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Update on the Guantánamo military commission hearings in the cases of two child "enemy combatants"

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On 19 June 2008, military commission pre-trial hearings took place at Guantánamo in the cases of Mohammed Jawad and Omar Khadr, both of whom were juveniles when they were detained by the US forces in Afghanistan in 2002 (see Amnesty International public statement of 19 June 2008: AMR 51/065/2008).

An Amnesty International observer attended the proceedings in the case of **Mohammed Jawad**, who appeared in the courtroom in prison garb and wore leg shackles (with a chain between both ankles). He remained in shackles throughout the morning session, until the judge granted the defence request that they be removed.

Amnesty International is disturbed by this further punitive treatment of Mohammed Jawad, who was allegedly subjected to torture and other ill-treatment during his long period of detention (see below). The use of shackles during the proceedings contravenes international standards which provide that restraints should be used only when strictly necessary to prevent damage or injury or to prevent escape "provided that they shall be removed when the prisoner appears before a judicial or administrative authority". The standards further provide that "Chains or irons shall not be used as restraints." (*UN Standard Minimum Rules for the Treatment of Prisoners, Rules 33 and 34*).

During the hearing, the defence counsel sought to have the attempted murder charges against Mohammed Jawad dismissed on the ground that he was tortured. In a forceful statement to the court, defence attorney Air Force Major David Frakt said that the US administration had created a "pervasive atmosphere of lawlessness" at Guantánamo that led to barbarism and the "pointless and sadistic treatment of ... a suicidal teenager". He ended with calling for the prosecution of Colonel Cannon, former Commander of the Joint Detainee Group, as well as President Bush, Vice-President Dick Cheney, former Secretary of Defense Donald Rumsfeld and their lawyers, among others.

Documents were produced to support claims that Mohammed Jawad was subjected to the "frequent flyer" program in May 2004, when he was moved 112 times to different cells every two to four hours over a two-week period, each time in shackles. According to the documentary submission, the program was specifically designed to "ensure maximum disruption of sleep". This ordeal was alleged to have taken place five months after the teenager had tried to hang himself in his isolation cell, and two

months after the “frequent flyer” program had been banned by Major General Jay Hood, then Commander of the Guantánamo base.

Amnesty International considers the “frequent flyer” program to constitute a clear violation of the international law prohibition against torture and other cruel, inhuman or degrading treatment or punishment.

The prosecution admitted that Mohammed Jawad had been subjected to the program, but argued that they were not aware of his treatment when the charges were instigated; his ill-treatment was not relevant to the charges, as he was not under interrogation at the time; they also argued that the treatment did not constitute torture, although sleep deprivation is prohibited in the Army Field manual which governs the treatment of detainees by US military officials.

Mohammed Jawad took the witness stand himself at one point to testify to his treatment through an interpreter, stating that “Nobody answered why they are giving me this punishment”.

The judge deferred a decision on the above motion. However, he granted a motion to allow an examination of Mohammed Jawad’s mental health by a Pashto speaking psychologist, provided that the psychologist obtained security clearance and was accompanied in his examination by a Department of Defence official. It is not known when such an examination will take place.

The defence also filed motions to dismiss the case on the ground that the military commissions had no jurisdiction to try Mohammed Jawad, as he was a juvenile at the time of the alleged offence, and on the ground that the conduct for which he was charged did not constitute a war crime. The parties agreed that the judge would consider these motions on the basis of documents filed before the court.

The court also considered a defence motion to dismiss the charges on grounds of undue influence in the case by Air Force Brig. General Thomas Hartmann, after he took over as legal adviser to the Convening Authority for the military commissions (the body that decides on referral of charges). The defence alleged that General Hartmann had insisted on moving forward with certain prosecutions, including Mohammed Jawad’s, on political grounds and so undermined the independence of the prosecution. In another ongoing case, that of Salim Hamdan, Military Commission Judge Captain Keith Allred on 9 May, ruled in favour of the defence on a similar motion and disqualified General Hartmann from any further role in the case because of unlawful influence.

At **Omar Khadr’s** hearing, two motions to disclose evidence were granted: requiring the government to produce for the defence the Standard Operating Procedures used at Bagram US airbase in Afghanistan (where Omar Khadr was first held), and unclassified versions of the Schmidt Furlough and Church reports (into detainee abuse at Guantánamo and Department of Defense operations and detainee interrogation techniques, respectively). A trial date in his case was set for 8 October 2008.

Amnesty International considers that no-one who was a child at the time of their alleged crime should be tried by military commissions which have no juvenile justice provisions whatsoever. The treatment of Mohammed Jawad and Omar Khadr throughout their detention violates the USA’s obligations under international law,

which requires, among other things that, in all actions concerning children, the best interests of the child must be a primary consideration.

Amnesty International further considers that the military commission system is fundamentally flawed and that the tribunals must be abandoned by the administration in all cases. Among other things:

- They lack independence from the executive branch of government;
- In violation of international law, the military commissions may admit information obtained under cruel, inhuman or degrading treatment or punishment. Although the commission rules prohibit the admission of information extracted under torture, the US government's definition of torture clearly does not meet international law. For example, the government has admitted to using "waterboarding", a form of simulated drowning, and has authorized the technique as lawful;
- The commissions were specifically established to try individuals designated by the US executive as "unlawful enemy combatants" a status unknown in international law. Among those facing trial are civilians detained outside any zone of armed conflict. Using military tribunals to try civilians runs counter to international standards;
- The right to trial within a reasonable time is not guaranteed and the right of appeal is limited. Even if a defendant is acquitted, he may be returned to indefinite detention as an "enemy combatant" should the USA administration so decide;
- The right to be represented by a lawyer of the detainee's choice is restricted
- The rules on hearsay and classified information may severely curtail a defendant's ability to challenge the government's case against him;
- The military commissions apply only to non-US citizens and are discriminatory, in violation of international law.

Amnesty International continues to campaign for any trials of Guantánamo detainees to be held within the ordinary civilian federal courts on the US mainland.

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