

**The Islamic Republic of Afghanistan
Attorney General's Office
The Codifying and Secretariat Directorate**

**Primer's Summary for Supporting the Suspects, Accused, and the
Convicted during Investigation, Prosecution, and Suspension of Order
for Averting the Outbreak of COVID-19 (*Coronavirus*)**

Introduction:

Due to the challenging outbreak of Coronavirus- a global threat and a number of positive tests have been recorded in Afghanistan as well- and with due attention to its quick and pandemic spread, the Attorney General's Office of the Islamic Republic of Afghanistan has prepared/drafted the following primer/guide in guidance of WHO's primers to avert the outbreak of this virus and to ensure the safety of suspects, accused, convicts, AG's employees, and relevant authorities from it. The relevant prosecution's directorates are obliged to obey this guide as follows:

A. The Investigation Stage:

The assigned prosecutors are bound/ required to widely investigate the cases according to articles 145 and 156 of Criminal Procedural Code and to render their decisions in compliance with the law. To avert the outbreak of COVID-19 (Coronavirus) and to detain the suspects, the following points must be considered and performed:

1. Seriously avoid detaining suspects, who diagnosed to be infected to COVID-19 based on the expert's opinion, and their cases must be processed according to the state's laws.
2. The suspects and the accused infected with a disease, postponement of investigation according to article 162 of Criminal Procedural Code and the eligible convicted according to article 332 and 333 of CPC, except public security crimes, shall be considered.
3. In spite with certainty of the conditions mentioned in article 19 of CPC, the investigation prosecutors shall consider the benefits of articles 105 and 110 for specifying the fate of accused and with due attention to the current situation, to take measures for their release based on a credible and present guarantor with consideration of article 7 mentioned in this primer/guide.
4. The suspects who are 55 years old or older than, and the accused pregnant and with infant women shall be released based on a credible and present guarantor from detention and their cases shall be processed according to law.
5. The accused persons with disability, infected with intractable diseases and diabetes shall be released after being diagnosed by reliable medical centers with credible guarantee and their cases shall be processed according to law.

****Unofficial Translation****

6. All individuals who are detained in misdemeanor cases shall be released based on a credible guarantee and their cases shall be processed. Children who are in confinement in such (misdemeanor) cases shall be immediately handed over to their parents and in process of their cases, legal predicted facilities must be considered.
7. Those who are detained or under confinement and their investigation is not completed in murder -except intended murder, armed larceny, abduction, rape, and terrorism shall be released and their cases shall be processed if the victim forgives based on bail or without it.
8. Except the crimes mentioned in the previous section (7), if the victim does not forgive, all other cases shall be released in coordination with the competent court according to articles 105 and 106 of Criminal Procedural Code based on bail or without it and their cases shall be processed.
9. Individuals who are sentenced to 5 years imprisonment/incarceration by the primary or appeal courts shall agree with the decision of the court if they cannot afford to pay or do not have the payment.
10. Avoid unnecessary objections that do not benefit the legal demand and the issued order and shall consent with the court's order/decision.
11. If the objection is necessary, the appeal and appeal to the Supreme Court shall be (effectively and) immediately granted/. Followed up.
12. By the time these instructions/guidance are/is received, the heads of provincial appeal prosecutions and relevant detection authorities shall conduct a coordination meeting whether the arrest and investigation of suspect is necessary in new criminal cases. The detection authorities are responsible to share this notice with relevant prosecution offices and the prosecution shall render its decision regarding the fate of suspect.
13. If the conditional release request is submitted to the prosecution, precise measures shall be taken according to stipulation of articles 334 and 342 of the Criminal procedural Code.
14. In cases if the courts rendered their decisions on suspensional imprisonment/incarceration according to article 223 of the Penal Code, the prosecutors can/shall consider the mentioned points while initiating the criminal case.
15. Individual who are being released based on this primer/guide, shall promise not to commit another criminal act.

Article 145 “Performance of Investigation”

- (1) Investigation is required for all felony and misdemeanor crimes and it is performed in the presence of the accused person's and suspect's defense lawyer by the prosecutor in accordance with the provisions of this law.
- (2) Purpose of the investigation is to access the facts of the case, achieve certainty on commission of crime and to identify its perpetrator. The prosecutor considers the following conditions for this purpose:

****Unofficial Translation****

1– Assessing all aspects of the case to determine the capacity of suspect or accused person and to identify the nature and legal description of the committed action, manner of commission and motive behind commission of the crime.

2– Identifying the perpetrator and assessing his/her criminal background and identifying his/her share in causing the effect and manner of investigation of the crime and its causes.

(3) The prosecutor is obligated to use any means which legally leads to the identification of the crime, perpetrator, and determination of the relationships and facts. To this end, the prosecutor shall collect and analyze both incriminating and exculpatory evidence equally.

