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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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7.1 INTRODUCTION

The present chapter focusses on the institutional aspect of the prison system, which is a key component of the institution-building model and involves assessments of internal structures, leadership, and resources (see 1.1.4 above), with specific emphasis on Pul-e-charkhi. A quick look at the institutional setting of the prison system makes it clear that all the institutional factors can be assessed at three different levels:

1. The prison system in its entirety: including national prison administration, the relevant laws, the system's legal mandate, strategy, and policy;
2. The individual prison institution: Pul-e-charkhi prison (in the first instance) and Balkh prison (for comparative purposes), focussing on their tasks, and institutional features; and
3. Actual rehabilitation programmes, conducted by individual prisons as one of their tasks.¹

Whilst I have examined the relevant dynamics and conducted interviews with major actors at each of the three levels, in the following sections I will focus primarily on the second and third layers, with only brief references to the first layer. The chapter begins by discussing the major institutional changes in the prison system since 2001, not only to provide a logical transition from the institutional context discussed in Chapter 6, but also to introduce national prison administration and the role of other crucial and

1 Over and above these three layers, historically, one or several ministries have been responsible for managing the prison system's policy direction and connections with the broader state structure. As discussed within the prison system's political context, the ministries' internal structures, relationships, and linkages cultivated during interactions are of great importance. More specifically, the interactions are identical to the enabling, normative, and functional linkages discussed in Esman (1972). In spite of their significance, however, the broader policy level structure, its relevant administrative layers, and its linkages were not investigated in this study, due to my research limitations and the impacts of the prison reform implemented in 2020.

relevant institutions, such as the Supreme Council for Prisons, the MoJ, and the Prison Police (or Ministry of the Interior).²

7.2 MAJOR INSTITUTIONAL CHANGES IN THE PRISON SYSTEM SINCE 2001

In addition to the internal management and leadership dynamics discussed below, the prison system was affected by four pivotal moments of change between 2001 and 2020. The changes shaped most of the institutional factors that were key to the prison system in general, and to Pul-e-charkhi in particular. An understanding of the four moments of change would therefore not only aid in understanding the deeper dynamics of the prison system's operation during the post-2001 reform process, but also in understanding the institutional factors, such as structures, leadership, and resources.

7.2.1 The evolution of militarised prison management

In 2001, in the aftermath of the Taliban's first government, a section of the police traditionally responsible for overseeing prisons under the PDP regime was reconstructed as the Prison Administration. In addition to changes in the structure and personnel of the department, its name was changed from Central Prisons Directorate (CPD) to GDPDC. However, the directorate remained part of the Ministry of the Interior, so the prison system also became a component of the Afghan National Police (ANP), which was undergoing radical reforms of its own (Jalali, 2006; Skinner, 2008; Pashtoon, 2017).

Consequently, the first product was a prison system led and managed by a military leadership, which had yet to establish its core values, internal structure, resources, and societal and political status. In addition, the system remained low priority for the ANP, because it was more concerned with counter-insurgency and reform of its own security and public order wing, than with prisons (Robert, 2009; Giustozzi and Isaqzadeh, 2014; SIGAR, 2022). Thus, even essential areas, such as the legal framework for the prison, could not attract adequate attention; for example, the laws which governed the prison system for about four years after the fall of the Taliban emanated from the Taliban's regime itself.³

2 The ANSF is also referred to as the Afghan National Defence and Security Force. It consists of: the Afghan National Army, led by the Ministry of Defence; the Afghan National Police, led by the Ministry of the Interior; and National Intelligence, led by the General Directorate of National Security. All of the three institutions are military in nature, with civilian senior leadership – for example, Minister of the Interior is a civilian position, but the police force (including prison police) is military. For more information about the ANSF, particularly the police and its challenges, see (Robert, 2009; Jalali, 2016; SIGAR, 2022).

3 The Taliban's Law for the Application of Imprisonment in Prisons (Ministry of Justice, 2000) had the exact same name and similar technical details as the PDP's Law of Prisons (Ministry of Justice, 1983).

In view of the low priority given to the prison system, the police not only considered prison issues secondary and relatively minor, it also paid less attention to various other aspects of prison management, leading to a deterioration in the condition of human rights and the general living condition of prisoners, due to a lack of close and careful supervision. It was due to this aspect of the prison and police dilemma that the JRC recommended (in 2003) transferring prison management from the MoI to the MoJ. Furthermore, the commission recommended that investigative and custodial functions be separated, in order to ensure fair trials, enhance rehabilitation opportunities for prisoners, and decrease the risk of inhumane treatment within prison institutions.⁴

Initially the commission's proposal met with some opposition, due to the typical power dynamics within the Ministry of the Interior, where some viewed prisons as a source of authority. The resistance reportedly diminished, following the appointment of Ali Ahmad Jalali as the Minister of Interior, who transferred responsibility for prisons entirely to the MoJ (Amnesty International, 2003c). This is testament to the fact that the senior leadership of the police was not interested in prisons and saw them as a liability to be dispensed with, rather than an asset to be retained.

7.2.2 Partial demilitarisation, substantive reform, and new problems

The MoI, in collaboration with the MoJ, formed a transition committee with "three international experts, including a correctional advisor from UNAMA, a penal reform expert from the UNODC, and an expert hired by the Italian government" (Amnesty International, 2003c, p. 6). In March 2003, the committee produced a transition proposal which was ultimately approved by the president. As a result, the GDPDC, along with its budget, personnel, and property were passed to the MoJ.⁵

According to the UNODC evaluation report of the prison reform project, the Prison Working Group developed organisational structures and a scope of work for the GDPDC (see 3.2.6.3 above) for more information about the working group concept). The project proposed two options as a possible structure for the GDPDC, "the first and preferred option was civilian and the

4 Several detention observation reports indicate that cases of torture continued to dominate practice during this time. The UNAMA "found compelling evidence that 125 detainees (46 percent) of the 273 detainees interviewed who had been in NDS detention experienced interrogation techniques at the hands of NDS officials that constituted torture, and that torture is practiced systematically in a number of NDS detention facilities throughout Afghanistan" (UNAMA, 2011, p. 2).

5 See the Presidential Decree on the Transfer of Prisons, issued in 2003 (Decree Number 3, dated 1382/1/10). Article 1 of the decree reads [translation], "The central and provincial prisons and detention centers, as well as their structures, budgets, and staff, shall be separated from the MoI and shall be integrated into the MoJ."

second was a combination of military and civilian. The latter was adopted by the President... Given the high priority assigned to the completion of the Priority Restructuring Reform (PRR) ..., UNODC participated in the Technical Working Group meetings held twice a week to [finalise] all the 38 organizational charts and terms of reference for the associated positions... A total of 2,680 staff (1,499 line officers and 1,181 sergeants) passed the exam and were then evaluated and assigned to their respective jobs" (Ron Renard *et al.*, 2013, p. 64).

The transition from a 'security first' approach to a mixed civilian and military system was a fundamental move towards ensuring the human rights of prisoners. Thus, humanitarian organisations such as AIHRC, as well as the civil society, the legal community, and UNAMA, have all expressed their support for the process. However, many of these organisations also expressed concern that a hasty shift in responsibility for such a large operation could lead to irreversible consequences, owing to the lack of adequate technical capacity and experience at the MoJ. Therefore, the government was presented with a counter-proposal for transferring responsibilities, as well as for building capacity in phases. In the end, the MoI declined to make any commitment to a long-term process, resulting in a poorly coordinated and hasty transfer of prison authority to the MoJ.

According to Amnesty International (2003), this was a historic but extremely challenging process. For instance, "no coherent strategy [existed] for this transfer or the long-term prison administration.... The full practical implications of this transfer remain unknown, and it is not clear who is taking responsibility for its implementation across the country. Outside Kabul, there is little if any knowledge of the transfer. For example, in early May 2003, the prison commander of one prison in central Afghanistan did not know about the move and said that they had received no message informing them that their reporting lines had changed" (2003c, p. 6).

