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USA: Amnesty International calls on US government to abandon military commissions

The US government should abandon its proposed military commissions and bring any Guantánamo detainees it charges to trial in the ordinary federal courts, without recourse to the death penalty, Amnesty International urged today, releasing a new report on trials under the Military Commissions Act (MCA).

The first proceeding under the military commissions is due to take place on 26 March, with the arraignment of Australian detainee David Hicks. He was one of 10 detainees charged under the previous military commission system thrown out by the US Supreme Court last year.

In its report, *Justice delayed and justice denied?*Amnesty International reiterates its belief that trials under the revised military commission process will fail to comply with international standards. The organization is also deeply concerned that detainees could face execution after such trials.

“The pervasive unlawfulness that has marked the past five years of detentions cries out for the strictest adherence to fair trial standards. Instead, these trials threaten to cut corners in pursuit of a few convictions and add to the injustice that the Guantánamo detention facility has come to symbolize”, said Susan Lee, Amnesty International's Americas Programme Director.

The military commissions will operate in something approaching a legal vacuum. Defendants cannot turn to international human rights law, the Geneva Conventions or the US Constitution for protection. The military commissions are part of a universe absent of judicial remedy for detainees and their families. Even if a detainee is acquitted, he may be returned to indefinite detention as a so-called “enemy combatant”.

In the “war on terror”, detainees in US custody have been treated as potential sources of information first and potential criminal defendants a distant second. They have been subjected to repeated interrogations without access to lawyers or the courts. Interrogation techniques and detention conditions amounting to torture or other ill-treatment under international law have been authorized and used against them.

“The military commissions are patently tailored to fit the unlawful practices that have preceded them. Information coerced by cruel, inhuman or degrading treatment will be admissible. At the same time, the government may introduce evidence while keeping secret the methods used to obtain it,” said Susan Lee.

In September last year, 14 detainees were transferred from years of secret CIA custody to Guantánamo for the stated purpose of trial by military commission. They have not yet been charged, and are being denied access to lawyers even as the government is building its case against them.

“We fear that the military commissions will lack the independence necessary to guarantee fair trials for those charged and to apply the relevant scrutiny to government misconduct," said Jumana Musa, Amnesty International's observer to military commission hearings at Guantánamo under the previous system. “Under such circumstances, justice will neither be done nor be seen to be done.”

Because of the absence of fair trial guarantees, and the trail of illegality that precedes the trials, Amnesty International is calling on other countries not to provide any information to assist the prosecution in military commissions.

Background Information
Pentagon officials have suggested that 60 to 80 of the thousands of detainees it has held as “enemy combatants” may eventually face trial by military commission, while admitting that even this may be an overestimate. There are currently more than 350 detainees unlawfully held in Guantánamo and hundreds more in US custody in Afghanistan. It is not known if there are any detainees currently held in the USA’s secret detention program.

Amnesty International is campaigning for repeal of the MCA or its substantial amendment in line with international law. As well as providing for trials by military commission, the MCA strips the US courts of jurisdiction to consider habeas corpus appeals of any non-US citizen held as an “enemy combatant”, and further entrenches impunity of US personnel by narrowing the scope of the USA’s War Crimes Act.

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