

# Afghanistan

*Afghanistan was the birthplace of post-September 11 detention and it continues there today over a decade later. In March 2012, the United States reached an agreement with the Karzai government on the custody of the then-estimated 3,200 detainees in Afghanistan. The agreement called for an accelerated transfer of detainees from U.S. to Afghan control, but it also provided Americans a veto over which detainees could be released. To some, the March 2012 custody agreement signaled the beginning of the end of the United States' involvement in detainee affairs in Afghanistan. However, in September 2012, The New York Times reported the U.S. military, over Afghan objections, would maintain control indefinitely over at least a few dozen foreign detainees in Afghanistan. Thus, there appears to be no clear end in sight to the U.S. role as a jailer in Afghanistan.*

*It is unclear from the available evidence the degree to which instances of illegal violence in Afghanistan can be attributed to the fog of war, to individual bad actors, or to policy decisions of senior leaders. The United States has had two detention programs in Afghanistan over the last 10 years — an officially acknowledged program and an unofficial, classified program. The official detention program has been run by the U.S. military during and following the invasion of Afghanistan in the fall of 2001. Estimates on the number of detainees in that program at any one time over the last decade have varied, up to several thousand. The second detention program has involved a secret network of jails, the existence of which was long unacknowledged by U.S. officials, and is believed to have been used to detain only a small fraction of those in the military's detention program. In both programs detainees have been mistreated and some have died. In some instances abusive, illegal interrogation tactics utilized in Afghanistan later found their way to Iraq. Notoriously, two detainees died within a week of each other at Bagram Air Base in December 2002 after they were interrogated by members of the 519th Military Intelligence Battalion. The battalion left Afghanistan in the summer of 2003, went to Iraq, conducted interrogations at Abu Ghraib prison, and became the subject of controversy when, months later, the infamous photographs of the abuses at Abu Ghraib prison emerged.*

*A review of the United States' experience in Afghanistan over the last decade demonstrates several different points of failure in the nation's post-September 11 detention process. Not only were detainees treated improperly and illegally at times, but the decision processes on whether to detain someone and whether to continue to do so were deeply flawed. Marine Major General Doug Stone, who in 2007–08 significantly revised the U.S. detention program in Iraq, was sent to review the situation in Afghanistan.*

*In 2009, he recommended that 400 of the 600 detainees held at Bagram Air Base be released. He said their continued detention was counterproductive to the interests of the United States.*

*Today, quietly, the United States seems to have learned at least some lessons from the last 11½ years in Afghanistan. Since May 2010, at the urging of General David Petraeus, the detention sites operated by the military's Joint Special Operations Command are reportedly open to inspection by Afghan officials and the International Committee of the Red Cross. More generally, the Red Cross appears today to have an improved relationship with the Department of Defense.*

## The Fog of War?

On the night of October 7, 2001, the first night of the Afghanistan war, an unmanned Predator drone (equipped with two Hellfire missiles) identified the Taliban's leader, Mullah Mohammad Omar, fleeing Kabul in a convoy.<sup>1</sup> The drone's infrared scanner tracked the convoy, but by the time the request to fire made its way to Central Command headquarters in Tampa Bay, Fla., Mullah Omar had managed to escape.

The United States and its allies had precious little intelligence about who, precisely, they were fighting on the ground in Afghanistan in the first months of the war. Overlap between Taliban and Al Qaeda members, many U.S. officials thought at the time, was high. After all, the Taliban had just jeopardized its hold on power throughout most of Afghanistan in order to protect Osama bin Laden and Al Qaeda. In truth, the overlap between the two organizations in 2001 was far smaller than believed.<sup>2</sup> Osama bin Laden had returned to Afghanistan in 1996 after four years in Sudan. Al Qaeda and the Taliban mutually co-existed together throughout the late 1990s in Afghanistan, but there seems to have been little coordination between the two. "In 1996 it was non-existent, and by 2001, no more than 50 people [overlapped]."<sup>3</sup>

While it is true that thousands of foreign fighters trained at Al Qaeda training camps, Mullah Omar was said to have maintained a parochial outlook, interested in the consolidation of the Taliban's power within Afghanistan, and was uneasy with bin Laden's goal of global jihad.<sup>4</sup> Omar was reported to be in talks to betray bin Laden to the Saudis until President Bill Clinton ordered air strikes against Afghanistan in 1998.<sup>5</sup> After the U.S. attack on Afghan soil, Omar refused any deal.<sup>6</sup>

The war against the Soviet occupation, and the ongoing Afghan civil war between the Taliban and the Afghan Northern Alliance, had brought many non-Afghans to Afghanistan over the years to fight with the Taliban to establish a "pure Islamic" state in Afghanistan. Additionally, Afghanistan, as a broken state in 2001, offered a variety of militant Muslim groups a comparatively safe haven in which to conduct training operations. Uighur separatists, members of an ethnic group who sought independence for their homeland in western China, operated there as did members of the Libyan Islamic Fighting Group (LIFG), which sought the removal of Colonel Muammar el-Gaddafi from power. By 1998, the Libyan government had succeeded in crushing LIFG's Libyan operations, and many of its members had fled to Afghanistan.<sup>7</sup> While many non-Afghans in Afghanistan had been prepared to fight the Northern Alliance for the establishment of a "pure Islamic" state, many of them were not prepared for September 11 and the ensuing U.S.-led invasion and "War on Terror," in which many of them would come to be seen as terrorists.<sup>8</sup> Leonid Syukiainen, a Russian academic, suggested parallels between some of the foreign fighters found in the aftermath of the U.S. invasion and the idealistic Westerners who had moved to the Soviet Union, following the 1917 Bolshevik Revolution, to build a socialist society.<sup>9</sup> "Of course, there had to be a combination of reasons for these people to flee to Afghanistan," Professor Syukiainen said, "but I believe that their strongest motive was that they sincerely sought a fair Islamic society there."<sup>10</sup> One candidate that appeared to meet Professor Syukiainen's description, a vagabond who sought to help build a theocratic Islamic state, was an American citizen — John Walker Lindh who earned the sobriquet "the American Taliban."

**“Omar was reported to be in talks to betray bin Laden to the Saudis until President Bill Clinton ordered air strikes against Afghanistan in 1998.”**

Lindh was born in Washington, D.C., and his family had moved to California when he was 10 years old. As a teenager, at a time of great turmoil in his parent's marriage, Lindh became deeply interested in Islam. He converted to the faith when he was 16. The following year, Lindh traveled to Yemen where he lived for 10 months studying Arabic and the Koran. After trips back and forth between the United States and Yemen, he left Yemen for Pakistan in 2000 and studied at a madrassa until May of 2001 when, at 20 years old, he left Pakistan to join the Taliban. Lindh's capture came in November 2001 after heavy fighting at Kunduz.

Lindh later said he had met Osama bin Laden while he was in Afghanistan but was only vaguely aware of his reputation at the time.<sup>11</sup> He claimed that prior to September 11 he had never heard of Al Qaeda, which terrorism experts found plausible.<sup>12</sup> "There were two kinds of training at Al Farooq (the training camp in Afghanistan Lindh attended) — Al Qaeda training, to fight civilians, and military training, to fight the Northern Alliance," explained Bruce Hoffman, a terrorism expert at the Rand Corporation in Washington. "Lindh took only the military training. Seventy thousand people were trained in general warfare at these camps, but perhaps only a tenth received advanced terrorist training."<sup>13</sup> Lindh claimed he was oblivious to terror plotting around him but admitted he had once been taken aside toward the end of his training by an Egyptian official named Abu Mohammed al-Masri, later identified as a confirmed member of Al Qaeda.<sup>14</sup> "He asked me whether I'd like to do a martyrdom operation" in the United States or Israel, according to Lindh. "I said no, I'm not interested in that. I came to fight the Northern Alliance, not other countries."<sup>15</sup> Al-Masri is said to have accepted Lindh's demurral but warned him that, whatever else he did, he was not to mention their conversation to anyone.<sup>16</sup>

Lindh's capture and detention is a useful, illustrative example of the controversy and confusion surrounding detainee matters in the early stages of the war. There were many foreign fighters in Afghanistan like Lindh. The collapse of the Taliban had come suddenly: Kunduz, Kabul and Kandahar — all under the control of the Taliban — had fallen to the United States and the Northern Alliance within just weeks of one another.<sup>17</sup> The light U.S. footprint designed for the military campaign by Secretary of Defense Donald Rumsfeld and the Pentagon embedded Special Forces and the CIA with the Northern Alliance's fighters. Following the initial battles in Afghanistan, Special Forces conducted village raids, going house to house, and rounded up suspected insurgents.<sup>18</sup> It was these elite U.S. forces and their allies who first dealt with prisoners taken from the battlefield.

Kunduz, where Lindh was captured, was the last city to fall in the north. Many Taliban and Al Qaeda soldiers, routed in other cities, had regrouped to Kunduz. Under relentless bombardment by the Americans and surrounded by the Northern Alliance, an estimated 450 foreign fighters agreed to surrender in Kunduz to the Northern Alliance warlord, General Abdul Rashid Dostum, who is today Afghanistan's chief of staff for the commander in chief of the Afghan army.<sup>19</sup> Afghan Taliban foot soldiers, most of whom deserted when the war's outcome became apparent, were welcomed by their counterparts on the other side. Senior Taliban leaders meanwhile, in many cases, were rescued by the Pakistani intelligence service, which had spent years supporting the Taliban.<sup>20</sup> Left behind were foreigners like Lindh. Mullah Faisal, Lindh's Taliban commander, had reached an agreement to pay Dostum around \$500,000 in exchange for his unit's safe passage out of the country.<sup>21</sup> Lindh had hoped to escape to Pakistan and then return to America. The foreign fighters at Kunduz, only after being disarmed, however, realized Mullah Faisal had been double-crossed and they were to be imprisoned rather than allowed to return to their home

countries. After a tense standoff, the prisoners were taken to Qala-i-Jangi, a prison fortress built in the 19th century. There, a CIA officer, Johnny “Mike” Spann interrogated Lindh briefly before a grisly prison riot broke out. Spann was killed in the ensuing riot.

