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State-building, lawmaking, and criminal justice in Afghanistan: a case study of the prison system's legal mandate, and the rehabilitation programmes in Pul-e-charkhi prison

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1.1 INTRODUCTION

This study is about the evolution and implementation of the prison system's legal mandate (notably rehabilitation of prisoners) in the context of an overall state-building endeavour, from 2001 – the time when international intervention and reform began – to 2020.¹ The study also examines the broader historical, social, and political context of state-building, law-making, and criminal justice reform before 2001. In order to allow for a practical and deeper understanding of the effects of the pre-2001 history and the post-2001 reform within one criminal justice institution with a specific legal mandate, it assesses Pul-e-charkhi, the largest and most modern prison in Afghanistan, along with its rehabilitation programmes.

To that end, instead of one conventional story to tell, this dissertation has three storylines which connect my academic interests and work experience.² As an administrator, I am interested in the overall state-building

1 I was planning to finish this study by 2020, which would have been an ideal deadline for completing my PhD. However, that year coincided with significant changes in the political and military landscape of Afghanistan, ultimately resulting in the return of the Taliban in 2021 (see 2.8). I therefore needed to extend my project's timeline, to ensure that I was both utilising the research data and keeping the work interesting and relevant. In addition, I decided to maintain the specified end date and add an epilogue to the dissertation, which discusses the changed context and its implications for this study.

2 I have been a faculty member of the Kabul Law School since 2001. In this capacity, I used to give lectures on theoretical criminology to undergraduate students. I also performed administrative duties at the Office of Administrative Affairs and the Council of Ministers' Secretariat (namely, the Cabinet Secretariat and the Executive Office of the President of the Islamic Republic of Afghanistan), from 2008-2014. I worked firstly as the Director of the Monitoring and Evaluation department, then as the Deputy Director-General of the Office of the President and Deputy Secretary of Cabinet. In addition to the high-level management of several projects, I was involved in the process of making the Afghan Constitution in 2004, and almost all the Loya Jirgas (Grand Assemblies) held in Afghanistan after 2004, including the CLJ of 2004. During the period 2017-2020 I served as Commissioner for the Administrative Reform and Civil Service Commission, and Director General of the Civil Service Appointments Board. The latter was a position at the core of the Afghan civil service administration and its reform processes. In my last appointment, I served as the focal point for the International Criminal Court and the 'Situation of Afghanistan', negotiating a historic process to put positive complementarity into practice; this project did not reach its final stages, due to the fall of the Afghan government on August 15th 2021. The experience I gained in these roles gave me a unique insight into how things worked in Afghanistan. As such, I have included some of my personal experiences (where appropriate), to add an insider's perspective to certain stories.

process, including the bureaucracy and administration of reform. As a lawyer, I am interested in lawmaking, legislative processes, and legal reform. Lastly, as a criminologist, I am interested in criminal justice institutions like prisons, as well as the rehabilitation of prisoners. I believe that the nexus of and parallels between the three storylines are not only compelling, but also multifaceted, when they are explored together (in this research project).

To ensure a proper interface between the three storylines, each of which has its own academic literature, it is necessary to go far beyond the familiar dualistic notion of '*law in books and law in action*'. In the following sub-sections I therefore briefly outline the key concepts in relation to each of the storylines, and describe their relevance to the overall research problem discussed further below.

1.1.1 State-building

'State-building' is increasingly embedded as a concept in multi-disciplinary academic literature, including the fields of social science, international relations, economics, anthropology, security, and development. A considerable amount of scholarly work has been devoted to topics such as the formation of the state, and the principles and approaches adopted to ensure that the legitimate use of force remains a key characteristic of 'the state' (Girth and Mills, 1946; Tilly and Ardant, 1975; Marquette and Beswick, 2011).³

Recently there has been a tendency to limit discussions to the most problematic situations. Therefore, contemporary literature on state-building is preoccupied with concepts such as modernisation, political development, institutionalisation, intervention, as well as post-conflict and fragile state issues. Thus, many authors use the term state-building to refer to interventionist strategies aiming to restore and rebuild institutions and infrastructure: e.g. the state bureaucracies (including the legislative and judicial branches) that communicate with and help each other to reach the ultimate goal of building the state.

In this context, state-building generally involves formulating policies, developing laws, rebuilding institutions, and training people. This not only calls for a sustainable approach to state development; it also requires that all the tasks and effort geared towards state-building are aligned with certain domestic and international norms and values. As such, interventions geared towards state-building (no matter how domestic or internationally-led they may be) require a clear and calculated blueprint to help maintain not only a healthy process, but also a meaningful institutional relationship between all relevant components of state-building endeavours.

3 Also see (Scott, 2007).

Some scholars refer to three overarching perspectives, a combination of which is used as a blueprint for international intervention in many areas of state-building. The perspectives are generally termed as modernisation, rational choice institutionalism, and institutional capacity (Goodhand and Sedra, 2015). In addition, certain normative assumptions tend to influence state-building efforts, particularly with regard to the security sector, the rule of law, the allocation of aid, and the roles of domestic and international actors.

Almost all scholars strongly emphasise the promotion of security and the rule of law as the top priorities for state-building; that was also at the core of post-2001 international intervention in Afghanistan. However, there is no specific consensus on how other areas, events, and priorities of state-building should be sequenced. Authors have suggested a variety of different frameworks of action for international intervention. Ghani and Lockhart (2009) suggest a 'Multifunctional View of the State', via a framework of ten functions for international intervention (2009, pp. 124-168).⁴

Other authors suggest broader and more comprehensive frameworks, by drawing attention to the normative status of different institutions and the roles they play in the process of state-building. Stromseth et al. (2006), for instance, look into the nuanced particularities of state-building and suggest a synergistic approach to leading state-building intervention. The approach originates from academic and political discussions about international intervention in post-conflict settings. As a normative theory, it sets out a few broad principles that the authors call the "blueprints for post-conflict governance". It considers reform to be an interconnected set of activities that must grow in synergy, suggesting that it must be ends-based and strategic, adaptive and dynamic, and systemic. The theory therefore provides a three-point agenda, implying that foreseeably successful reform must adopt a process involving the three elements, as follows:

4 Their proposed framework of ten functions includes: the rule of law; monopoly over the legitimate use of force; administrative control that operates within clearly defined and predictable guidelines; public finances; health and education services; infrastructure; citizens' rights; market creation and industrial policy; management of public assets; and public borrowing. According to them, external actors should prioritise state-building efforts in that sequence, focussing on state capacity instead of other objectives, and not allowing projects to be driven primarily by donors.

I have chosen to reference Ghani and Lockhart not only for their academic relevance, but also for practical considerations. The former served as president of Afghanistan from 2014 to 2021. In spite of being entrusted with full political and administrative authority, he failed not only to implement his own recommendations but also to maintain the status quo that he inherited from the previous administration. Ghani's failure may be attributed to several factors including his personal qualities, but at the same time it tells us a lot about the complexity of state-building endeavours in Afghanistan.

