

AMNESTY INTERNATIONAL PRESS RELEASE

AI Index: AMR 51/102/2006 (Public)
News Service No: 168
29 June 2006

USA: President Bush must use Supreme Court ruling as springboard for change

Amnesty International is urging President Bush to treat the Hamdan ruling as a spur to a major rethink of the full range of his administration's "war on terror" detention policies and practices, whether in effect in Guantánamo, Afghanistan, Iraq or undisclosed locations.

"We welcome the fact that the Supreme Court has blocked military commissions as they violate international fair trial standards, including the right of a detainee to be present at his trial and to know all the evidence against him," said Rob Freer, Amnesty International's researcher on the US.

"President Bush must now see the bigger picture and ensure that his administration adopts a progressive interpretation of the ruling in the interest of justice, respect for human rights, and the reputation of his country. He must not seek to resurrect the military commissions in other forms or by other means," said Rob Freer.

"For too long too much deference has been given to this executive in the 'war on terror', and the administration has sought to apply the narrowest interpretations to judicial rulings that have gone against it," Rob Freer said. "Today's ruling is a welcome assertion of judicial oversight."

The court affirmed the applicability of fundamental protections under Common Article 3 of the Geneva Conventions, specifically trials under "regularly constituted courts affording all the judicial guarantees...recognized as indispensable by civilized peoples". In early 2002, President Bush determined that Common Article 3, which also prohibits torture, cruel, humiliating or degrading treatment, did not apply to those detained by the US in Afghanistan and the wider "war on terror".

When asked recently about closing Guantánamo, President Bush has said that he was waiting for the Supreme Court to rule in the Hamdan case, as it concerned the question of whether detainees he has designated 'enemy combatants' could be tried by military commission.

"President Bush has always had the power to close Guantánamo and to cancel the military commissions. Both are the products of his administration. Each violates international law and each should be consigned to the history books."

The military commissions – bodies created by the executive, not independent courts – fall far short of international standards for fair trial. Justice would neither be done nor be seen to be done in any trials conducted before them. Moreover, the commissions can hand down death sentences.

Amnesty International has been calling for the closure of Guantánamo for over a year and since late 2001, the cancellation of President Bush's military order setting up the commissions.

Amnesty International continues to stress that the closure of the Guantánamo facility must not be used to transfer the human rights violations elsewhere. All secret detentions must be ended and all detainees fully registered. All detainees should be guaranteed their full rights under international law and standards, including the right not to be subjected to torture or other cruel, inhuman or degrading treatment, the right to judicial review of the lawfulness of their detention, and the right of anyone charged with recognizably criminal offences to be brought to full and fair trial in an independent and impartial court of law, without the threat of the death penalty.

Background Information

Salim Ahmed Hamdan, a Yemeni national, was captured in November 2001 during the international armed conflict in Afghanistan. He has now been in US custody for more than four and a half years, most of it in the detention camp in Guantánamo Bay, some of it in prolonged solitary confinement. In July 2003, he was named under President Bush's Military Order of 13 November 2001, making him eligible for trial by military commission. He was charged with conspiracy to commit acts "triable by military commission", for example "attacking civilians" and "terrorism".

In a 5-3 decision, the Supreme Court ruled that President Bush had overstepped his authority in ordering military commission trials for foreign nationals held at Guantánamo. The ruling held that the proposed commissions violated US law and the Geneva Conventions.

For further information on military commissions and closing Guantánamo, please see:

USA: Military commissions for 'war on terror' detainees -

<http://web.amnesty.org/library/Index/ENGAMR510502006>.

Memorandum to the US Government on the report of the UN Committee Against Torture and the question of closing Guantánamo - <http://web.amnesty.org/library/Index/ENGAMR510932006>.

Public Document

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