

Public Statement

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USA - Military commissions: Second-class justice

The operating guidelines for trials by executive military commission, issued by the US Secretary of Defence yesterday, have thrown into stark relief the fundamental defects of the Military Order signed by President Bush on 13 November 2001, Amnesty International said today.

"We have said from the start that the Military Order was too flawed to fix and should be revoked," Amnesty International said. "That the Pentagon has paid lip service to due process in its commission guidelines cannot disguise the fact that any trial before these executive bodies would violate the USA's international obligations."

Amnesty International is repeating its call for the Military Order to be rescinded, and for no person to be tried before the military commissions. The fundamental flaws include:

*! The Military Order is **discriminatory**. US nationals will not be tried by military commission, even if accused of the same offence as a foreign national, but rather tried by ordinary civilian courts with a broad range of fair trial protections. Under the Order, selected foreign nationals will receive second-class justice, in violation of international law which prohibits discriminatory treatment, including on the basis of nationality.*

*! The commissions would allow a **lower standard of evidence** than is admissible in the ordinary courts, including hearsay evidence. The Pentagon guidelines do not expressly exclude statements extracted under torture or other coercive methods. These deficiencies are particularly troubling given the lack of due safeguards during interrogation and the fact that the commissions will have the power to hand down death sentences.*

! In violation of international law, there will be **no right of appeal** to an independent and impartial court established by law. Instead, there would be a review by a three-member panel appointed by the Secretary of Defence.

! The military commissions would entirely **lack independence** from the executive. The President has given himself or the Secretary of Defence the power to name who will be tried by the commissions, to appoint or to remove the members of those commissions, to pick the panel that will review convictions and sentences, and to make the final decision in any case.

"We note the Pentagon's rules include the presumption of innocence," Amnesty International said. "However, this guarantee has been undermined by a pattern of public commentary on the presumed guilt of the Guantánamo detainees by the very officials that control the commissions."

President Bush has repeatedly labelled the detainees as "killers" and "terrorists". On Wednesday, discussing the military commissions, he said: "Remember, these are – the ones in Guantánamo Bay are killers. They don't share the same values we share". Similarly, Secretary Rumsfeld has referred to the Guantánamo detainees as "among the most dangerous, best-trained, vicious killers on the face of the earth", and as "hard-core, well-trained terrorists".

On the power to impose death sentences, Amnesty International pointed out that even the normal criminal justice system has shown itself to be error-prone.

"How much greater the potential for irrevocable miscarriages of justice here, under lower standards of evidence and no meaningful right of appeal?," the organization asked.

The procedures infringe the right to a fair trial in a number of other ways, including failing to guarantee that civilian defence counsel will be able to see all the evidence against their clients, permitting the use of secret evidence and anonymous witnesses, failing to guarantee that all relevant documents will be translated for the accused, and forcing the accused to accept US military lawyers as co-counsel against their wishes.

Moreover, Pentagon officials yesterday stated that even if acquitted by the military commissions, the defendants may remain in detention indefinitely. Amnesty International is concerned that the Military Order of 13 November allows for indefinite detention without trial. The USA is currently holding without charge or trial more than 500 people in Afghanistan and Guantánamo Bay. They have been denied access to the courts or to legal counsel. This is despite the fact that interrogations at Camp X-Ray have been continuing for two months.

"Since the appalling events of 11 September, the US administration has repeatedly stated its commitment to international human rights law and standards," Amnesty International said. "Its determination to retain the option of trial by military commission suggests that such claims are empty rhetoric."

*****See Amnesty International press release on military commissions**
<http://web.amnesty.org/ai.nsf/recent/AMR511652001> and the
organization's latest report on post-11 September detentions in the USA
<http://web.amnesty.org/ai.nsf/recent/AMR510442002>

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