The transition process also proved to be a point of tension between the conflicting management style of the previous military leadership and the new mix of civil and military management. In view of the practical challenges, the unfavourable institutional history of prisons, and the lack of resources and capacity within the system, the MoJ faced a daunting task. It was challenged in terms of security management, leadership, and transformation from an institutional mentality, which required an influx of financial and human resources. It seemed that the MoJ was planning to address its shortcomings by enforcing a new Prison and Detention Centres Law, which sought to mandate other state institutions to cooperate with the prison system.

In a sense, this was the start of restricting prison administration to safeguarding prisoners only, leaving all other issues, such as rehabilitation (including the delivery of work and educational programmes), to other state agencies. In the areas of prison leadership and prison supervision, for instance, the law proposed the formation of the Prisons and Detention

Centres Supreme Council (PDCSC).⁶ The council provided policy-level leadership for the prison system, independent of its administrative functions, to ensure that it could run efficiently and remain impartial whilst utilising resources from other state agencies. The council had to meet once every three months, under normal circumstances, but in emergency cases it could convene as and when necessary.

In theory, the collaboration of state agencies with the prison system, by assigning employees such as teachers, health care workers, and social workers, could provide a valuable opportunity in many areas, including developing rehabilitation policies and participation in rehabilitation intervention which shares responsibility between the relevant ministries and civil society organisations. However, due to the lack of an active leadership at the MoJ, council members remained unconvinced about contributing adequate resources and technical capacity towards implementation of the mandate.⁷

On the positive side, however, the new legal framework enabled the MoJ to successfully transform the GDPDC from an entirely military organisation into a mixed military and civilian institution. Thus, personnel

6 According to Article 14 of the Prison and Detention Centres Law (2007) [translation] “the Supreme Council of Prisons and Detention Centres holds a supervisory role, leading all affairs for prisons and detention centres across the country.” Whilst this provision puts the prison council at the highest level of decision-making, Article 16 of the law further strengthens its power. Article 16 authorises the council to propose amendments to the law, new bills, and regulations, to enact procedures, and to issue directives regulating the operation of prisons.

The Minister of Justice chaired the Supreme Council, and representatives from other government and non-government institutions participated as members of the council. The members included the Deputy Attorney General (as Deputy Chairman), a representative of the Supreme Court, the Deputy Interior Minister, the Deputy Public Health Minister, the Deputy Education Minister, the Deputy Minister of Labour and Social Affairs, the Deputy Minister of Women’s Affairs, the Deputy Head of the National Security Department, a representative from the AIHRC, a representative from the civil society, and the Director General of Prisons and Detention Centres (as council secretary).

7 In addition, the MoJ failed to establish adequate mechanisms for overseeing and coordinating the contributions of powerful institutions, such as the Supreme Court, the AGO, the MoJ, the MoE, and others. The supreme council lacked adequate institutional stability, and although the head of the council was a minister, he had limited administrative power over members who represented their own agencies outside of his administrative jurisdiction. In the meantime, although the law identified a number of state agencies (and certain positions within those agencies) as mandate holders, it lacked internal mechanisms for guiding the selection of other mandate holders from inside the institutions to participate in meetings. Having this kind of mechanism was very important, because mandate holders were extremely busy individuals who had ultimately to excuse themselves from attending meetings outside of their own organisation, often leading to the appointment of someone else to attend on their behalf. Many council meetings would therefore take place without the main mandate holder being represented, or only very low-level officials would represent institutions. Due to this issue, decision making was sometimes problematic, since low-level officials did not usually have the authority to make decisions on the spot. They were often so insignificant in the hierarchy that they were not given the opportunity to report directly to the mandate holder.

and structural adjustments were one area of progress amidst the troubled reform process. In addition, several prison programmes and routines were reformed and improved, in order to accommodate more rehabilitation activities, including work, recreation, and family visits. However, in general, the MoJ's success was hindered by inadequate resources and poor conditions, as well as a poor leadership (see 7.4 below).

The leadership deficit is obvious, when practical reform areas (such as security, infrastructure, and human resources) are compared with the development of laws and regulations. As the primary law making body, the MoJ moved swiftly in revising the legal framework, yet it consistently failed to make tangible progress in building proper security and infrastructure, as is echoed in several reports. According to a 2009 annual AIHRC report, "the situation of detention centres and prisons is not good, and the majority of detention centres and prisons do not meet the basic standards necessary for the rehabilitation of prisoners. The Afghan government has also not paid adequate attention to this issue; it has allocated few financial resources for constructing, managing, controlling and rehabilitating detention centres and prisons" (AIHRC, 2009, p. 18).

The biggest burden on the MoJ has been maintaining proper security in prisons. Over time, and with the escalation of insurgency around the country, the number of prison breaks, riots, and instances of disorder in provincial prisons continued to increase. Ultimately, following the notorious Sarposa prison break in April 2011 (which led to the release of 500 national security prisoners allegedly involved in terrorist action and anti-government activities), the MoJ proved itself incapable of controlling the frequent occurrence of security-related incidents in prisons.⁸ Accordingly, security sector officials proposed shifting responsibility for prisons and detention centres back to the Ministry for the Interior.

8 Sarposa Prison is located on the outskirts of Kandahar. It is where suspected Taliban members, who were detained by Canadian military personnel and handed over to Afghan officials, are held. An estimated one million dollars was spent by the Canadian military on improvements to the facility, including new cell blocks and new windows. Consequently, the Canadians have repeatedly resisted changing the location of the prison, under threat of such attacks, in order to preserve investment made in the existing location. For more information, please refer to (French, 2008; Luke Mongelson, 2012).

The list of prison breaks which took place during MoJ custody include:

- October 2003: 41 Taliban prisoners escaped through a tunnel which they dug underneath the Sarposa Prison complex.
- January 2006: 7 imprisoned Taliban fighters escaped from Pul-e-Charki prison.
- June 2008: 1,100 prisoners escaped from Sarposa Prison after a suicide bomber blasted open the gates.
- November 2009: 12 prisoners escaped after tunnelling out from their cells in a jail in Farah province.
- July 2010: 19 prisoners escaped after a blast at a prison in Farah province.
- April 2011: 470 prisoners escaped from a Kandahar jail, through a 360 m (1,180 ft) tunnel which was dug from the outside.

In its position paper, the MoJ claimed that a severe lack of resources was responsible for these shortcomings, which could not be resolved by transferring authority to another ministry. In addition, it stated that shifting the prison back to military-style management would be detrimental to the prison system's social, cultural, and rehabilitation functions. The ministry also asserted that past experience showed that existing problems could potentially be mitigated, either by enabling and strengthening the existing system, or by establishing a fully independent organisation that would report directly to the president. The AIHRC supported the MoJ in an official opinion dated May 2010 (21/2/1389).

Additionally, the International Committee of the Red Cross (ICRC) issued an official statement, requesting cancellation of the plan to transition prison management responsibilities. The statement indicated that the ICRC recalled a decree issued in 2004, which transferred prison authority to the MoJ over concerns regarding human rights violations. The decree also sought to ensure that court orders strengthening prisoners' rights were being implemented effectively. The ICRC stressed that all previous concerns remained relevant, and that if prisons remained under the MoJ, the ICRC would "continue to advocate for adequate funding in accordance with the requirements of maintaining and improving the country's prisons through multilateral discussions within the existing organisational framework."

7.2.3 Reinstating a 'security first' approach to prison management

Despite strong opposition from the MoJ, the AIHRC, the ICRC, the UNAMA, and international donors (including Canada and Italy), the cabinet approved the transfer of prison authority to the MoI in 2011.⁹ In particular, it instructed the Ministry for the Interior to ensure prison security and order, something that the MoJ had failed to do for the past seven years. The shift marked the third fundamental change to the prison system.

