

**PUBLIC**

**AI Index: AMR 51/131/2004**

**19 August 2004**

**Further information on UA 199/03 (AMR 51/099/2003, 8 July 2003) and follow-ups (AMR 51/106/2003, 25 July 2003; AMR 51/131/2003, 28 October 2003; AMR 51/028/2004, 11 February 2004; AMR 51/066/2004, 22 April 2004; AMR 51/105/2004, 24 June 2004) - Legal concern / Death penalty / Health concern**

**USA**

**Feroz Ali Abbasi (m), UK national, aged 23  
Moazzam Begg (m), UK/Pakistan national, aged 35  
David Hicks (m), Australian national, aged 28  
Salim Ahmed Hamdan (m), Yemen national, aged 34  
Ali Hamza Ahmed Sulayman al Bahlul (m), Yemen national  
Ibrahim Ahmed Mahmoud al Qosi (m), Sudan national**

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In the face of international opposition, the US administration is continuing to prepare to conduct trials by military commissions. In the week of 23 August, preliminary hearings are due to be held in the cases of four men in custody in the US Naval Base in Guantánamo Bay, Cuba. They have been charged under the Military Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism signed by President Bush in November 2001. Those held under the Order can be tried by military commission, whose verdicts cannot be appealed in any court.

The four men who have been charged are Ali Hamza Ahmed Sulayman al Bahlul, Ibrahim Ahmed Mahmoud al Qosi, David Hicks, and Salim Ahmed Hamdan. Their charges include conspiracy to commit "terrorism". The preliminary hearings for the four defendants will take place in a specially built courtroom in Guantánamo, before the presiding officer only. It is expected that the presiding officer – retired military judge, Colonel Peter E. Brownback – will hear pre-trial motions, may set trial dates, and will be questioned by defence and prosecution lawyers on his fitness to serve on the military commissions. An Amnesty International delegate will observe these preliminary hearings.

The death penalty will not be sought against these four defendants. A death penalty trial must be held before seven commission members, and these men will be tried in front of a panel of five military officers, including the presiding officer. Life imprisonment will be the maximum punishment available. Sentencing is at the discretion of the commission members. There are no detailed guidelines.

Amnesty International is concerned that any guilty pleas or detainee testimony before the commissions could be the result of the coercive nature of the conditions in which the detainees have long been held without any legal process. The four men, as well as Feroz Abbasi and Moazzam Begg who have been made eligible for trial by military commission, but who have not yet been charged, have been held for months in isolation in Camp Echo, the part of the Guantánamo facility where pre-commission detainees are held. Their conditions of detention have raised serious concern about their well-being and their susceptibility to making coerced statements. Salim Ahmed Hamdan, for example, is reported to have said that he has considered making a false confession in order to improve his situation.

The military commissions will be able to admit coerced evidence. The procedures for the commissions provide that evidence "shall" be admitted if the presiding officer or a majority of the commission members consider that it "would have probative value to a reasonable person". In other words, if a statement made under torture or coerced by the conditions of detention at Guantánamo or elsewhere is considered to have some significant evidential value, it "shall" be admitted. In similar vein, a memorandum from the US Justice Department to the Department of Defense, dated 26 February 2002, advised that "incriminating statements may be admitted in proceedings before military commissions even if the interrogating officers do not abide by

the requirements of *Miranda* [the US Supreme Court decision controlling the rights of criminal suspects and conduct of interrogators]”.

It is now known that the administration has approved interrogation techniques that have gone beyond normal US army doctrine. The purpose of the techniques has been to extract information. Methods approved in December 2002 by Secretary Rumsfeld for use at Guantánamo, for example, included stress positions, sensory deprivation, hooding, stripping, the use of dogs to inspire fear, and isolation.

On 7 July 2004, the Pentagon announced that another nine foreign detainees had been determined by President Bush to fall under the provisions of his Military Order. These detainees have not been identified. It is not known if they are held in Guantánamo Bay. They have not yet been charged.

Amnesty International has called for the Military Order to be rescinded ever since it was signed, on the grounds that it is fundamentally flawed and because trials under its provisions will violate international fair trial standards. The military commissions will entirely lack independence from the executive, will place severe restrictions on the defence, and provide no right of appeal to any court. The fact that only foreign nationals are eligible for such trials violates the prohibition on the discriminatory application of fair trial rights. The USA should abandon these trials and only countenance proceedings that fully meet international standards.

For further information, see *USA: A deepening stain on US justice*, AMR 51/130/2004, 19 August 2004, <http://web.amnesty.org/library/Index/ENGAMR511302004>

**We are asking for a final round of appeals on this action. After that, any new information will be forwarded to the Network and a new Urgent Action will be issued if necessary. If possible, please send appeals to arrive as quickly as possible, in English or your own language, in your own words:**

- expressing regret at the continuing preparations for trials by military commission, trials which will not comply with international standards, not least because the commissions lack independence from the executive, are discriminatory, and deny the right of appeal to an independent and impartial court established by law;
- expressing concern at the coercive nature of Camp Echo conditions, widespread allegations of cruel, inhuman and degrading treatment of detainees in US custody in the “war on terror”, and that coerced testimony or pleas may be admitted in trials before military commissions;
- urging that the military commission trials be cancelled, that the Military Order of 13 November 2001 be revoked, and that the Guantánamo detainees be charged with recognizably criminal offences, brought to trial, without recourse to the death penalty, in proceedings which fully meet international standards for fair trial, including the right to appeal to a court of law, or else released.

**APPEALS TO:**

President George Bush, The White House, 1600 Pennsylvania Avenue NW, Washington, DC 20500, USA

**E-mail:** [president@whitehouse.gov](mailto:president@whitehouse.gov)

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**Salutation:** Dear Mr President

Donald Rumsfeld, Secretary of Defense, The Pentagon, Washington DC 20301, USA

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**Salutation:** Dear Secretary of Defense

Colin Powell, Secretary of State, Department of State, 2201 C Street, NW, Washington DC 20520, USA.

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**Salutation:** Dear Secretary of State

**COPIES TO:** diplomatic representatives of the USA accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.** Check with the International Secretariat, or your section office, if sending appeals after 30 September 2004.