

AMNESTY INTERNATIONAL

Public Statement

AI Index: AMR 51/153/2004 (Public)
News Service No: 277
3 November 2004

Guantánamo: Military commissions -- Amnesty International observer's notes from proceedings

Amnesty International has an observer at the pre-trial hearings by military commissions being conducted at the US Naval Base in Guantánamo Bay, Cuba.

The organization's observer, Jumana Musa (see <http://web.amnesty.org/library/Index/ENGAMR511292004>) has sent the following update after the hearings held yesterday, 2 November. More updates will be sent, not necessarily on a daily basis, during these current proceedings, which are expected to last for two weeks.

Four men have been charged in preparation for their trial by military commission -- David Hicks, Australian national; Salim Ahmed Hamdan, Yemen national; Ali Hamza Ahmed Sulayman al Bahlul, Yemen national; and Ibrahim Ahmed Mahmoud al Qosi, Sudan national.

Amnesty International has opposed the military commissions ever since President George W. Bush signed a Military Order on 13 November 2001 providing for such trials. It will continue to campaign for the military commissions to be abandoned and the Military Order rescinded. For further information see <http://web.amnesty.org/library/Index/ENGAMR511302004>.

"Today was the second day of hearings on motions in the case of David Hicks. The day started with the military commission panel denying some of the defence motions argued the previous day. These included a motion to declare the commission improperly constituted and a motion to dismiss the case because of improper referral of charges. The arguments today were as contentious as those presented on Monday (1 November). The defence argued for dismissal based on an equal protection claim, namely that the US government cannot try people charged with the same crimes by different standards. The defence stated that a person's fate should not be determined by a factor so fortuitous as citizenship. They went on to argue that determining the level of justice a person receives by their citizenship does not meet the commission's stated standard of 'full and fair'. Since President Bush signed his Military Order providing for trials of non-US nationals by military commission, Amnesty International has argued that the discriminatory application of fair trial rights, including on the basis of nationality, violates international law.

The proceedings have also realized the prediction that asking individuals with no legal training to decide complicated issues of domestic, military and international law could not result in a fair process. The defence was not able to gain any concessions from the commission panel, even on basic and accepted principles of law. The prosecution, who presents the case on behalf of the government, asserted that no law, not even customary international law, was controlling in this circumstance. They asserted that the only law that binds the panel is 'commission law', which is comprised of orders, instructions and memorandums written by Pentagon and military commission personnel in order to charge and try non-US defendants held in Guantánamo or elsewhere. The prosecution also argued that defendants before military commissions are

afforded more rights than exist under the Geneva Conventions and US federal law. This statement ignores the fact that those facing trial before military commissions are denied some of the most basic components of a fair trial, including the right to an independent appeal and the exclusion of any evidence obtained by torture or coercion.

The case argued by the prosecutors was a continuation the US government's pick-and-choose approach to international law. The notion that the president can create a commission by executive order, allow the Department of Defense to write the rules and then have prosecutors claim that no other law applies is exactly the type of exceptionalism that undermines the rule of law and respect for human rights. No state is above the law, and the United States is not an exception. The military commission proceedings do not meet fair trial standards and none of the superficial changes made to the panel and the rules have remedied this very basic flaw."