As this change took place after the failure of a mixed civil-military prison system, it also marked the turning point for the system, including Pul-e-charkhi, towards being a set of static and hierarchical institutions based on full military management principles. The shift was critical, because the government decided to reintroduce a 'security first' approach,

9 The shift is authorised in Decision Number 6 of the Cabinet of the Islamic Republic of Afghanistan, dated 2011 [29/2/1390]. Also, on December 17th 2011 (26 Qaws 1390), President Karzai signed a decree that would transfer the control of prisons from the MoJ back to the MoI, effective from January 10th 2012 (20 Jadi 1390).

in response to dynamics that went beyond prisons and the justice system.¹⁰ Following this shift, a full-scale military structure was implemented, which would be led by the MoI and police force. The immediate consequence of shifting to a security-centric management approach was an escalation in security measures and restructuring of the GDPDC.

As a result, the prison security situation improved, but the human rights and rehabilitation-oriented routines and procedures were adversely affected. For instance, limitations were applied to prisoners' free movement within prisons for work, recreation, and education. Additionally, family visits, leave, and the transfer of prisoners to provincial prisons were subject to more restrictions and scrutiny. These changes also adversely affected donor-prison system relationships. Consequently, most donor-funded initiatives, including those funded by the United States and Italy, started planning their exit strategies.

In assessing the impact of the new leadership, a few words from Andrew Coyle (2002) are relevant to the Pul-e-charkhi situation and the prison system in general. He states that, "in the prison cliché, when I tell you [the prisoner] to jump, you should not ask why?, you should ask how high?" (2002, p. 11). In the case of the Afghan prison system, this cliché included prisoners and staff alike. As a result, there were no horizontal lines of communication, only vertical. Even the vertical lines pointed downward rather than upward, and frequently they were adapted from Bagram Detention Centre's management style (see 3.4 above).

With regard to prison conditions and human rights situations, the AIHRC keeps a wealth of information and prison monitoring records as part of its annual and special reports. Almost all the reports illustrate different levels of poor leadership, at different layers of prison management. For example, AIHRC's Annual reports (2012b, 2013, 2014, 2015a, 2019) and a few of its prison system-specific reports (AIHRC, 2012c, 2012a, 2015b) maintain that, after the transition of prison administration to the MoI, provincial prisons continued to operate across the country, but most of them reportedly continued to remain sub-standard, malfunctioning, and located in rented properties.

10 As a member of the Afghan bureaucracy, I could appreciate the government's perspective on this matter, as it was very clear that it wanted to demonstrate its ability to take care of prisons independently, including those run by international military forces. In fact, the administration had long urged the International Military Forces to cease operating private prisons and immediately hand them over to the Afghan authorities. Of particular concern was the Bagram Detention Centre, which the International Military Forces allegedly misused. However, the International Military Forces denied the allegations, arguing that maintaining the facilities was in the interest of the so-called War on Terror. Further, they felt that the government was unable to provide adequate security and ensure proper operation of the missions concerned.

In addition, following the migration of prisons to the MoI and reinstatement of the security first approach, cases involving illegal imprisonment increased. In 2014, the AIHRC documented close to 400 cases of illegal imprisonment (AIHRC, 2014, p. 42). The report noted that most of the cases stemmed from insurgency-related backgrounds, based on which the government imprisons individuals under broad anti-terrorism laws, allowing them to remain in prison almost indefinitely.

Therefore, prisons filled up quickly with convicted insurgents, including fighters captured on the battlefield, individuals arbitrarily detained during covert operations, and individuals suspected of indirectly supporting insurgency (notably, via vaguely substantiated allegations), such as providing material support to suspected institutions.¹¹ An overwhelming number of these prisoners were not eligible for any of the standard rehabilitation schemes discussed under the amenability criteria. However, they were received by the prisons, only to remain isolated and incapacitated.

Furthermore, as part of the police force, the prison staff tended to be more rigid towards prisoners incarcerated for insurgency crimes, since the police constantly lost comrades to the ongoing rebellion. These dynamics lead me to believe that tensions resulting from the ongoing war between prison staff and national security prisoners played a significant role in the fourth and final change in prison management, which was prompted by the peace and reconciliation process (see the epilogue, below).

7.3 THE PRISON SYSTEMS' INTERNAL STRUCTURE

It has been mentioned previously that all elements of the institutional factors, including the internal structure, can be assessed on three levels. As a result, the following three sub-sections address internal structures at the national prison administration level, prison level (Pul-e-charkhi), and rehabilitation programme(s) level.

7.3.1 Internal structure – national Prison Administration

As per Article 17 of the Prison and Detention Centres Law, the GDPDC (as part of the ANP and Ministry for the Interior) serves as the national prison

11 See Human Rights Watch's report of November 15th 2015, *Afghanistan: Reject Indefinite Detention Without Trial*, (Last accessed in October 2021).

It is worth mentioning that Doha talks and engagements with the Taliban were not a new phenomena, as various efforts were aimed at political reconciliation in Afghanistan in the past, starting with an attempt by Hamid Karzai to establish the Peace and Reconciliation Commission (the *Shora-e-Tahkim-e-Solh*) in 2005. For further details on the history of peace talks and complexities of the Doha peace process see (Behuria, Ul Hassan and Saroha, 2019, pp. 129–133; Junaid, 2021).

administration (see 7.2.1 above).¹² It is primarily a military establishment, with a few low-ranking civil servants working as clerks and support personnel. According to its official organisational structure, the GDPDC had 6,506 military and 1,278 civil service employees in 2019 (NSIA, 2019). The directorate is headed by a General Director, who is assisted by two deputies, one of whom is responsible for security and the other for technical and administrative matters.

Apart from the three most senior management positions, all other middle management and lower management positions are military in nature, and hence are occupied by police personnel. Most of the prison personnel are hired either by the GDPDC or directly by the Ministry for the Interior. There are no specific provisions in the Prisons and Detention Centres Law regarding staffing and custodianship of the management positions at the national prison administration. Thus, almost anyone who is a member of the ANP, or who is qualified to join the police force, can become a prison officer.¹³

During my fieldwork, almost all the management steps within the GDPDC insisted on the need for a broader internal structure to support all its functions. However, as a result of increasing police responsibilities in dealing with security issues and the cap imposed on the total number of police in the immediate aftermath of the 2001 reform, the requested expansion was not possible (Jalali, 2006; Wilder, 2007; Robert, 2009; Giustozzi and Isaqzadeh, 2011). The role of the GDPDC remained limited to providing security and general operational support to the prison system (see 7.2.2 above). The system continued to rely on the PDCSC and other state agencies, for policy-level guidance, and for technical, legal, and programmatic needs, including health, education, and rehabilitation.

The GDPDC itself has two directorates for prison-based rehabilitation, including one for education and one for industrial programmes. The two directorates have a very small internal structure, consisting of the director and three to four clerical positions, tasked with the overwhelming responsibility of not only coordinating and overseeing programmes that operate with the help of other government institutions (such as the MoE and the

12 According to Article 17.1 of the Prison and Detention Centres Law 2007 [translation] “the GDPDC is the central administration for all affairs concerning prisons and detention centres.” This department shall supervise all prison organisations, their installations, and their buildings. As per Article 17.2. [translation] “the GDPDC performs its duties in line with the provisions of the law, and the regulations, procedures, relevant bills and instructions of the Supreme Council of Prisons and Detention Centres.”

13 Although traditionally the Police Academy of Afghanistan (and more specifically the Prison Police Department) is known to be the source of recruitment for the national prison administration, most of prison recruits come from other branches. The Prison Police Department reportedly trained its students in a variety of technical, legal, and criminal justice subjects. The department itself is alleged to attract low quality students, because almost everyone admitted to the academy wishes to study criminal investigation, security, or law. Some professors and students of the Police Academy, who I interviewed for a different purpose, reported that when they were unable to study one of their favorite subjects, students would either transfer to the Prison Police Department or leave the academy.

Directorate of Vocational Training), but also with contributing and participating in formulating overarching strategies for prison-based rehabilitation programmes.¹⁴

The national prison administration therefore consists of a military-oriented internal structure that depends on the MoI. Thus, staff generally rely on the instructions of their immediate supervisors and those of senior management, even when their instructions are not exactly in line with the pertinent legal frameworks. In order to maintain the prison system's integrity throughout the country, a similar division of tasks and internal structure is used at the level of individual prisons as well. To this end, in most prisons, including Pul-e-charkhi, the internal structure itself leads to a serious lack of dynamism and innovative approaches in prison management, particularly in terms of implementation of the legal mandate for prisons.