1. The ends-based and strategic approach necessitates a “holistic process”, because effective reform is complex and prone to internal contradictions. As a result, it is necessary to see the bigger picture, rather than focussing solely on changing laws and institutions. Likewise, many overlapping topics (such as culture and education) must be considered, as these can either contribute to or challenge the success of reform.
2. The adaptive and dynamic approach requires building on existing foundations. It necessitates a desire to recognise that the perceptions and needs of ordinary people are important, and that the wholesale transplantation or importation of laws may clash with existing legal foundations and the public’s perception of the legal system in its entirety. A dynamic approach recognises that reform is a continuous and long-term process; therefore, it must be designed to accommodate new developments arising from contextual changes. In other words, it must be able to mitigate the challenges typically associated with the evolution of local circumstances.
3. A systemic approach implies that reform necessitates a detailed and thorough understanding of how institutions function as a system, their key elements, and how they relate to other institutions. Thus, reform processes should not focus simply on reforming laws. Instead, they should also consider improving the target institutions and adjusting other components, with the ultimate goal of building a law-abiding society (Stromseth et al., 2006, p. 13).

The synergistic approach implies that an effective rule of law reform involves many complexities and contradictions. For example, “attempting to build up judicial or police institutions without reforms in governance that create checks and balances may result in lopsided institutions in which one branch is dominant, willful, or oppressive” (Stromseth et al., 2006, p. 310). However, it is also important to highlight that achieving a synergistic pathway to state-building is particularly challenging in places like Afghanistan, with its checkered history and inconsistent development patterns.

1.1.2 Lawmaking

As laws are normally at the core of a state’s authority, governance, and the social contract between itself and its citizens, any form of state-building also involves lawmaking. In this context lawmaking is an objective process; through careful regulation of its domain, it aims to enhance the integrity of both state and society. In recent decades, legal reform (or ‘rule of law promotion’) has also become a core activity in international intervention (see 1.1.1 above). In the specific case of Afghanistan, lawmaking has been a huge undertaking throughout its history, and even more so in the post-2001 era.

Perspectives on lawmaking with a particular focus on developing countries, especially Afghanistan, are of paramount importance to this dis-

sertation, since it examines how lawmaking is organised, as well as how it is practised in the field of criminal justice. A spectrum of theories may be employed to make sense of lawmaking and reforms implemented in Afghanistan.⁵ However, the following theories seem to have more explanatory power, for the purpose of this study: legal transplant (Watson, 1993); programmatic lawmaking (Allott, 1980); the bureau-political theory (Allison, 1971; Tanner, 1995, 1999); and finally, Seidman's model for understanding and improving legal systems in developing countries (Makgetla and Seidman, 1987; Seidman and Seidman, 1994).

Throughout most of Afghanistan's legal history, and particularly during the post-2001 law reform period, the foremost approach to lawmaking has been legal transplantation (see Chapters 2 and 4 below). In this regard, Watson's theory of *legal transplants* (1993) has gained widespread recognition amongst scholars of comparative legal history. The theory suggests that there is no logical relationship between different societies and the legal systems they adopt as sets of rules with which to govern themselves. It argues that transplantation of law is the most straightforward, efficient, and comprehensive method of lawmaking. According to the theory, transplantation is particularly recommended for developing countries, as they can arguably transplant an entire legal system.

However, the theory also cautions the drafter to consider factors such as accessibility, habit, and fashion, when selecting a point of derivation, because when legal content is borrowed from a system, it is best to continue borrowing from that system in order to maintain the consistency and integrity of laws being made by the borrower. There is also a significant role for international assistance in legal education and training. Legal education can serve as a bridge between conceptual matters and the practical application of ideas transplanted to the borrower's society.⁶

Allott (1980) offers another useful tool for understanding lawmaking in the context of Afghanistan, particularly for the post-2001 situation and the phenomenon that is termed 'laws as projects' (see Chapters 3 and 4

5 In their study on the use of legislative theories to enhance law and development projects, Otto et al. (2008) distinguish between three broad features of legislative theories (e.g. those addressing lawmaking processes, those addressing the social effects of laws, and those addressing internationally oriented law reform). The authors argue that every theory has its limitations, as each is focussed on specific aspects and actors of lawmaking within only one of the three features. Further, lawmaking is intrinsically a complicated endeavor, made even more complex by the social, traditional, political, economic, and (several) other factors at play in developing and transitional contexts (Otto, Stoter and Arnscheidt, 2008, p. 57).

6 Although this study does not cover legal education, it is important to note that it has been one of the key challenges for post-2001 reform. In addition to its quality and content, legal education presents a challenge in terms of its scope, and in terms of the tension between the positive law system taught by faculties of law and the Sharia-based system taught by faculties of Islamic studies and Sharia (Weinbaum, 1980; Eddy, 2009; Choudhury, 2014).

below). The central premise of Allott's theory is that impatient political elites, unaware of the deeper layers of social reality, seek to transform societies through legislation guided by certain informing principles, such as unification, modernisation, regression, liberalisation, secularisation, and mobilisation.

The outcomes of such law-making processes are thus generally inclined towards ambitious elite agendas. Laws are used 'as programs', with the aim of achieving social change in a direction that is defined without the consent and participation of the general public. Allott asserts that the history of law and development is replete with "dismal failures" due to such lawmaking processes, which often lead to civil unrest, opposition, and political stagnation (Allott, 1980, pp. 174-202). While Allott's theory focusses on individuals and certain groups of actors who have the power to influence lawmaking, other theories pay special attention to institutions.

For example, organisational politics theory (Allison, 1971; Tanner, 1995, 1999) looks at the institutional dynamics of lawmaking, and argues that lawmaking involves a struggle within and between government institutions and other actors. As a result, laws are generally a product of unpredictable and capricious administrative competition. According to the theory, individual state institutions have specific objectives and interests within the goals of the state as a whole. As such, whenever a new regulatory issue arises, it leads to a struggle between agencies with somewhat shared concerns and responsibilities.

This struggle is partly due to the fact that agencies with discrete interests attempt to define, diagnose, and resolve issues within their sphere of authority, which directly affects the law. The organisational politics theory is particularly relevant to the Post-Bonn process and particularly to the later stages of post-2001 international intervention in Afghanistan (see 3.3 below). While the theories briefly discussed above can explain different aspects of lawmaking after 2001, I believe a country specific and problem oriented approach could have served as the best guiding framework, and that it could still be used as the overarching guide for lawmaking in post-2021 Afghanistan.

The institutional legislative theory developed by Bob and Ann Seidman fits best here, as one of the few comprehensive theories on lawmaking in developing countries (Arnscheidt, Rooij and Otto, 2008, p. 12). The Seidmans' model for understanding and improving legal systems in developing countries (Makgetla and Seidman, 1987; Seidman and Seidman, 1994) and their manual for drafters working in developing countries (Seidman, Seidman and Abeyesekere, 2001) have generated the most debate within the literature on lawmaking. According to the Seidmans, society specific and problem oriented lawmaking may facilitate democratic transformation and social change. Thus, behaviours (e.g. the behaviours of drafting personnel, the subject, and the other actors) are at the heart of all legal problems. It is only by understanding these behaviours that one can effectively address legislative problems and the social change expected to arise from them.

However, the Seidmans also argue that change processes will fail if all aspects of problematic behaviour are not fully recognised, existing legislation is not considered in its entirety, and a precise process for formulating and evaluating new laws is not put in place (Arnscheidt, Rooij and Otto, 2008, p. 57). They propose a methodology for analysing problematic behaviour, resolving the problems of existing laws, and evaluating new laws, which is known as the institutional legislative theory and methodology, and is outlined in a four-step roadmap. The methodology recommends that the process of drafting a law should begin with a description of the social problem, which must include what and whose behaviours constitute problems the law is intended to address.

