



# Afghanistan Analysts Network

شبکه تحلیلگران افغانستان  
د افغانستان د تحلیلگرانو شبکه  
INDEPENDENT NON-PROFIT RESEARCH ORGANISATION



## AAN Thematic Dossiers



### Thematic Dossier VII: Detentions in Afghanistan – Bagram, Transfer and Torture

Author: **Kate Clark** Date: 20 December 2014



Photo: Tolo News

One of the most controversial aspects of the 2001 intervention has ended: the United States' detention on Afghan soil of men accused of involvement in the insurgency. At its peak, the US military detention facility on Bagram airbase held more than 3000 detainees. In the early years, there had also been a number of CIA 'black sites.' All Afghan detainees at Bagram were finally handed over to the Afghan government in March 2013 after a long and rancorous struggle and, over the last year, the US has transferred dozens of foreign nationals to their home or third countries. It finally closed the Bagram Detention Facility on 11 December 2014. The lack of a legal regime underpinning US detentions made them open to abuse and miscarriages of justice from the start. However, on the Afghan side, as well, security detentions have been controversial, with torture common practice. This dossier brings together all of AAN's work on security detentions,

**both at US and government facilities. We have sorted coverage into four categories, see below, with each category's analyses in chronological order, making it easier to grasp the full story and how it unfolded.**

## **1. Foreign detainees held by the US**

In this section, we gather together dispatches looking at the abuses of detainees (both Afghan and foreign) and at how impunity for abuses, from these early days onwards, has remained a pattern in Afghanistan. In 2001 and 2002, the US established a number of detention facilities on Afghan soil, including what was to be the largest, at Bagram airbase. They detained both Afghans and foreign nationals, some captured in Afghanistan, others rendered by the CIA from other countries. The US administration decided those captured in the 'war on terror' were 'unprivileged combatants' and deemed they would not get Geneva Conventions protection, including Common Article 3 which bans torture and "humiliating and degrading treatment". The lack of a legal framework for the detentions and the authorisation of coercive interrogation techniques opened the way up to abuses.

Foreign detainees were far less visible and, in the end, had fewer rights than detainees at Guantanamo Bay or the Afghan detainees held in Afghanistan. Many were kept in limbo – deemed by the US military not to be a threat, but still in custody. Unlike their Afghan counterparts, friends and family were far away and there was no Afghan interest in them, no visits by national or international observers – except the ICRC – and no option to be put on trial. Over the last year, the US was transferring detainees to home and third countries, spurred on by the need to clear the facility before the end of the year. Those transferred included men cleared by the US for release for four or five years.

Although the US refused to release the names of those it was holding, AAN scrutinised public and secret sourcing to bring lists of those detained and released.

## **2. Afghan detainees held by the US**

In this section, we bring together reports detailing the long and bitter struggle by the Afghan government to wrench control of Afghan security detentions from the United States. President Karzai eventually managed to get a memorandum of understanding on the handover of Bagram and its Afghan inmates in March 2012, along with a sister agreement on handing over night raids in April 2012. It was to be a gradual transfer. The Afghan state initially, as AAN discovered, used internment, as one option, together with release or trial, for those transferred. This was subsequently blocked by Karzai. The US had wanted internment as it was always fearful the Afghan authorities would release those it deemed 'dangerous.'

After the full handover was completed in March 2013, AAN discovered the US still had access to the detainees for interrogation. We found out that, before handing over those it had captured to the Afghan authorities, it was still interrogating them, including using sleep deprivation, at the so-called 'Black Jail' (*Tor Jail*), co-located at Bagram.

In February 2014 – to the futile outrage of the US –, the Afghan authorities released 65 men whom the US deemed dangerous; it had wanted them put on trial or investigated further. Kabul was adamant, however,

these were “innocent” men. In the last months of his presidency, Karzai was still trying to eradicate all foreign involvement in detentions. The bilateral security agreement (BSA) which he refused to sign, but was signed by the new government of Ashraf Ghani on 30 September 2014, stipulated that “United States forces shall not... maintain or operate detention facilities in Afghanistan.”

