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USA: Supreme Court must end lawlessness in Guantánamo Bay

No less than the rule of law is at stake in the Guantánamo appeal before the US Supreme Court.

The US administration is offering a vision of a world in which arbitrary unchallengeable detentions, potentially for life, become acceptable. The Supreme Court must reject this vision and begin the process of extracting the Guantánamo detainees from the legal black hole into which they have been thrown in the name of national security.

The issue before the Supreme Court is whether the US courts have jurisdiction to consider *habeas corpus* appeals from the hundreds of foreign nationals detained without charge or trial at the US Naval Base in Guantánamo Bay in Cuba. The lower courts have so far largely sided with the executive in its efforts to keep the judiciary out of the equation.

The government has claimed that, because Cuba has ultimate sovereignty over the Guantánamo base, even though the USA clearly has full jurisdiction and control over the base and the detainees held there, it is free to deny the right of any person under international and US law to seek judicial review of their detention.

This contention has no basis in international law. Under international law, no detainee can fall into the sort of legal abyss that the US administration has attempted to create. The right to judicial review is a fundamental right enshrined in international law. As authoritatively stated by regional and international bodies, including the Human Rights Committee that monitors the implementation of the International Covenant on Civil and Political Rights, this right applies to all detainees everywhere, even during times of emergency, including armed conflict.

Amnesty International is one of numerous organizations and individuals that have filed *amicus curiae* (friend of the court) briefs on behalf of the detainees. US *amici curiae* include former prisoners of war, diplomats, military officers and Guantánamo officials; international *amici curiae* include jurists, legal historians and experts, as well as 175 British parliamentarians.

Condemnation has come from many quarters during the more than two years that the detainees have been held, reflecting global concern that the USA is setting a dangerous example in its "war on terror" detention policies. Other governments have already cited the example of Guantánamo in justifying their own abusive conduct.

By flouting fundamental principles of international law, the US administration's detention policies are making the world a less secure place. When any state, let alone a country as powerful as the USA, adopts a selective or contemptuous approach to international law and standards, the integrity of those standards is eroded.

The threat to human rights represented by *al-Qa'ida* and other groups seeking to attack US and other civilians around the world is a real one and must be confronted. However, governments must do so by

respecting fundamental and universal human rights principles, rather than give in to a logic of lawlessness, which is ultimately self-defeating. It is now up to the US Supreme Court to reassert the rule of law and reaffirm those universal principles.

For further information, see:

USA: Undermining security: violations of human dignity, the rule of law and the National Security Strategy in "war on terror" detentions, <http://web.amnesty.org/library/Index/ENGAMR510612004>

USA: The threat of a bad example: Undermining international standards as 'war on terror' detentions continue, <http://web.amnesty.org/library/Index/ENGAMR511142003>

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