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USA: Guantánamo pre-trial military commission proceedings Amnesty International's trial observations - Day 3

Pre-trial hearings before military commissions at Guantánamo are going ahead despite a pending Supreme Court decision on their legality. A representative of Amnesty International is observing the hearings.

Amnesty International has long been calling for the military commission trials to be cancelled and for the Military Order enabling these trials to be revoked, on the grounds that the Military Order is fundamentally flawed and any trial under its provisions will violate international fair trial standards. As such, the organization has expressed its deep regret at all steps taken to proceed with the trials, including the pre-trial hearings.

A summary of Amnesty International's initial findings from the third day of this round of proceedings (6 April 2006) are below.

First day of proceedings in the case of Binyam Muhammed

Binyam Muhammed is a victim of the US practice of "rendition" (1). He was arrested in Pakistan and is believed to have been transferred to Morocco before being sent to Afghanistan and ultimately to Guantánamo. He has alleged that he was subjected to torture or ill-treatment in all four places of detention.

Today was the first day of military commission pre-trial proceedings in his case. According to his military defence lawyer, Major Yvonne Bradley, he had wanted to enter the room wearing shackles, stating that for the first time he would face the public after four years of unlawful transfers, torture and confinement, he wanted to be seen as he has been kept – in chains.

Military Commission Instruction no. 1 provides that each defendant must have a military defence lawyer, and may also have a civilian lawyer who must be a US citizen. When the presiding officer informed Binyam Muhammed of his right to a lawyer, he asked the presiding officer what rights he was talking about, remarking that he had spent four years with no rights. Binyam Muhammed told the tribunal that he could not understand how he was expected to trust an American military attorney after the US has called him a "terrorist" and the "enemy". Holding up a handwritten sign that read "CONN MISSION", he protested, saying that 90% of courts allowed people to defend themselves without the help of a defence lawyer, while the "Conn mission" was forcing representation on him by the same military that was detaining him. The presiding officer decided that the commission rules did not allow self representation.

When he asked the military defence lawyer, Major Bradley, to continue her representation, Major Bradley explained that she could not, because she had a conflict of interest and referred to a 19 page advisory opinion that she had obtained from a legal expert in Pennsylvania, the state in which she is licensed. It is unclear whether the conflict of interest was regarding the issue of self representation.

The presiding officer ordered the defence to continue representation, despite the opinion which warned her against continuing against the wishes of the accused. Pointing out that he outranked Major Bradley, the presiding officer said that under military law she had to reply with his direct order. Eventually, the presiding officer took an extended break and came back asking the defence to outline her reasons for ceasing to represent the accused and set a schedule to argue them.

This is third case during the pre-trial hearings where a detainee has asked to represent himself before the tribunal, a right recognized in US and international law but not by the military commissions rules.

Binyam Muhammed's case will test the new rule that purports to ban the use of evidence obtained through torture in the commissions' proceedings. Binyam Muhammed has alleged that he was rendered to Morocco, where he was severely tortured, including having his genitals cut with a razor blade. The prosecution informed the presiding officer that the government intends that all government agents and other witnesses for the prosecution would be testifying under pseudonyms. This increases the danger that evidence extracted under torture could be presented before the commission without the accused being able to question the credibility of the witness or how the evidence was obtained.

Next arguments in this case are scheduled for the first week in June.

For more information on the case of Binyam Muhammad, please see:
<http://web.amnesty.org/library/Index/ENGAMR511522005?open&of=ENG-USA>

Note (1): Amnesty International uses the term "rendition" to describe the transfer of individuals from one country to another, without any judicial and administrative process and outside the rule of law. In the context of the "war on terror", the practice is mainly – although not exclusively – initiated by the United States of America (USA), and carried out with the collaboration, complicity or acquiescence of other governments. Its aim is to keep detainees away from any judicial oversight that might impede interrogation.