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Islamic Emirate of Afghanistan

The Supreme Court

Office of the Chief Justice

No. 209

Date: 8/Feb/2023 (17/7/1444 AH)

To:

Office of His Excellency, the Supreme Leader of the Islamic Emirate of Afghanistan

May peace, mercy, and blessings of Allah SWT be upon you!

May Allah SWT protect and grant you success,

Based on the instructions from the Office of the Chief Justice of the Supreme Court, the Director General of the Criminal Division of the Central Cassation, respected Mufti Atiqullah Sahib, along with the deputy director of the Audit Directorate, respected Maulavi Abdul Wali Sahib, has been appointed to ascertain the future of the detainees. Their directive includes convening a meeting with the central prison authorities to formulate a procedure. This newly established procedure, which encompasses fourteen articles across nine pages, is forwarded to you for your approval.

Whatever Your Excellency directs shall be complied with.

Respectfully,

Al-Shaikh Abdul Hakim "Al-Haqqani"

Head of the Supreme Court and the Chief Justice

Checked!

May peace, mercy and blessings of Allah SWT be upon you!

And then: Procedure for Prisoners, containing 15 articles, is hereby approved with some necessary amendments. The amended procedure is sent you attached with this letter.

Respectfully

(Stamp)

Office of the Supreme Leader
Islamic Emirate of Afghanistan

In the name of Allah, the most Merciful, the most Compassionate

Islamic Emirate of Afghanistan

The Supreme Court

Procedure for Prisoners

Pursuant to the instructions from the Office of the Chief Justice of the Supreme Court of the Islamic Emirate of Afghanistan, the Director General of the Criminal Division of the Central Cassation, respected Mufti Atiqullah Sahib and deputy director of the Judicial Audit Directorate, respected Maulavi Abdul Wali Sahib held a meeting with authorities of the central prison at Pul-e-Charkhi prison and developed the following material. It was agreed at the meeting that the written material would be shared with the Kabul Province Criminal Investigation Directorate and the Ministry of Interior (MOI) Internal Investigation Directorate for their review, which would be followed by convening a joint meeting. The contents developed in the said meeting are as follows:

About handing over prisoners:

- 1- When detectives and security agencies arrest prisoners, they should keep prisoners in their detention center till their investigations are complete and prepare their case files within their legally determined duration, in accordance with Order No. (397V1), dated 10 March 2022 (7/8/1443 AH) of the Supreme Leader.
- 2- When the prisoners' case files are completed, they should submit them along with the prisoners to the relevant court and obtain submission confirmation notes for the case files and the prisoners from the court. Then, they should hand over the prisoners along with the confirmation note to the prison. The prison authorities should take a copy of the confirmation note and keep it with them.
- 3- If the number of prisoners increases in the detention centers of the detective agencies, they should not refer prisoners to prison prior to the completion of their case files; instead, they should share the matter with their superior authority aimed at resolving the issue.

However, if, at times, a particular need surfaces, the detective and security agencies should request the prison authorities to receive prisoners through case files that have not been submitted to the court and that they would submit the case files of the prisoners to the court in one or two days and provide the prison authorities with a confirmation note. In such cases, the prison's authorities should extend their cooperation to detective and security agency officials to the extent possible. But, before

the confirmation note is provided, they must not include these prisoners in the list of those prisoners who are associated with the court.

- 4- After receiving prisoners' case files, the court should get written assurance from the prison that the prisoners associated with these case files were handed over to the prison.
- 5- Prisoners from districts of all the provinces, being handed over by a detective or security agency to the district detention center or the central prison of the province, should be handed over to the primary court together with their case files and the confirmation note for the case-files and prisons should be obtained from the court. Then, the prisoner, along with the confirmation note, should be handed over to the prison or detention center. When a prisoner is directly being handed over by the court to the prison or detention center, it should be accompanied by a letter from the court, and authorities of the prison and detention center should keep the confirmation note and the letter with them. The court should obtain written assurance about prisoners from the prison that prisoners related to the case files were handed over to the prison.
- 6- If prisoners of the division courts of the appellate court in all the provinces are being surrendered to the central prison of the province by the detective or security agency, case files, and prisoners should be surrendered to the directorate of the appellate court, and the confirmation note for surrendering the case file and prisoner should be obtained from the court. Later, the prisoner should be surrendered to the prison together with the confirmation note. Where a prisoner is directly surrendered by the court to the prison or detention center, it should be accompanied by a letter from the court, and authorities of the prison and detention center should keep the confirmation note and the letter with them. The court should obtain written assurance about prisoners from the prison that prisoners related to the case files were surrendered to the prison.

