

Decree of the president of Islamic Republic of Afghanistan concerning the enforcement of the Law on Combating Abduction and Human Trafficking

No. (52)

Date: July 14, 2008 (24/04/1387)

Article One

Based on the provision of Article (79) of the Constitution, I promulgate the Law on Combating Abduction and Human Trafficking which is ratified in the Council of Ministers in (4) Chapters and (26) Articles in the approval number (18) dated July 7, 2008 (17/04/1387).

Article Two

The Ministers of Justice and Parliament Affairs are assigned to pass this decree to the lower house of the Parliament within 30 days of its first session.

Article Three

This Decree shall be enforced from the date of promulgation and shall be published together with the law in the Official Gazette.

Hamid Karzai

President of the

Islamic Republic of Afghanistan

¹ Also referred to as the Counter Abduction and Human Trafficking Law. The title of this Law in Dari is «قانون مبارزه علیه اختطاف و قاچاق انسان».

LAW ON THE CAMPAIGN AGAINST ABDUCTION AND HUMAN TRAFFICKING

Chapter 1: General Provisions

Basis

Article 1:

This Law is enacted for the purpose of combating abduction and human trafficking crimes.

Goals

Article 2:

The goals of this Law are as follows:

- 1– Preventing commission of crimes of abduction and trafficking in persons.
- 2– Supporting victims of crimes of abduction and trafficking in persons (especially women and children).
- 3– Ensuring mutual international cooperation in combating crimes of abduction and trafficking in persons.
- 4– Preserving the United Nations protocols on human trafficking crimes.
- 5– Punishments for perpetrators of crimes of abduction and trafficking in persons.

Definitions

Article 3:

The following terms in this Law shall have the following meanings:

- 1– *Abduction*: Taking away of a person by using force, trick or deceit, or taking advantage of physical or mental disabilities of abducted, or exchanging a new born baby with another one or keeping away a child from their parents or legal guardian or leaving a child in a not residential place whether for the purpose of exploitation or harming.
- 2– *Trafficking in Persons*: Is transferring, transiting, employment, keeping of a person for the purpose of exploitation by taking advantage of poor economic and desperate condition of the victim through paying and receiving money, interest or using other deceiving means in order to obtain the consent of the victim or his/her guardian.
- 3– *Exploitation*: Getting advantage of the victim of crimes of abduction and trafficking in persons through employment, selling, engaging in sexual, criminal activities, provision of pictures and movies that are prejudicial to public morality (pornography), armed conflicts, forced labor or removal his/her organ or body tissues or conducting medical and health examinations and forcing him/her into other illegal activities.
- 4– *Abductor and Human Trafficker*: This is a natural or legal person who abducts or traffics human being independently or in a group, or who persuades, encourages trafficking in persons or provides means and equipments for the commission of such an act.
- 5– *Criminal Group*: Is a group of three or more than three people that jointly decide to commit one or more of the crimes listed in this Law.
- 6– *Victim*: Is a natural person who is abducted or trafficked for the purposes mentioned in paragraphs (1) and (2) of this article.

High Commission for Combating Crimes of Abduction and Trafficking in Persons

Article 4:

In order to combat against crimes of abduction and trafficking in persons and ensure coordination among related authorities, the High Commission for Combating Crimes of Abduction and Trafficking in persons shall be established under the supervision of the Minister of Justice as follows:

- 1– Representative of the Attorney General Office.
- 2– Representative of the Ministry of Interior Affairs.
- 3– Representative of the Ministry of Foreign Affairs.
- 4– Representative of the Ministry of Work, Social Affairs, Martyred and Disabled.
- 5– Representative of the Ministry of Education.
- 6– Representative of the Ministry of Culture and Information.
- 7– Representative of the Ministry of Hajj and *Awqaf*.
- 8– Representative of the Ministry of Public Health.
- 9– Representative of the Ministry of Women’s Affairs.
- 10– Representative of the Ministry of Refugees.
- 11– Representative of the Directorate of National Security.
- 12– Representative of the Kabul Municipality.
- 13– Representative of Afghanistan Independent Human Rights Commission.
- 14– Two representatives of Civil Society selected by the Minister of Justice.

