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U.S. Frees Detainees, but Afghans' Anger Persists

By ALISSA J. RUBIN
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KABUL, Afghanistan — The tribal elders had traveled many hours to reach a windswept Afghan military base on the capital's outskirts to sign their names to a piece of paper allowing them to bring their countrymen home from American detention.

As an Afghan general read the document aloud, Cmdr. Dawood Zazai, a towering Pashtun tribal leader from Paktia Province who fought the Soviets, thumped his crutch for attention. Along with other elders, he did not like a clause in the document that said the detainees had been reasonably held based on intelligence.

"I cannot sign this," Commander Zazai said, thumping his crutch again. "I don't know what that intelligence said; we did not see that intelligence. It is right that we are illiterate, but we are not blind.

"Who proved that these men were guilty?"

No one answered because Commander Zazai had just touched on the crux of the legal debate that has raged for nearly a decade in the United States: Does the United States have the legal right to hold, indefinitely without charge or trial, people captured on the battlefield? His question also exposed a fundamental disagreement between the Afghans and the American military about whether people had been fairly detained.

This is the latest chapter in America's tortuous effort to repair the damage done over the last nine years by a troubled, overcrowded detention system that often produced more insurgents rather

than reforming them. The problems were similar in the huge sweeps of suspected insurgents in Iraq.

Now, in Afghanistan, detainees who are deemed not to be a threat are handed over to local elders on the understanding that it is the community's responsibility to ensure that they stay on the right side of the law.

The releases that took place at a recent ceremony at the 201st Afghan Army Corps headquarters, as well as the release or assignment to Afghan detention of 70 to 80 detainees earlier this year, are part of a new effort to free detainees who are no longer thought to be an imminent threat to the government of Afghanistan or the international forces.

Under the program, recently overhauled by Vice Adm. Robert S. Harward and Brig. Gen. Mark S. Martins, a Harvard-trained lawyer with the army's Judge Advocate General's Corps, there is now an automatic administrative review devised to speed the release process, and for the first time it allows detainees to make a case for their release.

Once the review board has approved a release, the Afghan military, in conjunction with the Americans, asks the detainee to sign a pledge to stay away from the insurgency, from the Taliban and from Al Qaeda. The elders are asked to sign a similar pledge that they will help them. Similar programs have been used with considerable success in Iraq, and the new one in Afghanistan builds on that experience.

There are now about 800 detainees at the American-run Detention Facility in Parwan, the new detention center that opened at the end of 2009 to replace the notorious holding facility at Bagram Air Base, which is associated with abuses that resulted in the deaths of at least two detainees. The vast majority of detainees are Afghans, but about 32 are foreigners, according to a senior American officer.

The American plan is to hand control of the detention center to the Afghan Ministry of Defense by January 2011, but Americans will still be deeply involved in the detention operations. In the coming months, the Americans hope to use the review process to release as many detainees as possible if they are deemed no longer a threat and to transfer to Afghan custody those who can be tried for crimes under Afghan law.

But as the recent ceremony showed, beyond the cake and fruit and formal speeches lies a reservoir of resentment about how the United States has handled detentions since 2001.

In interviews, former detainees and their families said the Americans were routinely misled by informants who either had personal grudges against them or were paid by others to give information to the Americans that would put the person in jail.

In addition, many Afghans have experienced the detentions as humiliating, and found almost unbearable the depths of poverty borne by their families during their internment.

"The information you had about these men was wrong in the first place," said Hajji Azizullah, 54, a leader of the Andar tribe in Ghazni, who had come to sign for two detainees. "We are

confident they were not involved with insurgents. If they were, we wouldn't be here to sign for them."

One detainee, Pacha Khan, 29, an illiterate bread baker from Kunar Province, said he was still puzzled about why he had been detained in the first place, let alone held for three years. "I was innocent," he insisted. "Spies took money and sold me to the Americans. The Americans treated us very well, but as you know, jail is a big thing — to be away from your family, your relatives."

His brother, Gul Ahmed Dindar, was less forgiving. He had to support his brother's family of eight children and a wife on the meager salary of a local police officer. "They were about to sell their children," he said. "They had very little to live on. They sold their one goat, their one sheep and their cow. Then they sold the furniture — it was not much. They have had a very tough life."

Admiral Harward insisted that the American intelligence was good and that these were insurgents, but on hearing the elders' protests about signing a document that made it sound as if the tribal leaders agreed with the American view, he offered to change the language to say that in the eyes of American forces these detainees were insurgents. The elders nodded their assent. The new language will be used on future sponsor forms. "We learn something every time we do this," Admiral Harward said.

The Afghan military made its own effort to solve the problem when it heard the elders' protests, by simply writing in the word "no" in front of the phrase saying the detainee had a "link to the insurgency." The version the elders signed said the detainee had "no link."

In the shifting shadows of this often invisible war, where no one is sure who is lying and who is telling the truth, it seemed a reasonable way to resolve the day's discord.