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Legislative Analysis

I. Title of the Document: Law on Hearing of Complaints

II. Introduction

- Summary of the Legislative Document:** The Law on Hearing of Complaints was approved by Decree No. 412 issued by the DFA Leader on September 7, 2023. This law consists of an introduction, two chapters, and twenty-three articles. It outlines procedures for handling complaints against officials and employees of the DFA, aiming to ensure justice and address grievances.
- Legal Basis for the Document:** The law is based on Decree No. 113 dated September 5, 2022, issued by the DFA Leader. It provides a formal mechanism for citizens to report unlawful behavior and other grievances related to the officials and employees of the DFA entities.
- Scope:** This law applies to all complaints lodged by individuals against officials and employees of the DFA. It sets forth the obligations of DFA authorities, procedures for filing and processing complaints, and measures for protecting complainants.
- Responsible Agency:** The key agency responsible for implementing the Law on Hearing of Complaints is the Ministry of Promotion of Virtue and Prevention of Vice and Hearing Complaints (hereafter the "Ministry"). The "Ministry" reports that two hundred employees work to address complaints, with complaint boxes in all government offices. According to the Ministry, there are designated mechanisms for women to file complaints, and four contact numbers are available for registering complaints. Based on information available on official websites, various ministries have specialized lines for filing or hearing complaints. The Ministry of Defense, for instance, offers a toll-free number and WhatsApp contact for reporting harassment or misconduct. Complaints against the Commission for

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Prevention of Land Grabbing can be submitted to the Special Court for investigation and resolution.

5. **Significance:** In theory, complaint mechanisms and legislation enabling individuals to file complaints to government bodies are crucial for upholding the rule of law in any country. These mechanisms ensure accountability, transparency, and the protection of citizen's rights, especially in a country striving to stabilize and build public trust in its institutions. They allow citizens to hold government officials accountable, preventing abuse of power. By providing a formal process for complaints, these mechanisms promote transparency, demonstrating the government's commitment to fair governance.

Moreover, they offer a structured way for addressing citizens' grievances, ensuring victims can seek redress, and authorities can investigate and rectify issues. Additionally, such mechanisms help improve governance and public services by providing valuable feedback and ensuring the effectiveness and responsiveness of government actions. Establishing these mechanisms through legislation ensures they are backed by a robust legal framework, providing clear guidelines and protections for complainants, and enhancing overall public trust in governance.

III. Description and Analysis

1. Key Terms:

The following legal and technical terms apply in the context of this law and would help in understanding its provisions, although not all are explicitly defined in the law:

- **Accountability:** The obligation of officials to answer for their actions and decisions.
- **Administrative Review:** The process by which a government agency reviews its own decisions or actions in response to a complaint.
- **Baseless Complaint:** A complaint that lacks sufficient evidence or merit.

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- **Complainant (Shaki):** A person who submits a complaint to the Ministry.
- **Complaint:** Written or oral information about the abusive behavior of officials and employees of the DFA entities.
- **Court Proceedings:** The process of adjudicating legal disputes in a court of law.
- **Defendant (Mashko):** In the context of filing a complaint, alternative terms could include "respondent," "subject of the complaint," or "alleged offender." This term refers to an individual or entity against whom a complaint is filed, focusing on the subject of the complaint rather than implying a court proceeding.
- **Delegation:** A group of individuals assigned to verify the validity of a complaint.
- **Faithful (Sadiq):** Faithfulness, or sidq, implies sincerity, honesty, and truthfulness in one's actions and words. It is a key attribute of a believer, as emphasized in the Quran and Hadith.
- **Interference:** Unlawful involvement by DFA officials in court proceedings.
- **Legal Redress:** The process of seeking and obtaining a remedy through the legal system.
- **Missing Persons:** Individuals whose whereabouts are unknown, often in the context of political or security-related detentions.
- **Pious (Muttaqi):** Piety, or taqwa, refers to a person's consciousness of Allah and their commitment to living a life in accordance with Islamic principles. It involves a deep sense of spirituality and adherence to religious duties.
- **Political Crime:** An offense related to political activities or opposition to the government.
- **Prayerful (Musalli):** Being prayerful refers to a person's regular observance of the five daily prayers (Salat), which is a fundamental pillar of Islam. It signifies a person's devotion and commitment to their faith.