The prison should not receive prisoners based on letters and confirmation of the Division courts of the appellate court.

- 7- Where prisoners of each of the four zones of the urban court of Kabul province are surrendered to the central prison of the province by the detective and security agency, the case-files and prisoners should be surrendered to the general directorate of the zone, and confirmation note for surrendering the case-file and prisoner should be obtained from the zonal general directorate. Later on, the prisoner should be surrendered to the prison together with the confirmation note. Where a prisoner is directly surrendered by the court to the prison or detention center, it should be accompanied by a letter from the general directorate of the zone, and authorities of the prison should keep the confirmation note and the letter with

them. The general directorate of the zone should obtain written assurance about prisoners from the prison that prisoners related to the case files were handed over to the prison.

The central prison should not receive prisoners based on letters and confirmation from the division courts related to each zone.

8- Where prisoners related to the division courts of the urban court of provinces other than Kabul are handed over to the central prison of the province by a detective or security agency, the case files and prisoners should be handed over to the general directorate of the urban court, and confirmation note for handing over the case-file and prisoner should be obtained from the general directorate of the urban court. Later on, the prisoner should be handed over to the prison together with the confirmation note. When a prisoner is directly handed over to the prison by the court, it should be accompanied by a letter from the general directorate of the urban court, and the prison authorities should keep the confirmation note and the letter with them. The general directorate of the urban court should obtain written assurance about prisoners from the prison that prisoners related to the case files were handed over to the prison.

The central prison should not receive prisoners based on letters and confirmation from every division court of the urban court.

9- Where prisoners of a military court are handed over to the prison by a detective or security agency, the case file and the prisoner should be handed over to the directorate of the military court, and the case file and prisoner handover confirmation note should be obtained from the court. Later on, the prisoner, along with the confirmation note, should be handed over to the prison. If a prisoner is handed over to the prison or detention center by the court directly, it should be accompanied by a letter from the court, and authorities of the prison should keep the confirmation note and the letter with them. The court should obtain written assurance from the prison that prisoners related to the case files were handed over to the prison.

Note: Whenever those prisoners are handed over to the prison or detention center whose case files have been submitted to the court and are accompanied by the case-files submission confirmation note, then authorities of the prison and the detention center must send an assurance letter back to the court that the prisoners related to the case-file were handed over to the prison or detention center.

About the release of the prisoners:

10- The letter about the release of the prisoners from the prison should be issued according to the details given below:

- a. The release letter of the prisoners belonging to the division courts of the appellate court as well as primary courts of the districts of the Kabul province who are stationed in the central prison should be emailed to the central prison by the directorate of the appellate court, and the letter or a copy of it should be provided to the guardian of the prisoner as well. If a prisoner's release letter arrives at the prison and it has not been emailed to the prison, the prison authorities must contact the directorate of the appellate court requesting them to send over the letter to them through email so that fabrication could be averted in such letters.

Central prisons should not release prisoners based on the letter from the division courts of the appellate court and the primary courts.

- b. The release letter of the prisoner belonging to the division court each of the four zones of Kabul province should be emailed to the central prison by the general directorate of the zone in each of the four zones of Kabul province should be emailed to the central prison by the general directorate of the zone, and the letter or a copy of it should be provided to the guardian of the prisoner. If a prisoner's release letter arrives at the prison and has not been emailed to the prison, the prison authorities should contact the directorate of the relevant zone requesting them to send the letter to them through email so that fabrication could be averted in such letters.

The Prison authorities should not release prisoners based on the letter from the division courts of the zone.

- c. Release letters of the prisoners of the division courts of the appellate courts and of the primary courts of the districts of the provinces other than Kabul province who are located in the central prison of the province should be emailed to the prison by the appellate court, and the letter or a copy of it should also be provided to the guardian of the prisoner. Where a prisoner's release letter arrives at the prison and has not been emailed to the prison, the prison authorities should contact the appellate court directorate requesting them to send the letter to them through email so that fabrication could be averted in such letters.

The central prison should not release prisoners based on letters from the division courts of the appellate court and the primary courts.

