may also be recited, to avert the evil eye.

However, this is the first time I have experienced *nazar*, or the evil eye, being incorporated into a penal code. It would seem to be an example of the Emirate's tendency to reduce everything – even instances of

A judge is entitled to encourage a person who casts an evil eye to desist from being envious. If he refuses, he may be detained in his own home for one year as a punishment.

Punitive measures *[ta'aziri hukmuna]* for buying and selling weapons and military equipment belonging to the State *[bayt al-mal]*

Article 77

1. If anyone is found in possession of one barrel *[mil]*[31] of any type of light weapon, with the exception of an M4,[32] while he is engaged in buying or selling this weapon, and the weapon is proved to belong to the State *[bayt al-mal*, literally the Treasury or Exchequer], then the weapon should be returned to the Treasury and the culprit should be imprisoned for one year.
2. If the number of rifles exceeds one, then the rifles should be returned to the Treasury and the culprit should be imprisoned for one year for each rifle.
3. If one unit [mil – میل] of any type of heavy weaponry – or an M4 – is detected while being bought and sold, and it is proven that this weapon belongs to the Treasury, then the weapon should be returned to the Treasury and the culprit imprisoned for two years.
4. If the number of units of heavy weaponry exceeds one unit per item, then all the weaponry should be returned to the Treasury, and the culprit should be imprisoned for two years for every unit.
5. All military equipment *[tajhizat],* installations *[muhimat],* binoculars *[durbinan]*, radios *[mukhabirey]* and other items of military equipment that are detected while being bought and sold, and it is proven that they belong to the Treasury, all should be returned to the Treasury and the culprit should be imprisoned for one year.
6. If the aforesaid equipment, mentioned in the sixth clause of this article, turned out to be privately owned, then all the equipment should be destroyed and the culprit will be punished according to the price of the equipment:
    i. From AFN 10,000 to 50,000, six months' imprisonment.[33]
    ii. From AFN 50,000 to 100,000, one year imprisonment.

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everyday piety and avoiding the hazards of life *(taqwa)* – into a law-and-order issue. This would seem to be backed up by the footnote below article 76, in the IEA's original version of their Penal Code (footnote 1, page 30) which says that a jurist by the name of Iyad quoted "some scholars" – not all – as citing the propriety, when someone is identified as casting an evil eye, to avoid that person: "And it is appropriate for the leader to stop that person from mixing with society by confining him to his home." I would say this is very much a minority opinion, and a massive majority of Islamic scholars prefer and promote the "prevention is better than cure" approach of reciting simple verses and phrases in order to avert the everyday issue of the evil eye.

[31] Mil – میل – is the barrel of a gun. It is mentioned here to indicate the unit of one gun. In future, it will be translated as 'rifle', or as a unit of the weaponry referred to.

[32] M4 is a reference to the US-made M4 carbine, an assault rifle.

[33] The unit of currency is not mentioned, but is presumably afghanis.

iii. Above AFN 100,000, one year's imprisonment for every AFN 100,000, the maximum term that should be served being seven years, even if the price of the equipment exceeds 700,000.

Punitive measures for buying and selling illegal private weaponry

Article 78

1. If one unit [mil] of illegal, unlicensed weaponry is found with a person in the process of buying and selling it, and that weaponry is proven to be privately owned, then, in addition to destroying the weaponry, a court should imprison the culprit for six months. If he offends again, the weaponry should be destroyed, and he should be sentenced to one year's imprisonment.
2. If the weaponry mentioned in the above clause was more than one unit, then along with the weaponry being destroyed, the culprit *[murtakib]* should be sentenced to six months' imprisonment for every unit that he possesses. If he offends again, along with the destruction of the weaponry, he will serve one year for every unit, with a maximum term of seven years.

Punitive measures with regard to an indebted person *[madyun]*

Article 79

1. If a debt is proven by witnesses, or by retraction of evidence, and the person who is owed the debt requests that his debtor be imprisoned, then a judge should punish the debtor with two months' imprisonment.
2. If a person has agreed that the debt that he owes is valid, and a judge gives an order for the debt to be paid, if the debtor does not ask for some time to pay the debt, yet still does not pay it, then the judge should punish him with four months' imprisonment.

Punishment for a person who is not able to pay his debt *[mu'asir madyun]*

Article 80

1. If a judge is not certain that a debtor is in straitened circumstances or is unable to pay his debt, then, in the event of the person to whom he is in debt demanding the payment of that debt, the judge should imprison the debtor for three months. This is so that he can find out the circumstances of the debtor. If he turns out to be well-off, then his imprisonment should be extended to one year. If he still does not pay his debt, this imprisonment should be extended into the next year. However, if it turns out that the debtor is in straitened circumstances, he should be freed.
2. If the debtor's circumstances, in the course of his three months' imprisonment, do not become clear, then the judge should free the debtor.
3. As for a person in straitened circumstances who is not repaying his creditor, while at the same time he himself is owed a debt by a well-off person and does

not ask him to repay it, then that debtor should be imprisoned for four months. However, should the debtor, who is in straitened circumstances, request that the well-off person – who is indebted to him – be imprisoned instead of him, then this switch should take place.

Measures regarding a creditor *[da'in]* and debtor *[madyun]*

Article 81

1. After a debtor is released from prison, if the creditor cannot be located, then if the debtor says to the judge that he has the money to pay the debt, the judge is entitled to free the debtor, either until the debt has been paid, or by taking either a personal or a financial guarantee from the debtor.
2. If a judge imprisons a debtor on the request of his creditor and the creditor disappears and the debtor turns out – following the enquiry of the judge – to be in straitened circumstances, then after taking a guarantee, the judge is entitled to free the debtor.
3. Beating a debtor, attaching fetters to his feet, tying him up and standing him up in a humiliating fashion in the presence of the creditor – these things are not allowed, even if the debtor is in jail. However, if there is apprehension that the debtor may flee, fetters can be attached to his feet and he can be tied up.
4. While he is imprisoned, it is not permitted to prohibit the relatives and neighbours of a debtor from legally visiting him. However, they will not be allowed to visit him freely without restrictions.
5. If a creditor dies, and he has children – both post-pubescent *[baligh]* and pre-pubescent *[na baligh]* – then if a judge imprisons the debtor at the request of an adult child or, without the intervention of the adult child, he requests to be freed from the responsibility of paying the debt, then the judge should not set him free until he has taken a guarantee from him that he will pay what is due from him to the infant children of his deceased creditor.[34]