### 3. Legal documents

Where possible, we have published the legal documents – including those not publicly released – that have underpinned the detentions regime at Bagram. We have also looked at the wider legal framework authorising (or not) detentions and use of force in Afghanistan

### 4. The NDS, torture and transfers

This section brings together AAN dispatches on the abuses suffered by security detainees at the hands of the Afghan state and at the trouble ISAF nations got into by transferring detainees to the Afghan intelligence agency, the NDS. All countries, apart from the US, chose to do this, rather than establish their own detention facilities. AAN reported on complaints about corruption or political pressure allowing Taliban detainees to be released and innocent people to be detained. We also reported on a number of in-depth reports from the UN and the Afghanistan Independent Human Rights Commission detailing the torture of security detainees. Locations and methods used (beating, electric shocks, suspension) were depressingly familiar to those who had investigated torture during the Taliban and earlier regimes.

Torture is illegal in Afghanistan. It is also illegal under the Convention Against Torture to hand over a detainee where there are “substantial grounds” for believing he or she would be tortured. Revelations about what was happening to those transferred by Canadian, British and other ISAF forces caused scandals at home, legal challenges and parliamentary enquiries. The UK was finally forced by its courts to cease transfers and had to establish its own detention facilities. Pressure on the NDS to reform came only after ISAF and especially the US military were shamed into action in 2011 by UN reporting which demonstrated just how systematic and widespread the torture was. Indications are, however, that torture by the Afghan state continues.

### 1. Foreign detainees held by the US

#### Ambiguous about Torture: Zero Dark Thirty, the Movie

Author: Kate Clark    Date: 5 February 2013

Oscar-winning film director, Kathryn Bigelow’s new film Zero Dark Thirty tells the story of the search for and eventual killing of Osama Bin Laden. The film has proved controversial – praised by some for its cool realism, it has also been castigated for inaccuracies. Above all, though, it has been accused of justifying torture. AAN does not normally do film reviews, but this movie seems important. AAN senior analyst, Kate

Clark watched Zero Dark Thirty during the same week UNAMA published a report accusing parts of the Afghan security services of systematically using torture against their fellow Afghans. She brings us her thoughts on what Bigelow has described coyly in interviews as the film's depiction of 'harsh tactics'. She also looks at the consequences of the US' willingness to break the Geneva Conventions after 2001, consequences that are still being played out in Afghanistan.

### **The 'Other Guantanamo' (7): Foreigners in limbo at Bagram**

Author: Kate Clark    Date: 3 October 2013

When wars end, military detainees have to be released. Yet at the end of 2014 when President Obama has said the war in Afghanistan will "come to an end", it is still completely unclear what will happen to the more than 60 non-Afghans held by the United States military at Bagram Airbase. Most were detained in Afghanistan, but some were rendered to Bagram by the CIA during the first Bush presidency or, in a move deemed a breach of the Geneva Conventions by the British Supreme Court, transferred from Iraq after hostilities ended there. The foreign detainees at Bagram are far less visible and have fewer rights than those at Guantanamo Bay or the Afghan detainees who were transferred to Afghan control in March 2013. Many are already in limbo – deemed not to be a threat, but still in custody. Kate Clark, AAN senior analyst, looks at who is there and what might be their fate.

### **The 'Other Guantanamo' (8): A full list of foreign detainees at Bagram?**

Author: Kate Clark    Date: 28 August 2014

The United States military has always been highly secretive about the men it holds at the detention centre on Bagram airbase, only ever releasing one list of names – in February 2009, following a Freedom of Information request. AAN's Kate Clark has been going through various sources of information and has put together what may be the first comprehensive list of detainees since then. 22 detainees can now be named, all of them foreigners (since the US handed over its last Afghan detainees in March 2013), 17 Pakistanis and five others, including men from Tunisia, Egypt and Russia. Some were rendered to Bagram, others were picked up fighting in Afghanistan or appear never to have been combatants. The pace of releases has quickened in recent months, most recently nine Pakistanis repatriated last week – something which the Afghan government has said it is unhappy about – and two Yemenis this week.

