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## Bagram: The Other Guantanamo

**The American government is still holding about 60 prisoners without charge at the Afghan prison**

By: JOHN KNEFEL

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The months-long hunger strike at Guantanamo Bay has returned the subject of indefinite detention to U.S. headlines this year, but that notorious island prison isn't the only place where detainees in the war on terror are being held indefinitely by the United States without charge. Around 60 non-Afghan nationals are currently being kept by the U.S. at the prison near Bagram Airfield in Afghanistan – all without charge or trial – following the hand-over of around 3,000 Afghan prisoners to the Afghan government in March.

About two-thirds of the detainees, known as third country nationals, are Pakistani. Some of them have been held for nearly a decade, according to a lawyer who is fighting for his clients' freedom. Omran Belhadi is an attorney with the Justice Pakistan Project, based in Lahore, which represents 11 detainees currently held by the U.S. "They are being held without charge, trial or access to a lawyer, which constitutes a violation of international human rights law," says Belhadi. "Quite a few of them have been recommended for release by the U.S. government but remain stuck at Bagram, because the U.S. and Pakistani governments are failing to negotiate the terms of their repatriation."

Though the detainees at Bagram aren't mentioned often in the U.S., Chris Rogers, who focuses on conflict-related detention at the Open Society Foundations, says that the prison remains a

problem for America's image in the Middle East. "For Afghans, Pakistanis and many others around the world, Bagram is a symbol of hypocrisy and injustice," says Rogers. "Ending the war in Afghanistan, and closing the chapter of war-on-terror detention that both Guantanamo and Bagram have come to symbolize, means the U.S. has to resolve detainees' cases and end their legal limbo."

In March, the U.S. military transferred the majority of control of the prison at Bagram, which it calls the Detention Facility in Parwan, to the Afghan government. The transfer was scheduled to happen months earlier, but tensions between the two countries – including U.S. fears that Afghanistan would release prisoners the U.S. wants held – delayed the turnover. The U.S. is scheduled to remove significant numbers of troops from Afghanistan by December 2014, but how many remains undecided.

Pentagon spokesperson Todd Breasseale says in an email that the third country nationals held by the U.S. "at the small part of Parwan that we still use are all [Law of War] detainees" – the same authority that applies to nearly every detainee at Guantanamo. (There are currently 166 detainees held at Guantanamo, 86 of whom have been deemed transferrable because they are not threats to U.S. national security.) That legal rationale allows the U.S. to hold prisoners until the end of hostilities in the war against al Qaeda, which Pentagon officials have suggested could last as much as another 20 years.

It remains unclear what the future holds for the prison at Bagram, though Belhadi, the attorney in Pakistan, is not optimistic. "Our impression is that Bagram will remain open even after U.S. combat operations cease in December 2014," he says. The way forward for his individual clients and the rest of the detainees is also unclear. There is a significant danger that they could be tortured if they are turned over to the Afghans, and Belhadi says the Afghans don't want them anyway: "They're aware of the diplomatic hurdles involved in repatriation and want no part in it."

Rogers, at Open Society, says the U.S. knows "the clock is ticking" in these cases, and that "as the U.S. withdraws its forces and ends its combat mission in Afghanistan, it will not have the same legal basis to capture and detain individuals."

How does the U.S. military see the impending drawdown in Afghanistan affecting its legal authority to hold detainees? When asked if Bagram will stay open past December 2014, Breasseale, the Pentagon spokesperson, says detainees will continue to be held "through to when final disposition is decided," but that the U.S. "maintains that it shall not give up the humane – and ultimately reversible – option of removing enemy combatants from the battlefield."

As of now, Belhadi says six detainees – three of whom are his clients – are scheduled to be repatriated to Pakistan in September of this year, due in part to litigation his firm has brought before the Lahore High Court.

Whether U.S. courts have jurisdiction to order detainees released from Bagram remains partially unsettled, though the outlook for the detainees doesn't look good. Following the U.S. Supreme Court's 2008 ruling in *Boumediene v. Bush*, which extended habeas corpus rights to detainees

held at Guantanamo, lawyers for Bagram detainees sought to have those rights applied to their clients. After an initial win, the case – known as *al-Maqaleh v. Gates* – was overturned on appeal, heard again unsuccessfully with additional evidence in district court, and is currently on its second round of appeals.

Amin Al-Bakri, a Yemeni held by the U.S. without charge since 2002 and one of three petitioners in the *al-Maqaleh* case, "was tortured and coercively interrogated in CIA custody at undisclosed 'black site' locations," according to Golnaz Fakhimi, a lawyer with CUNY law school who represents al-Bakri. She adds that her client has been cleared for release three separate times. "The indefinite detention of Amin and other rendered non-Afghans at Bagram contrasts starkly with President Obama's renewed promise to close Guantánamo," says Fakhimi. "The contrast reveals that his promise to close Guantanamo is not necessarily a promise to end *the practice of indefinite detention* that makes Guantanamo so problematic."

Rogers is even more blunt in his characterization. "Right now," he says, "Bagram is another Guantanamo Bay that you've heard less about."