[34] The reason is that this is a matter of the rights of orphans, which from a Quranic angle is an extremely sensitive subject. A book of fatwas, entitled *al-Fatawa al-Hindiya* (Fatwas of India) is quoted by the IEA in the footnote below this article (footnote two, page 33), saying much the same thing as is written in the article itself. However, it might have been more instructive, and to the point, to quote the multiple verses in the Holy Quran warning about the dangers to oneself of disregarding the rights of orphans. The verses are too many to all be quoted or referenced here. This one in Surah an-Nisa (4:10) can be considered typical: "Those who consume the property of orphans unjustly are actually swallowing fire into their own bellies; soon they will burn in the blazing flame." Orphans and the destitute *(al-yatama wa al-masakin) are* the two most protected sections of society in the Quran. The authors of this Penal Code have, however, concentrated on books of *fiqh* – jurisprudence – and neglected infinitely more important and more relevant verses of the Quran.

6. A judge has the right, in order to ensure that an imprisoned debtor pays his debt, first of all, to sell movable property belonging to the debtor. If the debt is still unpaid, then his land and house can also be sold.
7. If a creditor claims that his debtor is well-off, but the debtor insists that he is in straitened circumstances, then whichever of them can substantiate his case by presenting witnesses will be considered to be telling the truth. If both of them have witnesses to testify on their behalf, then the testimony of the creditor's witnesses will be accepted.

CHAPTER TWO

PUNITIVE MEASURES FOR THOSE WHO PRODUCE FRAUDULENT AND FORGED DOCUMENTS; THOSE WHO CORRUPT AND ADULTERATE GOODS; AND THOSE WHO TAKE ACTION WITHOUT HAVING THE NECESSARY AUTHORITY

This chapter has two sections:

First section: Punitive measures for those who produce fraudulent and forged documents.

Second section: Punishment of those who corrupt and adulterate goods and those who produce fraudulent and forged documents related to such goods.

FIRST SECTION

Punitive measures for those who produce fraudulent and forged documents

Measures to be taken with regard to those who produce fraudulent and forged edicts, directives, guidelines, regulations and court orders

Article 82

1. If anyone forges, or produces fraudulent versions of the documents mentioned below, that person should receive three years' imprisonment:
    i. Any edict, directive or guideline of the exalted Commander of the Faithful, may Allah protect him.
    ii. An order of the head of the Council of Ministers *[Ra'is al-Wuzara]*.
    iii. An order of the Chief Justice.
    iv. A regulation of the Council of Ministers.
    v. A court decision or order.
2. Anyone who forges, or produces a fraudulent version of the signatures or the official stamps of the persons mentioned above will also be sentenced to three years' imprisonment.

3. Anyone who makes use of a certificate, like the ones mentioned in the first clause of this article, knowing that it is forged, will be sentenced to two years' imprisonment.
4. If anyone repeats the offences mentioned in clauses one, two and three of this article, and it is proved that he has repeated the offence, then two years will be added to the original sentence that he has received.
5. If the person committing the offences mentioned in clauses one, two and three of this article is an employee in some department of the Emirate, then two years will be added to the original sentence that he has received.

Measures with regard to someone who forges and produces fraudulent versions of official documents, signatures and stamps

Article 83

1. If someone forges, or produces a fraudulent version of a document, an official stamp, or a signature of the Emirate departments associated with the officials listed below, he should be sentenced to one-and-a-half years' imprisonment:
    i. Deputies of the Council of Ministers.
    ii. Ministers in charge of ministries.
    iii. Directors of major departments, with their own authorised workforce *[tashkil]* and budget.
    iv. Provincial governors.
    v. Security commanders *[da amniyay qomandanan]* of provinces.
2. If someone forges or produces a fraudulent version of a document, an official stamp, or a signature of the Emirate departments associated with the officials listed below, he should be sentenced to one year's imprisonment:
    i. Deputy ministers.
    ii. Directors associated with the Supreme Court.
    iii. Deputy directors of major departments, with their own tashkil and budget.
3. A person who makes use of any item mentioned in the first clause of this article, knowing that it is a forgery, should be sentenced to one-and-a-half years' imprisonment.
4. A person who makes use of any item mentioned in the second clause of this article, knowing that it is a forgery, should be sentenced to one year's imprisonment.
5. If anyone repeats the offences mentioned in the second clause of this article, and it is proved that he has repeated the offence, then six months will be added to the original sentence that he has received.
6. If the person committing the offences mentioned in clauses one and two of this article is an employee in some department of the Emirate, then six months will be added to the original sentence that he has received.

Measures with regard to someone who forges, and produces fraudulent versions of documents, signatures and stamps of directors, district governors and district chiefs of security

Article 84

1. If someone forges, or produces a fraudulent version of a document, an official stamp, or a signature of the Emirate departments associated with the officials listed below, he should be sentenced to one-and-a-half years' imprisonment:
    i. Directors of Emirate departments and ministries.
    ii. District governors *[uliswalis]*.
    iii. District chiefs of security.
2. A person who makes use of any item mentioned in the first clause of this article, knowing that it is a forgery, should be sentenced to six months' imprisonment.
3. If anyone repeats the offences mentioned in the first and second clauses of this article, and it is proved that he has repeated the offence, then three months will be added to the original sentence that he has received.
4. If the person committing the offences mentioned in clauses one and two of this article is an employee in some department of the Emirate, then three months will be added to the original sentence that he has received.

