



CONCEPT NOTE

Reforming Penitentiary in Afghanistan

Time Frame: December 2010 – July 2012

Background

A fully functioning corrections system, with full support from the state is essential to the functioning of an effective criminal justice system. This is especially important in a post-conflict nation where the government is trying to re-establish the rule of law. For most Afghans, the formal justice system remains distant, dimly understood and unpredictable. The formal system is constantly at risk of subversion by corruption, threats and violence. As a component within the justice system, Afghanistan's penitentiary system has been improving but more efforts and resources need to put in place in order to bring it in line with United Nations Standards and Norms relating to places of detention. For the purpose of this concept note, only prisons and detention centers operated by the Ministry of Justice (MoJ) are being addressed.

Reforming the penitentiary system is a priority for the Afghan Government and the United Nations Office of Drugs and Crime (UNODC) in partnership with the relevant national and international stakeholders in Afghanistan. The Afghanistan Compact (2006) commits the Government to achieving a number of 'high level' benchmarks by the end of 2010, benchmarks mirrored in the Afghan National Development Strategy (ANDS). Priority is given to the coordinated establishment of functional institutions including prisons and justice infrastructures in each province.

Currently, there are 17,088 prisoners in the custody of the MoJ – Central Prison Directorate (CPD). These prisoners are held in 237 detention and provincial facilities (34 provincial and 203 detention centers) across the country. Although provincial prisons are primarily for convicted persons, overcrowding at the district detention levels results in many of the 4,870 detainees being held in these prisons awaiting disposition of their cases. A quarter of these provincial facilities are located in leased properties that do not belong to the MoJ. These leased properties were not designed as prisons and often do not have the facilities required to humanely incarcerate prisoners.

"By end-2010, functioning institutions of justice will be fully operational in each province of Afghanistan ... Reforms will strengthen the professionalism, credibility and integrity of key institutions of the justice system (the Ministry of Justice, the Judiciary, the Attorney-General's office, the Ministry of Interior and the National Directorate of Security) ... Justice infrastructure will be rehabilitated and prisons will have separate facilities for women and juveniles."

The Afghanistan Compact 2006

Improvements in other part of the criminal justice system such as Afghan National Police (ANP) and the judiciary could contribute to a further increase in the number of the accused and convicted in detention and prison settings. These increased numbers will place a burden on the ability of these facilities to house prisoners. Therefore, it is critical that the penitentiary system is improved along with the other components of the criminal justice system, in order to prevent a growing humanitarian problem, including serious human rights violations. Examples include unacceptable conditions of detention due to overcrowding, unlawful and arbitrary confinement, physical and sexual abuse, corruption, ill-treatment and torture, communicable diseases, radicalization, and marginalization of vulnerable groups such as women and children, as well as drug use and HIV. Ultimately, an inadequate penitentiary

system compromises a public safety risk and the public's confidence in the justice system's ability to be fair and humane is further diminished.

Since 2003, UNODC, with the support of its donors has made significant contributions to improving the provincial prisons. However, a similar effort has not been targeted to detentions centers. This is particularly important when we note that detention facilities serve as the primary "feeder" point to the prisons. Unfortunately, this component of the CPD has operated without much scrutiny and oversight. Reports by human rights groups of physical and sexual assaults, poorly trained staff and violations of Afghan and international laws are common.

This concept note proposes to conduct an assessment of district level detention system and to provide the necessary resources and technical assistance to bring it up to international standards. Based on the assessment, UNODC in partnership with its international partners, will provide technical assistance and support to these facilities to improve their management and operational capacities. These activities will contribute to reducing instances of these adverse reports. There is also a critical need to align these facilities to create a seamless transition from detention centers to provincial prisons.

The populations in Afghanistan's MoJ detention and prison system have dramatically increased over the last nine years. This growth will only continue unless there is an increase in the use of non-custodial sanctions and programming that includes reintegration strategies. A review of the prison population for the CPD reveals that in 2001, the prison population was approximately 600. Since then the number has grown to over 17,000, without marked improvements to the system's infrastructure.

| Year | Population |
|-----------|------------|
| 2001 | 600 |
| 2004 | 5,262 |
| 2007 | 10,590 |
| June 2010 | 17,088 |

If this trend continues, it is conceivable that by 2015, the prison population will have grown to 26,000.

Although the Criminal Code, Criminal Procedure Code and the Counter Narcotics Law contain some provisions for the use of non-custodial sanctions, these are seldom used. In May 2008, UNODC published an assessment of the legal provisions for alternatives to imprisonment and the practice of utilizing non-custodial measures and sanctions as options for punishment within Afghanistan's criminal justice system.¹ Results indicated that despite the availability of several non-custodial options, detention and imprisonment are almost always preferred. This contributes to an increasing number of prisoners entering an already overburdened system. Prisoners charged with or convicted of relatively minor offences are incarcerated for long periods of time awaiting court dispositions or serving sentences.

There remains a lack of coherence in efforts to ensure that the prison system functions as a custodial setting, where prisoners are sent *as* punishment and not *to be* punished. Once imprisoned, there are limited opportunities for prisoners to participate in programming that can improve educational and vocational skills which can assist their transition to the community following release. In addition, drug addiction, while increasing among the prison population remains a largely ignored phenomenon. Shortcomings in communication and information flows between the various criminal justice components hinder the administration of justice. The result – prisoners remaining long beyond their dates of release - is not uncommon.

