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The Netherlands

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

Amin, N.

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6.1 INTRODUCTION

Whilst the preceding four chapters dealt with the first part of the main research question, throughout the remainder of this work I will examine the second part of the question (i.e. How and to what extent has the mandate been implemented in the country's largest prison, Pul-e-charkhi, with special reference to rehabilitation?). To do this, I use the institution-building model, which suggests an assessment of three distinct categories of factors (i.e. contextual factors, institutional factors, and target group factors) to understand the (in)effectiveness of institutions and programmes (see 1.1.4 above). Each of these factors will be assessed in a separate chapter, in order to examine the implementation of the prison system legal mandate, but more specifically to explore the application of prison-based rehabilitation programmes at Pul-e-charkhi.

In this regard, I view Pul-e-charkhi as an institution, and its rehabilitation programme as a task within that institution. Thus, further to the arguments presented in Chapters 2 and 3 above, which deal with the overall context of state-building and the criminal justice system, the current chapter presents a specific historical review of Pul-e-charkhi, followed by an assessment of the broader socio-political context, concerning the operation of prisons in the post-2001 era. Further, an assessment of the social and economic context is provided. The chapter ends with a review of the technological factors that affect the prison's operation and (more specifically) rehabilitation programmes.

Examining the contextual factors is both important and relevant, because prison institutions cannot function as standalone entities. In the same way as any other institution, prisons are influenced by several aspects – historical, political and economic – that shape and affect them in different ways, until they become a functional part of the criminal justice system.

6.2 THE HISTORICAL CONTEXT OF PUL-E-CHARKHI

As discussed previously, this is the first dissertation to address the prison institution; therefore, it will strive to fill the gap in the literature as much as possible (see 1.2 above). Whilst analysing the historical context, this section goes beyond mere contextual analysis and provides a fairly detailed account of Pul-e-charkhi's history. To that end, the contextual analysis and history of the institution has been framed in four historical periods, begin-

ning with the birth of Pul-e-charkhi prison (1974-1978), followed by the era of the People's Democratic Republic (1978-1991), then the Mujahidin's Islamic State (1991-1996), and finally the Taliban's first Islamic Emirate (1996-2001).

6.2.1 The birth of Pul-e-charkhi (the prison project)

Muhammad Hashim, a pseudo-dictator, who served as prime minister from 1933 to 1964, (see 2.5 above) initially proposed the idea of building a prison, with the capacity to house 6,000 prisoners, in the Pul-e-charkhi area. The idea remained a mere plan, even after it was revisited by Mohammed Daoud during his term as a prime minister, from 1953 to 1963. Later, Mohammad Nur Ahmad Etemadi, who served as prime minister from 1967 to 1971, also attempted to build a prison based on the revised plan, but construction could not begin. All these attempts most likely failed because of financial constraints, although the lack of strong determination on the part of the leaders and institutional politics should not be overlooked either.

In 1974, when Mohammad Daoud became president, he finally initiated the project shortly after assuming office. Although Pul-e-charkhi was the first modern prison in Afghanistan, people still see it as one of the most controversial institutions of its kind, with an unpleasant historical background, because of the way it operated under different regimes. This is intensified by the fact that most accounts about the prison are confined to stories about experiences of prison life after 1978, and are admittedly from a category of Afghans (and others) who oppose the PDP regime. Thus, opinions about the prison project remain highly politicised and controversial.

Some authors have also discussed the internal dynamics of the then government, concerning the prison project. In their view, Daoud required more space to suppress a large number of his domestic enemies, for which the existing central prison in Kabul (i.e. the Dehmazang prison) was not a suitable option. Therefore, Daoud embarked upon construction of Pul-e-charkhi, which horrified people even at the time. The same authors argue further that the country's political history had taught Daoud some hard lessons that he could not ignore; hence, he was determined to start the prison project right after he came to power (Farhang, 2000).

As I explored the prison project, I had to disregard many viewpoints, both so as not to overlook the heinous human atrocities committed there, and because the viewpoints were highly unrealistic. For example, several authors focussed their attention on Mohammad Daoud's intentions, and reasons why he commenced a prison project shortly after taking power. It has been suggested that the prison project was part of an overall programme to upgrade security (Rostar, 1990; Patman, 1991). Other authors relate the prison project to the Cold War era and former Soviet Union plans for their post-1978 invasion of Afghanistan (Haripoor, 1989; Ghaznawi,

2010; Abultaqi, 2013).¹ According to further authors, the prison was the only large-scale construction project that the president undertook during his administration, although several other public facilities, including a Loya Jirga convention hall, were also urgently needed at the time (Ghaznawi, 2010, p. 232).²

Amongst all the above views, the only author stating that the project aimed to improve oppressive prison conditions in the country was Hamdil, a former member of the Afghan Police Academy. He believes that the prison played a significant role in improving prison conditions, which contributes to Afghanistan's international reputation, even today (Hamdil, 2015). However, personal interviews with top officials at the prison, and those who remained employed there, revealed a mixed pattern.

For example, General Sultani, an expert in prison management who was educated in the former Soviet Union and served as warden of Pul-e-charkhi from 1990 to 1991, provided a different account of the prison project. According to him, Pul-e-charkhi had everything a prison would require; there were no issues with the design, or the intentions of those who built it. He added that Pul-e-charkhi was handed over to him in 1990, when he had completed his education. "The prison, as you may have heard or read, was in poor condition. The food, water, and hygiene were inferior, and ordinary criminals and political prisoners were kept together. Nevertheless, the mess was cleaned up when I rolled up my sleeves."

The second respondent, another General from the ANP, who supervised Pul-e-charkhi from 1993 to 1995, held the position of Director of Court Liaison for the Prison Administration at the time of my interview. According to him, "despite improvements to the physical structure of the prison, there is no evidence that it is better than previous prisons. The prison lacks facilities for education and rehabilitation programmes, as well as for daily living; these are insufficient even for 6,000 prisoners (i.e. the prison's original capacity). In addition, it does not have an adequate number of

1 These authors hold that Mohammad Daoud did not have any plans for judicial reform, and that the prison project was influenced by the Russian government. Additionally, as Mohammad Daoud was an avid supporter of development projects, and he had conflicts with some influential figures in the PDP, his reign was the best opportunity for the former Soviet Union (the architect of the prison) to gain support for their invasion of Afghanistan. According to Haripoor (1989), who supports this claim, "Daoud the assassin built this unpleasant place [Pul-e-charkhi] based on the orders of his Soviet masters." (1989, p. 48).

2 In my opinion this is not accurate, since other large-scale construction projects were in fact underway at the same time. Mohamed Daoud was known for his weakness for development projects, and he implemented a number of other construction projects as part of his three- and five-year development plans. For example, the Military Medical Academy of Afghanistan – a modern military hospital with 400 beds, currently known as Sardar Daoud Khan's Military Hospital – was also constructed during his reign, and is thus named in his honor. Nevertheless, the fact that the president prioritised the building of a prison, even though renovating Dehmazang would have sufficed for the purpose, could be an area worth exploring further.

restrooms, and daylight hardly enters the cells". To him, these were flaws that appeared to be indicative of a haphazardly designed and implemented project that was undertaken (perhaps) for reasons other than improving the conditions in prisons generally.

