

PUBLIC

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Further information on UA 199/03 (AMR 51/099/2003, 8 July 2003) – Legal concern / Death penalty

**USA**                    **Feroz Ali Abbasi (m), UK national, aged 23**  
**Moazzam Begg (m), UK/Pakistan national, aged 35**  
**David Hicks (m), Australian national, aged 27**  
**and three other non-US nationals, identities and nationalities unknown**

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Following discussions between the US authorities and their Australian and UK counterparts, the USA has said that it will not pursue the death penalty against Feroz Abbasi, Moazzam Begg or David Hicks in the event that they are charged and brought to trial by military commission. The US Department of Defence has issued statements saying that this decision was based on a review of the evidence against these men. The Pentagon's statements also said that "the circumstances of the cases" were such that "they would not warrant monitoring of conversations" between the defendants and the defence lawyers.

Amnesty International is still unable to confirm the identities and nationalities of the other three foreign nationals named by President Bush as being subject to the Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism which he signed on 13 November 2001. The Military Order provides for indefinite detention without charge or trial of anyone named under it. Any trial before the military commission will flout minimum safeguards for a fair trial.

Amnesty International fears that as the UK, Australian and US governments reach agreements on how to proceed with the cases, that one or more of these defendants may be charged and brought to trial by military commission within weeks. The three unidentified detainees could yet face the death penalty.

Under the commission rules, the defendant, through his defence counsel (at least one military lawyer), and the prosecution (a military lawyer) "may submit for approval to the Appointing Authority a plea agreement mandating a sentence limitation or any other provision in exchange for an agreement to plead guilty". The "appointing authority" is currently Deputy Secretary of Defence Paul Wolfowitz. The military commission, which is appointed by the very same official who approves the plea agreement, has to determine whether this arrangement was entered into voluntarily by the defendant.

Amnesty International not only opposes trial by military commission, because such proceedings before these executive bodies will not conform to international fair trial norms (see original UA), but is also concerned that any guilty pleas could be the result of the potentially coercive quality of the conditions in which the detainees have been held in military custody. Feroz Abbasi, Moazzam Begg and David Hicks, for example, have been held in the US Naval Base in Guantánamo Bay or in Bagram Air Base in Afghanistan for well over a year, held in small cells with minimal out-of-cell time, subjected to shackling and handcuffing, and to repeated interrogations without access to legal counsel or family members. Amnesty International believes that the totality of these conditions – including the prolonged, isolating and indefinite nature of the detentions – can amount to cruel, inhuman or degrading treatment in violation of international law and may be coercive. Amnesty International does not have specific information about the mental health of these detainees, but concern is heightened by the numerous suicide attempts and reports of mental health problems among the Guantánamo detainees.

Governments should work in the interests of their nationals, but human rights are universal and non-negotiable – the fate of any detainee should not be dependent on alliances between countries. Governments should speak out firmly and work against all violations, including if an ally is the violator.

## **BACKGROUND INFORMATION**

According to the Department of Defence, President Bush has “determined that there is reason to believe that each of these enemy combatants was a member of *al-Qa’ida* or was otherwise involved in terrorism directed against the United States”. It is now the responsibility of the “appointing authority” to decide whether to approve any charges brought by military prosecutors and whether to appoint a military commission to try those charged. Amnesty International believes that the Military Order should be revoked, and that any trial before the military commissions would contravene international standards.

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

### **To the US authorities:**

- calling for repeal of the Military Order and regretting that six detainees have been named under it;
- urging that none of the six be referred for trial before military commission, as justice will neither be done nor be seen to be done in such proceedings;
- calling for the six to be charged with recognizably criminal offences, brought to trial in proceedings which meet international standards for fair trial, including the right to appeal, or else released;
- opposing any use of the death penalty, noting the developments in the UK and Australian cases;
- expressing concern that any plea arrangements could be viewed with scepticism given the coercive conditions under which these detainees have been held over a prolonged period of time;
- regretting that by its conduct, the USA is undermining its claims to be committed to the rule of law.

### **To the UK and Australian authorities:**

- noting the inter-governmental meetings and the outcomes so far, but urging them to do all in their power either to ensure that their nationals are not brought to trial by military commission, or to obtain their return if the USA insists on pursuing trial by military commission under the flawed Military Order.

## **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**

Paul Wolfowitz, Deputy Secretary of Defence  
1010 Defence Pentagon  
Washington, DC 20301-1010, USA

**Fax: + 1 703 697 7374**

**Salutation: Dear Deputy Secretary of Defence**

Rt Hon Jack Straw MP  
Secretary of State, Foreign and Commonwealth Office, King Charles Street, Whitehall  
London SW1A 2AH, United Kingdom

**Fax: + 44 207 270 2144**

**Salutation: Dear Secretary of State**

The Hon. John Howard  
Prime Minister, Parliament House  
Canberra ACT 2600, Australia

**Fax: + 61 2 6273 4100 or + 61 2 9251 5454**

**Salutation: Dear Prime Minister**

## **COPIES TO:**

Colin Powell, Secretary of State, 2201 C Street, N.W.. Washington, DC 20520, USA

**Fax: +1 202 647 2283**

and 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 5 September 2003.