

The Situation of Detention Centers and Prisons in Afghanistan

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Introduction:

It is very important to monitor detention centers and prisons in Afghanistan because they are closed to general observation and out of people's sight and access. The fact that access to these detention centers and prisons is so limited dramatically increases the likelihood that convicted and accused persons will be subject to torture or to cruel, inhuman or degrading treatment or punishment during their detention. One way to prevent or reduce the occurrences of this type of human rights violation is through consistent, regular and systematic monitoring.

The Afghanistan Independent Human Rights Commission (AIHRC), in accordance with Article 58 of the national Constitution and with its legislated mandate, has continuously monitored almost all of the detention centers and prisons in the country. Article 58 of the Constitution states:

*The state, for the purpose of monitoring the observation of human rights in Afghanistan to promote their advancement and protection, shall establish the Independent Human Rights Commission of Afghanistan. Everyone in case of violation of his fundamental rights can file complaint to the Commission. The Commission can refer the cases of violation of the fundamental rights of the persons to the legal authorities, and assist in defending the rights of the complainant.*¹

The importance of monitoring places of custody, particularly prisons, is embodied in the Commission's main objective. The main purpose of the detention centers and prisons is to prevent crime and to rehabilitate offenders. To ensure that detention centers and prisons are fulfilling their purpose, their operations must be continuously monitored and scrutinized with an eye to assessing whether the places' activities are consistent with the law.

The Law of Prisons and Detention Centers regulates the physical places where police and military authorities can hold individuals and including prisons, detention centers and all

¹ Article 58-Afghanistan Constitution, Official Gazette 1382 (2003)

places of custody.² According to Article 7 of the law, a “detention center is a place where the accused persons that are waiting for trial are kept.” The same article also defines a prison: “A prison is a place where individuals, termed convicts on the final verdict of a court, are kept.”³

The Law of Prisons and Detention Centers was enacted to ensure the rights of those detained or imprisoned, to improve their treatment in prisons and detention centers, and to regulate the issues associated with the conditions in these places. Article 1, Clause 2 of the law explains that the purpose of a verdict of imprisonment is merely to rehabilitate prisoners and help them develop a respect for the law, common behavioral standards, and society’s ethical norms, as well as to prepare them for useful work in the community, and to help them not repeat their crimes. Similarly, regarding accused and suspected persons, the Constitution of Afghanistan clearly states: “Innocence is the original state. The accused shall be innocent until proven guilty by the order of an authoritative court.”

It is worth noting that the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights also emphasize the rights of people in custody. Article 10 of the International Covenant on Civil and Political Rights states: “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁴

This report has been prepared based on the observations made by the monitoring teams of regional and provincial offices of the Afghanistan Independent Human Rights Commission. Though the Commission has regularly conducted monitoring of detention centers and prisons, technical and logistical difficulties and problems accessing detention centers have prevented the Commission from conducting observations of these centers and prisons in a complete and systematic way. Those who have prepared this report have encountered a lack of complete information about each and every detention center. Although the researchers were able to acquire fairly complete information about provincial prisons, for example, they were able to access much less information regarding the detention centers at the district level.

Note: in this report, victims are given pseudonyms.

General Information about Prisons and Detention Centers in the Country

Regarding the condition and general situation of both detention centers and prisons, Article 23 of the Law of Prisons and Detention Centers states that prison and detention center operations are based on Islamic values and on the UN’s norms and standards. Moreover, Clause 3 of this Article explains that the Ministry of Justice, with the assistance of the Ministry of Health, should take necessary measures to implement

² Article 6- Law of Prisons and Detention Centers, 1386 (2007)

³ *Id.*

⁴ International Covenant on Civil and Political Rights (1976), Article 10.

standards in prisons and detention centers concerning the floor space, residential quarters, amount of light in the rooms, ventilation and heating, and other relevant issues. Article 5 of the law states that in order to help prisoners and detainees exercise their rights more effectively, the prisoners and those in police custody should be divided into separate groups according to the type of crime alleged, the personal characteristics and habits of the individuals in custody, and the overall temperament of the group in custody.

Article 9 of the Law of Prisons and Detention Centers states that men and women should be held in separate detention centers or prisons. Also, detainees and prisoners who are between 18 and 25 years of age should be kept separately from the detainees and prisoners who are older. The space allotted to each detainee and prisoner is also considered to be an important part of the conditions of the inmate's treatment and the size of every detainee or prisoner's room is included in the indices that monitor the level of crowding in prisons and detention centers. There is no single standard in the Law on Prisons and Detention Centers regulating how much space must be allotted for each individual in custody, but the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in an effort to prevent torture, and other cruel, inhuman or degrading treatment has suggested that a standard of single occupancy cells to measure at least 7 m² and have a volume of at least 20 m³ and collective accommodation to provide at least 4 m² and 12 m³ per prisoner would help improve serious problems of overcrowding.⁵

The Afghan government has not yet allocated enough financial resources to manage and reconstruct places of custody. The Ministry of Finance of Islamic Republic of Afghanistan allocated a budget of only 699,798,000 Afghani (about USD 15,371,729)⁶ for the year 1388 (March 2009-March 2010)--about 600,000,000 Afghani (about USD 13,179,571) less than the 1,297,830,000 Afghani (USD 28,508,071) requested by the General Office of Prisons and Detention Centers.⁷ Objecting to the shortage of funds made available for detention centers and prisons, the General Director of Prisons and Detention Centers appealed to both the government and the international community for more financial assistance.