### **The 'Other Guantanamo' (9): Bagram prison to close with BSA, 13 foreign detainees left**

Author: Kate Clark    Date: 2 October 2014

The US-Afghan Bilateral Security Agreement (BSA), now officially called the Security and Defence Cooperation Agreement, a copy of which AAN has obtained, says the US shall not "maintain or operate detention facilities in Afghanistan." It appears then, that the US foreign detention facility at Bagram, often referred to as the 'other Guantanamo', will close by the end of the year. The US has been making huge efforts to release detainees and so shrink the Bagram 'problem', probably pushed by uncertainty over its

legal authority to detain after 31 December when, in President Obama's words, "America's combat mission [in Afghanistan] will be over." There are now just 13 detainees left there, down from about 70, a year ago. As Kate Clark reports, the rapid pace of releases also shows just how many long-term detainees should have been released years ago.

### **The 'Other Guantanamo' (10): Bagram closing: Lawyers worried about 'ghost detainees' (an update)**

Author: Kate Clark    Date: 14 October 2014

Pakistani lawyers have told AAN they fear that when the United States closes its detention facility at Bagram at the end of the year, there may still be 'ghost detainees', men whose names, identities – and fate – remains unknown to the outside world. Since the earliest days of the war, the United States has been tight-lipped about those it detains at Bagram. That continuing secrecy means that, even as the US has repatriated dozens of detainees in the last year and prepares to end detentions in Afghanistan completely, suspicion still clouds its intentions of what it will do with those still left. AAN's Kate Clark reports.

### **The 'Other Guantanamo' (11): More transfers, a court's scrutiny and possible redress**

Author: Kate Clark    Date: 28 November 2014

The United States military spokesman has confirmed to AAN that another detainee has left the detention facility on Bagram Airbase, a 'German-Moroccan', Muhammad Abdullawi. A Russian detainee, named by the US military as Irek Hamidullan, has also been flown out – to the US to appear in a federal court on terrorism charges; the first foreign combatant captured in Afghanistan to do so. Meanwhile, in London, the High Court has given permission for two claims, one for redress, the other for accountability against the British state. As AAN's Kate Clark reports, it will mean the alleged wrong-doings of both US and UK troops – illegal detention, torture and rendition – will come under the legal and public scrutiny.

### **The 'Other Guantanamo' (12): Bagram closes, CIA torture revealed, US to be held to account?**

Author: Kate Clark    12 December 2014

As grotesque revelations in a Senate report on the CIA's torture of 'war on terror' detainees are being mulled over, it has been announced that the last three remaining detainees in United States custody in Afghanistan have been transferred out of American hands. The Bagram detention facility is finally, after 13 years, closed. As AAN's Kate Clark reports, US detention operations in Afghanistan may finally have concluded, but the repercussions of CIA torture and rendition have not yet ended. They include the possibility of the US being held to account at the International Criminal Court.

## 2. Afghan detainees held by the US

### Stories people tell (2): Bagram prison; not a single good day

Author: Martine van Bijlert    Date: 9 March 2011

There are so many stories of people who get caught up in the nightly operations by American and Afghan forces. In the search for 'kill & capture' targets the net is cast wide: once a door is kicked in all males in a household are usually taken for interrogation. And it is then anyone's guess when they will be released again. One story – out of many – of how an unlucky sleep-over resulted in years of detention, and what those years were like.

