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How Obama handed Afghanistan a prisoner dilemma

Unwilling to charge or release six prisoners in Afghanistan, US has simply passed problem on to Kabul

by Jenifer Fenton

3/16/2015

Afghanistan's President Ashraf Ghani, who visits the White House next week, has not held back on criticizing the U.S. over its handling of detainees. Reacting to the contents of a damning Senate Intelligence Committee report on torture in December, he expressed shock, declaring "that the principles of human rights — as well as the Constitution of the United States and universally accepted ethics — had been violated by the CIA and its contractors."

But when it comes to the status of six detainees now in the hands of his security forces after the U.S. turned over control of the Parwan Detention Facility near Bagram air base in his country, Ghani has been noticeably less vocal.

The fate of the six — two Tunisians, two Tajiks, an Uzbek and an Egyptian — will be decided by Afghan authorities. The reasons for their detention and for not repatriating them remain unclear. Unlike their counterparts in Guantánamo Bay in Cuba, the prisoners held by the U.S. at Bagram have no right to judicial review or access to lawyers.

One of the six men — whose identities have been confirmed by the Pentagon — is Redha al-Najar of Tunisia. He had the dubious distinction of being the first CIA prisoner held at an Afghanistan facility called detention site Cobalt — notorious in U.S. security circles as "the Salt Pit."

Officers from the Federal Bureau of Prisons visited the Salt Pit in late 2002 and, according to the Senate report, they were “wowed” by the sensory-deprivation techniques used on the detainees there — constant white noise, no talking and no lights. Still, the officers concluded that the prisoners “were not being treated in humanely [sic].”

Najar, according to the Senate report, was seized during a May 2002 raid in Karachi, Pakistan, when he was 36 years old. He was taken in view of his wife and 2-year-old child.

The CIA alleged he was a bodyguard for Osama bin Laden, and he was rendered to a third country — redacted in the Senate report — in June before being transferred to the Salt Pit in September. There was no evidence that Najar resisted CIA interrogators, but he was put in isolation, deprived of sleep and subjected to disorientating techniques and cold temperatures, according to the Senate report.



My Gitmo client’s interpreter worked for the CIA

Latest embarrassing incident demonstrates that military tribunals cannot mete out justice to detainees

CIA officers, none of whom were trained in interrogation techniques, thought there was a “reasonable chance of breaking Najar,” according to the report, and by September he was already a “broken man” and “willing to do whatever the CIA officer asked.”

Even then, the CIA continued to interrogate him, using “isolation in total darkness ... [playing music] 24 hours a day and keeping him shackled and hooded.” He was left hanging, “which involved handcuffing one or both wrists to an overhead bar,” the report notes, for all but two hours each day for two days. He was also made to wear a diaper. According to the CIA, Najar became a model for handling other detainees. He was held by the CIA for about 690 days before being transferred, at some point, to Bagram.

The same day that the Senate report revealed details of Najar’s torture under U.S. supervision, Barack Obama’s administration handed him over to the Afghan government, according to the International Justice Network (IJN), which represents Najar. The group characterized that as “an attempt to wipe the U.S. government’s hands of any responsibility for this victim of U.S.-sanctioned torture.”

Transferring responsibility for Najar and the other five men makes it difficult for his lawyer, IJN Executive Director Tina Foster, to fight his case. “We can’t argue anymore that they are in U.S. custody,” she said. “We still are representing them, but there isn’t a legal case at this point that we can pursue against the U.S. government.”

It’s unclear, she added, whether the Afghans are going to charge the men, indefinitely detain them or release them.

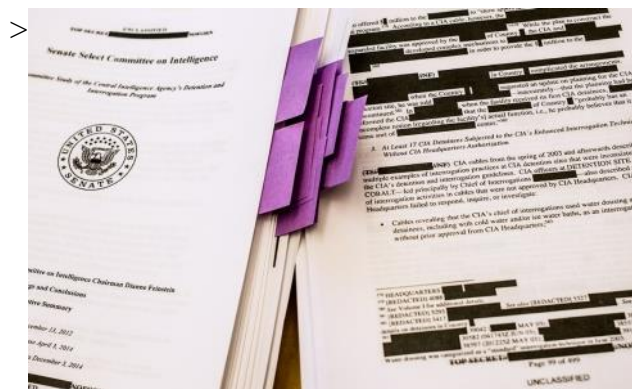
Foster also represented two men who were repatriated from Parwan to Yemen in 2014, Amin al-Bakri and Fadi al-Maqaleh. They were held for 13 and 10 years, respectively, without charge.

