

URGENT ACTION

GUANTÁNAMO: DEATH PENALTY DECISION IMMINENT

The US government wants to seek the death penalty at the upcoming military commission trial of a Saudi Arabian man held at the US detention facility in Guantánamo Bay. To do so it needs the approval of an official known as the 'convening authority'. A decision is expected within weeks.

Saudi Arabian national 'Abd al Rahim Hussayn Muhammed al Nashiri was arrested in Dubai, United Arab Emirates, by local security forces in October 2002. He was handed over to US custody a month later, and held in secret custody at undisclosed locations by the USA's Central Intelligence Agency (CIA) for almost four years, during which time he was subjected to torture and other ill-treatment and to enforced disappearance. In September 2006, he was transferred to military custody at the US Naval Base in Guantánamo Bay in Cuba, where he remains.

On 20 April 2011, the US Department of Defense announced that 'Abd al Rahim al Nashiri had been charged under the Military Commissions Act of 2009 with, among other things, "murder in violation of the law of war", and "terrorism". He is accused of having had a leading role in the attack on the USS Cole in Yemen on 12 October 2000 in which 17 US sailors were killed and 40 others wounded, and in the attack on the French oil tanker MV Limburg in the Gulf of Aden on 6 October 2002 in which a crew member was killed. No date has yet been set for his trial by military commission.

The prosecution has recommended that the death penalty be an option at the trial, but this must be approved in advance by the "convening authority" of the military commissions, an official appointed by the Secretary of Defense. The current convening authority, retired Navy Vice Admiral Bruce MacDonald, has indicated that he is prepared to receive written submissions on the death penalty issue until 30 June and that he will make his decision after that.

Amnesty International opposes the death penalty unconditionally. While international human rights law recognizes that some countries retain the death penalty, it prohibits the imposition and execution of a death sentence based on a trial that has not met the highest standards for fairness. The US military commissions fail to meet international fair trial standards. Any use of the death penalty after such trials would violate international law (see overleaf).

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:

- Recognizing that 'Abd al Rahim al Nashiri has been accused of involvement in serious crimes;
- Expressing concern that the prosecution is seeking approval for it to pursue the death penalty;
- Expressing your unconditional opposition to the death penalty in all cases;
- Pointing out that international law prohibits the death penalty based on any trial that has not met the highest standards of fairness, and arguing that the military commission trials do not meet such standards;
- Calling on the convening authority not to refer the charges against 'Abd al Rahim al Nashiri as capital charges;
- Expressing deep concern at the USA's failure to respect international human rights law in the case of 'Abd al Rahim al Nashiri over the past nine years, heightening the need for rigorous respect for human rights principles now.

PLEASE SEND APPEALS AS SOON AS POSSIBLE, AND BEFORE 30 JUNE 2011 TO:

Convening Authority for Military Commissions

Vice Admiral Bruce MacDonald
Office of the Convening Authority
Office of Military Commissions
1600 Defense Pentagon
Washington, DC 20301-1600, USA
Fax: +1 703 428 7484

Salutation: Dear Vice Admiral MacDonald

COPIES TO:

The Honorable Hillary R. Clinton
Secretary of State, US Department of State
2201 C Street, N.W., Washington DC 20520, USA
Fax: + 1 202 647 2283

Also send copies to diplomatic representatives of the USA accredited to your country. Check with your section if sending appeals after the above date.

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ADDITIONAL INFORMATION

'Abd al-Rahim al-Nashiri has been in US custody for nearly nine years. Despite being named on an indictment in US federal court only months after his arrest in 2002, he was not brought promptly before a judicial authority and brought to trial without undue delay, as required by international law. Instead he was detained in secret until he was transferred to Guantánamo in 2006. During his time in CIA custody, he was subjected to torture, including by "water-boarding", where the process of drowning the detainee is begun, as well as other cruel, inhuman or degrading treatment. Information released into the public domain indicates 'Abd al-Rahim al-Nashiri was also subjected to shackling, hooding and nudity as well as to a number of "unauthorized" techniques, including being threatened with a handgun and a electric power drill, "potentially injurious stress positions" and the use "of a stiff brush [used in bathing] that was intended to induce pain", and "standing on al-Nashiri's shackles, which resulted in cuts and bruises". He was held incommunicado in solitary confinement at undisclosed locations for nearly four years. No one has been brought to justice for the human rights violations, including the crimes under international law of torture and enforced disappearance, to which 'Abd al-Rahim al-Nashiri and others held in the CIA secret program were subjected.

In 2008, the Bush administration charged 'Abd al-Rahim al-Nashiri for trial by military commission. The charges were dismissed after President Barack Obama took office and ordered a review of the Guantánamo cases. In November 2009, the US Attorney General announced that the case was being sent back to the Department of Defense for prosecution by military commission.

The USA responded to the attacks of 11 September 2001 by developing a global "war" framework under which its interpretation of the laws of war would apply to the exclusion of international human rights law. Torture and other ill-treatment, enforced disappearance, secret detainee transfers, indefinite detention outside the criminal justice system, and unfair trials by military commission were among the practices that resulted. The military commission system has been revised over the years and is now in its third version since President Bush first established it by executive order in November 2001 (See: USA: Trials in error. Third go at misconceived military commission experiment, July 2009, <http://www.amnesty.org/en/library/info/AMR51/083/2009/en>). However, the commissions still fail to meet international fair trial standards. Among other flaws, they lack independence, whether in substance or appearance, from the political branches of government that have authorized, condoned, and blocked accountability and remedy for, human rights violations committed against the very category of detainees that will appear before them. The commissions are creations of political choice, not tribunals of demonstrably legitimate necessity, and turning to them in this context against these detainees contravenes international standards. Moreover, the commissions are discriminatory. If any Guantánamo detainee slated for prosecution was a US national, he could not be tried by these military commissions: Under US law he would have the right to a civilian jury trial in an ordinary federal court, not before a panel of US military officers operating under rules and procedures that provide a lesser standard of fairness. The same standard of fair trial should be applied to all, regardless of national origin: that is a fundamental principle of human rights and the rule of law.

The UN Human Rights Committee, established by the International Covenant on Civil and Political Rights (ICCPR) to oversee implementation of that treaty, has emphasised that fair trial guarantees are particularly important in cases leading to death sentences, and that "the imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of the right to life (article 6 of the Covenant)." In 2007, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms called on the USA to disestablish the military commissions. In 2009, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions urged the USA not to conduct any capital prosecutions before military commissions.

'Abd al-Rahim al-Nashiri has alleged that for several months in 2002 and 2003 he was held in secret CIA detention in Poland, and that he was tortured during this period. He has now appealed to the European Court of Human Rights, requesting that the court order the Polish government to intervene with US authorities to try to stop the military commission prosecution from seeking the death penalty. A decision from the European Court is pending.

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