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Guantánamo detainees: Update on review and trial processes

Hundreds of detainees have been held in US custody, most of them without charge or trial, in locations such as Guantánamo Bay, many for more than two years. Approximately 580 people remain detained in Guantánamo Bay alone.

Two different processes are under way at Guantánamo. Military commissions are being prepared for those prisoners who have been charged under President Bush's Military Order of November 2001. Separate to these, Combatant Status Review Tribunals have been convened to administratively review whether detainees are "enemy combatants" and should remain in detention.

To date, only 15 detainees have been determined by President Bush to fall under the provision of the Military Order he signed in November 2001. The Order allows non-US citizens to be held indefinitely without charge or trial or to be tried by military commissions -- executive bodies, not independent or impartial courts.

The first six were placed under the Order in July 2003, and have been held in isolation for months, raising serious concern for their well-being and their susceptibility to making coerced statements (see <http://web.amnesty.org/library/Index/ENGAMR511052004>).

Four of these six men have been charged: Ali Hamza Ahmed Sulayman al Bahlul, a Yemeni national; Ibrahim Ahmed Mahmoud al Qosi, a Sudanese national; David Matthew Hicks, an Australian national; and Salim Ahmed Hamdan, a Yemeni national. The charges include conspiracy to commit acts of terrorism. The other two, UK nationals Moazzam Begg and Feroz Ali Abbasi, remained detained without charge or trial in Guantánamo Bay.

On 7 July 2004, the Pentagon announced that President Bush had determined that another nine detainees in US custody were subject to his Military Order. These nine have not been identified or charged. It is not known if any or all are held in Guantánamo.

The four detainees who have been charged will face preliminary hearings in the week of 23 August 2004. The hearings will take place in a courtroom constructed in Guantánamo Bay before the presiding officer, retired military judge Colonel Peter E. Brownback, only. It is expected that he will hear pre-trial motions, set trial dates and will be questioned by defence and prosecution lawyers on his fitness to serve on the military commissions.

At the trials, the death penalty will not be sought in these four cases as the defendants will appear before a commission of five members (a death penalty trial must be held before seven commission members). Life

imprisonment will be the maximum punishment available in these cases. Sentencing is at the discretion of the commission members. There are no detailed guidelines. Even if a defendant is acquitted, he may not necessarily be released. He could be returned to indefinite detention unless and until a Combatant Status Review Panel determined that he was no longer an "enemy combatant".

The Combatant Status Review Panels -- an entirely separate process from the military commissions -- were initiated by the US administration as a response to the US Supreme Court's landmark decision of June 2004. The Court ruled that the US courts have jurisdiction over the Guantánamo detainees. The Combatant Status Review Panels, each consisting of three military officers, have been set up to determine whether each detainee should still be held or not. The detainees have no access to legal counsel for this administrative review and some have already refused to take part.

On 13 August, the Pentagon reported that 21 panels had been conducted and 150 further cases were in preparation. In all four cases finalized by that date, the detainee was deemed to be an "enemy combatant" who should remain in detention. Amnesty International fears that the administration is engaged in an effort to limit the scope of any future judicial review of the detainees' cases. (See <http://web.amnesty.org/library/Index/ENGAMR511132004>).

For more information on military commissions, please see:

Trials by military commission draw closer. Pages 37-40, USA: Threat of a bad example - Undermining international standards as "war on terror" detentions continue. August 2003
<http://web.amnesty.org/library/Index/ENGAMR511142003>

The threat of trials by military commission. Pages 44-58, USA: Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay, April 2002.
<http://web.amnesty.org/library/Index/ENGAMR510532002>

USA: Six named under Military Order: Another backward step for human rights. 4 July 2003.
<http://web.amnesty.org/library/index/engamr510962003>

USA - Military commissions: Second-class justice. 22 March 2002.
<http://web.amnesty.org/library/Index/ENGAMR510492002>

USA: Presidential order on military tribunals threatens fundamental principles of justice. 15 November 2001. <http://web.amnesty.org/library/Index/ENGAMR511652001>

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