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Legislative Analysis

I. Title of the Document

"The procedure for sharing information and data related to the judiciary with the media and foreign agencies"

II. Introduction

1. **Summary:** The Supreme Court Procedure on Information Sharing, issued by the De Facto Authorities (DFA) on November 8, 2023, regulates the dissemination of information within Afghanistan's judicial system. This regulation outlines the types of information that can be legally shared and identifies specific categories prohibited from dissemination. It establishes guidelines to ensure that information sharing within the judiciary adheres to legal and security standards, thereby maintaining the integrity and confidentiality of judicial processes.
2. **Legal Basis:** The legal basis for this procedure is detailed in Article One which explains the procedure was prepared by the Department of Foreign Relations, Public, and Press and approved by the Supreme Council of the Supreme Court of the DFA. It was subsequently sent to all courts for enforcement.
3. **Scope of Application:** The scope of this procedure extends to all judiciary-related departments within the Islamic Emirate of Afghanistan. This includes various judicial and related entities operating under the DFA's jurisdiction, mandating strict compliance with the outlined provisions to maintain consistency and order in information handling practices (Article 2).
4. **Responsible Parties:** The primary responsibility for enforcing this procedure lies with the judiciary, specifically the Supreme Court and other related judicial entities within the DFA.
5. **Significance and Rationale for Analysis:** Open government is an essential component of the rule of law, promoting transparency, accountability, and public

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participation in governance. Having clear regulations and procedures that govern information sharing is a vital aspect of open government, ensuring that data is handled responsibly and that public access to information is properly managed. Such measures establish the roles, responsibilities, and processes for disseminating judicial information, helping to prevent misunderstandings and maintain the integrity of the legal system. These regulations are crucial for upholding public trust, as they provide a framework for what information can be shared with the public and outline any restrictions on dissemination. Understanding these broader contexts, the following sections will explore the specifics of the current regulation under review, offering a detailed analysis of its provisions, strengths, and areas of concern.

III. Description and Analysis

1. **Key Terminologies:** Although not all terms are explicitly defined in this procedure, understanding the following key terms and definitions is essential for interpreting this procedure and analysis.
 - **Audio media:** Media formats that involve sound, such as radio broadcasts, podcasts, and other audio recordings used for disseminating information.
 - **Case files:** Collections of documents and records related to a specific legal case, including evidence, witness statements, and court rulings, which are typically confidential until the case is resolved.
 - **Children's cases:** Legal cases involving minors, which require special confidentiality protections to safeguard the interests and privacy of the children involved.
 - **Claimant:** An individual or entity that initiates a legal action or lawsuit, seeking a legal remedy for a grievance.
 - **Classified information:** Information that has been designated by a government authority as requiring protection against unauthorized disclosure for reasons of national security or other significant interests.

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- **Confidential information:** Information that is restricted from public access due to its sensitive nature, including details about ongoing investigations, personal data, and other protected categories as outlined in the procedure.
- **Crime detection stages:** The phases of the investigative process in which law enforcement agencies gather evidence and identify suspects before a case is formally charged and brought to trial.
- **Data protection:** Measures and policies implemented to safeguard personal and sensitive information from unauthorized access, disclosure, or misuse.
- **Defendant:** An individual or entity against whom a legal action is brought in a court of law.
- **Domestic media:** Media outlets that operate within the country, including newspapers, television stations, radio stations, and online platforms.
- **Family cases:** Legal cases involving family matters such as divorce, child custody, and inheritance, which often require confidentiality to protect the privacy of the individuals involved.
- **Foreign media:** Media outlets that operate outside the country and seek information from the judiciary for reporting purposes.
- **Freedom of information:** The right of individuals and organizations to access information held by public authorities, subject to certain restrictions to protect sensitive data.
- **Huqooq (Rights) Department:** A department at the Ministry of Justice that handles civil and commercial disputes, offering legal consultations, supervision, and reconciliation services through specialized committees nationwide.
- **Internal and external security:** Measures and policies aimed at protecting the country from internal threats (such as civil unrest) and external threats (such as foreign aggression), which may justify the classification of certain information as confidential.
- **Legal person:** An entity, such as a corporation or organization, that has legal rights and obligations, distinct from those of its members or owners.