Although both respondents worked in prison management, the former was the last to manage Pul-e-charkhi under the PDP (see 2.7 above), whereas the latter was the first to do so under the Mujahidin's government (see 2.8 above). They may not have been far apart in terms of time, but their views diverged to the extent that they did not agree on any aspect of the prison. The former was specifically trained in prison management and believed that one could set an example by applying one's knowledge and working hard to make the most of what is readily available. The latter, who came from a Mujahidin background without any relevant training, viewed the matter as being intertwined with many other factors, including the origins of the prison project. In an interesting twist, both respondents came from schools of thought which had nothing in common with either Mohammad Daoud's ideology or his social and political background.

Furthermore, the literature cited above indicates that those without a direct and relevant background in prison studies tend to associate the prison project with many other factors that are marginally related. However, those *with* relevant backgrounds, including officials like Sultani and academics like Hamdil (2015), tend to see a 'glass half full', by focussing on the relevant technical details and their knowledge of overall prison conditions around the world. Hence, it can be concluded that views about Pul-e-charkhi and Mohammad Daoud's intentions for its construction are shaped by personal experience and individual analysis, rather than by facts or empirical evidence.

In summary, there are many negative stories about the prison and its birth, which are generally political criticisms of its founder, president Mohamed Daoud, who is pictured as being very oppressive and preparing the ground for pro-Soviet regimes. Others, however, see the prison primarily as a project aiming to improve prison conditions. In my view, the fact that Pul-e-charkhi was born during an era of important legislative events, including the implementation of the country's first Penal Code in 1976, supports the contentions of those who viewed the prison project positively.

No written records are available which prove the prison's original purpose when it was proposed as a government project. Most of the important figures involved in policy level discussions about the prison were assassinated after Mohammad Daoud's government was overthrown by the PDP, which was also prior to the project's completion. Furthermore, since it began operating, no comprehensive academic study on the prison has been conducted; therefore, there is very little information available about even existing details. In any case, the prison was planned as the biggest prison in the country, and for almost half a century it has remained as such. Although the current study seeks to bridge a portion of this information gap, more research, and a closer examination of the budgetary and administrative

arrangements (as well as contemporary documents), is needed in order to establish a stronger understanding of the original purpose of Pul-e-charkhi.

6.2.2 Pul-e-charkhi under the People's Democratic Party (1978-1991)

Against the backdrop of the history of the PDP discussed in (2.7 above), it is unquestionable that the prison operated in an extra-judicial manner and as a facility for intimidation, obstruction, and torture. The prison was particularly brutal between 1978 and 1979, with its typical target being anyone who opposed communist ideology, irrespective of gender, age, social status, or tribal affiliation (Ghobar, 1978; Kakar, 1995; Ghaznawi, 2010). It was a time when the prison conjured an atrocious image in the public psyche.

Throughout this period many Afghans suffered directly from the atrocities, or knew about them through family members, friends, and allies being held in Pul-e-charkhi. In addition, stories about prison conditions were circulated in the media, and some authors suggest that the government spread stories about the horrific nature of Pul-e-charkhi throughout the city, to terrorise citizens (Rostar, 1990). Meanwhile, Afghans who lived in Pul-e-charkhi as political prisoners also wrote about their experiences. Several international researchers and authors have provided official statistics that clarify domestic authors' claims regarding torture, obstruction, and extra-judicial mass executions.

Reports and articles indicate that extra-judicial executions occurred as a result of extreme overcrowding in the prison. For example, a Dutch prosecutor, Thijs Berger, provided information regarding the execution of 5,000 people, and suggested that the prison served as a death station and slaughterhouse for many others. Berger obtained the list and related information when investigating cases related to six prominent members of the PDP, including Abdul Razaq Arif (who held key positions at Pul-e-charkhi) and Amanullah Osman (who served as the head of interrogation) resulting from the proceedings for their application for asylum to the Netherlands.³

Similarly, according to Kaplan (2001), the prison was more an execution site than a prison, as within the two initial years of the PDP, "around 27,000 political prisoners were executed in Pul-e-charkhi prison" (2001, p. 76). Husainkhail (2013) reports that, in 1979, the intelligence agency rounded up 100 residents of Ghazni province and directed them to the prison. Although the prison administration had received an imprisonment order from intel-

3 In 2014, Thijs Berger published a list of 5,000 political prisoners executed by the PDP at Pul-e-charkhi. Further information is available at: <https://www.om.nl/onderwerpen/internationale/death-lists> and <http://www.bbc.com/news/magazine-28645671>. Also see: <https://www.afghanistan-analysts.org/en/reports/rights-freedom/afghan-war-crimes-trials-in-the-netherlands-who-are-the-suspects-and-what-have-been-the-outcomes/> (Last accessed in October 2022).

ligence, it refused to accommodate additions, due to severe overcrowding, officially declaring that Pul-e-charkhi did not have sufficient space to accommodate additional prisoners. In response, the intelligence service issued another order saying “polygon all of them”. According to Husainkhail, the polygons are slaughtering areas, so this order meant “execute all of them”, and there must have been an inconceivable number of these orders (Husainkhail, 2013, p. 81).⁴

The above account provides a glimpse into extra-judicial treatment in the Afghan criminal justice system, including the prison system under the PDP. A related concern is the quality of life within prisons, for which it is helpful to explain the history of the organisational culture that post-2001 reform intervention tried to change (see 7.4 below). In written accounts by authors who lived in the prisons, individual and general accommodation are both portrayed as being horrifically overcrowded. For example, a solitary room designed for one person was crammed with as many as six people, and each cell was kept wet and dirty, in order to maintain an uneasy atmosphere.

Moreover, similar to the solitary rooms, the general rooms (where many prisoners had to live) were filthy. Prisoners were provided only 150 x 50 cm of space to conduct their daily activities, including eating, praying, and sleeping. The number of prisoners in each room was typically 120-130, and this number would increase as Islamic resistance against the Soviet invasion increased. At times, when the resistance was at its peak, between 250 and 600 people were housed in larger prison rooms (Haripoor, 1989, p. 22; Rostar, 1990, p. 93).

The government provided free food, but it was of poor quality. The prisoners were entitled to a loaf of low-quality bread each, as well as half a bucket of boiled carrot, eggplant, or pumpkin water as their main course. According to the menu for the day, ten prisoners received one bucket of food, consisting of five carrots, two eggplants, or half a kilogram of pumpkin. Occasionally, rice was on the menu, but it was never enough, and it was of poor quality as well. In general, the food contained dead insects, such as flies, cockroaches, and bugs. It was easy for cooks to remove this from the top of any liquid food, and they would do this in front of prisoners. However, if the menu consisted of rice, the prisoners were required to find

4 Polygon is the name of a desert-like area situated near Pul-e-charkhi prison, where political prisoners were subjected to extrajudicial executions. It has been reported that thousands of prisoners were killed here between 1978 and 1979. “When Amnesty International visited Kabul in 1980, reports of the killing of thousands in detention, and the systematic use of torture were widespread. The conditions of detention imposed extreme hardship, deliberately created in some cases, but also brought on because of acute overcrowding and other inadequacies in longer term prison conditions” (Amnesty International, 2003b, p. 4).

and pick off insects themselves (Haripoor, 1989, p. 56; Rostar, 1990, pp. 113-119; Abdulrahimzai, 2009, p. 123; Habib, 2015, p. 57).⁵

Female prisoners lived in the same compound, but on a separate wing, which was relatively clean and less crowded, and the prison clinic was located in the same building. Nevertheless, they received the same quality food and faced similar living conditions as the men. Haripoor (1989) asserts that some Soviet advisors and senior prison administration officials lived in the female wing, and they used to abuse, rape, and torture the female prisoners. Haripoor quotes a 17-year-old female prisoner, named Maliha, who claims that many female prisoners were suffering from gynaecological problems, due to being frequently abused by Russian advisors and prison staff. He also quotes Maliha as saying, "when the government freed me from Pul-e-charkhi in 1988, it also freed five other women. All of them suffered from severe health problems, and one was pregnant – she committed suicide the evening she was set free" (1989, pp. 15-17).