The next step should be an in-depth study, conducted to explain behaviours in a multi-layered manner and taking into account different categories, the perspectives of those who will benefit from the legislation, and the perspectives of those who will implement it. Next, the writing process should start, taking into account all the results obtained during the second step (e.g. the study). Finally, as an integral part of the initial design, a monitoring and evaluation system should be set in motion, to identify and solve any problems that could arise during the implementation process (Arnscheidt, Rooij and Otto, 2008, p. 95; Seidman and Seidman, 2009, pp. 453-4).

It is important to note that the Seidmans methodology has been criticised for being overly optimistic, particularly regarding the role of research and legal draftsmanship.⁷ However, I believe that the debate about whether or not research can answer complex technical questions associated with social behaviour and practical solutions is somewhat polarised and inconsistent, and that it does not undermine the relevance of the Seidmans' methodology in the case of Afghanistan. For example, the study of several Afghan laws demonstrates that legislation involving research and consultation tends to be more in tune with social realities in Afghanistan (see Chapter 4 below).

On the subject of the complexity of the process, however, I agree with assertions that considering lawmaking as an entirely technical process, free

7 Some critics maintain that the theory does not aim to explain how lawmaking in developing countries actually happens. They argue that the theory provides for the ideal scenario but does not take into consideration problems with lawmaking in developing countries, such as a lack of resources, time, and legal and political accountability. Finally, "the theory comes with naïve and positivist assumptions because it adopts a scientific approach to problem solving. The theory believes that scientific research can fill the knowledge gaps and can provide the correct answer about the problem through research. The theory ignores the limits and the methodological constraints under which research is conducted". In a very similar context, research processes can also relate to issues raised in the wider methodological literature: about how research is political, how it can be constrained by wider forces, and how it may only reveal parts of the story whilst leaving the bigger picture undocumented (Almeida, 2022, p. 123- cited from Rooij, 2006: 29 and Tamanaha 1999: 152).

from political and interest group interference, is a myth. Certain circumstances, such as the Taliban regime, will likely pose even more difficulties, because several layers of religious, traditional, and ethnic filters might be added to the review and drafting processes.

One final consideration with regard to lawmaking, as suggested by society specific and problem oriented models, is that lawmaking is not only relevant to state legitimacy; it also has strong potential to facilitate democratic social change. These aspects of lawmaking are of primary concern in the criminal justice systems (see 1.1.3 below). The social change aspect is of particular interest with regard to the prison system and the rehabilitation programmes which are of specific interest in the case study carried out for this work.

1.1.3 Criminal justice

Criminal justice, as an abstract concept, refers to a broad set of laws, policies, processes, procedures, and institutions that are set in motion before, during, and after the commission of a crime (Terrill, 2016). In this respect, anything directly involved in apprehending, prosecuting, defending, sentencing, and punishing those suspected or convicted of (a) criminal offence(s) are part of the criminal justice system. The primary and official institutions of the criminal justice system, however, include the police, prosecution, defence lawyers, courts, and prisons.

With respect to the relationship between state-building and criminal justice, it is important to note that state-building is clearly not just about building or consolidating state institutions and coordinating political processes. It also involves the creation of a commitment or social contract between the state and its citizens, which means formulating and enforcing a set of rules and norms that govern the society. A robust criminal justice system serves as an anchor for the state-society relationship and a means of enforcing the social contract, making it a vital component of state-building (Foucault, 1977).

In relation to the function of prison institutions within the criminal justice system and an important part of the state-building process, it is necessary to look into broader sentencing approaches first, including the 'consequentialist' and 'non-consequentialist' approaches, which tend to justify the act of punishment.⁸ The latter holds that criminal justice systems

8 The origin of this debate relates to the philosophy of punishment and, more specifically, to moral theories of punishment, which serve not only as a basis for justifying, rationalising, and legitimising punishments, but also as benchmarks for evaluating the degree to which a criminal justice system aligns its practices with its objectives (McPherson, 1967; Holth, 2005; Duff, 2016; Terrill, 2016). These theories are beyond the scope of this work, although my references to the relevant literature could be used to obtain further details about them.

possess a responsibility to demonstrate collective social disapproval of crime through retribution, and that punishment is the means to achieve that retribution and consequently achieve justice. However, the former maintains that punishment can only be justified in light of its benefits to offenders and society; for instance, via the rehabilitation or incapacitation of offenders (Duff and Garland, 1994, pp. 1-43).

Whilst prison institutions generally lean towards a consequentialist approach, they can also embrace parts of a non-consequentialist role, depending on the type and modality of the state. In the specific case of Afghanistan, sentencing aims “to regulate general principles of crime and punishment, to ensure the application of the constitution and other laws, to enforce criminal justice and public order, to safeguard the independence and sovereignty of the country, to fight and prevent crime, to discipline and rehabilitate, to ensure respect for human rights and personal freedom, to protect private and intellectual property, to promote accountability, and to compensate victims of crime” (Ministry of Justice, 2017b, Art 3).⁹

Amongst the various elements of sentencing objectives, those intending “to discipline and rehabilitate” and “to fight and prevent crime” relate more directly to the consequentialist function of prison institutions. However, those intending “to enforce criminal justice and public order” and “to compensate victims of crime” pertain to the non-consequentialist function of prison institutions (e.g. retribution). Whilst prison institutions function within the broader criminal justice system and as an important element of the state-building process, they also carry a complex legal mandate that emerged over time and against the backdrop of the three storylines discussed above.

1.1.4 The institution-building explanatory framework

In order to facilitate a deeper understanding of the three storylines in the context of prisons, I have presented a case study at the end of this dissertation which focusses on the rehabilitation component of prison system operation in Pul-e-charkhi (see 1.2 and 1.5 below). For the case study I use the institution-building framework, initially developed by Milton J. Esman (1972) and elaborated further by dozens of scholars, summarised by Blase (1973; 1984). The model assesses and explains government agencies’ performance, as described further below (see Chapter 6, 7, and 8). It has been used extensively to study local government institutions, agriculture, health, and education, in developing countries, including Afghanistan (Otto, 1993;

9 A similar objective is reflected in most of the criminal justice legislation, including the Criminal Procedure Code 2014, the Penal Code of 2017, and the Prisons and Detention Centers Laws of 2005, 2012, and 2020.

Giustozzi, 2004, 2013; Woods and Yousif, 2021). As far as I am aware, the model has never been applied to the study of prison institutions, and this is probably the first time it has been used in the context of prison studies.

In an attempt to operationalise the model for this study, I realised that a modified version of the model used to study the development of administration in Egypt, proposed by Otto (1993), had already dealt with some of the operationalisation issues, lending me a version of the model that was closer to what is needed. In Otto's version of the institution-building model, the main idea is that an institution must fulfil a given task, the quality and the process of which depends on a number of intimately relevant factors.

Those factors include: 1) institutional factors (i.e. internal structure, resources, and leadership); 2) target group factors (i.e. interest, access, reach, and enforcement); and, 3) contextual factors (i.e. geographical, historical, political, legal, socio-cultural, economic, and technological). Then there are institutions, with their own infrastructures, personnel, and resources. Finally, there are processes, which turn tasks into results, feeding into the overall programme and (ultimately) the policy goal concerned. This process of interaction between the institution and its tasks is normally affected by several contextual factors from within and outside of the implementing institution.

In this analysis I use all of the above three sets of factors (i.e. institutional, target group, and contextual), as well as their subordinate properties, although a slight readjustment has been necessary. The readjustment involves replacing 'task' with 'programme'. A task would only refer to a specific assignment that can be divided into sub-tasks of a similar nature; the term cannot be used to describe different types of assignments. I therefore propose using 'programme', as it can embrace the entire prison mission, including several tasks like rehabilitation and incapacitation (see 5.5 below). As institutions may be more effective in certain areas than in others, the proposed adjustment would allow for the inclusion of numerous tasks within one programme category, which would constitute the overall policy goal of the prison system. In this sense, programme conveys "actions related to the performance of functions and services" (Esman, 1972, p. 23).

