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Islamic Emirate of Afghanistan

Ministry of Justice

Official Gazette

- Decrees of

His Excellency Amir-al Momenin, May Allah protect him

- Regulation on Prevention of Usurpation and Restitution of Usurped Lands

Date of Publishing: Nov. 4, 2022 (10/4/1444 & 14/8/1401)

Serial No. (1424)

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The following legislative documents have been published in this issue:

1. Decree of His Excellency the *Amir-al Momenin*, May Allah protect him, on Prevention of Usurpation of Lands and Restitution of Usurped Lands.
2. Regulation on Prevention of Usurpation of Lands and Restitution of Usurped Lands
3. Decree of His Excellency the Amir-al Momenin, May Allah protect him, on Granting 150 Jerib of Land to the of the Refugees dwelling in Muhajir Qeshlaq of Khawaja Baha ud Din District in Takhar Province.
4. Decree of His Excellency the Amir-al Momenin, May Allah protect him, on how Processing of Legislative Documents shall be done.
5. Decree of His Excellency the Amir-al Momenin, May Allah protect him, on Criminal Decisions, Rulings and Legal Prosecutions about Mujahideen by the Courts, Prosecution Offices and
6. Detective or Investigation Institutions of the former Regime

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Decree

of His Excellency Amir-al Momenin, May Allah protect him,

on Enforcement of Regulation on

Prevention of Usurpation of Lands

and Restitution of Usurped Lands

No.: (3)

Date: 7/3/1444 L.C [coinciding with 11/7/1401 S.C & October 3, 2022 A.D.]

Article 1:

I hereby endorse Regulation on Prevention of Usurpation of Lands and Restitution of Usurped Lands consisting of (4) Chapters and (21) articles.

Article 2:

This Decree shall enter into force from the date of endorsement and shall be published in Official Gazette together with the text of the mentioned Regulation.

Peace be onto you

Amir-al Momenin Sheikh ul Quran wal Hadith

Maulavi Hibatullah Akhundzada

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Regulation on Prevention of Usurpation of Lands and

Restitution of Usurped Lands

Chapter 01

General Provisions

Article 1: Basis:

This Regulation has been enacted in accordance with Section 11 of the Resolution no. (28), dated 18/8/1443 {coinciding with March 21, 2022}, of the Cabinet chaired by H.E. *Amir-al Momenin Maulavi* Hibbatullah Akhundzada.

Article 2: Objectives:

The objectives of this Regulation shall be:

- 1- Restitution of the Emirate (State), public grazing (derelict) and endowed lands.
- 2- Prevention of usurpation of the Emirate (State), public grazing (derelict) and endowed lands.

Article 3: Terms:

The terms used below in this Regulation are listed with their meaning they stand for:

- 1- **Usurpation of Lands:** which is the ownership and possession of lands without permission from the owner or the authorized individual.
- 2- **Emirate (State) Lands:** Below lands are defined as the Emirate (State) Lands:
 - Virgin Land: It is the land not owned by any individual, nor in respect of which any individual has any special right associated to it and is at present unprofitable.
 - Public Land: It is the land not owned by any individual, (it is heirless) nor in respect of which any individual has any special right associated to it and is at present unprofitable.
 - The permissible land in respect of which order of the King (Sultan) or Amir in respect of their possession of any kind (revival, sale, lease, possession and building installations) is not legally prohibited.
 - The land which is registered in the Principal Book of the Emirate (State) lands and/or established as the Emirate (State) land as a result of survey and settlement process.
 - The land and properties registered as the Emirate (State) lands and properties in the records and Principal Book of lands of the Emirate (State).
 - The land deemed as public property but not registered in the Principal Book of lands of the Emirate (State).