In another account, some authors argue that the suppression of criminal justice and the suffocating prison environment were the same under all four PDP presidents (i.e. Noor Mohammad Taraki, Hafizullah Amin, Babrak Karmal, and Mohammad Najibullah), peaking between 1978 and 1991. Nevertheless, improvements were also noted during the last year of the party's rule, when peace talks and the national reconciliation process were underway (Rostar, 1990; Kakar, 1995).

Based on the stories and accounts cited above, one can contend that under the PDP Pul-e-charkhi went through the darkest era in its institutional history. There was some improvement in latter part of the party's time, which was possibly more a result of peace and the overall change of government policy towards the ongoing war, than a true improvement in the criminal justice system. Meanwhile, many PDP associates who had travelled abroad for special education (such as prison management) had returned, and they were being assigned to various government organisations. For example, General Sultani (cited earlier) earned his master's degree in prison management in the former Soviet Union. He was appointed warden of the Pul-e-charkhi prison upon his return to Afghanistan in 1990. A third factor, in this regard, is the general level of experience of the PDP. Perhaps because the PDP were initially inexperienced, prisons were primarily used for terror, torture, elimination, and the incapacitation of political

5 Paradoxically, inmates on death row received substantial food allowances for the last six months or so of their sentence. A special menu, called 'seven dishes', was offered to these prisoners twice a week. Soviet medical advisors also provided them with special care, such as good medical care and other therapies, on a regular basis. The government propagated and justified these services as human rights for the prisoners. In reality, however, the government intended to purify and stabilise the health conditions of death row inmates, since they needed their blood. As a result of the ongoing war, many government soldiers were becoming casualties who needed blood from stable prisoners on death row (Haripoor, 1989, p. 27).

opponents. That tendency gradually changed as the PDP gained more experience in using other strategies, such as political favouring, resettlement of opponents, and target killing.

Ironically, this period was also marked by a boom in criminal justice legislation, including the enforcement of the third Prisons and Detention Centres Law in 1982. The law defines the reformation of prisoners as its primary purpose and the goal of imprisonment. However, its official title reads as, "Law on the Application of Punishment in Prisons and Detention Centers", indicating that it focussed more on punishments than on rehabilitation.

6.2.3 Pul-e-charkhi under the Mujahidin (1991-1996)

As discussed above, the Mujahidin were already highly factionalised before they took control of the country in 1992, when they faced a multitude of economic, military and social upheavals. In keeping with their manifesto, calling for an end to foreign invasion and the restoration of Islamic values, they denounced the entire body of laws enacted during the PDP's rule and before, but failed to introduce any new laws. In the meantime, the regime also lacked a viable central government, which resulted in warlordism, human rights abuses, and widespread criminal activity in many parts of the country.

Accordingly, the country was quickly engulfed in conflict, including fighting over the control of regions and areas to which armed groups felt ethnically or geographically tied. Kabul, the capital city of Afghanistan, was of particular interest to all groups, and was thus divided along ethnic, political, and economic lines. Hizb-e-Islami and Harakat Enqlab-e-Islami took over the Pul-e-charkhi area of Kabul, including Pul-e-charkhi prison, as the Mujahidin entered the city in 1992.⁶ They ruled over the area and blocked others from accessing it, and soon became at odds with the ruling faction (i.e. Jamiat-e-Islami) which controlled the central parts of Kabul.⁷

As discussed before, every Mujahidin faction operated autonomously, with an independent jurisdiction and system of governance. In addition, those who asserted authority often displayed reckless behaviour and committed serious human rights abuses. Thus, the judicial system of the country was further exposed to uncertainty, where judges were plagued by the uncertain environment and therefore outcomes of court rulings became unpredictable. The complete absence of the rule of law and the chaotic situation were aggravated by the ongoing armed conflict.

6 For information about Hizb-e-Islami and Harakat Enqlab-e-Islami (see footnote 27, in 2.8 above).

7 For information about Jamiat-e-Islami (see footnote 27, in 2.8 above).

During the interview process for this work, a few respondents who had lived through those turbulent days in Pul-e-charkhi as managers, or who had resided there, shared their personal stories. These first-hand experiences demonstrate how the concept of law and governance is vulnerable in times of conflict, and how negative synergies are built around lawlessness and disorder, in order to compromise people's and systems' behaviours. The former Director General of Prisons and Detention Centres for the Mujahidin regime, provided some insight into the way prisons were operated during the Mujahidin regime. He said that prisons almost ceased to be operated by the government: "Nearly all Mujahidin commanders were allowed to maintain private prisons throughout the country. Since the facilities were private, they could operate independently of state laws and anyone else's control."⁸

According to him, Hizb-e-Islami and Harakat Enqlab-e-Islami were in control of Pul-e-charkhi prison and its surroundings. Although the prison was primarily used as a military base, some prisoners were also kept there. However, the General did not know a number of other details regarding those kept in prison, because his relations with Hizb-e-Islami were not friendly:

"The ruling party was not allowed access to Pul-e-charkhi. Therefore, except when peace talks between Jamiat-e-Islami and Hizb-e-Islami took place inside the Pul-e-charkhi prison, I never went there or exchanged any information with the prison... Jamiat-e-Islami, as the ruling party, would use the detention centres of the National Security Department, located in areas under our control in Kabul. Although small, these were used for many purposes, including housing prisoners and executing other court orders, such as capital punishment."⁹

This General's predecessor, General Sultani, served as Commander of Pul-e-charkhi under the PDP, witnessing the fall of the prison to the Mujahidin. As a result of opening the doors of the high-security prison to the Mujahidin, he referred to the subsequent release of all prisoners, including serious criminals, as an 'invasion of criminals' which was yet another rupture, but in the area of criminal justice. I would like to quote a relatively detailed part of the interview, because it is part of the prison history that is not recorded anywhere else:

"Within the first months of my appointment as Commander of Pul-e-charkhi, I had completed the separation of political prisoners from general criminals. Then, after a few months, I was instructed to release all political prisoners. The instruction was unusual, but I complied with it. I had to obey, in the first place because it was an order, and in the second place because I had observed (during my segregation efforts) that most political prisoners did not have a clearly defined criminal case. So, in a way, I was happy to let them go."