The AIHRC's assessments indicate that the buildings for the prisons and detention centers in most of the country's provinces do not meet the standards suggested by the CPT and that the space available to hold individuals in custody is not sufficient for the numbers of detainees and prisoners. The frequent overcrowding that results from the limited space has often made it impossible to segregate prisoners who have been tried and convicted from people who have only been accused and are awaiting trial. The investigations carried out by the Commission's monitoring team indicate that convicted

⁵ Report to the Portuguese Government on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 30 April 1999, 35, ¶80. Available at: <http://www.cpt.coe.int/documents/prt/2001-12-inf-eng.pdf>

⁶ Exchange rate from Afghani to USD on June 19, 2010: 1 USD= 45.52 AFN.

⁷ Interview with General Amir Mhd. Jamshed, General Director of the Prisons and Detention Centers, 14 Hamal 1389, (April 3, 2010).

prisoners and those awaiting trial are only kept apart in the Nangarhar and Herat provinces. At times, however, due to overcrowding and shortage of space, this standard is not observed even in Herat and the convicts and accused individuals are kept together.

The scarcity of space has also meant that most 18- 25 year-old detainees and prisoners are forced to share rooms with the adults. The Commission's investigation reveals that only in Paktia, Kabul, Kandahar, Faryab, Kunduz, Takhar, Baghlan, Nangarhar, Laghman and Herat provinces are the younger detainees and prisoners (between the ages of 18 and 25) kept separate from the adults. In the other 24 provinces of Afghanistan there is no age distinction made among the detainees or prisoners; they are all housed together. Even in Dai Kondi province, all the prisoners above the age of 18 are kept in one room.

With the respect to the requirement in the Law of Prisons and Detention Centers that prisoners should be segregated based on the type of crime, personal characteristics and habits and the general temperament of the group, overcrowding and scarcity of space has meant that this practice has not been in place in the majority of the prisons and detention centers. Lack of sufficient space in prison and detention center buildings, for example, has been used to explain why prisoners and detainees are not separated based on the nature or severity of their crimes. This is not true in all cases: in Jawzjan province, for example, convicted prisoners are kept together with those awaiting trial, despite the availability of facilities and space that would allow for the two groups to be held separately. It is worth noting that only the Herat, Faryab and Kandahar prisons separate convicted prisoners and accused individuals by crime and or by any of the other conditions listed above. In Kandahar, convicted prisoners and the accused individuals have been divided into two categories: those who have been accused or convicted of crimes, and those who have been accused or convicted of national or international security breaches. In Herat province, those sentenced to the death penalty (Qesas) or to life imprisonment are kept in a separate block, under specific conditions, as are the drug addicts. In Faryab, convicted prisoners and those who have been accused of crimes are also separated into two categories according to the severity of the crime: very dangerous crimes or common, ordinary crimes.

A majority of the authorities in charge of the prisons and detention centers explained that the main reason why those in custody are not separated from one another is the lack of space and suitability of the detention center and prison buildings. The lack of buildings that were specifically designed to be used as prisons or detention centers is one of the major problems facing officials. Only Samangan, Paktia, Nangarhar, Jawzjan, Herat, Fara, Nimroz, Badghis, Parwan, Ghazni, Kabul, Takhar, Kunduz and Kandahar provinces keep prisoners and detainees in specially designed buildings, and even in these provinces some of the buildings used as detention centers and prisons have not been constructed according to standard.

Within the past few years, seven prisons and one detention center have been built, including: the Kabul Prison for Women, the Jawzjan Prison for Women, the Herat Prison for Women, prisons in Laghman, Helmand, Khost, Paktia, and recently built detention centers for drug addicts. The General Department of Prisons and Detention Centers aims

to renovate or build three to four prisons or detention centers every year. The buildings used as detention centers and prisons in Dai Kundi, Ghor, Bamyan, Wardak, Logar, Panjsher and Kapisa are ordinary buildings rented by the state to hold individuals, and the state has not built or provided buildings that were created to be used as detention centers and prisons. In some of the provinces, if there is a building designed to be a prison or detention center for male prisoners, the prison for women is a normal building rented by the government. There are no prisons or detention centers for women in Logar, Maidan Wardak, and Panjsher provinces. In other provinces, there are no specific buildings built to be detention centers for women. Badakhshan province, for example, has no detention center for women in any of its districts outside of the central prison. Women are held either in ordinary buildings that have been rented by the state, or in custody rooms allocated by the Interior Ministry within buildings housing male detainees. According to General Amir Mhd. Jamshed, General Head of Prisons and Detention Centers, so far two blocks of Pol-e-Charkhi prison, the prisons in Kandahar, Nangarhar, Herat, Kunduz and the detention center in Kabul have been renovated. The prison buildings in Baghlan, Saripol, Logar, Nooristan, Paktia, Ghor, Dai Kundi and Bamyan are also being renovated.⁸ It is worth noting that in all the provinces, except Kabul, and in the districts, female prisoners and detainees are guarded by female guards, while the men in custody are watched by male guards. In Kabul prisons, the shortage of female guards means that sometimes male guards are appointed to guard the women in custody.

Article 12 of the Law of Prisons and Detentions Centers indicates that men and women should be held in different prisons, with at least one prison for each gender in each province, and this part of the law has been implemented to some extent. Currently, the center of every province has separate prisons for men and women. Article 12 also states that there should be one detention center in every district.⁹ The Commission has received reports of the absence of detention centers in a majority of districts, which is a serious problem in and of itself. Balkh province, for example, is made up of 14 districts and a border town, but only nine of these districts have their required detention center, the rest do not. There are also no detention centers in some of the districts of Samangan, Jawzjan, Nangarhar and Kunduz provinces. In Paktia province, none of the districts, except the province's central district, have detention centers. The Commission's regional office in Faryab province reported that while previously there were nine detention centers in the province's nine districts, the government recently reduced the number of detention centers to five. Although the government is committed to improving in this area and in other human rights indices, this reduction should be seen as a setback.

Minimum Standards of Conduct Regarding Prisoners and Detainees

Article 10 of the International Covenant on Civil and Political Rights refers to prison systems and states that penitentiary systems shall regulate the treatment of prisoners, the

⁸ Interview with General Amir Mhd. Jamshed, General Director of the Prisons and Detention Centers: 14 Hamal 1389 (April 3, 2010).

