



## **SUPPORT THE RESTORING THE CONSTITUTION ACT**

Amnesty International urges Congress to pass the "Restoring the Constitution Act of 2007" with strong bipartisan support. The "Restoring the Constitution Act of 2007" introduced by Senator Chris Dodd (D-CT) in the Senate and Congressman Jerrold Nadler (D-NY 8) and Congresswoman Jane Harman (D-CA 36) in the House, would repeal some of the highly problematic aspects of the Military Commission Act of 2006 (MCA) that weaken constitutional and international legal protections.

The need to reverse the most problematic provisions of the MCA, signed into law by President Bush on October 17, 2006, is imperative in light of the recent decision of the Court of Appeals for the D.C. Circuit. In a 2 to 1 decision, the court stated that due to the MCA, federal courts no longer have jurisdiction over the hundreds of pending habeas cases for detainees in Guantanamo, many in their sixth year of detention. The most troubling aspects of the Military Commission Act of 2006 infringe on the human rights and constitutional protections of US citizens and non-citizens alike and contravene basic protections provided in the U.S. Constitution and various international treaties. Immediate steps should be taken to reverse provisions of the MCA which do not comply with US obligations under US and international law. Senators and Members of Congress should cosponsor and pass the Restoring the Constitution Act of 2007, which would begin to reinstate basic constitutional and international human rights weakened by the Military Commission Act of 2006. Specifically, the Restoring the Constitution Act would:

Restore the writ of habeas corpus for individuals held in US custody;

Prevent the use of evidence in court gained through the unreliable and immoral practices of coercion and cruel, inhuman and degrading treatment;

Narrow the definition of unlawful enemy combatant to individuals who directly participate in hostilities against the United States, including individuals who participated in attacks against the United States on September 11, 2001;

Broaden the scope of violations prosecutable under War Crimes Act;

Provide for expedited judicial review of the Military Commissions Act of 2006 to determine the constitutionality of the process.

Amnesty International firmly believes that any person who is involved in committing war crimes or terrorist acts must be held accountable, as accountability is a cornerstone of human rights enforcement. However, it is imperative that any trials meet basic due process and fair trial standards, and that the human rights of everyone in detention are respected. While it is the responsibility of the United States to protect the country and its citizens from attacks, the tactics it uses must be consistent with human rights and humanitarian law.

### **AMNESTY INTERNATIONAL USA RECOMMENDATIONS:**

- ✓ Congress should act quickly to pass the reforms enumerated in the "Restoring the Constitution Act" (S. 576, H.R. 1415)
- ✓ Congress should also pass the "Habeas Corpus Restoration Act" (S. 185) introduced by Senator Patrick Leahy (D-VT) and Senator Arlen Specter (R-PA) and (H.R. 1416) introduced by Congressman Nadler D- NY 8) and Congresswoman Jane Harman (D-CA 36), which would restore the right to habeas corpus.
- ✓ Congress should hold oversight hearings into the conditions at detention facilities in Guantanamo Bay and work to close the facilities for good.

*Amnesty International is a grassroots organization with 2.2 million members worldwide working to promote and defend human rights. For information, contact Jumana Musa at 202-544-0200, or visit [www.aiusa.org](http://www.aiusa.org).*



## CLOSE GUANTANAMO

Amnesty International has been calling for the closure of the detention facilities at Guantanamo for more than two years. By choosing Guantanamo, the Bush Administration sought to send detainees to a place where they believed neither U.S. nor international law applied. This concept is an affront to human rights and the rule of law - no one can be held outside of the law. In 2004, in the case of *Rasul v. Bush*, the Supreme Court ruled that US federal courts did have jurisdiction over detainees in Guantanamo, allowing detainees access to the courts to challenge their detention. In 2006, in the case of *Hamdan v. Rumsfeld*, the Court found that Article 3 common to the four Geneva Conventions did apply to detainees in custody in Guantanamo. With these two court decisions, the Supreme Court has injected some legal framework to the detentions at Guantanamo. However, the Bush Administration has fought any attempts to enforce these rights, going to the courts and later to Congress to prevent detainees from claiming such rights.

More than five years after the first people were transferred to Guantanamo, only one person has ever been convicted of any crime, and only two others have been charged. The vast majority of the approximately 385 others are being held indefinitely in conditions that amount to cruel, inhuman and degrading treatment. Last June, after the apparent suicides of three inmates, many of those still in detention were moved to isolated cells in supermax facilities known as Camp 5 and Camp 6. They lost the ability to eat or exercise communally, have very limited contact with anyone but their jailers, and almost no access to sunlight or fresh air. In addition, last February a federal appeals court ruled that they no longer had jurisdiction to hear habeas appeals on behalf of Guantanamo detainees. For those currently in custody, some now in their sixth year of detention, it is not only their conditions in custody but also the indefinite and arbitrary nature of their detention which has led to a steep decline in their mental state. This has resulted in numerous suicide attempts, hunger strikes, and increasing desperation amongst the prison population.

The detentions in Guantanamo have also impacted the United States' reputation around the world, providing a magnet for criticism from allies and enemies alike. In the years since Amnesty International has called for closure of the detentions facilities, several high ranking US officials, allied governments, and the United Nations have issued calls for the prison's closure. As Senator Harkin stated when introducing his Guantanamo Bay Detention Facility Closure Act of 2007, "The 5-year-old prison at Guantanamo is a stain on the honor of this country. By holding people at Guantanamo without charge, without judicial review, without appropriate legal counsel, and--in the past--subjecting many of them to torture, we have forfeited the moral high ground and we stand as hypocrites in the eyes of the world."

The Harkin bill would give the Bush Administration 120 days to either charge or release anyone currently detained in Guantanamo. It provides protections for those who fear torture or persecution in their home countries, including judicial review of any initial decision. Those who will not be released, are to be transferred to a high security military facility at Ft. Leavenworth, Kansas to await trial. While Amnesty International supports this proposal to ensure that detainees are either charged or released, no one should be tried in a forum that does not guarantee minimum due process protections. As such, anyone charged should not be tried by a military commission which fall short of international fair trials standards.

### **AMNESTY INTERNATIONAL USA RECOMMENDATIONS:**

- ✓ Senators should cosponsor and pass S. 1469 to close Guantanamo and ensure that anyone not to be charged is released and not returned to a country where they would face torture or persecution.
- ✓ Any trials should meet international fair trial standards. Military commissions should be abandoned and civilians should not be tried by any military tribunal.

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## **Additional Ways Elected Officials Can Help**

Amnesty International USA encourages elected officials to:

- 1) Restore justice and the rule of law by cosponsoring and supporting the Habeas Corpus Restoration Act (HR 1416/S. 185)
- 2) Cosponsor and support the Restoring the Constitution Act (HR 1415 / S 576).
- 3) Encourage appropriate committee chairs to conduct oversight hearings into conditions at Guantanamo, rights to habeas corpus, and military commissions.
- 4) Make a statement in the Congressional Record calling for detainees in Guantanamo to be charged and tried in accordance with fair trial standards or released.
- 5) Include information on human rights concerns in Guantanamo in newsletters that are mailed to constituents.