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UNITED STATES OF AMERICA

The human rights scandal continues: Salim Hamdan's *habeas corpus* petition dismissed

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Amnesty International is deeply troubled by yesterday's ruling by a federal judge dismissing Guantánamo detainee Salim Ahmed Hamdan's *habeas corpus* petition, on the grounds that the Military Commissions Act, signed into law by President Bush on 17 October, strips the federal courts of jurisdiction to consider such appeals.

The right of all detainees to challenge the lawfulness of their detention is among the most fundamental principles of international law. That any legislature or any judge anywhere should countenance such stripping of this basic protection against arbitrary detention, secret custody, torture and other ill-treatment is shocking and must be challenged.

Salim Hamdan, a Yemeni national taken into custody in Afghanistan in November 2001, has been in US custody for five years. Like the more than 400 other detainees still held in Guantánamo, the lawfulness of his indefinite detention has never been judicially reviewed. Like many other detainees, Salim Hamdan has been subjected to ill-treatment in US custody, including prolonged isolation in the US Naval Base in Guantánamo, Cuba.

One only has to imagine what would happen if another government captured a US citizen and held him indefinitely for years on end while denying him the basic right to challenge his detention. The US government should now turn its imagination to ending this human rights outrage and to restoring an indispensable rule of law principle that dates back to the Magna Carta of 1215.

Judge James Robertson of the District Court in the District of Columbia acknowledged that Salim Ahmed Hamdan's "lengthy detention beyond American borders but within the jurisdictional authority of the United States is historically unique", and stressed that he was not ruling on the constitutionality of the Military Commissions Act. However, he concluded that a foreign detainee who has never entered the USA and who is held outside its sovereign territory has no entitlement to *habeas corpus* under the US Constitution. The Guantánamo base is leased from Cuba, which has ultimate sovereignty over the land, although the USA has complete jurisdiction and control over the base and the detainees held in it.

Thus, five years on, it seems that we are back to the US administration's original reason for putting the Guantánamo detainees on this island base. This hair-splitting over sovereignty has no traction in international law. This is nothing more than lawlessness by lease.

International human rights law applies in times of war and peace, and a country's human rights treaty obligations apply to its conduct inside *and* outside its territory, as the UN expert bodies, the Human Rights Committee and the Committee against Torture, told the USA earlier this year. The Military Commissions Act, and now Judge Robertson's ruling, has left the USA squarely on the wrong side of international law.

Salim Ahmed Hamdan was charged in July 2004 for trial by military commission under a Military Order signed by President Bush in November 2001. A challenge brought on behalf of Salim Hamdan led to the decision in June this year by the US Supreme Court throwing out the military commission system as unlawful. The administration and Congress responded by passing the Military Commissions Act, which provides for new military commissions without guaranteeing adherence to fair trial standards.

Judge Robertson noted that Salim Hamdan “has never been afforded access to a proper tribunal”. However, he then stated that “Hamdan is to face a military commission, newly designed, because of his efforts, by a Congress that finally stepped up to its responsibility... It is difficult to see how continued habeas jurisdiction could make further improvements in his tribunal”.

However, even if Salim Hamdan is tried by military commission at an as yet unknown date in the future, those commissions would not be established to review the lawfulness of detentions. Secondly, they do not guarantee the right to a fair trial – allowing, for example, the admission of coerced evidence. Thirdly, under the US government’s global “war” paradigm, even if a detainee is tried and acquitted by a military commission, he could still retain his “enemy combatant” status and be returned to indefinite detention by the military authorities.

Amnesty International reiterates that all those held in Guantánamo are unlawfully detained, and should either be charged with recognizably criminal offences and brought to trial in full accordance with international fair trial standards, or released with full protections against further violations. The Guantánamo detention camp should be shut down.

Amnesty International will continue to work for the repeal of the Military Commissions Act, or its substantial amendment, in conformity with international law.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM