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The New York Times

U.S. Will Hold Part of Afghan Prison After Handover

By Graham Bowley and Charlie Savage

09/05/2012

The United States military will continue indefinitely to operate a section of the Parwan detention complex holding foreign combatants in Afghanistan, even as the two countries prepare to mark the fulfillment of a deal to turn over operations there to Afghan control at President Hamid Karzai's demand, Afghan and American officials say.



US soldiers walk past prison cells in Bagram prison in 2009. The Afghan government said Tuesday it expected to take full control next week from the United States of the controversial Bagram prison, which numbers Taliban fighters among its 3,000 inmates.

Afghan guards now operate the majority of the cellblocks at Parwan, the American-founded detention complex at Bagram Air Base north of the capital, and have taken custody of most of the roughly 3,000 suspected Afghan insurgents who were being held there when the allies signed a transfer agreement on March 9. The deal, which set a six-month handover schedule, was a charged symbol of Afghan sovereignty at a time of serious tensions over American troops' burning of Korans at the detention facility.

But even as Mr. Karzai has announced plans for a ceremony on Sept. 10 to mark the "full transfer" of the detention center, officials of both countries say the United States will remain in control of a portion of the Parwan complex where about 50 detainees from other countries — mostly Pakistanis — are being held.

Moreover, the United States is continuing to operate cellblocks to hold and screen Afghan detainees who were captured more recently. Since March 9, more than 600 additional Afghans were taken into custody, and most remain in American custody even as continuing sweeps and raids add to their numbers. A major unresolved issue is how quickly newly arrested Afghans should be turned over.

The persistence of a United States-run portion of the prison underscores the complexity of relinquishing control over detention operations while American troops are still in the field conducting raids and new arrests — including the risk that detainees could be freed who might come back and stage attacks. By contrast, a similar agreement with Iraq terminated American authority to detain prisoners there at the same time that troops were scheduled to withdraw.

Some of the difficulties, moreover, echo dilemmas that have slowed the Obama administration's efforts to close the prison camp at Guantánamo Bay, Cuba. It is illegal to repatriate prisoners to countries where they are likely to be tortured or killed, for example, and American officials also have also wanted to ensure that other governments are willing and able to keep tabs on any former detainees who are released.

William Lietzau, the assistant secretary of defense for detainee policy, said in an interview that the United States was "on a trajectory to be able to comply" with the "milestone" — he rejected the word "deadline" — of Sept. 9. Compliance, he said, meant having transferred all Afghan citizens who were already in custody at the time the agreement was signed.

So far, Mr. Karzai, who has had a volatile relationship with American officials, has not voiced public objection to a narrow interpretation of the agreement. He had initially demanded the immediate transfer of all detainees and prison facilities. But some Afghan officials signaled that the continuing American role was understood and, to a degree, acceptable. "The priority for Afghanistan is Afghan citizens," said Janan Mosazai, a Foreign Ministry spokesman. "When it comes to third-country nationals, that will be a matter we decide with our international partners at some point down the road."

In an interview last week, the Afghan official who runs the Afghan-controlled portions of Parwan, Gen. Ghulam Farouk, acknowledged that the Afghan guard force is still "in the process of building our capacity." Three American officials sat in on the interview at his office at

Parwan, while in a dusty yard outside his window, a graduation ceremony for about 100 new guards in unfolded. Behind them, a bus delivered detainees' families for visits.

While General Farouk said that the process of transferring the initial group of Afghan detainees was almost complete, because of sensitive relations with a "neighboring country" — a reference to Pakistan — he thought it best if the United States keeps the so-called third-country nationals for the time being.

"If we keep these people with us in this current situation and deal with them, this will create more problems for us. Therefore it is better for the Americans to keep them," he said.

When transferred, prisoners leave their cells in one of the remaining American-controlled buildings and are delivered to new cells in an Afghan-controlled building, but where American personnel will still be present in an advisory role until at least next March, under the agreement. An Afghan committee sorts the detainees into two groups — so far, General Farouk said, about 1,638 have been approved for criminal prosecution and 963 have been referred to a review board, which evaluates them and then recommends whether to keep holding them without trial as a wartime detainee.

The agreement calls on Afghanistan to consult the United States and "consider favorably" its assessment of whether a detainee poses a continuing security threat or should be released, but is ambiguous about which country has final say. As a practical matter, the United States military still controls the perimeter of the base around the prison complex. To date, officials of both countries say, there have been no disagreements between General Farouk and his American counterpart, Lt. Gen. Keith Huber.

There are early signs, however, that the Afghans may be more inclined to release detainees than not. General Farouk said that so far the review board has finished evaluating about 600 men, recommending that he release 374. None have yet been freed, and he was vague about how many might be, but suggested it could be a majority.

A major task for American officials has been to declassify as much evidence as possible that each detainee may be an insurgent. The dossiers, given to the Afghans when each detainee is transferred, can be used by the Afghan court or its review boards.

To protect intelligence sources, the United States has sometimes withheld information or allowed Afghan officials to view documents but not take copies. Mr. Lietzau said that if the United States objects to an Afghan recommendation to release, the Americans re-examine the full, still-classified file to see whether there is a way to show the review board additional information.

"The bottom line is, we're not in a war by ourselves against an enemy that is just our enemy," he said. "We're in a war where the only way to win is with our alliance."

Domestic politics are a factor as well. Congress has also imposed steep restrictions on transfers from the prison at Guantánamo Bay, Cuba, and the military does not want its hands to be similarly tied in Afghanistan. Republican lawmakers have already criticized a decision to turn

over to Iraqi custody a detainee accused of helping to kill American troops in that war, and after a recent report that Iraq may soon release him, they warned the administration “to extend all efforts to ensure that this tragic mistake is not repeated with terrorists currently in U.S. custody in Afghanistan.”

But any sweeping declarations by the United States that it will not allow the release of anyone whom it deems too risky would undermine Mr. Karzai’s ability to show that Afghans now exercise sovereign control over prisons on their soil. The Obama administration also does not want to provoke American courts into revisiting a 2010 ruling declining to extend the same habeas corpus rights that Guantánamo detainees have to detainees in Afghanistan.

The prisoner transfer policy could also face legal and political pressures inside Afghanistan. The United States insisted, when negotiating the agreement, that the Karzai administration embrace a system of no-trial detention for wartime prisoners deemed too difficult to prosecute but too dangerous to release. Afghan lawmakers, however, did not ratify the agreement.

Gul Rahman Qazi, the chairman of the independent commission for overseeing the implementation of the Afghan constitution, which he helped write, argued that a no-trial detention system “is not acceptable to us” and is “in confrontation with the national constitution.”

But Mr. Lietzau said that while the war continues, it is lawful and necessary to detain people without trial — both to gain intelligence and to avoid creating any incentive for troops in combat to elect killing over capturing.

“An administrative detention regime is necessary for any morally responsible country in an armed conflict,” he said. “In this case, it was a prerequisite for our agreement with the Afghan government, at least the way combat operations are going right now. That’s something we’re going to have to be watching very carefully as we go forward with this transition.”