

CLOSE GUANTÁNAMO

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USA

Guantánamo's military commissions: a travesty of justice

Lasting security and real justice for the victims of terrorism cannot be achieved without fair trials for terror suspects and respect for the human rights of all detainees. Yet since 2001, the US authorities have consistently sought to block any meaningful access to justice for the thousands of men held in US custody in the “war on terror”. Some detainees have been held for five years without any judicial review of why they are being detained or how they have been treated in detention.

On 17 October 2006 President Bush signed the Military Commissions Act, which codifies in US law a substandard and discriminatory system of justice for those held in Guantánamo Bay, Afghanistan and elsewhere. As shown below, the Military Commissions Act disregards the standards of justice set out in the US Constitution, federal law and military justice system, as well as in international treaties that the USA has ratified.

International standards of justice	US ‘war on terror’ justice
Right to liberty. Anyone deprived of their liberty has the right to challenge in court the lawfulness of their detention and to be released if the detention is unlawful. Right to remedy. Anyone who has their rights or freedoms violated by the state has the right to an effective remedy.	The Military Commissions Act strips the US courts of the jurisdiction to hear habeas corpus appeals challenging the lawfulness or conditions of detention of any non-US citizen held in US custody as an “enemy combatant”. None of the detainees currently held at Guantánamo has had the lawfulness of their detention judicially reviewed. Over 750 people have been deprived of their liberty at Guantánamo, some for five years, without charge or trial.
Right to equality and non-discrimination.	The Military Commissions Act curtails the right to judicial review of detentions and the right to remedy for human rights violations, but only in the case of non-US citizens. The Act is therefore discriminatory on the basis of nationality. Only foreign nationals designated as “enemy combatants” can be tried by military commissions. These trials are likely to provide foreign nationals so labelled with a standard of justice inferior to that enjoyed by US citizens accused of the same or similar crimes, thereby violating the prohibition on the discriminatory application of fair trial rights.

<p>Right to trial by a competent, independent and impartial tribunal.</p>	<p>The Military Commissions Act allows the President to establish military commissions, the impartiality, independence and competence of which would be in serious doubt, due to the overarching role that the executive, primarily the President and the Secretary of Defense, would play in deciding who could be tried by the commissions, what the procedures of the commissions would be, and in the appointments of military judges and military officers to sit on the commissions.</p>
<p>Presumption of innocence.</p>	<p>All detainees in Guantánamo have been labelled “enemy combatants” in a loosely defined “war”.</p> <p>Although the military commissions provide that the accused must be presumed innocent until proven guilty beyond a reasonable doubt, this right has already been undermined by repeated statements of senior administration officials branding those held at Guantánamo as “killers” and “terrorists”.</p>
<p>Right to trial within a reasonable time.</p>	<p>The Military Commissions Act expressly states that any rule of courts martial relating to speedy trial under normal US rules of military justice “shall not apply to trial by military commission.”</p>
<p>Right to lawyer of choice.</p>	<p>The right of a defendant to legal counsel of choice is not guaranteed under the Military Commissions Act.</p>
<p>Right to challenge and present evidence.</p>	<p>The Military Commissions Act permits the use of classified information as “evidence” against a defendant, without affording the defendant the right to challenge the information, particularly the “sources, methods or activities” by which the government acquired it.</p>
<p>Exclusion of evidence obtained under torture or other cruel, inhuman or degrading treatment or punishment.</p>	<p>The Military Commissions Act does not prohibit the admission of evidence coerced by cruel, inhuman or degrading treatment as defined under international law and jurisprudence. The military judges overseeing the military commissions can decide whether or not to allow an allegedly coerced statement as evidence. Hearsay evidence may be admissible without the defendant necessarily being able effectively to challenge its source or the method used to obtain it, thereby allowing the admission of evidence coerced by torture or ill-treatment.</p>
<p>No capital punishment without judicial proceedings affording all possible safeguards to ensure a fair trial.</p>	<p>The Military Commissions Act allows for the death penalty while cutting back on fair trial safeguards.</p>

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