⁹ Clause 2, Article 12: Law of the Prisons and Detention Centers, Official Gazette, 1386 (March 2007-March 2008).

essential aim of which shall be their reformation and social rehabilitation. Also, Article 23 of the Law of Prisons and Detention Centers declares that the prisons and detention centers are to be constructed based on the Islamic values and the UN's standard norms.¹⁰ The Law of Prisons also explains that:

1) The Department for the Prisons and the Detention Centers is obliged to equip detention centers and prisons with proper health and sanitary facilities and to keep those environments neat and clean.

2) The Department for the Prisons and the Detention Centers is to provide separate beds for each and every prisoner and detainee.

3) The Ministry of Justice, with the assistance of the Ministry of Health, should take necessary measures concerning the floor space, residential quarters, the amount of light in the rooms, ventilation and heating related matters of the prisons and detention centers.¹¹

Issues of Crowding and Room Size

One of the UN's set standards is that prisoners be granted a suitable atmosphere and enough space inside the prisons. The Law of Prisons and Detention Centers also refers to the size of prisoners' rooms and obliges the Ministry of Justice to take the necessary measures to provide enough space for prisoners. According to the law, prisoners should not have to face difficulties associated with overcrowding. There is no single standard norm to determine the level of crowding in the prisons, though it can be measured by examining the sizes of the rooms in the prisons. In order to solve the crowding problem, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has suggested that in collective accommodation, there should be at least 4 m² and 12 m³ per prisoner.¹² With respect to single cell accommodations, the CPT also argued that cells that measured 5.5 m² were only "just acceptable" for short term detention and "quite inadequate for longer-term holding" of inmates.¹³

The lack of space and of buildings built-to-standard are two major factors in the overcrowding in Afghanistan's prisons, but according to Amir Mhd. Jamshed, General Head of Prisons and Detention Centers, the fact that police engage in arbitrary arrests also add to the problem. These arbitrary arrests are often of people involved in civil litigation, who become embroiled in street fights or disturbances, or who run away from

¹⁰ Clause 1, Article 23 Law of the Prisons and Detention Centers, Official Gazette, 1386 (March 2007- March 2008).

¹¹ Article 24: Law of the Prisons and Detention Centers, Official Gazette, 1386 (March 2007- March 2008).

¹² Report to the Portuguese Government on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 30 April 1999, 35, ¶80. Available at: <http://www.cpt.coe.int/documents/prt/2001-12-inf-eng.pdf>

¹³ Report to the Netherlands Government on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 27 November 1997, 17, ¶24. Available at: <http://www.cpt.coe.int/documents/nld/1998-15-inf-eng.pdf>

home to get married, all of whom, after arrest, are transferred to detention centers.¹⁴ So far, more than 16,000 prisoners and detainees are being kept in detention centers and prisons across the country, a comparable figure to the number of prisoners in other countries.

Overcrowding in prisons is a serious issue in the prison system in Afghanistan. The reports by the Commission's regional and provincial offices indicate that there is overcrowding in almost all of the prisons. Unfortunately, the Afghan government has not made any effort in this regard, and there has been no official response. The issue has not even been highlighted in the reports by human rights organizations or the media.

The General Director of the Prisons and Detention Centers says that the seven new buildings that have been designed to hold prisoners have about 3.5- 4 m² of space per person. It appears, however, that this standard has not been implemented in practice, as overcrowding in the prisons has led to violations of this space-to-person ratio.

The reports by the Commission's regional and provincial offices show that overcrowding in the prisons is three or even four times more than the standard norm established. For instance, in Faryab prison, the prison rooms are 2 x 3 meters or 3 x 4 meters, but about 10 people are crammed into even the smaller cells. There is construction of a new prison building in the Faryab province, however, and it is hoped that the completion of the building will resolve the problem. There are reports of overcrowding from prisons in other provinces, too. In Dai Kundi province prison, for example, 18 people are being kept in a room that is only 3 x 5 meters. In Balkh province prison, about 24 people are being kept in rooms that measure 12 m². In Baghlan prison, five people are being kept in a room 1.5 x 2 meters. The complete detail of overcrowding in prisons from some of the provinces is as follows:

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

¹⁴ Interview with General Amir Mhd. Jamshed, General Director of the Prisons and Detention Centers: 14 Hamal 1389 (April 3, 2010).

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 35 people per every room of 50 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

The overcrowding in the detention centers and prisons has negative impacts on the prisoners and the detainees. As a form of torture or cruel, inhuman or degrading treatment, overcrowding can undermine basic human dignity and even cause mental illness. The crowding and paucity of space in the prison rooms can cause human rights violations. It paves the way for the spread of contagious diseases like TB and AIDS, dangerously affecting the prisoners' general health. The overcrowding also seriously affects the ability of guards to control levels of crime and violence inside the prisons and may even jeopardize the working conditions for the prison staff. The overcrowding in the rooms makes it almost impossible to maintain the minimum level of lighting, air and privacy. The lack of space for prisoners, one the most basic elements to achieving humane and safe conditions of custody, makes it difficult to imagine how to implement the standards set out by the UN and the Law of Prisons and Detention Centers regarding the separation of the youth from the adults, accused individuals from convicted persons, etc. To summarize, it is clear that the overcrowding in the prisons makes it difficult or even impossible to achieve the main objective of imprisonment--the rehabilitation of convicts. Not only will the effort to rehabilitate fail, but the unsuitable atmosphere in the prisons may even cause one time perpetrators to turn into perpetual and dangerous criminals.

