



A PRACTICAL GUIDE TO LEGAL CITATION IN AFGHANISTAN



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Preface

Afghanistan's unique legal system is characterized by legal pluralism, meaning it has multiple sources. Some sources, such as written or state laws, have undergone significant changes, amendments, or expansions over the past decade. As a result, numerous legislations, regulations, and other types of laws have similar or identical titles. This multitude of authorities, both current and outdated, creates what is known as an information fog. Citing from amended legislation can potentially cause confusion as to which version of the law the writer intended to reference. Moreover, locating an authority can be difficult without proper citation. As a lawyer or law student, you may need to cite several unique authorities for which no standard citation method exists. Comparing two pieces of legal writing related to Afghan law with citations, it is highly likely that you will encounter different citation approaches, some of which may be incomplete or unhelpful. For these reasons, proper citation is more crucial today in Afghanistan than ever before.

The challenge of citing various authorities differently is not exclusive to Afghanistan. This stage of development is observable in the legal history of many countries. To address this issue, academic institutions or professional associations often develop a unified guide addressing numerous citation-related questions within their specific profession. Multiple citation styles within a single profession are also common. For example, in the U.S., several legal citation styles coexist, such as *The Chicago Manual of Style*, known for its simplicity, clarity, and comprehensiveness. This guide draws inspiration from *The Chicago Manual of Style*.

The Afghanistan Legal Education Project has been publishing law textbooks for Afghans for years. In the process of developing law textbooks on Afghanistan laws, we discovered that no single citation method exists in the country, with different professionals citing differently. We recognized the need for a comprehensive guide explaining various aspects of professional and ethical writing and providing instructions on citing various sources. Our ambitious goal was to create the first citation manual for a wide range of users needing to cite diverse legal sources in Afghanistan. This guide aims to assist judges, prosecutors, lawyers, scholars, and law students in citing Afghan legal sources.

We observed that legal citation practices in Afghanistan closely resemble *The Chicago Manual of Citation*, which provides specific citation rules that are underdeveloped in Afghanistan. In this guide, we prioritize the citation style practiced in Afghanistan, followed by the style in countries with similarities to Afghanistan.

This guide serves as a first step toward defining Afghanistan's optimal legal citation style. It is a collection of current practices and is neither complete nor error-free. The suggested citation style in this guide demonstrates just one way to cite legal sources, and we welcome feedback for future improvements in subsequent editions.

This guide comprises two main sections: the first explains general aspects of legal citation, such as its meaning, when to cite, why citation is important, and various methods of writing professionally and ethically; the second part provides a summary of citation rules. The appendix includes additional materials, primarily lists of sources useful for citation purposes. Designed to help legal researchers quickly locate a given legal authority within a single collection without referring to multiple sources, the appendix serves as a valuable resource.

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Acronyms and Key Terms:

In this guide, the subsequent terms have the following meanings:

| Term | Description |
|-------------------------------|---|
| Codification | Refers to the systematic process of assembling laws of a specific jurisdiction within a certain field, such as commercial, family, or criminal law, into a collective body known as a Code. |
| Components of Citation | These are the essential pieces of information necessary to complete a citation. Without them, a citation would be deemed incomplete or inadequate. |
| Ethical Writing | Involves the full acknowledgment of someone else's ideas, text, or both, while utilizing those elements in one's writing. It ensures the intellectual property of original authors is respected. |
| Information Fog | A situation where a multitude of relevant legal authorities exist in relation to a particular legal matter, making it challenging to identify the most pertinent authority. |
| Lawyer | Used in a broad sense to encompass anyone associated with the legal profession, including judges, prosecutors, and defense attorneys. |
| Legal Authorities | All the applicable laws, regulations, and other sources of law in Afghanistan, including the Constitution, statutory laws, legislative documents, international law, and other related authorities. |
| Legal Profession | A vocation centered on expertise in the law and its applications, often entailing roles such as lawyers, judges, and legal consultants. |
| Legal Research | A systematic approach is used to find answers to legal issues through the thorough examination of Legal Authorities. |
| Legal Writer | Encompasses any individual who authors legal materials, including but not limited to lawyers, judges, prosecutors, and legal scholars. |

| Term | Description |
|---|---|
| Legal Writing | Any form of writing about law, regardless of the format or purpose of the writing. |
| Legislative Documents (in Dari: Asnad-e-Taqnini) | A collection of binding rules that fall under the umbrella of the Constitution and statutory laws. These may have different names, such as regulations, additions, amendments, deletions, procedural manuals, guides, policies, etc. |
| Primary Sources | All the authoritative legal materials that courts are obligated to apply when making legal decisions. |
| Professional Writing | Involves adhering to the standards of writing within the legal profession, characterized by clarity, precision, and thoroughness. |
| Secondary Sources | Resources that, while not binding for judges, help researchers better understand and explain a primary source or persuade a judge to decide in a specific way about a legal matter. A lawmaker does not directly issue these sources. |

1. INTRODUCTION TO PROFESSIONAL WRITING

This section focuses on the ethics of writing, with the objective of helping you understand when and how to cite various authorities in your work. First, we will discuss the citation methods practiced in Afghanistan and, when necessary, provide comparative insight by examining citation regulations in other jurisdictions. Second, we will suggest improved citation methods based on international best practices while considering the unique aspects of certain authorities within the Afghan legal system. Through this guidance, you will learn to cite more effectively using numbers, letters, words, and abbreviations as appropriate.

1.1. Plagiarism and Importance of Citation¹

Plagiarism is a term that refers to the act of using another individual's words or ideas and presenting them as your own without appropriate acknowledgment. This may occur when you fail to correctly cite the original source, leaving the impression that you either overlooked the necessity of citation or deliberately presented another's work as your own.

In order to evade accusations of plagiarism, it's essential to consistently and properly cite your sources. Not only does this practice shield you from ethical breaches, but it also confers a host of benefits. For instance, referencing a well-regarded authority in your field can display insightful judgment and a robust understanding of your subject, bolstering your argument. Furthermore, it denotes a comprehensive research effort, which can increase the trust others place in your argument and establish your credibility from the outset.

Within the realm of law, the ethical obligation to avoid plagiarism is paramount for legal researchers and lawyers alike. Plagiarism is tantamount to theft, the intellectual equivalent of stealing a purse or wallet. Nonadherence to these principles within the legal profession can severely tarnish a lawyer's reputation, disrupt their practice, or even cost them their job. For law students, sanctions can range from warnings to expulsion, and if future education abroad is pursued, academic records may be thoroughly scrutinized for instances of plagiarism. In the digital age, identifying plagiarism is more straightforward than ever, and plagiarizing copyrighted materials could potentially lead to legal repercussions.

In Afghanistan, the scarcity of ethical writing courses in legal education institutions may result in unintentional plagiarism among legal writers. Nonetheless, plagiarism is categorically unacceptable, irrespective of intent. This guide aims to provide clear guidelines to prevent plagiarism in your work.

¹ This section is based on *draft* Legal Methods Textbook developed by Afghanistan Legal Education Project (ALEP).

It's crucial to understand that proper attribution of work, even if it is not a common practice in your school or a skill you've previously utilized, is considered a standard practice worldwide. As the world is becoming more interconnected and many of you may find yourselves working in international settings, mastering this skill is of utmost importance. No matter where you practice, correct citation contributes to the credibility of your arguments and your reputation as an attorney.

1.2. The Purpose of Citation

The primary objective of citation is to enable readers to access the sources you relied on. Proper citation demonstrates that you are a thorough researcher with a deep understanding of the subject matter. Conversely, poor citation creates an impression of carelessness and unethical behavior, raising doubts about your trustworthiness as a reliable source. Furthermore, citing your sources ensures that credit and any potential blame are attributed to the references used.

Failing to provide citations makes it time-consuming for readers to locate the resources referenced in your work. Transparent and easily searchable sources are preferred by readers. Providing citations in practical legal writing in Afghanistan is arguably more critical than in many other countries. One reason is that judges and lawyers may find it impossible to locate the authorities used in your writing without proper citation, especially since legal authorities are not easily accessible in Afghanistan. Additionally, determining the binding status of a given legislation in Afghanistan can be challenging. Particular legislation may have been amended, revoked, or replaced with new legislation. As a result, without accurate and complete citations, your readers, including judges and lawyers, may refer to a different version of the authority than the one you used, potentially harming your arguments. Therefore, when citing from a primary or secondary authority that you want the court to consider, it is essential to identify the source of the reference. Simply stating that Labor Law supports your client's claims is insufficient. Judges should not rely solely on your statements or writing; they must refer to an original authority to make a decision. Missing or incorrect citations could negatively impact both you and your client.

Rule 1.2.(A): Reasons to Cite

Always cite if you think providing citations will:

Rule 1.2. (a): Help your reader locate the source you are using;

Rule 1.2.(b): Support your writing;

Rule 1.2. (c): Provide assurance to your reader about the accuracy of the information in your writing;

Rule 1.2. (d): Guide your reader to helpful sources.

It might be helpful to think of your writing as a product that could be used by different people at different times and different locations. When discussing a legal matter with a colleague or classmate and repeatedly referring to a law such as Labor Law, it might be very clear to both of you what law, which version, and maybe which parts of the law you are referring to. However, imagine if your writing is used by someone else in a different part of the country, and maybe years later. Do you think it is still clear to your reader which law you are referring to? Will the chance of confusion or misunderstanding increase in those situations? You can actually find articles published and cases decided that have vague references to authorities; at this point, it is unclear as to which authority the author was referring to. Sometimes, with a little extra research, we may find out which law the author should have pointed out, and there are other times that we may not be able to identify with certainty which law the author was referring to. As a rule of thumb, whenever you have doubts as to whether or not you should cite, it is always safer to decide in favor of citing.

Rule 1.2. (B): When Unsure of Whether to Cite

When in doubt, cite.

1.3. Quotation

A quotation is used when one word or a group of words are taken from another text or speech. The quotation could be used in different forms, such as quoting extensively or briefly, directly or indirectly.

You must cite when you use a direct quotation, an indirect quotation, and when you paraphrase. A **direct quote** is when you use the exact words from another document and put them into your writing, indicated by the use of “ ” or << >> as quotation marks. An **indirect quote**, also known as a paraphrase, is when you use an *idea* or the *main point* of a sentence or paragraph and use different words to convey the message, but the idea itself is still not yours. You *must always* cite when you use someone else’s work.

Normally, citing a longer quotation (quotes of fifty words or more) requires a little change in formatting. When you are using a longer quotation, you need to indent the quoted text. To indent means to start the text further from the margin than the main part of the text. This method of quoting long texts is also referred to as **block quoting**. Below is an example of a block quotation:

The Afghan law contains a number of provisions to help courts enforce the fairness of contracts. From a subjective point of view, the Civil Code contains a number of provisions to help guard against fraud and duress. For example, Article 505 requires

that a contract be concluded without duress.²⁴ Duress is defined as a threat of harm made to compel a person to do something against his or her will or judgment.²

Rule 1.3.(A): When to Cite

Rule 1.3. (a): Always cite if you use someone else’s words, ideas, or both.

