

# URGENT ACTION

## US ADMINISTRATION WAVERS ON CIVILIAN 9/11 TRIAL

**Four months after the US Attorney General announced that five Guantánamo detainees would be prosecuted in civilian court in the USA, the five men remain in military custody in Guantánamo, amid signs that the administration may do a U-turn and instead use military commissions.**

On 13 November 2009, Attorney General Eric Holder announced that five detainees held at the US Naval Base in Guantánamo Bay in Cuba would be transferred for prosecution in federal court in New York on charges relating to the attacks of 11 September 2001 (see <http://www.amnesty.org/en/library/info/AMR51/116/2009/en>). The five detainees – Khalid Sheikh Mohammed, Walid bin Attash, Ramzi bin al-Shibh, 'Ali 'Abd al-'Aziz and Mustafa al Hawsawi – had been held incommunicado for up to four years in secret US custody before being transferred to Guantánamo in 2006. They were charged in 2008 by the Bush administration for trial by military commission.

Since the Attorney General's announcement, the question of the place of trial and use of civilian courts for these and other detainees has been the subject of fierce political controversy in the USA; proposed legislation in Congress seeks to prohibit civilian trials and require exclusive use of military commissions for these and other detainees (see overleaf). On 5 March, the US newspaper, the Washington Post reported that, according to administration officials, President Obama's advisers were to recommend that the trial of the five men be conducted by military commissions. Following the report, the White House spokesperson said that "no decision" had been made, and the administration has since been reported as saying that a final decision on where to try the five would not be made "for weeks".

Amnesty International considers that the military commissions, even under revised procedures introduced in 2009, do not meet international fair trial standards. International law requires that trials be conducted in independent courts; military commissions are not independent. Trial of civilians by military tribunals is inconsistent with international standards, especially when civilian courts are readily available. Applying inferior trial protections on the basis of nationality – US nationals cannot be tried by the military commissions – would violate the right to equality before the law. Any execution after such unfair trials would violate the right to life under international law. The latter also provides that anyone charged with a criminal offence has the right to be tried without undue delay. These five men have now been in US custody for up to seven and a half years. Any Guantánamo detainee the USA intends to prosecute must be promptly charged and brought to fair trial in an independent and impartial tribunal applying fair trial standards. Any detainee the USA does not intend to prosecute should be immediately released.

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

- Welcoming the administration's decision last year to prosecute five detainees in US federal court;
- Expressing concern that trial proceedings have not yet been initiated, and at reports that the administration may be considering reverting to military commissions for the prosecutions;
- Arguing that the military commissions do not meet international fair trial and other human rights standards;
- Pointing out that a U-turn on these trials will be widely interpreted as the USA failing human rights principles;
- Urging the administration to adhere to its decision and to promptly initiate trial proceedings in federal court.

### PLEASE SEND APPEALS BEFORE 22 APRIL 2010 TO:

President Barack Obama, The White House  
Office of the President, 1600 Pennsylvania Avenue NW,  
Washington, DC 20500, USA

Fax: + 1 202 456 2461

Email: [president@whitehouse.gov](mailto:president@whitehouse.gov)

Salutation: Dear Mr President

The Honorable Eric Holder, Attorney General  
US Department of Justice, 950 Pennsylvania Avenue NW  
Washington DC 20530-0001, USA

Fax: + 1 202 514 4507

Email: [AskDOJ@usdoj.gov](mailto:AskDOJ@usdoj.gov)

Salutation: Dear Attorney General

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

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### ADDITIONAL INFORMATION

Military commission proceedings were suspended in January 2009 as part of President Obama's order to his administration to review and resolve the Guantánamo detentions and close the detention facility within a year. Not only has that deadline been missed, and no new deadline set, military commission trials have been retained and are pending against a number of detainees. The Guantánamo detainee task force established under President Obama's 22 January 2009 executive order is reported to have recommended that about 35 of the detainees be prosecuted by the USA, either in federal courts or military commissions, while a further 48 should be held without charge or trial. The administration has proposed purchasing Thompson Correctional Center in Illinois, including for the indefinite detention in military custody of such detainees, but the plan will require congressional support for funding and possible legislation. Meanwhile releases of other Guantánamo detainees have been few and slow coming, including because of the USA's refusal to allow into the US mainland released detainees who cannot be returned to their home countries for fear of the human rights violations they would face there. See USA: Still failing human rights in the name of global 'war', January 2010, <http://www.amnesty.org/en/library/info/AMR51/006/2010/en>, and USA: Daily injustice, immeasurable damage, 5 March 2010, <http://www.amnesty.org/en/library/info/AMR51/020/2010/en>.

Over the past year, US detentions in the context of counter-terrorism – particularly the question of what to do with the Guantánamo detainees – have taken on a renewed domestic political dimension that has served to override the USA's international human rights obligations. The political temperature surrounding these issues has risen even further since an alleged attempt to detonate explosives on a commercial flight inbound to Detroit on 25 December 2009 and the administration's decision to provide the suspect, a foreign national, with a lawyer and charge him for trial in federal court. In January 2010, for example, the Chairman of the Senate Homeland Security and Governmental Affairs Committee called on the administration to transfer the suspect to military custody as an "unprivileged enemy combatant", for interrogation and military commission trial.

Over the year, Congress has blocked progress on the detainee cases in a variety of ways, and further legislation is pending. On 2 February 2010, for example, a number of US Senators introduced proposals aimed at cutting off funding for the trials of the five detainees whose prosecution in federal court Attorney General Holder announced in November 2009. The bill was described by its sponsors as "the first step towards protecting the security of the American people from inappropriate trials in domestic criminal courts". On 4 March 2010, Senators John McCain and Joe Lieberman introduced another bill – the Enemy Belligerent Interrogation, Detention, and Prosecution Act of 2010 – into the Senate. Senator McCain, emphasizing his claim that the USA was engaged in a "war" against terrorists, said that the bill would authorize detention without charge "for the duration of hostilities" of anyone labelled as an "unprivileged enemy belligerent". It would prohibit any such individual from being provided a lawyer after arrest – "we should not be providing suspected terrorists" with defence lawyers, Senator McCain said. If it eventually was decided to hold a criminal trial in such a case, he added, his bill would require exclusive use of military commissions.

The USA's military commissions are not by any measure tribunals of demonstrably legitimate necessity, but creations of political choice. Amnesty International has opposed use of these tribunals ever since President George W. Bush signed an executive order in November 2001 establishing military commissions for the trial of alien "enemy combatants" in what he called the "war on terror". That system was overturned by the US Supreme Court in 2006, but was replaced with a slightly revised system established under the Military Commissions Act of 2006. President Obama signed revised commission procedures into law in October 2009. Amnesty International remains convinced that justice will neither be done nor be seen to be done in such trials. See Trials in error: Third go at misconceived military commission experiment, July 2009, <http://www.amnesty.org/en/library/info/AMR51/083/2009/en>.

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