Human rights groups condemn US law on military commissions

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Civil liberties and human rights organizations have denounced the Military Commissions Act adopted by Congress last week, calling it a fundamental break by the US government with democratic principles. The bill passed the Senate Thursday and the House of Representatives Friday, and will be signed into law by President Bush within days.

The Center for Constitutional Rights (CCR), which has provided legal representation for hundreds of prisoners detained indefinitely at the Guantánamo Bay concentration camp, said it would file a legal challenge to the law as soon as Bush signs it, focusing on its denial of the right of prisoners to seek a writ of habeas corpus, a formal review of the reason for their detention by a court independent of the arresting authority.

Vincent Warren, director of CCR, said, "This unprecedented and expansive suspension of habeas corpus is utterly unconstitutional." He added, "Since the nation's founding, the writ has been suspended only four times—each only briefly and in a territory that was an active combat zone. This bill would suspend it for all non-citizens inside and outside of the US—even if they have not been charged with any crime."

The writ of habeas corpus has been recognized under English Common Law since the issuing of the Magna Carta in 1215. It was incorporated into the US Constitution in Article I, Section 9, which forbids the federal government to suspend habeas corpus except under conditions of invasion or rebellion.

The bulk of the new law provides congressional authorization for the military commissions which the Bush administration wishes to establish to try prisoners at Guantánamo, and others who may be arrested in the future. These tribunals will have few features recognizable as judicial: defendants can be excluded from their own trials, evidence can be withheld from the defense, testimony obtained by coercion and even torture may be introduced at the discretion of a military judge, and hearsay evidence and evidence produced by warrantless searches will be allowed.

Other key provisions of the law will immunize CIA agents against prosecution for torturing prisoners, bar US courts from reviewing the proceedings of the military commissions, and allow the president to "interpret" the provisions of the Geneva Conventions to permit violent, coercive interrogations of prisoners.

Christopher Anders, legislative counsel for the American Civil Liberties Union, said in a statement to the press, "Nothing could be less American than a government that can indefinitely hold people in secret torture cells, take away their protections against horrific and cruel abuse, put them on trial based on evidence they cannot see, sentence them to death based on testimony literally beaten out of witnesses, and then slam shut the courthouse door for any habeas corpus petition."

Physicians for Human Rights (PHR) condemned the legislation in a statement which focused on the bill's tacit authorization of torture and the use of testimony elicited by torture. "Congress abdicated its responsibility to ensure the strongest standard of human rights and constitutional protections for those in US custody," stated Leonard S. Rubenstein, Executive Director of PHR. "Because of the president's track record of twisting US and international law to justify the use of abusive and illegal CIA interrogation techniques, Congress must now commit itself to hold the Executive Branch accountable for adhering to the Geneva Conventions and the Detainee Treatment Act."

Amnesty International USA declared, "By passing the Military Commissions Act, the United States Congress has, in effect, given its stamp of approval to human rights violations committed by the USA in the 'war on terror.' This legislation leaves the USA squarely on the wrong side of international law, and has turned bad executive policy into bad domestic law."

As the Amnesty statement noted, "[T]he US administration has resorted to secret detention, enforced disappearance, prolonged incommunicado detention, indefinite detention without charge, arbitrary detention, and torture or other cruel, inhuman or degrading treatment." One of the principal functions of the new law, Amnesty pointed out, is to block possible war crimes prosecutions of high-level Bush administration officials.

The Arab American Institute, in a statement by its president, James Zogby, cited a late change in the bill's language which denies the right of habeas corpus not only to those detained overseas, but to any "alien detained by the United States."

"This bill would fundamentally change what America stands for," Zogby said. "The idea that individuals legally in the United States could be thrown in jail indefinitely without being charged and without the opportunity to rebut the accusations against them violates the Bill of Rights."

Perhaps the most significant change in the text of the bill during the last two days of House-Senate-White House talks was the redefinition of "unlawful enemy combatants" who are subject to indefinite detention or trial by military kangaroo courts under the Military Commissions Act. These can now include US citizens and legal residents who are deemed by the US government to have

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"purposefully and materially supported hostilities against the United States or its cobelligerents." Once a Combatant Status Review Tribunal consisting of military officers makes that determination, it is not subject to any judicial oversight, and the person so designated disappears into the new American gulag.