Lighting and ventilation systems:

Clause 3 of Article 24 of the Law of Prisons and Detention Centers obliges the Ministry of Justice to take necessary steps, with the cooperation of the Ministry of Health, regarding the lighting and the ventilation of the rooms. The law requires that rooms used to hold individuals in custody receive adequate artificial light and daylight and be free from humidity.

Unfortunately, in most of the prisons in the provinces, such conditions are not completely fulfilled. In some prisons, where some of the prisoners' rooms face the sun, prisoners are able to enjoy the sunshine, but in the rest prisoners are deprived of this sunlight. The majority of prisons do not have consistent access to electricity, and generators are only used to produce energy at night. Although the prisons in Nangarhar, Khost and Paktia provinces have electricity for a good number of hours, only the prisons in the Kabul,

Faryab, Kunduz, Maidan Wardak, Balkh, Jozjan, and Sari Pool provinces have access to electricity 24 hours a day.

The high level of humidity in the rooms is yet another serious issue in the prisons. Humidity has a direct impact on prisoner health. This problem exists almost in each and every room of the prisons. In some of the prisons, the level of humidity is so high that the walls and corners of the rooms are covered with mildew. The Commission office in Ghor reports that even some prisoner documents such as ID booklets (Tazkira) and prisoner files have been destroyed because of the humidity. Generally, high levels humidity have been reported to exist in most of the prison rooms in Fara, Nimroz, Badghis, Baghlan, Takhar, Jawzjan, Sari Pool Balkh, Khndahar, Badakhshan, Ghor, Dai Kundi, Samangan and Kabul. However, this problem was not reported in Bamyan, Khust, Paktia and Nangrhar prisons.

Ventilation and heating of prison rooms is another problem that has not been taken seriously. There are fans in some of the prisons which are used in the summer. In the winter, however, there are no heating facilities in most of the prisons. Only the prisons in Bamyan, Khust and Paktia have heating facilities. The Provincial Reconstruction office in Bamyan has helped the Bamyan prison office with some coal and other forms of fuel. The Commission's regional and provincial reports show that in the winter, prisoners in overcrowded conditions warm themselves with the body heat of the other prisoners crowded into relatively small spaces. The newly-built prisons for women enjoy better facilities and these prisons for women possess mechanisms for heating and cooling; there have been fewer complaints in this regard.

Access to water and sanitary facilities:

Article 25 of the Law of Prisons and Detention Centers clearly states that the detention centers and prisons are to provide hygienic water and food for the prisoners and detainees with regards to their age and health condition (especially to women who are pregnant or giving birth).

Generally, the majority of the detention centers and prisons do not follow the rules requiring hygienic sanitary conditions. The Commission's provincial and regional reports show that there are not enough proper showers and toilets in most of the detention centers and prisons. In Nimroz prison, for example, there is one shower for 80 to 100 prisoners. In Takhar province, which has 322 prisoners, there are 10 showers. In Baghlan Prison, only three showers have been provided for 234 prisoners. These statistics show that the number of showers does not correspond to the number of prisoners, and it appears as though prisoners face many hygiene-related problems as a result. In some of the prisons, there is no specific place meant for bathing and toilets, a curtained corner is all that is allocated for the prisoners' needs.

The Commission's provincial and regional offices report that the condition of the toilets is unbearable. A number of the prisons have not even created specific bathrooms, instead guards or prisoners have designated very simple spaces, such as a 4-walled section of

floor or earth, without a door or a ceiling for use. Only the prisons located in Nangarhar, Samangan, Bamyan and Faryab, enjoy clean and suitable showers and toilets. The showers and toilets in Nangarhar Province Prison were built by the provincial reconstruction forces and are particularly clean. The condition of detention centers is similar or even worse. In some of the detention centers in Badakhshan, the detainees are taken outside in the open space to relieve themselves. In general, most of the detention centers do not have bathrooms that are clean, suitable and sufficient in number.

The issue of access to potable water and water for general washing in the prisons is another challenge to creating safe, hygienic prisons. Most of the prisoners get water from wells to drink and use for washing. Some of the prisons do not even have wells and the prisoners have to use a nearby river or stream water, which is often completely unhygienic. A good example is in Ghor province; because the water from the wells there is salty, they use river water both for human consumption and washing purposes. The prisoners in Fara, Nimroz and Badghis provinces do not have access to water for washing. The prisoners in Jawzjan, however, do have access to tap water.

Access to Food:

The Law of Prisons and Detention Centers emphasizes basic standards regarding the quantity and quality of food and designates the Ministry of Public Health as the monitoring agency responsible for implementing these standards. The law states that the food for the prisoners and the detainees must be provided according to the menu approved by the Council of Ministers.¹⁵

Prisoners should have access to a sufficient amount of good quality food. Measuring the quality of food could be done by examining the amount of calories in the food, but it is difficult to gauge overall quality through such a technical approach. The amount of money allocated for food, for example, could also be used as a means of gauging food quality and quantity. The observations of detention centers and prisons carried out by the Commission's provincial and regional offices show that, as a whole, the prisoners do have access to enough suitable food. According to the Head of General Department of Prisons and Detention Centers, in the past years, about 60 Afs (USD 1.30) was allocated for every prisoner per day. Although, the president had increased the amount to 93 Afs (USD 2.04), the Ministry of Finance has allocated 75 Afs (USD 1.65) per prisoner to ensure that all prisoners have three meals a day.¹⁶ According to the law prepared by the Ministry of Justice, prisoners should have fresh meat and vegetables in their food two or three times a week. Nevertheless, there have been complaints from prisoners, usually about the low quality of food that is inadequately prepared. The prisoners in Herat, Ghor, Kabul, Dai Kundi, Kunduz, Badakhshan prisons, all complain about the low quality and poor preparation of the food that is provided to them. In some of the detention centers in

¹⁵ Clause 2, Article 25 of the Law of Prison and Detention Centers, Official Gazette, 1386 (March 2007-March 2008).