The events that followed in response to the prison riot have been called a massacre and human rights violation. After Spann’s death, the non-Afghan prisoners overpowered their guards and were said to have broken into the armory.<sup>22</sup> Air strikes were called in against the prisoners. Twenty-four hours after the air strikes, oil was poured into the facility and set ablaze. The following day, as the clean-up of corpses was underway, four shots rang out from the basement and two rescue workers were injured.<sup>23</sup> Realizing people were still alive in the fortress, the Northern Alliance, along with the support of American advisors, devised a plan to divert a local water supply to flood the basement and finish off any remaining survivors.

Remarkably, 86 detainees survived the air strikes, oil and water attacks at Qala-i-Jangi. As they slowly emerged, a guard called out their varied nationalities: “Uzbekistan! Arab! Pakistan! Yemen! Chechnya!”<sup>24</sup> Amongst the survivors there were early clues of the complex issues each non-Afghan fighter would pose to his captors. One survivor of Qala-i-Jangi told Luke Harding, a reporter for *The Observer*, “we wanted to surrender on Thursday. But there was a group of seven Arabs who wouldn’t let us.”<sup>25</sup> A Uighur survivor of the riot at Qala-i-Jangi, told his Guantánamo Combatant Status Review Tribunal that a Uighur friend of his was killed there during the riot, but “I did not participate in the riot. They dropped bombs and I was injured. I was not a soldier. I have nothing against the Americans. Why would I participate in the riot.”<sup>26</sup> Of the 86 survivors, at least 50, including 21 Saudis and nine Yemenis, would be transferred to Guantánamo, where their alleged participation in the prison riot was used to justify their continued detention.<sup>27</sup>

As the uprising at Qala-i-Jangi was beginning, a far larger group of Taliban soldiers, at least 1,100 and possibly as many as 13,000 — together with an unknown number of fleeing civilians — surrendered to General Dostum five miles west of Kunduz, in the city in Yerghanek.<sup>28</sup> Very few of those from Yerghanek, perhaps 70 at most, were eventually transferred to Guantánamo. Many more might have wound up in Guantánamo had they survived. The trip from Yerghanek to Sheberghan, crowded into shipping containers without adequate ventilation or water.

According to the British journalist Andy Worthington, both the Taliban and the Northern Alliance had previously used shipping containers as a means of killing the other side’s prisoners. In 1997, a brutal Uzbek general for the Northern Alliance murdered 1,250 Taliban prisoners by leaving them in containers without food, air or water.<sup>29</sup> The Taliban had responded with similar behavior. Three British nationals, who would later come to be known as the “Tipton Three” because they all came from Tipton, England, survived their journey to Sheberghan from Yerghanek by licking the moisture from the sides of their shipping container to get water. They described their ordeal after being released from Guantánamo in March 2004. The Tipton Three, two of whom were 20 years old at the time of their capture, would later successfully sue to have their right to challenge, in U.S. courts, their detention at Guantánamo Bay. That landmark case, *Rasul v. Bush*,<sup>30</sup> was handed down by the Supreme Court in June 2004, three months after the Bush administration had already released Rasul and the other members of the Tipton Three.

The shipping container that took the Tipton Three from Yerghanek to Sheberghan arrived

at night, the whole spectacle allegedly illuminated by spotlights operated by U.S. Special Forces soldiers.<sup>31</sup> Of the 200 men originally in their container, according to the Tipton Three, only 20 survived. Physicians for Human Rights conducted a forensic assessment of the gravesites in early 2002.<sup>32</sup> It is unknown exactly how many hundreds or thousands of detainees died in the convoy.

What remains unclear is the participation of U.S. Special Forces in these acts, in late November and early December of 2001, and the extent of U.S. knowledge about the Northern Alliance's actions. No investigation was ever undertaken to unravel these questions. Several U.S. officials told *The New York Times* that American officials were "reluctant to pursue an investigation — sought by the FBI, the State Department, the Red Cross and human right groups — because [General] Dostum was on the payroll of the CIA and his militia worked closely with United States Special Forces in 2001." Additionally, Dostum was still serving in the American-supported government of President Hamid Karzai.<sup>34</sup> U.S. interrogators later became well aware of what happened because the survivors, many of whom ended up at Guantánamo, told them about the atrocities. As evidence mounted about the deaths, Secretary of State Colin L. Powell assigned Pierre-Richard Prosper, the U.S. ambassador-at-large for war crimes, to look into them in 2002.<sup>35</sup> Upon facing stiff resistance from both U.S. and Afghan officials, Prosper dropped his inquiry. "They made it clear that this was going to cause a problem," said Prosper, speaking in 2009 of the Afghan officials he dealt with in 2002. "They would say, 'We have had decades of war crimes. Where do you start?'"<sup>36</sup> In a July 2009 CNN interview, President Barack Obama said he had authorized a preliminary probe into the matter:

The indications that this had not been properly investigated just recently was brought to my attention. ... So what I've asked my national security team to do is to collect the facts for me that are known, and we'll probably make a decision in terms of how to approach it once we have all of the facts gathered up.<sup>37</sup>

Whether or not the White House ever indeed gathered facts about the alleged atrocities in the fall and winter of 2001, or whether it took any action, remains unknown.

## The Early Setup

On October 7, 2001, the U.S. military launched its invasion of Afghanistan and found quick military success in a country that had frustrated other superpowers.<sup>38</sup> On November 13, 2001, President George W. Bush issued an order authorizing the creation of detainee sites by the U.S. military, and by Christmas of 2001 facilities were open, running, and interrogations were ongoing.<sup>39</sup> The last Taliban city stronghold, Kandahar, fell December 6. There was a race to ready interrogation operations. The U.S. was collecting detainees fast. In late December there were 37 detainees in U.S. custody at Kandahar.<sup>40</sup> A month later, in late January 2002, the number was about 500.<sup>41</sup> On January 19, 2002, Defense Secretary Rumsfeld relayed to the Joint Chiefs that General Tommy Frank's order to observe the Geneva Conventions, issued October 17, 2001, had been rescinded.<sup>42</sup> There were a variety of holding sites out in the field, often called DIFS (Division Internment Facilities) and BIFS (Brigade Internment Facilities), but there were two important military sites to which a detainee was eventually sent if the detainee was to be kept in military custody in Afghanistan for any significant period of time: the Kandahar airport facility<sup>43</sup> and a larger site at Bagram Air Base, first called Bagram Collection Point (BCP) and later called the Bagram Theater Internment Facility.<sup>44</sup> The two sites became the first stop on the path to

Guantánamo Bay, Cuba. Of the early detention operations at Bagram, retired General Stanley McChrystal later wrote in his memoir “I had been deeply unimpressed with the interrogation facilities at Bagram when I first deployed to Afghanistan in 2002.”<sup>45</sup>

Army troops that dealt with detainees in Afghanistan fell into one of two groups: military police and military intelligence. Military police (MP) were those troops responsible for detention operations whereas military intelligence (MI) interrogators were responsible for gaining intelligence from human intelligence (HUMINT) subjects. The Army’s Center for Law and Military Operations released a report in August of 2004 that found there was virtually no guidance on detainee operations or policy in Afghanistan through formal channels to the field until June 2002, when the Combined Joint Task Force-180 (CJTF-180), a corps-level headquarters, was established.<sup>46</sup> On the interrogation side, the 202nd Military Intelligence Battalion (202nd) established the initial interrogation operations in Afghanistan. The 202nd reportedly produced nearly 1,500 intelligence reports in just over seven months, in a reports database that was called “superb” at the time by the Army’s first task force director for counterintelligence and human intelligence in Afghanistan.<sup>47</sup> Two military intelligence personnel from the 519th Military Intelligence Battalion (519th) were assigned to augment the 202nd. In August and September of 2002, the 202nd was replaced by the 519th, and two members from the 202nd stayed and trained the 519th on the local practices developed by the 202nd.<sup>48</sup>

Conditions and treatment both in Kandahar and at Bagram were, by accounts from detainees and soldiers alike, brutal. Conditions were reported slightly better, though only comparatively so, at Kandahar compared with Bagram. In-processing of detainees at both facilities was designed to shock new detainee arrivals in an effort to recreate “point of capture” shock in the hope new captives would be more compliant. The behavior included yelling, nakedness, body cavity searches, alleged beatings, sleep deprivation and barking military dogs. The behavior toward detainees was exhibited across both military police and military interrogation units. Many of these same techniques would later be found in Iraq and indeed several members of the 519th deployed to Iraq in the summer of 2003 to initiate interrogation operations there. Just as at Bagram, the 519th’s assistant operations officer, Captain Carolyn Wood, assumed duties as the interrogation officer in charge in Iraq.<sup>49</sup> In the fallout of the Abu Ghraib scandal, Captain Wood later told the Senate Armed Services Committee that interrogators had used sleep deprivation and stress positions in Afghanistan and that she “perceived the Iraq experience to be evolving into the same operational environment as Afghanistan.”<sup>50</sup>

Guidance to the field was lacking. The executive summary of the Church Report, a report the secretary of defense commissioned in May of 2004 to examine Department of Defense (DOD) interrogation operations, found that the interrogators in Afghanistan, in the absence of clear orders regarding interrogation, had been forced to “fall back on their training and experience” and “rely on a broad interpretation” of Army Field Manual (FM) 34-52.<sup>51</sup> Notably, only the executive summary of the Church Report is available to the public. However, in January 2011 an unclassified, public document filed in the United States military commission case against Noor Uthman Muhammed made several references to facts and findings supposedly contained within the complete Church Report that conflict with the public unclassified executive summary. While the Army Field Manual was theoretically in place according to the Church Report, unofficially, interrogators were pressured to utilize whatever tactics they could that were thought might gain intelligence.

Demand for information, demand for intel, we need raw intel we need this

information as soon as you can get it. Get it now, get it, get it, get it, get it, get it, get it. Great, how do you suggest we go about getting it? We don't. Get it, get it, get it, get it. That's all we got for like six months straight. We're like — Is there anything else? ...