### The 'Other Bagram' (1): A Memorandum for handover

Author: Kate Clark    Date: 21 March 2012

President Karzai's legal advisor, Nasrullah Stanekzai, has confirmed to AAN that there will be detention without trial of Afghans by Afghans when the Detention Facility at Parwan (DFIP), also referred to simply as 'Bagram', is handed over to Afghan government control, at the latest, on 8 September 2012. A memorandum of understanding (MoU) signed by the Afghan and US governments on 9 March created a tight timetable for the handover, with security detainees covered not by Afghan criminal law, but the Laws of Armed Conflict. AAN Senior Analyst, Kate Clark, looks at how this may open the door to new abuses of Afghan citizens.

### Handing over Night Raids

Author: Kate Clark    Date: 9 April 2012

Afghanistan and the United States have signed a Memorandum of Understanding (MoU) on 'Special Operations', ensuring that night raids will continue – with Afghans ordering and conducting them and US forces acting only in support. The agreement is a victory for President Karzai who has long insisted – up till now in vain – that night raids must be in Afghan hands or cease. This gain in sovereignty also puts him and the Afghan government much more at the forefront of the anti-Taleban struggle, politically and militarily. Karzai will have to take greater ownership of the war, both for what goes well and what goes badly. As for Afghan citizens, their rights should be better protected by the obligation that a judge issues a warrant before a home can be searched. At the same time, warns AAN senior analyst, Kate Clark, the MoU also envisages Afghan special forces arresting people who can then be held without trial.

### The 'Other Guantanamo' (2): The Afghan State begins Internment

Author: Kate Clark    Date: 23 May 2012

Sources involved in the handover of Bagram detention facility from the United States to Afghanistan have

told AAN that the Afghan state was due to start ruling on the internment of its own citizens there on 22 May 2012. The use of the US system of detention without trial by the Afghan government is probably the most important consequence of the handover of Bagram. Yet it has been introduced with virtually no discussion, whether in parliament or the media. The Afghan government has appeared reluctant to discuss the issue: even as the new Afghan institutions were being established to detain Afghans without trial at Bagram, President Karzai's spokesman told AAN they were against the practice. In this blog, Kate Clark details what is now happening at Bagram, reveals unpublished documentation and questions whether the Afghan state has actually gained sovereignty over its detained citizens and whether the US has really relinquished any control.

### **The 'Other Guantanamo' (3): Bagram and the Struggle for Sovereignty**

Author: Kate Clark    Date: 10 September 2012

Bagram Detention Centre has been officially transferred to Afghan control today, with the fundamental question of sovereignty – who has the right to arrest and detain Afghans on Afghan soil – still not resolved. The US insists it still has the right; the government says this is illegal. On Saturday (8 September 2012), President Karzai, General Allen, the commander of ISAF and US forces and James Cunningham, the new US ambassador, met to try to thrash out their different interpretations of the Bagram Memorandum of Understanding (MoU) which was signed six months ago and forms the basis for the handover. According to a government official, it was a 'bad meeting' with 'hard talk' and, even as the handover ceremony went ahead, says AAN Senior Analyst Kate Clark, the ambiguities inherent in the MoU are unravelling for all to see.

### **The 'Other Guantanamo' (4): The Final Handover of Bagram in Sight?**

Author: Kate Clark    Date: 3 March 2013

The transfer of detainees held at Bagram airbase from US to Afghan hands is once again in full swing. Transfers had begun after the US and Afghan governments signed a Memorandum of Understanding (MoU) on transferring Bagram almost a year ago, but they were suspended by the US in late summer 2012, due to reluctance on the side of the Afghan government to hold its citizens without trial ('administrative detention'), as stipulated in the MoU. The two sides are now negotiating the final few – but key – issues: squaring administrative detention with certain constitutional rights, deciding whether those picked up by Afghan Special Operations Forces should also be detained at Bagram and agreeing how long the US military can hold a detainee before handing him over. These issues are important, explains AAN's Kate Clark, as they touch on Afghan sovereignty, the ability to fight the insurgency and the setting up of systems that will last well beyond the transition and the end of the ISAF mandate.