7.3.2 Internal structure – Pul-e-charkhi

Inspired by the GDPDC's internal structure, Pul-e-charkhi is headed by a director who also serves as prison commander. The director is, in principle, responsible for overseeing all prison functions, including administration and security, as well as the prison's external relations. However, the GDPDC generally handles all inter-agency and inter-governmental relations, as well as hiring and budgetary matters for the prison system, so there is no room for the prison director to carry out those duties.

In terms of the prison management routines and other duties, the director is assisted by two deputies, one for administrative affairs and one for security. The deputy positions are military in nature, and hence the duties are satisfied by two police generals. Each of them lead subordinate structures that help to implement their responsibilities, in accordance with the prison's legal mandate. The deputy for administrative affairs is responsible for general administration, including design and administrative support for the intake process and prison regimes, as well as prison-based rehabilitation programmes, such as education, recreation, sports, and industrial activities.

Below the deputy for administrative affairs are specific divisions that are responsible for direct implementation of these tasks. For example, there are two separate divisions responsible for prison-based rehabilitation programmes. The education and recreation divisions are solely responsible for anything related to education, sports and recreation. Likewise, the industrial division is responsible for Pul-e-charkhi's industrial programmes and vocational training, as well as canteens and any other activities that involve work and income generation.

14 After the 2020 reform, the Office of Prison Administration assumed responsibility for programmes that were previously handled by other agencies. Thus, the directorate was responsible not only for supervising and leading, but also for delivering rehabilitation programmes to over 35,000 inmates, spread across 37 institutions in 34 provinces (see the epilogue, below).

On the other hand, the deputy for security is responsible for safeguarding order within the prison, by ensuring that prisoners remain locked up within the prison and kept under control during transportation to and from courts, and by establishing security guidelines for overall prison operation. All prison programmes, including many of the routine administrative functions of the prison, are governed by parameters established by the security division.

7.3.2.1 *Management meetings*

A limited number of civil service employees have been tasked with clerical, rather than leadership, responsibilities across different divisions of the prison, including within its education and industrial programmes. However, due to the unique characteristics of Pul-e-charkhi, most of the internal affairs of the prison used to be managed and supervised in a military manner. For example, the prison's most important management platform is regular management meetings, which address the essential operational and policy needs of the prison's daily operation.

According to my observations, the management meeting was only a formality, aiming to legitimise the implementation orders of the prison's senior management (the director and his two deputies were called *Hehat Rahbari*, literally meaning 'senior management'). For instance, when there was a need to change the location of classrooms, close down classes, or change routines, a meeting was called. The meetings did not have a pre-determined agenda, there was no fixed schedule, and the participants often did not know the purpose of their gathering. Thus, it was solely a platform for senior management to issue directives and assign relevant divisions to implement its decisions.

In many instances, the meeting was dominated by irrelevant and random topics, as a result of the lack of an agenda and planning. In light of competing interests and military hierarchies, participants often jumped from one subject to another, particularly if the topic was suggested by a lower-ranking official. The topics could therefore hardly be discussed in depth, making it nearly impossible to reach a decision. However, in all cases, the prison's chief of staff, who functions as the secretary to the prison director, was responsible for taking the minutes and following up on decisions made. The chief of staff also had an important role to play in reporting between Pul-e-charki and the GDPDC.

The wide gap between the notion of a management meeting and the prison's actual organisational culture suggests that the meeting was simply an idea copied from international organisations, consultants, and the UN agencies engaged in reform of the prison system; an idea which kept repeating itself, without anyone questioning its relevance or the validity of its decisions. In itself, the meeting is a good example of how prison management deals with the prison's daily operation and substantive programmes, including those for education and other rehabilitation programmes.

7.3.2.2 The Baashees

In addition to the official internal structure of Pul-e-charkhi, there is also an unofficial system for handling, coordinating, and communicating issues within the prisoner community. This internal structure is similar to a management structure and it is based on operating procedures imposed by the prisoners themselves. Although an informal structure, it is strong enough in specific areas, such as prisoners' rights, concerns, and expectations. The hierarchy of this structure is simple but effective, as it is built around the common interests of prisoners, who elect one person as their cell leader and follow his lead in all matters.

The cell leader is called *Baashee*, literally meaning 'senior' or 'manager'. Several cell leaders within the wing select the general leader, known as *Baashee Omomi*.¹⁵ In this way, an informal hierarchy is created, in which the influence of the Baashees is proportional to the number, criminal background, and religious integrity of the individuals within the cell. Thus, Baashees representing the larger, more affluent, and more powerful cells, such as those representing national security prisoners, tend to carry more weight than those representing smaller cells.

Even though none of the Baashees represent the official structure, and they are not part of the prison system's design, they nevertheless work in parallel with official administration. Although their primary objective is to normalise social conditions within the prison, the mere existence of Baashees also creates classes, friendship groups, and parties within the prison population, because they engage in all the issues directly related to prisoners' lives. In a sense, this system serves as an effective deterrent against unfair behaviour from prison guards, restricts the possibility of mistreatment, and reduces the likelihood of dangerous situations occurring within the prison.

Just as directors and division managers in Pul-e-charkhi have official leverage over their units, the Baashees and wing leaders have informal influence within the cells. Staff and fellow prisoners must obey orders without hesitation, in both cases. Pul-e-charkhi's most notable feature is that the two streams of management complement, rather than oppose, one another,

15 The word *Baashee* has a Turkish root, but it is also commonly used in Pashtu and Dari (the two official languages of Afghanistan). *Baashee* usually has better financial and social status in prison, and thus they also have a better relationship with prison management, compared with other inmates. The *Baashee* plays a significant role in communicating the needs of inmates to prison management, and vice versa. They also have a substantial role in calming crises, setting ground rules in dangerous situations, and paying attention to general conditions, including the cleanliness of the prison, and the health and wellbeing of its inmates. In rare circumstances, the *Baashee* helps with inmates' cases and legal issues too. The *Baashee* gradually becomes the most trusted inmate, and hence they are in the front line of communication with the outside world as well. The prison management usually introduces *Baashees* to researchers, the media, members of the National Assembly, and other outsiders who want to look into prison life.

unless there is a serious violation of prisoners' rights. The Prisons and Detention Centres Laws of 2007 further reinforce this collaborative situation through specific provisions for monitoring, such as allowing regular visits by representatives of the AIHRC, the civil society, the media, and members of the National Assembly.

Involving Bashees in the informal structure of the prison ensures that there is a certain degree of pressure on the formal structure to protect prisoners' human rights, but Bashees have less to do with the legal mandate for prisons. The latter aspect is reinforced by third-party monitoring, which also plays a crucial role in bringing views and recommendations (including those of prison experts) into prisons that are usually restricted and rarely accessible.

7.3.3 Rehabilitation programmes

In addition to the administrative and security structures of Pul-e-charkhi, prison-based rehabilitation programmes (e.g. educational and industrial programmes) have their own specific internal structures. The education division, for instance, has three staff members, and it is responsible not only for overseeing the prison's official school, but also for sports and recreational activities in the prison. In the meantime, according to the law of Prisons and Detention Centres, the entire population of Pul-e-charkhi is entitled to education, sport, and recreational opportunities. As a result, the education division is specifically responsible for planning, coordinating, and supervising the educational, sports, and recreational activities carried out by the relevant state agencies.

The industrial division, on the other hand, has its own internal structure. In theory, the division qualifies as a state-owned enterprise, hence it should have only a few coordination functions within the prison's internal structure. The rest of the programme should be aligned with the State-Owned Corporations Law (2018) and the Charter of Prisons Industrial Enterprises (2006).¹⁶ However, due to several factors, including the privatisation issues discussed in (), the industrial department is fully incorporated within the prison structure.

