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## Hidden justice: do Obama's detention reforms in Afghanistan go far enough?

Fri, 09/18/2009 - 11:53am



By Sahr MuhammedAlly

The new Detainee Review Board (DRB) procedures for the approximately 600 detainees currently held in Bagram Air Base, Afghanistan, are an improvement over the existing review regime, which has resulted in prolonged and unjust detention and has been a growing source of frustration and decreased Afghan support for U.S. presence in Afghanistan. But these reforms do not address the core of U.S. detention problems that persist in Afghanistan -- problems that undercut America's counterinsurgency goals there.

I went to Afghanistan earlier this year to speak to former detainees suspected of involvement with the insurgency imprisoned by U.S. forces at Bagram. What I found was troubling. Many were captured in their homes during night raids that terrorized extended families, often involving destruction of property, sometimes even death to innocent bystanders. Detainees I interviewed had been held for 9 months, 2 years, and some up to 5 years without any opportunity to review the evidence against them or to produce tribal elders or other witnesses who could

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I take, for example, wazir [which is a pseudonym; he asked me not to use his real name] who was released from Bagram in March 2009. He was captured one morning while working at a base on construction projects with U.S. forces, and showed me certificates of appreciation he'd once been awarded by the Americans. One morning in November 2007 while he was working at the base, soldiers handcuffed him and placed him in an isolation cell. He was eventually taken to the U.S. central detention facility at Bagram Air Base, where he was interrogated and told that U.S. forces had intercepted suspicious conversations on his satellite phone. Wazir asked to hear the recording of the voices and see the evidence against him. His requests were denied and he remained in detention for sixteen months, never to learn why he was detained or indeed, when he was eventually released.

The majority -- but not all -- of the hundreds of detainees held at Bagram as part of Operation Enduring Freedom are Afghan. The public does not know their names, their alleged offenses or how long they have been imprisoned. Worse yet, the prisoners themselves are kept in the dark about what evidence led to their capture and detention, as well as the reasons for their eventual release.

And a lack of information is not their only source of frustration. During my conversations with former Bagram detainees, another reoccurring theme emerged -- false accusations grounded in tribal rivalries and personal animosities were the reasons many detainees believed they had been arrested. Add cultural and language barriers between Afghans and foreigners to the mix and you have fertile ground for miscommunication, misidentification, and a recipe for arbitrary arrest and detention. It's not only the former detainees who have raised this concern. I spoke with a number of Afghan government officials who confirm that such mistakes have increasingly become a source of frustration and anger for Afghans.

The United States has paid a high price for these and other mistakes in Afghanistan. Civilian casualties, arbitrary detention, mistaken captures, ill-treatment and intrusive house searches have led to decreasing Afghan support of the U.S. mission. A 2009 ABC News poll found that only 37% of Afghans say they support Western forces, down from 67% in 2006, citing unjust U.S. military practices as reasons.

Can the new Detainee Review Board procedures turn things around for the United States in Afghanistan? Not on their own, but they do mark an important and long overdue first step. For example, the new DRB procedures **revealed this week** allow detainees to have the assistance of a military personal representative, but not an attorney, who can assist in their appeal for release. Detainees will not have access to all the evidence and information that led to their detentions, but the personal representative will have access to all evidence, including the classified portions, that is relied upon by the three-member military review panel that decides whether to release, transfer to Afghan authorities for prosecution, or continue the detainee's detention. Detainees may now call "reasonably available witnesses" on their behalves, an important shift from the earlier policy that did not permit detainees to call any witnesses, "reasonably available" or not.

Building on these initial reforms, the United States should now take additional steps to ensure an end to the arbitrary detentions that have undermined its counterinsurgency goals. For example, given the discredited Combatant Review Status Tribunals (CSRTs) in Guantanamo, which were found as an inadequate substitute for habeas by the U.S. Supreme Court in 2008, detainees should be allowed to have lawyers, not just personal representatives, so they are given a fair opportunity to challenge their detentions. A lawyer, unlike a non-lawyer military representative, would be independent and more effective in gathering witnesses and evidence to challenge the lawfulness of his client's detention. It is unclear whether the policy guidance prohibits reliance on coerced evidence in determining a person's detention status, but if this is indeed the policy, it should be explicit and made public. Independent human rights observers should also be allowed to monitor implementation of the new procedures, as the Defense Department has already suggested, in order assess the effectiveness of the new procedures.

But quite apart from review procedures, reforms are needed to improve the reliability of information leading to capture in the first place. Review of rules of

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14 hours ago reply

@attackerman Also they use lots of different things as justifications for attacks  
14 hours ago reply

@attackerman They just relied on Amir Mir's data, our point was to present a more accurate pic of the program  
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seek Afghan buy-in and more local involvement in detention-related matters in order to provide legal legitimacy and to further the goal of making Afghans responsible for their own security.

Successful counterinsurgency strategy depends on U.S. actions being seen as fair by the Afghan people, whose consent and cooperation is needed to further U.S. goals in ensuring a stable Afghanistan. To this end, the United States and Afghan government should enter into public security agreements which detail rules for capture, detention, and treatment of persons in Afghanistan that are consistent with international humanitarian and human rights legal standards. A transparent and public agreement that complies with international law will give legitimacy to foreign military actions among the Afghan population and will promote the rule of law.

Fair and legitimate reforms would deprive al Qaeda and the Taliban the propaganda and recruiting opportunities created by unjust military practices. Respect for the rights of Afghan citizens is not only an important element to defeat of the insurgency, it is also a necessary precondition to establishing long-term stability through the rule of law.

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