¹⁶ Interview with General Amir Mhd. Jamshed, General Director of prisons and the houses of detentions: 14 Hamal 1389 (April 3, 2010).

the Badakhshan district, there are also complaints about the insufficient quantity of food provided to detainees.

Access to fresh air and to exercise facilities:

Access to fresh air, to open spaces suitable for walking, and to exercise facilities are part of prisoners' rights, and prison authorities are under an obligation to provide ways for prisoners to enjoy these rights. The Law of the Prisons and Detention Centers clearly states that inmates should walk in the open air or do some kind of physical exercise for at least two hours a day. On special occasions, the head of the prison office can reduce this time but not to less than 1 hour and must bring the reduction in time to the attention of the attorney's office.¹⁷

Access to fresh air and movement outside is, without exception, available in all of the detention centers and prisons in the country. All prisoners can walk freely in prison yards. The provincial and regional reports show that prison authorities have provided access to this right in a variety of ways. In some prisons, the prisoners can walk in the prison yards from 8 o'clock in the morning till 5 o'clock in the afternoon, whereas in others, prisoners can walk for far shorter periods of time, for example, from 10 to 12 in the morning or from 1 to 3 in the afternoon. It is worth noting that every prison in the country provides at least two or three hours of outdoor time to inmates.

With respect to exercise facilities, however, some of the prisons have not fulfilled their mandate to provide access for prisoners. In terms of sport facilities, the prison in Nangarhar province is the best in the country and provides space and opportunities for sports like football and volleyball. In a number of other prisons, there is only enough space for volleyball, chess and other games that require little space. Prisons like the ones in Bamyan, Nangarhar, Jawzjan, Kabul, Herat, Kunduz, for example, only have the capacity to allow prisoners to play sports or games that don't require much space. Provincial and regional reports about the Maimana, Kandahar, Balkh, Fara, Nimroz, Badghis, Ghor, Dai Kundi and Samangan prisons show that they do not have any sports facilities. Some prisons have space for prisoners to move, but do not have any exercise or sports facilities. The principle reason for the lack of exercise space or facilities in these regions is the overall shortage of space to house and guard inmates. For example in Ghor province prison, there is no proper place for sports; the prison yard is between 20 to 30 meters, leaving no room for physical exercises. The General Director of the Prisons and Detention Centers admits all these shortcomings, but points to the shortage of financial resources and lack of government support as the explanation for these problems.

Access to Educational Programs:

Access to education is an important right of the inmates. The Law of the Prisons and Detention Centers clearly states that the authorities of the prisons are obliged to establish

¹⁷Article 26 of the law of the prison detention centers, Official Gazette, 1386 (March 2007- March 2008).

fully functional libraries and provide the basis for prisoners to engage in studies, prayers, work, education, vocational training, recreational and cultural activities and other necessary activities.¹⁸

Educational programs are available at the prisons in Nangarhar, Paktia, Jawzjan, Kabul, Kunduz, Badakhshan, Bamyān, Balkh, Herat, Ghor, Dai Kundi and the prisoners there make use of those programs. However, it is important to understand that even in those prisons the existing programs are insufficient. In most of these prisons, for example, there are only two or three teachers available to the whole prison population and a number of complaints have been registered regarding the low quality of the educational programs in these places. Only Kandahar and Mainmana prisons have no educational programs at all. The inmates in these prisons are only able to read books brought to them by their family members. Regarding the number of prisons with libraries, sufficient and accurate information is not yet available.

In some of the prisons, there is no physical place available for conducting educational programs. In Jawzjan Province prison, for example, there is no regular educational program available, and most prisoners do not attend those programs that do occur, especially in the cold seasons, because no specific place has been prepared or heated. Some areas have more positive news: construction will soon be completed of a space for holding educational classes in Herat prison. A comprehensive educational program has already become available in Herat province prison, and both male and female prisoners have access to various forms of education such as literacy, religious education, English language classes, computer training and other vocational skills such as sewing, carpet weaving, tin smith, hair dressing, carpentry, confectionary and iron-working.

Access to Medical Care:

The Law of the Prisons and Detention Centers creates a number of standards relating to the provision of medical care and to the hygienic treatment of prisoners and detainees. Clause 1, Article 27 of this law states that the authorities of the detention centers and prisons, with the cooperation of the Ministry of Public Health, are obliged to provide free health services for the prisoners and the detainees.¹⁹ Elsewhere, in another clause, the law mandates that individuals be transferred to hospitals if medical treatment is not available in their detention centers or prisons. The law also governs the quarantine of the individuals affected by contagious diseases, stating that prisoners and detainees thought to be affected by contagious diseases should be kept in special areas of the detention centers or prisons.²⁰

¹⁸ Clause 1, Article 27 of the Law of the Detention Centers, Official Gazette, 1386 (March 2007- March 2008).

¹⁹ Clause 1, Article 27 of the law of the prison and detention centers, Official Gazette, 1386 (March 2007- March 2008).

²⁰ Clause 4, Article 27 of the law of the detention centers, Official Gazette, 1386 (March 2007- March 2008).

Unfortunately, there are not enough medical services and facilities to take care of all of the prisoners and detainees. Some prisons do not have either doctors or medicine. Prisons in Maimana, Dai Kundi, Nimroz and Badghis, for example, have neither medicine nor doctors available. Others have medicine and doctors, but the quality is low. In some prisons, there are doctors, but they are often unqualified and have medicine that is only sufficient for the administration of first aid. In general, it can be stated that in these prisons, the prisoners have access only to a very basic form of medicine. The Commission offices reported that prisons in Paktia, Kabul, Samangan, Kandahar and Balkh have medical facilities and services, but each of the prisons is facing its own specific problems. In Paktia Prison, for example, the assigned doctor is not regularly present or on duty; he is absent most of the time. In Pol-e-Charkhi prison, there is not enough medicine. In Samangan Prison, the doctor pays a visit only once a week. In Kandahar prison, there are not enough services and facilities and the patients are mostly taken to hospitals. In Balkh prison, there is no qualified doctor and there is not enough medicine and equipment.