### **The 'Other Guantanamo' (5): A New MoU for Bagram and, Finally, a Handover?**

Author: Kate Clark    Date: 24 March 2013



The Pentagon has announced and the Afghan presidential palace confirmed that the US military will hand over its detention facility at Bagram Airbase to the Afghan authorities tomorrow, 25 March 2013. The presidential spokesman, Aimal Faizi, told AAN the two governments have negotiated a new Memorandum of Understanding (MoU), which, unlike the first MoU on Bagram signed a year ago, will not authorise detention without trial. He also said it would not give the US a veto on the release of any detainee and would oblige it to hand over detainees within 96 hours of arrest. Faizi said all detainees will have been transferred ahead of tomorrow's ceremony, including the 38 individuals considered particularly dangerous by the US which it has held onto because of fears that the Afghans would release them. AAN senior analyst, Kate Clark, who has been closely following the machinations of the handing over of Bagram for the last twelve months, says tomorrow's deal – if the spokesman is correct concerning its contents – looks like a significant victory for President Karzai.

### **The 'Other Guantanamo' (6): Afghans still struggling for sovereignty at Bagram**

Author: Kate Clark    Date: 25 July 2013

It is exactly four months since the US military officially handed over its detention facility on Bagram Airbase to the Afghan Ministry of Defence. Whatever agreement was made between the two governments, it has never been made public. However, from speaking to detainees who have been released since the handover, AAN has been able to build up a picture of conditions there. Many more detainees are being freed than under the US system, including some whom the US had held without trial for years. However, former detainees say that even after being handed over to the Afghan authorities, the US military retains access to them for interrogation (the authorities deny this). They also say that, before arriving at the ANDF, some detainees are sent for interrogation to another, US-controlled site on Bagram Airbase known as *Tor Jail* (the Black Prison) where sleep deprivation is allegedly practiced. Senior AAN analyst, Kate Clark, reports.

### **Innocent, guilty – useful? What's behind the US-Afghan clash over 88 prisoners from Bagram**

Author: AAN Team and Guests    Date: 8 January 2014

The Afghan government announced yesterday (7 January) that it would go ahead with the release of 88 Taliban prisoners from Bagram despite US objections. American politicians, including two senior US senators who visited Kabul in early January, have warned of further damage to US-Afghan bilateral relations if the prisoner release goes forward. The issue has put additional strain on negotiations over the Bilateral Strategic Agreement (BSA) which Washington had wanted signed by the end of 2013 and which President Hamed Karzai has until now delayed. The prisoner controversy is the latest instalment in the ongoing struggle over sovereignty in Bagram prison and over who has the last word in the country as a whole as it heads into elections. The AAN team and guests report, with a particular focus on who these prisoners are and why the Afghan government is so keen on releasing them.

### **65 "Innocent" / "Dangerous" Detainees Released From Bagram: What secret documents say about Afghan and US claims**



Author: Kate Clark    Date: 13 February 2014

Today, Thursday, 13 February, the Afghan authorities have released 65 detainees from the Bagram Detention Facility. The Afghan government says they are “suffering innocents” who were illegally detained by the United States military. The US says they are dangerous men with Afghan or foreign blood on their hands who should be going to court, not being given the opportunity to return to the battlefield. So what are the rights and wrongs of this case? AAN has seen copies of the two key legal documents governing Bagram – which have never been released to the public: the Afghan/US 2013 Memorandum of Understanding (MoU) for handing over Bagram and a presidential decree passed in secret at the same time. As AAN Senior Analyst Kate Clark reports, the MoU and decree show the US may be right – in part – in claiming the Afghan government has violated the agreement. Yet, this bitter dispute also shows just how weak the Americans have become in the face of the Afghan state’s assertion of sovereignty.

