

PUBLIC

AI Index: AMR 51/202/2005

16 December 2005

UA 316/05 Legal concern/death penalty/torture/health concern

USA	Omar Khadr (m), Canadian national]	
	Ali Hamza Ahmed Suleiman al Bahlul (m), Yemeni national]	
	Jabran Said bin Al Qahtani (m), Saudi Arabian national]	
	Ibrahim Ahmed Mahmoud al Qosi (m), Sudanese national]	Guantánamo Bay
	Ghassan Abdullah al Sharbi (m), Saudi Arabian national]	detainees
	Sufyian Barhoumi (m), Saudi Arabian national]	
	Salim Ahmed Hamdan (m), Yemeni national]	
	David Matthew Hicks (m), Australian national]	
	Binyam Ahmed Muhammad (m), Ethiopian national]	

The nine Guantánamo Bay detainees listed above have been named under a US presidential order to be tried by military commissions, which Amnesty International considers to be inherently flawed and unable to provide fair trials in line with internationally recognized standards.

In November 2005, the US Supreme Court agreed to review the legality of the commissions, with hearings expected to begin around March 2006. The Supreme Court announced that it would review the ruling of a lower court in the case of detainee Salim Ahmed Hamdan, and his trial before the commissions was put on hold. Another of the detainees, Australian David Matthew Hicks, subsequently won a stay of proceedings in his case until the Hamdan case is decided. Lawyers for the other detainees are also expected to seek stays of proceedings until the Supreme Court reaches a final decision in the Hamdan case.

Despite the fact that the Supreme Court has yet to rule on whether the commissions are legal, the US government has gone ahead with proceedings against the detainees, scheduling 10 January pre-trial hearings for two of them, Canadian national Omar Khadr and Yemeni Ali Hamza al Bahlul. On 16 December the US authorities announced that they had also referred the charges of Binyam Ahmed Muhammad and Ghassan Abdullah al Sharbi and that the presiding officer would be contacting attorneys to initiate a trial schedule.

Omar Khadr was aged 15 when taken into custody in Afghanistan in 2002 and was given none of the special protections afforded to juveniles under international law. He was named to appear before the commissions on 7 November 2005. Amnesty International opposes trial by the commissions in all cases. In the case of Omar Khadr, Amnesty International is particularly concerned that evidence may be used derived during improper treatment while he was held as a juvenile with no access to a parent, guardian or legal representative and in conditions possibly amounting to torture. Omar Khadr has alleged that he was seriously injured at the time he was detained but was immediately interrogated and ill-treated: he was denied adequate medical care and forced into stress positions, and dogs were allegedly used to intimidate him. He was moved to Guantánamo Bay in October 2002. There, he says, he has been beaten, "short shackled" (wrists and ankles chained together to a fixed point on the ground) for hours, exposed to extreme temperatures, held in isolation for prolonged periods and threatened with rape. His US lawyers have expressed concern that his mental health is deteriorating in custody. Ali Hamza al Bahlul was one of the first to be charged under the Presidential Order and has refused to be legally represented.

BACKGROUND INFORMATION

Military commissions were established by a Presidential Order of November 2001. They exist to prosecute "enemy combatants who violate the laws of war". Amnesty International considers that the military

commissions fall far short of international standards for fair trial, which are set out in Article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which the USA is a state party. In August 2005 the US Department of Defense announced some changes to the commission regulations in the face of international pressure, including appeals from Amnesty International members, but they remain fundamentally flawed: they are not independent from the executive, which determines the rules under which they operate, selects who serves on them and vets their final decisions, which can include decisions on whether a person should live or die; the case against a defendant can include secret evidence, which he cannot hear and will be unable to rebut; defendants have no right of appeal to an independent court; and only foreign nationals can be tried by military commissions, violating the prohibition on the discriminatory application of fair trial rights.

The military commissions can admit testimony based on hearsay, statements obtained under torture and statements from other detainees in Guantánamo Bay and elsewhere, often using unverified translations. Salim Ahmed Hamdan has stated that he had considered confessing to false charges in the hope that this would improve the conditions he faced in Guantánamo Bay. Many other detainees have made similar claims, including Binyam Ahmed Muhammad. He was a victim of the US practice of "extraordinary rendition", having been arrested in Pakistan and flown to Morocco, Afghanistan and then Guantánamo Bay. He alleges that he was severely tortured and forced into signing false confessions, confessions which could be used at his military commission.

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

- expressing dismay at the US government's decision to resume proceedings before the military commissions even while the Supreme Court is considering whether they are legal;
- stating that the military commissions' procedures are fundamentally flawed and violate several provisions of international treaties to which the USA is a state party, and calling for the military commissions to be abandoned and the Presidential Order which created them to be rescinded;
- at a minimum, calling for all proceedings before the military commissions to be completely suspended until the US Supreme Court has reached a verdict in the Hamdan case;
- expressing concern at the decision to name Omar Khadr as eligible for trial by military commission, noting that he was a juvenile when taken into custody and was provided with none of the special protections due to juveniles in custody;
- calling for a full, independent and impartial investigation into the allegations of torture and ill-treatment made by those facing military commissions and other detainees held at Guantánamo Bay.

APPEALS TO:

Alberto Gonzales, Attorney General, US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530-0001, USA

Fax: +1 202 307 6777

Email: AskDOJ@usdoj.gov

Salutation:

The Honorable Donald H. Rumsfeld, Secretary of Defense, 1000 Defense Pentagon,
Washington DC 20301

Fax: +1 703 697 8339

Salutation:

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 27 January 2006.