Rule 1.3.(b): Always use direct quotations if you use someone else’s exact words.

Rule 1.3.(c): If quoting fifty or more words, indent from both sides by one inch. Do not use quotation marks when you use block indenting.

Rule 1.3.(d): Use block indenting when quoting a verse from the Holy Quran or a Hadith of the Prophet.

Rule 1.3.(e): It is acceptable to use a smaller size or a different font from the text for block quotations.

Quotations can be short or long. Some authors quote several sentences or paragraphs, while others may only need to quote a few words or phrases, or at most, a few sentences. It is normal and acceptable to quote from another person directly—people may express ideas more eloquently than you can. However, as a general rule, always remember that short quotations are preferred over long ones for scholarly and legal writing. The more you can express in your own words, the better; the goal is to showcase your original thoughts. Also, when writing for class assignments or law journals, pay attention to specific instructions or requirements set by your professor or the journal you intend to publish. A sample of requirements for a law journal in Afghanistan is provided at the end of this chapter.

In general, be cautious about quoting more than what is necessary. Using too many quotations, particularly long ones, is not recommended. Overusing quotations can be interpreted as showing off or as a sign of the author's insecurity in their ideas. Long and unnecessary quotations may also indicate that the author is too lazy to read, comprehend, and paraphrase the quoted text. Remember that the goal in writing is to effectively communicate an idea, which requires focusing on your reader and finding the most efficient and effective way to convey your message. Likewise, lacking the necessary confidence to express your analysis can lead to poor writing.

² Sam Jacobson, Chris Jones, and others, An Introduction to the Law of Obligations of Afghanistan, Afghanistan Legal Education Project (ALEP), November 2014, Page 80, PDF e-book, available online: <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/12/Intro-to-Law-of-Obligations-1st-Ed.pdf>

If you have used longer quotations, try to make them shorter during the revision process by using the techniques explained in the next sections. In Afghanistan, lawyers often need to quote from statutory sources because of their significant role in the legal system. However, quoting numerous legal provisions in the body of your writing can be detrimental, particularly if your reader is not a lawyer and your goal is to present the quoted material in layman's terms. Therefore, a clear rule statement based on relevant statutory provisions is generally allowed. A rule statement will restate key elements of a statutory provision in a different way without altering the substantive meaning of the provision. If citing the exact wording of the law is necessary, the relevant provision could be added to the original document. In certain types of documents, such as written legal advice, it is common to include an appendix with all relevant statutory provisions that support the document.

Lastly, ensure proper use of full stops for the text you quoted. As a general rule, if end punctuation is part of the quoted text, include it within the quotation marks. If it is not part of the quoted text, place the punctuation outside the quotation marks. See the examples below:

| Example | Explanation |
|---|---|
| In service contracts, the service “shall have to be determined or determinable.” | The period is part of the quoted text. |
| Was the mistake “so grave that contracting party would not confirm contract if he were aware of it”? | The question mark is not part of the quoted text. |

1.4. Alterations and Omission

Use brackets when you change any part of the quoted text. Do this when you change lowercase to uppercase, add punctuation, or omit one or more letters or words from the text. Use three periods (...) if you omit several words from a text. Below are some examples:³

| Example | Explanation |
|---|--|
| “[M]ost of the contracts we sign on a daily basis are valid contracts.” | Here, the lowercase m is changed to an uppercase M. |
| “In the contract[]concluded between Ahmad and Ali, all legal requirements were met.” | Here, the letter “s” is omitted. (The original document had "contracts.") |
| “The first two broader categories [of sources of obligation] are legal acts and legal events.”⁴ | Here, some new words are added to ensure the reader understands the meaning of the text. |

³ *Id.* 201 – 202.

⁴ Afghanistan Legal Education Project, *An Introduction to the Law of Obligations of Afghanistan* (2014) at 9.

| | |
|--|--|
| <p>“The Civil Code ... specifically addresses civil contract law and delict, or what is known in the Civil Code as a civil responsibility.”⁵</p> | <p>Here, a few words have been omitted within the quoted text. Note that there is space before and after the ellipsis mark, the three periods.</p> |
|--|--|

Rule 1.4.(A): Always Show Changes to a Quote.

Always show it in your writing if you change words, letters, numbers, or any other part of someone else’s writing when using direct quotations.

Use omission if part of the quoted information is unnecessary.

1.5. Paraphrasing

Another technique you can use to avoid plagiarism is to paraphrase. Paraphrasing is using another’s idea but explaining it in your own words.⁶ In simple words, paraphrasing is the act of rewording a text or speech originally produced by someone else. The words used by a person paraphrasing a text should be different from the words used in the original source; if the same words or phrases are used, then it qualifies as a direct quotation and should be marked as such. Paraphrasing will help you not only to avoid plagiarism but to explain an idea presented by another in a way that best suits your purposes. This makes it possible for you to further tailor that idea to your writing by making it clearer or shorter. However, since the idea still belongs to someone else, you still have to provide a citation. Like writing, paraphrasing is an art that requires practice.

Remember that quoting directly too much can negatively affect the quality of your writing. Paraphrasing is one way to avoid quoting too much directly, but also note that a wholly paraphrased document is not optimal. There should be an original premise or at least enough original thought to warrant authorship.

In order to be able to paraphrase, you need to first fully understand the idea or concept in the original source; then, you can reproduce it in your own words. To do so, first, you need to read the original text carefully and reread it if necessary. You can take notes at this stage. Secondly, you need to put the original source away and write from your notes and mind. If you still cannot write or have doubts about the accuracy of your writing, you can refer back to the original source and make sure that you fully understand it. You can also take a break and think about what you just read. Once you complete paraphrasing the text, double-check that you have fully and accurately explained the idea and then provide the citation. Below is part of a discussion on the role of advocacy taken from An Introduction to the Law of Afghanistan developed by the Afghanistan

⁵ *Id.* at 8.

⁶ Emphasis added.

Legal Education Project (ALEP). You will see here what is acceptable paraphrasing and what is not.

Examples

The original passage:

The second important tool that a lawyer uses to advocate for his client is the ability to write clearly and persuasively. Similar to oral advocacy, the ability to convey in writing exactly what the client is seeking can help to resolve a case quickly and out of court. This is somewhat less important in Afghanistan as most non-court meetings will be face-to-face, but it is an important skill when court submissions are required. As discussed before, Afghanistan is a civil law system that relies mostly on written submissions for cases. A lawyer will have to speak in court, but his writing skills are important because the outcome of the case is usually determined by the written submissions

Source: Eli Sugarman, Alexander Benard, and others, *An Introduction to the Law of Afghanistan*, 3rd Ed. Afghanistan Legal Education Project (ALEP), June 2011, Page 60, PDF e-book, available online:https://www-cdn.law.stanford.edu/wp-content/uploads/2016/03/ALEP-Law-of-Afghanistan-3d-Ed_English.pdf

A legitimate paraphrase:

Authors of *An Introduction to the Law of Afghanistan*, developed by the Afghanistan Legal Education Project (ALEP), suggest that a vital skill for a lawyer is the capacity to write in strong, distinct, and convincing terms. The ability to succinctly define your argument and what the objectives of your client are can hold great sway, especially when your case has a written component. This holds particularly true in Afghanistan, as it possesses a civil law system that usually requires written submissions for cases. For this reason, the outcome of a case is often greatly influenced by how well a lawyer can present his argument on paper.¹

1. *An Introduction to the Law of Afghanistan*, 3rd Ed. Page 60.

An acceptable summary:

Another vital skill that a lawyer can employ is clear and convincing writing because it can influence the final judgment of a case and resolve it quickly. Since Afghanistan has a civil law system that usually depends on written submissions for cases, strong writing skills are very important there.¹

1. *An Introduction to the Law of Afghanistan*, 3rd Ed. Page 60.

A plagiarized version:

An important tool that a lawyer uses to advocate for his client is the ability to write persuasively and clearly. The ability to convey in writing exactly what the client is seeking can help resolve a case quickly and out of court and is, in that way, similar to oral advocacy. This is slightly less important in Afghanistan as most non-court meetings will be face-to-face, but it is an important skill when court submissions are required. Afghanistan is a civil law system that relies mostly on written submissions for cases. A lawyer will have to speak in court, but his writing skills are important because the outcome of the case is usually determined by the written submissions.

Rule 1.5.(A): How to Paraphrase

Rule 1.5.(a): Always properly paraphrase when you use someone else's ideas but not words.

Rule 1.5.(b): Always provide citations when you paraphrase.

Rule 1.5.(c): You do not have to cite when you use common knowledge.

Rule 1.5.(d): It is preferable to use paraphrasing over direct quotation unless directly quoting is necessary.

Rule 1.5.(e): Paraphrasing is particularly preferable over excessively utilizing direct quotes or quoting long texts.

2. General Citation Rules

If you have never before learned how to cite sources, the following sections will cover the basic principles. We will explain the practice of citing from certain sources and make suggestions for using shorter citations.

Generally, citations are in the form of a clause or sentence. In a **citation clause**, the citation is part of the sentence. In a *citation sentence*, the citation is placed outside of the sentence. In Afghanistan, the citation clause is used more, particularly if the writer intends to emphasize the weight of the authority cited. This method of citation is used more commonly when citing from primary sources of Islamic law, although it is used as well as when quoting from statutory sources. This method is not recommended if you cite from a secondary source and the author or creator of the source is not well known. The examples below compare both forms of citation:

| | |
|--------------------------|--|
| Citation Clause | According to Article 505 of the Civil Code, “Validity of a contract is subject to the consent of contracting parties without duress and coercion.” |
| Citation Sentence | “Validity of a contract is subject to the consent of contracting parties without duress and coercion.” (Article 505 of the Civil Code). |

Also, note that citations could be provided in text or a footnote. Depending on what type of document you are writing, the preferred rule for using one or another may differ. Normally, citing in footnotes is common in scholarly writing, and citing in the text is suggested for more practical writing. As you learned earlier, lack of citation is a problem. Similarly, citing unnecessarily is also a problem. Providing unnecessary footnotes or in-text references could be distracting to your readers. So the next time you insert a footnote, ask yourself if it is necessary to add a footnote—but when in doubt, cite!

Rule 2.(A): General Citation Guidelines

Rule 2.(a): Always show in your writing if you change words, letters, numbers, or any parts of someone else’s writing when you are using a direct quotation.

Rule 2.(b): Do not use verses of the Holy Quran or the Hadith of Prophet Mohammad in the footnote. Instead, use sentence citations in the body of your writing.

Rule 2.(c): Only citations should be in the footnote. Include all substances in the actual text.