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- **Live broadcast programs:** Real-time media broadcasts, such as live television or radio shows, where information is disseminated immediately to the public.
- **Media freedom:** The right of media organizations to operate independently and report on matters of public interest without undue interference or censorship.
- **Moral crimes:** Offenses that violate societal norms and ethical standards, often involving issues of morality and decency, which are treated with particular sensitivity in legal proceedings.
- **National interest:** Considerations and actions that are deemed essential for the well-being and security of the country as a whole, which can justify restrictions on information disclosure.
- **National security:** The protection of a nation from threats and dangers that could compromise its sovereignty, stability, and safety, often used as a basis for classifying information as confidential.
- **Natural person:** An individual human being with legal rights and obligations, as opposed to a legal entity such as a corporation.
- **Non-confidential information:** Information that is not classified as confidential and can be shared with the public or requesting authorities according to the principles outlined in the procedure.
- **Personal information:** Data related to an identifiable individual, including names, addresses, and other details that could endanger the security of judges or their relatives if disclosed.
- **Print media:** Media formats that involve printed publications, such as newspapers, magazines, and journals.
- **Privacy:** The right of individuals to keep their personal information secure and free from unauthorized access or disclosure.
- **Public policy:** Principles and standards that guide government actions and decisions to achieve the welfare and safety of the public.

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- **Public security crimes:** Offenses that pose a threat to the safety and security of the public, such as crimes against the state, which may require special confidentiality measures.
- **Recorded programs:** Media programs that are pre-recorded and can be reviewed and approved before being broadcasted, as opposed to live broadcasts.
- **Right to information:** The legal right of individuals and organizations to access information held by public authorities, subject to certain restrictions to protect sensitive data.
- **Sensitive information:** Data that requires protection due to its nature, which could include personal, financial, or security-related information that, if disclosed, could cause harm.
- **State secrets:** Information that is classified by the government as critical to national security and is protected from disclosure to prevent potential threats to the state.
- **Transparency:** The principle of making information about the judiciary's activities and decisions available to the public in a clear and open manner to promote accountability.
- **Visual media:** Media formats that involve visual content, such as television, online videos, and social media platforms.
- **Witness information:** Data related to individuals who provide testimony in legal cases, which is protected to ensure their safety and the integrity of the judicial process.

2. Information Request Process:

- a) **Request:** Requests for information must be submitted in writing to the designated authority. The procedure outlines the necessary details that should be included in the request to ensure it is processed correctly (Article 6).
- b) **Domestic Media:** Requests for information from domestic media organizations are subject to additional scrutiny. These requests must be

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reviewed and approved by the designated authority to ensure compliance with the relevant legal and procedural standards (Article 7).

- c) **International Media:** Requests from international media organizations must follow a separate protocol. These requests require approval from higher authorities and are subject to more stringent regulations to safeguard sensitive information (Article 8).
 - d) **Confidential Information:** Requests involving confidential or sensitive information are treated with the highest level of scrutiny. Such requests require multiple levels of approval to ensure the security and integrity of the information being requested (Article 9).
3. **Media Interaction:** The procedure establishes different rules for broadcasting depending on whether the program is live or recorded. For live programs, judiciary officials are not permitted to participate unless there is an "urgent need" that justifies their involvement. In the case of recorded programs, there are stringent review processes in place to ensure that the content aligns with the established legal and procedural standards before it can be aired. (Article 8).
4. **Internal Communication:** The procedure outlines specific protocols for internal communication within the judiciary. All internal communications must follow the prescribed channels and adhere to established guidelines to ensure the security and confidentiality of sensitive information (Article 9).
5. **Public Information and Dissemination**
- a) **Rules for Public Information:** The procedure sets forth guidelines for the dissemination of public information. This includes the approval process for releasing information to the public and the types of information that can be shared, ensuring compliance with legal standards (Article 10).

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b) Interdepartmental Requests: Interdepartmental requests for information must follow a defined protocol to ensure proper authorization and documentation. These requests are subject to review by designated authorities to maintain the confidentiality and security of the information being requested (Article 10).

c) Restrictions on Information Sharing: The procedure establishes a list of 19 specific categories of information that are prohibited from being shared. Some key restrictions include prohibiting the sharing of court decisions, information related to ongoing investigations, and details that could compromise judicial security. (Article 10).

IV. Impacts

a) **Impact on the Judiciary:** The implementation of the procedure could significantly influence the judiciary by providing clear guidelines on what information is allowed and prohibited for dissemination. This may help maintain the confidentiality and security of judicial processes, protecting the privacy of parties involved, including citizens, witnesses, and judicial officers. By regulating information sharing, the procedure may enhance the judiciary's ability to control the flow of sensitive information, potentially reducing the risk of unauthorized disclosures and safeguarding the credibility of the judicial system.

b) **Impact on Transparency:** This procedure could contribute to increased transparency within the judicial system by establishing clear processes for requesting and disseminating information. By outlining specific guidelines for internal and external communication, the procedure ensures that information is shared responsibly and in accordance with legal standards. However, the stringent controls and the extensive list of prohibited information categories may also limit the extent of information available to the public, which could be seen as a trade-off between transparency and security.