16 The two regulations prescribe a management hierarchy of responsible institutions and individuals, to ensure the integrity, effectiveness, and financial viability of the programme. Article 10 of the Charter for Prison Industrial Enterprise (2006) provides that, "the supreme council of the prison industry shall have seven members. These include the minister of Justice as its director, representative of the minister of finance as its deputy, the General Director of Prisons and Detention Centres as a member, the production manager of prison industrial enterprise as a member, the deputy manager of prison industrial enterprise as a member, and two officers from production and administrative sections of the prison industrial enterprise as members." According to Article 14, "the executive committee includes the director and deputy director of the prison industrial enterprise."

Thus, the division operates with 12 civil service staff taking care of all six of the industrial workshops running at Pul-e-charkhi. Despite the division's relatively high visibility, as a section of the prison with several branches, it therefore operates in contradiction with its own legislation. As a result, the programme runs into problems with other state agencies. For example, the MoF decided to prevent it from accessing its own money, generated over time, and the Civil Service Commission blocked the hiring process for its civil service staff. In other words, it not only lacks the necessary features to function as a fully-fledged prison industrial enterprise, it has also become a point of tension in terms of the external relations of the prison system, leading to malpractice and corruption due to its unstructured and disorderly institutional conditions.

Overall, the general internal structure of the prison system, and that of Pul-e-charkhi in particular, seem to be more responsive to security needs. Whilst intervention programmes, such as rehabilitation, have been added to the legal mandate for the system, the relevant internal structure remains frozen; hence, the system lacks institutional support for the latter. In addition to an excessive focus on security, the predominantly military orientation, ranks, and internal structure have shaped the prison in the direction of not just ignoring, but also suppressing, potential dynamism and innovative approaches to connecting the prison system with other institutions (including non-governmental), and to mobilising the capacity and resources for prisoners' rehabilitation.

7.4 THE LEADERSHIP

From an institution-building perspective, leadership generally refers to the function of individuals, or groups of people, who are cooperating to guide a system toward specific goals (Esman, 1972, p. 22). In general, these groups and individuals can be located at different levels of bureaucracy. However, in the context of prison management in many countries, including Afghanistan, which typically involves static and hierarchical institutions, the system's operation is inspired by the highest level of authority and the most senior members of the institution.

7.4.1 General prison management and leadership

An hierarchical approach has undoubtedly been the commonplace in Pul-e-charkhi, where the role of senior leadership has been firmly limited to overseeing daily activities in the prison. Due to a restrictive and heavily centralised internal structure, the prison director is primarily responsible for overseeing the internal operations of the prison, and for communicating reports to the GDPDC (see 7.2.3 above). During the fieldwork for this study, a two-star police general, was the director of Pul-e-charkhi. He was a gradu-

ate of the police academy, with extensive experience in policing and the security sector, but he had no prison-specific education and experience.

The General was amongst a minority of prison authorities who were not strongly connected with the Northern Alliance, which predominantly controlled the prison system (see 6.3 above). Based on my observation of prison operations, the General was overly cautious in exercising leadership authority, due to both the largely centralised internal structure and his own background. He was primarily concerned with maintaining order within the prison. During several management meetings, I heard him describing Pul-e-charkhi as 'a fragile peace, made of thin glass and full of explosives'.

He consequently advised the prison police, and others, to exercise extreme caution in all aspects of their work, but particularly when dealing with prisoners. In his opinion, the 'prison laws and directives clearly outline everything regarding prison management and daily operation. The prison staff was responsible for applying the laws and directives, and there was no need for them to think beyond them and innovate, at least not in Pul-e-charkhi'. Even if the General had wanted to innovate, perhaps he would have not been able to, because the prison director has very limited authority beyond daily operation of the prison.

The director's financial role was confined to endorsing financial documents in a formalistic and ceremonial manner. In terms of human resources, key prison personnel are almost always hired by the GDPDC or directly via the MoI, leaving almost no role for the prison director in the hiring process. Nevertheless, the director does have the authority to assign personnel to different roles, and to rearrange or discipline them, when necessary. I did not witness any disciplinary measures being taken, or any reshuffling of prison personnel, during the period I was visiting Pul-e-charkhi.

Some of the prison staff also claimed they did not witness such things either, and that the director was particularly careful when dealing with prisoners and prison personnel who were connected to powerful people. I think that this may also have been because the General was a firm believer in maintaining order by avoiding conflict. In the meantime, this was definitely the type of leadership role that the prison law and prison internal structure expected him to play. During his leadership, the law specifically limited the role of the prison director to maintaining security and order within and around the prison; in all other areas, the prison leadership played a coordination role only.

The actual service delivery in many areas, including the provision of education, vocational training, and sport, was outsourced to the relevant state agencies (see 7.2.2 and footnote 6 above). In the meantime, broader and policy level decisions related to prison operation, and even management level issues, such as the food schedules and prison expenses, were decided by either the PDCSC, the Council of Ministers, or the MoI, leaving prison management with a very limited role, beyond overseeing the daily operation of the prison.

7.4.2 Management and leadership of individual programmes

As discussed before, there are basically two mainstream rehabilitation programmes running in Pul-e-charkhi (i.e. the education and industrial programmes). The education programme, which has both formal and informal components, is delivered by the MoE and prisoners, respectively. The curriculum of the formal education programme is developed and applied by professionals and specialists in the relevant field, and the teaching materials are also provided by them. Prison authorities – particularly the prison's education division – hardly play a role in preparing the substance or the delivery of the programme.

The official school is operated by individuals who are mostly recruited as teachers from within the educated prison population. These teachers, having been prisoners themselves, usually found themselves caught up in a power struggle between the MoE, which controls the contents and resources of the programme, and the prison authorities, which control everything else. Thus, often the teachers hardly show any leadership skills in terms of going beyond what is provided for them within the many restrictive boundaries of the prison.

The education division, on the other hand, is positioned almost at the bottom of the prison's administrative and military hierarchy. Its three employees and the manager are not very motivated to push educational agendas on all the available platforms. Due to their low rank, they lack the authority to enter many of the residential buildings without permission from the security department. As a result, the official educational programmes are usually far below commonly expected standards.

For example, although there are classes in almost all the residential buildings, the exact location of the classes varies from time to time, due to security restrictions and overcrowding. The majority of classes are held just around the corner, at the far end of a corridor. A curtain usually separates the class from the rest of the area, which is hardly conducive to learning as there is disturbance from other prisoners. The education division, the prison director, and even the MoE does not seem to have made tangible efforts to improve the classroom environment. A detailed yearly or six-monthly educational plan could be added to the general operational plan of prisons, to tackle most of these issues. However, the education division does not seem to have any incentives for drafting such a plan. According to the division head, it had been tried in the past and had not been successful, because of financial and security restrictions, as well as prison overcrowding.

The industrial programme, however, is larger and more resourceful than the education programme. It involves six workshops, several canteens inside residential buildings, and a number of call centres that are also located within the residential blocks. Due to the financial benefits and better living conditions it offers, the industrial programme is interesting to both the prison management and prisoners, so there is a need to exert more robust and dynamic management (see 8.4.6 below). Most importantly, the

manager of the programme was formerly a trusted member of the patronage network (see 6.3 above).

Although he came from an educational background in criminal investigation and policing, which he undertook in Ukraine and the United States, he was appointed manager of the industrial section. To that end, both because of his political connections and status within the internal structure, the industrial manager was relatively active and tended to move freely along the official and unofficial boundaries of the management. As an example, he was able to transcend the limits of his network and hire a relatively diverse team of 12 experienced individuals to assist in the management of the industrial programme.

In spite of this, the overall system is tainted with high levels of corruption and malpractice, including political favouritism, making the whole industrial programme the victim of a larger mafia network that almost completely negates the influence of programme leadership. For example, one step by the prison mafia within the GDPDC (and beyond) towards curbing leadership at programme level, was the privatisation of the prison workshops and canteens (see 8.4.6 below). Another example is when the same mafia orchestrated processes and events which lead to the closure of Pul-e-charkhi's bread factory.