### **‘Secret NATO Jails’ that Aren’t Secret: Ambush and drama over detainees**

Author: Kate Clark    Date: 6 May 2014

In the Afghan government’s latest attempt to wipe out any foreign role in detentions, the commander of the Detention Facility in Parwan (DFIP) on Bagram Air base, General Faruq Barakzai, has said detainees can no longer be sent there. Both US and UK forces have been transferring detainees to the DFIP, which the US finally handed over to the Afghan government in March 2013. Barakzai is a member of a presidential commission which has accused British and US forces of running secret detention facilities. Both countries have said their facilities are open and all detentions are carried out in cooperation with the Afghan state. This latest controversy is part of two, long-running detainee disputes – over who controls the DFIP, and how ISAF forces can transfer detainees to the Afghan authorities given the risk of torture. The UK also has added problems, writes AAN’s Kate Clark, after a British court ruled its detention policy in Afghanistan has been illegal under European human rights law.

### **Karzai struggles against foreign detentions – state releases Taliban?**

Author: Kate Clark    Date: 25 September 2014

In the last weeks of his presidency, President Hamed Karzai has again been trying to eradicate the last traces of foreign involvement in detentions, sending a commission to investigate the so-called *Tor Jail*, an American interrogation facility on Bagram airbase, and reactivating the Afghan Review Board, which had been sifting detainees transferred by the US military to the Detention Facility in Parwan (DFIP), also at Bagram. In February, it controversially released 65 detainees whom the US said should be prosecuted or investigated further. The UK, which had also been in Karzai’s firing line over detentions, has now been given a ‘clean bill of health.’ However, reports AAN senior analyst Kate Clark, the outgoing president has not been so active in dealing with the Afghan state’s own detention problems. He leaves the release of Taliban detainees, as alleged by senior Afghan politicians and members of the security forces, and the continuing use of torture to his successor to sort out.

### 3. Legal documents

Memorandum of Understanding between The Islamic Republic of Afghanistan and the United States of America On Transfer of U.S. Detention Facilities in Afghan Territory to Afghanistan 9 March 2012. Read it at the end of [this dispatch](#).

Memorandum of Understanding between The Islamic Republic of Afghanistan and the United States of America On Authorisation of Special Operations on Afghan Soil. Read it at the end of [this dispatch](#).

The Procedure for Transition and Management of Bagram Detention Facility and Pul-e Charkhi Detention Facility from the United States of America to the Islamic Republic of Afghanistan 9 April 2014 Unpublished inter-ministerial agreement. AAN translation can be read at the end of [this dispatch](#).

Presidential decree setting up the Bagram Review Board, the Afghan board which reviewed cases and recommended release or prosecution. Issued around the time of the March 2003 memorandum. Not published, but extensive quotes can be read [here](#).

Palace statement (9th February 2014): The work of the 'Investigation and Inquiry Committee into Bagram Prisoners' Files.' AAN translation [here](#).

AAN has also published two dispatches looking into the wider issue of the legality of the continuing US intervention, both the use of military force and military detention.

#### [Legalities of the Post-2014 Landscape: The US-Afghan Bilateral Security Agreement](#)

Author: Kate Clark    Date: 1 May 2013

By 1 May 2013, the United States and Afghanistan should have finalised a Bilateral Security Agreement and associated Status of Forces Agreement (SOFA) for governing a post-2014 US military deployment. There is, as yet, no sign yet of any deal. These new agreements are supposed to supersede the Status of Forces Agreement ratified in May 2003 which currently delineates the legal status of US forces on Afghan soil, including giving immunity for American soldiers from Afghan courts. The US domestic authorisation for the president to use force in Afghanistan is even older – it dates back to a Congressional resolution passed a week after the 9/11 attacks. In this far-ranging piece, AAN senior analyst, Kate Clark, looks at the legal basis for the current US military intervention in Afghanistan and what impact '2014' will have on the legal landscape, not only for any US military operations in Afghanistan, but also for its global 'war on terror'.