(4) The prosecutor shall go to the crime scene for witnessed felony crime in person and shall provide instructions regarding keeping of signs and collecting of incriminating evidence. The prosecutor shall listen to the statements made by the witnesses, victim's comments and statements and other individuals aware of the case. .

(5) The prosecutor shall oversee reviews and assessments by the experts, ask specific questions and request necessary explanations.

(6) The prosecutor may question anyone related to the criminal case about the crime and shall personally interrogate the accused person.

(7) The prosecutor may ask police, National Directorate of Security officers and other authorities for assistance during investigation and shall oversee their performances during investigation.

(8) The investigation of crimes, not related to their duties, committed by police, Afghan National Forces, National Directorate of Security officers/employees and the military personnel of Civil Departments which have military personnel within their organizational structures shall be conducted based on provisions of this law.

Article 146 “Assessing the Collected Evidence”

Prosecutors shall perform the following during the investigation for determining the collected evidence:

1. Interrogation of the accused person.
2. Questioning the witnesses separately.
3. Cross-examination of the witnesses and comparison of provided statements.
4. Examining evidence and items collected at the crime scene.
5. Inspection of accounting and finance documents.
6. Inspection of residential and other buildings.
7. Requesting experts' comments, investigating, accepting or rejecting them, or requesting for further clarifications of the matter.
8. Providing necessary instructions on using other methods which support the discovery and do not contravene the provisions of this law.

Article 105 “Release on Bail”

The prosecution office or the court despite of incriminating evidences and observance of conditions set forth in paragraph (3) of article 99 of this law, may issue an order for temporary release of the accused person on bail or without it at their own discretion or based on the request by the person under detention, or his/her legal representative.

Article 106 “Amount of Bail”

(1) In all cases, amount of bail will be determined by the presiding judge of the court.

(2) The presiding judge shall determine the amount of bail based on the severity of the accusation and incurred loss.

(3) Amount of bail shall never be set for less than the incurred loss.

Amount of Allocation of Bail

Article 107:

It shall be explained in the bail order that if the person does not appear during the investigation, trial and enforcement of the verdict or in case of any other breach, a quarter of the amount will be deposited to the Government bank account and the rest will be allocated to the execution of cash fines and compensation for losses which the person is likely to be convicted.

Article 108 “Payment of the Bail Amount”

(1) The accused person, suspect and any other individual can pay the amount of bail. The amount of bail may be paid through depositing cash or hand over of valuable document (transactional documents) or bank credit in the bank to the account of court or prosecution office. The moveable goods shall be kept in court or prosecution office deposit warehouses after its specifications are determined and a receipt is issued.

(2) If the bail is a vehicle, it shall be guaranteed through a relevant court or a relevant traffic office by a legal deed.

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Article 109 “Non-Consideration of Demand for Detention

Demands made by victims or plaintiffs on detention or objection to release or revocation of related orders shall not be heard, except in Qesas and Deyyat in which the case is claimed only by the victim or plaintiff.

Article 110 “Precautionary Measures”

(1) If it is proven to the court or prosecutor’s office that the accused person is not able to pay the bail, a summons guarantee shall be obtained from him/her. Whenever the guarantor is not someone reliable and credible, he/she can serve as guarantor only when he/she commits to pay the amount of guarantee stipulated in article 106 of this law should he/she fail to bring the guaranteed person. In such case the prosecutor or court may take the following precautions:

1– Must reside in a specific location

****Unofficial Translation****

2– Must appear at specified times, according to the circumstances, to a police station, prosecutors office or court.

3– Must inform police of leaving the specific location and its length of time.

(2) If there are justified reasons to fear escape of a suspect or an accused person, the court may issue an order banning him/her from leaving the country.

B. The Judicial Prosecution Stage:

To avert the crowd in prisons and the outbreak of COVID-19 , the appointed judicial prosecution prosecutor shall consider article 308 of the Criminal Procedural Code during his/her proceedings.

In order to avert the gatherings in detention centers and prisons, the prosecutor shall tell the merits/advantages of article 325 of the Criminal Procedural Code to the convicted prisoner or his/her defense lawyer.

Article 308 “Immediate Release of the Accused Person”

If the accused person is in detention and the court issues a decision for his/her acquittal, or he/she is sentenced to punishment which does not include imprisonment, or in the decision suspension of enforcement is ordered, or the accused person has completed the sentenced time in detention, he/she shall be released immediately even if the decision has been objected to, unless the upper court based on the request of the prosecutor orders an extension of the detention or nullification of the suspension of enforcement.

Article 325 “Application for Alternative Penalty to Imprisonment”

(1) A person, who is sentenced up to 3 years of imprisonment, can request the Minister of Justice to assign him/her to do community service outside the prison instead of enforcing the imprisonment.