The practice in Afghanistan shows that lawyers rarely use footnotes in litigation writings. Still, they cite in text for statutory sources or Islamic law rules used in their arguments.⁷ Lawyers tend to provide footnote citations in scholarly writing, such as academic writing.⁸

Rule 2.(B): Citing from Unusual Sources

When citing sources not listed here, follow your best assumption by citing as much necessary information as possible.

Rule 2.(C): Adapt to Your Audience

When writing for special purposes, such as a journal that has a special citation guideline or a professor that prefers a specific citation system, use the citation rules provided there.

2.1. Basic Citation Components

⁷ This conclusion is made based on several briefs presented to various Afghan Courts (on file with the author).
⁸ See generally the law journals and other periodicals listed in Chapter 4 on Introduction to Legal Research.

There are many different accepted ways to cite sources in documents. If you have learned how to cite sources in the past and this system is different from what you learned, or the information is in a different order than what you are familiar with, do not worry. The most important part of citing is ensuring that all the critical information is provided. Generally speaking, the order should not matter.

Below, we have introduced the key citation components for some of the most commonly used authorities. Generally, these components could be grouped into four major categories.⁹ The first part includes information about the authority used, including the name and other relevant information that helps to locate the authority. This is the most important part because it includes important information about the source used. The second part includes information about the producer of the authority, such as the name of the author, court, government body, or other personalities. When citing from statutory sources, the title of a statute normally explains whether it is a law, a regulation, or another type of legislative document. The third part contains information about the publisher, such as the publishing company in the case of secondary authorities or the government body that is responsible for publishing the authority. For example, the gazette number shows that it was published by the Ministry of Justice and could be found in the official gazette. Finally, some specific information is needed about the exact part of the authority that is used, such as the article number, page number, and other similar specifications. The following chart summarizes these key components and explains why each component is important by giving an example of citing from a statutory source. In the next section, you will learn more about how to cite from a statutory source.

| Component | Example | Significance |
|---|-------------------------|---|
| Information about the title of the source | Criminal Procedure Code | This part helps the reader to identify what type of source this is and possibly where he can find it. |
| Information about the producer or creator of the source | Criminal Procedure Code | The words “Code” or “Law” show that it is a statute and should have been prepared in light of Article 94 of the Constitution 2004. For secondary sources, here is where information about the |

⁹ This part is generally based on analysis of different citation forms used by lawyers and law scholars in Afghanistan. *Generally see*, Abdul Malek Halimi, *Instruction for Monograph Writing* (Dari), Kābul : Intishārāt-i Risālat, (2nd ed. June 2013). *Also see*, N. M. Sabri, *An Introduction to Research Method in Law* (Farsi), Mizan Legal Foundation, Tehran (2010).

| | | |
|---|--------------------|---|
| | | author of the source is required. |
| Information about the publisher of the source | OG No. 1132 (2014) | It shows that the source was published by the Ministry of Justice in the Official Gazette. This part helps your reader to locate the source easily. The year showed when the source was published. It will help the reader find out if the law was changed later on or not. |
| Information about the exact part of the source used | Article 11(1) | This component shows the specific part cited in clause one of Article eleven; now, your reader can see the specific part of the source you have cited. |

The order of these details is normally in the same order as explained above. As you can see in the above chart, your citation should respectively include information about the authority you are using, information about the producer or creator of the source, information about the publisher, and information about the exact part of the source you have relied on in your writing. However, this order may change for secondary sources, as explained below in further detail. In any case, you need to record all these different types of information in order to be able to provide a complete citation.

Rule 2.1.(A): Provide the Minimum Required Component

Always provide the minimum required component in any citation.

If information regarding one of the components is missing, add “unknown” or “_____” as the case might be.

In addition to footnotes, you may be required to list all sources that you have cited at the end of your writing. This last section is called references. The components explained above are generally the required components for footnote citations. The main difference you will see between references and footnotes is that references do not include information about specific parts of the source used, such as the page number. Some writers prefer not to use publication-related information in the footnote and leave it to reference. Another difference between footnotes and references is that normally, in the reference section, the author's last name comes first, and the first name will come second. However, in footnotes, it is vice versa. Footnotes are flexible, and

although they are sometimes used for more than just providing citation (such as using the footnote to explain a point), for the purpose of legal writing, one must adhere to Rule 2.(c): Only citations should be used in the footnote. Include all substances in the actual text. Unlike footnotes, however, references are only used to provide citations to authorities.

Now, let's see how we can apply these general rules when citing specific authorities that you learned about in the previous Chapter.

2.2. Rules Regarding Order of Authority

Rule 2.2.(A): The Most Important Authorities Come First

If you have to cite from the Constitution and statutory laws, always first cite from the Constitution first and then explain and cite from the statutory law.

Rule 2.2.(B): For Cases, Rank Authorities by Court Hierarchy

If you cite from one case decided by the Supreme Court of Afghanistan and a case decided by a primary court in Bamyan, first cite from the Supreme Court and then from the primary court in Bamyan.

Rule 2.2.(C): Statutes, Cases, Secondary Authorities

When citing from different sources of law, statutes should come before cases, and cases should come before secondary sources such as articles or treatises.

Rule 2.2.(D): Chronological Order

Follow the chronological order that best suits your writing.

2.3. General Rules Regarding Abbreviations

Lawyers in Afghanistan use acronyms and abbreviated forms of phrases and words, which are usually shortened forms of long phrases or names. Abbreviations help us to communicate more easily or to remember concepts. However, abbreviations can also be confused with abbreviations and initialisms. Abbreviations are shortened words whose pronunciation does not change, such as Doctor to Dr. or Mister to Mr., while acronyms are both shortened forms and are pronounced as their own words. Some examples of acronyms are Acquired Immune Deficiency Syndrome, shortened and pronounced as AIDS; the World Health Organization, shortened and pronounced as WHO; and the North Atlantic Treaty Organization, shortened and pronounced as NATO. Finally, initialism is a shortened form where the result is pronounced one letter at a time, such as a compact disc becoming a CD, the Federal Bureau of Investigation being the FBI, or a Bayerische Motoren Werke vehicle simply called a BMW. When using these shortened forms in legal writing, consider the following rules:

Rule 2.3.(A): Abbreviations, Initialisms, and Acronyms

It is acceptable to use abbreviations, initialisms, and acronyms when citing from common authorities such as the Constitution, Penal Code, Civil Code, or Commercial Code, to name a few.

Rule 2.3.(B): How to Introduce an Abbreviation, Initialism or an Acronym

The spelled-out version of the word or phrase (with the abbreviated form following in parentheses) is always used for the first reference.

Example

Three new members were introduced to the Independent Commission for Overseeing the Implementation of the Constitution (ICOIC).

Rule 2.3.(C): When to Use Abbreviations, Initialisms, and/or Acronyms

It is permissible to abbreviate the authority that is frequently used in your writing.

Rule 2.3.(D): Efficient Use of Abbreviations, Initialisms, and/or Acronyms

Only use an abbreviation if it is easily recognizable. Avoid using abbreviations that would confuse the reader.

Rule 2.3.(E): Avoid Inappropriate Abbreviations, Initialisms, and/or Acronyms

Never abbreviate if the abbreviated form creates a new word that is inappropriate or confusing.

Rule 2.3.(F): How to Punctuate Acronyms and Abbreviations

If you are writing in Dari or Pashto, always use a period between abbreviated letters. When writing in English, it is better to avoid using periods or commas as much as possible.

| Write: | Do Not Write: |
|--------|---------------|
| CCA | C.C.A. |
| ق.ا. | قا |
| ق.م. | قم |
| ق.ج. | قج |

Also see the Appendix to the Guide for a list of abbreviations for legal sources, government institutions, and other common abbreviations. If no abbreviated form is

provided in the appendix, you can use your best judgment while keeping in mind the other rules explained here.

Rule 2.3.(G): How to Abbreviate Names

Do not use abbreviations for full names of individuals. It is possible to use abbreviations for part of the first name of a person if it is easily recognizable, such as names that start with Mohammad.

| For This Name: | You Can Write: | Do Not Write: |
|---------------------|----------------|---------------|
| Mohammd Nabi Kabuli | M. Nabi Kabuli | M. N. K. |

Rule 2.3.(H): Abbreviating Principles into Terms

When explaining a principle that is based on a legal maxim, provision of law, or other materials, first provide the full explanation and use the shorter form inside parenthesis and then use the shortened form throughout the rest of the work.

| Example |
|--|
| Article 25 of the Afghanistan Constitution states that innocence is the original state and that an accused person should be considered innocent until an authoritative court proves the person is guilty (Presumption of Innocence). |

Rule 2.3.(I): Abbreviating Geographical Locations

Spell out the names of countries, cities, and other geographical locations.

Rule 2.3.(J): Abbreviating Months

Do not abbreviate the months of the year in the text. You can abbreviate the months of the year for a citation using the following list:

| Number | Month | Short Form | Season |
|--------|-----------|------------|--------|
| 1 | January | Jan | winter |
| 2 | February | Feb | |
| 3 | March | Mar | spring |
| 4 | April | Apr | |
| 5 | May | May | |
| 6 | June | Jun | summer |
| 7 | July | Jul | |
| 8 | August | Aug | |
| 9 | September | Sep | autumn |

| | | | |
|----|----------|-----|--------|
| 10 | October | Oct | |
| 11 | November | Nov | |
| 12 | December | Dec | winter |

Rule 2.3.(K): Punctuating Abbreviations of Months

Do not use a period or other punctuation for abbreviated forms of months.

Rule 2.3.(L): Abbreviations in Legal Citation

Months of the year, geographic terms, and ordinal numbers should be spelled out in legal citation.

2.4. General Rules Regarding Translations

Rule 2.4.(A): Using Afghan or Islamic Law Terms in English

For unique Afghan or Islamic Law-related terms that do not have an exact English translation, use the closest English word and put the original Dari/Arabic term inside parentheses after the name of the language.

Example

Amendment (in Dari: Tahdil) is published as a separate publication in the official gazette (in Dari: Jarida e Rasmi).

Rule 2.4.(B): Citing Official Dari or Pashto Documents in English

When citing any official documents that are in Dari or Pashto, always use the official translation used in the document. If no translation exists, then the translation is allowed, but the name of the document should be also used in Farsi inside parenthesis.

Example

Penal Code of the Islamic Republic of Afghanistan (Qanoon e Jaza e Afghanistan)

2.5. General Rules of Transliterations

Rule 2.5.(A): Do Not Italicize Foreign Words

Don't italicize Dari, Pashto, or foreign words; just write them in normal font.

Rule 2.5.(B): Arabic or Dari Transliterations into English

For all Arabic or Dari transliterations into English, use the International Journal of Middle Eastern Studies Transliteration Guide:
<http://ijmes.chass.ncsu.edu/docs/TransChart.pdf>

Rule 2.5.(C): Pashto Transliterations into English

For all Pashto transliterations into English, use the transliteration guide used by the Library of Congress: <http://www.loc.gov/catdir/cpsd/romanization/pushto.pdf>

2.6. General Rules of Style

Rule 2.6.(A): Always Provide the Complete Citation First

Never use a shortened citation form for any source unless you first provide a complete citation form.