Take the kid gloves off, stop playing nice. We were told get information, get it fast. It's not like we were sitting there going, ok, you don't want to talk to me, ok, have a nice day. It's not like we could do that. It's like every time you go to the interrogation room, you've got to go, ok, this guy knows information that could save a hundred of my friends. How do we get that information out of them?<sup>52</sup>

At Kandahar, Lieutenant Colonel Paul Keith Warman was in command at the detention facility in the days after the fall of the Taliban.<sup>53</sup> Kandahar was in crisis mode: space was inadequate, resources were inadequate, and there was constant pressure to empty cells. Detainees, as well as an interrogator, described how one interrogator at Kandahar always shouted the same question at arriving prisoners: "When did you last see Osama bin Laden?"<sup>54</sup> Sami al-Hajj, a cameraman for Al Jazeera who spent years in detention, first in Afghanistan and later at Guantánamo, says Kandahar seemed to him like a strategic collection site, as opposed to Bagram, where he was only ever asked about bin Laden.<sup>55</sup> Amongst the indignities al-Hajj recalled were being beaten, deprived of sleep, stripped naked, and being anally probed with an instrument when he was captured and brought to Kandahar.<sup>56</sup>

Anal cavity searches of detainees were a common source of complaint. The Australian David Hicks, who pleaded guilty to charges of providing support for terrorism and was returned to his home in Australia in 2007, wrote of the same experience. In his autobiography, Hicks described how he and a number of other detainees were flown from the USS Bataan to Kandahar where they were met and then forced to lie down while a soldier walked on their backs, stepping on one detainee after the other. Hicks described how he was then shaved entirely before a medical inspection.<sup>57</sup> Of the rectal probe he wrote:

I was bent over and held down by two soldiers who were escorting me. The soldier at this station held a large piece of white plastic and shoved it up my anus. As this was done, I heard a nearby soldier say, "Extra ribbed for your pleasure."<sup>58</sup>

On the practice of full-body nudity and anal cavity searches, in June 2004 the Jacoby Report, an internal military investigation of Afghanistan's prisons launched in the wake of the Abu Ghraib scandal, found there was no evidence rectal examinations were useful, either from a medical or a security standpoint.

There has been no evidence to reinforce the need for rectal or hernia examinations, and little or no justification for requiring full-body nudity as a part of exams or inspections. Guidance removing these processes from our procedures has been issued as part of this inspection.<sup>59</sup>

The practice was widespread enough that in January 2005, Deputy Defense Secretary Paul Wolfowitz issued a policy statement memorandum and guidelines on body cavity searches of detainees in DOD control. "The United States has a significant and legitimate interest in performing appropriate security searches and medical exams" the memo began. "However,

the use of body cavity exams and searches may conflict with the customs of some detainees.”<sup>60</sup> Body cavity searches were no longer to be routine and were only to be performed when there was a reasonable belief an item would be concealed that presented a security risk.<sup>61</sup>

Why were these techniques used as a part of in-processing? One interrogator said it appeared to many to have been a way to set the stage for later interrogation:

What’s the best way to get someone to talk to you? The direct approach. Ask a question, get an answer. What’s the best way to put them in that frame of mind? Fear! Of the unknown. The best way is adrenaline pumping through your body. Your mind isn’t thinking clearly. So: dogs, loud music, lots of light, no light, eyes covered. ...

Again, you are trying to jack up their level of aggravation. You are trying to create this balance between what they are frightened of and what’s going on. Usually they are in the hood at the time so they couldn’t just stare around and block out the sound. You take out the ability to block the sound by taking another sense away. So they’ll be sitting there listening to this music they hate, it’s blaring at them, so their entire body’s adrenaline is rushing, their heart is pounding cause they are aggravated. You’d walk in, turn it off.<sup>62</sup>

**“Even in those instances where interrogators felt a detainee shouldn’t be transferred to Guantánamo, their recommendations were often overruled.”**

## Afghanistan’s Road to Guantánamo

Afghanistan was, in the beginning, where prisoners were gathered and interrogated, and not just those captured in Afghanistan. Detainees from the Far East, from Africa, and from the Middle East all found themselves transferred to Kandahar and/or Bagram. One such detainee was Moazzam Begg, a dual-citizen of Great Britain and Pakistan who was apprehended at his rented home in Islamabad in early 2002.

After his release from Guantánamo in 2005, Begg remained a controversial figure.<sup>63</sup> In 2010, a cable from the State Department praised Begg for his work in Europe persuading European governments to take in remaining detainees at Guantánamo.<sup>64</sup> Begg was raised in an educated, middle-class family in Birmingham, and was sent to a Jewish elementary school.<sup>65</sup> Throughout the 1990s, Begg traveled to Pakistan, Afghanistan and Bosnia, he said, to learn more about his heritage and to work with Muslim charities.<sup>66</sup> Those travels included visits to Bosnian battle zones and to two Afghan training camps. While living in Peshawar, Pakistan, in 1998, Begg was suspected of having met Khalil Deek, an associate of Abu Zubaydah, and assisting him in crafting a CD-ROM version of a terror manual.<sup>67</sup> Begg acknowledged meeting Deek and collaborating on a business idea to sell traditional clothing, but says he never met Abu Zubaydah.<sup>68</sup> Begg returned to the U.K. with his family in 1998 and opened an Islamic bookstore in Birmingham, which he described as a meeting place for young Muslims.<sup>69</sup> The store was raided twice in 1999 and 2000 by British police, but Begg was never charged with a crime.<sup>70</sup> Begg stated that he had believed the security establishment’s interest in his store was “a silly mistake or a fishing trip” until the second raid. In the summer of 2001, Begg moved his family to Kabul, where his stated plan was to start a girls’ school and oversee a project digging wells.<sup>71</sup> After the September 11 attacks and the initiation of the U.S. war in Afghanistan, Begg

evacuated his family to Pakistan.<sup>72</sup> Begg's 2004 Guantánamo *habeas* petition stated he was seized at his rented home by Pakistani officials on January 31, 2002.<sup>73</sup> Begg claims he was first interrogated by Pakistani interrogators for several weeks before he was turned over to American CIA officers, who threw him into the trunk of a car and took him to Bagram.<sup>74</sup>

With the prisoners in their custody, interrogators faced a dilemma. In the face of inadequate intelligence they had to make a decision in many cases whether detainees should be either repatriated or transferred to Guantánamo. Even in those instances where interrogators felt a detainee shouldn't be transferred to Guantánamo, their recommendations were often overruled. Joshua Claus, one of Moazzam Begg's former interrogators said of Begg, "Nicest guy who ever got screwed in his life!"<sup>75</sup> Claus pleaded guilty to assault, prisoner maltreatment, and lying to investigators in 2005 and was sentenced to five months in prison for detainee abuse and for his role in the death of a detainee known by the single name of Dilawar. When Claus was asked why Begg was sent to Guantánamo rather than repatriated, he told Task Force staff:

Because no one listens to us. No one listens to us. Our recommendations don't mean shit. We told them, "Moazzam is a good guy. He got snatched up because he was in the wrong place [at] the wrong time and because he's a London English speaker." People were all bent out of shape about him. They were just hard core: Moazzam had to be evil. They couldn't prove it. That's why he was there so long. And then finally they were saying: just send him with the crew! "Why? We're telling you, send him home!"<sup>76</sup>

Strong evidence suggests that at least some U.S. officials were aware public statements claiming that Guantánamo only housed "the worst of the worst" were incorrect. An outside 2006 review of the military's own data on detainees was striking in this regard. The study found only 8 percent of Guantánamo detainees were identified as "fighters" for Al Qaeda.<sup>77</sup> Forty-five percent of detainees were identified as having committed a hostile act against the United States or its allies.<sup>78</sup> Hostile acts could include fleeing an area under bombardment by U.S. forces.<sup>79</sup> Ninety-three percent of the detainees were not captured by U.S. or coalition forces.<sup>80</sup> A majority were handed over to the United States by Pakistani or "not stated" authorities when the U.S. was still offering bounties for terrorist suspects.<sup>81</sup>

Initially, all Arabs in custody in Afghanistan were sent to Guantánamo without exception. It did not matter what the interrogators personally thought after the interviews. "Every Arab was supposed to go," wrote Chris Mackey in *The Interrogators*, but "not every Arab should have been sent."<sup>82</sup> Torin Nelson, an interrogator working at Guantánamo in the first few months, "realized that a large majority of the population just had no business being at Guantánamo."<sup>83</sup> In the spring of 2002, during a short lull in transfers to Guantánamo from Afghanistan, Major General Dunlavey, the head of Guantánamo's Task Force 170, visited Kandahar to demand changes. The prisoners being sent to Guantánamo from Kandahar, Dunlavey felt, weren't "the worse of the worst."<sup>84</sup> Of Dunlavey's visit Mackey wrote, "Dunlavey complained Kandahar wasn't being nearly selective enough in filling out its transfer lists."<sup>85</sup>

Following Dunlavey's visit, a few changes were made to the screening process. The process began with the interrogators making a recommendation about each detainee. The categories were: hold in Afghanistan, transfer to Guantánamo, or repatriate. After hearing a

recommendation, the operations officer would ask additional questions about the reasoning before presenting selected individuals at a weekly meeting.<sup>86</sup>

Since many detainees had no identification or biographical information beyond what they themselves volunteered to the interrogators, a great deal of uncertainty surrounded each detainee and each recommendation. Recruits had been brought to training camps in Afghanistan by “facilitators,” a network of supporters aiding the militant cause in Europe, the Middle East and Northern Africa. During their journey recruits gave up their identification and adopted aliases. Detainees with empty pasts were left to have the gaps filled in, often by the worst assumptions of their captors.<sup>87</sup> As former United States ambassador-at-large for war crimes Pierre-Richard Prosper explained “[w]hat people need to realize is that, in the fog of war, you are picking up individuals who have literally nothing but litter in their pockets. Maybe scrap pieces of paper. We have no idea who they are.”<sup>88</sup> Retired Army Colonel Stuart Herrington recalled in an interview with Task Force staff that, when he arrived at Guantánamo in 2002, he was told by interrogators they were uncertain if they had the real names of up to 60 percent of the detainees who were there.