8 Personal interview with the Director General – August 2016.

9 Ibid – August 2016.

As I contended earlier, the peace talks between the PDP and Mujahidin factions in Pakistan resulted in the release of political prisoners. This was viewed, by the General and his staff, as a positive step in terms of peace and reconciliation, as well as bringing about a decrease in the prison population which allowed for prison space and facilities to be better managed:

“Several days after the release of the political prisoners, I attended a dinner with a few colleagues in a nearby restaurant. Around 8.00 p.m., just as we were about to finish our dinner, I noticed people walking through the area with piles of belongings on their backs – not just one or two, but many – and they appeared to be coming from the direction of the prison. Upon contacting the prison, I learned that orders had been given for specific categories of prisoners to be released. I also learned that some people who identified themselves as Mujahidin had arrived at the prison and were attempting to release all the other prisoners as well.

Based on my military experience and a quick assessment of the situation, I determined that my best course of action was not to return to prison immediately. Even though there were several things to worry about, I decided to leave the area quietly and return home. In the morning of the following day, I went to the prison dressed in a civilian outfit. I was shocked by what I saw. The prison doors were broken and wide open. Although I was terrified without guards, I still had to enter the prison to observe what was happening. As I entered the prison, I noticed the body of a police officer hanging in the courtyard. The body was the commander responsible for the zone’s security. On seeing the body, the broken doors, and the empty high-security prison, I did not proceed any further. Instead, I returned home and left Afghanistan the same day.”

The testimonies of two other respondents who were eyewitnesses to that same transition period, especially the first 24 hours, offered similar accounts. I have cited them in the footnote below, as their accounts fill in some of the gaps in General Sultani’s story. The testimonies were made by Lieutenant Abdul Ahad Mudaber, affiliated with the Military University of Afghanistan, and Commander Rahmatullah, a resident of Pul-e-charkhi and an affiliated member of Hizb-e-Islami.¹⁰

10 According to Lieutenant Mudaber: “In the evening of 7th Saur, 1371 (1992), militia appeared in the Pul-e-charki area. They presented themselves as Mujahidin, and they asked us to evacuate the buildings and surrender to them, along with our weapons. Areas around the prison, such as the polygons, parts of the military academy, and the 4th division of heavy armour and artillery forces, had already been handed over to unknown groups. However, the prison itself was handed over to the Mujahidin of Hizb Islami (the Mawlawi Khalis faction) and Harakt Enqlab Islami, under the supervision of Commander Abdulhaq of Mawlawi Khalis, Commander Azimullah, and Mawlawi Shafiullah. They were assisted by locals, some of whom had already entered the prison under the name of Mujahidin. The first militia group – I do not know if it was Hizb-e-Islami or Harakat-e-Islami – were relatively hostile and used force to free certain inmates. The second group, however, did not look for specific people, nor were they hostile. They said that henceforth they would be responsible for government affairs, and they wanted to free everyone from the prison.” ➡

In summary, the Mujahidin operated a faction-specific criminal justice system and maintained private prisons. The party's influence determined the capacity of these prisons; for example, the higher the rank of the leader/ commander, the larger the prison. As for Pul-e-charkhi, the prison was used partly as a military base, and partly for torture and extra-judicial treatment (Amnesty International, 2003b, p. 5). To that end, the Mujahidin were not only unable to maintain a national-level prison, they were also unable to establish a single, nationwide justice system.

The Mujahidin era was also a major rupture in the criminal justice system and in prison institutions. The rupture also brought in a culture of using prison institutions for purposes other than mere imprisonment, even using them as tools to elevate state power via coercion. The misuse of prison institutions got worse to the level of faction politics, as later prisons were used as military base and stronghold to retreat from attacks by the enemy. The Hizb-e-Islami Mujahidin operated in parts of the facility, using it as a fortress and headquarters for managing their faction's internal fights. As a result, the prison's infrastructure sustained great damage, due to improper use and fights, and because (due to its military function) it became the target of many assaults.

Additionally, some of the former prisoners of Pul-e-charkhi became wardens, as they were amongst the few trusted individuals with active experience.¹¹ However, these individuals did not have a basic understanding of how prison institutions function within a broader criminal justice system. As a result, they not only ruled aggressively and treated prisoners inhumanely, they also served as role models for future recruits in the prison system, by relying more on loyalty and patronage than on education. As the new wardens had experienced the inhumane treatment of prisoners during the PDP period, instituted a severe punitive and retaliatory culture in prisons, which continued to grow until the Taliban took control of the country in 1996.

⇒ Commander Rahmatullah said: "When we [Mujahidin] arrived at Pul-e-charkhi, it was midnight on 7th of Saur. There was nobody there, and portions of the prison had already been robbed. People were presenting themselves as Mujahidin, but we did not know all of them. I think this presented an opportunity for strangers to steal prison property. To avoid further stealing, and to base ourselves in a good location strategically, Mawlawi Shafiullah decided to establish his headquarters in the prison building... In terms of inmates, under the Mujahidin government we held only a few people in prison – mostly those suspected of being spies, people arrested on the street for doing something wrong, and some people with foreign nationality."

11 After the Mujahidin took over Kabul a wave of 'brain drain' began, because of the fear of retaliation, economic considerations, and declining living standards.

6.2.4 Pul-e-charkhi under the Taliban (1996 to 2001)

As the Taliban came to power (in 1996) following several years of internal conflict, insecurity, and disorder under (and amongst) the Mujahidin, it attempted to fill the gaps with its harsh criminal justice system (see 2.8 above). As Barfield (2008) maintains, the Taliban proved to be as keen as “the PDP in using state power to enforce an alien worldview on the Afghan population. The movement’s religious orientation was strongly influenced by conservative Salafi sect of Islam ... and the local [customary system known as] Pashtunwali. The influence of the latter was only indirect because, as a movement led by clerics, the Taliban were opposed to the tribal system as well as customary law” (2008, p. 367).

During the Taliban’s rule many religious figures, and even militiamen, worked as judges and prosecutors, or were involved in other parts of the system, including as prison guards and prison managers. In addition to using inhumane investigative techniques, such as beating and torturing suspects and bypassing court procedures, these figures rendered judicial decisions on the spot, based only on their assessment of the situation. The consequence was often brutal punishment, particularly when the criminal or suspect was caught red-handed. To this end, the Taliban did not need to rely on prisons.

Imprisonment was used in rare instances, usually for hostage prisoners, those awaiting punishment, and those convicted of minor offences. The Taliban’s religious police dealt primarily with those in the latter category, and they were often held in prison for brief periods.¹² As stipulated by the religious police, individuals who committed minor offences were initially detained in a small jail. For example, those arrested for not knowing enough about basic things, such as the correct way to conduct prayers or oblations, had to receive training for seven days. At the end of the seven days, they were required to pass a test on these topics; if they failed, they would remain imprisoned for another seven days. Others were arrested for shaving or cutting their beards, and these people would remain in prison until their beards grew long enough.

In all cases, if the religious police determined that an individual should remain in custody for more than seven days, he would have been sent to

12 Under the Taliban certain normal conduct would count as a crime, even if an explicit punishment for it did not exist. For example, it was compulsory for all men to grow a beard, wear a hat or a turban, and pray in joint sessions. Praying was always to be conducted immediately after the call for prayer. Thus, not wearing a hat, cutting or shaving a beard, and/or not attending prayer on time were all crimes. Likewise, women were not allowed to go out unless fully covered and accompanied by a *Mahram* (a close male family member). The Taliban’s religious police later extended bans on music, dance, films, flying kites, football, volleyball, boxing, playing chess, card games, and other forms of entertainment.

