

7.3: Challenges facing Afghanistan's Correctional System

Summary

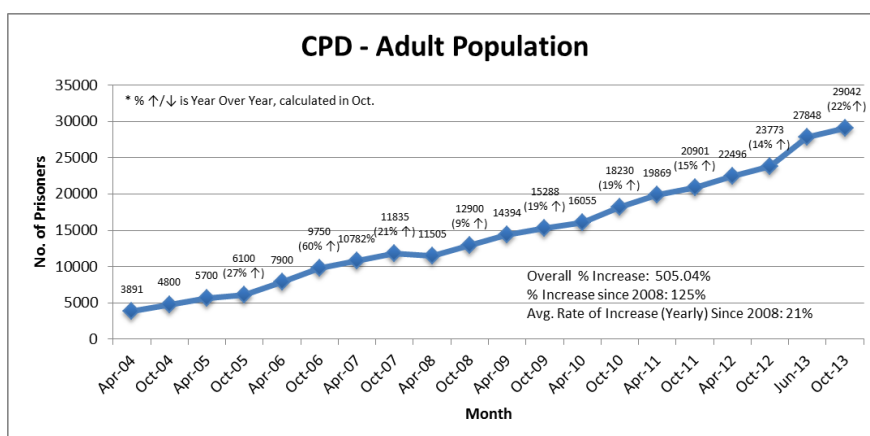
This chapter looks at the major challenge of overcrowding facing Afghanistan's correctional system as well as the factors contributing to overcrowding and the consequences of overcrowding.

Introduction

Afghanistan's correctional system faces a multitude of challenges. The most significant challenge is overcrowding in all of the prisons and detention centers. Overcrowding is a result of several factors including inadequate infrastructure, under funding, and failure to use non-custodial sanctions. Overcrowding also creates challenges for the correctional system. The ability to properly segregate inmates and to provide vocational and educational programs, health care, and meet the objective of rehabilitation and social integration is difficult, if not impossible, due to overcrowding. This chapter looks at the issue of overcrowding in the prisons, the factors contributing to overcrowding, as well as the resulting consequences.

Overcrowding

The U.S. Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL) Correction System Support Program (CSSP) reports that since 2008, the average rate of increase in Afghanistan's prison population is 21 percent a year.¹ As illustrated in the graph below, in April 2004 the prison population was 3,891. In January 2014, the total population count for prisoners and detainees was 29,226; an overall increase of more than 500 percent.²



¹ U.S. Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL) Corrections System Support Program (CSSP); General Directorate of Prisons and Detention Centers (GDPDC) Regional Provincial Prison (PP) and District Detention Center (DDC) Staff Inmate Count, 10 August 2013.

² GDPDC Inmate Count, 20 January 2014. CPD –Adult Population graph provided by INL/AP.

In November 2006, when the prison population was less than 8,000, the Prison Directorate was already reporting it was “unable to provide indoor sleeping accommodation for nearly 1,000 prisoners in eleven of their facilities.”³ In 2009, when the prison population was nearly half its current population, the Afghanistan Independent Human Rights Commission (AIHRC) reported that overcrowding in the prisons was “three or even four times more than the standard norm established.”⁴ The report provided the following examples of cell capacity:⁵

No.	Prison	The detail of the overcrowding level in the prison rooms
1	Nimroz	10 people per every room of 12 m ²
2	Samangan	15 people per every room of 24 m ²
3	Nangarhar	17 to 18 people per every room of 20 m ²
4	Baghlan	5 people per every room of 5 m ²
5	Takhar	15 to 20 people per every room of 10 or 15 m ²
6	Kunduz	15 to 20 people per every room of 15 or 20 m ²
7	Jawzjan	An average of 15 people per every room of 24 m ²
8	Balkh	An average of 24 people per every room of 12 m ²
9	Kandahar	An average of 1 or 2 people per every room of 4 m ²
10	Bamyan	An average of 30 people per every room of 30 m ²
11	Badakhshan	An average of 53 people per every room of 35 m ²
12	Ghor	An average of 10 or 14 people per every room of 12 m ²
13	Kabul	The number of prisoners is twice the capacity of the rooms (no exact figure is given)
14	Faryab	An average of 5 to 10 people per every room of 9 m ²
15	Dai Kundi	At least 5 to 10 people per every room of 9 m ²
16	Khost	An average of 5 or 10 people per every room of 9 m ²