One of the first men to be released from Guantánamo was a man by the name of Faiz Mohammed. Faiz was later described by a fellow detainee:

He was a very old man. Two soldiers harshly dragged him into the tent and dropped him on the floor. He was ordered to stand but neither could he stand nor was he able to understand the men. ... On the second day when he was called for interrogation and had to lie down to be tied up, he did not understand again. Soon the soldiers let their passions loose and kicked him to the ground ... All the while the old man was shouting. He thought he was going to be slaughtered and screamed, “Infidels! Let me pray before you slaughter me!” ...

When he came back I sat down to talk to him. He said he was from Uruzgan province and that he lived in Char Chino district. He told me he was 105 years old and eventually he was the first man to be released from the Hell of Guantánamo.<sup>89</sup>

*The New York Times* described Faiz Mohammed after his 2002 release from Guantánamo.

One of them, Faiz Mohammed, said he was 105. Babbling at times like a child, the partially deaf, shriveled old man was unable to answer simple questions. He struggled to complete sentences and strained to hear words that were shouted at him. His faded mind kept failing him. First he said that American soldiers took him away twelve months ago. Then he said he was five years old during the rule of the Afghan King Amanullah, which would make him at least 78, and that he spent eight months in an American prison. He was asked if he was angry at the American soldiers who arrested him. “I don’t mind,” he said, his face brightening. “They took my old clothes and gave me new clothes.”<sup>90</sup>

Detentions were in many cases not just unjust, but especially counterproductive. Detainees in U.S. custody included former prisoners of the Taliban *itself*, the very regime the U.S. had just overthrown. The Taliban had considered some of its prisoners spies, but ironically, and

**“...only 8 percent of Guantánamo detainees were identified as ‘fighters’ for Al Qaeda.”**

incomprehensibly, the arrival of Western forces was little help to them, as they were not freed, but taken in as detainees, and, at least in some cases, taken to Guantánamo.<sup>91</sup>

Ali Shah Mousavi was a Shiite from a prominent family in Gardez. He had been a doctor and was chosen as a representative for the Loya Jirga (an assembly of regional leaders and tribal chiefs) in Kabul to help form the new Afghan government. Not only had he been an enemy of the Taliban, but he had worked extensively with the Americans and Europeans. One day in 2002 he simply disappeared and no one knew he had been taken to Bagram and later to Guantánamo.<sup>92</sup> Similarly Haji Rohullah Wakil, an important Afghan figure, was shipped to Guantánamo and released two years later.<sup>93</sup> After his release, Wakil met frequently with Afghan president Hamid Karzai and other senior Afghan government leaders.

As important as the road from Afghanistan to Guantánamo was for many detainees, there were at least some instances where non-Afghan detainees, captured overseas, were held at Bagram and *not* sent to Guantánamo. In 2006, *habeas* petitions were filed by three men at Bagram — one captured in Thailand, one in Dubai, and one in Pakistan — none of whom was Afghan.

## The Deaths of Detainees Mullah Habibullah and Dilawar at Bagram in December 2002

Documented incidents of abuse that took place in the detention process in the Afghan theater included: use of “compliance blows” on restrained detainees, use of pressure point control tactics to inflict pain, use of loud music to disorient detainees, sleep deprivation, routine hooding, military working dogs, shackling of detainees from their wrists to a ceiling to keep them standing so they couldn’t fall asleep, rough physical handling and medical exams during detainee in-processing, extended isolation, shackling for punishment, stress positions, male and female interrogators touching a detainee or acting toward a detainee in a sexual manner, physical assaults, and threats of physical assault.<sup>94</sup>

The Bagram Collection Point (BCP) was set up at the very beginning of 2002, in a giant old machine shop at Bagram. The uninterrupted space was vast, like a huge warehouse. It was more than 50 feet high and 300 feet long, with a cement floor. Detainees were held in what were essentially four to six pens, or cages, with each pen separated from one other by razor wire walls. Functionally, there were no walls, other than those of the razor wire. The razor wire was manipulated to form doors.

The door space, called a sally port, was where the MPs interacted with the detainees. In some instances, detainees were sometimes chained in standing positions for days at the sally port. Claus described the place as “Orwellian”:

You can smell it about 10 feet before you open the door. ... And then you open the door. We walked into a warehouse that stank worse than most people’s garbage cans that have been left out in the heat for three months. ... You get hit by these waves of stench. And then after three days you never notice it again.<sup>95</sup>

For the first year that Bagram operated, detainees there were told to remain completely silent except when being interrogated, likely because interrogators were concerned that detainees

would collude with one another. The typical punishment for speaking to a fellow detainee in the pen would be various stress positions or standing. Al Jazeera cameraman Sami al-Hajj said he was beaten upon entry at Bagram in 2002 and stripped naked while dogs barked and soldiers yelled.<sup>96</sup> He said he waited, for 10 days, in the cage with other detainees, with whom he was forbidden to talk.

There were four interrogation rooms at the BCP, which weren't soundproof, and there were several "isolation" rooms, where MPs could hold detainees for punitive measures or for isolation. The facility had no climate control and the windows were open so it was freezing cold in the winter and immensely hot in the summer. Toilets were 50-gallon drums cut in half and laid at the rear of each pen.<sup>97</sup> Detainees were forbidden from using drinking water to wash their hands after using the toilets. Well-behaved detainees would, every few days, be forced to pick up the drums and carry them outside to mix the contents with diesel fuel for incineration as the MPs were, at times, understaffed.

December 2, 2002, was notable for several reasons. On that day, Secretary Rumsfeld had, in his office at the Pentagon, approved a controversial list of harsh interrogation tactics for use in Guantánamo and even scrawled a note that questioned why detainees were only forced to stand for four hours at a stretch while he, himself, would voluntarily stand for eight hours a day. On the same day at the BCP, Mullah Habibullah, an Afghan whose innocence or guilt was never known, was found dead, hanging by his shackled wrists in an isolation cell. Habibullah had, by many accounts of his interrogators, been noncompliant. He had been disdainful of his captors and disrespectful and as a result had made himself a target of their anger and frustration. Habibullah's Army autopsy report indicated the cause of death had been a pulmonary embolism caused by blunt force trauma.<sup>98</sup> Most likely a blood clot, caused by severe injuries to his legs, had traveled to his heart blocking his blood flow. Less than a week later, another death occurred. Dilawar, the second man to die, had been held for days, and had, in fact, been approved for release. Dilawar was a 22-year-old Afghan taxi driver known by his single name. He had been picked up as he was driving passengers past a remote American base that had been under rocket attack just hours earlier. The members of the 377th MP Company would knee prisoners in their thighs for being unruly or disobedient, a powerful pressure point control tactic. By the time of his final interrogation with Joshua Claus, Dilawar's legs had been kicked mercilessly as he had hung from the doorway and he could barely walk. Dilawar was delirious, and believed his wife had died and that her ghost had come to the interrogation cell. Dilawar was so badly beaten that he could not adequately respond to questions, and Claus figured the inability to answer was an indication of guilt. Claus believed Dilawar, who was subsequently demonstrated to be an innocent taxi driver, had been practicing what was taught in Al Qaeda's training manual to resist interrogation techniques:

At this point in the interrogation I thought he was reverting back to Al Qaeda's training manual, of how to avoid interrogation. Have you heard of that? He did five out of the six things. Almost in a row: can't understand the interpreter, pretend you're sick, ask for special things, pretend you can't hear. He went through all those things. Turned out he got his ass beat and I didn't know.<sup>99</sup>

In 2001, investigators in Manchester, England, while searching the home of a suspected Al Qaeda operative, had discovered a crude manual that sought to instruct Al Qaeda recruits on how to

**“Dilawar’s legs were beaten so badly they had been ‘pulpified’; his injuries were similar to those that would have resulted from being run over by a bus, and would have required amputation had he survived.”**

avoid giving up intelligence during interrogations.<sup>100</sup> To interrogators, and policymakers back in Washington, it was touted as a document of immense significance, because it seemed to suggest Al Qaeda had developed techniques to resist what was in the Army Field Manual.<sup>101</sup> As valuable as it may have seemed, there were troubling assumptions made based upon it. What would have ordinarily been taken as normal behavior by a detainee, like denials, requests for help, or lack of comprehension, could now be construed as incriminating indicators of Al Qaeda membership.

After Claus finished his interrogation, Dilawar was taken away by MPs. As with Habibullah, he was found dead the next day, hanging by his shackled wrists in an isolation cell.<sup>102</sup> An Army pathologist reported that Dilawar's legs were beaten so badly they had been "pulpified;" his injuries were similar to those that would have resulted from being run over by a bus, and would have required amputation had he survived.<sup>103</sup> For reasons that remain unclear, it was not until April 2004 — the same month that the garish photos from Abu Ghraib splashed across American television sets, 16 months after the two deaths — that investigators even began to question officers who had served on the command staff at Bagram in late 2002.<sup>104</sup> A June 2004 Military Justice Field Report stated:

CPT was (and currently still is) the Company Commander of the 377th MP Co, which was deployed to Afghanistan in the fall of 2002. In December 2002, at Bagram Detention Facility, 2 Afghan detainees died while in the custody and control of US forces, specifically members of the 377th MP Co and an active duty MI Company, A Co, 519th MI Bn. The deaths were determined to be a result of blunt force trauma by various members of the 377th and 519th.<sup>105</sup>

The captain referenced in the report was Captain Christopher M. Beiring. In a sworn statement Army JAG then-Major Jeff A. Bovarnick recalled a November 26, 2002, meeting he had with captains Beiring and Wood, less than a week before Habibullah's death, when Major Bovarnick directed changes:

I remember a lot of friction between CPT Wood, MI Commander and myself and CPT Beiring, MP Commander, when I directed changes. CPT Beiring was a very weak commander, but he did not want responsibility for warming their food, getting them clean clothes, simple stuff that made sense. He was very resistant to changing anything. I worked with a couple of the MP Lieutenants, whose attitude was much better.<sup>106</sup>

Charges against Captain Beiring were later dropped.<sup>107</sup> As for Captain Wood, while the Army did have an interrogation school at Fort Huachuca in Arizona, and a field manual governing interrogations, few of the interrogators deployed to Bagram in Wood's unit had ever been trained at that school.<sup>108</sup> Even those who were trained were told to forget the Cold War-based training they had received and to forget what they knew when they arrived. Claus said:

