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USA: Stripping courts ability to hear Guantanamo detainees threatens rule of law

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The International Commission of Jurists (ICJ) today called on the US Congress to reject amendments to a military appropriations bill approved by the Senate on Thursday that would strip Guantanamo detainees of the right to test the legality of their detention before US Courts.

“This draft bill would be a major set-back for the rule of law in the fight against terrorism. The detainees are held in Guantanamo for years without charge or trial. It would deprive them of the last prospect of having a fair examination of their detention”, said Gerald Staberock, Director of the ICJ’s Global Security and Rule of Law Programme.

The proposed legislation would override the ruling of the US Supreme Court in *Rasul versus Bush* in 2004, in which the court had confirmed the right of the Guantanamo detainees to challenge the legality of their detention in federal courts. If adopted, the bill would threaten to halt all cases presently pending before US courts.

The right to habeas corpus is one of the most fundamental human rights and the cornerstone of any democratic state based on respect for the rule of law. It cannot be suspended under human rights law even in an emergency. Under the changes, the only available remedy would be vested in the so-called Combatant Status Review Tribunals, which have not only proven completely ineffective in the past, but also fail to fulfil the criteria of judicial independence and impartiality and do not provide essential guarantees for the detainees to challenge the legality of their detention.

“This right has been created precisely to prevent the unlimited power of the executive that leads to gross human rights violations, like torture and cruel, inhuman or degrading treatment or punishment in places such as Guantanamo”, said Gerald Staberock.

For further information, please contact the International Commission of Jurists, +41 (0) 22 979 3803, staberock@icj.org.

The ICJ is an international non-governmental organisation comprising sixty of the world’s most eminent jurists and has a worldwide network of national sections and affiliated organisations

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