1.2 RATIONALE – PUL-E-CHARKHI AND REHABILITATION

In light of the background provided above, it was imperative to choose a prison as the unit of analysis and, more specifically, to examine one or more of the programmes within that unit. I selected Pul-e-charkhi and its rehabilitation programme as an example of prison-based intervention in the prison system of Afghanistan. I chose Pul-e-charkhi because it has deep roots in the traditions and history of the Afghan criminal justice system. It therefore has more potential to support a comprehensive account of the practice of imprisonment than any other prison in the country. It is also the largest and most advanced prison in Afghanistan, housing a variety of prisoners from

different social, political, economic, and criminal backgrounds, including many who were initially detained at Bagram Detention Centre.¹⁰

Furthermore, Pul-e-charkhi comes the closest to meeting internationally accepted prison management standards in Afghanistan, although it remains unexplored and under studied. The prison occupies an area of about 225.6 hectares of land, surrounded by a massive wall, with a big steel door (referred to as the ‘Black Door’) that is the only entrance to the facility. Life in Pul-e-charkhi starts the moment a convict passes through this door. Thus, the Black Door has a powerful connotation for those in captivity, and in their minds it has completely replaced the name Pul-e-charkhi (see 8.2 and 8.3 below). All prisoners, without exception, remember entering Pul-e-charkhi through this door, and this establishes a link with the pains of imprisonment discussed in the work of (Sykes, 1958).¹¹

To this end, another important aspect of this dissertation is that it opens the Black Door to its readers, trying to explain (as much as possible) the prison dynamics and discuss the factors which have helped shape the prison system of Afghanistan in its current (as of 2020) form and structure.

Illustration 1: The Black Door



Photo from public domain (accessed, January 2019)

10 Bagram Detention Center (also known as Parwan Detention Center) used to operate within one of the biggest United States military bases in Afghanistan, known as Bagram Airbase. Over 3,000 inmates were held at the center, many of whom had been arrested on the battlefield or accused of helping anti-government militants (see 3.4 below).

11 According to Sykes (1958), the five major pains of imprisonment are triggered by five types of deprivation, including the deprivation of liberty, the deprivation of goods and services, the deprivation of heterosexual relationships, the deprivation of autonomy, and the deprivation of security.

Regarding my choice to analyse rehabilitation within the prison system of Afghanistan, it is necessary first to look at the broader understanding of the term, followed by an explanation of how it fits into this study. Dictionary definitions of 'rehabilitation' may be helpful in understanding it as an abstract concept. According to the Oxford dictionary, rehabilitation means "restoration to a higher moral state". Merriam-Webster dictionary defines rehabilitation as "the action, process, or result of rehabilitating or of being rehabilitated". Accordingly, rehabilitation in the context of prisons involves "the process of restoring someone (such as a criminal) to a useful and constructive place in society".

In essence, rehabilitation encompasses a wide range of concepts related to an improvement in status for objects or human beings. From an etymological perspective, the word rehabilitate is derived from the Medieval Latin 'rehabilitatus' the past participle of 'rehabilitare'. It means, "restoration or the noun of action from the past participle stem of rehabilitare, from [the prefix] 're' meaning again and [the infinitive] 'habitare' meaning to make fit. Its specific use in cases of criminals, addicts, etc. is to restore one's reputation or character in the eyes of others" (Online Etymology Dictionary, 2017).

In the field of penology and criminology 'rehabilitation' refers to a process that is intended to help an individual attain a certain level of improvement. The improvement in question must be considered 'normal', 'healthy' or 'better than before', within a particular value system. Therefore, both the nature of rehabilitation and the process through which rehabilitation is achieved are important factors for its success. Some argue that "rehabilitation according to modern standards can be defined tentatively and broadly as the right to an opportunity to return to (or remain in) the society with an improved chance of being a useful citizen and staying out of prison; the term may also be used to denote the action of state or private institutions in extending this opportunity" (Rotman, 1990, p. 3). Thus, rehabilitation is not limited to restoration to a preexisting condition of adequacy. It can entail the achievement of completely new social or psychological development, or the acquisition of new skills.

Additionally, terms such as "reform, regeneration, correction as well as more modern expressions such as reentry, social reintegration, reeducation, and socialization have all been used to refer to the rehabilitative ideas" (Rotman, 1990, p. 3). However, for the purpose of this work, rehabilitation refers to *the process of leading an offender to a normal life through progression towards a gradual reduction in their criminal inclinations*. Looking at rehabilitation as a prison-based programme allows us to question not only prison-based intervention, but also the spirit of criminal justice, lawmaking, and the overall process of state-building specifically from the following two viewpoints.

First, rehabilitation has featured as a somewhat lofty goal of imprisonment throughout the post-2001 state-building process and the significant overhaul of criminal justice laws in Afghanistan. For example, the Prisons and Detention Centres Laws 2005, 2007, and 2020; the Criminal Procedure Codes 2004, 2008, and 2014; and the Penal Code 2017 all underwent substan-

tial changes during the post-2001 international intervention, state-building, and legal reform process. All the above aimed to integrate advanced criminal justice concepts, such as rehabilitation, conditional release, and alternatives to imprisonment; the reformed laws indeed contain numerous examples of each (see 4.3.3, 4.3.4, and 4.3.5 below).

In general, the reformed criminal justice legislation sets specific goals for prisons, and promises to reform prisoners and decrease recidivism. According to the Prisons and Detention Centres Law (2020), Article 2.4: “the law aims at preparing and correcting prisoners, to abide by the law, to adjust to social and moral standards of living, to participate in beneficial social work, and to prevent recidivism.” The legislation also serves as a baseline for the inclusion of some international standards, including (amongst others) the UN Minimum Standard Rules for Treatment of Prisoners 1955; the International Convention on Civil and Political Rights 1966; and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Torture Convention”) 1984.

However, interestingly, the prison population has grown rapidly since these major reforms were implemented. For example, the prison population of Afghanistan was about 6,000 in 2006, up from 600 in 2001 (UNODC, 2007, p. 5). In 2007, the numbers stood at 12,400 (Johannes van den Brand and Roagna, 2010, p. 54).¹² According to the World Prison Brief, the prison population reached 12,500 in 2008 and 18,283 in 2010. From that point onwards the numbers increased steadily every year, reaching 24,600 in 2012, 26,590 in 2014, and 30,000 in 2017 (World Prison Brief, 2021).¹³ As of 2018 there was a total of 31,130 prisoners across the country, increasing to 31,066 in 2019, and to 36,216 in 2020 (NSIA, 2018, p. 87, 2019, p. 114, 2020, p. 116).¹⁴

12 This period coincided with a number of developments in the process of state-building, including: the first elected presidency; the first National Assembly; changes to the police structure; and shifts in prison system administration between the MoJ and MoI. As the data suggest, there appears to be a correlation between all of these factors and the rate of incarceration, probably resulting from active policing as well as more laws.

13 During my initial fieldwork 2016/2017, I observed daily counts of prisoners at the General Directorate of Prisons and Detention Centers and compiled some statistics. At that time, there were approximately 29,504 inmates, including 10,441 remanded prisoners across the country.