Our first briefing was "this is nothing like you learned before! Everything you've learned is great basics, none of it is going to actually work." We were supposed to make interrogation books, you have different sections for you know, units information, things like that. We were told these things are absolutely useless don't even bother bringing them.<sup>109</sup>

The interrogators frequently forced detainees into stress positions, painful kneeling or squatting “daily” one later said in a sworn statement.<sup>110</sup> Sleep deprivation, referred to as sleep adjustment, lasted for up to 72 hours.<sup>111</sup> Coincidentally, or perhaps not, the 72-hour time frame for sleep deprivation was the same that the CIA permitted for sleep deprivation in its secret facilities.<sup>112</sup> The cruelest and most unusual part of sleep deprivation at Bagram was that it was enforced by MPs who simply chained the detainees to the doorframes by their wrists. It was in this position that Habibullah and Dilawar were both discovered. Sleep deprivation had morphed into forced standing. Army criminal investigator Angela Birt, who began investigating the deaths in 2003, described it this way:

**“To me it was a great big billboard: ‘Murder, Murder, Murder!’ You don’t accidentally hang someone from a ceiling and beat them to death.”**

The MPs were brutal, and they were brutal, we believed, as a function of being the arm of the MI [military interrogator] folks. The captain who was in charge of the 377 at the facility, Christopher Beiring, was previously branched MI. He had just gone to MP officer school before he deployed but his familiarity and his comfort zone was with the Military Intelligence mission. So when Captain Wood came in, she had a very strong personality. She told him what she wanted and he was very familiar with the MI mission and not so familiar with the MP mission. Well she asked to keep these guys awake. ... [T]hey were doing it at Kandahar in the STIF but they were not doing it by chaining people to the ceilings. They would just go by and say, hey, wake up. There was no physical violence. ...

The 377th was just lazy: they wanted to be able to keep these guys awake so they chained them in a standing position. And doing that you can cause deep vein thrombosis, just like you can get on an aircraft, and that was one contributing thing that killed one of the detainees. One of them had very serious thrombosis in his lower legs.<sup>113</sup>

The initial investigation into the deaths was stillborn. Notably, the MPs had convinced the first set of criminal investigators that the blows they had dealt to the legs of Dilawar and Habibullah were completely authorized and routine. Angela Birt was shocked investigators didn’t pursue it:

I’ll be really candid [the investigators] drank the Kool-Aid. They wrote reports saying these were authorized use of force and that these were accidental deaths. ... They really believed it was authorized, and I could never understand where they got that from. So many people at the prison had told them that it was authorized that they believed it. ...

To me it was a great big billboard: “Murder, Murder, Murder!” And it was on the death certificate: Homicide. And I didn’t understand how we got from there to “Oh, it was just an accident.” You don’t accidentally hang someone from a ceiling and beat them to death.<sup>114</sup>

Private William Brand was one of the MPs who caused Dilawar’s death by kneeling him repeatedly in the thigh. His court-martial panel found him guilty of maiming, assault, maltreatment and making a false statement, but the panel sentenced him to only a reduction

in rank. Brand was honorably discharged. Following the court-martial, a battalion commander who had sat on Brand's jury had been asked how he had viewed the defendant.

This individual was an American citizen who had been called up. ... He had volunteered, and when they called upon him to perform his duties in a time of war, he did it without question.<sup>115</sup>

One after one, military court-martial panels were reluctant to punish comrades who had been following the operating procedures in place and listening to the instructions of their leadership. At the court-martial of Private Damien Corsetti, Captain Wood, who had been granted prosecutorial immunity in exchange for her testimony, recounted constant efforts on her part to seek clarification on permissible interrogation techniques.<sup>116</sup> Wood said that sleep deprivation and stress positions were authorized.<sup>117</sup> Following the December 2002 deaths, in January 2003, Lieutenant Colonel Robert Cotell produced a memorandum describing "current and past" interrogation techniques used by CJTF-180 interrogators that included up to 96 hours of isolation, the use of female interrogators to create "discomfort" and gain more information, sleep adjustment, deprivation of light and sound in living areas, the use of a hood during interrogation, and mild physical contact.<sup>118</sup>

Cotell's memo approved the use of those techniques and recommended use of five additional techniques, including: "deprivation of clothing" to put detainees in a "shameful, uncomfortable situation"; "food deprivation"; "sensory overload — loud music or temperature regulation"; "controlled fear through the use of muzzled, trained, military working dogs"; and "use of light and noise deprivation."<sup>119</sup> Colonel Theodore Nicholas, Director of Intelligence for the Army's Task Force in Afghanistan, said in a sworn statement "I was aware of [the practice of shackling detainees] and observed at least one individual standing with his arms shackled and attached to the entrance door at waist level."<sup>120</sup> Precisely how high up the chain of command knowledge about the interrogation program went is unknown, but many of the MPs and interrogators saw senior officials visit their site on a regular basis. According to Claus,

We had dignitaries, generals. If anyone large came to Bagram they wanted to have a tour of us. ... And everyone's saying [OK] and then walking out. I had people sit in interrogations because they wanted to see them. ...

We would randomly see [Captain Wood] wandering through with eagles, stars, and in suits and ties. ... So I don't understand why people kept bitching at us saying we are evil. Everybody who was anybody in the world walked through that place.<sup>121</sup>

## **The Other Government Agency: The CIA and The Salt Pit**

The CIA had been granted sweeping new legal authority to hunt down, capture or kill suspected terrorists anywhere in the world in the wake of September 11, but the agency had virtually no trained interrogators. On September 12, 2001, the CIA had numerous polygraphers, psychological profilers, and agents highly skilled in debriefing defectors, but ever since Vietnam, the CIA had stayed away from interrogation.<sup>122</sup> An outside adviser to the CIA

said “they had very little experience with interrogation. When 9/11 hit, it was fifty-two-card pick-up.”<sup>123</sup>

Many inside the CIA had misgivings. “A lot of us knew this would be a can of worms,” according to a former operative who was involved. “It was going to get a lot uglier. We warned them, it’s going to be an atrocious mess. ... What are you going to do with these people? The utility of someone [like Abu Zubaydah] is at most six months to a year. You exhaust them. Then what?”<sup>124</sup> However, former CIA Acting General Counsel John Rizzo, who has spoken out in defense of the agency’s program, and to whom John Yoo addressed one of the now infamous Torture Memos, told Task Force staff that never — not once — did any member of the agency ever approach him to express concerns about its “enhanced interrogation program.”

What sustained me, it was the people who were involved, the lifers, the career CIA people who were involved in this program believed in it. And they were not myopic, they knew as it was getting increasingly controversial, that they were likely going to wind up in investigation, and recriminations. ... [T]hey knew all that. And yet they were steadfast in believing in the value of the program.<sup>125</sup>

At least some within the CIA were uncomfortable, as internal complaints about the program triggered a highly critical 2004 report from the agency’s inspector general.

CIA detainee operations in Afghanistan must be examined separately from those run by the military. The CIA is believed to have operated under “different rules” and at a different site or sites, at least one of which, based in Kabul, came to be called the “Salt Pit.” Initially CIA operations were disorganized and impromptu but later became more systematic. Accounts of former detainees subjected to CIA renditions between the years 2002 and 2005 showed standardized treatment during transfer.<sup>126</sup>

In most cases, the detainee was stripped of his clothes, photographed naked, and administered a body cavity search (rectal examination). Some detainees described the insertion of a suppository at that time. The detainee was then dressed in a diaper. His ears were plugged, headphones were placed on his head, he was blindfolded or provided black goggles, and his head was wrapped with bandages and adhesive tape. The detainee’s arms and legs were shackled and he was put into the transportation vehicle.<sup>127</sup>

Five former members of the Libyan Islamic Fighting Group (LIFG) told Human Rights Watch they were detained in prisons run by the CIA in Afghanistan for between eight months and two years. Abuse there allegedly included

being chained to walls naked sometimes while diapered in pitch dark, windowless cells, for weeks or months at a time; being restrained in painful stress positions for long periods of time, being forced into cramped spaces; being beaten and slammed into walls; being kept inside for nearly five months without the ability to bathe; being denied food and being denied sleep by continuous, deafeningly loud Western music.<sup>128</sup>

**“So I don’t understand why people kept bitching at us saying we are evil. Everybody who was anybody in the world walked through that place.”**

Significantly, the Salt Pit appears to have been a hub of the CIA program, and many high-value detainees transitioned through the Salt Pit, at one point or another. CIA detainees were often released and given to the military when the CIA was done with them or convinced they were not a threat. Often the CIA handed over detainees without information about the detainee.

The military had to not only deal with detainees from the CIA, ubiquitously referred to as “Other Government Agency” or OGA, but also from their own special forces. Detainees from U.S. special forces were constantly dropped off, often times without disclosing their names or what they were doing there. “Capture tags” — tags that identified information about a detainee — were often missing. Military interrogators came to believe that many had been innocent “dirt farmers” and shouldn’t have been picked up in the first place. As to the actions of any OGA, the Church Report executive summary sought to make clear the actions of any such agency were beyond the scope of its report:

[I]t was beyond the scope of our tasking to investigate the existence, location or policies governing detention facilities that may be exclusively operated by OGAs, rather than by DoD however senior [DoD] officials expressed clear expectations that DoD-authorized interrogation policies would be followed during any interrogation conducted in a DoD facility.<sup>129</sup>

As in the official military detention system, deaths occurred in the CIA’s program. At least one man died at the Salt Pit: Gul Rahman. a suspected Afghan militant, died on November 20, 2002, three weeks before Dilawar and Habibullah were killed at Bagram. Rahman was kept in chains outside the Salt Pit overnight as temperatures near Kabul dipped to freezing. The subsequent forensic exam on Rahman determined he had frozen to death.<sup>130</sup>