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- The land in respect of which an individual is in possession but cannot legally establish his/her ownership.
- 3- **Public grazing (derelict) land:** It is that virgin land whose revival, based on expropriation, has been prohibited by the Amir and remains at its permitted state and where all citizens of the country are entitled the right to graze their livestock.
- 4- **Endowed Land:** It is a land which, itself or its revenue, is dedicated by its owner for utilization for public or private welfare matters.
- 5- **Principal Book for Registration of the Emirate (State) Lands:** It is the Book where the Emirate (State) lands are registered with their quantitative and qualitative descriptions.
- 6- **Principal Book for Registration of the Virgin Lands:** It is the Book where virgin lands are registered with their quantitative and qualities descriptions.
- 7- **Principal Book for Registration of the Public Lands:** It is the Book where public lands are registered with their quantitative and qualities descriptions.
- 8- **Principal Book for Registration of the Public grazing (derelict) lands:** It is the Book where Public grazing (derelict) lands are registered with their quantitative and qualities specifications.
- 9- **Principal Book for Registration of the Endowed Lands:** It is the Book where endowed lands are registered with their quantitative and qualities descriptions.
- 10- **Illegal possessor:** It is the person who is practically in possession of the usurped land transferred to him from usurper or any other illegal possessor.
- 11- **Identification of Land:** It is confirmation and identification of property an individual, Emirate (State), public grazing (derelict) land and endowed land based upon the legal documentations and justifications regarding ownership of land.

Article 4: Executing and Cooperating Authorities:

- (1) The Ministry of Justice, Ministry of Agriculture, Irrigation and Livestock, the Ministry of Urban Development and the Ministry of Labor and Social Affairs and the Attorney General's Office shall constitute the authorities to execute this regulation.
- (2) The Ministry of Finance, the Ministry of Interior and the Ministry of Pilgrimage and Endowments (*Hajj and Awqaf*), relevant municipalities and other institutions shall be obligated to cooperate with the authorities stated in paragraph (1) of this article in executing this regulation.

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Identification and Confirmation: Article 5:

- (1) Identification and confirmation of the Emirate (State), public grazing (derelict) and endowed usurped lands in the center and provinces shall be conducted through technical boards.
- (2) Composition, duties and authorities of the boards mentioned in the paragraph (1) of this article shall be regulated in the bylaws.

Chapter 02

Addressing Usurped Lands

Article 6: Matters to be Addressed:

Authorities, mentioned in paragraph (1) of article 4 of this regulation, shall address the lands usurped by people while keeping in account the following points in respect of the lands:

- 1- Registered as Emirate (State), public grazing (derelict) and endowed lands.
- 2- Registered as Emirate (State), public grazing (derelict) and endowed lands as a result of settlement process.
- 3- Confirmed based on the ultimate ruling of the court as the Emirate (State), public grazing (derelict) and endowed lands.
- 4- Not registered in the names of real or legal persons in the associated Principal Books.
- 5- Registered in the Emirate (State) Principal Books under titles of ownerless, unknown owner and virgin or known by the mentioned titles in the traditions of the locality.
- 6- Greater in area than the area mentioned in the settlement document and the documentation is issued in the name of the individual after the year 1357 (1979), though registered in the name of individuals in the Cadastral offices.
- 7- Sold real or legal persons in the center and provinces ultimately by the Municipalities and Emirate's institutions with various titles to, provided that it is sold in contradiction with the legal provisions.
- 8- Where public interest projects were established by the previous governments and administrations even though lacking their expropriation documents.
- 9- Expropriated by the previous governments and administrations and their expropriation exchange documents are missing from the relevant institution, however witnesses with regard to award of exchange exist, even though Emirate may not have possessed such properties as owner.
- 10- those subterranean irrigation canal (*Kariz*), streams, plots of lands and their facilities in regard to which ownership of the individuals may not be confirmed.

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Article 7: Settlement and marking of Land:

- (1) Ministry of Agriculture, Irrigation and Livestock shall be obligated to settle the lands adjacent to rivers and confirm and mark mounds, skirts of mountains and public grazing (derelict) lands.
- (2) Authorities, mentioned in article 4 of this regulation, shall oversee the activities stated in paragraph (1) of this article.

Chapter 03:

Actions regarding Addressing Usurped Lands

Article 8: Lands usurped for the purpose of agricultural use:

Where a person has usurped Emirate (State), public grazing (derelict) and endowed lands and converted them into agricultural lands contrary to the provisions of Islamic law, actions in this connection will be undertaken complying provisions of the Islamic Law.

