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USA : Guantánamo detainees - the legal black hole deepens

Yesterday's federal court ruling on the Guantánamo detainees it will cause further damage to the international reputation of the USA and to fundamental human rights standards agreed to across the world, Amnesty International said today.

"It is a basic principle of international law that any detainee has the right to test the lawfulness of his or her detention in a court of law", Amnesty International said. "By putting these detainees into a legal black hole, the US administration is supporting a world where arbitrary unchallengeable detention becomes acceptable".

More than 600 detainees of more than 40 nationalities are being held without charge or trial in the US Naval Base in Guantánamo Bay in Cuba. Some have been held there for more than a year, with no access to lawyers, relatives, or the courts. This situation of indefinite detention is inflicting cruelty on the detainees and their families.

"There can be little doubt that the US Government would not countenance such treatment of its own citizens by another country", Amnesty International added.

By detaining people at the Guantánamo Bay naval base, the US Government appears to have effectively removed them from the reach of the US courts because US jurisprudence has restricted the applicability of the Constitution in the case of federal government actions outside the USA concerning foreign nationals.

Yesterday, the US Court of Appeals for the District of Columbia Circuit ruled that the detainees may not challenge their detentions in US federal court because Cuba has sovereignty over Guantánamo Bay and therefore the prisoners are not protected by the US Constitution.

However, international law, including the provisions of the International Covenant on Civil and Political Rights (ICCPR), which the USA ratified in 1992, applies to persons subject to the jurisdiction of a state party even abroad.

"We recall the US Government's repeated assertions since 11 September 2001 that it will not relax its commitment to international human rights standards and the rule of law", Amnesty International said. "Those words ring more and more hollow each day that the Guantánamo detainees are denied their fundamental rights".

Background

In a 61-page Memorandum sent to the US Government in April 2002, Amnesty International

pointed out, among other things, that:

Article 2(1) of the ICCPR states: “Each State Party to the present Covenant undertakes to respect and to ensure to *all individuals* within its territory and *subject to its jurisdiction* the rights recognized in the present Covenant, without distinction of any kind”, including on the basis of national origin. The Human Rights Committee, the expert body established by the ICCPR to oversee implementation of the treaty, has made it clear that the Covenant applies to places outside the territory of a state party under its control.

Article 9(4) of the ICCPR states: “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” The Human Rights Committee has stressed that this “important guarantee... applies to all persons deprived of their liberty by arrest or detention”. Indeed, it has stated that this right is non-derogable, even in states of emergency. When the USA ratified the ICCPR in 1992, it declared that: “it is the view of the United States that States Party to the Covenant should wherever possible refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the terms of the Covenant”.

Amnesty International has had no response to its Memorandum, or to numerous communications sent since. It has also not had any response or acknowledgement to its repeated requests to visit the Guantánamo detainees and officials overseeing them.

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