Measures with regard to someone who forges and produces fraudulent versions of deeds and other Emirate documents

Article 85

1. If someone forges, or produces a fraudulent version of a deed, issued by a court of the Islamic Emirate of Afghanistan, then he will be sentenced to three years' imprisonment.
2. A person who makes use of any deed mentioned in the first clause of this article, knowing that it is a forgery and fraudulent, will be sentenced to two years' imprisonment.
3. With the exception of individuals and departments mentioned in the first and second clauses of this article, and those mentioned in articles 82, 83 and 84, anyone who forges, and produces fraudulent versions of any official documents or office stamps, or those of any Emirate department, or the signatures of any officials associated with these departments, or of madrasas, schools and banks, will be sentenced to two years' imprisonment.
4. A person making use of any item mentioned in the third clause of this article, knowing that it is a forgery, should be sentenced to one year's imprisonment.
5. If anyone repeats the offences mentioned in the third clause of this article, and it is proved that he has repeated the offence, then six months will be added to the original sentence that he has received.

6. If the person committing the offences mentioned in the third clause of this article is an employee in some department of the Emirate, then six months will be added to the original sentence that he has received.

Measures with regard to someone who forges and produces fraudulent versions of documents of private, non-governmental organisations

Article 86

1. Someone who forges and produces fraudulent versions of documents of private and non-governmental organisations will be sentenced to six months' imprisonment.
2. If anyone repeats the offences mentioned in the first clause of this article, and it is proved that he has repeated the offence, then three months will be added to the original sentence that he has received.

Measures with regard to someone who forges and produces fraudulent versions of deeds, securities, and banknotes

Article 87

1. Anyone who forges a deed or security, or uses a forged deed or security, in the knowledge that it is forged, should be sentenced by a judge to three years' imprisonment.
2. A judge should sentence anyone who prints fake banknotes to two years' imprisonment, and someone who introduces fake banknotes to the market to one year's imprisonment.

Measures with regard to counterfeiters and forgers of industrial and commercial trademarks, and other goods

Article 88

1. Should a person manufacture some product, for example write a book, or construct a motor car or some other such item which has been produced before, then any commercial gain associated with that product is the right of the person who first manufactured it. Trademarks and names registered with the government belong to the registrants. Whoever infringes on and fraudulently usurps those rights is an offender. A judge should condemn him to three months' imprisonment.
2. It is an offence to mix faulty products with good ones, or to sell faulty products as if they were good. A judge should sentence someone who does this to one year's imprisonment.
3. It is an offence to sell poor-quality medicine as if it were high-quality medicine, and to pack it as such. It is also an offence to put a new expiry date on expired

medicine. Along with destroying any such medicine, a judge should sentence any offender to one year's imprisonment.

4. A person who tricks people in weights and measures, selling less of an item than he makes it out to be, is an offender. A judge should sentence him to one month imprisonment.[35]
5. A person who sells distasteful *[makruh]* items, such as raw or cooked meat that has developed a foul smell, is an offender. A judge should sentence him to ten days' imprisonment.
6. If anyone sells an animal or bird that is not halal [ie it is haram], or the meat of a carnivorous beast *[makul al-lahm],* or the meat of an animal that has died without being slaughtered *[mordar shway],* either cooked or raw; or without selling it, donates such meat to the public, then a judge should have him beaten and humiliated and sentence him to one year's imprisonment.

SECOND SECTION

Punishment for those who corrupt and adulterate goods and those who produce fraudulent and forged documents related to such goods

Punishments *[sazaganay]* for those importing and producing, and for the production and distribution of poor-quality foodstuffs

Article 89

1. The producers and importers of poor-quality foodstuffs should be sentenced by a judge to punishments as listed below:
    i. If anything from one to 90 tons is either produced or imported, with the item being subject to a low level of adulteration *[adi takhalluf*], and after such adulteration was detected for the first time, those responsible for it received a warning from the related government department, then if the same thing happens for a second time, the licence of those responsible for the adulteration *[mutakhallif]* should be suspended for two months.

[35] One month's imprisonment for an offence that amounts to stealing from the public, and has been singled out as a landmark heinous offence in several places in the Quran, seems a surprisingly lenient sentence, unlikely to prove a deterrent. It is a practice that proved the undoing of a whole nation – that of the father-in-law of Moses, Shu'ayb – as mentioned several times in the Quran, for instance in Surah al-A'araf (7:85). Not only that, it led to the revelation of a whole surah of the Holy Quran, "Those who give short measure" – Surah al-Tatfif: "Woe to those who give short measure, who demand of other people full measure for themselves, but when they give by measurement or weight to others, they give them less. Do such people not realise that they will be raised up on a fateful Day? The Day when mankind will stand before the Lord of the Universe." (Surah al-Tatfif, 83:1-6).

ii. If it is the first time that adulteration has been detected, and the weight of the foodstuffs produced or imported is between 90 and 100 tons, and the item is subject to a low level of adulteration, then the licences of those responsible should be suspended for two months.

iii. If more than 100 tons is produced or imported, and it is found to have a low level of adulteration, then the licence of those responsible should be suspended for a further one month for every 100 tons in which there is adulteration.

iv. If there is a repetition of the adulteration that has been mentioned in the second and third clauses of this article, then the licence of those responsible should be suspended for a further half of the period for which it was originally suspended.

2. If the item being produced and imported is found and proven to be subject to an intermediate level of adulteration *[manzanay takhalluf],* then the producer and importer are subject to punishments as listed below:

   i. If the foodstuff mentioned in this article as being produced and imported with an intermediate level of adulteration weighs between one and 100 tons, then the court should suspend the licence of the responsible individual for two months and jail the responsible person for this period;

   ii. If more than 100 tons of the foodstuff mentioned in this article is produced or imported, being subject to an intermediate level of adulteration, then the licence of the individual responsible should be suspended – along with his period of imprisonment – for a further one month for every 100 tons in which there is adulteration;

   iii. If there is a repetition of the adulteration that has been mentioned in the first and second clauses of this article, then the licence of those responsible should be suspended – and his imprisonment extended – for a further half of the original period.

3. If the item being produced and imported is found and proven to be subject to a severe level of adulteration *[shadid takhalluf],* then the producer and distributor are subject to punishments as listed below:

   i. If the foodstuff mentioned in this article as being produced and imported with a severe level of adulteration weighs between one and 100 tons, then the licence of the individual responsible should be suspended by a court for up to six months *[tar shpago miyashto]*, and the responsible person jailed for this period;

   ii. If more than 100 tons of the foodstuff mentioned in this article is produced or imported, being subject to a severe level of adulteration, then the licence of the individual responsible should be suspended – along with his period of imprisonment – for a further two months for every 100 tons in which there is adulteration;

iii. If there is a repetition of the adulteration that has been mentioned in the first and second clauses of this article, then the licence of those responsible should be suspended – and his imprisonment extended – for a further half of the original period.

Punishments for those who import oral medicine *[khuraki dawa'i]* or health-related products *[roghtiya'i mahsulat]* without permission or the proper licence

Article 90

1. If companies or individuals import, through official or unofficial, or smuggling channels, foodstuffs, medicine or health-related products, and this is detected and the contraband seized by the relevant authorities, then the items mentioned will be destroyed by order of a court of law and the responsible persons sentenced to one month's imprisonment.
2. If a traveller arrives in Afghanistan from abroad by land or air and – besides what he has for his own need with the prescription of a doctor – he is carrying medicine and health-related products for commercial purposes, then the items should be destroyed by a court order. Furthermore, he should give a written undertaking not to repeat such illegal activities.
3. If he deviates from the undertaking mentioned in the second clause of this article, then he will be sentenced to three months' imprisonment. If he repeats his offence, then his sentence will be twice as long as that handed to him in the previous instance.

Punishment for deviant import companies

Article 91

1. If a company *[shirkat]* responsible for the import of medicine and health-related products, starts to import – through official or unofficial channels – and introduce to the market, medicines and health-related products without due permission, then it will be liable to the punishments listed below:
    i. On the first occasion, the medicine and health-related products will be destroyed following a court order, and the licence of this centre [markaz] to deal in health-related products will be suspended for one month;[36]
    ii. On the second occasion, the medicine and health-related products will be destroyed following a court order, and the licence of this centre to deal in health-related products will be suspended for three months;

[36] The text uses both 'company' and 'centre' in this article.

iii. In the case of repetition, the offender will be handed a penalty twice the amount mentioned in the second part of the first clause of this article.[37]

2. If consignments reaching the Customs *[gumruk]* are found to contain medical supplies or health-related products without the necessary paperwork, then the goods concerned will be destroyed following a court order, and the offending individual will be imprisoned for one year.
3. If a company, responsible for importing medical supplies and health-related products, starts importing its medical supplies and health-related products and introducing them to the market, without having completed its registration with the Ministries of Public Health or Agriculture, Irrigation and Livestock, then the following punishments will be administered:
   i. On the first occasion, the offender will be admonished in no uncertain terms *[puh qahrjano alfazo]* and a written undertaking taken from him that such actions will not be repeated;
   ii. On the second occasion, the importing centre's activities will be suspended for one month;
   iii. In the event of repetition, then the imported items will be destroyed, following a court order.
4. If a company, responsible for importing foodstuffs, medical supplies and health-related products, releases the goods stocked in its warehouses, prior to the officials of the Ministries of Public Health or Agriculture coming to check the standard of the goods, or starts selling them, then the company will be liable to the following punishments:
   i. On the first occasion, the deviant company will collect the items it has sold from the market and destroy them, following a court order;
   ii. On the second occasion, the licence of the medical centre *[darmaliz markaz]* will be suspended for two months;
   iii. If there is repetition, the medical centre licence will be permanently revoked.
5. If a medical supplies importing company has not taken steps to import to Afghanistan those medicines that were recommended to them by the Public Health Ministry in the previous importing schedule, then it is liable to the following punishments:
   i. On the first occasion, its licence will be revoked for one month;
   ii. If there is repetition, it will be liable to twice the previous punishment;
6. If a medical supplies importing company has not imported at least 70 per cent of what was agreed, in its registration certificate with the Ministries of Public Health and Agriculture, in the stipulated time period, then it will be liable to the following punishments:

[37] Since the original punishment was for the centre's license to be suspended for one month, in the case of repetition, the suspension will be for two months.

i. On the first occasion, the company concerned will be denied permission to import that brand of medicine for one year;
ii. On the second occasion, the company concerned will be denied permission to import that brand of medicine for two years;
iii. On the third occasion, its permission to import that brand of medicine will be withdrawn.

7. If pharmaceutical and health product manufacturing plants, import companies, wholesale stores, and pharmacies pay doctors a percentage or other concessions for distributing imported pharmaceuticals and health products, they will be subject to criminal penalties under a court order:
   i. On the first occasion, the activities of manufacturing plants, importers, wholesale stores, and pharmacies should be suspended for one month;
   ii. On the second occasion, the activities of manufacturing plants, importers, wholesale stores, and pharmacies should be suspended for three months;
   iii. On the third occasion, the responsible person of manufacturing plants, importers, wholesale stores, and pharmacies will be handed a sentence of three months' imprisonment.
8. If a doctor takes a percentage or other concessions from pharmaceutical and health-product manufacturing plants, import companies, wholesale stores, and pharmacies, then, in compliance with a court order, he will be subject to the following penalties:
   i. On the first occasion, a written undertaking will be obtained from the doctor concerned that he will not do this again, in addition to which his clinic and health-related activities will be suspended for one month;
   ii. On the second occasion, his clinic and health-related activities will be suspended for three months, and the matter will be communicated to the Ministry of Public Health, for them to take necessary steps;
   iii. On the third occasion, he will be struck off the health register and permanently prevented from working on health-related matters.
9. If food and pharmaceutical facility licence holders use substandard transportation equipment to transport food and pharmaceutical products and store them in substandard storage facilities, then, under a court order, they will be handed the following penalties:
   i. On the first occasion, a written undertaking will be taken from them that they will not do this again;
   ii. On the second occasion, their activities will be suspended for one month;
   iii. If they do this again, the penalty previously imposed on them will be doubled.
10. If unlicensed individuals use substandard transportation equipment to transport food and pharmaceutical products and store them in substandard storage facilities, then under a court order, they will be handed the following penalties:

i. On the first occasion, the items will be destroyed;
ii. On the second occasion, along with destroying the items concerned, the offender will be handed a one-month imprisonment sentence;
iii. If there is repetition, the penalty previously handed to them will be doubled.

