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## Legislative Analysis

1. **Title of the document:** [“Brief Report on the Meeting of Human Resources Directors from All Ministries and Independent Directorates with His Highness Amir-ul-Momineen Sheikh of the Qur'an and Hadith, Mawlawi Hebatullah Akhundzada”](#)

### 2. Introduction

#### a) Basis of the Document

The directives of the leader of the De Facto Authorities "DFA" to the heads of human resources of the ministries and independent directorates in the meeting conducted on Tuesday, 10 January 2023 (1444/6/17 A.H.) constitute the basis of this document.

#### b) Summary of the document

The human resource directors of the DFA authorities met with the supreme leader of the DFA on 10 January 2023 (1444/6/17 A.H.). In this meeting, the leader of the DFA talked about various issues and provided necessary directions to the human resource directors. All these issues are not the subject of the present analysis, but we are trying to analyze only the following part of the sayings of the leader of the DFA that was expressed in this meeting: ***"All the laws and regulations of the Republic Government are revoked because Islam and Sharia have canceled them." There is no need to issue even a short decree regarding the annulment of the republic's laws and regulations because the Sharia has already revoked them<sup>1</sup>.***

**c) The implementation scope of this document:** All audiences of this legislative document.

**d) Implementing authorities:** all DFA agencies.

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<sup>1</sup> The Directive No. (15) of His Highness Amir al-Mu'minin, brief report of the meeting of His Highness Amir al-Mu'minin Shaikh Al-Qur'an and Hadith Mawlawi Hebatullah Akhundzadah with the heads of human resources of all ministries and independent directorates, on 10 January 2023. Meeting place: Qandahar, reporter: Mawlawi Ahmed Shah Shaker, head of human resources of the Ministry of Finance.

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### **3. Description and analysis of this document:**

#### **a) Uncertain issues in this document**

The issue of revoking the laws and regulations of the Republic Government through verbal directions of the leader of the DFA, which has a legislative aspect, has raised this question for lawyers and analysts of laws and legal issues whether the verbal directions of the leader of the DFA are legally binding as his written directions issued under the name of "decree" or not?

In response to this question, it should be said that the practices of the DFA are different from those of previous laws. It means some of the practices of the DFA are made in accordance with the previous laws, but some others are not carried out in accordance with them.

- **The practices that are in accordance with the previous laws are, for example, as follows:**
  - Organizational structures (ministries, secondary units of ministries in the provinces, independent directorates, etc.) are the same as previous, and their administrative performances are carried out as stipulated in the previous laws.
  - Subject matters related to civil servants, their rights and privileges, matters related to the municipality such as acquisition, construction, etc., and matters related to taxes and customs products, matters related to higher education, work, and social affairs, health, education, and other sectors are proceeded according to their respective laws that were applicable during the previous regime.
  - Even the formal proceedings of the courts, such as the way to submit petitions, register lawsuits, summons, conduct meetings, and deadlines for appealing to secondary court and appealing to the Supreme Court, proceeded according to the previous laws.
- **Practices that are not according to previous laws** are the issuance of decrees. When resolving the lawsuits and issuing rulings, the judges do not make any reference to previous laws such as the Civil Code, the Civil Procedure Code, the Commercial Procedures Code, the Penal Code, the Criminal Procedures Code, and other laws regulating crimes and punishments.

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- **Part (1) of Resolution No. (9) dated 7 November 2021 (1443/2/4 A.H.) of the cabinet of the current government**, which is about revising the laws of the previous government, indicates as follows: (Emirate ministries and authorities are obliged to identify the laws, decrees, procedures, and bills of the previous government that have Sharia and organizational problems and submit a complete report to the cabinet meeting.)

It should be mentioned regarding this letter that:

**First**, the word "those laws, decrees, ...." means that all laws do not have Sharia problems, but only some laws have Sharia-based problems that must be identified and reported to the cabinet meeting.

**Second**, Reviewing the compliance of all the laws, decrees, procedures, and bills of the previous government is a very costly and time-consuming task. So, what is the obligation with regard to these laws until their Sharia-based problems are determined?

**Third**: While checking the compliance of the laws, decrees, procedures, and bills of the previous government with Islamic Sharia is a technical work, can every ministry and authority of the emirate be able to do this work, or does this work require persons who have enough expertise, capacity, and ability both in the Sharia and legal affairs and get together in the form of different committees (taking in mind the subject of each law) under the supervision of a "High Committee for Reviewing the Compliance of Laws with Islamic Sharia" and carry out this review as required?

**Fourth**: Letter No. 512/197 dated 30 December 2021 (1400/10/9 H.Sh.) issued by the Ministry of Justice and signed by Mawlawi Abdul Hakim Sharie stipulates as follows: "It is inferred from the ruling of the above resolution [part (1) of Resolution No. (9) dated November 7, 2021 (1443/2/4 A.H.)] of the cabinet of the Islamic Emirate of Afghanistan that those laws that do not have Shariah and organizational problems are valid and applicable. This letter clearly states that all the laws of the republic government are not revoked.

## **Conclusion:**

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Considering the above-mentioned issues, we conclude that the laws, decrees, procedures, and bills of the previous government are in an unknown state in terms of revocation or enforcement.

## **b) Consistency or inconsistency of this document (revocation of laws) with other similar DFA documents:**

This document is not consistent with part (1) of Resolution No. (9) dated 7 November 2021 (1443/2/4 A.H.) of the Cabinet, and with letter No. 512/197 dated 30 December 2021 (1400/10/9 H.Sh.) of the Ministry of Justice, both of which were mentioned above, because the cabinet resolution does not have any ruling on the revocation of all the laws of the Republic, but it considers some of the laws of the Republic reviewable, and thus, the Ministry of Justice considers the laws having no Sharia or organizational problems effective and applicable.

## **4. Potential Impacts**

### **1- Potential positive impacts on the audience**

This document will have positive impacts when special committees are formed to review the compliance of laws with Islamic Sharia, and if already formed, it should be extended, and their works should be accelerated so that the audience can obtain their Sharia and legal rights and fulfil their Sharia and legal obligations and responsibilities.

### **2- Potential negative impacts on the audience**

Revocation of all the laws, decrees, rules, regulations, and procedures of the Republic Government without specifying which of them have a Sharia-based problem and which do not have such a problem, and without developing alternative laws to replace the revoked laws will put the country in a legal gap, and its negative impacts harm the audience.

## **5. Problems and solutions**

Revoking all the laws, decrees, rules, regulations, and procedures of the Republic government without the existence of alternative laws puts the country in a legal gap and creates injustice, which is strictly prohibited by the Islamic Sharia.

The solution is:

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- 1- **"Special committees to review the compliance of laws with Islamic Sharia"** should be formed as soon as possible, and the reviewed laws should be immediately sent to the leader of the DFA for approval, and the approved laws should be published as soon as possible on the website of the Ministry of Justice so that everyone has access to them.
  - 2- **"Special committees to review the compliance of laws with Islamic Sharia"** should be composed of experts in Sharia and legal affairs.
  - 3- The mentioned special committees should be the only competent authority to review the compliance of the laws with Sharia, and this task should not be assigned to ministries and departments in order to avoid conflicting practices in this regard.
6. **Documents related to this analyzed document are available on the ARLO website:**

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