Less is known about the treatment of the other Tunisian still at Parwan, Lofti al-Ghrissi. The Senate report identifies him as one of seven prisoners subjected to at least one CIA enhanced interrogation method without the approval of CIA headquarters. He spent some 380 days in CIA custody.

The Americans did not tell Foster why they would not send the Tunisians home. “Nobody has offered any explanation,” she said, adding that what information the U.S. government previously gave has been largely contradicted by events. “They told us they weren’t going to send the Yemenis back,” she said, “that they would probably be the last people there.”

The U.S. alleges that the two Tunisians are affiliated with Al-Qaeda — but Pentagon spokesman Myles B. Caggins III declined to specify how they are connected or what they are alleged to have done.

The two Tajik detainees are Said Jamaluddin and Abdul Fatah. A detainee review board at Bagram recommended they be turned over to a third country for possible prosecution or detention.



What does the newly released Senate report on torture reveal?

Senate review concludes that the CIA misled about brutal techniques and intelligence after 9/11

The U.S. alleges that the Tajiks are also Al-Qaeda members, with ties to allied groups in Central Asia, according to Caggins. The Pentagon's later claim about the Tajiks is the same explanation given in the case of the Uzbek prisoner, Muso Akhmadjanov.

The Egyptian prisoner is Abu Ikhlas al-Masri, who the Pentagon alleges is an Al-Qaeda member with ties to the Afghan Taliban and related Afghan and Kashmiri groups.

No proof or any details about any of these allegations have been provided.

Bagram, a former Soviet base, became a detention site in late 2001 when the U.S. took it over, using it as a clearinghouse for prisoners detained during the U.S. occupation after 9/11. Many were sent to Guantánamo, but after a landmark 2004 U.S. Supreme Court ruling in *Rasul v. Bush*, which gave Guantánamo prisoners the right to challenge their detention, George W. Bush's administration effectively halted the transfer of prisoners from Bagram to Guantánamo, where they would have more rights. By 2011, there were 1,700 prisoners at Bagram, according to Human Rights First.

The Parwan facility began transitioning from U.S. to Afghan control in January 2011, with Afghan and Pakistani prisoners eventually handed over to their governments. A Russian prisoner, Irek Ilgiz Hamiddulin, was transferred to the U.S. and appeared in federal court. He pleaded not guilty to charges relating to an attack on U.S. and allied forces in Afghanistan, and his trial is set for April.

While the U.S. gave Afghanistan control of Parwan on March 25, 2013, it maintained control over a special facility where third-country nationals were held, according to the Pentagon. The U.S. handed over that last facility on Nov. 1, 2014, and the U.S. was unable to transfer the remaining six prisoners before then. Under the security agreement now in force, the U.S. is not permitted to maintain or operate detention facilities on Afghan soil.

But inheriting Parwan prisoners has put the Afghan government in a dilemma, according to Kate Clark, the country director of the Afghanistan Analysts Network, an independent research organization that first reported the identities of the six men. "They have had these people dumped on them, and they are trying to find a legal solution," she said, adding that Kabul was reluctant to simply free the men without reviewing their cases.

The Afghan commander of the facility, Gen. Faruq Barakzai, has told local media that the men would not be held without trial.

IJN's Foster is encouraged by the willingness of the Afghans to reject the U.S. model of holding detainees without due process.

That marks what she and Human Rights Watch senior national security counsel Laura Pitter see as a welcome change. The U.S. "has locked up scores of men without charge or trial for years," she said, "and now as they are about to leave [Afghanistan], rather than prosecuting or releasing them as they should have done years ago, they simply transfer them to Afghanistan without any proper review or process."

She raised concern that the men could be subjected to torture, which has been widespread in Afghanistan's prisons, and urged that they be speedily released, absent any evidence that could serve as a basis for prosecution.