#### [Winding Down or in for the Long Haul? The emergence of a new US counter-terrorism strategy](#)

Author: Kate Clark    Date: 8 July 2013

The great behemoth of US counter-terrorism strategy is shifting. President Barack Obama has said he wants to end the war, not just in Afghanistan, but also, ultimately against al-Qaida. Congress has also been making its first attempts to claw back some of the unprecedented powers it gave the president to wage war when, just after the 9/11 attacks, it passed the Authorization of the Use of Military Force (AUMF) – this is the law which still governs military operations in Afghanistan and elsewhere. At the same time, though, Pentagon officials and generals and members of the powerful Senate Armed Services Committee showed no sign of wanting to reign in US military operations. In a hearing on the AUMF in May, there was talk about going after al-Qaida ‘affiliates’ in Syria, Yemen and even the Congo. AAN Senior Analyst Kate Clark has been trying to assess what all of this means, especially for Afghanistan.

#### 4. NDS, torture and transfers

##### Freeing the Prisoners Blog 1: Letting the Guilty Go Free?

Author: Kate Clark    Date: 11 June 2010

When the Afghan intelligence boss, Amrullah Saleh, said he could not, in all conscience, carry on in his post if it entailed “negotiating with suicide bombers” he became the first person to take a principled stand against the way Afghan policy on the Taliban is developing. Saleh is particularly opposed to freeing Taliban prisoners. Yet this was one of the most common suggestions of the 28 committees which the delegates to last week’s peace jirga split into. It was also the first of the jirga ‘recommendations’ which the president has chosen to implement. Two issues are critical: will a proposed prisoner review commission free active Taliban, including those guilty of major crimes (what Saleh fears) or will it help to reduce arbitrary arrest and detention? In the first of two blogs looking at prisoner release, AAN senior analyst, Kate Clark, concentrates on the possibility that the commission will help the guilty go free.

##### Freeing the Prisoners Blog 2: Protecting the Innocent?

Author: Kate Clark    Date: 13 June 2010

An unknown number of Afghans are being held in custody suspected of being Taliban or convicted of insurgency-related crimes. Complaints about wrongful arrest, detention without trial, torture and a justice system where influence and money count for more than guilt or innocence are rife – and, of course, not limited to security prisoners. President Karzai’s order to review security prisoners and release those detained because of, “unreliable reports and unproved accusations” is potentially a good day for human rights. In her last blog, senior AAN analyst, Kate Clark, looked at the danger – voiced by the former head of the Afghan intelligence boss, Amrullah Saleh, that the review would be used to release active Taliban and those guilty of serious crimes. Now she looks at the possibility that those who are innocent – or pose little threat – might get released.

##### “Hundreds of Taliban released last year”

Author: Kate Clark    Date: 24 June 2010

A senior Taliban commander quietly pardoned by President Hamed Karzai last year, Akbar Agha, has given his first interview since being released from Pul-e Charkhi jail. He told AAN's Senior Analyst, Kate Clark, that he was one of "hundreds of Taliban prisoners" across the country who were released by the president to mark Eid al-Fitr in September 2009. Akbar Agha was sentenced in 2004 to 16 years in jail (which was subsequently reduced on appeal) for ordering the kidnap of three UN staff. He was then the leader of a Taliban splinter group, Jaish ul-Muslimin. He maintains his innocence.

### **UK court rules on detainee transfers and the risk of torture**

Author: Kate Clark    Date: 5 July 2010

Judges at the Royal Courts of Justice in London have given a 'mixed ruling' on a bid to stop UK forces transferring detainees to the Afghan intelligence directorate, the NDS. They found that there was risk of torture – which should make transfers illegal – but ruled that they could continue to be transferred to the NDS in Lashkargar and Kandahar, so long as detainees were properly monitored, but not to Kabul (where transfers had already stopped) where the risk of torture was too great. Human rights campaigners have variously called the ruling cowardly and a partial victory which can be used to call British forces to account in the future. Senior AAN Analyst, Kate Clark, looks in detail at the ruling, at what it will mean for the British and the fascinating insight it gives into how foreign and Afghan institutions deal with each other and the way the UK has sought to find ways of working with an institution which tortures.