¹ Afghanistan: Implementing Alternatives to Imprisonment, in line with International Standards and National Legislation (May 2008)

Women in Prisons

Many women are detained or imprisoned for so called moral crimes (e.g., running away from home, adultery). An assessment carried out by UNODC in 2007 revealed that 50 percent of the women prisoners interviewed in Pul-e Charki prison had been accused and imprisoned for these acts.² Many of these women receive long sentences and have



their children imprisoned with them (up to the age of seven). This routine use of custodial sanctions for moral and behavioral acts contributes to already dire circumstances by removing primary caregivers in families and forcing mothers to keep their children with them in less than humane conditions. The lack of adequate and separate housing for female prisoners with children creates inhumane conditions for them and violates provisions of the Law of Prisons and Detention Centres. Of equal concern is the standard of care the children receive during imprisonment with their mothers.

Kabul Women's Prison established with the support of UNODC, offers much better conditions of imprisonment for women in Afghanistan. In January 2010, the facility housed 132 women with 44 children. Although the women have access to some vocational and literacy programmes and much better conditions of detention, there is still a need to improve the level of services provided to bring the prison fully up to international standards.

Prison Reform 'at work'

Since 2003 UNODC has been working with the Government of Afghanistan and other stakeholders to build the capacity of the penitentiary system. This includes efforts to encourage the use of alternatives to incarceration, and focus on infrastructural, normative and operational priorities across the system. Efforts to coordinate across the different sectors of the criminal justice system and with other international and national actors are also elements of this programme.

UNODC is committed to supporting Afghanistan on penitentiary reform in line with relevant UN Standards and Norms through:

- Providing comprehensive training programs to strengthen operational performance of the correction officers and to improve knowledge of human rights issues;
- Assistance to rehabilitate existing prisons and detention facilities in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners;
- Contribute to the development of sustainable mechanisms to ensure a sound implementation of alternatives to imprisonment;
- Provide comprehensive drug treatment, educational and vocational training programs to increase post release opportunities for male and female prisoners and detainees;
- Support the development of models, contingency plans, training manuals and guides for crisis managers and team members for a high profile/high security prison, in accordance with applicable international standards;

² UNODC, Afghanistan, Female prisoners and their social reintegration (March 2007)

- Currently, UNODC as part of its 2010 programme activities proposes to conduct trainings to judges and prosecutors to raise their awareness of the need to utilize alternatives and to highlight the impact of their decisions.

Proposed Areas of Intervention

1. Improve the capacity of district detention centers:

- Conduct an assessment of the district level detention system management and operational capacity of district detention facilities and develop and implement training to improve their management and operational capacity where warranted;
- Provide technical assistance to the MoJ to develop a comprehensive database of prisoners to include demographic information;
- Assess the conditions of confinement and provide assistance to improve them in line with international standards.

2. Reduce overcrowding in prisons by the use of alternatives to imprisonment:

- Expand training to all judges and prosecutors to raise awareness and encourage use of alternatives to imprisonment;
- Develop and train specialized teams within sectors of the Afghan National Police to employ diversion strategies at the point of contact with offenders to reduce confinement (the potential for corruption cannot be discounted and will need to be mitigated);
- Propose reforms to existing laws to allow for expanded use of alternatives to imprisonment;
- Develop community focal points where arrestees can be screened and assessed and referred to appropriate community based resources and treatment (e.g. UNODC's community drug treatment centres);
- Implement pilot projects in selected provinces to demonstrate the merits of alternatives to imprisonment. These pilots would be implemented in two stages over 24 months and evaluated to determine their effectiveness at reducing the criminal population and having positive outcomes for those accused of certain crimes.

3. Address the social, economic and personal wellbeing of prisoners by:

- Developing and implementing a formal classification system of prisoners across the entire system (currently only selected facilities are being targeted);
- Expanding and tailoring the use of vocational training to reflect the employment and livelihoods potential of the particular province;
- Developing prison industrial programmes within the Central Prison Directorate to provide expanded vocational training to prisoners and allow for them to earn money to support their families;



- Expanding drug treatment within the prison and integrate it in the overall health care delivery structure.

4. Avoid criminal relapsing - Reintegration through a viable transition to the community:

Phase I—Prepare: Use of prison based programmes. These programmes will be designed to prepare prisoners to re-enter society. Services provided in this phase will include education, mental health and drug abuse treatment, job training, mentoring, and full diagnostic and risk assessment.

Phase II—Control and Restore: Community-based transition programmes. These programmes will work with offenders prior to and immediately following their release from the prison. Services provided in this phase will include, as appropriate, education, monitoring, mentoring, life skills training, assessment, job skills development, and mental health and drug abuse treatment to include relapse prevention.

Phase III—Sustain and Support: Community-based long-term support programmes. These programmes will connect individuals who have left the supervision of the justice system with a network of community supports (e.g., tribal elders), community-based organizations to provide ongoing services and mentoring relationships. The use of ex-offenders during phases II and III will be explored.

5. Research for evidence-based policy reform:

- Provide support for the evaluation of projects’ implementation to include process and outcome evaluations;
- Support the development of a research unit within the MoJ to undertake research across the system and to inform policy development.

Activities proposed for funding under this concept paper

| Activities | Timeframe | Estimated Cost (\$) |
|--|------------------|----------------------------|
| Detention center assessment and capacity building | | \$1,500,000 |
| Alternatives to Incarceration | | \$1,500,000 |
| Custodial Programming (e.g., drug treatment, educational, health services) | | \$1,000,000 |
| Reintegration and vocational training | | \$1,000,000 |
| Research for evidence-based policy development and reform | | \$500,000 |
| Communication costs (1%) | | 55,000 |
| Administrative cost (13%) | | 722,150 |
| TOTAL | | \$6,277,150 |