



US: Reform Afghanistan Detention Policy

As New Facility Opens, Prisoner Rights Still Lacking

November 14, 2009

(London) - The Obama administration should revise its detention policies in Afghanistan to make them consistent with international law, Amnesty International, Human Rights First, and Human Rights Watch said today. The United States military is hosting the media and some nongovernmental organizations today at its recently constructed but empty detention facility in Parwan province, Afghanistan.

The three organizations urged the US to end arbitrary detention in Afghanistan and to fully align US detention practices with international law.

The organizations noted that the US has made some recent changes in its detention policy in Afghanistan. These include providing detainees with "notice of the basis of their internment" and the right to call witnesses and question government witnesses.

"It's common knowledge that Afghans perceive US detention operations as secretive and lacking in due process," said Sahr Muhammedally, senior associate at Human Rights First. "The United States must remedy this problem and take the critical step of bringing its detention practices into an appropriate legal framework that is consistent with international and Afghan law, and allows and provides detainees with a sufficient way to challenge their detention. Such reforms are a necessary precondition to establishing long-term stability in Afghanistan through the rule of law."

The three organizations urged the U.S. and Afghan governments to take further steps immediately. In particular, the three organizations urged the US and Afghanistan to enter into a public agreement that spells out grounds and procedures for US detentions that are consistent with international and Afghan law.

A US domestic law, the Authorization for Use of Military Force, is currently being used as the basis for the detentions on Afghan soil.

It is inadequate because it fails to recognize that all persons held in Afghanistan are entitled to the legal protection of Afghan domestic law and international human rights law, regardless of whether they are in the physical control of the Afghan government or a foreign government.

All detainees in Afghanistan are entitled to minimum protections, including the right to legal counsel, and to be able to challenge the legal and factual basis for the detention before an independent and impartial tribunal. The U.S. reforms still fall short of providing detainees with those rights.

"President Obama has taken some steps to sort out the mess created by the Bush administration," said Rachel Reid,

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Afghanistan researcher for Human Rights Watch. "But the US will have a lot more credibility encouraging the Afghan government to respect the rule of law if it reforms its own detention practices."

The US should provide transparency in its detention operations by allowing private access to detainees by the Afghan Independent Human Rights Commission (AIHRC), which is legally mandated to visit places of detention on Afghan soil, and by international human rights organizations, the three groups said.

The International Committee of the Red Cross does visit detainees being held in long-term detention by the United States, but their findings are confidential.

The US should also facilitate observation of the new detainee review board proceedings by Afghan and international human rights groups.

Similar detainee review processes conducted by the US in Iraq, Afghanistan, and Guantanamo Bay fell far short of international legal standards.

"The Bagram detention facility serves as a symbol of the US operating outside a proper legal framework in Afghanistan," said Sam Zarifi, Amnesty International's Asia-Pacific director.

"Given the real problems with the existing Afghan judicial system, the US and Afghan governments must immediately begin to establish a long-term solution that respects the right of the detainees to have their cases heard in a court of law, and to be set free if they are not found guilty of a criminal offense."

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