

Human Rights Watch

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U.S. Cannot Deny Rights Protection to Detainees at Guantanamo

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(New York) -- The U.N. body that provides authoritative interpretations of a key international human rights treaty issued an opinion yesterday that would indicate the United States cannot use offshore facilities like Guantanamo to evade responsibility for human rights violations, Human Rights Watch said today.

The Human Rights Committee a U.N. expert committee charged with interpreting the International Covenant on Civil and Political Rights, a core human rights treaty ratified by 148 countries has put governments on notice that they are responsible for human rights violations committed wherever they have "effective control."

"The Human Rights Committee has sent a strong message that states cannot avoid their international human rights obligations by outsourcing their detention centers," said Kenneth Roth, executive director of Human Rights Watch. "The Bush administration's trick of detaining people at Guantanamo won't work under international law."

The U.N. Human Rights Committee in its general comment on article 2 of the International Covenant on Civil and Political Rights said that states must respect and ensure the rights laid down in the treaty to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party." This principle applies to the forces of a state acting outside its territory, regardless of how such power or effective control was obtained. These protections are not limited to citizens of the state in question, but apply to all individuals, regardless of their nationality.

The Bush administration has detained hundreds of people at Guantanamo Bay in Cuba, at military bases in Afghanistan, and in other places outside the United States in part to avoid judicial scrutiny of those detentions. In a March 8 report, Human Rights Watch found that [U.S. forces in Afghanistan](#) were detaining persons without regard to the requirements of international human rights or humanitarian law.

The Human Rights Committee's general comment makes it clear that states are still responsible for ensuring human rights protections for all persons under their "effective control," even if they are not within the states territorial boundaries. Among the rights protected by the International Covenant on Civil and Political Rights are the rights to have judicial review of one's detention and, if criminally charged, to be tried by a court that meets international fair trial standards.

In April, the U.S. Supreme Court will hear arguments as to whether the Bush administration may continue to detain persons at Guantanamo without any review by U.S. federal courts. (http://www.humanrightsfirst.org/us_law/14077_freiman_proofs.pdf) Human Rights Watch and others have also criticized the U.S. military commissions being set up at Guantanamo for failing to meet the requirements for a fair trial under international law.

The Human Rights Committee's general comment has important implications for all countries involved in peacekeeping and other international operations. States sending forces to U.N. or NATO peacekeeping operations will normally be responsible for the actions of their personnel under international human rights law.

U.S. and other international forces operating independently in Iraq after sovereignty has been transferred to an Iraqi government will still be bound by human rights law, regardless of the arrangements made with the new Iraqi government. The Human Rights Committee noted that in situations of armed conflict, the more specific rules of international humanitarian law may be especially relevant, but do not replace human rights law.

"The Human Rights Committee has made it clear that even in wartime, armed forces are bound not only by the laws of war, but by human rights law as well," Roth said. "The U.S. and other forces in Iraq will have to uphold those standards."

The U.N. Human Rights Committee is a body of 18 independent experts that provides authoritative interpretations of the International Covenant on Civil and Political Rights, one of the core international treaties on human rights protections. The United States ratified the Covenant in 1992 during the administration of President George H.W. Bush.

The Human Rights Committee has issued 31 general comments on specific provisions of the Covenant. The general comment on article 2, issued on March 29, is entitled "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant."

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