11. If a transport company, or an individual, transports food items, medicine and pharmaceutical products, for which the importer does not have the necessary commercial licence, added to which – in the case of food items – he does not possess a import certificate from the Ministry of Agriculture, Irrigation and Livestock, while for medicine and pharmaceutical products, he does not have the same certificate from the Ministry of Public Health, then this action on the part of the transport company will be considered to be smuggling *[qachaq]*. On the order of a judge, the offender will be punished in the following manner:
    i. On the first occasion, the items will be destroyed, and the vehicle used for this smuggling will be suspended from operation for one month;
    ii. On the second occasion, the items will be destroyed, and the vehicle used for the purpose of smuggling will be suspended from operation for two months; in addition, the culprit will be imprisoned for one month;
    iii. On the third occasion, the items will be destroyed, and the vehicle used for this smuggling will be suspended from operation for three months, added to which the culprit will be imprisoned for two months.
12. If airport or aircraft staff, for instance pilots, engineers or other staff, import food items, medicine or pharmaceutical products for commercial gain for a second time, then the relevant authorities should report them to a court of law and a judge should penalise offenders in the following manner:
    i. The items, medicine and pharmaceutical products involved should be destroyed;
    ii. If there is repetition, imprisonment for one year.
13. National and foreign institutions offering medical services may be penalised by a judge should any of the following situations occur:
    i. If food, medicine, and health products are not purchased from domestic manufacturing factories, import companies and wholesale stores in accordance with the principles of the Islamic Emirate;
    ii. If food items, medicine and pharmaceutical products are imported without having a licence from the Ministries of Public Health or Agriculture, Irrigation and Livestock;
    iii. If the institute does not share with the Ministry of Public Health a certificate of analysis and evaluation from the manufacturer with the number and load of each package of food, medicine, and health products – if their quantity and quality analysis and evaluation are not possible in Afghanistan;

iv. If products manufactured in domestic factories, and other essential food items, medicine and pharmaceutical products are not sourced from local markets;

v. In the event that essential food items, medicine and pharmaceutical products are not available in Afghanistan, they must be sourced from trusted foreign factories, namely ones that hold a World Health Organisation certificate;

vi. When importing food, medicine, and health products, two-thirds of the shelf life of the relevant items will not be taken into account;

vii. When importing food, medicine and health products, all the regulatory documents of the Ministries of Public Health and Agriculture are not adhered to;

viii. Once food items, medicine and health products have arrived, all original and customs documents are not presented to the Public Health Ministry;

ix. Failure to follow up regularly with relevant agencies on the completion of documentation stages;

x. Not keeping food items, medicine and health products in standard containers;

xi. Not making use of standard methods of transportation when delivering medicine and health products;

xii. If an offence is committed a second time, medicine and health products will, on the basis of a court order, be destroyed;

xiii. If an offence is repeated, the licence of the concerned agency will be cancelled.

14. If somebody, under the name of traditional medicine, brings medical items to Afghanistan for commercial purposes, without having a certificate allowing him to import medicines and health-related supplies, or brings medicines by official or unofficial channels for medication purposes, without having the prescription of a physician *[tabib]*, then this action will be considered to be smuggling. Relevant authorities should present anyone who engages in such activities to a court of law, where a judge should issue an order for the destruction of medicines bought for medical purposes. As for a person who has imported such medicines for commercial purposes, he will be punished in the following manner:

    i. The destruction of the medicine;

    ii. 39 lashes and two years' imprisonment for the perpetrator;

    iii. The licence of any vehicle involved in this smuggling suspended for three months.

15. A judge will punish in the following manner anyone who smuggles prohibited food items, medicine or pharmaceutical products:

i. The prohibited food items, medicine or pharmaceutical products concerned will be destroyed;

ii. Along with receiving 39 lashes, the persons concerned will also receive two years' imprisonment;

iii. The licence of the vehicle used for the smuggling will be suspended for two months.

16. In the case of incontrovertible evidence being unearthed against those who are accountable to Emirate departments, those who work for the Emirate, and those who are in some way connected to Emirate offices, and at the same time help smugglers or give them guidance, then they will be removed from their posts and subject to the same punishments as the smugglers.

Punitive measures for smuggling gangs

Article 92

1. If organised gangs are conducting the smuggling, then the gang leader will be sentenced to ten years' imprisonment.
2. If a smuggling gang, at the time of their arrest, offer armed resistance, but finally they have not wounded anyone, then they will be subject to the following punishments:
   i. Under a court order, the smuggled items will be destroyed;
   ii. Every gang member will be handed a ten-year jail term.

Punishments for perpetrators of fraud and falsification in matters related to standards and quality

Article 93

1. Those who perpetrate fraud and falsification in matters related to standards and quality will be punished by a judge in the following manner:
   i. If a person removes the license plate from a vehicle carrying goods of approved quality, attaches it to another vehicle and loads and transports goods of poor quality in it, then such a person will be handed a six-month jail term. In the event of a repeat offence, he will be jailed for nine months;
   ii. Someone who forges a document similar to an official document of the department responsible for standards and quality will be given a nine-month jail term. In case of repetition, the sentence will be thirteen-and-a-half months;
   iii. Someone who tampers with the official document of the department responsible for standards and quality will be sentenced to six months in jail. In the event of a repeat offence, he will serve a nine-month jail term;
   iv. Using the quality and standards mark fraudulently on their products and services without the official authorisation of the quality and standards

authority will make a person liable to six months' imprisonment, and in case of repetition, nine months;

v. If a quality certificate for an importer or manufacturer's products is used fraudulently in someone's products or services without an official licence from the agency, then the perpetrator will be liable to nine months imprisonment, and in the event of repetition, the jail term will be thirteen-and-a-half months;

vi. If a quality certification for products is used fraudulently in one's own business without an official licence from the Standards and Quality Authority, then a person is liable to six months' imprisonment and on repetition, the jail term will be nine months;

vii. Someone who tampers with the information label of the Standards and Quality Authority will be liable to a six-month jail term, which, on repetition, will be nine months;