Duties and Authorities of the Commission

Article 5:

- (1) The High Commission for Combating Crimes of Abduction and Trafficking in persons shall have the following duties and authorities.
 - 1– Studying and evaluating factors for commission of crimes of abduction and trafficking in persons at country level.
 - 2– Planning and implementing programs, including campaigning and public awareness in order to prevent commission of abduction and human trafficking crimes.
 - 3– Ensuring coordination of activities of the organs and related authorities in combating Abduction and Human Trafficking crimes.
 - 4– Collecting the statistic of crimes of abduction and trafficking in persons and publishing it.
 - 5– Proposing amendments to the provisions of the related law.
 - 6– Preparing annual report on crimes of abduction and trafficking in persons and presenting it to the Government.
 - 7– Performance of other activities assigned by Government.
- (2) The operating procedure of the commission shall be regulated by a regulation which is approved by the commission.

Chapter 2:
Punishments for the Crime of Abduction

Abduction

Article 6:

- (1) Any person who abducts another person by threatening, using of force or any other type intimidation or by using of intoxicating substances, he/she shall be sentenced to long imprisonment of not less than 12 years.
- (2) Any person who abducts another person by using of trick and deceit, he/she shall be sentenced to long imprisonment of not less than 10 years.
- (3) Any person who abducts another person by using his/her psychological and physical disability, he/she shall be sentenced to long imprisonment not less than 10 years.
- (4) Any person who abducts another person by using ways and methods listed in paragraphs (1), (2), [or] (3) of this article, and asks or receives advantage or property for his/her release, shall be sentenced to maximum of long imprisonment.
- (5) Any person who **leave** a child in a not residential place, he/she shall be sentenced to mid-term imprisonment.
- (6) Any person who exchange a new born baby with another new born baby in any ways, he/she shall be sentenced to long imprisonment not less than 8 years.
- (7) Any person who take away or hide a child from his/her legal **guardian** or falsely relate him/her to a person other than their mother, in accordance with circumstances he/she shall sentenced to long imprisonment not more than 10 years.

Aggravating Circumstances of Abduction Crime

Article 7:

- (1) If the victim of abduction is a child or a female or the crime is committed by the servant of the victim or by a person that the victim is under his/her guardianship or authority, the perpetrator shall be sentenced to maximum imprisonment anticipated.
- (2) If the victim of abduction is exploited through employment to sexual activities and provision of pictures and movies prejudicial to public morality (pornography), the perpetrator shall be sentenced to continued imprisonment.
- (3) If the victim of abduction is exploited through employment to armed conflicts, forced labor, medical examinations and other illegal activities, the perpetrator shall be sentenced to continued imprisonment.
- (4) If adultery or pederasty has taken place against victim in circumstances listed in paragraphs (1), (2), and (3) of this article, the perpetrator in addition to punishment prescribed for abduction crime shall be also convicted to the punishment of adultery or pederasty.
- (5) The provision of article 145 and other judicial mitigation circumstances stated in the Penal Code shall not be applied to circumstances listed in paragraphs (1), (2), (3), and (4) of this article.

Human Trafficking

Article 8:

- (1) Any person who commits human trafficking offence, in accordance with circumstances shall be sentenced to long imprisonment not more than 8 years.
- (2) If the victim is a child or a female, the perpetrator shall be sentenced to long imprisonment not less than 12 years.
- (3) If adultery or pederasty is taken place against victim, the perpetrator in addition to punishment prescribed for the human trafficking crime shall be also convicted to the punishment of adultery or pederasty crime.

Cutting Organ or Disability of Victim

Article 9:

If the crime of abduction or human trafficking causes disability of lost of any organs of the victim, the perpetrator shall be convicted to the punishment of intentional laceration and if causes death the perpetrator shall be convicted to intentional murder.

Punishment for Person Who Cuts and Removes Body Organs or Tissues

Article 10:

- (1) Any person who cuts and remove organ and tissues of the body of the victim of this Law but does not cause his/her death, in accordance with circumstances he/she shall be sentenced to long imprisonment.
- (2) If the action stated in paragraph (1) of this Law causes death of the victim, the perpetrator in accordance with circumstances shall sentenced to continued imprisonment or execution.

Punishment for Legal Person

Article 11:

If the crime of human trafficking and abduction is committed by a legal person, in accordance with circumstances in addition to the punishment for offender and accomplices, the legal person shall be punished to a fine of 2,000,000 Afghanis and its license shall be revoked.

