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USA: Military commissions should not be resumed

Amnesty International is dismayed at the recent US appeals court ruling that Yemeni national Salim Ahmed Hamdan, a Guantánamo detainee can be tried by military commission and the subsequent announcement by the US Department of Defense that commission proceedings will resume immediately. The organization is calling on US authorities to abandon these procedures and to rescind the Executive Order which created them.

Amnesty International said that these developments are deeply worrying. All the detainees must be afforded their due process rights. Trials by these military commissions as currently constructed would be a huge step in the wrong direction. The use of military commissions is an affront to the rule of law and a major dereliction from international and US fair trial standards.

On 15 July the United States Court of Appeals for the District of Columbia Circuit ruled that Salim Ahmed Hamdan can be tried by a military commission. The ruling also held that the Geneva Convention protections do not grant individual rights enforceable through direct legal action in US courts. This ruling reverses a November 2004 District Court decision that the Third Geneva Convention does confer an individual right of action, and prevented trial by military commission unless and until a “competent tribunal” found that Salim Ahmed Hamdan was not a prisoner of war. The District Court had gone on to say that even if a competent tribunal determined Salim Ahmed Hamdan was not a prisoner of war, the military commissions could not go forward because the rules allow the defendant to be excluded from hearing the testimony against him and violated basic due process rights.

The latest ruling held that the military commissions could also serve as a “competent tribunal,” in determining a detainee’s status as a prisoner of war. However, the commissions were established by President Bush who has continually denied that the men should have such status.

The only rule governing admission of evidence at the military commissions allows for the admission of any evidence which would have “probative value to the reasonable person.” This can include hearsay, statements obtained under torture and statements taken from other detainees in Guantánamo Bay or elsewhere. No recordings are available of interrogations carried out at such locations, witnesses cannot be cross-examined, nor can accuracy of the translations be verified. Yet such statements are admissible as evidence for the military commission trials.

Article 15 of the Convention against Torture and other forms of Cruel, Inhuman and Degrading Treatment or Punishment, to which the USA is a state party, prohibits the use of statements obtained by torture as evidence in any proceedings, legal or otherwise. US law prohibits evidence obtained from coerced confessions being used in a criminal proceeding.

Amnesty International said that all forms of torture and ill-treatment must be condemned and eradicated. Evidence extracted under torture or ill-treatment, including any moral or physical coercion must never be used in legal proceedings. To go ahead with the military commission trials which would admit evidence obtained by torture would be nothing less than an endorsement of torture and ill-treatment.

Salim Ahmed Hamdan has told his military lawyer that whilst in US custody in Afghanistan he was "beaten, that he was held for about three days in a bound position, cold...dragged, kicked, punched." In Guantánamo he was held for almost a year in solitary confinement in Camp Echo, only moved out of isolation following a judicial order. Before this the US government had refused to move him on the grounds that it "would create an undue risk of destroying the environment that the military is trying to create at Guantánamo in order to facilitate intelligence gathering". He has asserted that he has considered confessing falsely to ameliorate his situation.

Another detainee, charged under the President's Order is Australian national David Hicks. He alleges that whilst in US custody he was repeatedly beaten while restrained and blindfolded, that he was forced to take unknown medication and was subjected to sleep deprivation "as a matter of policy" and that he was not allowed to leave his cell in Camp Echo to exercise in the sunlight between July 2003 and March 2004.

The military commissions also lack independence from the executive and severely restrict the right to a counsel of choice and the right to an effective defence. They deny the right of appeal to an independent tribunal, even when the death penalty is imposed.

On 16 July 2005 the US Department of Defense announced that the cases of Yemeni detainee Salim Ahmed Hamdan and Australian detainee David Hicks will resume for both men as soon as possible, and also announced that it would move forward with commission proceedings against Yemeni national Ali Hamza Sulayman al-Bahlul and Sudanese national Ibrahim Ahmed Mahmoud al-Qosi. Commission members for these cases are expected to be appointed this week.

Only four people have so far been charged under the Military Order. Another eleven had been identified for trial by military commission subject to the President's Order, but three have since been released without charge. An Amnesty International observer attended the preliminary proceedings of the military commissions in Guantánamo Bay during the week of 23 August 2004 and in 1 November 2004. The proceedings are now widely acknowledged to have been poorly organized and deeply flawed, yet no changes appear to have been made to improve proceedings despite a series of recommendations from human rights groups, legal associations and the office of military commissions. The fact remains that even partial reforms of the military commission process cannot resolve its fundamental flaws.

Amnesty International called on the US administration to, ensure the physical and psychological well being of all the detainees, as well as ensuring that justice is done. The organization also urged the US authorities to charge detainees and give them fair trials or release them.