viii. If someone tampers with the accreditation document of the standard and quality management system, which specifies a person's ability and competence in specific activities, he will be liable to four months' imprisonment, and in case of repetition, the prison term will be six months;

ix. If someone uses the envelopes issued by the Standards and Quality Authority to carry official documents for fraudulent purposes, he will be liable to two months' imprisonment and, in case of repetition, three months;

x. Anyone who uses the stamp of any department or source of the Standards and Quality Authority for fraudulent purposes will be liable to one year's imprisonment, and in case of repetition, to 18 months' imprisonment;

xi. If another employee uses the stamp of the Standards and Quality Authority without the authorised person's permission, that employee will be removed from his position and will have to serve six months' imprisonment;

xii. If anyone forges the signature of the Standards and Quality Authority's director general, deputy directors, technical directors or managers on documents related to the Standards and Quality Authority, then he will be sentenced to two years' imprisonment, and in the case of repetition, to 30 months' imprisonment;

xiii. Bribery of an employee of the Standards and Quality Authority, for the purpose of accomplishing some wrongful task, will be punished by 12 months' imprisonment. If there is repetition, the term served will be 18 months;

xiv. Any employee of the Standards and Quality Authority who accepts a bribe will be punished with a 12-month prison sentence and removed from his position.

xv. Any employee of the Standards and Quality Authority who acts as a go-between between the briber and the bribed will be sentenced to 18 months' imprisonment, and, if there is repetition, to 24 months;

xvi. If anyone, pretending to be a spokesman, liaison person or representative of the Standards and Quality Authority, establishes contact with companies or individuals, then he will be sentenced to three months' imprisonment, and if there is repetition, to four-and-a-half months;

xvii. Anyone who makes fake Internet sites, web pages, email addresses and identity cards, purporting to belong to the Standards and Quality Authority, will be sentenced to two years' imprisonment, while those who make use of these will be sentenced to one year. If there is repetition, each will serve an additional half, on top of their original sentence;

xviii. If a person exchanges some good quality item for an item of bad quality, then gives it to a customer, or to the owner of an item of good quality, along with a quality certificate obtained from the Standards and Quality Authority, then the person concerned will be sentenced to one year's imprisonment, and if there is repetition to 18 months' imprisonment.

2. If a shopkeeper, individual, company or printing press makes forgeries of items associated with the Standards and Quality Authority, they will be subject to the following punishments.

   i. A person who forges the Standards and Quality Authority mark or logo will be sentenced to 12 months' imprisonment and if there is repetition to 18 months;

   ii. A person forging a certificate of the Authority will be sentenced to 18 months' imprisonment and if there is repetition to 27 months;

   iii. A person forging a registration certificate of the Authority will be sentenced to 12 months' imprisonment and if there is a repetition to 18 months;

   iv. A person forging a label of the Authority will be sentenced to 12 months' imprisonment and if there is repetition to 18 months;

   v. A person forging a reliability certificate of the Authority will be sentenced to 8 months' imprisonment and if there is repetition to 12 months;

   vi. A person forging envelopes used for sending official letters of the Authority will be sentenced to 4 months' imprisonment and if there is repetition to 6 months;

   vii. A person forging stamps of any department or source of the Authority will be sentenced to two years' imprisonment and if there is repetition to 36 months.

CHAPTER THREE

PUNISHMENTS FOR THOSE WHO GROW, TRADE OR TRANSPORT NARCOTICS

This chapter has five sections as follows:

First section: Punishments related to opium and cannabis.

Second section: Bringing opium, hashish and other narcotics to Afghanistan.

Third section: Punishments for using and selling narcotics.

Fourth section: Injunctions with regard to various narcotics.

Fifth section: Various injunctions with regard to narcotics.

FIRST SECTION

Punishments related to opium and cannabis

Punishments for growing opium and cannabis

Article 94

1. Anyone who grows opium or cannabis, along with his crop being destroyed, should be punished by a judge according to the amount grown, in the following manner:[38]
    i. If the area of cultivation was less than half a jerib, six months imprisonment;[39]
    ii. If the area of cultivation was half a jerib, nine months imprisonment;

[38] A footnote related to article 94 goes to confirm what I wrote in my own footnote 12 above. The footnote in the Penal Code (footnote 1, p 47), reads: "…. what is permissible in itself may become forbidden by the ruler's decree on the grounds that Allah commanded obedience to the ruler…." The inference is that growing opium and cannabis is in itself permissible; it is only prohibited since the leader – in this case the leader of the IEA – says it is. The writers of this Code could have argued that there is a consensus – *ijma* – of Islamic scholars and jurists on this matter, deriving from the Quran (Surah al-Maida, 5:90) expressly forbidding wine [khamr]: the literal meaning of the word *khamr* – used for wine – is to cover or hide, which is why jurists, from the earliest times, have taken it to apply to anything that covers – or better say smothers – the intellect.

[39] Half a jerib is a pretty small amount of land – about a quarter of an acre, or 0.1 hectare.

iii. If the area of cultivation was more than half a jerib, one year imprisonment;

iv. If the area of cultivation was more than one jerib, six months imprisonment for every extra jerib, and ten days for each additional half jerib, the maximum jail term which he is to serve is seven years.

2. It makes no difference if the person cultivating the opium or hashish is the owner of the land, a tenant, farmer, labourer, or someone who has a share of the land, all are subject to the orders mentioned in the first clause of this article and will be handed jail terms in accordance with the grades mentioned.

Punishments for those who transport opium and hashish within Afghanistan

Article 95

1. A judge will punish anyone who transports opium or hashish within Afghanistan according to the amount of opium or hashish he is carrying:
   i. If the hashish or opium that is found is less than one kilogram, one year's jail;
   ii. If the hashish or opium that is found is one kilogram, or anything between one and five kilograms, two years' jail;
   iii. If the hashish or opium that is found is between five and 30 kilograms, three years' jail;
   iv. If the hashish or opium that is found is more than 30 kilograms, one year's jail for every additional 20 kilograms, with the maximum term to be served being seven years.
2. It makes no difference if the person carrying the opium or hashish is the owner, a partner, or someone being paid to do this, all are subject to the orders mentioned in the first clause of this article and will be handed jail terms in accordance with the grades mentioned.

