

URGENT ACTION



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Note: Please write on behalf of these persons even though you may not have received the original UA when issued on July 3, 2009. Thanks!

8 October 2009

Further information on UA 178/09 (3 July 2009)

Death penalty

USA Ahmed Khalfan Ghailani (m), Tanzanian national

The US administration has decided not to seek the death penalty against male Tanzanian national Ahmed Ghailani at his forthcoming federal trial. Before being transferred from Guantánamo Bay to New York, Ahmed Ghailani was held without trial in US custody for five years, two of them at undisclosed locations.

On 2 October, Attorney General Eric Holder directed the federal prosecutor not to seek the death penalty against Ahmed Ghailani. The prosecutor has informed the trial judge of this decision. Ahmed Ghailani's trial is currently scheduled to begin on 27 September 2010.

Ahmed Ghailani was arrested on 25 July 2004 by Pakistani police in Gujarat, Pakistan. He was handed over to US agents the following month and held in secret detention by the Central Intelligence Agency (CIA) for the next two years. He was then transferred in September 2006, to the US Naval Base in Guantánamo Bay, Cuba. He was charged for trial by military commission in 2008, but the trial had not happened by the time the new administration took office.

The US Department of Justice announced on 21 May 2009, that Ahmed Ghailani would be tried in federal court under an indictment pending against him in the District Court for the Southern District of New York. On 9 June 2009 he was transferred from Guantánamo to New York. He is charged with involvement in the 1998 bombings of the US Embassies in Tanzania and Kenya in which, more than 200 people were killed and many others injured. In a hearing in District Court on the day of his transfer from Guantánamo Bay, he pleaded not guilty. On 2 July 2009, the judge ordered the prosecution to tell him whether it intended to seek the death penalty.

In recent months, as the US administration has sought to meet President Barack Obama's deadline of closing the Guantánamo Bay detention facility by 22 January 2010, the detentions have become highly politicized, with some members of US Congress opposing the transfer of any detainees to the US mainland. However, on 7 October, clauses were added to legislation being drafted in Congress which could authorize the transfer of detainees currently held at Guantánamo Bay to the US mainland for trial.

BACKGROUND INFORMATION

Ahmed Ghailani's transfer to civilian custody was a positive, albeit belated, step that should be replicated without further delay in any case where the USA intends to prosecute a Guantánamo detainee. Ahmed Ghailani is the only such detainee to have yet been charged by the new administration. Some 223 detainees remain in Guantánamo.

Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

Ahmed Ghailani was first indicted in December 1998, for his alleged role in the bombing of the US embassy in Dar es Salaam, Tanzania, on 7 August 1998. In a superseding indictment on 12 March 2001, he was charged with involvement in the bombing of the embassy in Nairobi, also on 7 August 1998, and for his alleged participation in a wider conspiracy with al-Qa'ida.

Ahmed Ghailani was subjected to enforced disappearance, a crime under international law, for the two years he was in CIA custody. In secret detention at undisclosed locations, he was held incommunicado in solitary confinement. Amnesty International does not know what interrogation techniques he was subjected to in CIA custody, in addition to conditions of detention which themselves violated the prohibition of torture or other ill-treatment. In any event, no one has been held to account for the human rights violations that were authorized and used in the CIA program.

The USA is obliged under international law to ensure full investigations into all human rights violations committed against detainees in US custody and to ensure that anyone whose rights have been violated has access to effective remedy.

President Barack Obama and officials in his administration have stated that no CIA personnel who used interrogation techniques authorized by the US Justice Department will face prosecution. On 24 August 2009, Attorney General Holder announced that he was appointing a federal prosecutor to conduct a "preliminary review into whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations", to determine if a fuller investigation was warranted. However, this preliminary review is narrowly framed apparently to the question of whether certain interrogations had gone beyond what had been approved, and the Attorney General played down expectations of any criminal accountability being established even in these cases (see USA: Attorney General orders 'preliminary review' into CIA detention cases – full investigation long overdue, 25 August 2009, <http://www.amnesty.org/en/library/info/AMR51/094/2009/en>).

Amnesty International remains deeply concerned at the absence of accountability for the human rights violations committed in the CIA secret detention program, including the crimes under international law of enforced disappearance and torture.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible:

- welcoming the US Attorney General's decision not to seek the death penalty against Ahmed Ghailani;
- urging the US administration to abandon military commissions, to transfer for trial in US federal court (also without seeking the death penalty) any other Guantánamo detainee it intends to prosecute, and to release any Guantánamo detainees it does not intend promptly bring to criminal trial;
- calling for a full investigation into the enforced disappearance of Ahmed Ghailani and others held in the CIA secret detention program, and into the evidence of torture and other ill-treatment authorized and used in the program, and for the detainees and former detainees to be granted effective access to remedy for human rights violations committed against them in US custody.

APPEALS TO

Attorney General Eric Holder

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Fax: 1 202 307 6777
Email: AskDOJ@usdoj.gov
Salutation: Dear Attorney General

COPIES TO:

Secretary of State Hillary R. Clinton

US Department of State
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Washington DC 20520

Fax: 1 202 261 8577
E-mail: secretary@state.gov
Salutation: Dear Secretary of State

PLEASE SEND APPEALS IMMEDIATELY.

Check with the AIUSA Urgent Action office if sending appeals after 19 November 2009.