(2) Alternative penalty to imprisonment is applicable to the following convicts:

1– The convicted sentenced to prison is a school student, university student or teacher and or breadwinner of a child or an old person, or a woman who does not have occupation outside the house.

2– The behavior of convicted person was good enough in the past and he is guaranteed by a reliable person.

3– If an alternative penalty to imprisonment is approved, the convict shall be introduced to an organization providing community services to perform community service.

4– The convicted is obligated to comply with the rules and regulations of the organization providing the services during the sentenced term in lieu of imprisonment.

C. Stage of Postponement of Sentence Enforcement

In order to avert the outbreak of COVID-19 (Coronavirus), the relevant prosecutors shall consider articles from 330, 331, 332, 333, and 334 up to 338 of the Criminal Procedural Code for the crowd in prisons.

Article 330 “Postponement of Sentence Enforcement of a Pregnant Woman”

If a woman, who is pregnant for (6) months or more, is sentenced to up to (5) years of imprisonment, the prosecutor shall request the sentencing court to postpone the sentence enforcement until (3) months after the delivery.

Article 331 “Postponement of Sentence Enforcement of Parents Who Have Children”

If a husband and wife who are looking after a child under 15 are sentenced to up to (5) years of imprisonment at the same time, the prosecutor shall request the sentencing primary court to postpone the enforcement for imprisonment on one of them, given that the person to be released is not a repetitive offender. In case of repetition of crime by the parents, the guardianship of a child under age 15 shall be determined in accordance with Article 242 of the Civil Law.

Article 332 “Postponement of Sentence Enforcement Due to Sickness”

(1) If a person sentenced to imprisonment be affected by a disease which by itself or due to enforcement of the sentence may threaten his/her life, it is permitted to postpone the enforcement of the sentence until the sickness danger is eliminated.

(2) If a person sentenced to imprisonment be affected by psychological diseases, the enforcement of the sentence is postponed and the prosecutor can issue a transfer order to one of the psychiatric treatment facilities. In such cases, the examination and treatment time is deducted from their prison term.

(3) The determination of dangerous diseases or mental diseases in such conditions is carried out by experts.

Article 333 “Bail”

For reasons permitting a postponed enforcement of a sentence, in accordance with the provisions of this law, the prosecutor can ask the amount of bail to be determined by the court. If required, the prosecutor can also ask the court for taking other precautionary measures to prevent person sentenced to imprisonment from fleeing after removing excuse.

Article 334 “Parole Request”

Parole takes place in accordance with the provisions set forth in this chapter by the request of the convicted person.

Article 335 “Parole Request”

(1) If a person is convicted by an absolute decision and he/she has served 3 quarters (3/4) of his/her entire sentence and is proven to be reformed by exemplary good behavior, an order for his/her parole is permitted.

(2) A decision regarding the parole of a convicted prisoner is made by a competent court where the prisoner is imprisoned in its jurisdiction and is based on a proposal by the warden and confirmation of general director of prisons and detention centers through the prosecution office.

****Unofficial Translation****

(3) The court, in its decision of parole, states the behavior, conduct and conditions that shall be observed by the convicted person in the future. These conditions are:

- Specific place of residence
- Giving attendance at particular times to police office
- Use of surveillance hand cuff
- Guarantee of good behavior

(4) The local police are obligated to monitor the parolees' conduct and behavior and shall report to the relevant prosecutor office about their behavior on timely basis.

Article 336 “Calculating the Commutation Period”

If the convict benefits from a commutation order, the time period after applying commutation time is his/her total imprisonment term.

Article 337 “Parole for a Conviction of Multiple Crimes”

(1) If a person be convicted for multiple crimes committed before imprisonment, the parole shall be counted based on the total period of the combined sentence.

(2) If a convicted person commits a crime while serving his/her sentence in the prison and he/she is also sentenced to imprisonment for this action, the term for his/her parole shall be based on the time remaining from his/her initial sentence at the time the crime was committed and the sentence on his/her later charge from committing the crime in the prison.

Article 338 “Submitting an Order for Parole to the Prison Administration”

A prisoner's order for parole shall be submitted to the relevant prison administration to proceed with enforcement of the order and to issue a certificate that specifies the type of punishment under the sentence, parole term and enforcement date. The certificate shall also include the conditions and obligations that shall be followed by the parolee. The certificate shall also state that if the parolee does not adhere to the conditions and obligations or commits an action which is construed as misconduct, the parole is to be revoked.

The head of central and provincial prosecutions shall seriously observe on a daily basis the implementation of this primer/guide and report to the AGO Editorial Department and Secretariat.

With respect,
Attorney General, Mohammad Fareed Hamidi
Attorney General's Office of the Islamic Republic of Afghanistan