Rule 2.6.(B): Always Use the Abbreviated Citation After the First Citation

Always use the shortened citation form for subsequent citations to an authority that is already cited.

Rule 2.6.(C): When to Use Id

Use Id only when you refer to an authority that is used in the immediately preceding footnote.

Rule 2.6.(D): When to Use Footnote Numbers for Reference to Citation

If a citation to authority is not used immediately in the preceding footnote, use the footnote number to provide a reference to that citation.

Example

See id at 9.
See page 12.
See section 4.2.

2.7. Rules Regarding the Format of Your Writing

Rule 2.7.(A): Font and Format

Generally, follow the below font and format unless required otherwise by your reader:

Rule 2.7.(a): Use single-spaced between sentences.

Rule 2.7.(b): Use 1-inch margins all around.

Rule 2.7.(c): Use Times New Roman 12 pt for the body of your text.

Rule 2.7.(d): Use Times New Roman 10 pt for footnotes.

Rule 2.7.(e): Left justify.

Rule 2.7.(f): Hard return between paragraphs. Do not indent paragraphs.

Rule 2.7.(B): How to Use Headings

Rule 2.7.(a): Use LEVEL ONE HEADING for Chapter titles. All words in this level should be capitalized.

Rule 2.7.(b): Do not use numbers for the INTRODUCTION or Conclusion sections.

Rule 2.7.(c): Use LEVEL TWO SUBHEADING for a Section title. All words in this level should be capitalized.

Rule 2.7.(d): Use Level Three Subheading for Sub-section title. At this level, only the first letters should be capitalized.

Rule 2.7.(e): Use the Level Four subheading for the Sub-section title and only capitalize the first letters.

Rule 2.7.(f): Use an auto-formatted table of contents. For example:

| TABLE OF CONTENTS | |
|----------------------------------|-----|
| PREFACE | ii |
| ACKNOWLEDGEMENTS | iii |
| CHAPTER 1: TITLE | 1 |
| 1. TITLE OF SECTION 1..... | 2 |
| 1.1. Title of Subsection 1 | 2 |
| 1.2. Title of Subsection 2 | 4 |
| 1.3. Title of Subsection 3 | 5 |
| 2. TITLE OF SECTION 2..... | 6 |
| 2.1. Title of Subsection 1 | 6 |
| 2.2. Title of Subsection 2 | 14 |
| 2.3. Title of Subsection 3 | 22 |

| | |
|----------------------------------|-----------|
| 3. TITLE OF SECTION 3..... | 25 |
| 3.1. Title of Subsection 1 | 25 |
| 3.2. Title of Subsection 2 | 38 |
| 3.3. Title of Subsection 3 | 34 |
| 4. CONCLUSION..... | 36 |
| CHAPTER 2: TITLE..... | 38 |
| 1. TITLE OF SECTION 1..... | 39 |
| <i>...and so on...</i> | |

Rule 2.7.(C): Footnote or Endnote

Using footnotes is preferred over using endnotes in Afghanistan. However, when making the decision which one to use, use common sense and decide based on the context.

Rule 2.7.(D): Number of Footnotes

Avoid using excessive footnotes or other types of citations. Cite only when it is necessary.

Rule 2.7.(E): Bibliography Style or Reference Style

Legal writers in Afghanistan mostly use a bibliography style. The reference style is also used in the most recent writings. Each style has pros and cons. You have to consult with your department to find out which style is acceptable.

2.8. Rules Regarding Punctuation

Rule 2.8.(A): Rules Regarding Parentheses:

Rule 2.8.(a): Do not use parentheses for the last name of individuals.

Rule 2.8.(b): It is permissible to use parentheses for explanation purposes.

Rule 2.8.(c): Use parentheses to write the non-English form of the word.

Rule 2.8.(d): Use (–) before Arabic first or last names (Noor Al-Haq).

Rule 2.8.(e): Use (e) to show kasra between two words (Share e Naw).

2.9. Rules Regarding Capitalization

Rule 2.9.(A): Use English Grammar

Follow the general rules of English grammar for using uppercase or lowercase letters.

Rule 2.9.(B): Exception for Transliterated Words

Do not use capital letters for words that are used in transliterated form.

Example

Another source of law is Sharia law.

Rule 2.9.(C): Capitalize the Names of Statutory Laws

Names of statutory laws or other authorities (as well as references to specific parts of those authorities) may be capitalized.

Example

The principle of legality is accepted in Article 27 of the Constitution.

The Second Chapter of the Afghan Constitution is entitled “Fundamental Rights and Duties of Citizens.”

3. CITING FROM COMMON TYPES OF SOURCES

3.1. Constitutions

Throughout its legal history, Afghanistan has operated under multiple constitutions. As with citing any source, specific details are necessary when referencing a constitution. Essential information includes the constitution's precise and complete title, the official gazette number, the publication year, and the specific constitution article being cited. For instance, the correct full title of one constitution might be the "Constitution of Islamic Republic of Afghanistan," while for another, it may be simply the "Constitution of Afghanistan." These seemingly minor details are critical for correct citation and avoiding confusion.

In practice, authors often cite the Constitution without incorporating all four elements mentioned above. A typical citation might appear as follows:

Example of Practiced Citation

Constitution of Islamic Republic of Afghanistan (2004), or
The Islamic Republic of Afghanistan, Constitution 2004, or
CONST. OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, or
According to Article 25 of the constitution

Many authors, in practice, do not reference the official gazette number or the year of enactment when citing from a constitution or statutory sources. As you'll discover, mentioning the official gazette number is crucial to avoid ambiguity about the sources used and aid readers in locating the source. It's plausible that a particular law approved in a specific year could be replaced with another law within the same year. Not citing the year or date of publication could lead to confusion about which source you're referring to. Therefore, the specific date of application, including the month and day of publication is also significant to prevent misunderstandings. Nonetheless, providing the complete date of publication is not as useful as mentioning the official gazette number, if there is one. As such, it is always beneficial to provide both the official gazette number and the publication date.

While the constitution is less likely to change as rapidly as statutory laws, the absence of the gazette number and exact date is not as problematic when citing from the Constitution. Writing the year of enactment for the cited constitution should be sufficient. However, for uniformity's sake, it's preferable to write the gazette number for all sources published in the official gazette, including the constitution.

For instance, citing Article 130 from the current Constitution of Afghanistan for the first time should appear as follows:

Example of Suggested Citation

Constitution of Islamic Republic of Afghanistan, OG No. 818, Article 130 (January 28, 2004).

Subsequent citations from the constitution can be more concise, omitting the official gazette number and complete date. An abbreviated form of the Constitution's name, along with the section and article referenced, can be used.

Example of Suggested Citation

Article 130, *Constitution of Islamic Republic of Afghanistan*, OG No. 818 (January 28, 2004).

However, if you cite from a constitution more than once, the subsequent citation could be shorter without keeping the official gazette number and complete date. You can also use an abbreviated form of the Constitution's name and provide the section and article referenced.

Example of Shorter Citation

Article 131, *Constitution of Islamic Republic of Afghanistan* (2004).

In judicial decision writing or litigation writing, judges and prosecutors cite in the textual body of their decisions and litigations, usually in a condensed form as below:

Example

According to Article 25 of the 2004 Constitution, any person who is accused of committing a crime shall be innocent until a competent court rules that the person is guilty.

Afghan judges and lawyers might use abbreviated forms of the constitution under the assumption that detailed citation isn't necessary due to the constitution's well-known status. However, the constitution's articles may be amended in the future, possibly more than once. In such cases, it is advisable to provide more detailed information, such as the publication date and official gazette number.

3.2. Citing from Statutory Laws

In judicial decision writing, the judges always quote or cite the statutory laws in the body of the text. The main purpose of the judges' use of citation and quotation in judicial decision writing could be to make sure that their opinion and reasoning are based on a provision of an enforceable code. To meet this purpose, it is essential that the citation and quotations guide the readers easily and clearly to the original source.

As we discussed earlier, courts have adopted their traditional method of citing. Usually, it depends on how famous and well-known the law is among writers and readers. If the code is famous, the judges usually cite it briefly. Here is an example of an in-text citation:

Example

According to section 2 of Article 29 of the *Penal Code of the Islamic Republic of Afghanistan* merely deciding about committing a crime is not considered initiating a crime.

However, although the above citation might guide someone to the original source while this cited code is enforceable and valid, what happens if someone refers to this case a few years after the code is amended or replaced by another code? In order to meet the required purpose of the citation, it is incredibly important to be as specific and detailed as possible.

Rule 3.2. (A): How to Cite from Statutory Law

Clause number, article number, code name, official gazette number, and publication date.

Example

Section 2, Article 29, *Penal Code of Islamic Republic of Afghanistan*, OG No. 347 (September 22, 1976).

It is obvious some codes may have several volumes. For example, the civil code of Afghanistan has four different volumes. In terms of citation, it may not be a requirement to add the volume number since judges and lawyers are referring to the articles. However, if each volume starts with article one, in this case, it is recommended to cite each volume.

Rule 3.2. (B): Citing from Statutory Laws with Several Volumes

Clause number, article number, code name, volume number, official gazette number, and publication date.

Example

Section 4, Article 395, *Civil Code of Islamic Republic of Afghanistan*, the second volume, OG No. 353 (January 5, 1977).

However, there is no code in Afghanistan in which the first article of each volume starts with article one. The civil code has four volumes with sequential provision numbers.

There are situations in which judges may be required to cite more than one clause or article of the same code.

Rule 3.2. (C): Citing from Statutory Laws with Multiple Clauses or Articles

Clause number, article number and clause number, article, code name, official gazette number, publication date.

Example

Section 4, Article 395 and Section 5, Article 410, *Penal Code of Islamic Republic of Afghanistan*, OG No. 347 (September 22, 1976).

In other cases, courts may cite two different codes in the same argument. In this case, complete the first cite and start with the second cite with conjunction.

Rule 3.2. (D): Citing from Two Different Codes

Clause number, article number, code name, official gazette number, publication date, AND clause number, article number, code name, official gazette number, publication date.

Example

Section 4, Article 395, Penal Code of Islamic Republic of Afghanistan, OG No. 347 (September 22, 1976); AND section 2, Article 4, *Criminal Procedure Code of Islamic Republic of Afghanistan*, OG No. 1132 (2/15/1392).

Some codes may follow a unique structure for sub-parts of its provisions. The example below shows the unique structure used in the Civil Code of Afghanistan. When citing from such sources, it is important to give reference to the specific sub-part cited.