The factory was a viable part of the prison's industrial programme, as it not only provided bread for the prison, it also created jobs. The closure was reportedly because the factory was marked as a threat to the security of the prison as, based on intelligence reports, there was a fear that supply trucks may transport explosives to the prison or facilitate the prisoner escapes. Based on these simple and unsubstantiated assumptions the factory was closed, which meant that the prison had to spend millions of dollars outsourcing a daily amount of at least 30,000 loaves of bread to private vendors (10,000 people, multiplied by three, per day).

According to several low-ranking officials from the industrial programme, none of those in management roles made an effort to influence these decisions. 'They hardly questioned the legitimacy of the decisions. Instead, they often extended offers of help to make such conspiracies the reality, because changes like these could create enormous revenue for corrupt officials who were not at all concerned about the prisoners and the prison system'.

7.5 RESOURCES

In general, prison resources, particularly those related to rehabilitation programmes, fall into three categories: financial, human, and infrastructure. These categories are important resource areas for the Afghan prison system, for two reasons: because they were historically lacking; and, because they have been the source of significant challenges. It is important to note that the degree and priority of the three areas differ, depending on

circumstances. For instance, in the case of Pul-e-charkhi, issues related to financial and human resources have been more prevalent than those related to infrastructure.

In the remainder of this section I will provide an outline of the financial resources within the prison system, as well as in Pul-e-charkhi, followed by a separate and more focussed account of the infrastructure and human resources at Pul-e-charkhi and within its rehabilitation programmes.

7.5.1 Financial resources

As discussed above, from the outset of the GDPDC's revival in 2002, the prison system was dependent upon the ANP for its budgetary needs and general staff functions; hence, it lacked both the financial and professional human resources to function independently. Paradoxically, international partners, who were seeking to promote the rule of law through human rights-based criminal justice and prison services, chose to establish parallel prisons and management structures outside the control of the official prison system, in precisely the same way as described in the case of temporary institutions (see Chapter 3, above).

Bagram Prison and several special counter-insurgency detention centres, in Kabul and other parts of Afghanistan, were amongst the most famous parallel structures (see 3.4 above). These facilities were specifically designed to address the counter-insurgency concerns which were central to the state's official policy, and that of its international allies. Therefore, international military forces operated these facilities either independently, or jointly with the Afghan Directorate for National Security; hence, all of them remained outside the official prison system.

The special prisons were given priority for significant international investment. Furthermore, due to the operation of these institutions, and the fact that they responded to the most pressing needs of the time, government funds were not allocated to the official prison system, resulting in it becoming under-resourced and corrupt. For example, when the prison system came under the management of the MoJ, the entire expenditure of this ministry, including for all the prisons, represented only three per cent of security sector expenditure (Atabay and English, 2008, p. xii).¹⁷

In spite of the fact that the prison's financial resources were insufficient for addressing all its operational and programmatic needs, its budget gradually increased over time. In accordance with information obtained from the MoF, the ordinary budget of Pul-e-charkhi almost doubled between 2011 and 2015 (the data shows an increase from 4.3 to 7.3 million euros [345 to 580 million Afghanis] in the ordinary budget). A growing prison population

17 For example, the monthly salary of a police officer working for the MoI was 65 euros, whereas equivalent for a prison guard working for the MoJ was 35 euros, and this was sometimes paid late, or not at all (International Center For Prison Studies, 2009, p. 19).

and the gradual development of prison institutions seem to have contributed to this trend. In addition, expanding prison infrastructures and international development projects focussing on the development of a prison system also played an important role.

Amongst such development efforts, the first prison reform project was launched in May 2003, as part of the overall security sector and criminal justice reform agenda. It was limited to helping with legislation and rebuilding Kabul's infrastructure. Known as the 'Penitentiary Reform Project', the initiative was part of the UNODC's Criminal Justice Reform Program (AFG/R41). Even with its limited scope, the project created a divide between Kabul and the provinces, as the latter were in greater need of such assistance than the city. Therefore, the UNODC initiated a follow-up project three years after its initial project, which was designed to address the disparities between the capital and the provinces.¹⁸

The efforts of the UNODC were further strengthened by a large-scale project funded by the United States Correction System Support Program (CSSP), which began in 2006.¹⁹ The scope and funding of the CSSP were substantially larger, as the project involved rebuilding infrastructure, supporting programmatic needs, and developing regulations, operating manuals, and directives. The majority of the directives, including those related to the prison-based rehabilitation programmes, were developed under this project (see 5.5.1 above). The project also contributed some machinery and equipment for prison-based vocational training programmes (see 8.4.6 below).

In summary, the prison system's budget was part of the MoI and police budget, and since the prison system was given low priority, the budget was also set low. The lack of sufficient budget exacerbated the prison system's problems on many other fronts, including human resources, due to the low financial incentives it offered. However, the prison budget gradually

18 See the UNODC AFG/R87 project for more detail. The project was a continuation of the 2003 Penitentiary System Reform Project AFG/R41. The Italian government remained the key donor to this project, but as the name implies, the focus of the reform shifted to upgrading the prison system in selected provinces. The project objectives included: a) supporting the GDPDC and the judiciary in establishing the rule of law and promotion of human rights; b) enhancing the operational capacities of penitentiary staff, and improve coordination within the criminal justice system; c) providing drug treatment during and after incarceration, and education/job training programmes for prisoners, and promote alternatives to imprisonment; d) rehabilitating prison facilities, and making infrastructure improvements; e) providing outreach to vulnerable prisoners (e.g. women with children); and f) training for corrections personnel/social workers. The project budget was about US\$ 8,530,718, and it was supported, via the UNDP, by Italy, Canada, Germany, and Spain.

19 According to official sources from the Corrections System Support Program (CSSP), the initiative involved a mentoring and advising programme, between American and Afghan corrections professionals. The INL funded the programme. The PAE, which is a US-based contractor, implemented the project, involving all aspects of prison management. From 2017 onwards, the project was in the process of scaling back its activities, in order to withdraw entirely before 2020 <https://2009-2017.state.gov/j/inl/rls/fs/189319.htm> (Last visited in August 2021).

increased over the years, because there were several well-funded prison reform projects being supported by donors. Although international funding initially went into a parallel system of high security prisons, this ultimately resulted in infrastructure being added to the system.

The new infrastructure not only housed more prisoners and meant an increase in the prison population; it also increased the prison system's need for maintenance (see 7.5.3 below). Thus, there was increased funding from the national budget as well. As an example, in 2008 the Canadian government supported the establishment of a drug treatment clinic in Pul-e-charkhi. The donor's agreement was that "the program would be jointly managed by the [GDPDC], the Ministry of Public Health, and the Ministry of Counter Narcotics. UNODC provided medication and equipment for the program" (Ron Renard *et al.*, 2013, p. 65).

7.5.2 Human resources

As discussed previously, Pul-e-charkhi inherited its core values from a Russian oriented prison system, upon the ashes of which was built a somewhat western oriented prison management system, in the aftermath of 2001. The western oriented prison system's legal mandate expanded to include human rights norms and the UN Standard Minimum Rules for the Treatment of Prisoners, and also to set up a number of specialised programmes, such as rehabilitation. As part of this mandate, several functional units, including prison-based treatment, education, employment, and vocational training, became necessary. These programmes were framed under the two rehabilitation programmes discussed below (see 8.4 below).

The programmes also required specialised human resources, including psychologists, highly skilled educators and counsellors, medical doctors, statisticians, research specialists, data management experts, and marketing professionals. However, such professionals are not usually available in most Afghan institutions, particularly within the prison system and, more specifically, in Pul-e-charkhi. The prison's education department, which is responsible for overseeing education, sports, and recreation for nearly the entire 10,000-strong prison population has only three employees who are ordinary police officers.

To that end, the prisons have no choice but to rely on the resources of other state agencies, such as the MoE, Ministry of Islamic Affairs, and Department of Vocational Trainings. Likewise, the prison's industrial programme, which is in comparatively better shape in terms of its infrastructure and is capable of accommodating up to 750 prisoners, has a problematic structure, and it runs on very few employees. The programme has only 12 employees, all of whom are not experts in the relevant industries. Whilst there are six production shops within the industrial section, it does not have a single marketing officer to promote products or to facilitate communication with customers in the free world.