Rahman’s death is not the only known death in the CIA system. David Passaro, a CIA contractor, beat Abdul Wali at a U.S. base in Kunar Province until Wali died on June 21, 2003. Passaro was charged and convicted of felony assault with a dangerous weapon and three counts of misdemeanor assault, for which he was sentenced in 2006 to eight years and four months in prison. Passaro was assisted in his interrogation by nearby soldiers from the 82nd Airborne Division. While the beating and death of Wali was not linked to the CIA’s approved “enhanced interrogation program,” the federal appeals court reviewing Passaro’s conviction described “Passaro’s brutal attack” “as including repeatedly throwing Wali to the ground, striking him open handed, hitting him on the arms and on the legs, with a heavy Maglite type flashlight.”<sup>131</sup> The interrogation was videotaped by a soldier named “Sgt. Sellers” but the taping stopped, Sellers testified, when Passaro pushed Wali against a wall.<sup>132</sup> Two days prior, Passaro had told the military guards “to maintain Wali in a series of ‘stress positions’<sup>133</sup> Significantly, Passaro “told the guards that while they could not strike Wali, he had different rules which permitted him to administer any force so long as it was not life threatening.”<sup>134</sup> On June 21, two days after Wali’s interrogation had begun, Wali collapsed. Passaro kicked him one final time while he lay there, and Wali was pronounced dead 20 minutes later.<sup>135</sup>

Passaro remains the only individual affiliated with the CIA to have been charged for misconduct in connection with detainees. On August 30, 2012, Attorney General Eric Holder announced the completion of an investigation into the deaths of two individuals in U.S. custody overseas. The investigation, by Assistant U.S. Attorney John Durham, resulted in no subsequent prosecutions of any CIA officials.<sup>136</sup>

## The Development of the Counterinsurgent Strategy (COIN)

Following Abu Ghraib, a series of examinations and reports were initiated. The Jacoby Report, mentioned earlier in this chapter, solely focused on Afghanistan. It recommended that only qualified school-trained interrogators (from Fort Huachuca) conduct interrogations. The report found allegations of detainee abuse had been substantiated.<sup>137</sup> It found that a “lack of thoroughly authorized, disseminated, and understood guidance and procedures create opportunities for detainee abuse and the loss of intelligence value throughout the process.”<sup>138</sup> The problem, as the report saw it, was with low-level troops: “While there was a near universal understanding in [the Combined Joint Task Force] that humane treatment was the standard by which detainees would be treated, guard awareness and application of standard operating procedures (SOP) was lacking.”<sup>139</sup> The report also found:

Improved interrogation training leading to the certification of all interrogators will improve intelligence gathering and dissemination of actionable intelligence as well as improve the detainee screening process. Interrogators need training on Afghan culture, traditions and history to be able to get the most intelligence from detainees. Additionally, combat commanders at all levels need training on interrogation and detainee chain of custody to ensure that unit actions do not interfere with or negatively affect the interrogation of detainees.<sup>140</sup>

An enclosure to the Jacoby Report is a March 26, 2004, memorandum from CJTF-180 to an unknown distribution list. The subject line of the memo read “CJTF-180 Authorized Interrogation Approaches and Strategies.”<sup>141</sup> The purpose of the memo was to “identify approved interrogation techniques and strategies to be used at Battlefield Interrogation sites throughout the CJTF-180 AOR and at the Joint Interrogation Facility located in Bagram, Afghanistan.”<sup>142</sup> It referenced three sources: the Army Field Manual; a memo on counter-resistance techniques in the “War on Terror” dated April 18, 2003; and “Working Group on Detainee Interrogations in the Global War on Terrorism (GWOT),” dated January 15, 2003. The Jacoby Report’s enclosure demonstrates that the Pentagon’s Working Group memo, which had generated considerable controversy within the Pentagon [see Chapter 1], had indeed made its way to the troops in the field in Afghanistan.

After 2004, treatment of detainees improved at Bagram, though conditions remained primitive and legal processes and reviews remained largely inadequate. In March 2005, the Church Report was completed and released. Its focus was to investigate whether DOD had promulgated interrogation policies that had directed, sanctioned or encouraged the abuse of detainees. At least in the public unclassified summary, the report found DOD had not done so; it “found no link between approved interrogation techniques and detainee abuse.”<sup>143</sup>

Significantly, nothing in our investigation of interrogation and detention operations in Afghanistan or Iraq suggested that the chaotic and abusive environment that existed at the Abu Ghraib prison in the fall of 2003 was repeated elsewhere.<sup>144</sup>

As discussed above, the complete report remains classified; however, references to the classified

report appear in other publicly available documents and it appears the classified report may, if not contradict, at least undermine, some of the findings in the unclassified executive summary.

Even from the Church Report's executive summary, it was clear interrogation policy was fluid and constantly changing. To that point however, the report nonetheless found that

[e]ven if interrogators were "confused" by the issuance of multiple interrogation policies within a short span of time, as some have hypothesized regarding Abu Ghraib, it is clear that none of the approved policies — no matter which version the interrogators followed — would have permitted the types of abuse that occurred.<sup>145</sup>

Of pressure being placed on interrogators to gain actionable intelligence, the Church Report stated:

Finally, there has been much speculation regarding the notion that undue pressure for actionable intelligence contributed to the abuses at Abu Ghraib, and that such pressure also manifested itself throughout Iraq. It is certainly true that "pressure" was applied in Iraq through the chain of command, but a certain amount of pressure is to be expected in a combat environment.<sup>146</sup>

The report didn't find fault solely with individual actors. It also found blame with unit leadership: "there was a failure to react to early warning signs of abuse" and "a breakdown of good order and discipline in some units could account for other incidents of abuse." "As documented in previous reports (including MG Fay's and MG Taguba's investigations), stronger leadership and greater oversight would have lessened the likelihood of abuse."<sup>147</sup>

After taking office, President Obama issued an executive order calling for review and reform of detainee operations.<sup>148</sup> In 2009, U.S. Special Envoy for Afghanistan Richard Holbrooke invited Marine Major General Doug Stone to examine the Afghan detention system.<sup>149</sup> General Stone, as also discussed in Chapter 3, had been widely praised for changing the detention methods used in Iraq in 2007 and 2008, focusing on the rehabilitation and reintegration of detainees in Iraq during "The Surge." At Holbrooke's request, Stone launched a review of the Afghan system. In 2008, U.S. forces were struggling with transferring prisoners from the crude and overcrowded Bagram facility into Afghan prisons.<sup>150</sup> General Stone observed to Task Force staff that Bagram was "inappropriate, there were supply cages packed with guys."<sup>151</sup>

Moreover, Stone estimated that of the 600 detainees at Bagram in 2009, two-thirds should not be in custody.<sup>152</sup> Specifically, he reported that two out of every three detainees were either innocent or posed no security threat. Stone provided an extensive report on suggested changes to the detention program in Afghanistan.

That same year a new facility replaced Bagram, called the Detention Facility at Parwan (DFIP), which is today considered a vast improvement, at least insofar as its physical plant and facilities are concerned. The new facility has large cells, temperature-controlled facilities, a soccer field, and classrooms.<sup>153</sup> As of the date of this report, the volume of detainees churning through DFIP remains large. In June 2011, it was estimated that over 1,700 detainees were in custody at Parwan, up from over 600 at the end of the Bush administration.<sup>154</sup> The numbers

increased from 1,100 detainees in September 2010 to 3,110 detainees in March 2012.<sup>155</sup> By contrast, in 2004 there had been just 100 detainees at Bagram.<sup>156</sup>

In 2006 and 2007, both civilian casualties from U.S. airstrikes and the detainee population in Afghanistan rose significantly, which led to a backlash from the civilian population.<sup>157</sup> An upsurge in arrests within a short period — giving the impression of indiscriminate captures — continued to directly cause a decline in local support for the presence of U.S. troops.<sup>158</sup> The crucial lesson was that detention facilities were inseparable from the kinetic battlefield. According to General Stone, the attacks on hotels and guesthouses in Afghanistan in October of 2009 (leading up to the presidential election on November 7 between Hamid Karzai and Abdullah Abdullah), were planned from within detention facilities.<sup>159</sup>

They are planning operations from the inside. That actually clearly happens in Iraq prisons, [and certainly] in Afghan prisons. That was one of the major observations that I made while over there, that most of the operations, most of the major bombings in the hotels, etc., were being planned for and run by detainees.”<sup>160</sup>

In his 2009 review of Afghanistan operations, General McChrystal recognized detainee operations as a key component of the U.S. strategy for success in Afghanistan. As to detainee operations, the report seemed to draw from the perceived lessons and successes of General Petraeus and General Stone in Iraq.

As always, the detention process must be effective in providing key intelligence and avoid ‘catch and release’ approaches that endanger coalition and [Afghan National Security Forces] ANSF. It is therefore imperative to evolve to a more holistic model centered on an Afghan-run system. This will require a comprehensive system that addresses the entire “life-cycle” and extends from point of capture to eventual reintegration or prosecution.<sup>161</sup>

Currently, Taliban and Al Qaeda insurgents represent more than 2,500 of the 14,500 inmates in the increasingly overcrowded Afghan Corrections System (ACS). These detainees are currently radicalizing non-insurgent inmates and worsening an already over-crowded prison system. Hardened, committed [I]slamists are indiscriminately mixed with petty criminals and sex offenders, and they are using the opportunity to radicalize and indoctrinate them. In effect, insurgents use the ACS as a sanctuary and base to conduct lethal operations against GIRoA [government of the Islamic Republic of Afghanistan] and coalition forces (e.g., Serena Hotel bombing, GIRoA assassinations, governmental facility bombings). ...

The U.S. came to Afghanistan vowing to deny these same enemies safe haven in 2001. They have gone from inaccessible mountain hideouts to recruiting and indoctrinating hiding in the open, [sic] in the ACS. There are more insurgents per square foot in corrections facilities than anywhere else in Afghanistan.<sup>162</sup>

The report warned:

Detention operations, while critical to successful counterinsurgency operations,

also have the potential to become a strategic liability for the U.S. and ISAF [International Security Assistance Force]. With the drawdown in Iraq and the closing of Guantánamo Bay, the focus on U.S. detention operations will turn to the U.S. Bagram Theater Internment Facility (BTIF). Because of the classification level of the BTIF and the lack of public transparency, the Afghan people see U.S. detention operations as secretive and lacking in due process.