Some prisons have better conditions. There are enough medical facilities and services in the prisons in Takhar, Kunduz, Nangarhar, Jawzjan, Ghor, Badakhshan and Bamyān and no complaints have been reported there. A three-bed medical unit has recently been established in Jawzjan Province and the sick prisoners are being given treatment. Likewise, recently a well-equipped hospital for the treatment of drug addicted prisoners was built in this province. These prisons are equipped with suitable facilities such as available transportation to the nearest hospital. Nevertheless, pregnant women prisoners, especially after giving birth, are not given special care. While there are two vehicles that could be used to transport prisoners in the Badakhshan Prison Office, many of the prisoners there are transferred to the court or attorney office on foot and in handcuffs, and in some cases the accused person even has to pay for being transferred from the central building, which houses both the prison and detention center, to detention centers in other districts for trial.

The Commission offices have reported problems related to medical services in most of the prisons; the major problems 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. In Balkh, Dai Kundi, Badghis, Paktia, Kandahar, Kunduz, Ghor and Badakhshan prisons, for example, the prisoners suffering infectious diseases are being kept in the same room as the rest of the prison population and the lack of sufficient space has meant that no step has been taken to quarantine them, despite the fact that the reports show that some of the prisoners are suffering from very serious illnesses such as TB and hepatitis-B. It seems that the Ministry of Justice and the office overseeing the prisons have shown little concern in regards to the prisoners' conditions, especially with regards to their living quarters and their health, and there are no improvements in most of the prisons.

Contact with Family Members and Relatives:

The Law of Prisons and Detention Centers includes contact with family members as a right of those in custody. Article 31 of the law states that prisoners and detainees have the right to be in contact with their relatives through supervised meetings in places of custody, the use of letters and through other non-disruptive means of communication.²¹

The right to contact and meet with family members is observed in all the prisons in Afghanistan. However, the method of regulating the duration and frequency of meetings with family members differs slightly from one prison to another. The meetings' time and duration have not been determined by the Law of the Prisons and Detention Centers, which says nothing about these specific issues. The prisons have generally allocated two days a week for relatives to meet the prisoners, and in almost every prison family members of the prisoners can meet them twice a week. Only in Pol-e-Charkhi prison in Kabul, do the prisoners of one block meet their relatives just once every 15 days. The General Director of the Prisons and Detention Centers says that the reason for this practice is that it is difficult to regulate the meeting times of so many prisoners. In Nimroz and Dai Kundi prisons, the prisoners are usually allowed to meet their relatives once a week. The duration of the meetings also varies; in some of the prisons, the visits last one hour, in other prisons, visits are restricted to half an hour and in others there is no restriction. In all prisons except for Pol-e-Charkhi prison in Kabul, if the prisoners' relatives come from far off places, they are allowed to meet with their imprisoned relatives beyond the time limits.

Registration and Disciplinary Measures:

The maintenance of order and control of prisons and detention centers are two important responsibilities of the prison and detention centers authorities. Article 10 of the Law of the Prisons and Detention Centers also emphasizes this issue. In order to address the issues pertaining to the legality, regulation and control of the prisons and detention centers, it is extremely necessary to maintain registration records that specify the prisoner's entry date, determined detention period and exit date. The registration booklet should be updated regularly. The new entrants as well as those getting released should be registered. Disciplinary measures should also be observed in the prisons and detention centers. In order to keep discipline and control the places of custody, measures should be taken to ensure that guards and authorities are prepared to maintain order at all times.

Registration booklets are available in all of the prisons without exception; no shortcoming is reported in this regard. Almost most of the prisons use registration booklets that have been designed for this purpose. In some district detention centers, however, there are no specific registration booklets and authorities in those centers have to use ad-hoc booklets that they make themselves. The Commission office in Ghor province reports that there are no registration books in any of the detention centers in the

²¹ Clause 1, Article 31 of the Law of Prisons and Detention Centers, Official Gazette, 1386 (March 2007-March 2008)

province's nine districts. The General Director of the Prisons and Detention Centers did not deny the absence of registration books in some detention centers,²²

The Commission offices' reports show that all of the prisons and detention centers follow enumerated procedures, and the situation is better now in terms of discipline and control. There are enough armed guards in most of the prisons; no complaints have been registered in this regard. The Commission offices have reported that the guards in all prisons are prohibited from entering the prisons with their arms. In most of the prisons, the administration section is separate from the prisoners' living quarters. The authorities in some of the prisons have taken more effective measures in order to address the complaints and improve prison management. They have chosen one prisoner from every room as a representative who can keep order inside the room and refer prisoner complaints to the prison authorities.

There have been a number of objections and strikes launched by the prisoners in some prisons. On 14/7/1388 (October 6, 2009), all the inmates went on a strike in Paktia prison, but it was suppressed and silenced with severe harshness. The police took arms and opened fire on the prisoners, wounding four prisoners, one of whom was severely injured. Ultimately, the head of that prison was replaced. In Kandahar prison, about 40 inmates also went on a strike, which was eventually ended by force.

Torture and Cruel, Inhuman or Degrading Treatment

Torture and cruel, inhuman or degrading treatment of any kind is illegal and no instrument or law considers them permissible. The Afghan Constitution bans torture. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Convention against Torture also clearly prohibit torture and other forms of cruel, inhuman and degrading treatment. In recent years, instances of torture and abuse of prisoners and detainees have declined from previous years. Nevertheless, torture and degrading treatment in detention centers and prisons is one of the most serious concerns regarding places of custody. Torture and cruel treatment, especially of individuals in the custody of the National Directorate of Security (NDS), is much more than what has been identified and reported by AIHRC.