Example

Structure of the Civil Code:

BOOK
Chapter
Section
Topic
Subtopic
Part 1
1 —

3.3. Citing from Amendments, Addition, Correction, and Revocation of Codes

3.3.1. Citing from Amendment Statutes

Verifying the currency of a quoted or cited code is paramount. After a statute is published in the official gazette, legislators may change particular provisions—a process known as "amendment." In any legal and judicial system, it is quite common for legislators to amend, add to, correct, or revoke a code, either in part or in full. The amended provisions are usually published in the official gazette, each carrying a unique publication number. The publication title typically indicates which part of a code has been altered and the authority responsible for the amendment. Once a portion of a statute has been revised, the prior version of that part is no longer enforceable.

However, the initial version of the statute, including the outdated provision, remains accessible via the official gazette number where it was first published. Additionally, the Ministry of Justice does not reissue a new version of the entire statute after amendments. Consequently, this amendment process can potentially cause confusion if the precise source and publication number are not correctly cited.

For instance, the Private Investment Law was initially enacted and published in official gazette number 869 on December 21, 2005. Later, Article 21 of this law was amended in 2010 and published in official gazette number 1020. Therefore, when citing from any part of this law except Article 21, the citation should refer to the 2005 version of the law. However, when citing Article 21 of this law, the citation should reference official gazette number 1020, which contains the amended and currently enforceable version of the Private Investment Law. In this scenario, providing incomplete or inaccurate citations could result in misinterpretation. An illustration of both a complete and incomplete way of citing from an amendment is provided below.

Example of an Incomplete Citation

Amended Article 72 of Income Tax Law, a person without a business license providing goods or services to others shall be subject to a 7 percent fixed tax.

The importance of specificity in citation cannot be overstated; a citation that falls short in facilitating source location can be considered incomplete. This highlights the necessity of always mentioning the official gazette number and explicitly specifying whether we are referring to a new law or an amendment of a law.

Rule 3.3.1.(A): Citing from Amended Code

When citing from the amended version of a law, the following order should be adhered to:

Amended clause number, article number, code name, date of ratification, publication, No. Of official gazette.

Example

Amended section 1, Article 72, *Income Tax Code of Islamic Republic of Afghanistan*, OG No. 1117 (October 20, 2013).

At times, codes may undergo a second, third, fourth amendment, or more. In such instances, it becomes crucial to cite the exact amendment with meticulous detail. Precision in citing amendments ensures clarity and accuracy in referencing, avoiding potential misinterpretation or confusion.

3.3.2. Addition

The legislative approach towards adding new articles to an existing code is distinct from the amendment of pre-existing articles. Typically, legislators may introduce entirely new articles to an existing code. The publication protocol for such added articles aligns closely with that of amended codes; they are usually published in the most recent edition of the official gazette at the time of the amendment. For judges and lawyers, it is paramount to ensure that their viewpoints and claims are supported by enforceable provisions within the code. As with amended codes, accuracy in citing added articles is crucial to prevent misunderstanding and ensure the cited law's correct interpretation and application.

Example

According to addition to clause number 4 of Article 37 of Election Law, if a candidate is killed after the election, he is announced to be the winner, then the election shall be held again in that particular area.

Rule 3.3.2. (A): Citing from an Added Article of Law

Added clause number, article number, code name, date of ratification, and Official Gazette number (date).

Example

Added clause 4, Article 37, *Election Law of Islamic Republic of Afghanistan*, OG No. 874 (January 26, 2006).

3.3.3. Correction of the Code

On rare occasions, the Ministry of Justice issues corrections to previous publications that contain non-substantive errors such as misnumbering or typographical mistakes. Each correction has its unique official gazette number and publication date. Ordinarily, references to such corrections are embedded in the main body of the text, negating the need for a comprehensive citation in a footnote.

Rule 3.3.3. (A): Corrections Cited in Running Text

Corrections made to a legislative document by the Ministry of Justice could be cited in the running text.

Example

According to the correction issued on November 18, 2015, reflected in the official gazette number 1198, the numerical designation for Article 40 of the Law on Administration of Tax Affairs was altered from Article 33 to Article 34.

3.3.4. Revocation

Citation to revocation of legislation could be provided in running text or in a footnote. If a citation is provided in a footnote, the following order should be followed:

Example

Article 3, *The Amendment and Omission of Some Articles of Law on Organization and Jurisdiction of Judiciary Branch of Islamic Republic of Afghanistan*, OG No. 1146 (September 8, 2014).

3.4. Legislative Presidential Decrees

Under the former Afghan legal framework, Presidential decrees served as provisional sources of legislation. As per the previous Constitution of Afghanistan, in the event of the legislators' (Meshrano Jerga and Wolsi Jerga) absence, the President was authorized to enact laws. However, the Constitution constrained the validity period of these enactments; they had to be submitted to the legislative body as soon as the following legislative term commenced. Subsequently, the legislative body would either endorse these enactments as laws or retract them. Despite this, the legislative presidential decrees possessed a specific number and date and were cataloged in the official gazette. Typically, the stipulated articles were either incorporated within the main text of the decree or articulated in the same code. The method of citing these varied depending on the format. Practical and suggested examples were provided below:

Example of Presidential Decrees

Presidential Decree No. 66, OG No. 802, June 18, 2002.

Example of Legislative Presidential Decrees Articulated in the Textual Body of the Decree

According to Article 1 of legislative presidential decree number 66 dated 06/18/2002, published in OG No. 802 on June 18, 2002, all presidential legislative decrees issued before 12/22/2001 are null and void.

Rule 3.4. (A): Citing from Legislative Presidential Decree

Article number, Legislative presidential decree number, decree date, published official gazette number, date of publication.

Example

Article 1, *presidential legislative decree number 66*, OG No. 801 (June 18, 2002).

Example of Citing a Code Adopted by a Presidential Decree

According to Article 29 of the *Interim Criminal Procedure Code of the Islamic Republic of Afghanistan*, OG No. 820, February 25, 2004, as adopted by presidential decree number 115.

Usually, the last type of citation is not very different from the citation of statutory law. The structure of an articulated presidential decree is not very different from the structure of codes, which have been legislated under the normal procedure of legislation; that is why it will not affect citation format. However, in cases where the presidential decree is not following a unique format, it is important to consider the title, number, published document, date, and specific matter you are referring to. It might be challenging to keep track of presidential decrees because they will either be validated or revoked by another legislative document and because types of decrees vary in terms of the period; some might be periodic, but others might be long-lasting.

Rule 3.4. (B): Citing from Codes Ratified by Presidential Decree

Clause number, article number, code name, official gazette number, and publication date.

Example

Section 2, Article 29, *Penal Code of Islamic Republic of Afghanistan*, OG No. 347, (September 22, 1976).

3.5. Judicial Circulars

Judicial Circulars are often used as legal sources for courts. Judicial Circulars are binding regulations for courts and other entities requesting the interpretation of the law from the Supreme Court. Constitutionally, when courts or other government agencies require an interpretation of an ambiguous provision of a code, they have to ask the Supreme Court to interpret it for them; those interpretations are done through the Supreme Court High Council (SCHC), which is the managing and legislative body of the judiciary. The SCHC routinely publishes these decisions, and the courts are bound to refer to them as necessary. Sometimes, the SCHC judicial circulars explain procedural and administrative acts, but they are mostly binding regulatory circulars.

The method of citation for judicial circulars is different from that of the other sources because the Judicial Circulars are not as organized as the official gazettes published by the Ministry of Justice (MOJ). Therefore, it is sometimes challenging for judges and lawyers to find particular circulars. However, the Supreme Court has its own monthly publication called *Qaza*, which publishes circulars and other subjects. The following are some examples of citations to the judicial circulars.

Example

According to decision number 1747, circular number 272-194 of the High Counsel of the Supreme Court High Council dated 13/2/1394 HS judges must be impartial.

Rule 3.5.(A): Citing from Judicial Circulars

Supreme Court High Council decision number, circular number, date, publication source name (if available), publication date, publication date.

Example

According to decision number 1747, circular number 272-194 of the High Counsel of the Supreme Court High Council dated 13/2/1394 HS judges must be impartial.

3.6. Citing Regulations

Ministerial Regulations usually execute binding regulations to the code and often explain how to put the regulations into practice with certain laws. For instance, when the government passes a law about taxes, usually these are general rules because legislators believe that if every detail is established in the code, it might be too immense. Therefore, they think it is better to limit the law articles to general rules, and the code and the procedure for how to enforce the law should be in different legal documents. The regulations are counted as the secondary source after statutory law. Usually, the relevant code cites that specific regulations will be articulated by regulations.

The courts are referencing the Ministerial Regulations as below:

Example

Pursuant to Article 6 of *Regulation on Financial Independence of Universities* (published in OG No. 1123, dated December 11, 2013), foreign organizations may directly financially support independent universities.

However, keep in mind the regulations will be replaced frequently, so be sure you are citing the valid regulation.

3.7. Citing Court Cases

Currently, in Afghanistan, there is no widely accepted uniform way of citing cases that have already been decided by courts. One possible reason for this is that these cases do not hold as much significance as they do in other primarily common law legal systems.

However, cases can be valuable in various ways. They can be utilized in non-litigation writings, such as academic legal writing, where they offer insights into how judges have resolved legal matters. In essence, cases serve as tangible examples of how the law is applied by the courts. Additionally, cases are crucial in predictive writing. You can refer to a case to explain to a client facing a similar issue how that issue is likely to be decided if it were brought to court.

Nevertheless, accessing cases and judicial decisions is not easy. Perhaps due to this difficulty, case law has rarely been employed in legal education in Afghanistan. However, the Supreme Court of Afghanistan recently acknowledged the need to publish court decisions. The primary objective was to distribute cases of various types among future judges in the Judicial Stage Program, aiding them in developing their practical legal skills.¹⁰

In the Supreme Court's collection of cases, each case is assigned a date and number, serving as key identifiers. Other important identifiers may include the names of the parties involved, the type of case, the date and location of the incident (in criminal and public security cases), a summary of the case's nature, and the basis for litigation (explaining why a case was brought to court). The following snapshot of a case from the Supreme Court's publication of cases illustrates these key components that can be used in our citations.