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- **Public Awareness:** Efforts to inform the public about their rights and the complaint process.
 - **Threat:** Any action or statement that intimidates or endangers the complainant.
 - **Transparency:** The quality of being open and clear about government processes and decisions.
 - **Trustworthy (Al-Amin):** Trustworthiness in Islamic law implies being honest, and fair in dealings, punctual, and honoring trusts and commitments. It is a fundamental virtue in Islam, rooted in the teachings of the Quran and Hadith. In Afghanistan, a trustworthy person is expected to uphold integrity and reliability, ensuring that the verification process is conducted honestly and without bias.
 - **Verification:** The process of confirming the validity of a complaint.
 - **Vice:** Immoral or wicked behavior that is contrary to the principles of Islamic law and societal norms. In Afghanistan, vice refers to actions deemed sinful or harmful according to Islamic teachings, subject to correction by the “Ministry” for the Propagation of Virtue and the Prevention of Vice.
 - **Virtue:** Behavior showing high moral standards, righteousness, and adherence to Islamic principles. In Afghanistan, virtue refers to actions and behaviors that align with Islamic teachings and societal norms, promoting moral conduct enforced by the “Ministry” for the Propagation of Virtue and the Prevention of Vice.
- 2. Rights Under the Complaints Law:** This law recognizes several rights and privileges for citizens or individuals, such as:

- **Right to File Complaints**
Citizens have the right to file complaints against officials and employees of the Emirate entities. Complaints can be submitted in writing, verbally, or via telephone in exceptional cases (Article 7).
- **Right to Safety and Security**
The “Ministry” is obliged to ensure the safety and security of complainants,

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protecting them from any threats. This provision aims to encourage individuals to come forward with their grievances without fear of retaliation (Article 13).

— **Right to Information**

Citizens have the right to request information about missing persons. The “Ministry” is required to ask for information from relevant authorities regarding the disappearance of individuals (Article 16).

— **Right to Address Political Detentions**

When a person is arrested for political reasons and their fate is unknown for more than a month, citizens have the right to submit a complaint. The “Ministry” will pursue the matter to ensure the individual's situation is clarified (Article 17).

— **Right to Fair Treatment**

Complaint hearing officers are obliged to treat complainants well, even if they are emotional or use harsh words. This ensures that complainants are treated with respect and dignity throughout the process (Article 21).

— **Right to Legal Redress**

Complainants have the right to submit their complaints in accordance with Islamic Sharia and are advised to avoid baseless complaints. If a complaint is proven to be baseless, the “Ministry” can advise the complainant appropriately. If the complainant wishes, they can be referred to the court (Article 19).

— **Right to Non-Interference**

Citizens have the right to complain about interference by Emirate officials in court proceedings. The “Ministry” will address such complaints and, if unresolved, escalate them to higher authorities (Article 14).

— **Right to Appeal and Escalation**

If complaints against judges or officials are not handled properly, citizens have the right to escalate the matter to higher authorities, including the DFA Leader (Articles 11 and 12).

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— **Right to Transparent Processes**

The “Ministry” is required to maintain a complaints registration book, ensuring that all complaints are documented and can be tracked. This promotes transparency and accountability in handling complaints (Article 8).

3. Responsibilities: This law establishes several responsibilities, both for citizens filing complaints and for authorities and delegations verifying these complaints. Here are the details:

A. Responsibilities of Authorities:

— **Receiving and Registering Complaints**

The “Ministry” is responsible for receiving complaints and entering the full details of the complainant and the defendant in a specific form (Article 7(1)).

— **Verification of Complaints**

The “Ministry” is obliged to send a delegation of trustworthy, pious, faithful, and prayerful persons to the defendant's area to verify the validity of the complaint (Article 9).

— **Ensuring Safety and Security**

The “Ministry” must ensure the safety and security of complainants, protecting them from any threats (Article 13).

— **Handling Complaints Against Emirate Entities**

If a responsible authority does not handle the complaint properly, the “Ministry” will request complete information about the case from the said entity for consideration (Article 10).

— **Addressing Interference in Court Proceedings**

The “Ministry” will address complaints about interference by Emirate officials in court proceedings and escalate them if unresolved (Article 14).

— **Good Behavior with Complainants**

Complaint hearing officers are obliged to treat complainants well, even if they are emotional or use harsh words (Article 21).

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— **Guidance for Amending Complaints**

The relevant authority of the “Ministry” should provide guidance to the complainant to correct and amend the complaint if it is written against the complaint writing principles (Article 19(4)).

4. Procedure for Filing a Complaint:

— **Receiving Complaints:** The “Ministry” for the Propagation of Virtue and the Prevention of Vice (hereafter “Ministry”) is responsible for receiving complaints through written or oral submissions. Special provisions are made for verbal complaints in emergencies, which must subsequently be documented.