The religious police were part of a predatory establishment called the Ministry of Vice and Virtue, which forced people to pray, and they would whistle-blow on any men and women who were violating Taliban rules.

Pul-e-charkhi. However, some reports maintain that, whilst Pul-e-charkhi was being kept relatively quiet, the Taliban used other prisons excessively. According to Amnesty International, "[The Taliban] arrested many political prisoners from 1996 to 2001... Political prisoners or military combatants were reportedly held in Kandahar, a prison allegedly holding several thousand prisoners. Prisoners were reportedly forced to labour... some died of exhaustion or from beatings by prison guards. Food was reportedly inadequate, and prisoners faced starvation if they could not afford to buy additional food ..." (Amnesty International, 2003b, p. 5).

It should be noted that, irrespective of the extent to which the Taliban used prison institutions, they were no better than the Mujahidin, because in addition to their peculiar system of governance, the country experienced a continuation of the brain drain that had started under the Mujahidin. As a result, the Taliban were also forced to rely on unprofessional people to run its prisons. The Taliban's religious police is reminiscent of a backwards and distorted version of the role played by Quakers in English prisons in early 1800, who believed that prisoners would be reformed if they were forced to read the Bible and remain in a prison cell for long enough (Cooper, 1979).

Two major conclusions can be drawn from the overall historical account of the Pul-e-charkhi prison, throughout all three of the periods discussed above. First, discussions concerning the aims and objectives of Pul-e-charkhi and Mohammad Daoud's intentions for constructing the prison have been based more on personal experiences and individual evaluations, than on factual and empirical evidence. However, the fact that the birth of the Pul-e-charkhi as a criminal justice system institution coincided with the enactment of the comprehensive 1976 Penal Code indicates that the prison project was intended to be more than a mere tool for suppressing the regime's political opponents.

Secondly, in practice the institution had not only inherited a bad reputation from its own history, it had also introduced a tradition of distrust, authoritarianism, and individualism, as a consequence of the widespread use of oppression and extra-judicial measures throughout that history. Most of the negative traditions have gradually become embedded in the unwritten codes of prison management because, as a result of successive ruptures and regime changes, the prisoners of previous regimes have become key figures of the new system; they often became prison administrators. The new administrators are generally novices, have a retaliatory attitude (and are hence predatory in nature), and are inclined to perpetuate many of the unethical practices of the past.

6.3 THE POLITICAL CONTEXT – POST-2001

The post-2001 political landscape in Afghanistan may be best described as a newly born democracy, characterized by a pervasive lack of government control over the territory. In addition to the outcomes of the longstanding

instability discussed above, and the struggle to establish a viable state alongside the ongoing turmoil of the War on Terror, many other factors have contributed to the issue of government control and legitimacy. In the area of criminal justice, three major factors have had a particular influence on the evolution of the existing prison system: the type and direction of international investment in the police and prison system; unclear government policy regarding (for instance) terrorists, warlords, and drug traffickers; and systemic issues, such as the independence of the judiciary and that of the prison system.

6.3.1 Controversial international investments and the prison system

As discussed before, many of the investments made in the justice system have leaned towards achieving War on Terror goals. In that regard, numerous international engagements have invested heavily in building 'special' units and institutions, including special counter-terrorism courts and special units dealing with drug trafficking, money laundering, corruption and similar crimes, all of which mainly focussed on insurgency and its related activities. These units seldom dealt with ordinary crimes, so special prisons and detention centres, such as the Bagram prison and National Security detention facilities (see 3.4 above), hosted the ultimate products and clients of these institutions.

These institutions usually operated as military bases which were heavily guarded and, when moving around, personnel (including judges, prosecutors, and other staff) were escorted by close protection and armored vehicles. The majority of judges and prosecutors were particularly harsh with certain types of defendant; as a result, they needed guards and heavily armored vehicles to protect themselves from retaliation and suicides. In addition to working within these special units, the personnel had to maintain both vertical and horizontal relationships with other criminal justice institutions, due to the nature of criminal investigation and case processing.

Thus, it was not uncommon for people in other parts of the judiciary to fantasise about obtaining some of those expensive protective measures, and they subsequently went out of their way to enforce unusually harsh punishments in every case they were assigned to investigate.¹³ As a result, prison institutions were not only filled with national security cases, they also imposed broader damages on the criminal justice system, to the extent

13 One specific category of judges imposed sentences of 16-20 years on almost all the cases they reviewed. These judges were given the code name '1620', which is also the name of a gigantic trailer truck famous for its capacity to transport large amounts of goods in one go. The analogy was to the length of the sentence, which was commonly perceived to be unfair, but it also corresponded to the judges' decision to remove big criminals and notorious characters in one go, which was significant.

that 'the Taliban form of justice tended to prevail in some areas' (Wardak and Braithwaite, 2013).

More in general, due to post-2001 state-building efforts, some powerful warlords were able not only to return to government, but also to hold powerful positions (see 2.9 above). In specific sectors (such as the police force) warlords, especially the so-called 'Northern Alliance', grew into a powerful patronage network. Although they were apparently 'less trusted' by the international community, they were still much needed for the War on Terror, and hence they were empowered primarily within the security sector (SIGAR, 2022). As part of the police force, the prison system was primarily under the control of this alliance. There was a significant dynamic to this capture, not only because of the serious nepotism and patronage hierarchy within the prison system, but also because the system lacked professional resources and still carried baggage inherited from the wartime period, including reckless conduct, misuse of authority, and corruption.

6.3.2 Controversial state policies and the prison system

The second concern was political will and determination when the government ended. The government used to play a hide-and-seek game, particularly regarding the following three categories of criminals: terrorists, warlords, and drug traffickers. For example, the Taliban and its affiliates were referred to one day as 'brothers' and the next as 'terrorists and the enemy' (Tarzi Amin, 2005; Christia Fotini and Semple Michael, 2009; Tellis, 2009). Meanwhile, notorious warlords and drug mafias were not only shielded from prosecution, they also held positions of authority in the government and National Assembly. They were also enabled to establish their patrimonial networks by infiltrating government bureaucracies (Onishi Norimitsu, 2001; Chandra, 2006; Mukhopadhyay, 2009; Mehran Weeda, 2018). The challenge these factors posed for the criminal justice system was twofold.

First, policy ambiguities caused a general sense of confusion and insecurity for domestic criminal justice actors. Judges and prosecutors did not wish to touch someone who might be considered a brother of the system in which they worked, nor did they wish to influence the warlords, who were powerful to the extent that they had the authority to determine the faith of judges and prosecutors and decide whether or not they could remain in their work. In addition, uncertainty around policy led to irreversible mistakes, including the formation of patrimonial networks that later formed governments within the government, and even degrading reversals of justice. The most famous example of the latter is the Law on National Reconciliation, which was adopted by a National Assembly made up of

major warlords, in response to the government's 2005 Transitional Justice Action Plan.¹⁴

The law provided legal immunity to two types of alleged perpetrators: those involved in hostilities before establishment of the interim administration in 2001; and those who remained in opposition to the Afghan government. According to the law, the latter category was not supposed to be held responsible for crimes committed in the past, if they "join the national reconciliation process" and "adhere to Afghanistan's constitution and other laws".¹⁵ In essence, therefore, blanket legal immunity was granted to all the criminals of past, present, and even future conflicts.