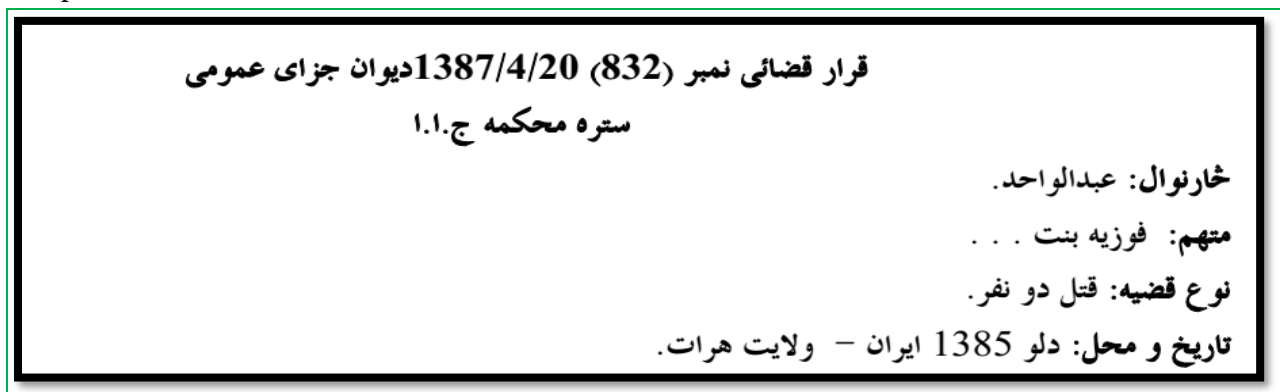


Figure 1 - Example of Judicial Number and Decision Date That Could Serve as Case Locator

¹⁰ See *supra* note Error! Bookmark not defined.

The key components or identifiers of a case can vary depending on the type of case. Generally, the following information is typically provided at the beginning of each case:¹¹

1. Information about the parties involved in the case.
2. Type of lawsuit.
3. Details about the location and nature of the incident.
4. Information regarding the administrative processing of the case, including dates and number locators referring to previous official records.
5. Facts of the case, the court's holding, and the date of the decision.¹²

However, not all of the information provided in the case needs to be included in the legal citation of the case. The simplest way to cite a case is to use the name of the court, the judicial decision number, and the date of the holding. For example, for the case mentioned above, the citation would be as follows:

Suggested Style of Citing from a Case

General Criminal Division of the Supreme Court of the Islamic Republic of Afghanistan, *Judicial Decision* Number 832 (1387/4/20 HS).

District primary court of Paghman, Decision Number 125 (22/10/1392).

When citing a case, you should provide some details about the case you are referencing, such as a summary of the case and how the court applied the law. This information can be provided in the body of your writing. If you are writing for litigation purposes, you may also explain that the reason you are citing the case is primarily because case law is not a source of law in Afghanistan. By providing an explanation, you have the opportunity to persuade or convince your reader based on the case you are citing. Simply citing a judicial decision without any explanation will not strongly support your argument.

In practice, authors often cite cases using different styles. In many cases, the citation is more of an explanation of the case in one or two sentences. For example, you may come across a citation like "In a contract dispute between Ahmad and Mahmood, decided by the Appellate Court of Kabul on such and such date, it was stated that...". You can use this method of citation if you are citing from a case that is not officially published by the courts and does not have a decision number. However, if you have the case number, date, and name of the court, it is better to use the style explained above.

¹¹ See e.g., Article 6 of the Supreme Court Guideline on Simplifying Judicial Decisions in Criminal Courts, *supra* note.

¹² See *supra* note.

Example

The accusation has been heard against Najib and Fahim, in decision number 39 dated 11/3/1393 of this court.

3.8. Citing from Sharia Sources

When citing Sharia sources, it is important to consider the constitutional framework in Afghanistan. According to the constitution, in cases where there is no provision available in the statutory code, legal actors are obligated to refer to Islamic sources under specific conditions. In the Afghan legal system, the Hanafi Sect is recognized as a binding legal source following the statutory laws. Additionally, the Constitution of Afghanistan contains a provision stating that no law shall contradict the provisions of Islam.¹³

For citation purposes, lawyers may refer to the following sources in their writings:

- The Quran
- The Tafsir books (books that provide explanations and interpretations of the Quran)
- The Hadith books (collections of sayings and actions of the Prophet Muhammad)

When citing from these Sharia sources, it is important to provide accurate references and citations to ensure transparency and scholarly rigor in legal writing.

3.8.1. Quran

When citing from the Quran, normally, words of attribution such as "according to the Quran..." and "Allah says in the Quran..." are used before quotation marks. After the quotation, the citation includes the name or number of the chapter (surah) and verse (ayat). For example, if you have to cite verse 157 of the Al-Imran chapter, you can cite it as [2:157] or [Al-Imran:157]. This method of citation could be used in the body of your text at the end of the cited verse.

Rule 3.8.1. (A): Cited Verses Should be Indented.

For longer citations, you need to provide additional information, such as the translation you are using, the publication, and the year of publication. See the examples below:

Example

¹³ See, Constitution of Islamic Republic of Afghanistan, Official Gazette No. 818 (2004/01/28), Articles 3 and 130.

According to the Quran: "They are those on whom (descend) blessings and mercy from Allah." [2:157]

Allah says in the Quran: "When you remember Me, I will remember you. Be grateful to Me, and reject not Faith." [2:152]

The Qur'an. Trans. by Tarif Khalidi. New York: Viking, 2008. Print.

3.8.2. Hadith

Citations from the Hadith also necessitate the use of attribution phrases before the quotation and citation details after. These attributing expressions typically include "as reported by...", "as narrated by...", or "Prophet Muhammad (peace be upon him) stated..."

Upon concluding the quotation, there exist several methods for citation. One common approach is to conclude the translation with phrases like "narrated by..." or "as reported by... in Sahih Bukhari", following the statement by Prophet Muhammad (peace be upon him).

Example

The Prophet Muhammad (peace be upon him) said, "That which is lawful is clear, and that which is unlawful is also quite clear. Between these two is that which is ambiguous, which most people do not know. One who avoids the doubtful safeguards his faith and his honor." Riyadh-us-Salaheen, Hadith 588.

The Prophet Muhammad (peace be upon him) was asked what type of earning was best, and he replied: "A man's work with his hands and every (lawful) business transaction." Al-Tirmidhi, Hadith 846.

3.8.3. Fiqh

As previously mentioned, courts have the constitutional authority to cite Sharia sources in their cases. These Sharia rules are interpreted in the Fiqh books authored by various Islamic scholars. Predominantly, courts utilize the Ninety Nine Fiqh Maxims, a text well-known among judicial practitioners.

Rule 3.8.3. (A): How to Cite Islamic Legal Maxims

Cite legal maxims of Islamic jurisprudence in running text as follows:

Example

According to the legal maxim of Islamic jurisprudence, “harm shall be removed” (in Arabic: Al-Darar yuzalu), which means everyone should avoid causing harm to another.

3.8.4. Fetawa Books

In Islamic jurisprudence, a Fatwa is a legal opinion or scholarly interpretation delivered by a qualified Islamic jurist, known as a Mufti in Dari. Certain certified Fatwa Books are widely referred to for such authoritative interpretations. Consistent with Article 130 of the Constitution, Afghan Judges frequently consult these books when seeking Islamic rulings. Fatwa Books such as Fetawa Kamilia and Fathul Qadeer are most commonly used within Islamic Law Jurisdiction.

Example

A person is allowed to marry the sister of a foster son as explained in the section on Consent in the Fatawa e Alamgiri (page 343).

However, in the Shia' Jafari sect of Islamic Jurisdiction, reference is often made to a Marja-i Taqlid (Authority to be Followed), a high-ranking religious authority qualified to answer religious inquiries. In regions where Shi'a constitute the majority and under Article 131 of the constitution in personal statute matters, the Fiqh Jahfari provisions are enforceable. In such instances, the courts' citations typically follow this format:

Example

According to the opinion of Marjae Taqleed Ayatullah Mohaqiq Kabuli, if a buyer holds property with the intent of deciding whether or not to purchase it, and the property sustains damage while under the buyer's possession, the buyer is obliged to compensate the seller (Issue Number 2711).

3.8.5. Istefta

Istefta refers to the act of soliciting a fatwa. The Supreme Court of Afghanistan has a designated department known as "Darul Ifta," which holds the responsibility of issuing fatwas to guide Afghan legal actors in interpreting novel matters under Islamic law. A fatwa typically presents the meticulous reasoning of scholars regarding a specific case.

Under the Afghan legal system, when dealing with such issues, the Supreme Court directs the matter to the Darul Ifta for an opinion formulated on the principles of Sharia. Once this opinion is issued, it becomes a reference for judges and courts in subsequent related cases. The Supreme

Court's Muftis do not dispense fatwas regularly; instead, they issue a fatwa upon request from courts and other government agencies aiming to elucidate a particular matter.

Example of Citing from *Istefta*

According to the *Istefta* made by the First Committee of Crime Investigation Unit at the General Directorate of Crime Investigation of Appellate Prosecution Office on 1384/7/4 regarding a publication on Apostasy in Islam, the Darul Ifta of the Supreme Court issued a fatwa stating that the author committed apostasy.

3.9. Citing from Custom

Customary practices are recognized as valid references for laws in Afghanistan, often consulted by judges and lawyers predominantly in civil and commercial cases. While criminal law delineates specific acts and associated penalties, civil and commercial legal areas sometimes consider custom the most authoritative source. In certain scenarios, custom may supersede even a statutory source. Under specific circumstances, the Civil or Commercial Code may necessitate the resolution of a dispute in accordance with customary norms. When a law prefers customary norms to regulate specific relationships, such customs then become an authoritative source within our legal system. Note that even when not the primary source, custom can still serve as a secondary and persuasive source to some extent.

Example

According to the customary practice among furniture sellers in Herat in 2015, a tea table is invariably included as part of a sofa set unless the seller explicitly states its exclusion from the set.

3.10. Citing from Books

Books serve as valuable secondary sources, offering a range of materials that can assist in research, including textbooks and sourcebooks. Some books are written in straightforward language, intended to facilitate self-study or guide the general public. Others provide comprehensive analyses of law, explicating general principles and legal doctrines. Such sources not only define law but also illuminate its interpretation and application. As mentioned previously, these books are also referenced by judges for legal research. Works such as *Al Tashree al Janai al Islami* by Abdul Qadir Awdah and *Al-Wasīṭ Fī Sharḥ Al-Qānūn Al-Madanī Al-Jadīd* by Abd, al-Razzāq al-Sanhūrī are frequently utilized by law professors, judges, and researchers in Afghanistan.¹⁴

¹⁴ Interview with Judge Shaker Morid, see *supra* note 5.

When citing from a book or similar resources, five key components about the source should be noted:

1. Author's name;
2. Title of the book, including the volume and edition numbers if multiple editions exist;
3. Details about other contributors, including editors and translators;
4. Publication-related information, including the year of publication, location, and publisher;
5. Specific details about the source used, such as page numbers.

If any information is absent, it may be omitted. Some opt to use the term "unknown" for missing details (e.g., "Year of publication: unknown"), while others suggest a blank underline for the absent part (e.g., "Author: ____"). However, it is more advisable to use the term "unknown" for any missing information.

Rule 3.10. (A): How to Cite from Books

Author's name, title of the book, publisher, publishing date, edition number, and page number.

Example

Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Islamic Society Texts (2003), page 23.