Some positive steps have been taken to prevent torture and cruel treatment of the inmates in prisons and detention centers. The Head of the General Department of Prisons and Detention Centers says that during the past two years, about 4,600 authorities, staff and guards of the prisons and detention centers have been trained for three to six months regarding better guarding and treatment of inmates.²³ Although the level of torture and ill-treatment of prisoners has decreased in recent years, there are still some cases reported from detention centers and places of custody. In 1388 (March 2009- March 2010), 26

²² Interview with General Amir Mhd. Jamshed, General Director of Prisons and Detention Centers: 14 Hamal 1389

²³ Interview with General Amir Mhd. Jamshed, General Director of the Prison and Detention Center: 14 Hamal 1389 (April 3, 2010).

cases of torture in the detention centers were registered as a result of the observations of the Commission's provincial and regional offices. The number of incidents of torture is probably more than what has been ascertained, but it is difficult to substantiate all of the claims. Torture is usually carried out during interrogations in order to obtain confession.

One typical story is that of Mhd. Yunous from Kunduz province, who came to the Commission in Hamal 1388 (March 2009). He said that a person called Abdul Wahed falsely accused him and four others of robbing him of 16,000 Pakistani rupees (about USD 187), 11,000 Afghani (about USD 242), and four cell-phones in Zanjir-e-Charkhab area. In response, the Kunduz police arrested Mhd. Yunous and cruelly beat him until he suffered greatly and his ears and nose bled during the night. He is in a detention center now.

Most of the international human rights instruments, especially the International Convention against Torture, are particularly clear on the illegality of torture. According to the international human rights documents and Afghanistan's laws, the perpetrators of torture must be prosecuted and punished.²⁴ However in Afghanistan, such perpetrators are not prosecuted by the judicial organs. Most of the perpetrators of torture have been identified and brought to the attention of the relevant organs of the AIHRC, but only a few of such cases have been prosecuted. In one detention center in Faryab, a torture case was registered and the perpetrator was sentenced to one year imprisonment by the provincial court as a result of the efforts and follow up done by the Commission's monitors.

Unfortunately, during the arrests and resolution of disputes and allegations, police beat people, which is illegal. On September 5, 2009, a person came to the Commission office in Ghazni province and said that he had been working on his farm when a neighbor's flock of sheep entered his farm and inflicted damage to his farm and trees. He had thrown a stone at the flock to get them away; unexpectedly a stone had hit a sheep in the head and had killed it. The owner of the sheep did not claim anything for the loss, but other people, out of some personal hostility, falsely reported to police that he had stolen the sheep and killed it. The police arrested him and burned his hand with a cigarette. His mother was also beaten, and his father was forced to ask the criminal investigation officer looking into the torture to exonerate those responsible for the torture.

Use of Handcuffs and Shackles:

According to laws regulating police conduct, the use of handcuffs and shackles is permissible only in special cases, such as when there is the chance of escape by the suspect, or while the suspects or convicts are being transferred and the need is felt to take preventive measures. The use of handcuffs and shackles inside the prisons and detention centers is illegal; it is even considered a form of torture and ill-treatment. The reports

²⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975), Article 7.

from the Commission's offices show that in some detention centers, the detainees are handcuffed and chained during the night in order to prevent escape. Although, there are no exact and perfect statistics regarding how often handcuffs and shackles are used, the reports show that in some of the detention centers in Ghor, Dai Kundi, Herat, Ghazni, Bamyan, Badakhshan, Kunduz and Faryab, Jozjan and Balkh provinces, handcuffs and shackles are sometimes used to prevent escape attempts and disorder. The General Director of the Prisons and Detention Centers did not deny the use of handcuffs in some detention centers, but with the exception of a few extraordinary cases, he did not admit that the use of handcuffs and shackles was in general use in detentions centers. The use of shackles in Paktia prison is not something unusual and most of the prisoners are not satisfied with the current situation in Paktia province.

Most of the authorities of detention centers blame the use of handcuffs and shackles on a lack of security measures and on an insufficient number of guards. This problem, though, should be solved by the authorities and security measures should be increased; shackles and handcuffs should not be used to compensate for the shortcomings of authorities. The police department and the Ministry of Justice are responsible for rehabilitating and repairing the buildings used for the detention centers and prisons and for employing legal measures to prevent the detainees and prisoners from escaping.

Access to Take Leave:

Article 37 of the Law of the Prisons and Detention Centers, contemplates up to 20 days of leave for prisoners. In order to better protect the prisoner's contact with the family and the world outside of prison, and to foster a practice of obeying the law in and out of the prison, this article of the law provides prisoners with the right to leave the prison for visits.

The right to take leave is not observed in most prisons. Last year, for example some prisons, like those of Badakhshan, Balkh, Samangan, Faryab, Paktia, Jawzjan and Herat provinces, did give some leave, but to one to three people, and only gave them 7-10 days of leave. Other prisons did not give any form of leave to prisoners at all. In the prisons of Kabul, Kunduz, Baghlan, Takhar, Nangarhar, Bamyan, Ghor, Khust, Kandahar and Dai Kundi provinces, for example, no one was given leave during the last year. There is not enough information regarding the rest of the prisons.

The majority of the prisoners do not have enough knowledge about their legal rights to allow them to demand that the authorities respect those rights. In order to enhance awareness among the prisoners about their rights, AIHRC has published and distributed informative leaflets and other forms of rights-education materials in most of the prisons. However, this is not enough. The authorities of the detention centers and prisons are also responsible for informing the prisoners and the detainees about the rules and regulations and in this regard, they have the obligation to plan and conduct specific awareness raising programs.

