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WORLDRIGHTS

Human Rights Advocacy Worldwide

STATEMENT ON MILITARY COMMISSIONS ACT OF 2006 AND COMPATABILITY WITH RIGHT TO FAIR TRIAL AND EFFECTIVE REMEDIES UNDER OSCE STANDARDS

Mr. Chairman,

As a result of the US Supreme Court's decision in Hamdan v. Rumsfield in June, the US Administration was forced to submit the Military Commissions Act of 2006 to Congress for consideration in September. The bill has since become US law. A positive aspect of this bill is that it rebuffed the Bush Administration's efforts to lower humane treatment standards under Common Article 3 of the Geneva Conventions for detainees. For instance, it outlawed "cruel, inhuman or degrading treatment", and forbad harsh interrogation techniques, such as mock executions, sleep denial, stress positions, waterboarding, and artificially-induced hypothermia. Nevertheless, the legislation remains problematical, and falls below international standards, particularly with regard to detainees' right to a fair trial and legal protections and remedies against unjust treatment.

For instance, the Military Commissions Act prohibits detainees situated anywhere in the world to exercise their right of habeas corpus. Otherwise known as "court-stripping", a detainee will be prevented from challenging his or her detention. Prisoners, who may in fact be innocent, could be held indefinitely. And detainees who allege torture will have no recourse to the courts. This Act endangers over 200 cases involving detainees currently under review by US courts, including the Hamdan case. They could eventually be dismissed.

The right to a speedy trial is also rejected under the Military Commissions Act and it forbids the basic right of self-representation or to be represented "by legal counsel of one's choice". Detainees may be represented by military defense lawyers only. Moreover, the Act allows military prosecutors to enter into evidence hearsay or coerced statements in certain instances.

Significantly, the Act conveys to the President the unprecedented authority to redefine and expand the term "unlawful enemy combatant", a phrase used by the US Administration which permits it to justify detaining "combatants" without affording them all protections under the Geneva Conventions. The new, broader definition defines combatants as persons who have "purposefully and materially supported" hostilities against the US. This elastic language could be applied to a wide range of persons, including American citizens and permanent US residents, living within the borders of the US, and allow for their detention.

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Perhaps most troubling, the Act immunizes US officials from charges of "cruel, inhuman or degrading treatment" of all detainees capture by US intelligence services and the military prior to 2006. In other words, it's an Act of Impunity. It also tightens the scope of the US War Crimes Act by prohibiting the Geneva Conventions from being applied by the courts in lawsuits filed against the US. Additionally, it grants the Executive Branch power to interpret "the meaning and application" of the Geneva Conventions and bans US courts form applying international law in decisions on certain violations of Common Article 3.

In conclusion, while the Military Commissions Act of 2006 makes illegal the Administration's past interrogation practices in its "war on terror", and provides legal guarantees for those detainees held at Guantanamo Bay, and previously at US-administered secret prison in Eastern Europe and elsewhere, it nevertheless falls short of fully complying with international standards. By denying independent judicial review of detentions, limiting detainees' rights at trial and allowing evidence obtained by coercion to be used against defendants, it does not meet OSCE standards.

We recommend therefore that the OSCE monitor US implementation of the Military Commissions Act and report in a timely manner as to its compatibility in practice with all OSCE protections under the relevant documents, including Moscow 1991, Copenhagen 1990, and Vienna 1989.