— **Complaints Registration:** A formal complaints registration book is to be maintained, recording all details related to each complaint.

— **Verification:** A delegation of trustworthy individuals is tasked with verifying the validity of complaints through local investigation.

— **Handling Specific Complaints:** Procedures are specified for handling complaints against different entities, including general DFA entities, judges, and court proceedings.

5. Intervention and Resolution:

— **Complaint Against Officials:** If a complaint involves abusive behavior considered criminal, the “Ministry” must act according to legal principles and potentially escalate unresolved issues to higher authorities or the courts.

— **Interference in Court Proceedings:** Complaints about interference in court proceedings are to be shared with the relevant authorities, with unresolved issues being escalated further.

6. Special Provisions:

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- **Missing Persons and Political Detainees:** Specific articles address complaints about missing persons and those detained for political reasons, requiring the “Ministry” to seek information and pursue the matter.
- **Review Without Complaint:** The “Ministry” is empowered to investigate and report violations of rights even in the absence of a formal complaint.
- **Protection of Complainants:** The law mandates the provision of safety and security for complainants to prevent retaliation and ensure a fair process.

IV. Impacts

1. **Potential Positive Impacts:** This section focuses on the positive outcomes that may result from the implementation of the Law on Hearing of Complaints in Afghanistan.
 - **Increased Public Trust in Government:** By providing a structured mechanism for filing and addressing complaints, the law can enhance public trust in government institutions. Citizens are more likely to believe in the fairness and responsiveness of the government when they see that their grievances are taken seriously and addressed effectively.
 - **Greater Accountability of Officials:** The formal process for addressing complaints can lead to greater accountability among DFA officials. Knowing that there is a system in place to report and investigate misconduct can deter officials from engaging in abusive behavior, thereby improving governance.
 - **Improved Access to Justice:** The law's provisions for submitting complaints in various forms (writing, verbally, or via telephone) can improve access to justice for all citizens, including those who are illiterate or live in remote areas. This inclusivity ensures that more people can exercise their rights and seek redress for grievances.
 - **Protection for Vulnerable Groups:** The law's explicit provisions for the safety and security of complainants can provide critical protection for vulnerable groups,

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encouraging them to come forward without fear of retaliation. This is particularly important in Afghanistan's current socio-political context, where fear of reprisal can deter individuals from seeking justice.

- **Enhanced Civic Engagement:** The law encourages citizens to participate in governance by providing a formal avenue to express their grievances and hold officials accountable. This engagement can foster a more active and informed citizenry, contributing to a more vibrant civil society.
- **Support for Victims of Political Detentions:** Provisions for handling complaints about missing persons and political detentions ensure that the state is held accountable for the treatment of individuals in custody. This can provide hope and support for families and victims seeking information and justice.

2. Potential Negative Impacts:

This section focuses on the immediate negative consequences that may arise from the ambiguities and gaps in the law.

- **Deterrence Due to Lack of Anonymous Complaint Provisions:** The law does not explicitly allow for anonymous complaints, requiring complainants to provide their full name and address. This could deter individuals from filing complaints due to fear of retaliation, reducing the overall effectiveness of the complaint mechanism.
- **Insufficient Confidentiality Measures:** Although the law includes provisions for the safety and security of complainants, it lacks clear guidelines on maintaining the confidentiality of personally identifiable information (PII). This gap may discourage individuals from coming forward with complaints, fearing that their identities could be exposed and lead to revenge.
- **Handling of Judicial Complaints:** Complaints against judges are first shared with the superior judge of the relevant court (Article 11). This process may not

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ensure impartiality, as it relies heavily on internal judicial mechanisms without independent oversight.

- **Penalties for Baseless Complaints:** The law allows the “Ministry” to advise complainants who submit baseless complaints and refer them to court if necessary (Article 19). This provision may discourage individuals from filing legitimate complaints due to fear of being penalized for perceived baselessness, especially given the undefined criteria for "baseless" complaints.
- **Interference in Court Proceedings:** Complaints about interference by Emirate officials in court proceedings are first shared with the defendant and then with the relevant authority if unresolved (Article 14). This process may not effectively address interference issues, as it relies on the same authorities that may be involved.

V. Concerns and Challenges

This section addresses broader systemic and procedural issues that could undermine the integrity, fairness, and overall effectiveness of the complaint process.

