

2006

## Legislative Watch

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## LEGISLATIVE WATCH

*The Human Rights Brief's Legislative Watch reports on key legislation in the U.S. and other countries relevant to human rights and humanitarian law. This list is not meant to be comprehensive.*

### S. 3930/ H. R. 6166, MILITARY COMMISSIONS ACT OF 2006

**Senate Sponsor:** Senator Mitch McConnell (R-KY), 2 Co-sponsors

**House Sponsor:** Representative Duncan Hunter (R-CA), 1 Co-sponsor

**Senate Status:** Passed by roll call vote 65-34 on September 28, 2006.

**House Status:** Passed by roll call vote 253-168 on September 27, 2006.

**Substance:** The purpose of these parallel bills is to give the President the authority to convene military commissions to prosecute terror suspects. The legislation prosecutes unlawful enemy combatants engaged in hostilities against the United States or its citizens and creates the procedures, rules, and legal framework for trying alleged terrorists. The Act allows suspects to obtain a civilian defense counsel but strips away the writ of habeas corpus, the right to challenge unlawful detention. The bill also states that no one may invoke foreign or international law as a source of rights and that no foreign or international law shall supply a rule of decision in court.

Despite claims that the bill prohibits certain abusive interrogation techniques, such as stimulated drowning, by providing precise definitions of abusive treatment, opponents like Human Rights Watch say the bill is flawed. Critics are worried that the legislation violates the U.S. Constitution because it denies detainees the basic right to challenge the lawfulness or conditions of their detention. Without the right of habeas corpus, one of the oldest human rights protections, the President would be able to indefinitely detain individuals without charge.

The Senate rejected an amendment to the bill, 51-48, supported by Senator Arlen Specter (R-PA) and Senator Patrick Leahy (D-VT), which would have preserved the writ of habeas corpus. Leahy said that the bill, as passed, is "flagrantly unconstitutional" and

that "authorizing indefinite detention of anybody the government designates is what our critics claim the United States would do, not what American values, traditions and our rule of law would have us do."

The bill has domestic as well as international repercussions. Legal residents of the United States and foreign citizens in their own countries may be subject to indefinite detention with no appeal because of the vague and broad definition of the term "unlawful enemy combatant." The bill redefines "unlawful enemy combatant" to include those who have purposefully and materially supported hostilities against the United States or its co-belligerents. This new definition could apply to many innocent individuals. The bill would also allow the President to interpret the meaning and application of the Geneva Conventions. Amnesty International said that the bill narrows the scope of the War Crimes Act by not explicitly criminalizing degrading and humiliating interrogation techniques banned by Common Article 3 of the Geneva Conventions.

### S. 2125, DEMOCRATIC REPUBLIC OF THE CONGO RELIEF, SECURITY, AND DEMOCRACY PROMOTION ACT OF 2006

**Sponsor:** Senator Barack Obama (D-IL), 12 Co-sponsors

**Status:** Passed by unanimous consent in the Senate, with amendment, on June 29, 2006.

**Substance:** The bill is a response to growing concerns regarding the situation in the Democratic Republic of Congo (DRC), Africa's third largest country. Since 1994 the country has been plagued by ethnic strife and civil war, which was exacerbated by a massive influx of refugees fleeing the Rwandan Genocide. A cease-fire was signed in 1999 but fighting continued. In December 2004 a study by the International Rescue Committee (IRC) found that 31,000 people were dying monthly, and a total of 3.8 million people had died since 1998 because of continued violence and the lack of basic medical care. On July 30, 2006, the DRC held its first free elections in more than 40 years. The United Nations reports, however, that 1,000 people continue to die each day because of the ongoing humanitarian crisis.

The main objectives of the bill are: to support the political process in the country; to ensure transparent governance once a stable national government is established; to assist the government in meeting the basic needs of its citizens; and to increase security by helping to train a professional national army and police force that respects human rights. To help quell the conflict, the bill calls for a special U.S. envoy to the region and encourages the United Nations to strengthen its peace-keeping forces by enhancing surveillance capabilities and monitoring arms trafficking and natural resource exploitation. The bill authorizes a 25 percent increase in U.S. assistance. The proposed increase would bring the total aid to \$52 million available for fiscal year 2006, according to a Congressional Budget Office report.

Supporters of the bill, such as the IRC, say that the bill would save lives and rebuild the country. The majority of deaths are caused by preventable and treatable illnesses; violence prevents people in the country from receiving food, clean water, and the medical care they need. UN Emergency Relief Coordinator Jan Egeland said that 2006 is a crucial year for the DRC because while the country is heading in the right direction, more assistance is needed to address what has been the largest humanitarian emergency of the last decade.

### H. R. 6061, SECURE FENCE ACT OF 2006

**Sponsor:** Representative Peter King (R-NY), 42 Co-sponsors

**House Status:** Passed by roll call vote 283-138 on September 14, 2006.

**Senate Status:** Passed by roll call vote 80-19 on September 29, 2006.

**Substance:** This bill is the latest in the wave of immigration reforms in the United States. The purpose of the bill is to secure the southern border of the United States with Mexico by authorizing the construction of a double-layered 700-mile fence. A virtual fence will accompany the physical infrastructure, with systematic surveillance by unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras. Lawmakers from both political parties admit, however, that

*continued on page 50*

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LEGISLATIVE WATCH *continued from page 48*

1,300 miles of the border would remain uncovered, and some concede that the construction of the wall is nearly impossible because of the steep ravines and sharp mountain peaks of the southwestern region. The bill also calls for a study to be conducted by the Department of Homeland Security on the feasibility of an infrastructure security system along the northern border of the United States. The construction of the fence is expected to cost \$6 billion.

Supporters of the bill, such as House Speaker J. Dennis Hastert (R-IL), say that the fence is common sense because it will make it harder for illegal immigrants to cross into the United States. Opponents of the bill, including Senate Minority Leader Harry Reid (D-NV), criticize President Bush for settling for this ineffective half-measure when just months ago he was calling for comprehensive reform. Moreover, the Border Network for Human Rights stated that the bill will let

hundreds more people die and will risk the safety and future of our communities.

Ted Kennedy (D-MA), a visible figure in the push for immigration reform, emphasized that the measure will be ineffective because fences can be circumvented over land and through underground tunnels. He also noted that the fence would do nothing about immigrants who come to the United States legally and then overstay their visas. For example, 500,000 undocumented immigrants entered the United States each year between 1990 and 2006, despite the increase in budget of the Border Patrol from \$263 million to \$1.6 billion during the same 16-year period.

The bill has also caused friction between the United States and Mexico. Luis Ernesto Derbez, Mexico's Foreign Secretary, said that the government may go to the United Nations to challenge the United States' plan of building the fence. President-Elect Felipe

Calderon, who will assume power in December, said that the fence will increase tension and insecurity at the border with Mexico. The mentality of the wall also alienates other countries, especially those in Latin America who call the wall "muro de muerte" (the "wall of death"). Cardinal Roger Mahoney, Archbishop of Los Angeles, said that "as the world's superpower and greatest democracy, [the United States] possesses the resources and ingenuity to solve our immigrant problems humanely and without resorting to the construction of barriers and walls."

*HRB*

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