In practice, lawyers and judges commonly cite books authored by Islamic scholars to elucidate Islamic law concepts. For instance, they may refer to *Tashreh Al Jenaiee*, penned by the Egyptian scholar Abdul Qader Awda, for insights on Islamic criminal law. However, the authority level of such textbooks authored by Islamic scholars remains ambiguous within Afghan Jurisdiction. Nevertheless, these types of books are frequently cited in court proceedings.

Example

Section 6 on Exemption from Punishment, rule number 527 of *Tashreh Jenaee Islami*, lists seven grounds for being exempt from punishment.

Rule 3.10.(B): Books Published Electronically

For books published electronically, add additional details that might be available, such as the format of the book and a hyperlink.

Example

The Supreme Court of Islamic Republic of Afghanistan, *Special Bulletin of the Supreme Court*, no date, Page 17, available online; http://supremecourt.gov.af/Content/files/Bulletin_28.pdf (accessed 2/28/15).

3.11. Law Journals

In recent years, a variety of institutions have begun publishing law journals and other periodicals, which lawyers may need to cite.

Law journals and similar periodicals are essential secondary sources, as they typically offer comprehensive and specialized analyses and critiques on specific legal topics. While the specific nature of law review articles may not make them ideal starting points for legal research, they nonetheless serve as invaluable resources, revealing numerous other sources within their footnotes and bibliographies. Developing the ability to mine these articles for sources is a crucial skill. At present, you can access several journals or other publications that can aid your legal research. In Afghanistan, these publications also share updates on recent advancements in legal areas, emerging legal issues, interviews with officials and lawyers, reports, actual cases, judicial circulars, and information about respective administrations.

Citing secondary sources such as law journals is common in academic writing. However, there may be instances when a secondary source offers the only in-depth analysis of a new legal issue. In such cases, a lawyer might wish to cite this source to persuade a judge or their client on how the issue should be resolved based on the explanation provided in the secondary source, especially when no primary source exists that directly addresses the issue.

Citing from a journal article bears similarity to citing from a book, but as a journal is published more frequently, more detailed information about the specific journal volume is required.

Example

Mohammad Hashim Kamali, *References to Islam and Women in the Afghan Constitution*, Arab Law Quarterly 22, No. 3 (2008): 272.

In the example above, the citation includes the author's name, article title, journal name, volume number, publication date, and page number.

Rule 3.11.(A): General Form

When citing from a journal, make sure to provide the following information:

1. Author
2. Title
3. Style (article titles should be italicized)
4. Secondary titles or subheads (always include a secondary title or subhead in the citation)
5. Volume Number
6. Abbreviations (refer to Appendix 5)
7. Cited Page(s) (being specific requires that you cite the page(s) from which you quoted)
8. Date (In Afghanistan, it is common to mention the month [January 2005] or season and year of publication [Winter 2008]. The season is typically used in periodicals published quarterly.)

Rule 3.11. (B): Citing Months in Georgian, Hirji, or Islamic Calendars

It is acceptable to cite the month in the Georgian, Hirji, or Islamic calendar without converting it to another calendar.

Rule 3.11. (C): How to Cite Months in Hirji

When citing a month in Hijri Shamsi or Hijri Qamari, use a transliterated form of the month. See the example below:

Hamal is the first month of the year in the Hijri Shamsi calendar.

Rule 3.11.(D): How to Convert Dates

When converting dates, the conversion should be made accurately, and the original date should also be cited in parentheses. Lawyers in Afghanistan mostly use this method in the body of their text. See the example below:

This crime occurred on the first of Hamal 1393 HS, which coincides with 21 March 2014 in the Gregorian calendar.

Rule 3.11. (E): How to Cite if the Author's Name is Unknown

If the name of the author is unknown, use the underlined blank space () followed by all other available information.

Rule 3.11. (F): How to Cite if the Publication Date is Unknown

If the year of publication is unknown, use "n.d." for no date.

Rule 3.11.(G): Citing a Citation

If you cite from a source already cited by another person, either find the original source, review the respective section, and then cite from it, or mention the source you are citing from (and not the original source) in your citation.

Rule 3.11. (H): Do Not Shorten Periodical Titles

Never shorten a periodical title on the first reference, even if it is long.

3.12. Other Sources

The catalog of persuasive sources continues to expand. Theoretically, additional sources, such as political materials, including speeches or statements, possess practical significance. At times, certain documents, although not binding, can offer analysis of current issues or propose actions to be undertaken by the state, thereby serving as secondary and persuasive sources. Numerous documents prepared by civil societies, research groups, think tanks, and international organizations suggesting specific actions and improvements in legal areas are readily available online.¹⁵

Several organizations and research groups publish series of reports or guides summarizing certain issues such as development work, aid, and reform efforts.¹⁶ Furthermore, some non-government organizations, including international organizations working in specific areas worldwide—like trade facilitation—publish manuals and guides pertaining to Afghanistan.¹⁷ It's also worth noting that certain non-government organizations produce handbooks that detail a particular government body, its duties, and operations.¹⁸ These guides can assist you in acquiring background knowledge in certain fields, such as advancements in specific legal areas.¹⁹

3.12.1. Legal Dictionaries, Encyclopedias, and Law Review Articles:

Legal dictionaries, encyclopedias, and law review articles represent other significant secondary sources. Generally, dictionaries offer definitions, pronunciations, spellings, and usage examples for legal terms. In many instances, dictionaries and encyclopedias are advantageous sources to utilize at the commencement of a legal research task, assisting in discovering the meaning of related terms and issues. Encyclopedias supply a general explanation of a concept without offering

¹⁵ See e.g., recommendations of a number of international organizations to the government of Afghanistan regarding human rights issue: <http://moj-hrsu.gov.af/followuprec.php> (last visited 12/16/2014).

¹⁶ See, e.g., The A to Z Guide to Afghanistan Assistance, prepared and published by Afghanistan Research and Evaluation Unit (AREU), available online: <http://www.areu.org.af/ContentDetails.aspx?ContentId=19&ParentId=19&Lang=en-US> (accessed 4/15/2015).

¹⁷ See, e.g., the Doing Business Series prepared by a number of organizations including the US Department of Commerce.

¹⁸ See, e.g., *Handbook on the Duties and Functions of the NGO Department in the Ministry of Economy*, International Center For Not-For-Profit Law (ICNL) And The Ngo Department Of The Ministry Of Economy Of The Islamic Republic Of Afghanistan, date unknown, available online: http://pdf.usaid.gov/pdf_docs/Pnadu098.pdf (last visited 12/25/2014).

¹⁹ See, e.g., A to Z guide prepared by Afghanistan Research and Evaluation Unit (AREU), available online: <http://www.areu.org.af/ContentDetails.aspx?ContentId=19&ParentId=19> and the A to Z prepared by the Asia Foundation.

a comprehensive analysis or critique. Conversely, law review articles typically extend beyond mere concept explanation, providing doctrinal discussions, critiques, and applications of specific concepts.

During research, it's not uncommon to encounter ambiguous legal terms or concepts. In such instances, your initial response should be to seek out the definition or general explanation of such topics—this is where legal dictionaries and encyclopedias come into play. After developing a foundational understanding of a new concept, you may delve into a more detailed analysis of the topic typically discussed in law review articles. As you continue to study, you'll discover several such sources of dictionaries and encyclopedias available on Afghanistan laws. It's always prudent to consult these sources first whenever you're confronted with an unfamiliar concept. If you find it necessary to refer to a secondary source, such as a law dictionary from a different jurisdiction, remain aware that the meaning and usage of legal terms can vary between countries and legal systems. Additionally, be mindful when determining the correct meaning of a term, as many legal terms possess differing meanings in various contexts.

3.12.2. Legislative History:

Notes taken during legislative committee sessions often provide valuable insights into the rationale and objectives behind specific legal provisions and language choices. These pre-codification records can enhance understanding of certain laws and regulations. Thus, examining the minutes of discussions, drafts, and queries put forth by officials scrutinizing and ratifying a statutory law can be insightful. In Afghanistan, numerous entities may be involved in the legislative process, including a proposing government body's legal advisory department, the Taqin Department of the Ministry of Justice, parliamentary drafting committees, individual houses of Parliament, and the President. Therefore, whenever such historical legislative materials exist, identifying and studying them can be beneficial.

3.12.3. Policies and Strategic Plans

Strategic plans generally outline the desired outcomes in particular sectors and the means to achieve them. Such plans may be devised by an individual ministry or a consortium of legal entities working collectively within a specific field. Afghanistan has recently established numerous long-term and medium-term national strategic plans, policies, and roadmaps across various sectors. Notable strategic plans include Afghanistan's National Justice Sector Strategy (NJSS), Afghanistan's National Development Strategy (ANDS), and the Ministry of Justice's National Legal Awareness Strategy (NLAS), ratified in 2011. These strategies typically undergo revision every five years. While not legally binding within Afghanistan's legal framework, they can serve as persuasive citation sources, reinforcing your argument with the backing of these policies and demonstrating how a ruling favoring your client aligns with broader national interests.

In citing from a strategic plan or comparable documents, begin with the full name of the country, followed by the corresponding government agency and the document's title. Be sure to include the publication date.

Example

The Islamic Republic of Afghanistan, Ministry of Justice, *National Legal Awareness Strategy*, 2011.

3.12.4. Treatises

Treatises are often prepared by a range of organizations, encompassing both governmental and non-governmental entities, offering manuals, guides, and commentary on statutory laws. Various government bodies generate manuals elucidating a statutory source and its practical application. For instance, the Revenue Department of the Ministry of Finance prepared the Income Tax Manual 2010.²⁰ This valuable resource provides practical examples for each Tax Law article, demonstrating the calculation of tax duty. Similarly, the Ministry of Economy prepared a manual outlining the practical application of the Law of Non-Governmental Organizations. This, too, is an invaluable resource for researchers in the field. Many other governmental bodies and independent organizations have developed guides and manuals within their respective work domains.²¹ These resources typically provide straightforward explanations and summarizations of the legal framework governing certain activities.

3.12.5. Monograph or Dissertation

Monographs and dissertations can serve as robust secondary sources in legal research, offering deep dives into specific subjects. These comprehensive documents often stem from meticulous academic research and provide substantial information and insights on a particular topic. In Afghanistan, these documents are typically referred to as monographs.

When referencing a monograph or dissertation, it's important to provide a clear citation, which typically includes the author's name, the title of the document, the type of document (i.e., dissertation or monograph), the institution where the work was submitted, and the year of submission or publication.

Example

Ahamad Khadim, *Types of Right*, (LL.B. dissertation), Kabul University Law and Political Science Faculty, January 2, 2005, at 15.

²⁰ Islamic Republic of Afghanistan, Revenue Department of Ministry of Finance, *Income Tax Manual*, (May 2010).

²¹ See, e.g., Islamic Republic of Afghanistan, Ministry of Mine and Petroleum, *Investor's Guide* (July 2013).

3.12.6. Paper Presented at a Conference

Conference papers can be a useful source of cutting-edge research and perspectives on a given topic. These are papers that scholars and professionals present at academic or industry conferences. They often contain preliminary research findings or theories that may not yet be published in other formats.