On the other hand, since Pul-e-charkhi adopted its expanded legal mandate (discussed in Chapter 5, above), it has had to rely on a pool of human resources that barely meet its increasingly high demands for a professional, secure, and objective prison. The police force that dominated the prison system in the aftermath of 2001 were a mixture of former Mujahidin commonly associated with the Northern Alliance, a tiny number of educated police, and diaspora returning from the west. Amongst this number were people like Sardar Sultani, Ayoub Aseel, and others, who either had significant professional experience within the prison system, or were educated police.

The former Mujahidin gradually enhanced their grip over the system, at the cost of excluding many of the professionals. This ultimately became a significant challenge for the prison system, which was already being criticised for poor management and abusing prisoners' rights. As discussed before, the MoI established a department within the Police Academy of Afghanistan in the early aftermath of 2001, partly in response to criticism regarding the abuse of prisoners' rights and their mistreatment. Although the quality of training and calibre of students graduating from the department was controversial, attempting to deal with the shortage of professional prison guards by providing relevant university-level education was a tangible step towards meeting fundamental requirements for the prison system.

Later, in 2005, a National Training Centre for Prisons Police (NTCPP) was established. It aimed to ensure a certain level of understanding amongst prison staff who had been recruited from the Police Academy and other sources.²⁰ Despite its inability to provide all the necessary types of human resource required by the programmes, such as those trained in rehabilitation, it represented another step forwards in creating a conducive environment for rehabilitation programmes, due to the improved relationship between the prison guards and prisoners.

The trainings, alongside staff who had an university level education, undoubtedly produced some professional prison police. A great majority of them were assigned to Pul-e-charkhi, leaving most of the provincial prisons

20 According to the director of the National Training Centre for Prisons and Detention Centres' Police Force, the centre was established in 2005, to serve as a training hub for prison police. It covered both law enforcement and basic legal awareness training, as well as refreshers for police assigned to work in prisons and detention centres. As part of its curriculum, the centre offered a detailed introduction to the relevant laws, human rights standards, and military training (such as the use of weapons). A group of professional teachers was recruited as permanent employees to operate the centre. The majority of its instructors, however, worked on short-term contracts and supported the teaching process according to the approved curriculum. Training sessions ranged from four to twenty-four weeks in length, and the content ranged from refresher and crash courses to specialised training. The centre designed classes based on the type and category of employee, so trainees with the least relevant background would need to take intensive courses before they qualified as prison staff.

at a disadvantage. Also, the provincial prisons had extra difficulty attracting qualified personnel, due to personalistic ways of hiring and poor remuneration policies. To mitigate this shortage, a policy of rotating experienced prison police was initiated, which proved to be ineffective. The policy had several implementation problems, including a lack of foundational support, due to which the rotated officers usually had a hard time settling into their new post.

The policy also lacked the proper mechanisms to support initiatives by rotating staff, which were designed to modify certain organisational cultures and personnel behaviour, such as a dislike of training and reporting, and certain other behavioural issues that were common amongst prison staff. In addition, due to the four fundamental shifts in overall management of the prison system, Pul-e-charkhi's internal structure shrank and expanded several times (see 7.2 above). The changes clearly prevented the normal process of reaching some level of maturity, stability and development, and so did the prison's human resources. Therefore, full and adequate implementation of the prison's legal mandate was hindered by the lack of human resources, to the extent that in many areas it could not meet its legal mandate.

For example, whilst the law requires the segregation of all prisoners, based on their criminal history, the prison does not do that for many categories. For instance, convicted sex offenders are not segregated, because the system does not have any specialised programmes or skilled personnel to assist them. Therefore, why would they even consider dividing them, when they cannot treat them? In some cases, the offenders may even abuse each other, if segregated and put in one room together. This lack of professional human resources is evident in both the rehabilitation programmes and their relevant activities in Pul-e-charkhi.

7.5.3 Infrastructure

As discussed previously, with respect to its infrastructure Pul-e-charkhi is close to being a modern prison institution. The prison has some basic amenities, including infrastructure for prison-based rehabilitation programmes, but overcrowding has been a challenge. It is important to note that some of these facilities have been renovated during post-2001 reform and international intervention. In most cases, however, the renovation interventions have had a significantly negative impact on prison operation and the prison budget.

For example, some of the biggest reconstruction contributions in Pul-e-charkhi have been to improve security, including the UK's large-scale project to renovate the counter-narcotics section of the prison, turning it into a high security block. According to a programme evaluation report from the UNODC (2013), "the construction of places of detention has some high profile errors in planning, design and implementation; however the project

has demonstrated a process of adaptation and learning to reduce mistakes and the new [country program] identifies limits to construction activities" (Ron Renard *et al.*, 2013, p. 55).

Other similar projects have been based on flawed designs and have encountered serious implementation issues due to corruption, resulting in projects which never reached completion. However, in order to maintain such incomplete projects, the prison's human resources and budget have both grown. In a sense, this is part of a protective measure taken by Afghan bureaucrats, who are helpless to influence the project, but are well aware that they might be held responsible for not fully playing their part in a project that they saw failing.

According to the SIGAR (2014), besides a corrupt contracting and implementation process, the overall goal of one 20 million US dollar reconstruction project in Pul-e-charkhi was flawed and poorly calculated. The project aimed "to reconfigure large, undivided prisoner holding areas into smaller maximum, medium, and minimum security cells. Each cell was to have a sink and one or more eastern-style toilets depending on cell size ... [because] the prison is currently being used, but in an extremely overcrowded condition..., the security advantage of reconfiguring large prisoner holding areas into smaller cells... has been lost." (2014, pp. 1-7)

However, given that prison overcrowding is currently almost a universal problem across the world, specific prison amenities, such as the number of toilets and bathrooms, may be limited. In addition, although Pul-e-charkhi offers basic health services to its prisoners, there is not enough infrastructure to serve prisoners in need of more serious treatment. Again, it must be noted that the healthcare services in many prisons across the world have long been criticised as inadequate, under-funded, and under-staffed, so Afghanistan's case is not unique (Senior, 2012; Wehr and Aseltine, 2013).

In summary, as the prison system's mandate grew, its backbone of institutional resources remained under-developed. As a result of the scarcity and misdistribution of financial resources in the prison system in general, and in Pul-e-charkhi in particular, it has been difficult to expand the necessary infrastructure and attract professional human resources. This presents a formidable challenge for the implementation of the prison's legal mandate beyond the mere incarceration of its prisoners, which in itself has been achieved under less than optimal conditions, due to the limitation of resources.

To this end, the institutions responsible for the prison system, including the MoI and the MoJ, lacked the personnel and resources to maintain a prison system that was over-burdened with difficult mandates (particularly rehabilitation), whilst also handling their broader responsibilities (e.g. fighting insurgencies in the case of the MoI, and creating laws in the case of the MoJ).

7.6 SOME COMPARATIVE OBSERVATIONS REGARDING BALKH PRISON

In keeping with its role as a part of the Afghan prison system, the Balkh prison follows the overall institutional structure and resource pool of the system in general (7.2 and 7.3 above). However, in terms of its internal structure, resources, and leadership, the prison is different to Pul-e-charkhi in a number of ways.

7.6.1 Leadership

As already mentioned in the general case of Balkh prison's operation (see 6.6 above), the management style at Balkh is relatively relaxed. The prison director is an educated police officer, who is equipped with fairly strong managerial skills, even though he has been closely linked to the patronage network (6.3.1 above). Based on my observations, the prison director's qualities have had a great impact on the prison's day-to-day management, but the relaxed and friendly management of Balkh prison can also be attributed to its small size, its lower level of security restrictions, and its socio-cultural context (see 6.6 above).

In general, the prison management allows prisoners to receive visitors regularly (and sometimes beyond the allocated time for visits), to order their food from home or cook inside the prison without limitation, to stay in the open air all day long, and to hang out with each other throughout the day. According to the prison director, 'this approach not only helps ease the day to day management of the prison, it also has a considerable and lasting impact on the reform and rehabilitation process for the prisoners'.