However, the opposite was true in case of the foot soldiers and others accused of national security crimes. Almost all those imprisoned as a result of national security allegations were either arrested on the battlefield or (because they were suspected of participating in anti-government activities or actions) considered a terrorist. These proceedings usually involve similar prosecutions and similar punishments. This loose definition of guilt and the open-ended authority afforded to government actors allowed influential people, including politicians, to manipulate the criminal justice system and fill prisons with people who opposed them (and other people they did not like).

This brings us to the second set of challenges due to the ambiguity of policy. Whilst the policy commonly discouraged criminal justice actors from taking decisive measures, it also provided an opportunity for some politicians to polarise the prison system. Mohammad Ashraf Ghani, the former president who fled Afghanistan just before the Taliban's takeover in 2021, once stated to the media 'that 98% of all national security crime prisoners belonged to a single tribal group'. In fact, because of the intensity of war in the eastern and southern areas, many people were arrested and prosecuted for national security-related crimes, so the president was right in that context. Later, however, it was argued that many other prisoners had been penalised due to political connections and the bitter rivalry between powerful elites.

As a result, the National Assembly and National Security Council ordered the prison administration to develop a detailed report, including demographic and other relevant information on the prison population. A complete set of information was not available prior to the implementation of this order in 2020, which reportedly revealed a number of controversies. The data suggested that people in positions of power had used the criminal justice and prison system extensively to suppress their opponents, includ-

14 The Law on National Reconciliation, General Amnesty and National Stability was adopted by the National Assembly in 2007 and came into effect in 2008. The law is published in Official Gazette No. 965-2008.

For a digital copy of the Action Plan: Peace, Reconciliation and Justice in Afghanistan, see (GIROA, 2005).

15 Art. 3.2, Law on National Reconciliation, General Amnesty and National Stability.

ing those within their own constituency. It was prohibited to publish this data, but a prison official confirmed it to the current author in an interview after the fall of the republic in 2021.

6.3.3 Issues of institutional independence and the prison system

Systemic issues concerning the independence of the judiciary have been linked to the misuse of criminal institutions by political elites and internationals alike. In a recent report, the Afghanistan Analysts Network evaluated the status and future direction of four institutions, including the Supreme Court, the Senate, provincial councils, and the Independent Commission for Overseeing the Implementation of the Constitution. The report concludes that, “there has been a withering of these institutions and a sapping of their authority. ... The effects of this are most clearly seen in the Supreme Court ... and the [Independent Commission for Overseeing the Implementation of the Constitution’s] set up to consider Constitutional questions. Both have been prone to manipulation by the legislative, but especially the executive” (Adili, Soroush and Sadat, 2021).

In this way, despite the Afghan constitution’s separation of powers framework, the executive branch consistently subverted the judiciary. As a result, the government functioned as an authoritarian regime, not just reinforcing the prevalent culture of impunity (particularly amongst powerful individuals), but also offering a chance for powerful elites to misuse the criminal justice system.¹⁶ The National Assembly was another big contributor to this dilemma, as its members also tried to take advantage of the situation instead of giving a helping hand to reform. According to many such members, everything (including disparities in the prison system) was acceptable, as long as the essential components of the prison system were managed by ministers, who needed a vote of confidence and were accountable to the National Assembly.

Members of the National Assembly were therefore known to have heavily influenced the government’s criminal justice reform plan, including the police and prisons, through which they helped criminal networks and released insurgents and other criminals. In the long run, this led to an overall poor state of the rule of law, a weak criminal justice system, and a culture of impunity.

16 In January 2021, SIGAR published a report entitled ‘Hamid Karzai International Airport: Despite Improvements, Controls to Detect Cash Smuggling Still Need Strengthening’. The report claims that, despite endemic corruption in the country, powerful individuals continue to escape even basic oversight. For instance, in the case of examining cash smuggling in Afghanistan, ordinary Afghans who had nothing to do with smuggling have to pass through checkpoints and inspections at Kabul airport, whilst VIP passengers who are potential cash smuggling suspects bypass all security measures and proceed directly to the planes (SIGAR, 2021).

In addition, and on a more technical level, the different functions of the prison system were divided between several government agencies, such as the MoI, the MoJ, the AGO, the Ministry of Health, the Ministry of Education (MoE), the Ministry of Culture, the Ministry of Islamic Affairs, the Ministry of Commerce, the Ministry of Finance (MoF), and others. As these government agencies were officially responsible for their own portfolios, they were also responsible for delivering services in their respective areas, across all sectors. In theory, they had the staff, budget, and legitimate interest in delivering these functions within the prison system as well, but the reality was that they had far less resources than were required and were therefore unable to provide satisfactory services.

As a result, there used to be two possible options for the prison system, either to accept a dull, motionless contribution from state agencies, or to take the initiative on its own. When it came to prison-based education, for instance, the prison system was a victim of power politics in both scenarios, but more so if it showed or demanded any action. This is because, in response to such demands, powerful ministers would be forced to defend the interests of their own ministry, and this was costly to the prison system.¹⁷ Many state agencies adhered to the bureaucratic mindset of never giving up on their departmental portfolio, especially in protected institutions such as prisons. This is because state agencies' involvement in the prison system entailed more staff, more funding, greater authority, and more opportunities for corruption and favoritism. Ergo, whenever there was a plan for reform, it was interrupted in some way (see the epilogue, below).

In summary, there has long been a lack of clear political foundations for the prison system to flourish and serve as a meaningful institution that is committed to changing behaviour and reducing recidivism. Considering the political context, it appears that the Afghan government was looking forward to establishing the prison system as a place of incapacitation, intimidation, and coercion, rather than as an institution aiming to reduce recidivism and rehabilitate prisoners. This mirrors the way that its international partners invested in the system (i.e. as a means of fighting the War on Terror).

6.4 THE SOCIO-ECONOMIC CONTEXT

In examining the broader social context of prison institutions, one is reminded of the features that are unique to the Afghan social fabric, and how these features relate to the criminal justice system. Historically, no government has been able to provide an official justice system that extends

17 It was costly for the prison system, because the system was usually represented by a General Director who was one level below the ministers, and hence had less power to influence decisions, build allies, and win arguments against ministers.

to all the rural areas. Thus, people are not only less concerned with criminal justice institutions, but also do not accept the assumption that the state has exclusive jurisdiction over criminal matters. In contrast, family, clan, and kinship have greater significance in many areas, including criminal justice. In many cases, the role of kinship extends beyond reserving the right to seek revenge or compensation, when a member of kin is harmed. It may include (for example) extended bloodshed, as damage to one member of kin threatens not only *their* honour, but also the honour of the entire kinship.

Prison institutions have experienced both positive and negative consequences, as a result of such social dynamics. One of the positive impacts is that prisoners are not subjected to as much extreme isolation as one would expect in a Western society. In most cases, people take matters into their own hands, by mobilising immediate relatives and larger kinship groups to help its members. A prisoner may receive assistance in the form of regular visits, food supplies, and other resources, particularly in situations where the prison institution is unable to provide what the prisoner requires. On the other hand, there are negative consequences for the rule of law, and for state-building in general, because a large proportion of the population are enabled not only to oppose institutions such as prisons, but also to view them as a form of state imposition, which in turn reinforces the belief that individual treatment can replace official justice.