14 It should be noted that the actual population census for Afghanistan dates from 1971, and that there has not been a full population count since then. As a result, the rate of imprisonment reflects estimates that have been recalculated every year by the NSIA, based on the 1971 population census.

As the statistics suggest, the prison population has risen steadily – and tripled in size – since 2001.¹⁵ The elevated national security concerns discussed in (Clear and Austin, 2009; UNAMA, 2019; UNAMA and OHCHR, 2021) provide a possible explanation for this increase. However, an (in)effective prison system might be another plausible explanation, which could be deeply rooted in the history of state-building, and the development of criminal justice institutions and legal reforms, including the post-2001 international interventions.

Second, rehabilitation is widely recognised as a significant part of criminal justice systems, worldwide. Some studies suggest that implementing rehabilitation programmes could result in tangible outcomes (Rotman, 1990; Losel, 1995; Gendreau, 1996; Listwan *et al.*, 2013; Fazel and Wolf, 2015; Johnston, 2016). There are some instances, although these are isolated and country-specific, which suggest that prison-based interventions could result in ideologist hardliners undergoing reform, if appropriate methods are applied and highly skilled professionals, such as Judge Hamood Al-Hitar, are available to administer the methods (see 5.2 below).

It is also important to note that rehabilitation involves different models, and at least four such models dominated prison interventions during the 19th and 20th centuries, including the penitentiary system, therapeutic communities, social learning, and the rights model (Palmer, 1975; Martinson, Palmer and Adams, 1976; Andrews *et al.*, 1990; Wilson, Gallagher and MacKenzie, 2000; Coyle, 2002, 2004; Clear, 2007; Andrews, Bonta and Wormith, 2011). These models, all establish corresponding functions in prison systems, known as ‘prison-based treatment’ or ‘intervention programmes’, which include individual and group activities, ranging from simple tactical functions to complex professional and correctional intervention programmes that are designed and implemented by specialists.

Employing any of these models is (at best) challenging and requires significant financial, infrastructural, and professional resources. Indeed, many countries have implemented various rehabilitation programmes and services that aim to address the underlying causes of criminal behaviour. However, as discussed in this work (see 5.2 below), academics and practitioners) identified several challenges and criticisms of prison-based rehabilitation (Nur and Nguyen, 2022; Van der Meulen and Omstead, 2021;

15 International trends indicate that many other countries are also experiencing an ever increasing prison population, so Afghanistan is not the only example of this. Nevertheless, a comparison of its data with other Asian countries shows that Afghanistan falls into the category of ‘nations with a medium incarceration rate’. According to the World Prison Population Index, Afghanistan ranks 54 amongst 223 countries worldwide, or 19 amongst 31 Asian countries, with a prison population rate of 74 prisoners per 100,000 inhabitants. Likewise, based on World Prison Brief statistics, Afghanistan ranks amongst the top 100 countries with the largest prison population worldwide (World Prison Brief, 2021). Also see the **Prison Studies Database** <https://www.prisonstudies.org/highest-to-lowest/prison-population-total> (Last accessed in December 2021).

Sachitra and Wijewardhana, 2020; Fergus McNeill and Hannah Graham, 2019; Austin, J, 2017; Boone and van Swaaningen 2013; B. S. Brown et al, 2004; and David Farabee, 2005) that one could summarise in the following order:

Lack of effectiveness: some critics argue that prison-based rehabilitation programs are not effective in reducing recidivism rates. They suggest that the high rates of reoffending are evidence that rehabilitation programs are not working.

Limited funding: another criticism of prison-based rehabilitation is that the programs are often underfunded, which can limit the scope and quality of services provided to offenders. This can result in long waiting lists for programs and inadequate support for those who do participate.

Lack of support: many offenders face significant challenges when they are released from prison, such as finding housing, employment, and reconnecting with their families. Some critics argue that prison-based rehabilitation programs do not do enough to address these challenges, which can increase the risk of reoffending.

Inadequate staffing: some critics argue that prison-based rehabilitation programs are understaffed, which can lead to a lack of attention and support for offenders who are trying to change their behavior.

Emphasis on punishment: many critics argue that prison-based rehabilitation programs are too focused on punishment, rather than rehabilitation and reintegration into society. This can create an environment in which offenders feel stigmatised and marginalised, which can make it harder for them to successfully re-enter society.

Lack of tailored approaches: critics also argue that many prison-based rehabilitation programs take a one-size-fits-all approach, which can be ineffective for some offenders. They suggest that more tailored approaches, based on individual needs and circumstances, may be more effective in reducing recidivism.

Overall, it is important for policymakers and practitioners to address these criticisms in order to improve the effectiveness of prison institutions and better support offenders as they try to reintegrate into society. To that end, one becomes curious to know which ones of these sophisticated normative and theoretical suggestions for prison-based rehabilitation are being applied in the case of Afghanistan, how they are selected, and how and to what extent they are working.

1.3 RESEARCH QUESTIONS AND WORKING DEFINITIONS

The three storylines outlined above, and the developments and challenges of the prison system and criminal justice laws discussed below (see 1.5 below), have led me to formulate the research problem or fundamental question of this dissertation, as follows:

How has the legal mandate of the Afghan prison institutions developed in the context of state-building efforts before and after the 2001 international interventions and their repercussions on law-making and criminal justice; and, how and to what extent has the mandate been implemented in the country's largest prison, Pul-e-charkhi, with special reference to rehabilitation?

Whilst this work focusses on law, it views law in the context of and in relation to developments in other relevant fields; and it views the prison institutions as the target of law reform. The dissertation therefore addresses its thematic research areas through these specific questions:

1. How have subsequent regime changes and political ruptures before and after 2001 influenced state-building, lawmaking, and criminal justice, and especially the prison system?
2. To what extent and how has the post-2001 international intervention influenced legislative processes and products, with special reference to criminal justice legislation including the legal mandate of prison institutions?
3. What does rehabilitation as an objective of imprisonment mean, in the Afghan prison system, and how has it been regulated and programmed?
4. To what extent and how did Pul-e-charkhi implement its legal mandate in 2017-2020, and how does it compare with a provincial prison elsewhere in Afghanistan?

A few terms used in the research problem are of a complex nature, so some working definitions are necessary, as follows:

State-building efforts is used to describe all orchestrated attempts, whether physical, financial, or programmatic, to establish or strengthen state institutions.

International intervention is used to describe the interactions and processes directed toward social and political engineering, mainly due to the Bonn Agreement (2001), and any subsequent development programmes that are influenced by the international community and donors.

Legal mandate is used to describe a command or authorisation to act in a particular way on a public issue; in this case, all the key powers and obligations entrusted to the prison administration. The term covers two specific mandates of the prison system in particular: its mandate to limit the freedom of its target population; and, its mandate to rehabilitate its prisoners.

Implementation is used to describe the multiple levels of variables and actions which contribute to the realisation of a mandate assigned by law.

Rehabilitation is used to describe the process of leading an offender towards a normal life, by achieving a gradual reduction in their criminal inclinations.

Prison system is used to describe prison institutions as a whole, whereas individual prisons are always referred to as 'a prison' or 'a prison institution'.

1.4 RESEARCH METHODOLOGY AND LIMITATIONS

The methodological inspiration for this research comes from interdisciplinary socio-legal research, and a mix of qualitative and quantitative methods, including a case study. This combination assists in understanding the research problem in different ways. First, the study investigates the emergence of the Afghan prison system's legal mandate, in the context of state-building efforts before 2001. Here, the socio-legal approach helps to explore (in a structured way) how the laws and regulations governing the prison system have been made in the past, how different social and historical factors have influenced them, how they have been applied, and how they have changed over time. The result of this exploration is vital to understanding how reform actors have perceived and influenced criminal justice regulation and institutions after the 2001 legal reform (see 4.4 below).