- d. Release letters of the prisoners of the division courts of the urban courts of the provinces other than Kabul province should be emailed to the prison by the urban court general directorate, and the letter or a copy of it should also be

provided to the guardian of the prisoner. If a prisoner's release letter arrives at the prison and has not been emailed to the prison, the prison authorities should contact the general directorate of the urban court requesting them to send the letter to them through email so that fabrication could be averted in such letters.

Central prisons should not release prisoners based on letters from the division courts of the urban court.

However, in provinces where the email system is not established in the courts or prison, authorities of the appellate court and the urban court of those provinces should discuss a method among themselves that could prevent fabrication in the letters, whether it is sending the letters to prison through WhatsApp or through any other appropriate way.

- e. Release letters of the prisoners of all the districts of all provinces who are in the district detention center should be issued by the primary court. If the email system exists, it should be emailed to the detention center, and the letter or its copy should also be provided to the guardian of the prisoner. But if there is no email system in place, authorities of the detention center and the primary court of the said district should discuss among themselves a method that could prevent the fabrication of the letters, whether it is sending the letters to the detention center through WhatsApp or it is any other appropriate way.
- f. Release letters of the prisoners of the military court should be emailed to the central prison by the directorate of the military court, and the letter or a copy of it should be provided to the guardian of the prisoner as well. If the prisoner's release letter arrives at the prison and it has not been emailed to the prison, authorities of the prison should contact the directorate of the military court requesting them to send the letter through email so that fabrication could be averted in such letters.
- g. Release letter of those prisoners of the division courts of the Cassation court who are located in the central prison of the province should be emailed to the prison by the general directorate of the Cassation court, and the letter or its copy should be provided to the guardian of the prisoner as well. If the prisoner's release letter arrives at the prison and it has not been emailed to the prison, authorities of the prison should contact the directorate of the Cassation court requesting them to send the letter through email so that fabrication could be averted in such letters.

Central prisons should not release prisoners based on the letter from the division courts of the Cassation court.

- 11- If there is a prisoner in the prison or detention center, keeping him/her in the prison or the detention center is difficult due to his/her seniority or suffering from disease, the issue of such a prisoner should immediately be shared directly with the Supreme Court. The Supreme Court should immediately assign a delegation to investigate the prisoner. Later on, whatever the Office of the Chief Justice of the Supreme Court orders, it must be complied with.
- 12- The prisoners are ordered by the court to be released based on bail, and if they cannot afford the bail, the guardian of such prisoner, if there is any, should file a petition to the court, and if they do not have any guardian, authorities of the court or detention center should contact the relevant court about the said prisoner. Later on, the court will make a decision, keeping in mind the justification and matter of the prisoner.
- 13- If the court decides about the prisoners to be released on bail, bail should be accepted from such prisoners using two methods:
 - a. A prisoner who owes to fulfill the right of another person, and the guaranty is taken with the purpose that if he/she does not fulfill the right of the said person, his/her guarantor should be obligated to fulfill the right of the person (provided he had guaranteed for the properties) and/or present the released person (provided he had guaranteed for life), a letter should be issued by the court for such bail that formal letter of guaranty should be prepared in his relevant legislative documents for the said prisoner.
 - b. The prisoner who does not owe to fulfill the right of other person and the guaranty is taken only for the purpose it should serve as a means to prevent the said person from repeating the act, the court should send a letter to the prison authorities about those prisoners to prepare a letter of guaranty for the said prisoner. Then, authorities of the prison should prepare a letter of guarantee and send it to the court via a guardian of the prisoner or an official of the prison to be signed and sealed by a judge of the court. Once it is signed and sealed by a judge of the court, then the said prisoner should be released by the prison authorities, and the letter of guaranty should be kept in the prison.
- 14- For prisoners whose imprisonment term is about to be completed, the prison should notify the relevant court three days before the re-completion of the term. The court should check if there was no other issue with him/her; it should send a letter of release to the prison. But if there existed any other problem requiring the said person to remain in prison for some time following completion of the term of imprisonment, it should communicate the said matter in writing to the authorities of the prison so that prison authorities remain informed and have an answer for others when questioned.

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15- Female prisoners should be surrendered to the detention center of the provincial police headquarters immediately upon arrest and be kept there in the detention center for female inmates till their case files are complete. They should not be kept in zones and districts because there are no separate facilities for female inmates in those establishments.

The End