Article 9: Lands usurped for the purpose of industrial or commercial installations:

- (1) Where a person has usurped Emirate (State), public grazing (derelict) and endowed lands and has constructed industrial or commercial establishment over them, the following actions shall take place:
 - 1- Taking price of the land from the usurper or illegal possessor based on the market rate (to be determined by the experts) provided that the land falls under the urban, industrial or commercial plan and does not fall under Emirate's project.
 - 2- Leasing land to the usurper or illegal possessor without auction at the market rate, provided that the land falls outside urban, industrial or commercial plan and does not fall under Emirate project.
- (2) Where the usurper or the illegal possessor does not agree to paying the price of land or entering into a lease agreement, the land shall in accordance with the provisions of the Islamic law, be restituted and sold out or leased to other people through the mandated authority.
- (3) The charges of lease mentioned in section 2 of paragraph (1) of this article shall be calculated and payable from the date of lease agreement is signed.
- (4) Where industrial or commercial buildings or installations have been constructed in contradiction with the urban plan in the usurped Emirate (State) land, their retention or destruction shall be proposed to the competent court following joint decision of the authorities mentioned in paragraph (1) of article 4 of this regulation.
- (5) Where price of land is obtained from the usurper or illegal possessor, actions shall be taken toward transfer of land to said person through the mandated authority in accordance with the provisions of the Islamic law.

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Article 10: Lands Usurped for the purpose of town:

- (1) Where a town has been established in the usurped lands of the Emirate (State) and the land falls under residential or semi-residential urban plan and does not fall under the Emirate project, price of the land shall be obtained from the usurper or the illegal possessor based on market rate.
- (2) Those individuals who have purchased land plots, apartments or commercial areas shall be granted title deed by the mandated authority in compliance with the provisions of Islamic law.
- (3) For the purpose of completion of the infrastructure of the town, individuals, mentioned in paragraph (2) of this article, shall, in addition to paying the cost of title deed, be subjected to paying 5% of the actual price of land in accordance with relevant bylaw. Where the infrastructure has already been completed by the usurper, they shall not be subjected to paying 5% of the actual price of land.
- (4) Where a town has been constructed in the usurped Emirate (State) lands against the urban plan, its retention or destruction shall be proposed to the competent court following joint decision of the authorities referred to in paragraph (1) of article 4.

Article 11: Lands Usurped for the purpose of shelter:

- (1) Those usurped Emirate (State) lands that are located in the urban informal, and a shelter has been constructed over such land, actions shall be taken in this connection according to the provisions of the Islamic law.
- (2) Where a shelter has been constructed in the usurped Emirate (State) lands against the urban plan, its retention or destruction shall be proposed to the competent court following joint decision of the authorities referred to in paragraph (1) of article 4.

Article 12: Lands Usurped for the purpose of public installations:

- (1) Where a mosque, *madrassa* (religious school) or other holy premises, park, hospital, clinic, nursery, kindergarten, learning centers or higher education institutes and/or public installation have been constructed for the benefit of public and construction of the installation is under the plan and the said land is not fit for public use, its retention or destruction shall be proposed to the competent court following joint decision of the authorities referred to in paragraph (1) of article 4.
- (2) Where the land, mentioned in paragraph (1) of this article, is under the urban plan and the type of its use has not specified in the detailed plan, it shall be registered in the relevant Principal Book shall be commissioned for public use according to the provisions of Islamic law.

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Article 13: Protection and Oversight of the Public pasture lands:

- (1) Encroaching public grazing (derelict) lands and converting them into agricultural lands, constructing shelter, industrial or commercial installations and other types of possessions over these lands shall be prohibited.
- (2) Where an individual has converted public grazing (derelict) lands into agricultural lands or has constructed shelter, industrial or commercial installations and/or has established other encroachments over those lands, actions in this connection shall be taken following joint decision of the authorities mentioned in paragraph (1) of article 4, as follows:
 - 1- Reversion of the agricultural land is into public grazing (derelict) lands.
 - 2- Cessation of other types of the encroachments.
- (3) Where an individual has constructed shelter, industrial or commercial installation over the public grazing (derelict) lands, their retention or destruction shall be proposed to the competent court following joint decision of the authorities referred to in paragraph (1) of article 4.
- (4) Public grazing (derelict) lands, after identified by the technical board and decision jointly by the authorities referred to in paragraph (1) of article 4, shall be handed over to the Ministry of Agriculture, Irrigation and Livestock and registered in the relevant Principal Book.
- (5) The Ministry of Agriculture, Irrigation and Livestock shall, in cooperation with the relevant Emirate institutions, protect and oversee the public grazing (derelict) lands and supervise how these are utilized.

