

URGENT ACTION

FROM SECRET DETENTION TO THE DEATH PENALTY?

Tanzanian national Ahmed Khalfan Ghailani, who has been detained without charge for five years, two of them at undisclosed locations, is now facing trial in US federal court. The judge has ordered the government to tell the court by 13 October whether it will seek the death penalty.

Ahmed Ghailani was arrested on 25 July 2004 by Pakistani police in Gujarat, Pakistan. He was handed over to US agents the following month and held in secret detention by the Central Intelligence Agency (CIA) for the next two years, then transferred in September 2006 to solitary confinement in military custody in the US Naval Base in Guantánamo Bay in Cuba. He was charged for trial by military commission in 2008. The Bush administration intended to seek the death penalty against him, but in October 2008 the Convening Authority for the military commissions rejected this and referred the charges on for trial as not eligible for the death penalty.

The US Department of Justice announced on 21 May that Ahmed Ghailani would be tried in federal court under an indictment pending against him in the District Court for the Southern District of New York (SDNY) since March 2001. On 9 June 2009 he was transferred from Guantánamo to New York. He is charged with involvement in the 1998 bombings of the US Embassies in Tanzania and Kenya in which more than 200 people were killed and many others injured. In a hearing in District Court on the day of his transfer from Guantánamo, he pleaded not guilty.

In a letter to the trial judge on 26 June, the US Attorney's Office for SDNY said that the earlier rejection of the death penalty in the military commission case would "factor into the analysis of whether to seek it or not" in this federal trial, but "we cannot rely on the military's no-seek determination...in lieu of following our own process." It said that it would submit its recommendation to the Justice Department within 81 days and should have an answer from the Department "within 30 days of our submission." On 2 July, the judge ordered the prosecution to file any notice of intent to seek the death penalty no later than 13 October. He set the trial to begin on 13 September 2010.

PLEASE WRITE IMMEDIATELY in English or your own language:

- welcoming the fact that the US government has ended the indefinite detention without charge of Ahmed Khalfan Ghailani and that it has turned to ordinary federal court to conduct the trial;
- urging the authorities not to pursue the death penalty against Ahmed Ghailani under any circumstances, noting the increasing isolation of the USA on this fundamental human rights issue;
- reminding the authorities of their obligation not to seek to admit, in this or any other proceeding, information obtained under detention conditions or interrogation techniques that violated the international prohibition of torture or other cruel, inhuman or degrading treatment (except to prove that such unlawful treatment was used);
- calling on them to order a full investigation into the enforced disappearance of Ahmed Ghailani and for him to be provided with effective access to remedy for any human rights violations committed against him in US custody.

PLEASE SEND APPEALS BEFORE October 2009 TO:

Attorney General Eric Holder
US Department of Justice
950 Pennsylvania NW,
Washington, DC 20530-0001, USA
Fax: +1 202 307 6777
Email: AskDOJ@usdoj.gov
Salutation: Dear Attorney General

Lev L. Dassin,
Acting United States Attorney
Southern District of New York
One Saint Andrew's Plaza,
New York, NY 10007, USA
Fax: +1 212 637 2390
Salutation: Dear US Attorney Dassin

And copies to:
Secretary of State Hillary R. Clinton
US Department of State
2201 C Street, N.W.,
Washington DC 20520, USA
Fax: + 1 202 261 8577
E-mail: secretary@state.gov

Also send copies to diplomatic representatives accredited to your country.

Please check with your section office if sending appeals after the above date.

Further information: www.amnesty.org/xxxxx

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ADDITIONAL INFORMATION

Amnesty International opposes the death penalty in all cases, unconditionally. A majority of countries have abolished judicial killing in law or practice. The international community has ruled out the death penalty as a sentencing option in international tribunals for even the worst crimes – genocide, war crimes and crimes against humanity. The USA's continuing resort to capital punishment places it at odds with both this global trend and the abolitionist outlook of international human rights instruments.

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to life and prohibits the arbitrary deprivation of life. While encouraging abolition of the death penalty, article 6 also seeks to ensure that countries which still retain capital punishment not impose it in any way that contradicts any other provision of the Covenant.

Article 2 of the ICCPR requires the state party to ensure that any person whose rights under the Covenant have been violated "shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." The UN Human Rights Committee has noted that reparation may include "bringing to justice the perpetrators of human rights violations." Indeed, failure by a government to ensure thorough, effective, impartial and independent investigations, or failure to bring perpetrators to justice can amount to further, separate breaches of the ICCPR. The Committee has emphasised that "these obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman or degrading treatment (article 7)... and enforced disappearance (articles 7 and 9)."

Ahmed Ghailani was subjected to enforced disappearance, a crime under international law, for the two years he was in CIA custody. In secret detention at undisclosed locations, he was held incommunicado in solitary confinement. Amnesty International does not know what interrogation techniques he was subjected to in CIA custody, in addition to conditions of detention which themselves violated the prohibition of torture or other ill-treatment. In any event, no one has been held to account for the human rights violations that were authorized and used in the CIA program. President Barack Obama and officials in his administration have stated that no CIA personnel who used interrogation techniques authorized by the US Justice Department will face prosecution. Under such circumstances, the cruelty of any death sentence would only be compounded by the prisoner's prior treatment and the absence of any effective remedy or accountability for the human rights violations to which he was subjected.

Ahmed Ghailani was first indicted in December 1998 for his alleged role in the bombing of the embassy in Dar es Salaam on 7 August 1998. In a superseding indictment on 12 March 2001, he was charged with involvement in the bombing of the embassy in Nairobi, also on 7 August 1998, and for his alleged participation in a wider conspiracy with al-Qa'ida.

While Amnesty International will continue to urge the USA not to resort to the death penalty against Ahmed Ghailani, or any other person, the organization considers his transfer to civilian custody to be a positive, albeit belated, step that should be promptly replicated in any case where the government intends to prosecute a Guantánamo detainee. To date, Ahmed Ghailani is the only Guantánamo detainee to have been charged by the new administration. Some 229 detainees remain in Guantánamo. The USA should abandon military commissions and release any detainee it does not promptly charge for trial in federal court.

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