Alteration in the hashish and opium after it has been seized

Article 96

If there is an alteration in the hashish and opium after it is seized, or its weight diminishes – someone makes it less or alters it in some way – then the accused persons mentioned will be presented before a court of law and given the following sentences:[40]

1. If the seized hashish and opium have undergone alteration, or diminished by less than one kilogram, one year's jail term.
2. If the seized hashish and opium have undergone alteration, or diminished by between one and five kilograms, two years' jail term.

[40] I am at a loss to understand, and I expect readers may be also, how the people who are carrying the drug can be held responsible for its diminishment *after* it has been seized. Nor do I understand how this diminishment could take place, other than by the persons who have seized it themselves taking some amount away from the narcotics they have seized.

3. If the seized hashish and opium have undergone alteration, or diminished by between five and 30 kilograms, three years' jail term.
4. If the seized hashish and opium have undergone alteration, or diminished by more than 30 kilograms, one year's jail term will be added for every kilogram, with the maximum term to be served being seven years.

Punishments for those transporting opiates *[da taryako tsakha jor beest mawad]* within Afghanistan

Article 97

If someone transports opiates from one place to another within Afghanistan, then he will be punished according to the amount seized:

1. If the opiates found are one kilogram, or less than one kilogram, the transporter will be sentenced to one year's jail term.
2. If the opiates found are between one and five kilograms, the transporter will be sentenced to three years' imprisonment.
3. If the opiates found are between five and ten kilograms, the transporter will be sentenced to four years' jail term.
4. If the amount of opiates found is more than ten kilograms, then the jail term given to the transporter will be increased by one year for every two kilograms, the maximum jail term to be served being seven years.

Alteration in the seized opiates after they have been seized

Article 98

If there is an alteration in the opiates after they are seized, or their weight diminishes – someone makes them less or alters them in some way – then those accused of the diminishment will be presented before a court of law and given the following sentences:

1. If the seized opiates have undergone alteration, or have been diminished by less than one kilogram, then the offender will be given a two-year jail term.
2. If the seized opiates have undergone alteration, or have been diminished by between one and five kilograms, two years' jail term.
3. If the seized opiates have undergone alteration, or been diminished by between five and ten kilograms, then the offender will be sentenced to three years in jail.

If the seized opiates have undergone alteration, or have been diminished by more than ten kilograms, one year's jail term will be added for every additional kilogram, with the maximum term to be served being seven years.

SECOND SECTION

Bringing opium, hashish and other narcotics to Afghanistan

Punishments for those bringing opium and hashish from abroad to Afghanistan

Article 99

If anyone brings hashish or opium from abroad to Afghanistan, then he will be liable to the following punishments, according to the amount of the hashish or opium he has brought:

1. If the amount of hashish or opium transported weighs less than one kilogram, then the carrier will be given a one-year jail term.
2. If the amount of hashish or opium transported weighs between one and five kilograms, then the carrier will be given a two-year jail term.
3. If the amount of hashish or opium transported weighs between five and 30 kilograms, then the carrier will be given a three-year jail term.
4. If the amount of hashish or opium transported weighs more than 30 kilograms, then one year will be added to his jail term for every ten kilograms he has transported, the maximum jail term he is to receive being seven years.

Punishments for those who bring other drugs besides hashish and opium to Afghanistan

Article 100

Anyone who brings narcotics – for instance, Tramadol, Zeegab, tablet K, heroin, liquor, *shisha*[41] and other such drugs – that have no legitimacy whatsoever, to Afghanistan, will be punished as follows, according to the weight of the substances transported:

1. Of the three types of tablets mentioned, anyone who brings from one to ten tablets from abroad will be given a six-month jail term.
2. If anyone brings more than ten tablets, then for every ten tablets, six months will be added to his jail term, with a maximum jail term of seven years.

[41] Tablet K is a cocktail of methamphetamine, opium and MDMA/Ecstasy. Shisha is methamphetamine, also known as crystal meth. Tramadol is a strong opiate painkiller and Zeegab, a brand name for tablets containing Pregabalin, a drug used to treat epilepsy, anxiety and nerve pain, for example from diabetes, shingles, or after an injury. Both are prescription drugs and both can be addictive. See the UK National Health Service website for more information on Tramadol and Pregabalin, and this BBC report on deaths linked to the use of Pregabalin by heroin users in Britain.

THIRD SECTION

Punishments for using and selling narcotics

Punishments for someone who sells narcotics *[saqi]*

Article 101

Anyone who sells narcotics (any type of heroin, opium, hashish, methamphetamine, liquor, tablet K, Tramadol 250 grams, Zeegab) will receive the following prison sentences, according to the weight of the items concerned:

1. If up to five grams of the substance is found with him, one year's imprisonment.
2. If between five and thirty grams of the substance is found with him, two years' imprisonment.
3. If from thirty to one hundred grams of the substance is found with him, two-and-a-half years' imprisonment.
4. If more than 100 grams of the substance is found with him, then he will receive an additional six months' imprisonment for every 100 grams, the maximum term that he is to serve being seven years.

Punishments for those using narcotics

Article 102

Taking into account the condition of the drug user or addict *[mu'tad],* a judge should sentence him to six months' imprisonment.

FOURTH SECTION

Injunctions with regard to various narcotics

Punishments with regard to F [Ephedrine][42]

Article 103

Transporters, sellers and dealers will be handed punishments in accordance with the amount of the drug involved:

1. If a person is arrested with more than ten kilograms of F in his possession, he will be sentenced to six months' imprisonment.
2. If a person is arrested with more than ten kilograms and up to 50 kilograms of F in his possession, he will be sentenced to one year's imprisonment.

[42] Ephedrine is a crystalline alkaloid drug obtained, among other sources, from some plants in the ephedra family (see FN45), and can be further processed into methamphetamine.

3. If a person is arrested with more than 50 kilograms of F in his possession, he will be handed an additional jail term of six months for every 50 grams, with a maximum jail term of seven years.

