

HANDOFF OF DETENTION FACILITY IN PARWAN MARRED: AFGHAN GOVERNMENT PLACES HIGHER VALUE ON RULE OF LAW THAN US

Following on the heels of the initial agreement that was virtually meaningless from the start, because the US still retained veto power of many of Afghanistan's moves, the US today allowed Afghanistan to hold a "splendid" ceremony marking the "complete" handoff of prison control to Afghanistan. As might be expected, the handoff is not complete, and the US is still insisting it retains many powers the Afghans dispute.

Khaama provides a summary of the ceremony:

U.S. officials handed over formal control of Afghanistan's only large-scale U.S.-run prison to Kabul on Monday, even as disagreements between the two countries over the Taliban and terror suspects held there marred the transfer.

Control of the jail has been hailed by Kabul as a victory for sovereignty, but analysts said it was largely a symbolic measure, as Nato prepares to leave Afghanistan after more than a decade fighting an insurgency.

/snip/

"I'm happy that today we are witnessing a glorious ceremony that marks the handing over of responsibilities of Afghan prisoners to Afghans themselves," acting defence minister Enayatullah

Nazari said.

Multiple reports point to the establishment of an Afghan system for prolonged detention of prisoners without charges as the primary area of disagreement. The New York Times provides the transcription of the US government's position on the dispute:

The coalition would not say what its concerns were, but some Afghan officials have raised objections to the system of no-trial detention that the United States insisted the Afghan government embrace at Parwan. This system allows the continued imprisonment of wartime prisoners deemed too difficult to prosecute but too dangerous to release.

The Times provides no basis for how we are to understand that these detainees are both "too difficult to prosecute" and "too dangerous to release". How are we to understand the danger these prisoners pose if the evidence against them is not tested in a court?

The Washington Post dances around the edges of this issue, suggesting that the US position is governed by classified evidence, but that this practice has drawn "international criticism":

The United States has held suspected militants for years on the basis of classified, undisclosed evidence, drawing international criticism.

Writing in Foreign Policy, Chris Rogers summarizes the situation in more detail, drawing on a report from Open Society Foundations (funded by George Soros), for which he is an attorney:

This partial handover has come at a high cost for Afghanistan: the creation of a new internment regime that will allow the Afghan authorities to detain without

trial. A number of Afghan officials have called this new regime unconstitutional and fear it will be subject to abuse.

The creation of an Afghan internment regime appears to have been introduced largely at the behest of the United States, in order to facilitate the handover of U.S. held detainees, and satisfy the U.S. desire for a lasting internment system on the Afghan side into which it could continue to transfer future captures. The system, created last March, closely resembles the U.S. system at Bagram. It was not introduced through legislation or even consultation with Parliament—instead it was created last March through a secret “inter-ministerial agreement” and unpublished presidential decree that are vaguely worded and ripe for abuse.

There is a danger that this will be the real legacy of Bagram—the creation of a flawed system of detention without trial in a country already wracked with decades of internal conflict, impunity, and weak rule of law. The Open Society Foundations learned that U.S.-Afghan disagreements over these issues led to a temporary suspension of detainee transfers from U.S. to Afghan control, which was resolved only days before the handover deadline.

So there we have it. Some officials in Afghanistan are resisting the creation of a system for indefinite internment without trial because it is unconstitutional. That doesn't bother the US a bit, as we have had our program of indefinite detention for over ten years now. And it appears that the US is forcing the Afghans to bypass their normal government processes to put the system in place there.

What could possibly go wrong?

And what does it say about the status of the rule of law in the US that the two major newspapers of record fail to point out that indefinite detention without trial is illegal? The Times merely tells us to accept the fact that some prisoners are too dangerous to release. The Post at least goes so far as to tell us that this practice generates international criticism, but it fails to tell us that this criticism is based on international law and ratified treaties that have the force of law. Maybe those Afghan officials can visit the US and inform our government about those pesky laws that are meant to prevent detention without trial.

The US is truly trying to remake Afghanistan in its own image. Both already have "internal conflict, impunity and weak rule of law". With the imposition of indefinite detention in Afghanistan, one more US flaw will have been transferred.