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USA/Guantánamo: Military commissions incompatible with justice

The USA should abandon military commissions because justice will neither be done nor be seen to be done in trials by these tribunals, which lack independence and can admit coerced evidence, among other flaws.

The Pentagon has indicated that it will resume military commission proceedings following yesterday's ruling by the Court of Military Commission Review (CMCR) a tribunal established by the Secretary of Defense in June 2007.

Trials under the 2006 Military Commissions Act (MCA) stalled in early June after two military judges dismissed charges against Canadian national Omar Ahmed Khadr and Yemeni national Salim Ahmed Hamdan on the grounds that the commissions lacked jurisdiction over them. These detainees are among the more than 300 foreign nationals still held in the US Naval Base in Guantánamo where Combatant Status Review Tribunals (CSRT) – administrative review bodies established by the Pentagon – had affirmed their classification as “enemy combatants”. The jurisdictional question arose because under the MCA, military commission trials are reserved for foreign nationals classified as “unlawful enemy combatants”.

In the appeal in Omar Khadr's case, the CMCR ruled that the military judge had erred by not allowing the government the opportunity to present evidence in support of its contention that Omar Khadr was an “unlawful enemy combatant”. It ruled that the military judge was also wrong to have found that he lacked the authority to decide whether the defendant was an “unlawful enemy combatant” for the purpose of establishing the military commission's jurisdiction.

It is not clear if the decision can or will be appealed to the federal US Court of Appeals for the District of Columbia Circuit.

Amnesty International considers that the absence of due process for Omar Khadr and the other Guantánamo detainees has left them arbitrarily detained in violation of international human rights law. They should either be charged and brought to fair trial in independent, impartial and competent tribunals, or released.

If the USA genuinely intends to bring any of the Guantánamo detainees to trial, it must do so in a way which demonstrates a commitment to restoring the rule of law. It should promptly charge any such detainee in the federal courts with recognizable criminal offences. Trials in the form provided for under the MCA as currently enacted are unacceptable, yet currently such trials appear to be the only ones being contemplated by the US administration.

With this in mind, and given the indications that the administration continues to seek to bring Omar Khadr and Salim Hamdan to trial by military commission under the MCA, Amnesty International calls upon the Canadian and Yemeni governments to join Amnesty International and others in doing all they can to persuade the USA to bring its treatment of these detainees into full compliance with international law. As long as the USA continues to fail to apply international fair trial standards, these two governments should move to protect their citizens by seeking their repatriation and, if there is sufficient and admissible evidence, arranging for a trial in their home country, which must meet international fair trial standards.

In Omar Khadr's case, the USA's failure to apply international law has meant that an individual who was 15 years old when he was taken into custody in Afghanistan in mid-2002 has been held for a quarter of his life in untried military custody, with no account taken of his age and his captors ignoring the requirement under international standards to do all they could to facilitate his rehabilitation and reintegration into society. The Canadian government should do what it can to make up for the USA's failure.

As US Secretary of Defense Robert Gates said in March 2007, “Guantánamo has become symbolic, whether we like it or not, for many around the world”. The military commissions – a revised version of the military commission scheme found unlawful by the US Supreme Court in 2006 – are part of the reason why the Guantánamo detention facility has

been widely condemned by the international community. The detention facility should be shut down, without transferring the human rights violations elsewhere.

For more information, please see *USA: Justice delayed and justice denied? Trials under the Military Commission Act*, March 2007

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