Over the course of Afghanistan's history, different regimes have tried to control this situation by introducing laws and implementing a variety of state ideologies, but some forms of opposition have persisted, and in rural areas things have hardly changed at all. That is partly due to the social fabric and the fact that people developed their own 'informal' institutions for regulating behaviour and resolving problems, but it is more due to the fact that Afghan people have had hardly any input into creating the laws and the system of government. The people were instead asked to accept something they did not know, and even something they viewed as a product of foreign influence, which violated their cultural traditions. Historically, this sparked rebellions and civil wars, as discussed in the case of King Amanullah and the later PDP reforms in Chapter 2, above.

A similar trend continued post-2001, where debate was needed about issues such as: Who has the right to seek justice? Does the state have priority over individuals, when it comes to delivering punishment? What are the boundaries of family support and calls for justice? However, these questions did not have an audience within the international community assisting with the reform process. This was due both to the apparently self-evident nature of the answers to the questions, and to the beliefs of the so-called domestic elite, who also thought such debates were not valid. The elite regard formal justice as automatically good and acceptable, because in societies with a long history of formal justice and a viable state all citizens tend to support the state's administration of justice.

With regard to the economic context, despite Afghanistan's abundance of natural resources, it has long been one of the world's poorest nations due to long-term conflict and instability. As discussed in Chapter 2, historically the primary source of government revenue was foreign assistance. During most of the 19th and 20th centuries the system survived, initially, on British subsidies, and later on subsidies from the United States and Soviet Union. There was occasional scope for specific private sector engagement, mainly in the trade and manufacture of small-scale and basic consumer goods. This activity was normally owned and managed by either government officials or members/associates of the royal family, which created a minority upper feudal and capitalist class and a majority lower working class (Nyrop and Seekins, 1986).

The First Republic in 1973 and the rise of the PDP (which was comprised of many members from an aspiring middle class) were both responses to those considered feudalistic and capitalist. In particular, as soon as the PDP came to power in 1978, it expanded the role of the state based on socialist ideology, aiming to transform rural peasants into industrial workers, despite the country's weak industrial base. In the meantime, in order to gain favor in urban areas, the state expanded its social services and provided subsidies for consumer goods. One of the most visible examples of such a subsidy was the coupon system, under which the state provided wheat, cooking oil, and other essential commodities to employees in the public sector. However, the majority of people living in rural areas and those who did not work in the public sector were ineligible for the coupons.

Although it was never booming or particularly prosperous in the first place, the system gave general direction to an economy that gradually declined into nothing more than short-term trading, due to wars and long-term instability. In particular, during the Mujahidin and Taliban eras, the economy was extremely turbulent, and it would be more accurate to describe the economy then "as loot and plunder under the Mujahidin and neglect under the Taliban. During [which], institutions and infrastructure continued to decay or be stripped for sale in Pakistan" (Fishstein and Amiryar, 2016, p. 3). Against this backdrop, the pre-2001 economic system of Afghanistan may be best described as the Soviet model (or socialist orientation).

Following the post-2001 reform, the government adopted a market economy, which was first outlined in the National Development Framework 2002 (see 3.2 above). A provision of the 2004 Constitution formally codifies this position, providing that "the state shall promote, protect, and ensure the safety of capital investment and private enterprises in accordance with the provisions of the law and the market economy." The ANDS 2008 states that the government should seek to create an environment "that encourages the private sector to play a central role in the country's economic development [and where] the government is the policy maker and regulator of the economy, not its competition" (see 3.3 above).

To that end, Afghanistan shifted from a somewhat Soviet and socialist-oriented economy to a market economy, which remained largely unsatisfactory until the republic ended in 2021. Many believe that “support for the market economy was undermined by hasty implementation when the political, institutional, and legal environment was not ready for it. The privatization of state-owned enterprises was especially unpopular because many were sold to associates of high officials in a nontransparent way... Free trade is considered to have been harmful to Afghanistan because predatory neighbors and the lack of government protection are seen to have led to the destruction of the country’s few industries” (Fishstein and Amiryar, 2016, p. 1).

The hasty shift in the system caused disparity in the overall economic situation, which gradually led to a number of major issues, such as a lack of justice and equity, a boom in the illegal economy and the mafia’s rule over it, and the capture of benefits by a small group of corrupt individuals who were tied to big warlords and powerful elites. The problem was further exacerbated by the flow of funds and contracts related to the war, resulting in a separate war economy that affected almost all sectors, including prison institutions.

This explains why people charged with crimes related to war and the economic mafia, including drugs crimes, money laundering, corruption, and other crimes, constitute the largest segment of the prison population, after those who are associated with National Security. As Sykes (1958) argued with regard to the adaptation and importation of prisoner behaviours, people charged with war and mafia-related crimes import new behaviours and social trends into the prison environment. A few examples of these behaviours, and their impact on prison management and programmes are discussed in Chapters 7 and 8, below.

In the specific case of Pul-e-charkhi, the privatisation of economic activities has infiltrated prison services and prison-based programmes such as rehabilitation. Due to the lack of resources, the prison administration leased industrial shops to prisoners who possessed certain technical skills to run a shop, as well as the capital to compete in open competitions (see 8.4.6 below). Consequently, the prisoner would be in charge of the shop and the programme and would be able to determine (or significantly influence) the programmes, including the admission process, scale, and participants.

In summary therefore, prison institutions used to operate in a social context where people hardly believed in the state’s authority to deliver justice. This was due both to the absence of formal criminal justice institutions and to strong familial and kinship ties across society. Thus, prison institutions have generally been viewed as instruments of state authority, coercion, and control at the hands of powerful (and often corrupt) officials who consider themselves part of elite society. Similarly, in terms of the economic context, if we look at the social construct of prisons as discussed in Chapter 1, Pul-e-charkhi contained just over half the total number of national secu-

rity prisoners (partly a result of the illegal drug economy) in all 33 prisons.¹⁸ In addition, the second largest category of prisoners were the poor and uneducated, who were a result of the poorly integrated economic systems.

Considering the specific features of these two groups, one could argue that a high percentage of the prisoners was neither eligible for standard rehabilitation programmes nor considered particularly amenable to rehabilitation (see 5.2 above 1.1.3 above. Particularly, the vast majority of prisoners who come from national security or illegal economic backgrounds generally require incapacitation, rather than rehabilitation. Hence, the prison system and its programmes are also shaped in that direction.

Additionally, because these prisoners come from powerful social, religious, and economic backgrounds, they bring several levels of social hierarchy to the prison, which are detrimental not only to the social fabric of the prison, but also to the entire prison system and environment. Powerful Taliban members, and those with religious backgrounds (for example), are able to influence an extensive prison wing and sometimes an entire block, by making all the prisoners follow their rules (see 8.2 below). The drugs mafia, those affiliated with powerful elites, and corrupt officials who end up in prison, tend to corrupt the prison system with their ability to purchase anything at any time.