³ See *Afghanistan: Implementing Alternatives to Imprisonment, in line with International Standards and National Legislation Assessment Report*, the United Nations Office of Drugs and Crime (UNODC) Project: Prison System Reform in Afghanistan— Extension to Provinces (AFG/R87)(hereinafter UNODC Report), May 2008, p. 54: http://www.unodc.org/pdf/criminal_justice/Afghanistan_Implementing_Alternatives_to_Imprisonment.pdf.

⁴ See *The Situation of Detention Centers and Prisons in Afghanistan*, Afghanistan Independent Human Rights Commission (AIHRC)(hereinafter AIHRC Report), 2009, p. 7: http://www.aihrc.org.af/media/files/Reports/Thematic%20reports/rep_25_jun_2010.pdf.

⁵ Ibid, pp. 7-8.

Overcrowding is a result of a number of factors including inadequate infrastructure, under funding, poor information management, and the failure to use non-custodial sanctions.

Inadequate Infrastructure

The Ministry of Interior (MOI) reports that one of the problems facing the correctional system is the lack of standardized design. Only 15 of the 34 provincial prisons in use have been built to standard with the purpose of serving as a prison.⁶ “In 8 provinces, prisoners are kept in rented non-standard prison facilities.”⁷ The rented properties do not belong to the Government of Afghanistan and are not designed to serve as prisons. The remaining 11 prisons are in poor condition with crumbling infrastructures.

The majority of the prisons lack consistent access to electricity.⁸ Some rooms within the prisons do not have windows resulting in deprivation of sunlight and inadequate ventilation.⁹ Most of the prisons do not have heating.¹⁰ The majority of the prisons and detention centers do not have adequate bathing facilities or toilets.¹¹ Access to potable water varies. Some prisons have access to tap water, others use well water, and some have access only to river or stream water.¹²

After taking over responsibility for the correctional system in January 2012, the Minister of Interior conducted a survey of the prison conditions and toured 17 provincial prisons.¹³ “As part of the improvements in living conditions for prisoners, 1,970 blankets, mattresses, pillows and bed sheets and 150 beds were distributed to various prisons across the country. In addition, 14 Ambulances and 5 generators were also supplied to several prisons.”¹⁴ The MOI reports that “additional improvements are being made as quickly as possible.”¹⁵

Under Funding

Another contributing factor to the lack of adequate custodial space is the fact that the “Afghan government has not yet allocated enough financial resources to manage and reconstruct places of custody.”¹⁶ In Solar Year 1388 (March 2009 - March 2010), the General Directorate of Prisons and Detention Centers (GDPDC) requested US \$28.5 million to manage and reconstruct places of custody.¹⁷ In reality, the GDPDC receives a total annual budget of US \$27 million - an annual operating budget of approximately US \$15 million from the Ministry of Finance and

⁶ INL Vulnerable Populations Factsheet, Updated July 2013; INL/CSSP Briefing April 2013.

⁷ Ministry of Interior, Prison Reports: <http://moi.gov.af/en/page/6342/6343> (accessed February 28, 2014).

⁸ See AIHRC Report, *supra* note 4.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Ministry of Interior, Prison Reports: <http://moi.gov.af/en/page/6342/6343> (accessed February 28, 2014).

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ AIHRC Report, *supra* note 4, p. 3.