Marjorie Cohn, head of the National Lawyers Guild, focused on this aspect of the law in an Internet commentary Saturday. "Because the bill was adopted with lightning speed," she wrote, "barely anyone noticed that it empowers Bush to declare not just aliens, but also US citizens, 'unlawful enemy combatants.' Anyone who donates money to a charity that turns up on Bush's list of 'terrorist' organizations, or who speaks out against the government's policies could be declared an 'unlawful enemy combatant' and imprisoned indefinitely. That includes American citizens."

Human Rights Watch director Kenneth Roth said, "This provision expands the concept of combatant way beyond anything that is traditionally accepted, and it could come back to haunt Americans. It would make every civilian cafeteria worker at a US military base, and every worker in an American uniform factory, someone whom enemy forces could shoot to kill."

Many of the statements issued by the civil liberties groups evince a degree of shock at how far and how fast the Bush administration and Congress have moved to overturn longstanding constitutional principles and establish the framework of a police state. But this understandable and legitimate response finds almost no echo in the American mass media or in official Washington.

There, the Military Commissions Act is discussed almost entirely in terms of the immediate electoral advantages which the Bush administration and congressional Republicans hope to obtain by presenting themselves as stalwart fighters against terrorism and their Democratic opponents as capitulators and traitors.

The McCarthyist overtones of this campaign are evident in the initial comments of the congressional Republican leaders after the bill's passage. Senate Majority Leader Bill Frist declared that the issue in the November 7 election was whether voters "want to be voting for a party that does unabashedly say, 'We're going to have victory in this war on terror,' or a party that says, 'We've got to surrender.'"

House Speaker J. Dennis Hastert said in a television interview that Democrats "are so bent on protecting criminals ... they're not allowing us to prosecute these people." He added, "The 130 most treacherous people probably in the world, and they want to put them and release them out in the public eventually."

The National Republican Senatorial Committee charged that two senators who voted to restore habeas corpus rights—Democrats Robert Menendez of New Jersey and Debbie Stabenow of Michigan—had "sided with trial lawyers and terrorists." Menendez and Stabenow actually voted for final passage of the law after the habeas corpus amendment was defeated by 51-48.

The response of the Democrats to this witch-hunting has been abject prostration before the rightwing. The tone was set by Senate Democratic leaders who made the decision last Wednesday that there would be no filibuster to block a bill to repeal fundamental constitutional rights—an action that could have easily been sustained, as it requires only 40 votes out 100 in the Senate.

In a joint interview on Fox News Sunday with former Republican House Speaker Newt Gingrich, Congresswoman Jane Harman, the ranking Democrat on the House Intelligence Committee, limited her criticism to the Bush administration's failure to consult Congress sufficiently. Referring to alleged Al Qaeda prisoners, she said, "We're all for detaining these guys. We're all for prosecuting them. And I am for, if it's under strict limits, with clear oversight by Congress, treating high-value detainees differently." In other words, torture them, but get a congressional OK first.

In an ominous comment, Gingrich declared that the Military Commission Act was only the beginning. "We're going to find ourselves in the next four or five years looking at bills involving civil liberties we never dreamed of because our enemies are going to give us no choice," he said. His Democratic counterpart did not object or pursue the issue.

In a scathing editorial on the Democrats' performance, entitled "Profiles in Cowardice," the *Los Angeles Times* commented on the speech by Senator Hillary Clinton of New York opposing the bill. "By allowing this administration to further stretch the definition of what is and is not torture," Clinton declaimed, "we lower our moral standards to those whom we despise, undermine the values of our flag wherever it flies, put our troops in danger and jeopardize our moral strength in a conflict that cannot be won simply with military might." The *Times* added: "Stirring words—but apparently not stirring enough to justify a filibuster."

The *Times* also reported (September 30) a comment by an unnamed "senior administration official" that best captures the complete rejection of basic democratic and constitutional principles that now characterizes official Washington. This official "disputed the idea that the definition in the law was overly broad and said that just because someone could be tried did not mean the person would be. 'The only people who will be tried will be people who have committed a crime,' said the official."

"We only put guilty people on trial" ... Then why have trials at all? Why not rely solely on the judgment of the police, prosecutors and presidents who wield the executive power? The logic of the policies being pursued by the Bush administration, rubberstamped by Congress and the Democratic Party, is the establishment of an American police state.

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