- **Absence of Procedural Clarity:** Detailed guidelines for sanctions, non-compliance, and appeals are not well-defined, risking transparency and fairness. There is also a lack of clear mechanisms for appealing decisions made by the “Ministry” or higher authorities, limiting avenues for redress and accountability.
- **Lack of Independent Oversight:** The absence of an independent body to oversee the complaint process, such as an ombudsman or independent commission, can compromise the impartiality and fairness of the complaint resolution process. The reliance on internal mechanisms may lead to conflicts of interest.
- **Fear of Retaliation:** While the law mandates the “Ministry” to ensure the safety of complainants, there are no detailed provisions on how protection will be practically implemented. Given the historical context, this remains a concern and may deter individuals from filing complaints.

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- **Interference in Court Proceedings:** Complaints about interference by DFA officials in court proceedings are first shared with the defendant and then with the relevant authority if unresolved. This process may not effectively address interference issues, as it relies on the same authorities that may be involved. The criteria for escalating unresolved complaints to higher authorities are not clearly defined.

VIII. Recommendations

Civil Society Organizations (CSOs) and NGOs can play a crucial role in improving the implementation and public awareness of the Law on Hearing of Complaints in Afghanistan. Here are some areas where these organizations can focus their efforts:

- **Public Awareness Campaigns:** CSOs and NGOs can conduct public awareness campaigns to educate citizens about their rights under this law and the complaint process. Utilizing various media channels, including radio, television, and social media, can help disseminate this information effectively.
- **Community Engagement:** Engaging local communities to gather feedback on the complaint process and identify areas for improvement is essential. Organizing public forums and town hall meetings can help ensure the process is responsive to public needs and foster greater trust and participation.
- **Training and Capacity Building:** CSOs and NGOs can provide training for their staff and other local organizations to understand the complaint law and their roles in supporting complainants. Enhancing the capabilities of these organizations will ensure more effective monitoring and support of the complaint process.
- **Legal Support and Assistance:** Legal clinics active in this area could focus on offering free legal advice and assistance to individuals filing complaints, particularly targeting vulnerable groups. Providing advocacy and representation for complainants can ensure their grievances are addressed properly.

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- **Monitoring, Evaluation, and Research:** CSOs and NGOs can develop systems for regular reporting and monitoring of the complaint process to ensure transparency and accountability. By publishing statistics on complaints received, actions taken, and outcomes, these organizations can highlight successes and areas needing improvement. Additionally, conducting research to identify gaps in the complaint process and proposing evidence-based solutions, as well as preparing guides on the complaint process, can be beneficial for informing and educating the public.

IX. Conclusion

The Law on Hearing of Complaints seeks to provide a structured mechanism for addressing grievances against DFA officials, aiming to ensure justice and accountability. While it has the potential to improve transparency and responsiveness, several concerns need to be addressed, particularly regarding clarity, procedural fairness, and stakeholder engagement. The role of CSOs and NGOs is crucial in this context. They can help bridge gaps through public awareness campaigns, community engagement, training and capacity building, legal support and assistance, monitoring and evaluation, and documentation and research. By focusing on these areas, CSOs and NGOs can significantly contribute to the effectiveness and public trust in the complaint mechanisms, ensuring that grievances are addressed fairly and transparently in Afghanistan. Implementing these recommendations could enhance the law's effectiveness in achieving its objectives and fostering a more just and accountable governance system.

X. References

This analysis is based on the translated text of the "[Law on Hearing of Complaints](#)" and relevant resources available on the Afghanistan Rule of Law Observatory (ARLO). Further details on related legislation and regulatory frameworks can be found on the ARLO website at www.arlo.online. You may also visit these sources:

- [Instructions of the DFA leadership on preventing unnecessary and worthless accusations against the officials and employees of the Islamic Emirate](#) (July 18, 2022)

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Decree No. 407 outlines the Islamic guidelines prohibiting false accusations and unwarranted criticism of officials. It emphasizes that spreading gossip and rumors is against Islamic principles as it fosters hatred, undermines faith, and weakens societal efforts. The decree cites Quranic verses and Hadiths to reinforce the importance of speaking truthfully or remaining silent. It states that insulting public servants, including Ulema (Islamic scholars), government employees, soldiers, and court judges, through gestures, speech, or other means, is punishable. The decree also highlights that disrupting judicial sessions and damaging uniforms are offenses that require restitution. The document underscores the Shariah responsibility of all citizens, Mujahideen, and media to adhere to these guidelines.

— **Decree No. 19 (OG 1432)**

This decree confers upon military courts the authority to adjudicate complaints and appeals against officials and employees of three security organizations, implementing verdicts subject to higher court approval in line with Shariah provisions.