¹⁷ *Ibid.*, p. 3.

approximately US \$12 million from the Law and Order Trust Fund Afghanistan (LOTFA).¹⁸ The funding from LOTFA supports 88 percent of the GDPDC's salary fund. The total annual budget of approximately US \$27 million is considered inadequate. Consequently, the GDPDC has relied heavily on the international community.¹⁹ Recently the Minister of Interior "ordered additional funding and new equipment for prisons," however, the amount of funding and the type of equipment requested is yet to be determined.²⁰

Poor Information Management

Although improving, the correctional system still faces challenges with obtaining full, proper, and timely information. As discussed in Chapter 3.3: Case Management Systems, the MOI along with six other Afghan justice institutions adopted a national information management system to assure transparency, accountability, and efficiency in the criminal justice system. The implementation of the case management system (CMS), however, is still in the early stages and shortcomings in the flow of information between the criminal justice institutions hinder the proper administration of justice and specifically hinder the timely release of prisoners or detained individuals.²¹

Communications between the Attorney General's Office (AGO) and the MOI/GDPDC is particularly important. It is the responsibility of the Prosecution Office for Investigation and Enforcement of Decisions ("monitoring" prosecutors) to oversee the implementation of court sentences and the treatment of detainees and prisoners.²² A key responsibility given to monitoring prosecutors is the authority to order the release of a person illegally detained or in custody.²³ With one exception, in order to release a prisoner or accused individual, the GDPDC must be given written notice by the AGO.²⁴ The one exception is when a case is not completed in the nine months provided for in the Interim Criminal Procedure Code. In that case, the GDPDC must notify the court or the attorney in writing 15 days before the expiration of the nine

¹⁸ INL Corrections Institutional Capacity Factsheet, Updated July 2013; INL/CSSP Briefing April 2013. LOTFA is a mechanism for the international community to mobilize additional resources for the police and uniformed personnel employed by the GDPDC. See Preface Chapter Part II: An Overview of the Fiscal Structure of the Government for a discussion of the national budgeting process and LOTFA. See also Chapter 8.5: International Support to the Afghan National Police for additional information on LOTFA.

¹⁹ International support to Afghanistan's correctional system is discussed in Chapter 7.4.

²⁰ Ministry of Interior, Prison Reports: <http://moi.gov.af/en/page/6342/6343> (accessed February 28, 2014).

²¹ The ministries began using the paper CMS program at the start of the Afghan New Year 1390 (March 21, 2011).

²² The Law on Structure and Authority of the Attorney General's Office. Official Gazette, Issue No. 1117, 7 October 2013, Art. 15 (hereinafter AGO Law); see also Islamic Republic of Afghanistan, Law on Prisons & Detention Centers, 2007, Art. 51 (hereinafter Law on Prisons). Unofficial English Translation by UNODC: http://www.unodc.org/documents/afghanistan/Government_of_Afghanistan_LAW_ON_PRISONS_AND_DETENTION_CENTERS_2010.pdf; see also Chapter 3.4: The Afghan Prosecutor for a discussion of the role the Prosecution Office for Investigation and Enforcement of Decisions.

²³ Ibid, AGO Law, Art. 15.

²⁴ See Law on Prisons, *supra* note 22, Articles 49 and 50(1) and (2).

month period and “[i]f there is no reply the accused person shall be released from prison.”²⁵ In reality, the GDPDC requires written notice for the release of all individuals. Failure by the monitoring prosecutor to properly inform the correctional facility to release a person has resulted in individuals staying in custody longer than necessary and thereby contributing to the excessive number of prisoners/detainees. For example, in one week of August 2013, 35 of 116 new CMS case files (30 percent) reported in Kabul were over the statutory time limits.²⁶ Of the 35 cases over the time limits, 21 cases were over the time limits by 15 or more days.²⁷

Non-Custodial Sanctions

The failure to use non-custodial sanctions has contributed to the significant overcrowding in all of the prisons and detention centers.²⁸ The Penal Code, Interim Criminal Procedure Code, and the Counter Narcotics Law contain some provisions for the use of non-custodial sanctions; however, these are rarely utilized.²⁹ In May 2008, the United Nations Office on Drugs and Crime (UNODC) published an assessment of the legal provisions for alternatives to incarceration.³⁰ The assessment found that despite the availability of non-custodial measures and sanctions as options for punishment, detention and imprisonment are almost always imposed.³¹ Without the use of alternative measures, individuals charged with or convicted of minor offences are being held in already overcrowded facilities awaiting trial or serving a sentence.