Punishments with regard to a methamphetamine *[shisha]* factory

Article 104

1. The owner of a methamphetamine factory – and its workers – will be given one-year jail sentences and the factory will be destroyed.
2. Anyone who deals, sells, stores or transports methamphetamine will be handed punishments in accordance with the following scale:
    i. If someone is found with less than one kilogram of methamphetamine, he will be handed a one-year jail term;
    ii. If someone is found with between one and five kilograms of methamphetamine, he will be handed a one-and-a-half-year jail term;
    iii. If someone is found with between five and ten kilograms of methamphetamine, he will be handed a two-year jail term;
    iv. If someone is found with more than ten kilograms of methamphetamine, then he will be handed an extra six months for every kilogram, with the maximum jail term he is to serve being seven years.

Punishments with regard to alcohol

Article 105

1. Those who produce, sell, deal and transport liquor, or drink it, if there is no fixed punishment in his case, will be given a two-year jail term and receive 39 lashes.
2. Under the circumstances mentioned in clause one of this article, the liquor seized will be destroyed, and the vehicle used for the transport of the liquor will be burnt.

Punishments with regard to ephedra *[oman]*[43]

Article 106

Anyone who cuts, deals, sells or brings in ephedra, as well as those who work in ephedrine factories, will be subject to the following punishments:

1. Anyone who cuts [harvests] ephedra plants will be required to burn the plants and given a ten-day jail term.
2. Anyone who transports ephedra will be handed a three-month jail term.

[43] Oman is the Pashto word for a bush native to Afghanistan from the ephedra family, which can be used to make ephedrine and then methamphetamine. For more on this, see Jelena Bjelica and Fabrizio Foschini, Taleban Bans on Drugs: What is the Emirate's counter-narcotics agenda?, 15 June 2023.

3. The owner and workers of an ephedrine factory will be handed six-month jail terms and the factory destroyed. If the factory is inside someone's home, then the village imam and elder should accompany the responsible mujahedin to the house concerned, where they should lay waste to the factory.

Punishments regarding precursors used in narcotics

Article 107

Every type of acid which is used to manufacture narcotics, or is mixed with narcotics, and is seized without the owner having any authorisation, then the person transporting this acid will receive punishment according to the amount of the acid that he has in his possession:

1. If he has between one litre and ten litres in his possession, he should be handed a sentence of three months' imprisonment.
2. If he has more than ten litres, up to 50 litres in his possession, he should be handed a sentence of six months' imprisonment.
3. If he has in his possession more than 50 litres, then he will be given an extra three months' jail term for every additional ten litres, with a maximum sentence of three years.

Punishments regarding substances which are mixed with opium

Article 108

1. Anyone who makes available, sells or deals in substances that are mixed with opium will be punished in accordance with the amount of the substances that have been seized:
    i. If less than ten kilograms are seized, three months' imprisonment;
    ii. If between ten and 50 kilograms are seized, six months' imprisonment;
    iii. If more than 50 kilograms are seized, then for every ten kilograms over that amount, three months' imprisonment will be added, with a maximum term of three years.

FIFTH SECTION

Various injunctions with regard to narcotics

The finality of the primary court's decision

Article 109

In cases concerning narcotic substances, the decision of the primary court is final.

Punishment for the real owner of the narcotics

Article 110

The original owner of narcotics will receive the same punishment as the carrier, even if he is not involved in the transportation.

Destruction of narcotics

Article 111

The destruction of any narcotic substance that one is not allowed to produce, import, buy, sell, transport, or use should take place in the presence of a delegation of the concerned authorities.

Narcotics that are rarely imported into Afghanistan

Article 112

Besides those narcotics that have been mentioned, some narcotic substances are imported to Afghanistan only in very small amounts. If any such substance is found with a person, and a judge is not sure about the level of the substance, then if it was in the form of a tablet, it will be classified along with tablet K, and if it was a solid substance, then it will be classified along with hashish. If the substance was a liquid, then it should be classified as an acid. Once the judge has found out the level of the narcotic concerned, then he will hand out a punishment commensurate with the related substance, which is on the same level.

Punishment for someone associated with the Islamic Emirate, on account of some narcotic substance

Article 113

1. If someone associated with the Islamic Emirate has cultivated cannabis or opium, or some other narcotic substance, and it is found in his possession, then he will be punished in accordance with the punishments mentioned in this Code. Any weaponry or official equipment that is in his possession will be taken from him and handed over to the Department of Verification, Registration and Monitoring *[da tasbeet, sabt wa muraqibat riyasat].*
2. If the individual mentioned in the first clause of this article is arrested again, for the same offence, then he will be expelled from the ranks of the Islamic Emirate.

Injunction related to any narcotic substance for which a person has an exemption certificate

Article 114

In the case of any narcotic substance for which one is able to be granted an exemption certificate, then anybody who is in possession of such a certificate will be considered exempt from all the penalties mentioned in this Code.

Punishment for transporting drugs abroad, from Afghanistan

Article 115

It is an offence to take abroad any narcotic substance which one would not be allowed to bring to Afghanistan. An offender will be given the same punishment as someone who brings it to Afghanistan would face

Punishment for someone who repeats an offence

Article 116

Someone who repeats any narcotics-related offence will receive twice the punishment he received for the first offence. Furthermore, the means by which he transported the drugs will be burned.

Compiling plans of action

Article 117

The Supreme Court is entitled to prepare plans of action for the best implementation of this Code.

Approval or annulment

Article 118

1. The injunctions in this Code, following them going through all the legal stages, are presented to the exalted Commander of the Faithful, may Allah protect him, for approval, if he wishes to amend or annul them.
2. The amendment or annulment of the injunctions in this Code can only be done with the approval of the exalted Commander of the Faithful, may Almighty Allah protect him.

Implementation

Article 119

This Code is to be enacted from the date of its approval, and published in the official journal, and all Codes that the exalted Commander of the Faithful, Sheikh al-Quran and Hadith Mawlawi Hibatullah Akhundzada, may Allah protect him, has not ratified, sanctioned or approved, are hereby annulled.

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