Second, the study focusses on how the post-2001 reforms influenced the emergence of the prison system's legal mandate and its implementation in Pul-e-charkhi. In-depth accounts of the relationship between domestic actors and donor-led reform interventions, and understanding prisoners' and prison staff perspectives on imprisonment, as well as the prison programmes and challenges they are facing, form the primary objectives of this study. I mainly use a qualitative semi-structured interview technique, rather than a direct survey method. In addition to providing me with the opportunity to ask follow-up questions and extract comprehensive accounts from respondents, the method provides me with the opportunity to show how lawmakers' assumptions and expectations compare with actual practice.

It is important to note that my research reflects my dual roles as academic researcher and senior government official who has been partly involved in lawmaking, reform, and criminal justice (see footnote 2 above). Having worked at various levels within the government and in the legal sector results in some pros and cons for this research. As for its advantages, I have developed a thorough understanding of both working processes and the various actors involved in all forms of state-building, lawmaking, and criminal justice. This thorough understanding proved beneficial throughout my research, including the data collection processes and analyses of the data.

Due to my work connections I also had access to a wide range of information and contact with a variety of stakeholders, which would have been difficult for an outside researcher to establish. I would like to provide an example of how my connections helped me to penetrate certain bureaucratic barriers. As a general rule, Afghan authorities do not permit easy access to institutions under their control, especially in the military environment, and right of entry is further restricted in prison environments. The Prisons and Detention Centres Law restricts outsider access to prisons, serving as a systematic research barrier.

For instance, the law requires official authorisation from top level bureaucracy, and it is usually challenging to negotiate so high within the hierarchy.¹⁶ This becomes even more complicated when trying to understand prison institutions and their dynamics through the lens of scientific research, which necessitates multiple visits and access to different areas of the prison – in most cases, more than once. My government portfolio and connections, along with experience from Bagram Detention Centre and connections with Kabul Law School and Leiden Law School, proved helpful. It not only helped me secure entry to the prison, I could also set several individual meetings with people like the Chief Justice and other high-ranking officials, who were deeply engaged in post-2001 reform and could genuinely comment on multiple aspects of the reform process.

I believe that incorporating the term ‘rehabilitation’ was another essential element of gaining easy access to prisons and relevant actors. I used the term rehabilitation when introducing the research to prisoners, prison guards, prison management, and other criminal justice officials. As mentioned before, whilst it is usually challenging to access information and reveal untold stories from such highly protected institutions, people feel less threatened and vulnerable when talking about rehabilitation. This is because the presence of rehabilitation programmes (if any) highlights the cheerful side of an institution, making it seem a safer topic for discussion. In this way, the topic allowed smoother access to the institutions, data, and people needed for this research.

Moreover, many of the relevant actors knew my background personally, which encouraged free and open discussion, without any embarrassment, regarding what they knew about the reform and different stakeholders; it also helped to minimise any incentive the actors might have had to be untruthful in their responses. Similarly, for most other respondents, including prison management staff, this was an opportunity to state their concerns and frustrations about the prison system to someone who might help them find solutions that would be in the best interest of the prison population in general. Respondents also felt that they could openly and freely discuss and exchange views on various topics related to this research. This would certainly not have been the case for researchers unfamiliar with the system, because they would have been regarded as outsiders and key actors would have been hesitant in dealing with them. In other words, such researchers are unlikely to receive the kind of reception and open discussion afforded to me.

16 At the time of my fieldwork, the Ministry of Interior was at the forefront. Article 38 of the Prisons and Detention Centers Law (2007) specifies that, “except for prison authorities and staff, no one else is permitted to enter detention centers or prisons without the permission of the Ministry of Interior.”

In addition, my university connections and social status helped me penetrate the prison's socio-legal structure more deeply during my fieldwork and observation across the prison system, particularly in Pul-e-charkhi and Balkh prisons. My academic background played an even more significant role, in this regard. For example, knowing about my criminology background, the majority of the prison personnel openly encouraged me to come and observe their work, or talk to them more often. They tended to openly discuss the prison conditions and its programmes and asked genuine questions, to see if I could propose some workable arrangements they might adopt to develop a better prison programme. They also facilitated proper access to Pul-e-charkhi and other relevant institutions, usually restricted to media, civil society, human rights, and similar portfolios.

In spite of these advantages, my government portfolio and university position also created some challenges involving ethical issues and potential conflicts of interest. Certain actors' perceptions that I might learn about their mistakes were a major challenge, particularly within the Ministry of Justice (MoJ) and the National Prisons Administration. As a result, some potential respondents refused to cooperate, for fear of self-incrimination, or because they felt insecure. There were also instances where my personal experience, gained from attending cabinet meetings, was different to the accounts presented by drafters or other actors; in some cases, I knew the reality much deeper, and from a broader government-level viewpoint, and it was always difficult to resolve such tensions. I generally solved the tensions by triangulating the data and cross-checking with other relevant actors, as suggested in (Bryman, 2016).

As a matter of fact, being an outsider to a research context helps to promote a greater degree of objectivity, which may not be possible for researchers who are insiders. Therefore, to improve objectivity and deal with the challenges illustrated above, I adopted the following measures. First, I assured respondents that any sensitive information they shared would remain anonymous and confidential. Second, I obtained prior and informed consent from each respondent, whilst they were guaranteed the freedom to decline any questions they deemed uncomfortable. Third, I discussed the findings of the study with colleagues and researchers at Kabul Law School, for critique and feedback, and in order to deal with any ethical issues.

At this point I would like to introduce the data used in this study and explain the importance of a qualitative approach. As is argued in (Banakar and Travers, 2005), whilst socio-legal studies involve examining law, jurisprudence, and doctrine, they also include empirical research involving quantitative and qualitative methods. This research is based on literature, laws, regulations, case law, official reports, project documents, strategies, official statistics, and two sets of primary data.¹⁷

17 Additionally, I used a few batches of secondary sources from the GDPDC, the NSIA, the UNODC, the UNAMA, and the CSSP.

The first data set consists of 20 in-depth interviews with Afghan criminal justice professionals and experts, and 20 in-depth interviews with prison management staff. For the earlier category, respondents were pre-selected from scholars and officials involved in lawmaking processes, and in teaching and practising law within the criminal justice system. The interviews aimed to gauge the depth and quality of criminal justice actors' attachment to and comprehension of concepts such as rehabilitation, and to examine the dynamics behind the lawmaking process.

The in-depth interviews of prison management included staff at Pul-e-charkhi prison, Balkh prison, and the General Directorate of Prisons and Detention Centres (GDPDC), which used to serve as the National Prison Administration. The interviews were mainly geared towards a better understanding of the prison officials' views on prison policies as well as systemic and practical matters, such as prison management and rehabilitation programmes. These interviews also examined internal dynamics at Pul-e-charkhi and Balkh prisons, and how rehabilitation is interpreted in prison and at the higher levels of prison management.

The second data set consists of a semi-structured survey of 30 prisoners in Pul-e-charkhi prison and 60 prisoners in Balkh prison. The purpose of the survey was to understand the prison conditions, its programmes, and the level of satisfaction amongst prisoners. Initially, I intended to reach 60 prisoners in each prison, and due to the relatively small sample size, I did not employ a systematic randomisation procedure. Instead, I divided the sample size as evenly as possible amongst all types of prisoners to ensure that responses were diverse, with a mix of age categories, ethnicities, length of sentences, and types of crime.

