

PUBLIC

AI Index: AMR 51/028/2004

11 February 2004

Further information on UA 199/03 (AMR 51/099/2003, 8 July 2003) and follow-ups (AMR 51/106/2003, 25 July 2003 and AMR 51/131/2003, 28 October 2003) - 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 27
New names: **Salim Ahmed Hamdan (m), Yemen national**
 Ali Hamza Ahmed Sulayman al Bahlul (m), Yemen national
 Ibrahim Ahmed Mahmoud al Qosi (m), Sudan national

The six detainees named above, all believed to be held in US military custody in Camp Delta, Guantánamo Bay, Cuba, have been identified as being the first foreign nationals to be subject to the Military Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism. The Military Order was signed by President Bush on 13 November 2001 and those held under it can be detained indefinitely without charge or trial. They can also be brought to trial before military commissions whose verdicts, including death sentences, cannot be appealed in any court.

Amnesty International believes that the Military Order should be revoked, and that any trial before the commissions – which are executive bodies, and not independent courts – would contravene international fair trial standards. The organization is also concerned that any guilty pleas brought before the commissions could be the result of the coercive nature of the conditions in which the detainees have long been held without charge, trial or legal process in Guantánamo Bay or elsewhere.

David Hicks, Salim Ahmed Hamdan, Ali Hamza Ahmed Sulayman al Bahlul and Ibrahim Ahmed Mahmoud al Qosi have been assigned military lawyers in preparation for possible trials. The lawyer for Salim Ahmed Hamdan said on 10 February: "My client doesn't understand why he's being held. He implores the president to allow him a civilian trial in which he may demonstrate his innocence." The military lawyer assigned to David Hicks said on 21 January: "The military commissions will not provide a full and fair trial. The commission process has been created and controlled by those with a vested interest only in convictions." Last month, he and four other military officers assigned to represent defendants at trials by military commission, wrote in an *amicus curiae* (friend of the court) filed in the US Supreme Court: "The President here asserts the power to create a legal black hole... Under this monarchical regime, those who fall into the legal black hole may not contest the jurisdiction, competency, or even the constitutionality of the military tribunals...The Government's argument in this case has no logical stopping point. If there is no right to civilian review, the government is free to conduct sham trials and condemn to death those who do nothing more than pray to Allah. The President's claim is for the absence of any legal restraint whatsoever on the government".

In the US State Department's report on human rights in other countries in 2002, the entry on Iran notes: "Trials in the Revolutionary Courts, in which crimes against national security and other principal offenses are heard, were notorious for their disregard of international standards of fairness... Pretrial detention often was prolonged and defendants lacked access to attorneys." The six people named above have been held without access to any legal process for up to 25 months. The entry on Cuba states: "Military tribunals assumed jurisdiction for certain counterrevolutionary cases and were governed by a special law... There was a right to appeal". In the case of the US military commissions, there is no right of appeal to any court. The Secretary of Defence has selected four people to serve on a "review panel" as military officers. They will not have to consider petitions from the defence or prosecution, and their recommendations are not binding on the Secretary of Defence and President for the final disposition in any case. The entry on Iraq states that:

“defendants may appeal to the President for clemency. Saddam Hussein may grant clemency in any case that suits his political goals or predilections.” In the case of the US military commissions, the power of clemency lies with President Bush, the official who set up the commissions by executive order and selected the detainees for trial in the first place.

The State Department’s entry on Uzbekistan, while critical of the lack of independence of the judiciary, adds that: “Unlike in past years, when trials of alleged Islamic extremists were often closed, local and international trial monitors and journalists were generally permitted to observe court proceedings during the year.” In the event that any trials by US military commissions take place, international human rights organizations, including Amnesty International, have asked to be allowed to attend as observers. Amnesty International recently received a response, in which the Pentagon, while not denying the request outright, states that “limited courtroom seating and other logistical issues will preclude attendance by many who desire to observe military commission proceedings”.

BACKGROUND INFORMATION

There are more than 650 people of around 40 nationalities detained without access to lawyers, relatives or the courts in Guantánamo Bay, where detentions began in January 2002. The US courts have held that they do not have jurisdiction over the detainees, because they are foreign nationals held outside US sovereign territory. The US Supreme Court has agreed to consider the question of whether the US courts lack jurisdiction, and is due to hear the case in April 2004. Numerous parties have filed *amicus curiae* briefs in support of the detainees and the rule of law, including former US diplomats, former US prisoners of war, retired US military officers, international law professors, legal historians, 175 British parliamentarians, and a consortium of organizations, including Amnesty International.

There is continuing concern for the psychological well-being of the detainees because of their prolonged indefinite detention. The International Committee of the Red Cross (ICRC), the only international organization to have had access to Camp Delta, has said that it has “observed a worrying deterioration in the psychological health of a large number of [the detainees]”. There have been numerous suicide attempts, and according to the authorities the 34th occurred in early January 2004.

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

- opposing trial by military commission, and expressing concern that preparations continue for them despite widespread concern that they will not comply with international fair trial standards;
- in the event that any such trials do take place, calling for international human rights organizations to be allowed to observe the proceedings;
- noting US criticisms of trials in other countries, and regretting that by its conduct in relation to the Guantánamo detainees, the USA is undermining its claims to be committed to the rule of law;
- urging that the Guantánamo detainees be charged with recognizably criminal offences, brought to trial, without recourse to the death penalty, in proceedings which meet international standards for fair trial, including the right to appeal, or else released.

APPEALS TO:

President George W. Bush, The White House, Washington, DC 20500, USA

Fax: +1 202 456 2461 (please keep trying)

Salutation: Dear Mr President

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

Fax: + 1 703 697 8339

Salutation: Dear Secretary of Defense

COPIES TO: Diplomatic representatives of USA accredited to your country

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 23 March 2004.