For juveniles, confinement is considered to be “the last resort for rehabilitation and re-education of the child” and only then for the shortest time possible.³² The prosecutor and the judge have the authority to release a juvenile on bail, without bail, or to a legal representative during the investigation and trial period.³³ In 2007, the United Nations Fund for Children (UNICEF) reported that 41 percent of children were in the juvenile rehabilitation center pending trial.³⁴ Although recent statistics were not available, anecdotal evidence suggests that juveniles are almost always held in custody during the investigation and pre-trial phase.³⁵

²⁵ Ibid, Art. 20(4); *see also* Interim Criminal Procedure Code, Official Gazette No. 820, published 2004/02/25 (1382/12/06 A.P.), Art. 6. Available on the Afghan Attorney General’s Office website: <http://ago.gov.af/en/documents>; or <http://www.asianlii.org/af/legis/laws/icc175/>; *See* Chapter 3.2: The Process of a Criminal Justice Case in Afghanistan.

²⁶ INL Justice Sector Support Program (JSSP) Weekly Report 17-23 August 2013.

²⁷ Ibid.

²⁸ *See* UNODC Report, *supra* note 3.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Juvenile Code, Official Gazette No. 846, 19/12/1383, published 1384/01/03 A.P. (2005/03/23), Art. 8: <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/>.

³³ Ibid, Articles 10(3), 11 and 13.

³⁴ *Justice For Children: The situation for children in conflict with the law in Afghanistan*, United Nations Children’s Fund (UNICEF), 2007, p. 26 (hereinafter *Juvenile Detention Report*): http://www.unicef.org/media/files/Juvenile_Detention_Study_engl.pdf.

³⁵ Information from INL CSSP August 2013.

The Juvenile Code gives the court the authority to adopt one of the following measures against an accused child:³⁶

1. Performing social services.
2. Sending the child to special social services institutions.
3. Issuance of warning.
4. Postponement of trial.
5. Conditional suspension of punishment.
6. Home confinement.
7. Surrender of child to his/her parents or those who have the guardianship rights.
8. Sending the child to the juvenile rehabilitation centers for confinement.

Non-custodial measures, however, are rarely used. According to the 2007 UNICEF report, 93 percent of the juveniles in custody were first time offenders, and 71 percent were sentenced to more than one year in detention.³⁷ “Without systems of diversion in place many children are sentenced to detention in juvenile rehabilitation centre where alternative measures to hold the child accountable may have been both more appropriate and more effective in preventing reoffending.”³⁸

Consequences of Overcrowding

Overcrowding impacts every aspect of prison life including the ability to properly segregate the prison population according to the type of crime, accused from convicted, and adult from juvenile. Overcrowding negatively impacts the conditions of a facility including sanitation and ventilation, which in turn affects the health and well-being of individuals in custody.

Overcrowding further challenges the ability to provide vocational and educational programs. The AIHRC noted that the main objective of imprisonment – the rehabilitation and social reintegration of prisoners – is “difficult or even impossible to achieve” due to the overcrowding of the prisons.³⁹

Segregation of Custodial Population

The lack of adequate space in prisons and detention centers has resulted in the inability to properly segregate the custodial population. Consequently, individuals accused of a crime are detained with individuals convicted of committing a crime; individuals convicted of minor offenses are in custody with individuals convicted of serious offenses; non-violent offenders are in custody with violent offenders; and juveniles are often held with adults. The current environment does not fully protect vulnerable populations including women, juveniles, and the

³⁶ Juvenile Code, *supra* note 32, Art. 35.

³⁷ Juvenile Detention Report, *supra* note 34, p. 26.

³⁸ *Ibid.*

³⁹ AIHRC Report, *supra* note 4, p. 8.

mentally ill. In 2007, UNICEF reported 53 percent of juveniles in police custody had been detained with adults.⁴⁰ Outside of Pol-i-Charkhi Prison near Kabul, there are no separate facilities for the mentally ill; they are confined with the general prison population.

