**Fair Trial Standards**

**The Essential Components of a Fair Justice System**

*Submitted to the Senate Armed Services Committee on behalf of Human Rights Watch and Human Rights First (see more: www.hrw.org)*

Any tribunal established by this Congress should meet the minimum standards of fair trials. As the majority opinion in Hamdan pointed out, �Common Article 3 obviously tolerates a great degree of flexibility in trying individuals captured during armed conflict; its requirements are general ones, crafted to accommodate a wide variety of legal systems. But requirements they are nonetheless.�[1](http://www.hrw.org/legacy/english/docs/2006/08/23/usdom14067.htm%22%20%5Cl%20%22fntref1) The fair trial standards required by Common Article 3 can be boiled down to 10 basic principles, against which any Administration proposal must be judged:[2](http://www.hrw.org/legacy/english/docs/2006/08/23/usdom14067.htm#fntref1)

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1. Trials must be conducted publicly, by a regularly constituted, independent and impartial court.

2. The accused is entitled to a presumption of innocence.

3. The accused may not be tried for crimes that were not in existence at the time of the offense and may not be tried in violation against the prohibition on double jeopardy.

4. The accused has the right to information about the basis for detention or arrest in a language that he can understand.

5. The accused is entitled to be made aware of the evidence against him and to any exculpatory evidence in the government�s possession.

6. The accused has the right to be present at trial and to be provided all of the evidence shared with the factfinder.

7. The accused has the right to prepare a defense and to call and examine witnesses, to be represented by independent counsel, and to a trial within a reasonable time.

8. The tribunal may not rely on testimony that violates the prohibitions against torture and cruel, inhuman, or degrading treatment.

9. The accused has the right to remain silent, and his silence cannot be used against him.

10. The accused has the right to a public judgment and to an appeal before an independent adjudicator.

[[1](http://www.hrw.org/legacy/english/docs/2006/08/23/usdom14067.htm%22%20%5Cl%20%22fnt1)] Hamdan v. Rumsfeld, 126 S.Ct. 2749, 2798 (2006).

[[2](http://www.hrw.org/legacy/english/docs/2006/08/23/usdom14067.htm#fnt1)] These fair trial standards are based on the U.S. Constitution and in treaties signed and ratified by the United States, including the Geneva Conventions, the International Covenant on Civil and Political Rights, and the Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment and the Protocols to the Geneva Conventions, which the United States negotiated and signed. See Geneva Conventions I � IV 1949, 75 U.N.T.S. 31, 75 U.N.T.S. 85, 75 U.N.T.S. 135, 75 U.N.T.S. 287 respectively (all entered into force Oct. 21, 1950, ratified by the United States of America on August 2, 1955.; Protocol I and II Additional to the Geneva Conventions of 12 August 1949, 1125 U.N.T.S. 3, 1125 U.N.T.S. 609 respectively (both entered into force Dec. 7, 1978, signed by the United States of America on December 12, 1977); International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976, ratified by the United States of America June 8, 1992); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted 10 December 1984, G.A. Res. 39/46, U.N. Doc. A/39/51 (entered into force June 26, 1987, ratified by the United States of America October 21, 1994).