Article 14: Prevention of encroachment of endowed lands:

- (1) Encroachment of endowed lands (their conversion into agricultural lands, construction of industrial or commercial installations) and all other kinds of encroachments in respect to those lands against the Islamic law shall be prohibited.
- (2) Where a person has constructed shelter, industrial or commercial installation in the endowed lands, the case shall be proposed to the competent court for Islamic prescribed judgement following joint decision of the authorities referred to in paragraph (1) of article 4.
- (3) Public grazing (derelict) lands, after identified by the technical team and decision made jointly by the authorities referred to in paragraph (1) of article 4, shall be handed over to the Ministry of Pilgrimage and Endowments (*Hajj and Awqaf*) and recorded in the relevant Principal Book.
- (4) The Ministry of Pilgrimage and Endowments (*Hajj and Awqaf*), in cooperation with the relevant Emirate institutions, shall protect and oversee the endowed lands and supervise how these are utilized.

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Chapter 04

Miscellaneous Provisions

Article 15: Prohibition of possession, sale, distribution and transfer of the Emirate (State) Lands:

- (1) An individual may not exercise possession as an owner in respect of the Emirate (State) lands without Decree of the Amir-al Momenin May Allah protect him.
- (2) Where an individual possesses unlawfully lands referred to in paragraph (1) of this article, they shall not be deeded his property.
- (3) No individual and/or the official of the Emirate administration may sale and/or distribute and/or transfer the Emirate (State) lands, based on conveyance of possession or interest, to any other individual or individuals without the Decree of the Amir-al Momenin May Allah protect him.
- (4) Where an individual and/or official of the Emirate administration violates the provision mentioned in paragraph (3) of this article, shall be prosecuted.

Article 16: Referral of the documents to the Department of Emirate Cases:

- (1) Where the authorities, referred to in paragraph (1) of article 4 of this regulation, fail to reach a decision with individuals regarding documents related to the disputed lands, they shall refer the matter to the Department of Emirate Cases.
- (2) The Department of Emirate Cases, in coordination with the relevant Emirate institutions, refer the documents, mentioned in the paragraph (1) of this article, to competent court and file a lawsuit in this connection according to the provisions of the Islamic law.

Article 17: Approaching Seller or Usurper:

Where price of land is taken from the Illegal possessor, he may approach the seller or usurper for claiming the amount of money paid.

Article 18: Depositing money into the Emirate's single account:

- (1) The Ministry of Agriculture, Irrigation and Livestock and the Ministry of Finance, in their relevant areas, shall be obligated to develop and provide the usurper or the illegal possessor with the tariff for the purpose of depositing into the Emirate's single account the money received from the prices of usurped or leased Emirate (State) lands.

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- (2) Municipalities shall be obligated to develop and provide the usurper or the illegal possessor with the tariff for the purpose of depositing into the relevant account the money received from the prices of their lands usurped or leased.
- (3) The usurper or illegal possessor shall be obligated to deposit the money, mentioned in the paragraphs (1) and (2) of this article, into the bank and present its receipt to the relevant institutions.

Article 19: Seek guidance:

Where a provision may not have been specified with regard to usurpation of the Emirate (State), public grazing (derelict) and endowed lands in this regulation, guidance in this connection shall to be sought from Amir-al Momenin, May Allah protect him.

Article 20: Victim's right lawsuit:

Enforcing provisions of this regulation does not prohibit individuals who have sustained damages from lodging a victim's right lawsuit against the usurper.

Article 21: Date of Enforcement:

This regulation shall enter into force from the date of endorsement, and it shall be published in the Official Gazette and other provisions contradicting this regulation shall declared abolish.