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- c) **Operational Consequences:** Operationally, the procedure could impose additional administrative burdens on organizations and judicial entities by requiring detailed documentation and approval processes for information requests. This might lead to delays in information dissemination and could hinder the efficiency of operations. Additionally, the extensive review and approval processes for media interactions and interdepartmental requests might slow down communication and collaboration, impacting the overall functionality of the judiciary and related entities.
- d) **Delays in Information Dissemination:** The detailed approval processes and the requirement for multiple levels of authorization could slow down the flow of information both within the judiciary and to external entities. The regulation does not specify a timeframe for sharing the requested information. These might affect the timely availability of information for media, civil society organizations, and the public, potentially hindering transparency and responsiveness.
- e) **Administrative Burden:** The procedure may impose additional administrative burdens on judicial entities and organizations seeking information. The need for detailed documentation and adherence to specific protocols could increase the workload for those involved in processing information requests. This could divert resources away from other critical functions, impacting overall efficiency and productivity.

V. Concerns and Challenges

- a) **Ambiguities in Definitions and Terms:** Certain terms such as "urgent need" in Article 8 is not clearly defined in the procedure. This lack of clarity may lead to varied interpretations and inconsistent application of the rules, which could create uncertainty for those involved in information sharing. The broad terms and lack of precise definitions could result in inconsistent enforcement. Different authorities may interpret the rules differently, leading to variations in how the procedure is

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applied. This inconsistency can create confusion and undermine the procedure's effectiveness (Articles 6-10).

- b) Detailed Approval Processes:** The procedure's detailed approval processes, while intended to enhance security and compliance, may introduce delays and administrative burdens. The requirement for multiple levels of approval for information requests and media interactions could slow down the dissemination of information, affecting the efficiency and responsiveness of the judiciary. Specifically, the involvement of the Chief Justice in approving the sharing of information, as stipulated in Article 6, even for non-confidential information, adds an additional layer of review that could further contribute to these delays (Articles 6-10).
- c) Prohibited Information Categories:** The procedure specifies 19 categories of prohibited information, including court decisions and details of ongoing investigations. These restrictions might have been established to protect judicial integrity and sensitive information. However, they also encompass broad areas such as "statistics and types of lawsuits that suggest potential harm to reputation or indicate corruption" (Article 12(19)). Some of these provisions can potentially limit public access to information. The broad scope of these categories can make it challenging to determine what information is permissible to share, which may create uncertainties for legal practitioners and the public.
- d) Limited Public Access:** The stringent controls on what information can be shared and the extensive list of prohibited categories may limit public access to important judicial information. While these measures may have been established to protect the integrity of judicial processes, they could also reduce the amount of information available to the public, impacting the transparency and accountability of the judiciary (Article 10).

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VI. Recommendations

- a) Comprehensive Review and Understanding:** For civil society organizations and NGOs involved in rule of law and justice, it is crucial to conduct a comprehensive review of this procedure. Understanding the specific provisions, such as the categories of prohibited information and the detailed approval processes, will enable these organizations to navigate the regulatory environment effectively. Familiarity with the procedure will help ensure compliance and identify potential areas of concern that may impact their operations (Articles 6-10).
- b) Engagement with Legal Experts:** Given the complexities and potential ambiguities within the procedure, NGOs and civil society organizations should engage with legal experts to interpret the provisions accurately. Legal counsel can provide clarity on the terms and conditions set forth in the procedure, assisting organizations in understanding their legal obligations and rights. This engagement is vital for ensuring that their activities remain within the bounds of the law.
- c) Building Capacity for Compliance:** Organizations should invest in training and capacity-building programs for their staff to ensure thorough understanding and compliance with the procedure. This can include workshops, seminars, and informational sessions that focus on the procedural requirements and best practices for information sharing. Building internal capacity will help organizations adhere to the procedure while effectively carrying out their missions.

VII. Conclusion

The Supreme Court Procedure on Information Sharing establishes a detailed framework for regulating the dissemination of judicial information. While it aims to enhance security and maintain the confidentiality of judicial processes, it also introduces complexities and potential delays due to its detailed approval requirements and broad definitions. For civil society organizations and NGOs working in the areas of rule of law and justice, it is crucial to understand these regulations thoroughly. These organizations may review the procedure, consult with legal experts, train their employees, and conduct further research

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and coordination to analyze the impacts of this regulation on their operations. Compliance with the procedure is essential to ensure that their activities align with the new legal requirements.