

Appendix III: Letter from the High Office of the Courts of the Afghanistan Islamic Emirate to Human Rights Watch (English translation)

Afghanistan Islamic Emirate (1&2)

High Office of the Courts

Correspondence number 190

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The High Office of the Courts of the Islamic Emirate's response to two questions (first: who oversees the courts. Second: is anyone guilty by association with the Kabul establishment?) of the Human Rights Watch organization:

Answer to first question:

All courts of the IE are overseen by High Office of the Courts. High Office of the Courts has one general president and two vice presidents (Courts Guide[Bill] page 5).

Furthermore, High Office of the Courts has executive branch, financial branch, interrogation branch, educational branch, and investigation branch (Courts Guide Article 1).

Answer to second question:

Those who are associated with the Kabul establishment there are two types of associations: one is biological (family) association and second espionage [intelligence] association.

First: Court does not charge or find anyone guilty by family association. So, if an individual's brother or father or another family member works for the Kabul establishment, his brother, son, or family member is not charged or found guilty by association as it is stated in this verse of the holy Quran: "*Every soul draws the harm of its acts on none but itself. no bearer of burdens can bear the burden of another*" [Chapter 6, V. 164].

Second: If someone has intelligence contacts with the Kabul establishment, if this person's intelligence contact is proven based on Sharia to the court, lower court will find this person guilty and will decide on the punishment based on Sharia. After that the court will let the guilty person [offender] know of the punishment. After the judgment, if the offender is not content with the lower court's decision, he will be given the right to: defend himself, appeal, and object to the lower court's decision. The case will [then] go to the appeal court. Appeal court will look at the entire case, and the lower court decision and his objections to the decision [judgement]. After that if the lower court decision was in accordance with the Sharia, the appeal court will approve it. The approval will be announced to the offender. After [the decision is announced] if the

offender is not content with the appeal court's decision, he will be given the right to: defend himself, ask higher court [Discernment Court] to take the case, and object on appeal court's decision. The case will go to the higher court (4).

If the lower court decision is not in accordance with the Sharia, the appeal court will reject it. In such a case if the appeal court rejects the lower court's decision, appeal court will send the case back to the same lower court which had made the initial decision on the case and will point out flaws in the decision and will make recommendations in accordance with Sharia on correcting the flaws.

When the lower court makes the second decision [judgement], it will send it back to the appeal's court. Appeal court will again look at the lower court's decision; if the lower court's second decision is in accordance with Sharia, appeal's court will approve the decision. After the decision is approved, it [decision] will be announced to the guilty person. After the decision is announced, if the offender is not content with the appeal court's secondary approval he will be given the right to: defend himself, ask higher court to take the case, and object on appeal court's decision. The case will go to the higher court.

And if the lower court's second decision was not in accordance with the Sharia, appeal's court will reject it after which appeal's court itself will investigate the offender's case and will make its Sharia decision (Judiciary Courts Administrative Manual, Article 189 and Commentary.)

After the appeal court's decision, appeal court will notify the defendant of its decision. If [the defendant] does not accept the decision, he will be given the right to defend himself and ask higher court to take on the case. The case will then go to higher court. The higher court will review his entire case, lower court's and appeal court's decisions, and his objections on the decisions.

After the review, if a decision in the lower and appeal court's decisions was in accordance with the Sharia, higher court will approve that decision and will notify the offender.

And if a decision by either lower or appeal court was not in accordance with Sharia [This could also be translated as: "If none of the lower and appeal court's decision was in accordance to Sharia"], higher court will reject it.

In this case, if the higher court did not approve any of the decisions, it will send the case back for appeal and the appeal court will point out flaws in the decision and will make recommendations in accordance with Sharia on correcting the flaws (5).

When the appeal court makes the second decision, it will send it back to the high court. The high court will look at the appeal court's second decision; if the appeal court's second decision is in accordance with the Sharia, the high court will approve the decision and if it is not in accordance with the Sharia, it will reject it.

If the high court does not approve the appeal court's second decision, the high court will send the issue [case] to another province's identical [equal or matching] appeal's court and will instruct [the court] to make a decision in accordance with the Sharia. After that, the identical appeal's court itself will investigate the offender's case and will make its Sharia based decision and will announce [the decision] to the offender. If the offender does not accept the identical appeal court's decision, he will again be given the right to defend himself and ask for higher court to take the case; and the case will go to higher court.

Higher court will again review the individual's entire case, the lower and appeal courts decisions, and the individual's objections on those decisions; if the identical appeal court's decision is in accordance with the Sharia, higher court will approve the decision. And if it [the decision] is not in accordance with the Sharia, it will reject it again.

If the higher court does not approve the identical appeal court's decision, the higher court itself will investigate the case and will make its Sharia based decision and will announce it to the offender (Judiciary Courts Administrative Manual, Articles 224, 263.)

After this the high court will send its decision to the High Office of the Courts. High Office of the Courts can reduce or increase this offender's punishment in accordance with its authority.

If the High Office of the Courts decides on lesser or more sentencing (imprisonment) or releasing, this decision will be executed.

Except for murder [death sentence], the aforementioned detail is entirely in the event if the lower court makes a decision on jail term or other punishment [[Or: ... in the event, except for murder [death sentence], if the lower court makes a decision on jail term or other punishment.]]

And if the lower court decides death sentence for the offender, whether the individual accepts or rejects the decision, the decision will go to the appeal's court. Appeal's court will review the entire case and the lower court's decision. After the review, if the appeal's court approves the lower court's decision, the entire case will be sent to higher court.

Higher court will again review the entire case [and] the lower and appeal's courts decisions; after the review if the high court approves the lower and appeal's courts decisions, then the entire case will go to Emirate's leadership. If the Emirate leadership approves the lower, appeal, and high courts all three decisions, it [the decision] will be executed.

And if the Emirate leadership changes the death sentence to prison term or other punishment, then the prison term will be executed (Courts Guide Article 37, The Leadership Edict [order]).

This is the IE Courts guideline for offenders [criminals] which has been prepared in light of the Holy Quran; Prophet Mohammad's, peace be upon him, teachings; and the predecessors (6) accounts.

Note: The Emirate leadership has issued an order to all those in charge of prisoners not to torture prisoners and will need to treat them well. They [in charge of prisoners] shall take care of the [prisoner's] eating, drinking, praying, ablution, illness, heat, and cold. [Prisoner] shall not be disrespected and demeaned; court is the punishing authority and [prisoner] shall not be kept in prison after sentence time is completed.

(Leadership Edict [Order] Number 10 J:5)

With Best Regards

The High Office of the Courts