The desired end-state, McChrystal reported,

is the turnover of all detention operations in Afghanistan, to include the BTIF, to the Afghan government once they have developed the requisite sustainable capacity to run those detention systems in accordance with international and national law. This will empower the Afghan government, enable counterinsurgency operations, and restore the faith of the Afghan people in their government's ability to apply good governance and Rule of Law with respect to corrections, detention, and justice.<sup>163</sup>

In his 2013 memoir, General McChrystal recalled his frustration and the steep learning curve that existed in managing detainee operations from the previous decade.

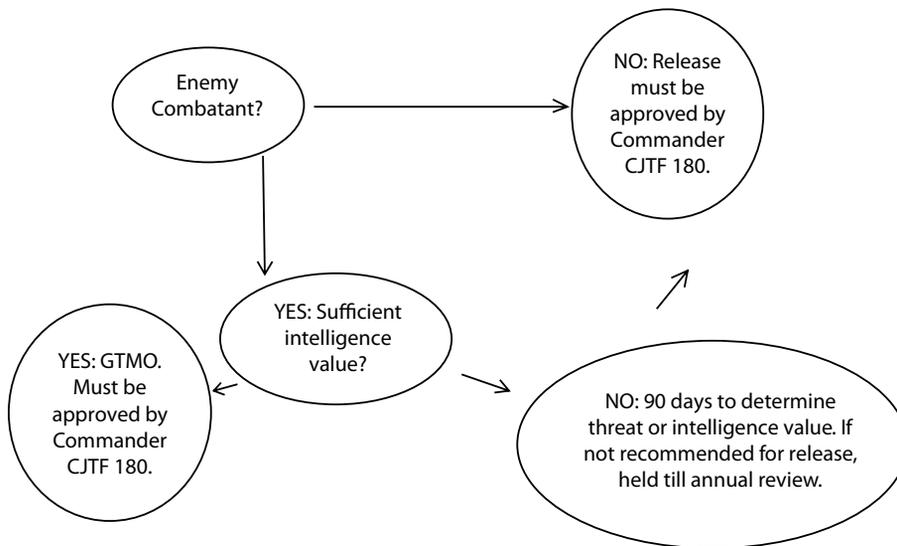
I reemphasized my concern that we suffered from a shortage of trained interrogators. ... The interrogator shortage wasn't [General] George Casey's fault or a problem he could solve, and I knew that. Half a dozen corners of the military — from the Pentagon to the services to training centers — had a part in producing and fielding a professional interrogator. ... On 9/11, our shortage was understandable. By 2005, it was indefensible.<sup>164</sup>

Of his own inexperience in detainee operations, McChrystal recalled:

I was one of the leaders who lacked experience in detainee custody and exploitation. I had studied history and understood the theory but had never done anything remotely like running a prison. My peers and subordinates were similarly positioned.<sup>165</sup>

McChrystal declined several invitations from the Task Force to be interviewed about Afghanistan and Iraq.

The military's procedures for reviewing detention decisions in Afghanistan, the then-called Detainee Review Boards (DRBs), underwent a series of changes in September 2009. The United States revamped release procedures of the re-christened DRBs to hasten release of detainees from the swelling facilities.<sup>166</sup> The DRBs had evolved since the beginning of the war. From the beginning of the war in Afghanistan until January of 2010, detention operations in Afghanistan were under the control of tactical level command.<sup>167</sup> The initial structure (from 2002 to 2005) is sketched in the diagram below:<sup>168</sup>



*Note: The decision to release had to be approved by the Commander of CJTF-180, whereas no such requirement existed if a detainee were held. Detainees were not present during, or notified of, the board review.*

In 2005, the boards were renamed Enemy Combatant Review Boards (ECRBs), and again in 2007 the review boards were re-branded Unlawful Enemy Combatant Review Boards (UECRBs).<sup>169</sup> These cosmetic changes to the title of the review boards, to polish and rebrand, were also accompanied by some structural and procedural advances. Detainees were notified of their review. Detainees could attend the first review and read a statement to the board. They were still not questioned by board members, nor did they have a representative. Each case was to be reviewed every six months with the detainee invited only for the first meeting.<sup>170</sup> Those found to be Low Level Enemy Combatants (LLEC) would be referred to the Detainee Assessment Board for prosecution, if there was sufficient evidence, through the Afghan criminal justice system. If there was not sufficient evidence for a trial, the detainees continued to be held in U.S. interment facilities.<sup>171</sup>

The DRB's post-2009 procedures govern detention operations under the U.S. military command, USFOR-A (U.S. Forces, Afghanistan), and not the International Security Assistance Force (ISAF). USFOR-A is subject to the AUMF (Authorization for Use of Military Force) and international laws of war for its authority and accountability. While ISAF is authorized through a U.N. Security Council resolution and has 78,430 U.S. troops under its mandate, USFOR-A is the continuation of Operation Enduring Freedom (OEF) and has 17,000 U.S. troops under its command.<sup>172</sup> Along with the new procedures, the reform introduced a new command to control detention operations under USFOR-A, Joint Task Force 435 (or, more formally, Combined Joint Interagency Task Force-435) (CJIAF-435). Under the new procedures, detainees were given a representative throughout the process, received timely notifications, were able to attend hearings, call witnesses, and question government witnesses.<sup>173</sup> Once captured, a detainee could be held for 14 days before being assigned an interment serial number (ISN) and the Red Cross given access. The DRB hearing had to take place within 60 days of capture. A personal representative (PR) was to be assigned within 30 days and the PR was to meet with the detainee to explain the process and read the unclassified version of the file.<sup>174</sup>

Conversely, combatants captured by ISAF had to be turned over to Afghan authorities within 96 hours of capture. However, U.S. forces under ISAF have extended their timeframe for transfer to within 14 days of capture.<sup>175</sup> The improved procedures were designed to reduce the detainee population and legitimize the surviving practices.<sup>176</sup> One lieutenant colonel reviewing the new detention operations observed: “The considerable effort made to bring live witnesses to the DRBs, at least anecdotally, has also spread the word throughout Afghanistan that the DRB process is fair and legitimate and, perhaps more importantly in light of past missteps, that the treatment of the detainees in the new DFIP is exceptional.”<sup>177</sup>

According to at least some human rights organizations with access to detention facilities, the procedures still have problems. While there have been substantial improvements, it is argued that detainees still lack a meaningful opportunity to challenge the evidence against them.<sup>178</sup> After observing several DRB sessions, Human Rights First reported: “Not a single witness was called to testify in any of the hearings observed. In some cases, the evidence against the detainee appeared to be as thin as a mere claim by U.S. soldiers that they found bomb-making materials in a house nearby. No public evidence was presented connecting the individual detainee to that house.”<sup>179</sup> However, according to another study of the DRBs, there were 411 live testimonies and 125 phone testimonies from March 6, 2010, through June 30, 2010, alone.<sup>180</sup> The difference in these observations could be due to the fact that the majority of the DRBs do not involve witness testimony. Another criticism is of the “personal representatives” appointed for the detainees. Some allege these military officers, not attorneys, failed to effectively question the evidence presented through the detainees’ files. “The result, in cases we observed, is that these representatives appeared to do little or nothing on behalf of the detainees.”<sup>181</sup> While there is a classified portion of the review, which neither the detainee nor human rights organizations can attend, the perception the public hearings create undermines the effort to establish legitimacy through the “rule of law.”<sup>182</sup> There is a prohibition against using information obtained through torture; however, when the statements and identities of witnesses are classified, there is no mechanism for discerning which statements are elicited through cruel and inhumane treatment, which statements are given because of personal grudges, and which statements resulted from erroneous information.

Finally, the Task Force has learned that there are a number of detainees cleared for release by the DRBs who remain in detention because DRBs do not have the ultimate authority over releases.<sup>183</sup> A Pentagon spokesman, Lieutenant Colonel Todd Bresseale, told Task Force staff in an email exchange that if a detainee is a third-country national, it is the deputy secretary of defense who has the authority to approve the transfer or release, following a thorough assessment of the security and humanitarian conditions in the detainee’s home country and after receipt of appropriate diplomatic assurances. In such cases, the Pentagon even consults with members of Congress prior to release. According to Bresseale, members of Congress are consulted “as appropriate” following release determinations made in the case of third-country nationals.

General Stone’s other detention policies from Iraq migrated to Afghanistan at the same time changes occurred in the DRB process.<sup>184</sup> First, determined to move away from mass housing in favor of segregation of hardliners from those who could be rehabilitated, Stone recommended overhauling release procedures aimed at increasing the rate of release, thereby strengthening the rule of law through transparency and engagement.<sup>185</sup> Detention centers and commanders began to focus on distinguishing the irreconcilables, those constituting an ongoing threat, from individuals who could be rehabilitated. Detainees who could be de-radicalized were presented

with greater security and in-prison programs for rehabilitation. The release boards were revamped to allow for timely release in conformity with the rule of law. Finally, the coalition forces invested in long-term development of the local criminal justice mechanisms. The task was and remains enormous.

The prisoners would have access to vocational courses, be taught by local imams about moderate Islam, and be allowed visits by their family members.<sup>186</sup> Additionally, the military introduced pay-for-work programs to provide a source of income for detainees and develop their trade skills. These skills were a tool for reconstruction and a source of economic security for the detainees upon their release.<sup>187</sup>

The social programs from Iraq extended to Afghanistan in 2009. An Afghan instructor, who taught the first class of detainees at Parwan about health and identifying prevalent diseases, said “there was good communication between [them]” and that “the participants seemed very interested.”<sup>188</sup> The detainees were also instructed on geography, government, civics, and trade skills such as tailoring, agriculture and baking.<sup>189</sup> The long-term success of these programs has yet to be measured, and once the detainees are released and re-enter Afghan society, they may continue to face serious problems [see Chapter 8]. Dr. Sima Samar (chairperson of the Afghanistan Independent Human Rights Commission) said on the occasion of the release of the Fifth Report on the Situation of Economic and Social Rights in Afghanistan, “[Given] the volume of assistance and commitments made by the Afghanistan government over the past several years, economic and social rights has not improved with satisfactory [sic] and even in some areas shows regression.”<sup>190</sup> However, the survey conducted by CJIATF-435 of the first group of Parwan detainees who went through the newly instituted programs found a recidivism rate of just 1.2 percent. “CJIATF-435 assesses that reintegration programs are working to prevent previously detained individuals from rejoining the insurgency.”<sup>191</sup> The recidivism rate has dropped to below 1 percent, according to the 2012 report.<sup>192</sup>

## The Future of Detention in Afghanistan and the U.S. Role

The ongoing insurgency continues to provide daunting challenges. As 2012 wound down, Washington was engaged in intense discussions as to what kind of presence the U.S. would have in Afghanistan after the 2014 date for the withdrawal of most American troops. The proposals ranged from having a large civilian (*i.e.*, diplomatic), presence with a few thousand troops to as many as 14,000 troops.<sup>193</sup> The Task Force sought to interview U.S. military officials in Afghanistan. Mid-level officials initially indicated we would be shown the Parwan facility as well as be briefed or even sit in on sessions of a DRB hearing, which prisoners are afforded every six months to see if they are eligible for release. But Lieutenant General Keith Huber, who commanded the military detention operations in Afghanistan in late 2012, formally declined to permit Task Force staff to tour the Bagram facilities. Entreaties from two retired three-star generals asking him to reconsider were unavailing. A spokesman for Huber said the reason for denying the Task Force’s request was that the U.S. military was getting out of the detention operation business, which was being turned over to Afghan military and government authorities. There exists considerable evidence that total disengagement by the United States from detention operations in Afghanistan is largely a fiction.