In addition, the current state can potentially foster the insurgent inmate population. The lack of segregation provides the insurgent population with the opportunity to control areas of the prison and recruit from within the prison. In June 2009, the Afghan Government was able to take back control of Pol-i-Charkhi Prison from insurgent inmates. Since then, renovations coupled with training, classification, and proper segregation have helped improve the situation. INL reports that nearly 30,000 inmates have been classified since 2008.⁴¹ Over 6,000 national security threat inmates have been identified and separated from the general population where infrastructure permits.⁴²

Access to Health Care

Prisoner access to health care is a serious problem for the Prison Directorate. Pursuant to the Prison Regulations, the MOI is required to establish a health facility in every prison and detention facility.⁴³ The Law on Prisons requires the Prison Directorate to provide free health services to all prisoners and detainees in collaboration with the Ministry of Public Health.⁴⁴ There is, however, a lack of specificity on the ministries' respective responsibilities, including financial responsibilities. Consequently, until 2009 the prisons "lacked a formal [health care] system and had no linkages to national health services."⁴⁵ The UNODC reported:⁴⁶

This situation has lead [sic] to an almost total absence of primary care which should include preventative healthcare measures, such as basic hygiene education and awareness. Provision of curative services is also lacking, with few of the main prisons having any formal or regular contact with the health system through the Ministry of Public Health.

In 2009, the Ministry of Justice entered into a Memorandum of Understanding with the Ministry of Public Health to transition the responsibility for healthcare in prisons to the Ministry of Public Health.⁴⁷ All Afghans, including prisoners, are entitled to access to the Basic Package of Health

⁴⁰ See Juvenile Detention Report, *supra* note 34, p. 16.

⁴¹ INL Corrections Programs in Afghanistan, Updated January 2014.

⁴² *Ibid.*

⁴³ See Islamic Republic of Afghanistan, Prisons and Detention Center's Regulation for Management of Affairs 2007 (hereinafter Prison Regulation), Art. 17. Copy provided by INL.

⁴⁴ Law on Prisons, *supra* note 22, Art. 27.

⁴⁵ 2010 Prison Drug Use Survey: A National Survey of Drug Use and Associated High-Risk Behavior Across The Prison Population in Afghanistan, Final Report January 2011, UNODC and Health Protection and Resource Organization, p. 14:

http://www.unodc.org/documents/afghanistan//Criminal_Justice_Sector/Prison_Drug_Use_Survey_report_FINAL_REPORT.pdf.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

Services – the national health system including primary and secondary level healthcare.⁴⁸ “The Prison Health Package guides the implementation of the [Basic Package of Health Services] in prisons.”⁴⁹

The reality is that there are not enough medical services or facilities to care for the 28,000+ prisoners and detainees. Consequently, prisoners do not currently have uniform access to even basic health care. Some prisons are able to provide basic care, but other facilities do not have any doctors or medicine.⁵⁰ In some provinces, the Ministry of Public Health provides mobile clinics to service the prisons.⁵¹ The AIRHC reported “the major problems [related to health care] are the lack of professional doctors, sufficient medicine, suitable places for checkups, space for quarantining the patients suffering from contagious diseases and suitable places for the treatment of drug addicts and mental patients.”⁵² Overcrowding exacerbates and contributes to health concerns in prisons because patients cannot be properly separated, quarantined, or treated in a timely manner.

Education and Vocational Training

The lack of physical space in the prisons limits the ability to have designated areas for educational and vocational training. Consequently, there are limited opportunities for prisoners to participate in programs that improve educational and vocational skills. The Ministry of Education is responsible for approving the education programs for the prisons, but they are not implemented in every prison.⁵³ In the prisons that do have educational programs, teachers are limited, and complaints have been made regarding the low quality of the programs.⁵⁴ Renovations and new construction provide new opportunities. For example, one of the most comprehensive programs is available in Herat prison.⁵⁵ The program provides classes to both male and female inmates in literacy, English language, computer training, and religious education as well as vocational training in sewing, carpet weaving, hair dressing, carpentry, iron-work, tin smith, and confectionary.⁵⁶ The Kabul Female Prison also provides a variety of educational and vocational programs for the inmates including literacy, English language, computer skills, bag-making, handicrafts, cosmetology, and life skills.⁵⁷ These programs, however, are not universal within the correctional system and are heavily dependent on international support.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ See AIRHC Report, *supra* note 4, p. 13.