Punishment for Criminal Group

Article 12:

If the crime of human trafficking and abduction is committed by a criminal group, the perpetrator or perpetrators shall be sentenced to the maximum punishment anticipated for committed crimes.

Punishment for the Organizer of the Crime

Article 13:

Any person, who leads, organizes and manages a criminal group for commission of human trafficking and abduction crime, he/she shall be considered as an accomplice to the offence and shall be sentenced to the punishment prescribed for perpetrator.

Punishment for the Person Who Supports the Offender

Article 14:

- (1) Any person who support the suspect and accused of abduction and human trafficking during discovery, investigation and trial in any way or conceal, falsify the truth or destroy the evidence and documents of crime, in accordance with the circumstances he/she shall be sentenced the one third of the punishment prescribed for the offender.
- (2) If the person stated in paragraph (1) of this article is an official of public services, in addition to the prescribed punishment he/she shall be permanently discharge from his/her duty.

Punishment of Negligence

Article 15:

Any person who based on the related duty norms, is obliged to obey special rules and regulation but he/she neglects to perform his/her duty and this facilitates the commission of the abduction and human trafficking crime, the perpetrator in accordance with the circumstances shall be sentenced to mid term imprisonment.

Exemption and Mitigation of Criminal Responsibly

Article 16:

- (1) If a person has connection or cooperation in any ways with the perpetrators of crimes mentioned in this Law, but assist the authorities in disclosing and arresting the perpetrators before committing the crime, shall be exempted from the criminal responsibility.

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- (2) If the assistance stated in paragraph (1) of this article take place after commission of the crime and cause the arrest of other members of criminal group, the court shall decide mitigation of prescribed punishment.

Chapter 3:
Support of Victim

Prohibition of Prosecution

Article 17:

The victim of abduction and human trafficking shall not be prosecuted.

Custody

Article 18:

- (1) If the victim is child, he/she shall be returned to their parents or legal guardian. In case their families or legal guardian are not available, the victim shall be kept in the special social services organization.
- (2) If the victim is female, she shall be returned to her legal intimate. In case her legal intimates are not available or refuse to keep her, the victim shall be kept in the special social services organization.

Providing Health Services to Victim

Article 19:

The authorities of discovery and investigation are obliged to carry the victim to the health centers as soon as possible for treatment.

Application for Compensation

Article 20:

- (1) The victim or his/her legal representative has the right to submit an application to the judicial authorities for compensation of damage brought to him/her.
- (2) If the victim is citizen of Afghanistan and is transferred to a foreign country, they are eligible for support and has the right to submit an application to the diplomatic or consulate representative of the country abroad, the diplomatic or consulate representative of the country is duty-bound to make all efforts for Judicial prosecution of the suspect and the compensation of the victim through the Ministry of foreign affairs of the related country or its diplomatic representative.

Taking Measures for Returning the Victim

Article 21:

- (1) Ministries of Interior Affairs, Foreign Affairs, Pubic Health, Labor and Social Affairs, Martyrs and Disabled, Women Affairs, and other related organizations shall support the victim and take the necessary measures in order to reintegrate the victim to his/her families or other safe places.
- (2) If the victim is a citizen of a foreign country, he/she shall be handed over to his/her country diplomatic representative. In case of his/her discontentment, based on law provision he/she shall be given the temporary resident permit for six months. It can be renewed if it requires.
- (3) Afghan diplomatic representatives in foreign countries are duty-bound to provide necessary facilities for returning the victims who are citizens of Afghanistan.

Chapter 4:
Final Provisions

Confiscation

Article 22:

- (1) Fund and properties that are obtained through the commission of abduction and human trafficking crime or used in its commission or is provided to be used in commission of crime, shall be confiscated.
- (2) If the fund and properties that its order of confiscation is issued can not be obtained, the court shall order the confiscation of the equivalent fund and properties.
- (3) Fund and Properties that are obtained as the result of the proceeding to abduction and human trafficking crimes, after compensation of the victim the fund and properties shall be transferred to the income account of the State in a bank.

Enforcement

Article 23:

This Law shall enter into force after it's published in the National Gazette and with its enforcement the articles 356 and 418 through 424 of the Penal Code published in Official Gazette No. 347 of the year 1355, Legislative Decree No. 47 dated 1383/04/13 of the President of Islamic Transitional Government of Afghanistan about Intensification of the Campaign Against Abduction and Child Trafficking Crimes and other contrary provisions shall be nullified.