The insurgency provides a mechanism for dispute resolution and accountability, thereby

undermining efforts of the official government of Afghanistan. As General McChrystal noted in his 2009 assessment: “They appoint shadow governors for most provinces, review their performance, and replace them periodically. They establish a body to receive complaints against their own ‘officials’ and to act on them.”<sup>194</sup> One step toward realizing the sovereign rule of the Afghan government was ISAF-mandated transfer of prisoners to Afghan custody. Despite recognition of the fundamental importance of supporting the Afghan government as the primary, effective and legitimate sovereign in Afghanistan by means of transferring responsibility of detainee operations, efforts to reform the system met with resistance as ISAF attempted to overcome decades and decades of entrenched, chronic problems.

In 2005, a Government Accountability Office (GAO) report titled *Afghanistan Security* identified ongoing challenges in training and preparing Afghan forces to assume control:

A number of difficult conditions hamper the effort to rebuild the police in Afghanistan. Newly trained police often return to community police stations staffed by poorly trained, illiterate conscripts or former militia members who have little loyalty to the central government. According to State/and Defense officials, many of the untrained officers remain loyal to local militias in an environment dominated by ethnic loyalties. Working with untrained colleagues, newly trained policemen often find it difficult to apply the principles they learned during training. For example, according to several DynCorp trainers, some recently trained police were forced to give their new equipment to more senior police and were pressured by their commanders to participate in extorting money from truck drivers and travelers.<sup>195</sup>

The two-week training program with limited follow-up visits in the field proved inadequate for the circumstances faced by the newly trained police.

In March of 2012, the Obama administration reached an agreement to transfer control of the Parwan Detention Facility to Afghanistan. “It is a matter of pride for us to acquire responsibility for the prison,” Nasrullah Stanikzai, the legal adviser to President Hamid Karzai said.<sup>196</sup> The formal ceremony to mark the transfer of control went ahead as scheduled on September 10, but the U.S. continued to control hundreds of detainees in the facility.<sup>197</sup> As of September 2012: some 600 new detainees remained under U.S. control, along with nearly 30 of those originally slated for transfer. The ongoing tension about the 30 or so originally slated for transfer stems from whether Afghans would continue to hold those 30 without trial, as the U.S. had demanded and stipulated under the transfer deal.<sup>198</sup>

The day after *The New York Times* reported that the United States would have a continuing role in Afghanistan detention operations after the planned September 2012 handover,<sup>199</sup> a report from the Open Society Foundations suggested there had been fundamental misunderstandings between the two sides as to the detention relationship moving forward:

Though numerous Afghan officials have told Open Society Foundations researchers that they believe Afghan internment will come to an end in September 2012, when they assume the detention transition will be complete, U.S. statements and actions suggest otherwise. U.S. forces have continued to capture individuals in military operations and detain them on the “U.S. side”

or part of the DFIP since the transition process began in March 2012, adding around 600 detainees to the facility. So even though they have almost completed the transfer of the 3100 that were being held in March, these additional captures and detentions make it all but impossible for them to meet the Afghan government expectation of a full handover of the facility.<sup>200</sup>

The Afghan national security advisor, Dr. Rangin Dadfar Spanta, has said: “We cannot allow allies and friendly countries to have detention centers here. This is illegal.”<sup>201</sup> The United States has used internment in Afghanistan for many years since September 11, detaining persons rather than accusing them of a crime and placing them on trial. Afghanistan today remains an operational environment for American troops who continue to conduct raids and make arrests. There exists the risk that detainees could be freed only to come back and later stage attacks. The Afghan government, in cooperation with the United States, created its own internment regime, closely resembling the U.S. system in order to facilitate the transfer of detainees interned by the U.S. military. Though the Afghan government has chosen to transfer many detainees to a criminal court, more than 50 are being held by the Afghan government without charge or trial through this new internment power. Senior Afghan officials told the Open Society Foundations they believed the new system was unconstitutional.

**“...more than half of the 635 detainees interviewed for the report (326 detainees) had experienced torture and ill-treatment.”**

☆ ☆ ☆ ☆ ☆

While visiting Afghanistan in November 2012, sources told Task Force staff that U.S. troops were continuing to arrest about 100 Taliban suspects a month in nighttime raids and bringing them to DFIP. Some journalists have refused to call the detention facility at Parwan by its “new” name because they say it was only created as an inventive way to try to disown the bad reputation that lingered from the BCP. The rate of prisoners taken in the nighttime raids in November 2012 was about the same as the rate that has prevailed over the last two years. The raids have been a source of great friction among the Afghan population.<sup>202</sup> Task Force staff spoke with recent prisoners taken in nighttime raids and they offered a familiar story of sudden and unjustified raids on their rural homes, after which they were taken by helicopter to Parwan. While these former prisoners complained about what happened, they did not say they were mistreated at the prison, a marked change from detainee accounts in earlier years.<sup>203</sup>

Additionally, adding to the complexity of the political problem, concerns remain about the Afghan commitment to the legal rights of prisoners held in Afghan-run facilities. An Afghanistan Independent Human Rights Commission report in March 2012 found evidence of torture in nine separate Afghan NDS facilities.<sup>204</sup> (The National Directorate of Security, or NDS, is Afghanistan’s intelligence agency.) Afghan prisoners were beaten, suspended from the ceiling, subjected to electric shock, and sexually abused in order to secure confessions or to elicit other information.<sup>205</sup> In September 2012 Afghan President Hamid Karzai announced the appointment of Asadullah Khalid as the new head of the NDS. Khalid has been accused of running an unauthorized secret prison in Kandahar where torture was routine.<sup>206</sup> NATO forces had stopped transferring captured combatants to Afghan facilities in September 2011, following the U.N.’s findings of systematic abuse and torture in those facilities. Transfers resumed on a conditional basis in February 2012, after NATO forces extended training and reform to Afghan facilities.<sup>207</sup> A January 2013 report from the U.N. found “multiple credible and reliable incidents of torture and ill-treatment” across different Afghan detention

facilities.<sup>208</sup> The report went on to say there existed “sufficiently credible and reliable evidence” that more than half of the 635 detainees interviewed for the report (326 detainees) had experienced torture and ill-treatment.”<sup>209</sup>

Furthermore, non-Afghan detainees, third-country nationals, held at DFIP represent yet another major unresolved issue. Little is publicly known about the 50 or so third-country nationals currently held without charge at DFIP. The September 2012 Open Society Foundations report noted that “[g]iven the lack of progress thus far in repatriating, releasing, or resettling these detainees, many are at risk of falling into the kind of indefinite detention limbo reminiscent of Guantánamo Bay.”<sup>210</sup> President Obama in 2008 pledged to close Guantánamo, and while no detainees have been brought to Guantánamo since that time, it is unknown how many, if any, of the 50 or so third-country nationals currently at Parwan have been captured and kept at DFIP since transfers to Guantánamo became politically untenable in the United States. DFIP may have served, and may still be serving, as a Guantánamo Bay substitute, a place where individuals may be held indefinitely, since its completion in 2009.

Domestic political sensitivities in the United States are still at play. Congress imposed restrictions on the Obama administration’s ability to transfer detainees from Guantánamo, and the U.S. military likely does not want its hands to be similarly tied in Afghanistan.<sup>211</sup> Republican lawmakers recently criticized a decision to turn over to Iraqi custody a detainee accused of helping to kill American troops during the Iraq war.<sup>212</sup> The Republican chairmen of the House Armed Services Committee and the House Judiciary Committee released a press statement on August 3, 2012, critical of the administration’s decision to turn over the Iraqi to Iraq’s security forces before the withdrawal of U.S. forces in Iraq, and urged the administration “to extend all efforts to ensure that this tragic mistake is not repeated with terrorists currently in U.S. custody in Afghanistan.”<sup>213</sup> Sen. Lindsay Graham supported closing the detention facility at Guantánamo Bay in 2009, but no longer believes it is feasible to do so. As he told Task Force staff:

So I’ve embraced the fact that we’re not going to close GITMO; let’s use it. You’ve got people at Bagram — you got 52 third country nationals, something like that, somewhere around 50 third country nationals that are not Afghans, they gotta go somewhere. And all of them are not gonna be repatriated back to their host country for different reasons. And Afghanistan is not going to be the U.S. jailer forever ... so we need to do something with those folks.<sup>214</sup>

On November 19, 2012, Karzai ordered Afghan forces to take control of the Parwan facility and accused American officials of violating its agreement to hand over the facility.<sup>215</sup> In March 2013, Karzai announced that his government might unilaterally act to take control of the prison if there were further delays in the Parwan handover. Karzai later agreed to give the United States another week. Given the repeated missed deadline as of the writing of this report, there appears to be no end in sight to the U.S. role as a jailer in Afghanistan. Unresolved, the continued detention of “enemy combatants” in Afghanistan or Guantánamo leaves the United States and its allies vulnerable to criticism.