Example

Rohullah Azizi, Legal Education Reform in Afghanistan: A SWOT Analysis, presented at Ministry of Higher Education's Legal Education Symposium, Kabul, Afghanistan (2014).

3.12.7. CD/DVD-ROM

CD/DVD-ROMs are physical storage media that can contain various types of digital information, including books, documents, databases, and multimedia. They can be especially valuable for accessing large collections of laws, documents, or databases that are difficult to access otherwise, particularly in regions where internet access is limited.

Example

USAID, Collection of Afghanistan Laws, CD-ROM, Kabul, Afghanistan (2009).

3.12.8. Interviews and Personal Communications

Interviews and personal communications provide direct insights from individuals who are knowledgeable in a certain field. They can offer unique perspectives, experiences, and expert knowledge that may not be available in published sources. These may include interviews, personal correspondence, or conversations with experts or professionals.

Example

Judge Walid Qasimi, interview by author, Kabul, Afghanistan (March 23, 2014).

3.12.9. Newsletter

Newsletters are periodical publications that contain news, updates, and information on a particular topic or organization. They can provide a wealth of up-to-date information and insights about

current events and developments in a specific field, making them valuable sources of contemporary data.

Example

MPs approve members of Constitution commission amidst legislative executive standoff on interpretation powers, Legislative Newsletter, Vol. 3, No.16, Afghanistan Parliamentary Assistance Project, USAID (June 14, 2010).

2.1.1. Social and Online Media:

Social and online media platforms have evolved into significant sources of information, particularly for current events and emerging issues. These platforms, including news websites, blogs, social networking sites, and others, often cover news regarding the enactment of new laws or amendments to existing ones ahead of official sources like the Gazette. In addition to broadcasting the legislative branch's activities, these platforms also shed light on current legal topics. Given the potential for areas of law, such as constitutional law, to become hotbeds of social and political debate, media outlets often host expert analyses and roundtables, providing valuable insights to researchers.

Beyond providing information, content published or broadcasted on social and online media may serve as evidence within the legal system, functioning as an affidavit or contributing evidence for specific disputes or crimes. Certain media publications may even lay the foundation for a criminal investigation. For example, an article discussing a controversial religious topic published in a newspaper or magazine might serve as evidence in a blasphemy case.

When citing from a newspaper or magazine, whether physical or electronic, the citation should include crucial identifying information: the name of the source, the title of the article, the volume of the newspaper, and the publication date. If the source is online or electronic, follow this order for citation:

Example

Khaama Press, *Parliament Approves Draft Law to Ban Recruitment of Child Soldiers*, November 2, 2014.

2.1.2. Websites

Websites are increasingly utilized for their convenience and extensive storage of information. It may often be easier to navigate to the Ministry of Justice's website and search within the Official Gazette. However, it is crucial to note that the content available is the digitized version of the

original sources. The Ministry of Justice manages the website and online database, allowing you to cite Official Gazette publications just as you would their print counterparts, negating the need to include the URL and other details discussed later.

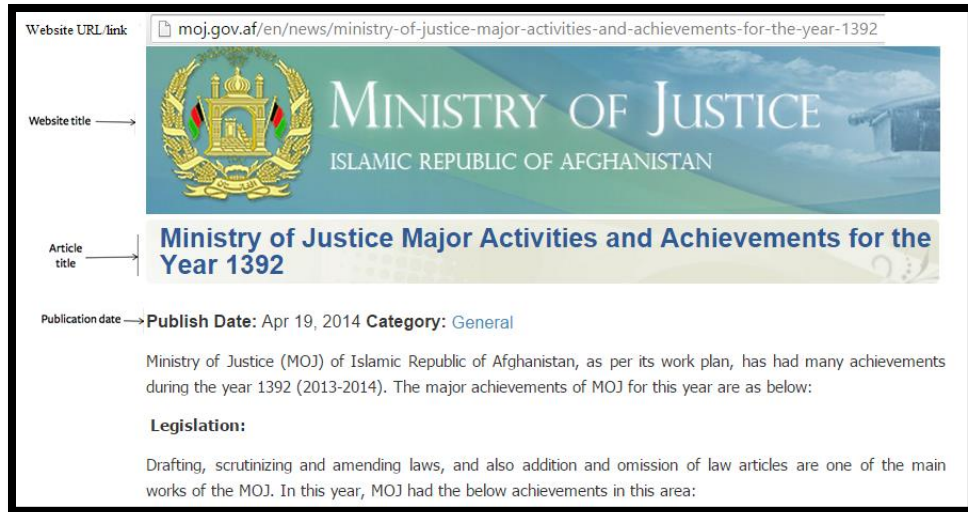
Citing from a website has its unique peculiarities compared to physical publications. A book, once published, typically remains in the same format. Even if revisions or updates occur, these are recorded in new editions, making it clear that a citation refers to a specific version. Websites, on the other hand, are regularly updated, meaning the cited content may not remain accessible via the quoted link. Consequently, when citing from a website, it's advisable to include the date. If the content is frequently revised and is time-sensitive, indicating the date of the revision in your citations may be necessary.

In litigation writing, prosecutors often use websites as evidence to substantiate an offense against the accused. As the case proceeds to the hearing stage, judges verify the accuracy of the indictment. However, citing websites as evidence presents unique challenges due to their global accessibility. In cases where the publication is ambiguous, the court might ask domestic authors or owners to confirm or refute the citation based on their records. However, for foreign websites, there may be issues of jurisdictional authority. The owner might argue non-recognition of the court's jurisdiction, thereby refusing to provide requested information, or the cost of obtaining such information might be prohibitively high.

Example

“Website Article”, Website Title. Website Publisher, Date Month Year Published. Web. Date Month Year Accessed.

“Ministry of Justice Major Activities and Achievements for the Year 1392”, *Ministry of Justice*, Islamic Republic of Afghanistan, 19 April 2014, Web. 5 May 2015.



Rule 3.12.11. (A): Cite the Printed Version When Possible

If you have the option to use either the printed version or an electronic version of a source, it is preferable to cite the printed version.

Rule 3.12.11.(B): How to Cite Websites

When citing websites, it is permissible to skip any information, such as the name of the author, the title of the page, or other citation elements if such information is not available. For example:

For a list of law firms registered with AISA, visit the AISA Online Directory of Investors: <http://www.aisa.org.af/onlinedirectory/all.php> (visited June 27, 2015).

3. Special Citation Rules for Legislative Drafting

3.1. Codification of Law

Codification in legal terminology denotes the process of collecting and restating the laws of a specific jurisdiction within a certain field, systematically arranged by the subject matter, resulting in a legal code. When drafting a legislative document, legislators do not commonly use many citations, but they do incorporate some in the introductory articles of the law.

Lawmakers often rely on paraphrasing techniques in the main body of the code. Given the considerable influence of Sharia rules on Afghan legislation, there are many instances where these rules have been paraphrased, and at times, "Fiqh" rules have been directly incorporated into the body of the code. This section aims to expound on how legislators use citations and quotations in drafting a code.

Legislators usually use citations in the introductory articles of law to highlight its legal foundations. These may refer to the Constitution, other laws, or international agreements that Afghanistan has ratified as part of the international community. A legislative international agreement often contains binding articles and obligates member countries to revise their existing codes or enact new ones to align with the ratified international agreements. However, there have been instances where legislators have cited codes within the text body of the Constitution.

Rule 4.1. (A): Always Write the Basis First

When drafting a legislative document, always write the basis of the legislation first.

Example

This Law is enacted pursuant to Article (31) of the Constitution to regulate the rights and duties as well as other responsibilities of advocates.²²

In the process of citing from international agreements, legislators, along with the aforementioned criteria, may also mention the extent of the agreement's authority and jurisdiction within Afghanistan. This demonstrates the impact and relevance of the international agreement to Afghan law and policy.

Rule 4.1. (B): Use Afghanistan's Acceptance Date

When referring to an international agreement, write the date Afghanistan accepted the agreement.

Example

This law has been enacted pursuant to United Nations Convention against Corruption Afghanistan accessed by Afghanistan on August 25, 2008.

3.1.1. Quoting and Paraphrasing in Legislative Writing

In legislative writing, legislators often employ paraphrasing techniques when codifying a provision of Sharia rules or other legal principles. This strategy involves rewording or restating the law without altering the original meaning. For example, Afghanistan's Civil Code contains certain "fiqh" (Islamic jurisprudence) rules, which have been directly incorporated into the main body of the code.

Rule 4.1.1. (A): Quotation Marks Are Not Required for Citing Islamic Rulings

²²Advocates' Law, Official Gazette No. 934, Article 1 (2007).

When incorporating a principle of law or an Islamic ruling in a legislative document, using quotation marks or citations is not required.

Example

Islamic Jurisprudence Legal Maxim:

Whoever seeks an issue before its time will be punished by being deprived of it.

Civil Code of the Islamic Republic of Afghanistan

Article 4: A person who resorts to obtaining a right before its due time shall be condemned to deprivation of that right.

In the realm of legislative writing, rearticulating legal principles is also a common practice. This involves codifying principles into an explicit law, providing more clarity and applicability. The following example demonstrates how Afghan legislators codified a legal principle into an article of the Penal Code of Afghanistan.

Example

Principle of Law: No crime can be committed nor punishment imposed without a pre-existing penal law.

Constitution 2004

Article 27: No deed shall be considered a crime unless ruled by a law promulgated prior to the commitment of the offense.

Penal Code

Article 2: No act shall be considered a crime but in accordance with the law.

Rule 4.1.1. (B): Provide a List of Technical Terms and their Definitions

It is preferable to provide a list of technical terms used in law along with the definition of those terms at the beginning.

Rule 4.1.1. (C): When and Where to Explain the Objectives of a Law

It is preferable to explain the objectives of the law at the beginning.

Rule 4.1.1. (D): When to Explain the Date of Entry

It is required to explain the date of entry for when a law becomes enforceable and a list of any previous laws that will be nullified by the new legislation.

Rule 4.1.1.(E): Follow a Logical Structure

Each law should follow a logical structure consistently.

Conclusion

In summary, this guide simplified the complex process of citing varied legal sources in Afghanistan's multi-layered legal system. It addressed the need for standard citation rules amidst diverse legal authorities and changes in legislation. Covering aspects of professional writing like plagiarism, quotations, and paraphrasing, it laid out general citation rules, including style, format, and punctuation. It delved into citing sources like constitutions, laws, court cases, Sharia sources, books, and digital and social media, among others. The guide, drawing from the Chicago Manual of Style, yet prioritizing local practices, equipped legal professionals and students to handle citations.

Your role as a practitioner, interpreter, or law student is essential in maintaining the fabric of justice. We trust that this guide will assist you in upholding the highest standards of precision, transparency, and integrity in your legal writing and overall practice.