

The International Legal Foundation Afghanistan's Urgent Call to Action to Relevant Afghan Authorities on COVID-19 Justice Sector Response

The International Legal Foundation (ILF) is a non-profit organization and leading global expert on access to legal aid in criminal justice system, and is operating in Afghanistan as the International Legal Foundation-Afghanistan, a legal aid organization that defends the legal rights of indigent suspects, accused and convicted persons. The ILF Afghanistan has been operating in Afghanistan since 2003 and is currently providing legal aid services in 22 provinces. Since its inception, the ILF-Afghanistan has represented more than 56,000 cases criminal of clients throughout the country.

In order to safeguard the fundamental rights of all Afghans during the outbreak of COVID-19 and during necessary emergency measures, in particular to protect the mental and physical health of the vulnerable detainees in police stations, pretrial detention centers and prisons, ILF Afghanistan delivers the following urgent call to action to the justice and judicial sector:

1. To the President's Office:

Dear Honorable President's Office of the Islamic Republic of Afghanistan, in order to limit the spread of COVID-19 and save lives, it is critical to reduce the number of detainees in detention centers and prisons. We respectfully urge the President to grant special amnesty to the following categories of convicted prisoners and issue a mitigation decree requiring other governmental authorities to undertake the actions recommended below.

- To grant amnesty and to release convicted persons and detainees older than 55 years without consideration of remaining duration of imprisonment.
- To grant amnesty and to release all confinees without consideration of the remaining duration of confinement.
- To grant amnesty and to release convicted women without consideration of the remaining duration of imprisonment.
- To grant amnesty and to release convicted persons and detainees sentenced to 5 years or less without consideration of the length of time left on their sentence.
- To grant amnesty and to release convicted persons and detainees sentenced to 10 years to 5 years (*1 day imprisonment*) if he/she has served more than one-third duration of the imprisonment.
- To effectively and immediately grant amnesty and to release intractable ill convicted persons.

2. To the Honorable Detection Authorities:

It would be better for the detection authority officials to avoid investigating and interrogating the suspects and accused person even if possible during the arrest. The suspect should be immediately released through subpoena guarantor or based on bail after being identified or during the arrest.

. In serious crimes such as public security crimes, murder, abduction and armed larceny, suspects and accused persons should be immediately introduced/ sent to medical centers to ensure that they are not infected with COVID-19 before they are investigated/ interrogated in detention centers, and a legal aid provider should be immediately notified.

3. To the Attorney General's Office:

The Attorney General's Office has broad authority to help curtail the impact of COVID-19 in Afghanistan. In order to reduce the prison population, while still upholding the administration of justice, the AG should instruct prosecutors to undertake the following:

- If the detention is illegal, the suspect/accused must be released in all cases, including those involving illegal arrest or the expiration of statutory detention duration.
- To issue the release order if the address of the person is specific or if his/her appearance is in return of bail or if the appearance guarantee is possible. And to consider article 149 sub-article 3 of the CPC regarding investigation duration.
- To transfer the authority of detention extension to the Directorate of Appeal Prosecution mentioned in article 149 sub-article 3 of CPC.
- To dismiss the case or to decline prosecution according to articles 169 and 171 of the Criminal Procedural Code.
- To effectively (*promptly and without filing an appeal*) order the release of the accused persons if the judgment is/was issued on acquittal, cash fine, time served, suspension of imprisonment, or alternatives to incarceration.
- To implement the points that postpone the issuance of order regarding convicted persons who are eligible with the conditions of Criminal Procedural Code.
- To implement conditional release (*parole*) for convicted persons in accordance with the provisions of chapter 3 section 4 of the Criminal Procedural Code.

4. To the Judicial Branch of the Islamic Republic of Afghanistan:

The Judicial Branch has a heavy responsibility to ensure the protection of fundamental rights and equal protection of the law, even during times of crisis. Therefore, it is essential to the administration of justice that courts continue to operate, at least in part, even under emergency measures, for critical hearings and emergency applications. While rendering their decisions/orders, the courts should take the following actions:

- Immediate release if the detention duration has expired and avoid extending the detention of suspects and accused persons.
- Positive respond to the requests and litigation motions of release with bail or without it according to the provisions of Criminal Procedural Code, especially articles 105 and 110.
- To consider the criminal case's dismissal conditions while rendering decision according to article 203 of the Criminal Procedural Code.
- To grant alternatives to incarceration, cash fine, suspension of imprisonment, or house confinement in accordance with the law.

- To emphasize on conditional release in accordance with the provisions of chapter 3 section 4 of the Criminal Procedural Code.

5. Detention Center and Prison Administration:

It is critical that the administration of detention centers and prisons in Afghanistan take the following actions for the health and well-being of detainees and prisoners:

- To procure separate places for the new pre-trial detainees brought to the detention centers and to immediately quarantine them from other detainees for two weeks.
- To procure medical treatment facilities in detention centers and prisons.
- To procure communication facilities or other technology for detainees and prisoners so that they may communicate freely with their lawyers and relatives using the tools such as phone, Skype, Viber, or WhatsApp.
- To make available sanitizer and antiseptics for the use of detainees and prisoners.
- To provide medical tools facilities for checking the body temperature and to generally check the suspects, accused and convicted persons.
- To procure a suitable place that follows medical guidance and recommendations for ensuring the health and safety of the suspects, accused and convicted persons while meeting justice and judicial sector officials, including the defense lawyers.
- To recommend to the prosecutor's office the use of conditional release (*parole*) for all eligible prisoners pursuant to chapter 3 section 4 of the Criminal Procedural Code.
- To provide honest, transparent and accurate information to stakeholders about the capacity of institutions to adequately protect their staff and detainees, and to transparently report any cases of COVID-19 among staff and detainees.
- Procurement facilities such as; masks, elastic/plastic gloves, sanitizer and antiseptics while transferring suspects, accused persons, and convicted prisoners from one place to another including the transfer to court for trails/hearings.
- To recommend incarceration alternatives to the Ministry of Justice of the Islamic Republic of Afghanistan mentioned in article 325 of the Criminal Procedural Code regarding convicted prisoners sentenced to three years in misdemeanor crimes whose perpetrators are teachers, instructors, university students, school students, child guardian, old elders, and a woman who does not have a job outside her house.