

PUBLIC

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28 October 2003

Further information on UA 199/03 (AMR 51/099/2003, 8 July 2003) and follow-up (AMR 51/106/2003, 25 July 2003) - Legal concern / Death penalty New concern: Health concern

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

The UK and Australian authorities have continued discussions with the US government on the cases of their nationals who have been made subject to the Military Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism signed by President Bush in November 2001. The UK Prime Minister has indicated that a decision on the UK nationals may be imminent. Amnesty International is calling on him and his Australian counterpart to reject trials by military commission and not to compromise international fair trial standards in any agreement reached on the cases.

It emerged on 3 July 2003 that President Bush had identified six foreign detainees in US custody as falling under the provisions of the Military Order. As such the six can be held indefinitely without charge or trial, or brought to trial before military commissions against whose decisions there would be no right of appeal to any court. Amnesty International believes that the Military Order, which applies only to non-US nationals, should be revoked, and that any trial before the commissions – which are executive bodies, and not independent courts – would contravene international 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 been held without access to any legal process.

UK nationals Feroz Abbasi and Moazzam Begg, and Australian national David Hicks, held in Camp Delta in the US Naval Base in Guantánamo Bay, Cuba, were among the six named under the Order. Amnesty International does not know the identities of the other three detainees, though information received suggests that they may be from Pakistan, Sudan and Yemen. None has had access to a lawyer. While the US authorities have given assurances that the death penalty will not be sought against the UK and Australian nationals, no such guarantees are known to have been given in the other three cases.

Asked about the UK detainees on 23 October 2003 (there are nine UK nationals and three UK residents in Guantánamo), Prime Minister Tony Blair said “I think we are going to bring this to closure one way or another within the next two weeks...either you get a trial of these people which we can be satisfied meets the obligations and stipulations that we've got, or alternatively they will come back here” [to the UK]. In a recent private meeting with Australian Prime Minister John Howard, President Bush reportedly promised to expedite the cases of two Australian nationals in Guantánamo, including David Hicks.

Moazzam Begg and Feroz Abbasi are said to be in cells away from the rest of the prisoners, with no access to any other detainee. In the main cell blocks in Camp Delta, detainees are held in individual cells, but can communicate through the mesh walls of the cells. Amnesty International does not know when Moazzam Begg and Feroz Abbasi were so placed, or if the other four are also now in increased isolation. In any event, such a move heightens concerns for their mental health.

There is growing concern for the psychological well-being of all detainees in Guantánamo as detentions there approach their two-year mark. In recent months, the International Committee of the Red Cross (ICRC), the only non-governmental organization to have had access to the detainees, has taken the unusual step of making public its concerns on this issue (its findings are generally confidential). In July, ICRC spokespersons

described how the absence of “any clear legal framework” had had “a very adverse impact on [the detainees] physical and mental well-being”. In August, the ICRC posted on its website that it had “observed a worrying deterioration in the psychological health of a large number of [the detainees]”. On 9 October, an ICRC spokesperson told the *New York Times* that “the open-endedness of the situation and its impact on the mental health of the population has become a major problem.” To date, there have been over 30 suicide attempts among the detainees.

BACKGROUND INFORMATION

There are more than 650 people from around 40 countries detained in Guantánamo Bay, where detentions of “enemy combatants” in the USA’s “war on terror” began in early January 2002. None of the detainees has had access to any sort of legal process. Efforts to obtain justice in the US courts have been unsuccessful, with the courts holding that they do not have jurisdiction over the detainees, because they are foreign nationals held outside US sovereign territory. On 9 October 2003, former US diplomats, former federal judges, ex-prisoners of war, retired military officers, and the International Bar Association were among those who filed *amicus curiae* (friend of the court) briefs in the US Supreme Court urging it to examine the issue in the interest of justice, international standards, the rule of law, and the reputation of the USA. The Court has not yet responded.

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

To Prime Minister Blair and Prime Minister Howard:

- calling on them not to accept trial by military commission under the fundamentally flawed Military Order, and to obtain return of all of their nationals and residents from Guantánamo Bay if the US authorities refuse to give them trials that fully meet international standards;
- suggesting that any plea arrangements should be viewed with scepticism, given the coercive conditions under which these detainees have been held over a prolonged period of time, and the fact that they have had no access to legal counsel;
- urging them to call on the US authorities to end the legal limbo of all those held in Guantánamo Bay.

To President Bush:

- expressing concern for the psychological well-being of the detainees held in Guantánamo Bay in view of the indefinite nature of their detention, noting that many have been so held for almost two years;
- noting the recent statements of concern by the International Committee of the Red Cross about the mental health impact of this legal limbo, and noting the numerous suicide attempts;
- calling for an end to the legal limbo of all Guantánamo detainees, urging that they 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;
- opposing trial by military commission, and calling for the 2001 Military Order to be rescinded;
- 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.

APPEALS TO:

Tony Blair, Prime Minister, 10 Downing Street, London, SW1A 2AA, UK

Fax: +44 207925 0918

Salutation: Dear Prime Minister

John Howard, Prime Minister, Parliament House, Canberra ACT 2600, Australia

Fax: + 61 2 6273 4100 / 9251 5454

Salutation: Dear Prime Minister

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

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

Salutation: Dear Mr President

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 15 December 2003.