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July 17, 2010

U.S. Backs Trial for Four Detainees in Afghanistan

By **ALISSA J. RUBIN**

KABUL, Afghanistan — The chief judge asked God's forgiveness if he had reached the wrong decision, and then he sentenced four members of an Afghan family charged with making bombs: two brothers to 10 years in prison and two other family members to time already served.

The courtroom, deep inside the American-run detention center in Parwan, erupted. The prosecutors complained that the sentences were too light, and the defense lawyers protested that they were too heavy; one of the defendants, Masri Gul, said he had not been allowed to examine the evidence; and the guards tried to quiet everyone.

In the next room, the American military lawyers and officers who were the trial's godfathers and were watching the proceedings on a closed-circuit television gave a sigh of relief: it had gone as well as could be expected for the first of its kind. For months they had been working to make it possible for the Afghan government to hold trials at the Parwan site as part of an effort over time to transfer the center's detainees to Afghan control.

This trial was the beginning of a confusing period in which two legal systems will be running in parallel at the Parwan detention center — an Afghan one and an American one. Under the American one, detainees, all of whom are detained by American soldiers usually working with Afghan forces, can be held indefinitely without charge or trial.

Their cases are periodically reviewed by an administrative hearing board of military officers, first when they arrive in Parwan and then every six months to see if they should continue to be

detained, released or referred for trial in the Afghan courts.

Under the Afghan system, detainees are tried and, if found guilty, they serve their time in an Afghan prison. New cells are being built at Parwan that will be entirely under Afghan control, and detainees who are sentenced could be imprisoned there. Previously, a small number of Parwan detainees were referred for trial and internment in the Afghan prison at Policharki, but the referrals were not part of a comprehensive transfer plan.

The American military made a great effort to showcase the bomb-making trial as a symbol of the transfer of authority, inviting Afghan and Western news media. However, the judges' verdict seemed to depend in large part on crucial **forensic** work primarily from American technicians, and over all, Americans will continue to play a substantial role in decisions about the transfer of detainees. So far, Afghan and American officials have identified 110 cases for Afghan trials.

There are about 850 people now detained in Parwan; all but about 30 are Afghans. Most have been held for less than two years, but about 100 have been held for longer and about 20 have been held for more than four years.

The recent trial reflected the American military's evolving view of detention policy. Although military officials believe that the United States can legally continue to detain Afghans under the law of war, they have come to see long-term detention as creating problems, including increased resentment from the local population that the Americans are trying to win over. The goal by next summer is to have more Afghan trials than American military administrative hearings — an ambitious target given that so far this year there has been just one trial, but nearly 1,000 administrative hearings.

“The most sustainable detention is a criminal law enforcement-based detention in the Afghan system,” said Brig. Gen. Mark Martins, the deputy commander of Task Force 435, which has jurisdiction over those detained by the Americans.

The Americans envision building up the Afghan judicial system to make the expansion of trials possible. Construction is under way for an on-site courthouse and living quarters for the judicial and legal staff to make them less vulnerable to corruption and threats than they would be if they were working in the regular Afghan court system, American military lawyers said.

The newly built Parwan detention center is the successor to the notorious one at the [Bagram Air Base](#), where two detainees died in custody and there were charges of other maltreatment. Parwan is adjacent to Bagram but entirely separate.

“In one sense the U.S. military is starting to do today what it should have started to do years ago, which is to allow Afghan nationals detained on Afghan soil to be subject to Afghan law,” said Jonathan Horowitz, a detention analyst for the Open Society Institute, a public policy and advocacy group. But he added that the United States was still unilaterally detaining hundreds of Afghans.

Those detainees who are no longer considered a threat are released through administrative hearings — 150 have been released so far this year — even as others are brought into the system, according to American military officials. However, those proceedings are not trials and are not carried out under Afghan law.

The American interest in Parwan is not only overseeing detention decisions, but continuing to mine intelligence from detainees. There are 16 interrogation cubes equipped with one-way windows and cameras to allow monitors to ensure that there is none of the abuse that occurred in the past. The interrogations produce a 24-hour stream of information that can be filtered and sent to the battlefield.

One potential problem that has yet to be confronted is that an Afghan court could acquit a detainee whom the American review board deems a continuing threat. Then whose law will prevail?

“Anybody not found guilty can be released, but we have an interest in not releasing people that pose a risk to the people of [Afghanistan](#) and to us,” said Capt. Gregory Belanger, director of legal operations for Task Force 435.

“I’m not going to say it’s not binding, but if someone is acquitted in state court, they can still be prosecuted in federal court,” Captain Belanger said.

It is unlikely, however, that a detainee who the Americans believed remained a threat would reach a trial in the near term unless there was substantial evidence against him. This group could remain for some time in the American detention system.

“There’s a small group of enduring security threats who we’re going to deal with case by case,” said General Martins. “You’re never conceding that you throw away the key, you’re always looking for a sustainable, legitimate detention under the Afghan legal system.”

The Gul family members tried on June 8 were detained less than a year ago, with the evidence gathered in a way usable by the court, something less likely to be true of the older cases at Parwan. The two men ultimately convicted of bomb making were picked up on suspicions that they were bomb makers and fingerprinted.

Their fingerprints were later lifted by American soldiers from the battery pack of a bomb that exploded and from parts of one that was defused; the matching was done by Afghan and American technicians, and an American testified about the match.

The enduring problem is that trials remain a long way off for many detainees, according to human rights experts. “This is the beginning, a good first step,” said Nadir Nadiry, the deputy director of the Afghan Independent Human Rights Commission. “But it comes after a long time of indefinite detention. We want trials to be available equally to all detainees.”