Conclusion:

It can be stated, in general, that the situation of the detention centers and prisons is not good and the majority of the detention centers and prisons do not meet the basic standards necessary for the prisoner's accommodation. The Afghan government has also not paid adequate attention in this regard; it has allocated few financial resources for the construction, management, control and rehabilitation of the detention centers and prisons. Most of them are faced with shortages of space, and thus, overcrowding. Based on the standards provided by the Ministry of Justice, every inmate should be allocated 3.5 - 4.5 m² of space, but this standard is not being practiced in any of the prisons. As far as the buildings are concerned, with the exception of seven prisons, the rest of the detention centers and prisons are not housed in standard buildings that have been designed for use as places of custody. Therefore, these prisons and detention centers do not meet the UN standards and or fulfill the Islamic values articulated in Article 23 of the Law of the Prisons and Detention Centers.

Due to the lack of specific buildings for the prisons, most of the prisoners face numerous problems. The majority of the prisons and detention centers, for example, do not have a sufficient number of showers and toilets for the number of inmates housed in custody. Even if there are showers and toilets, they are poorly maintained. Similarly, dampness and humidity in the rooms put the inmates' lives in danger. The rooms are often built in a way that prevents any daylight from entering in. There are no mechanisms for ventilation and or heating facilities in the rooms. Access to potable water in the detention centers is another problem; the majority of the prisons do not have access to clean water; most of them use the water from the wells or the rivers. Access to food has improved a little for the prisoners; for every 24 hours, 75 Afs (about USD 1.65) per person has been allocated for food. With this amount of money, relatively adequate food can be prepared.

Invariably, all the prisoners in all the prisons can walk in the open air; there are no complaints in this respect. Some of the prisons have provided sports facilities for the inmates, but not all of the prisons have such facilities. Access to health facilities and services is also one of the most serious problems faced by the prisons and detention centers. Inside the detention centers, there is limited access to medical care, often enough only for the administration of first aid. Therefore, the ill prisoners must be taken to hospitals. Scarcity of space and overcrowding also means that individuals suffering from contagious diseases are not quarantined but are kept together with the rest of the inmates. There are also serious shortcomings when it comes to literacy programs and learning skills; except for a few prisons, like the one in Herat, prisons do not have regular and comprehensive educational programs.

With respect to the regulation of the time limits allotted to relatives to visit prisoners, there are fewer problems; in almost all of the prisons, except for Pol-e-Charkhi prison in Kabul and the ones in Nimroz and Dai Kundi, proper amounts of time have been set for the visits. The prisoners see little of the right to take leave that is articulated in the Law of the Prisons and Detention Centers; in some prisons, only a few (no more than three) people were able to take leave for periods of 7-10 days. It should be stated that

registration booklets are invariably available in all of the prisons, but there are no registration books in some of the detention centers.

Although torture and ill-treatment of prisoners and detainees has been reduced when compared to past years, there are still instances of torture and ill-treatment in places of custody. During the year 1388 (March 2009- March 2010), 26 cases of torture and ill-treatment were registered by the Commission. It is worth mentioning that most of these cases have been committed by the police during interrogations in detention centers. There are few reported cases of abuse and ill-treatment of the prisoners by the staff and officials of the prisons. Additionally, prisons do not generally resort to the use of handcuffs, except in the extraordinary circumstances mentioned by the law. At night, however, in some detention centers, handcuffs are used to prevent the detainees from escaping. The major reason for this violation is the absence of a suitable building to hold the detainee population and a shortage of guards in detention centers.

Despite all these shortcomings and problems in detention centers and prisons, the General Department of Prisons and Detention Centers has also made important achievements. During recent years, for example, the department has been able to construct about seven prisons in a relatively standard and proper way. It has also streamlined some educational programs to conform to the regulations regarding management and control of places of custody and the proper treatment of prisoners. The AIHRC appreciates these achievements and the initiation of the process of reform of prisons and detention centers. The authorities have also always cooperated with the Commission with respect to the observation of prisons and detention centers, which is a very valuable and important step forward.

According to the Law of the Prisons and Detention Centers, the High Council of the Prison and Detention Centers, which has a critical leadership responsibility toward prisoners' affairs, should hold a meeting once every three months. In 1388 (March 2009-March 2010) the Ministry of Justice could only manage to hold one meeting of the High Council.

The Commission emphasizes that, in order to bring about changes and reforms in detention centers and prisons, the activities of the High Council should be more active and organized.

Recommendations:

1. AIHRC requests that the government and the Afghan parliament, in keeping with national laws and international human rights instruments, allocate sufficient financial resources to the Department of Prisons and Detention Centers in such a way that it can resolve the problems pertaining to the detention centers and prisons.

2. The Commission calls on the international community to assist the Ministry of Justice in reconstructing and building adequate detention centers and prisons.
3. The Commission requests that the High Council of Prisons and Detention Centers be pro-active and use its legal authority, established in the Law of the Prisons and Detention Centers, to see that the prisons' affairs will be managed efficiently and shortcomings and problems will be resolved.
4. The Commission suggests that the Ministry of Justice put more effort into constructing buildings for prisons and detention centers and make a complete and distinct program for the reconstruction and building of places of custody.
5. The Commission asks the Ministry of Justice to pay special attention to the construction of prisons for women.
6. The Commission demands that the government take serious and effective measures in order to prevent the ill-treatment of individuals who have been accused or imprisoned.
7. The Commission recommends that the Ministry of Justice put more effort into training the staff and guards working in the detention centers and prisons, and the Commission is ready to assist these efforts.
8. The Commission requests that the Ministries of Justice and Public Health pay attention to the provision of health services in the detention centers and prisons, and to support the development of health units in places of custody.
9. The Commission requests that the Ministries of Justice and Public Health plan and implement regular and comprehensive educational programs in order to empower prisoners with literacy and skills.
10. The Commission asks the Ministry of Justice to pay serious attention to capacity building, livelihood and other problems of the prison staff.

The End

