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USA: Five more Guantánamo detainees to be tried in federal court

Amnesty International says decision is better late than never, but US administration should abandon military commission trials in all cases

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The US administration's announcement that it will transfer five detainees from Guantánamo to the US mainland to face trial in federal court, a decision that is years overdue but still positive, is seriously tarnished by its continued pursuit of military commission trials in other cases.

Although the decision to turn to the federal courts in these cases has been a long time coming, it is a welcome step forward from where we were. However, the decision to abandon military commission trials in these cases must now be followed by an end to the commissions altogether.

Attorney General Eric Holder today announced that five Guantánamo detainees will be transferred to New York to face trial in federal court for crimes relating to the attacks of 11 September 2001. The five detainees – Khalid Sheikh Mohammed, Walid bin Attash, Ramzi bin al-Shibh, 'Ali 'Abd al-'Aziz and Mustafa al Hawsawi – were all held in secret US custody before being transferred to Guantánamo in early 2006. They were charged in 2008 by the Bush administration for trial by military commission and were facing the death penalty in their forthcoming military trials.

Attorney General Holder said that he “fully expects” to direct federal prosecutors to seek the death penalty against these five detainees for their trials in US District Court in New York. Amnesty International will continue to call on the US administration to drop pursuit of the death penalty in any and all prosecutions, in whatever forum the trial is held.

In five other cases, Attorney General Holder said that military commission proceedings will be pursued. He indicated that the five defendants will include Abd al-Rahim al-Nashiri who, like Khalid Sheikh Mohammed, was subjected in secret custody to the form of torture known as “waterboarding”.

Military proceedings will be convened in under the Military Commissions Act, the 2006 version of which was recently amended by Congress and the revisions signed into law by President Obama last month.

Amnesty International considers that military commissions operating under the revised procedures will still fail to meet international standards. Moreover this use of different trial

forums for different detainees raises concern that decisions are being made according to which avenue is deemed most likely to achieve convictions rather than according to adherence to principles of equal protection of the law, due process and human rights.

Concern is compounded by the projected continued detention without charge of dozens of detainees whom the administration apparently intends neither to prosecute nor to release. Amnesty international opposes indefinite detention without charge as inconsistent with human rights.

As it seeks to end the Guantánamo detentions, the new US administration undoubtedly faces the serious consequences of unlawful policies pursued by the Bush administration. Under no circumstances, however, may the human rights violations of the previous administration serve as justification for the commission of further violations by the present administration.

Amnesty International long called for all trials of Guantánamo detainees to be conducted in independent and impartial civilian courts, not military commissions. Anyone who is not charged should be released, and the USA should end its pursuit of indefinite detention outside the criminal justice system.

Amnesty International reiterated that while the victims of the attacks of 11 September 2001 rightly expect the US government to bring those responsible to justice, those responsible for human rights violations committed in the name of counter-terrorism – including the crimes under international law of torture and enforced disappearance – must be pursued with equal vigour.

For further information, see:

USA: Trials in error: Third go at misconceived military commission experiment,
<http://www.amnesty.org/en/library/info/AMR51/083/2009/en>.

USA: Investigation, prosecution, remedy: Accountability for human rights violations in the 'war on terror',
<http://www.amnesty.org/en/library/info/AMR51/151/2008/en>.

USA: The promise of real change. President Obama's executive orders on detentions and interrogations,
<http://www.amnesty.org/en/library/info/AMR51/015/2009/en>.

USA: Further information: No death penalty for former secret detainee,
<http://www.amnesty.org/en/library/info/AMR51/110/2009/en>.

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