The director argued that 'the spirit of justice calls for the adoption of friendly relations between the management and the prisoners'. According to him, friendly relationships in this context 'are not same as the conventional friendships that we know; this is very deep and special. Those in the free world are not likely to ever experience this type of relationship... The relationship is such that it can establish a thick layer of trust between individuals from two different levels, who have needs that are not comparable and often even contradict one another... In Balkh prison we do not convey to the inmates that we are managing them, as we do not believe we are managing them, but rather that we are serving them and are therefore more like brothers and friends'.

The prison management remind prisoners from time to time that, as long as they are not doing anything wrong, the management and guards could be like "brothers and friends" to them. These are not mere promises, as the prison management seems to carefully combine them with tangible results towards meeting the material needs of prisoners. If a prisoner wants to order food from outside, exercise for extended hours in the open air, hang out with others, and/or receive visitors, the management goes out

of its way to help; in certain circumstances, officials will even help if the prisoner's wish runs slightly contrary to prison rules.

According to another Balkh prison official, this is not just a 'carrot and stick' approach to prison management, as there is local substance to the approach being used. According to him, this targets values, such as respecting the prisoners' dignity. The official believes that 'the prison environment alone breaks people, because it is naturally harsh; hence, it softens the attitude of all prisoners. Although it cannot discipline hardcore criminals, it has a strong impact on those accused of minor crimes.'

In contrast, some of the prisoners interviewed marked this management style as ambiguous. They complained that the prison did not have a set standard for what is allowed, for whom, and under what circumstances. In their view, the apparently relaxed measures were tools for corruption, rather than for ensuring a humane environment within the prison. The main point in their arguments was that everything within the prison is based on the personal will of the prison director, and that prisoners can only benefit if they can pay for it, in either a direct or an indirect way. It should be noted, however, that the majority of prisoners in Balkh appeared happier and looked to be in better mental and physical health than those in Pul-e-charkhi.

7.6.2 Infrastructure and resources

As previously mentioned, Balkh prison is less well equipped than Pul-e-charkhi, in general. The prison's pool of human resources consists of a majority of lower grade and new police officers, who are less experienced than those at Pul-e-charkhi. Yet, about three quarters of the prison staff received formal education at the police academy, and around (80%) of them have been trained in the Prisons and Detention Centres Law and basic prison management skills, including trainings at the NTCPP in controlling prison riots and the management of disorder.

On the facilities front, 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. The facility is a small structure of 35 rooms, each 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.

The prison also has meeting and prayer space, classrooms, a small library, and a computer lab. There is an infirmary with a few beds, where doctors are available during the day to serve the basic needs of prisoners, and a pharmacy providing pain killers and other essential medicine. The prisoners also enjoy a tape recorder and a radio in almost every prison cell, and a few cells had satellite television with 70 active channels. The prison is provided with full-time electricity via the national/city power grid.

As part of a security upgrading plan and the so-called post-2001 renovation efforts, the surrounding walls of the compound concerned were reinforced with big concrete blocks (e.g. T-walls). All the windows were also blocked, to optimise security, leaving the compound with dark, humid, and stinky vaults to use as prison cells. Small windows were tunnelled through the ceiling across all the corridors, which now function as skylight windows that are guarded with metal bars. Balkh is a dusty, hot city in the summer and very cold in the winter; the skylight windows are thus a punishment, because they allow a constant stream of dust and heat/cold to enter the cells. Consequently, whilst natural light and fresh air are virtually excluded, the renovation has transformed the rooms into iceboxes in winter and baking cauldrons in summer.

Of course, it goes without saying that this type of environment is a breeding ground for infectious diseases. In addition, the prison shares an entire parameter wall with private houses and a shopping area, although the outer perimeter of the prison is fenced with barbed wire and guarded. The area includes a public road that has been blocked off to general traffic and turned into the prison's main entrance. All this makes the physical existence of the prison a big problem, not just for the surrounding community, but also for others who have to use the prison road.

7.7 CONCLUSION

The prison system in Afghanistan is composed of three tiers: national prison administration, individual prison administration, and programme or technical level administration. Based on the above review of institutional factors, it becomes evident that, despite a gradual expansion of the prison system's legal mandate, its institutional capacity and resources have remained insufficient across all three layers. It is also clear that amongst all the institutional factors outlined above, a lack of leadership has played the most prominent role. In view of these limitations, the prison system seems to have focused primarily on the easier parts of its legal mandate, including incapacitation and ensuring prison security. The implementation of its substantive and relatively difficult aspects (i.e. rehabilitation) has not yet been fully undertaken.

In addition, the prison system has been low priority for both the MoI and the MoJ, which have each been entrusted with their own portfolios and mandates. Therefore, in all circumstances, prison leadership has been weak and has lacked appropriate supervision at policy level, which has led to successive changes, as well as the transfer of prison authority between the two ministries. Not only has there been a lack of institutional development, but the internal structure of the system was also twisted and shrunken several times, resulting in poor management, prison officials with weakened authority, and hampering of its implementation capabilities.

In general, the prison system has been following changes in the broader political and security environment, whilst remaining enslaved to its past, and to old management and leadership methods. Together, these factors have paved the way for prisons to serve as a tool for the government and politicians to impose coercion and ruling by law, rather than the rule of law. Due to the sequence of changes and institutional issues, a patronage network has gradually dominated the prison system, blocking reforms and new resources from entering the system.

As for Pul-e-charkhi, leadership was one of the most serious problems for the prison's management and execution of its legal mandate. The problem of leadership in this case goes beyond the individual qualities of the prison's senior management; the military nature of the prison's operation and its restrictive internal structure also played a significant role. Due to its restrictive internal structure and absence of dynamic leadership, the prison's budget was mainly used to support its incapacitation and security functions, leaving little to no resources for other important aspects of its legal mandate, such as rehabilitation.

The prison's rehabilitation programmes, including work and education, were not implemented in line with any international standards, and no local standards were developed for prison-based rehabilitation. The operating prison-based programmes are poor imitations of international standards. They not only failed to produce satisfactory results, but they also become a source of tension between the prison system and other state agencies, as well as a source of corruption and the abuse of power within the prison itself. The prison's industrial programme is a good example of inter-governmental tensions and inter-agency corruption.

In addition, scrutiny of international investment in the prison system in general, and in Pul-e-charkhi in particular, reveals that most donor funds were wasted, either on flawed designs and faulty implementation, or on Kabul-centric initiatives. In areas where such contributions were successful, they mostly belonged to security upgrading and the boosting of a prison's capacity to fight the War on Terror, rather than to correction institutions serving ordinary prisoners. The large infrastructure projects funded by the international community aimed to upgrade prison security and general living conditions, but added hardly any reformatory aspects to the prison. To that end, the internal structure of the prison system, including Pul-e-charkhi, emerged as something which is more responsive to security needs.

Pul-e-charkhi always lacked institutional support for prison-based rehabilitation programmes. In addition to an excessive focus on security, its predominantly military orientation, ranks, and internal structure shaped the prison system in a direction which not only ignored but also suppressed potential dynamism and innovative approaches; approaches which could have connected the prison system with other institutions (non-governmental included), mobilising their capacity and resources towards the rehabilitation of prisoners.

Institutional problems, including the reach of the patronage network, poor resources, and failing programmes, were all clearly evident at Balkh prison as well. However, in contrast with Pul-e-charkhi, Balkh prison had a relaxed management system, and the majority of prisoners were (relatively) happier with it. The management allowed prisoners to enjoy extensive freedom in their daily activities, as well as engagement with the outside world. This was a management trick which was primarily aimed at compensating for the lack of prison-based programmes. However, it was implemented in a relatively innovative way, making the programme deficit less obvious to the prisoners themselves.

Consequently, even though the prison possessed fewer resources and institutional capacity than Pul-e-charkhi, its overall impact on prisoners was arguably more favourable. Although the prison did not offer prison-based programmes, the wellbeing and general mental condition of its inmates were much better than at Pul-e-charkhi. The majority of the negative mental effects associated with imprisonment, such as depression and anxiety, were virtually eliminated.

