

# **US DECRIMES RULE OF LAW IN AFGHANISTAN WHILE CALLING FOR OVERRULING AFGHAN ATTORNEY GENERAL**

**Update:** Reuters is reporting that the 65 prisoners were released on February 13.

Without a single hint of awareness of the irony involved, the US military yesterday released a statement decrying Afghanistan's decision calling for the imminent release of 65 prisoners held at the Afghan National Detention Facility at Parwan, stating that the release would be a "major step backward for the rule of law in Afghanistan". There are 88 prisoners over whom the US and Afghanistan disagree, but so far only 65 are subject to the current release orders (with the release order for 37 of the 65 dating back to January). Recall that an independent commission, headed by Abdul Shakor Dadras, has been reviewing the status of the prisoners handed over from US control. Despite US bleating that Karzai and Dadras are releasing hardened insurgents bent on returning to battle, it is hardly noted that over 100 of the prisoners have been ordered held over for trial and that the US has not disputed the release of hundreds of others (648 out of 760 reviewed as of January) against whom there was no evidence of crimes.

In their rush to transcribe the complaints from the US military, articles by the New York Times and Los Angeles Times quickly brush over the fact that the results of the Dadras board have been reviewed both by the Afghan attorney general's office and Afghanistan's National Directorate of Security, which is the main intelligence agency. In fact, the New York Times doesn't mention the NDS review at all. From the Los Angeles Times article:

Afghan officials issued a sharp rebuttal, saying the attorney general's office and the National Directorate of Security – Afghanistan's CIA – had reviewed the U.S. information and found insufficient evidence to continue to hold the prisoners. "According to Afghan laws there is no information gathered about these detainees to prove them guilty, so they were ordered released," Abdul Shakoor Dadras, head of the Afghan government committee responsible for the prisoner issue, said in an interview Tuesday.

The New York Times has also posted a document (pdf) purporting to lay out the evidence against the 37 disputed prisoners cleared for release in January. Remarkably, although the military is expressing concern for rule of law, there is a strong reliance on failed polygraph tests in the evidence cited. Of course, polygraph results are so unreliable that they are not admissible in most US states, but that doesn't seem to matter to the military. Fingerprints and other biometric matches are also cited in the document for some prisoners, but whether these matches are strong or weak is not discussed, even though a court would be very interested in the level at which the match is said to occur. Similarly, evidence of explosive residue is cited for some of the prisoners without any discussion of how conclusive the test result was. Laughably, possession of firearms is cited for many of the prisoners, despite the fact that the country in which they live has been at war for over the last twelve years after the US military invaded.

Back in January, Dadras had this to say about some of the evidence:

Mr. Dadras said in an interview on Monday that he was only being true to Afghan law. He insisted that he had to discard any evidence that was collected without a defense lawyer present, which would appear to include anything in the

suspect's possession when captured. He also said he distrusted evidence collected years after suspects were detained, and was not persuaded when lab analysis found residue from chloride chemical compounds used in explosives. Suspects could have picked up the residue other ways, he said.

"The air is contaminated with chlorides, given the fighting; there is bombing and the wind," Mr. Dadras said.

Returning to the US military statement, they do acknowledge that Afghanistan's attorney general's carried out a review of the disputed cases. However, they dismiss that review:

We have made clear our judgment that these individuals should be prosecuted under Afghan law. We requested that the cases be carefully reviewed. But the evidence against them was never seriously considered, including by the Attorney General, given the short time since the decision was made to transfer these cases to the Afghan legal system.

But the Dadras commission has been working since the "handover" of Bagram in March of 2013. That process should be considered part of the the transfer of these cases to the Afghan legal system, and so the cases have been reviewed for nearly a year at this point. And proving once again that the handover was in name only, this whole hubbub comes down to the US still claiming to have veto power over any release despite claiming to have handed over the prison completely to Afghan authority.

There is one final bit of deception being carried out by the US that shouldn't get a free pass. If you clicked on my link above for the US military statement, you found that the statement is on a NATO website maintained for ISAF, the International Security Assistance Force that is

present under NATO command in Afghanistan. But the statement is not an ISAF statement, it is clearly marked as originating from United States Forces-Afghanistan, which is only under US command. See the comments in Sunday's Firedoglake Book Salon on the book *NATO in Afghanistan: Fighting Together, Fighting Alone* by Stephen Saideman and David Auerswald for a discussion of the issue I raised about the US sometimes getting NATO cover for unilateral actions.