⁵¹ Ibid.

⁵² Ibid.

⁵³ See *ibid.*, p. 13; see also Law on Prisons, *supra* note 22, 32.

⁵⁴ AIRHC Report, *supra* note 4, p. 12.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ INL supports the programs at the Kabul Female Prison through a grant with the Afghan Women Education Center. See Chapter 7.4: International Support to Afghanistan’s Correctional System.

Rehabilitation and Social Integration

Overcrowding negatively impacts Afghanistan’s commitment to the reformation and social rehabilitation of individuals detained or imprisoned. Given the current conditions of the correctional system – a crumbling infrastructure, under funding, a 21 percent annual growth in the prison population – it is unrealistic to expect the correctional system to be able to rehabilitate inmates. The UNODC remarked that the “principle of social reintegration for most prisoners in Afghanistan is an abstract concept at the current time.”⁵⁸ The international community is helping to build and remodel many of the prisons and detention centers and create educational and vocational programs in an effort to help Afghanistan’s correctional system meet its obligations. These programs are discussed in Chapter 7.4.

⁵⁸ UNODC Report, *supra* note 3, p. 57.

Resources

- Islamic Republic of Afghanistan, Law on Prisons & Detention Centers, 2007. Unofficial English Translation by the United Nations Office of Drugs and Crime (UNODC): http://www.unodc.org/documents/afghanistan/Government_of_Afghanistan_LAW_ON_PRISONS_AND_DETENTION_CENTERS_2010.pdf.
- Presidential Decree No. 85 (2012) amending the Law on Prisons to reflect the move of the GDPDC from the MOJ to the MOI.
- Islamic Republic of Afghanistan, Prisons and Detention Center's Regulation for Management of Affairs 2007. Copy provided by INL Afghanistan/Pakistan Office.
- Juvenile Code, Official Gazette No. 846, 19/12/1383, published 1384/01/03 A.P. (2005/03/23): <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/>.
- Interim Criminal Procedure Code, Official Gazette No. 820, published 2004/02/25 (1382/12/06 A.P.). Available on the Afghan Attorney General's Office website: <http://ago.gov.af/en/documents>; or <http://www.asianlii.org/af/legis/laws/icc175/>.
- The Law on Structure and Authority of the Attorney General's Office. Official Gazette, Issue No. 1117, 7 October 2013.
- Ministry of Interior, Prison Reports <http://moi.gov.af/en/page/6342/6343> (accessed February 28, 2014).
- *The Situation of Detention Centers and Prisons in Afghanistan*, Afghanistan Independent Human Rights Commission 2009: http://www.aihrc.org.af/media/files/Reports/Thematic%20reports/rep_25_jun_2010.pdf.
- *Afghanistan: Implementing Alternatives to Imprisonment, in line with International Standards and National Legislation Assessment Report*, UNODC Project: Prison System Reform in Afghanistan— Extension to Provinces (AFG/R87), May 2008: http://www.unodc.org/pdf/criminal_justice/Afghanistan_Implementing_Alternatives_to_Imp_risonment.pdf.
- *Justice For Children: The situation for children in conflict with the law in Afghanistan*, United Nations Children's Fund (UNICEF), 2007: http://www.unicef.org/media/files/Juvenile_Detention_Study_engl.pdf.
- 2010 Prison Drug Use Survey: A National Survey of Drug Use and Associated High-Risk Behavior Across The Prison Population in Afghanistan, Final Report January 2011, UNODC and Health Protection and Resource Organization: http://www.unodc.org/documents/afghanistan//Criminal_Justice_Sector/Prison_Drug_Use_Survey_report_FINAL_REPORT.pdf.
- U.S. Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL), Corrections Programs in Afghanistan Factsheet, Updated January 2014.
- INL Vulnerable Populations Factsheet, updated July 2013.
- INL Corrections Institutional Capacity Factsheet, Updated July 2013.
- INL CSSP Factsheet, Updated July 2013.