### **NDS Torture: UN Report Makes Bleak Reading**

Author: Kate Clark    Date: 11 October 2011

UNAMA has released a major report on torture in National Directorate of Security (NDS) and police detention. For those of us who have worked on war crimes investigations post-1978, it makes desolate reading. The places of torture and many of the methods are familiar from testimony from victims of previous governments, including the Taliban's. What is also disturbing, says Kate Clark, is the question of what the international agencies and armies who have worked so closely with NDS have been doing for the last ten years

### **The Trouble with Torture: NDS, Special Forces and the CIA**

Author: Kate Clark    Date: 29 March 2012

Fresh evidence of abuse in more than a dozen NDS and police facilities has been presented in a report by the Afghanistan Independent Human Rights Commission (AIHRC) and Open Societies Foundations (OSF). The allegations, which include testimony of security detainees being beaten, given electric shocks and having their genitals wrenched, were described by NDS as 'baseless'. In October 2011, when UNAMA made similar revelations, ISAF was forced to stop transferring detainees to facilities where there was

evidence of torture and to institute a monitoring mechanism. The new report has found fresh grounds for concern, including over the role of the US Special Forces and the CIA. It questions whether the current safeguards are sufficient to, 'ensure that the United States is not complicit in torture'. AAN senior analyst, Kate Clark, reports.

### **Transfers and Torture: The British Army halts transfers of detainees to the NDS**

Author: Sari Kouvo    Date: 11 December 2012

President Karzai has warned British forces that they must hand detainees over and may not hold any detainees themselves. The warning follows a British government decision to stop all transfers after a former UK detainee, Sardar Mohammed, challenged their legality, given the risk of torture by the Afghan National Directorate of Security (NDS). Sardar Mohammed himself claims to have been tortured by the NDS after being handed over. The decision to stop all transfers of detainees is a victory for human rights organisations who have long contested that transfers are a violation of international law because of the real risk of torture. However, the halt will cause difficulties for the British army in Afghanistan, and also create an inconvenient precedent for other troop-deploying countries. AAN's Sari Kouvo reports.

### **UN Torture Report: still no accountability for torture**

Author: Kate Clark    Date: 21 January 2013

UNAMA's new report on the torture of 'conflict related detainees' makes bleak reading and not only because of the scale and weight of evidence against Afghan intelligence and the police. UNAMA reported that more than half of those interviewed had experienced torture or ill-treatment. They included children as young as 14. The UN also says it has credible reports of 81 individuals 'disappearing' from police custody in Kandahar. ISAF has stopped handing over detainees to facilities named in the report, but it did this in 2011 when UNAMA's first report was released. It is clear ISAF's efforts over more than a year to train NDS staff and monitor and certify facilities so that it could carry on handing over detainees without risk of torture have failed. The reaction of the Afghan government gives an indication of why this might be. It has rejected that torture is taking place. Yet, UNAMA says, unless there are real deterrents from the government – the threat of investigation, being sacked or facing trial – the abuses will continue. AAN senior analyst, Kate Clark, reports.

### **Torture, Illegal Armed Groups: Signs of Possible Afghan Government Action?**

Author: Kate Clark    Date: 22 February 2013

Many were surprised by the eventual response of the Afghan government to the detailed allegations made by UNAMA in January concerning torture carried out by the National Directorate of Security (NDS) and the Afghan National Police (ANP). The government's initial denials that any problem existed were predictable enough, but were followed by President Karzai ordering a high level delegation to investigate the allegations; then, after, it accepted torture was 'widespread', Karzai called the torture by Afghans of

Afghans 'shameful' and published an anti-torture decree. As AAN Senior Analyst, Kate Clark, reports, the new decree looks good on paper; now comes the real test of whether the president will actually push for change in how the security forces treat detainees. Meanwhile, on another issue of concern to rights activists, there has come an order from the National Security Council to foreign forces to disband any irregular armed groups they were supporting.

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