6.5 TECHNOLOGIES

In 2005, a case management system was rolled out, with financial assistance from the United States Bureau of International Narcotics and Law Enforcement Affairs (INL) and technical assistance from the JSSP. The project involved the establishment of an online database to track criminal cases from the point of arrest through to the incarceration process, thereby reducing the potential for corruption and denial of individual constitutional rights. This multi-million dollar project had an estimated 550 offices, outnumbering the number of active prisons across the country, and it took 15 years to complete.

The database was nonetheless developed, with a number of design and implementation flaws. It could not accommodate all the data in local languages, like Pashtu and Dari, at the same time. In addition, its entry system was very open, so that a data entry clerk could alter certain fields and escape others, which led to bad data collection. Moreover, data such

18 In this context, it is important to note that most National Security inmates have a similar background: they are arrested on the battlefield and are often accused of engaging in anti-government activity, including financing terrorism through drugs and other illegal businesses, or in conduct classified as a terrorist act. Interestingly, these inmates undergo similar prosecution processes, resulting in similar punishments. Perhaps because of these similarities, most members of this group tend to stick together within the prison, adhering to their own internal code of conduct.

as dates of birth, places of birth, names, and family names have always proved problematic, resulting in unmanageable difficulties with searching and reporting functions. Although the project had hired a lot of staff, it lacked layers such as quality assurance and verification, which meant that it could not decrease the number of prisoners over-serving their sentences, inaccurate information was still common, and seized assets were frequently misplaced (SIGAR, 2020).

Consequently, the prison system was left with paper-based records of prisoners. At Pul-e-charkhi, the prison administration collected necessary information about prisoners using forms and personal files. These files contained three separate folders in red, blue, and white: the red folder contains legal matters, including information about the case, arrest details, the prosecution's claim, the defence, and all court decisions. In general, criminal justice officials add to this file at various points during the investigation and trial process, but it may not ever be fully complete.

The blue folder contains personal, psychological, and behavioural information. The prison administration must compile a new dataset for the blue folder, because perpetrators' behavioural characteristics, threat levels, work and educational needs are only partially assessed and recorded during their prosecution and trial. Since the blue folder initially consists of limited or no information, the necessary data is collected via forms containing questions about almost everything relating to personal information and behaviour. Individuals are required to answer all the questions. As long as the responsible officers collect the data correctly, the file should provide enough information for the prison to make informed decisions about the prisoner, at various points in the incarceration process.

Finally, the white folder contains medical records, beginning with a summary of the prisoner's medical history. An assessment of the prisoner's current physical and psychological status, as well as any potential health risks, is included in this file. As with the blue folder, a new dataset must be compiled, and the collection process and quality are equally important. With information management being the most technology-oriented, and perhaps also technologically demanding, area of the institution, every other aspect of the prison, including, security, searches, and other aspects of prison management, runs via a manual operation system.

In summary, in addition to the lack of infrastructure and widespread corruption, issues relating to capacity and other technical factors were also at play during the post-2001 reform intervention, which hindered the success of modern technologies in Pul-e-charkhi. However, the fact that the prisons are not equipped with any technology (apart from a limited number of security cameras) is probably one of the most intelligent decisions made during the post-2001 reform, because over 90% of all prisons lack the necessary infrastructure for this – even an ordinary electricity connection can be problematic.

6.6 SOME COMPARATIVE OBSERVATIONS REGARDING BALKH PRISON

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). In addition, Balkh serves as the judicial hub and hosts the main prison in northern Afghanistan. As with Pul-e-charkhi and other prison institutions in Afghanistan, Balkh prison has been affected by the general historical, socio-economic, technological, and political context in much the same way as other prison institutions.

Although the city of Balkh has a rich intellectual background, with famous writers, poets, theologians, and mystics such as Jalal al din Balkhi (Mawlana) having been born there, the historical context, particularly most of the consecutive political ruptures and regime changes discussed in Chapter 2, has affected Balkh prison in a similar way to other prison institutions. More specifically, at least three of the four historical periods discussed in (6.2 above) have influenced Balkh prison in a broad but similar way to Pul-e-charkhi. The Taliban's first government reached the northern parts of Afghanistan towards the end of its rule, however, so it had less of an impact on Balkh prison.

As mentioned before, the city of Balkh is the birthplace of 'Zahak', but Balkh prison did not inherit Zahak prison's horrific features, discussed in (see footnote 5, in 2.3 above). Yet admittedly, the prison is not much better either. Life in the prison cells is unbearable during the hot summers and harsh winters in Afghanistan (see 7.6.2 below). This is because the prison hardly uses any technology; it does not even have a heating and cooling system. Still, compared to Pul-e-Charkhi, Balkh prison seems to have a softer and friendlier mode of operation. The latter prison deals with a blend of criminals, mostly from the northern provinces, who share a similar background in terms of ethnicity and language.

Compared to Pul-e-charkhi, Balkh prison seems to have experienced less institutional fluctuation under the Taliban's first government, and with regard to its contextual characteristics, including the historical and socio-cultural contexts. It is perhaps due in part to the broader contextual features of the prison that it promotes a sense of hospitality, embracing a friendlier environment that is more conducive to cooperation, not only between the prisoners themselves, but also between the prisoners and prison management.

6.7 CONCLUSION

This chapter examined four key contextual factors related to the prison system: historical, political, socio-economic, and technological. Against the backdrop of these factors, one can contend that there appears to have been an insufficient social, political, economic, and technological foundation

for prison-based rehabilitation programmes comparable to the 'something works' framework, or any other feasible framework for prison-based intervention. Consequently, any mandate arising from a regulation or otherwise may be less contextually sound and more likely to be a result of wholesale legal transplant.

Pul-e-charkhi prison (despite many views to the contrary) is the first prison with a modern structure, and its construction coincided with important legal developments, such as the implementation of the first modern Penal Code in 1976. Prior to the post-2001 reforms, the prison had undergone three consecutive periods of unconventional management, which affected not only its reputation within society, but also its physical structures, organisational culture, and institutional ability to function as an establishment that was fully committed to changing behaviour and reducing recidivism.

Although the post-2001 reform incorporated certain mandates, including rehabilitation, into the system, there appears to have been a lack of financial means, social support, and (more importantly) political will for the system to carry that mandate. The political elites gave higher priority to issues related to their own personal preferences, government stability, and national unity, than to the criminal justice and prisons legal mandate. In theory, rehabilitation was an important legal mandate of the prison system, but the incapacitating aspects of the system tended to predominate, because the latter also served as a coercive mechanism, enabling the political elites to meet their priorities.

An additional complication was caused by the flawed investments made during post-2001 reform, which changed the direction of the prison system to serve more as a weapon of the War on Terror and less as a system to fight street crime and reform prisoners. A particular instance of this problem occurred at Pul-e-charkhi, which was overcrowded with national security prisoners and ran programmes which were subject to the power politics of other state agencies. These instances are particular examples that illustrate the lack of political support for rehabilitation programmes from the government and how flawed international investments altered the direction of the prison system.

As far as the contrast between the Pul-e-charkhi and Balkh prisons is concerned, although the contextual factors influenced both prisons, they shaped them in different ways. For instance, unlike Pul-e-charkhi, which inherited a rigid and formalistic mode of operation, the socio-cultural and historical contexts seem to have made Balkh prison a relatively relaxed and friendly institution.

