

PUBLIC

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Legal concern / Death penalty

8 July 2003

USA

**Feroz Ali Abbasi (m), UK national, aged 23
Moazzam Begg (m), UK/Pakistan national, aged 35
David Hicks (m), Australian national, aged 27
and three other non-US nationals, identities and nationalities unknown**

On 3 July, it was revealed that President Bush had named six foreign nationals in US custody as being the first to be subject to the Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism which he signed on 13 November 2001. Under the Order, the six can be held indefinitely without charge or trial, or brought to trial before military commissions with the power to hand down death sentences against which there would be no right of appeal.

According to the Department of Defence, President Bush has "determined that there is reason to believe that each of these enemy combatants was a member of *al-Qa'ida* or was otherwise involved in terrorism directed against the United States". It is now the responsibility of the "appointing authority", currently Deputy Secretary of Defence Paul Wolfowitz, to decide whether to approve any charges brought by military prosecutors and whether to appoint a military commission to try those charged. The Pentagon has not made the identities of the six public, stating that because "no charges against any of the detainees have been approved, their names will not be released". However, it has emerged that Moazzam Begg, Feroz Abbasi and David Hicks are among the six detainees. These three men are being held in the US Naval Base in Guantánamo Bay, Cuba.

Amnesty International believes that the Military Order should be revoked, and that any trial before the military commissions would contravene international standards:

- The commissions will lack independence from the executive. The executive has the power to name who will be tried by the commissions, to appoint or to remove commission members, to pick the panel that will review convictions, and to make the final decision in any case.
- There will be no right of appeal to an independent and impartial court established by law. The commissions can pass death sentences. Under international standards, governments must ensure particular respect for all fair trial rights in capital cases, including the right to appeal.
- The right to counsel of choice and to an effective defence is restricted. Defendants will be provided with military lawyers and would have to pay to retain a civilian lawyer. Among other restrictions, civilian lawyers may not have access to classified information or closed proceedings. In addition, lawyer/client confidentiality is not guaranteed.
- US citizens cannot be subject to the Military Order and will not be tried by military commission, even if accused of the same offence as a foreign national. International law prohibits discrimination on the basis of nationality with regards to fair trial rights. The commissions would allow a lower standard of evidence than is admissible in ordinary courts

Anyone named under the Military Order "shall not be privileged to seek any remedy or maintain any proceeding" in any court anywhere in the world. This would cover any remedy sought for any human rights violation that may have occurred at the time of arrest, during detention, or during trial by military commission. Even if acquitted by a commission, the prisoners would not necessarily be released until the end of the "war on terrorism", which on 3 July 2003 a senior defence official said is "open-ended".

BACKGROUND INFORMATION

More than 650 people from some 40 countries are being held without charge or trial in Guantánamo Bay. Most of the detainees have been held for more than a year in conditions which may amount to cruel,

inhuman or degrading treatment. They have not had access to any court, to legal counsel, or visits from relatives. They have been subject to repeated interrogations and confinement to small cells for up to 24 hours a day with minimal opportunity for exercise. Several have attempted suicide. The conditions under which they have been held raise concerns about the type of evidence that may be introduced against them if brought before military commissions, the guidelines for which do not expressly exclude statements extracted under coercion, including a coercive detention regime.

Many of the detainees, including Feroz Abbasi and David Hicks, are believed to have been captured in Afghanistan at the time of the international conflict there. Others have been taken into custody in other countries, including Bosnia-Herzegovina and Gambia. Moazzam Begg was allegedly seized from a flat in Pakistan in early 2002 and, despite a *habeas corpus* petition pending in court in Pakistan, was secretly transferred to Afghanistan where he was held in US custody for a year before being transferred to Guantánamo in February 2003. Other detainees have been held incommunicado in US custody in Afghanistan and at undisclosed locations elsewhere outside the USA. It is thought that any trials by military commission and any resulting executions would likely take place at Guantánamo Bay.

On 7 July, the UN Special Rapporteur on the independence of judges and lawyers expressed his alarm at the naming of the detainees under the Military Order. He said that the USA was defying UN resolutions "that any measure taken to combat terrorism must be in accordance with international law".

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

To the US authorities:

- calling for repeal of the Military Order and regretting that six detainees have been named under it;
- urging that none of the six be referred for trial before military commission, as justice will neither be done nor be seen to be done in such proceedings;
- calling for the six to be charged with recognizably criminal offences, brought to trial in proceedings which meet international standards for fair trial, including the right to appeal, or else released;
- opposing any use of the death penalty;
- regretting that by such conduct, the USA is undermining its claims to be committed to the rule of law.

To the UK and Australian authorities:

- urging them to do all in their power either to ensure that any trial proceedings against their national(s) are conducted fairly, not by military commission and without resort to the death penalty, or to obtain their return if the USA insists on pursuing trial by military commission under the flawed Military Order.

APPEALS TO:

President George W. Bush
The White House, Washington, DC 20500, USA
Fax: + 1 202 456 2461 (please keep trying)
Salutation: Dear Mr President

Paul Wolfowitz, Deputy Secretary of Defence
1010 Defence Pentagon
Washington, DC 20301-1010, USA
Fax: + 1 703 697 7374
Salutation: Dear Deputy Secretary of Defence

Rt Hon Jack Straw MP
Secretary of State, Foreign and Commonwealth Office, King Charles Street, Whitehall
London SW1A 2AH, United Kingdom
Fax: + 44 207 270 2144
Salutation: Dear Secretary of State

The Hon. John Howard
Prime Minister, Parliament House
Canberra ACT 2600, Australia
Fax: + 61 2 6273 4100 or + 61 2 9251 5454
Salutation: Dear Prime Minister

COPIES TO:

Colin Powell, Secretary of State, 2201 C Street, N.W.. Washington, DC 20520, USA

Fax: +1 202 647 2283

and to diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 19 August 2003.