In addition, I personally administered the survey at Pul-e-charkhi so that I could communicate with the prisoners not only to explain the survey questions, but also to ask additional questions, and to take notes. This method enabled me to gain insight into the motivations, attitudes, and beliefs of prisoners at a deeper level than simply answering survey questions. Thus, it provided me with an opportunity to reflect not only on the survey questions, but also on many qualitative aspects of the prisoners' views. Nevertheless, it also hindered my ability to reach the required number of 60 respondents, so instead I surveyed only 30 prisoners in Pul-e-charkhi.

Whilst I personally administered the survey at Pul-e-charkhi, the prison authorities at Balkh prison strictly asked me to let them handle my questionnaires and data collection directly. I suspected that they wanted to make sure the data comes from selected prisoners, but I did not have a choice to resist their request. So, I insisted on the necessity of selecting random prisoners to ensure unbiased data and to be given a chance to informally chat with several prisoners. Eventually, my conditions were accepted and we had an agreement leading to a data collection process that yielded 60 fully answered questionnaires in one evening. Additionally, I interacted informally with two cell leaders for approximately one hour. I also engaged

in informal discussions with two groups of prisoners consisting of 13 and 8 prisoners for approximately 90 minutes each.

Although with this sample size, one cannot claim full representativeness, due to the data collection technique used in Pul-e-charkhi and sheer number of responses received from both prisons, it quickly became clear that, generally, the data was sufficient and robust enough to draw meaningful conclusions for the purpose of this work. In some cases, however, the written responses also presented challenges due to lack of coherence and/or precision. For example, when I asked the prisoners of Pul-e-charkhi about the quality of food and hygiene, 77% reported that food and hygiene were 'satisfactory'. In reality, however, most prisoners did not consume the prison food, because it was not even close to what locals would consider satisfactory.

As a result of my follow up questions and qualitative investigation with prisoners of Pul-e-charkhi, several factors were identified, which directly contributed to the prisoners' unwillingness to complain about the food. Those included prisoners' concerns regarding their legal proceedings and paper work, which used to remain pending for a considerable period of time as well as an overwhelming sense of apprehension and fear of retaliation from prison guards. Similarly, in the case of Balkh prison, I noticed that the deputy manager of the prison, who had offered to help with the data collection, had encouraged and manipulated some prisoners to answer the questions as per his instructions. As a result, I had to discard (30) questionnaires that were answered almost similarly (several of them had similar penmanship) and all of them contained unrealistic or exaggerated answers.

With these challenges in mind, it is imperative to note that, while quantitative methods may be more reliable elsewhere, prisoners in Afghanistan have many reasons to avoid expressing their views openly in writing, or on record. Thus, as is argued in (Blair, Imai and Lyall, 2014), when trying to capture views through quantitative methods alone, the risk of misleading and unreliable data outcomes is high. To that end, despite the inclusion of some quantitative data in this study, I place greater emphasis on the qualitative aspects and the same follows in most of my analysis.

1.5 THE PRISONS

The information I obtained regarding the prison system and prison-based rehabilitation programmes is grounded in a study of six prisons, which provides an overview of the entire prison system in Afghanistan. I had informal discussions with key informants about prisons in Herat, Kandahar, Kunduz, and Jalalabad, and I visited two prisons in person, to review their programmes including Pul-e-charkhi and Balkh. The following two sub-sections deal with the social constructs and other characteristics of the prisons I visited in person.

1.5.1 Pul-e-charkhi prison

Pul-e-charkhi prison is Afghanistan's central prison, and it is located east of Kabul City.¹⁸ The prison consists of three major zones, including a residential area, an administrative area, and an industrial area. The residential area has 11 buildings, including a wheel and spoke structure at its heart, and it supports facilities around the area and within the prison perimeters (see figure 1).¹⁹ All the residential buildings have three to four floors, and on each floor there are two large extensions. The extensions are located directly opposite one another and are referred to as 'wings'. The wings are protected by cage-like internal structures with solid steel bars, commonly called 'rings'.

Illustration 2: Aerial view of Pul-e-charkhi prison and the surrounding area



Source Wikimedia Commons (Jerome Starkey)

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- 18 The prison lies between Arzanqimat and Pul-e-charkhi, two villages to the east of Kabul City. Arzanqimat is a residential area that is close to Pul-e-charkhi. It is reported that, at the time of the prison's construction, the entire area of Arzanqimat and Pul-e-charkhi were like a desert. There were no residential buildings or signs of life around the prison, except for a distant, less populated village towards Sheena (i.e. another residential area in the Bagrami district of Kabul City). However, at the time of writing, due to internal displacements because of long-lasting armed conflict, the area around the prison is now a populated residential district of Kabul City.
- 19 The capacity and dimensions of each building are as follows: Block One, with capacity for 446 prisoners, is dedicated to substance addicts and prisoners with mental health conditions. Block Two, with capacity for 1,763 prisoners, is used for detainees. Block Three, with capacity for 871 prisoners; Block Four, with capacity for 1,256 prisoners; Block Five, with capacity for 227 prisoners; Block Six, with capacity for 867 prisoners; and Block Seven, with capacity for 909 prisoners, are all used for other prisoners. Block Eight, with capacity for 785 prisoners, is used as a high-security section. Block Admin, with capacity for 76 prisoners, serves as the intake facility of the prison. Some blocks, such as Block 10, were vacant at the time of my fieldwork, because their rooms and wings needed major reconstruction.

In some buildings, the rings serve as prison cells; in others, they are divided into smaller units separated by drywall, and each unit has its own entrance. The prison also has other facilities, such as workshops, meeting and prayer rooms, a small library, an open sports facility, a clinic with a 20-bed inpatient ward, a dental unit, and a pharmacy.

The prison is home to perpetrators of serious crimes from across the country, as well as those whose families live in Kabul. Those in the first category are housed in Pul-e-charkhi, due to its status as the best maximum security prison.²⁰ According to official statistics obtained in 2017, the national prison population then stood at about 29,504 prisoners (10,441 on remand, and 19,063 prisoners). A total of 9,391 prisoners were housed at Pul-e-charkhi, representing 49% of all prisoners in the remaining 33 provinces of Afghanistan, combined.²¹

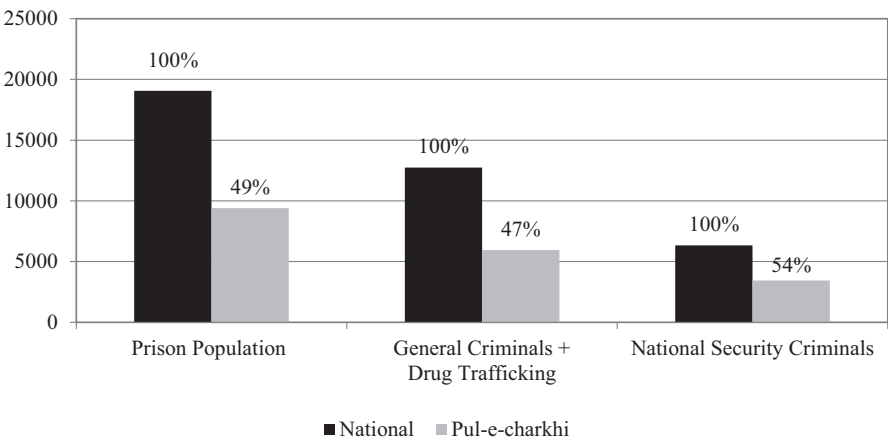
Whilst this shows significant disproportionality between Pul-e-charkhi and all the other Afghan prisons, specific categories of prisoners seem to have been following similar trends. For example, there are 3,441 national security prisoners in Pul-e-charkhi, constituting about 54% of the same category in all the other prisons at national level (i.e. 6,338 prisoners). National security prisoners even outweigh all the other categories of prisoner (i.e. general criminals, and drug trafficking criminals) within Pul-e-charkhi itself, because national security prisoners account for about 37% (or just over one-third) of the prison population.

