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Disturbing appearance of Mohammed Jawad, child ‘enemy combatant’, at Guantánamo military commission hearing

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On 12 March 2008, Mohammed Jawad, an Afghan national who was 16 or 17 years old at the time of his detention in Kabul in December 2002, appeared before a military judge in pre-trial military commission proceedings in the US Naval Base at Guantánamo in Cuba. Mohammed Jawad is charged with attempted murder and intent to cause serious bodily injury in relation to a grenade incident in which two US soldiers and an Afghan interpreter were injured in Kabul on 17 December 2002.

The proceedings on 12 March 2008 were delayed for almost three hours. This was apparently because Mohammed Jawad did not want to leave his cell or participate in the proceedings. His lawyer later reported that the detainee had been carried out of his cell, but had entered the commission room of his own accord, although he was handcuffed and shackled at the ankles. When observers, including Amnesty International’s observer, entered the commission room, Mohammed Jawad, dressed in orange prison clothing, was already seated with three guards behind him.

The military defence lawyer asked the military judge if Mohammed Jawad could have water, but this request was denied. The judge said he would address this issue during a recess, but no recess occurred. According to Amnesty International’s observer, Mohammed Jawad was visibly agitated and uncomfortable throughout the proceedings. He would often rub his forehead and put his head in his hands. At times he rocked forward and exhaled audibly. When he put his hands to his head, the guards behind him would remove them and place them back on the table. Eventually they gave up on this.

The military judge attempted to advise Mohammed Jawad of his rights to legal counsel. The defendant kept asking to be heard rather than responding to the judge’s questions about representation. The judge repeatedly said that he would let him talk, but that he needed Mohammed Jawad’s cooperation to get through to the next part. It was not clear to what extent Mohammed Jawad understood the proceedings.

At one point the military judge allowed the defendant to speak for an extended period. Mohammed Jawad said that he was innocent. He said he was taken into custody when he was 16, interrogated and tortured. He said that he had been arrested a long time ago and was only now being given a trial, but that this trial was illegal. He asked if it was in the US Constitution to treat 16-year-olds this way, and said that all he wanted was fairness and justice. He had already rejected his military lawyer, and any lawyer because he did not think the process was fair.

Mohammed Jawad subsequently removed his headphones (for interpretation) and put his head on the desk. The judge asked him to put them back on, but he said he could not – that he was suffering from a severe headache and that years of being under bright florescent lights had made him permanently ill. He replaced the headphones but eventually took them off again and asked the judge not to bother him anymore. At one point he had his fingers in his ears,

but eventually just put his head down on the table and did not raise it again for the rest of the proceedings.

The military judge ruled that Mohammed Jawad understood his right to counsel and had rejected his military lawyers. The judge said that he would not rule on the issue of self-representation at this time.

The military lawyer assigned to represent Mohammed Jawad is leaving military service shortly. The chief defence counsel for the commissions informed the judge that no new lawyer can be assigned to the case due to current workload on the limited number of lawyers assigned to his office.

At previous military commission proceedings, observers have remained seated while the defendant was escorted out of the room. At yesterday's proceeding, Mohammed Jawad refused to raise his head off the table. As the observers left, he was surrounded by at least six guards preparing to take him back to his cell.

Mohammed Jawad's military lawyer said: "What we had very clearly today I believe is a direct result of taking a 16- or 17-year-old boy and putting him in confinement for five years without contact with the outside world".

Amnesty International considers that no one under 18 years old should ever have been transferred to Guantánamo, and that no one who was a child at the time of their alleged crime should be subject to a military commission trial. Moreover, these military commissions have no juvenile justice provisions whatsoever, as required under international law.

The Pentagon has said that it expects as many as 80 detainees to face trial by military commission. Yesterday, charges were sworn against another Guantánamo detainee, Mohammed Kamin, an Afghan national. This means that to date 14 Guantánamo detainees have had charges sworn against them or referred on for trial under the Military Commissions Act of 2006 (MCA). These include David Hicks, the only person convicted by military commission to date. This Australian national pleaded guilty in March 2007 to providing material support for terrorism and was sentenced to seven years in prison. Six years and three months of this sentence was suspended under a pre-trial agreement which also saw him transferred to Australia to serve the remainder of the nine months there. He was released from prison in Adelaide in December 2007.

The USA's military commission proceedings cannot be divorced from the backdrop against which they are being conducted. This backdrop is one of practices pursued in the absence of independent judicial oversight that have systematically violated international law. At any such trials, the defendants will be individuals who have been subjected to years of indefinite detention, whose right to the presumption of innocence has been systematically undermined by a pattern of official commentary on their presumed guilt. Among the defendants will be victims of enforced disappearance, secret detention, secret transfer, torture or other cruel, inhuman or degrading treatment. Their treatment has not only been arbitrary and unlawful, it has been highly and deliberately coercive in terms of the interrogation methods and detention conditions employed against them. This heightens the need for any trials to take place before courts independent of the executive and legislative branches which have authorized or condoned human rights violations. Instead, trials are looming before military commissions lacking such independence and specifically tailored to be able to turn a blind eye to government abuses.

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