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US Law Would Let Torture be Used for Evidence

Demetri Sevastopulo

Financial Times

December 19, 2005

Congress could approve this week legislation that would permit indefinite detention of prisoners at Guantánamo Bay based on evidence obtained through torture.

The law would allow military judges at Guantánamo to consider whether evidence obtained by coercive methods was admissible in determining whether a prisoner should be classified as an “enemy combatant”.

The measure, included in two defence bills already approved by the House and awaiting Senate approval, would also restrict the rights of prisoners at the detention centre to appeal against their detention to US courts.

Human rights groups and lawyers for some of the Guantánamo detainees argue the law would undermine some of the guarantees to detainees following an agreement between Senator John McCain and the White House last week on legislation banning US personnel from abusing prisoners anywhere in the world.

“The most dramatic story is that the same legislation that passes the McCain amendment – which is this historic bill on torture – has this other provision, which undercuts it in two ways,” said Jennifer Daskal, US advocacy director for Human Rights Watch.

“[The measure] implicitly allows the use of evidence that is obtained through torture for the first time ever in American history,” said Jennifer Daskal, US advocacy director for Human Rights Watch. “[And] it cuts off one of the best enforcement and monitoring mechanisms of the McCain amendment because it prohibits detainees from ever bringing any suit alleging that they have been tortured or abused.”

Under the new rules, detainees could appeal to US courts only after they had been declared enemy combatants, or after having been sentenced to death or more than 10 years’ imprisonment.

The provision comes as the Supreme Court prepares to hear a challenge to the Bush administration’s planned use of military trials for prisoners captured in the war on terrorism. The Pentagon was forced to halt the trial of Salim Ahmed Hamdan, who has acknowledged that he was a driver and bodyguard for Osama bin Laden, after the high court agreed to consider the case.

While the defence spending bill has run into opposition in the Senate – because of an unrelated provision - the policy bill is expected to get Senate approval.

The measure would come as the UK attempts to tighten up restrictions on the use of evidence gained by torture. The House of Lords month banned the use in English courts of evidence obtained by torture in overseas

jurisdictions.

Carl Levin, one of the original sponsors of the amendment, said previously that it would not apply retroactively. But some lawyers are concerned that the administration might try to argue that they apply to existing cases brought by Guantanamo detainees.

Tom Wilner, a Washington lawyer who represents some of the Kuwaiti detainees at Guantanamo Bay, said Congress did not intend the law to apply retroactively.

“If they applied it retroactively, it would be a disgrace...The people there would have no effective redress.”

The provision comes as the Supreme Court prepares to hear a challenge to the Bush administration's planned use of military trials for prisoners captured in the war on terrorism. The case has been brought by Salim Ahmed Hamdan, who has acknowledged that he was a driver and bodyguard for Osama bin Laden, who was scheduled to be the first enemy combatant tried in the war on terror, until the Pentagon was forced to postpone his trial pending the case in the high court.

While the defence spending bill has run into opposition in the Senate – because of an unrelated provision on Alaska oil drilling – the policy bill is expected to get Senate approval. The measure would come as the UK attempts to tighten up restrictions on the use of evidence gained by torture. The House of Lords earlier this month banned the use in English courts of evidence obtained by torture in overseas jurisdictions.