In a sense, the density of the national security prisoners' category has a strong implication for rehabilitation programmes at Pul-e-charkhi. Since prisoners in this specific category share an insurgent background, they are less likely to qualify for the usual rehabilitation programmes that are aimed at street criminals with moral, financial, and psychological issues. Thus, perhaps more specific intervention programmes targeting counter insurgency and the issue of Islamic fundamentalism are necessary, alongside ordinary rehabilitation. In the absence of such additional/alternative programmes, Pul-e-charkhi would qualify as a prison facility where a significant number of prisoners are not eligible for active rehabilitation programmes.

20 The Prisons and Detention Centers Law 2007 stipulates that incarceration takes place at provincial facilities, in which the prisoners' families reside. This provision basically relates to the concept of resocialization, and easy access for each prisoner to his/her social base, see (Ministry of Justice, 2007, Art 20).

21 When I first visited Pul-e-charkhi in 2016, I gathered daily counts of prisoners, indicating that the prison housed approximately 13,000 prisoners.

Figure 1: Prisoner categories – Pul-e-charkhi v. the national level



1.5.2 Balkh prison

After completing the first leg of my fieldwork in Pul-e-charkhi, a question remained regarding whether other prisons had similar issues at play; I therefore added Balkh prison to my study. Another objective in adding Balkh was to describe, as much as possible, the experience of being imprisoned under poorer conditions than at Pul-e-charkhi. Balkh prison was the best choice for comparison, for the following three reasons. First, although the city of Balkh is the birthplace of ‘Zahak’ prison, Balkh prison itself is different to the horrific Zahak prison (see footnote 5, in 2.3 below).²² Second, the city of Balkh is located in Mazar-e-Sharif, a key province and economic hub for the northern part of the country, which shares borders with three Central Asian countries (i.e. Uzbekistan, Tajikistan, and Turkmenistan). Third, Balkh prison is the main prison in northern Afghanistan. Its age-old continuity, and its perseverance in producing similar results to Pul-e-charkhi make it an interesting case for comparison here.

Balkh prison is less well equipped than Pul-e-charkhi, and almost all its amenities are sub-standard. The prison does not have a dedicated building, and it operates within a compound belonging to the Traffic Police Department of Balkh Province.²³ The facility is a small structure of 35 rooms, each

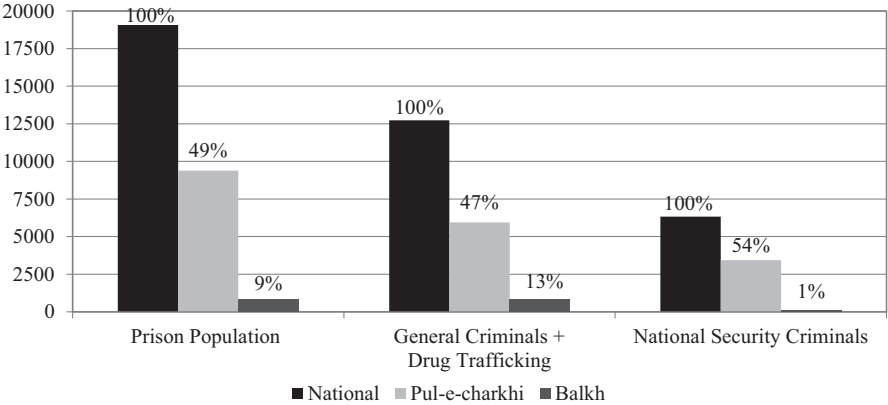
22 See also Azad and Kennedy (2018), which provides an overview of Balkh’s evolution during the pre-modern and early Islamic periods, using archaeological data and relevant research.

23 The Traffic Police Department and its compound are located at the heart of the city of Balkh, closely attached to a residential area in which shops and private houses share walls with parts of the prison. According to the prison authorities, there was a large dedicated area for the prison just outside the city, which was grabbed by land mafia and converted into an illegal township. For this reason, the prison was moved to a location that was not originally designed for incarceration purposes.

with an average dimension of about 6 x 4 metres and accommodating 25-30 prisoners. There are shared bathrooms at the far end of each corridor, which are insufficient for the number of prisoners using them.

At the time of conducting the fieldwork, Balkh prison had a daily head-count of 800 prisoners.²⁴ Balkh hosts about 6% of the overall national prison population. Similarly, within specific prisoner categories, the population of Balkh accounts for 4% of overall general criminals and less than 1% of overall national security prisoners. However, unlike Pul-e-charkhi, where a large group of prisoners have committed national security crimes, over 95% of Balkh’s prisoners fall into the general criminals’ category.

Figure 2: Balkh prison population v. Pul-e-charkhi and national level



Around 79% of the prisoners in Balkh are illiterate, including 388 prisoners (48%) who declared themselves illiterate at the time of their intake and registration. Just over 20% have been educated up to primary and secondary levels; a few prisoners received tertiary education as well. The majority of prisoners (427, which constitutes about 53% of the Balkh prison population) are aged 18-30. Whilst the 31-50 age group was still significant (295 prisoners, or about 37% of the total prison population) the remainder were 50 or older.

Looking at the length of imprisonment, more than half of the prison population (56%) belongs to the medium or long-term imprisonment group, which falls under the 5-15 years category and mainly relates to crimes such as murder, kidnapping, and armed robbery. Other visible crime categories include adultery (10%), drug trafficking (6%), forgery (3%), corruption (3%), and human trafficking (3%). Other crimes make up the remainder.

24 According to unpublished data produced by reliable sources (including the USAID-funded Correction Centre’s Support Program), the population of Balkh prison increased by over 60% over a 5-year period – from 534 prisoners in December 2011, to 804 in July 2016.

1.6 DISSERTATION STRUCTURE

Whilst the current chapter deals with introductory and conceptual matters related to the study, Chapter 2 provides a concise historical background for the rest of the dissertation. Chapter 3 discusses the institutional context of the post-2001 legal reform, and Chapter 4 deals with a case study of major criminal justice laws affected by the reform. Chapter 5 discusses the prison system's legal mandate. Chapters 6 and 7 provide an overview of the prison system's realities, with a focus on the context for and institution of Pul-e-charkhi. Chapter 8 introduces the prisoners of Pul-e-charkhi, along with an assessment of its rehabilitation programmes. Chapter 9 summarises the main findings of the study. Finally, Chapter 10 outlines the post-2020 changes, as well as reflecting on what the system looks like under the Taliban regime.

All the chapters aim to contribute to explaining the three storylines, including the dynamics of state-building, lawmaking, and criminal justice, and the extent to which and how pre-2001 history and post-2001 reform processes have influenced criminal justice laws and prison institutions in Afghanistan. At the very least, I hope that this contribution helps to reduce the literature gap in the evolution of the prison system's legal mandate, and its implementation in the country's largest prison, Pul-e-charkhi.