

Dear Chairman Levin and Ranking Member McCain:

We write to express our concern over several provisions of the version of the 2012 National Defense Authorization Act (NDAA) passed by the House of Representatives and urge you to take these concerns into account when considering the bill this week. Should the House-approved provisions become part of the NDAA, they will hinder US counterterrorism efforts and erode the ability of the United States to promote the rule of law in other places such as the Middle East.

One especially troubling provision of the House bill expands the military targeting and detention powers of the president well beyond what is authorized by the current Authorization for the Use of Military Force (AUMF). The AUMF was enacted following the 9/11 attacks to permit the US to target and detain persons connected to the attacks or who harbored those responsible. The proposed provision allows for the military targeting of undefined forces "associated" with al Qaeda and the Taliban, as well as those deemed to be "substantially supporting" those forces, with no connection to 9/11. The provision is both overbroad and unnecessary. The military has not asked for more authority and the administration has said it does not need it. Of particular concern is the absence of careful congressional deliberation and debate on the issue, as occurred with prior AUMFs. Such an expansion should not be taken lightly when the consequence is the power to summarily kill suspects or to detain them indefinitely without trial. Should Congress wish to expand the president's power to use military force it should do so in a bill intended specifically for that purpose, not by inserting a provision into a bill considered essential for other reasons.

The House language would also authorize the detention without charge of individuals accused of being part of these undefined forces without adequate due process for an indefinite period of time. It would nullify the system of review put in place by the president's March 7, 2011 Executive Order for a limited number of detainees and replace it with one that provides even less adequate opportunity to challenge detention.

The House bill also alters the current state of the law by making it extremely difficult for any detainee to ever be released from Guantanamo, even if determined by the administration to pose no threat to the United States. Detention on this basis violates US obligations under international law and is counter to US values. Such a regime would undermine the US's role as a leader in human rights around the world and make it more difficult for the US to urge compliance with internationally recognized human rights standards by other nations.

Finally, provisions in the bill categorically ban federal trials for any terrorism suspects and require the use of military commissions for any prosecution. This provision strips the administration of its authority to make a case-by-case determination of the appropriate forum in which to pursue prosecution. As the administration made clear in its Statement of Administration Policy (SAP) issued on May 24, 2011, this unnecessarily constrains US counterterrorism efforts and undermines US national security. The administration threatened a veto should these provisions be included because it takes

away from the Executive one of the most effective tools it has to fight terrorism - US federal courts.

Since 9/11, US federal investigators, intelligence agencies and courts have resolved over 400 terrorism-related cases while the military system in Guantanamo has resolved exactly six. It also virtually guarantees that the detention facility at Guantanamo will not just stay open but will expand and detain even more prisoners for decades to come.

Guantanamo is a stain on the US's reputation and its continued use undermines US national security. The unwarranted and problematic expansion of the AUMF, combined with provisions in the bill that deny detainees basic due process and ensure the continued use of indefinite detention, hinder US counterterrorism efforts. We therefore urge you to work to eliminate these dangerous provisions while deliberating over these issues this week.

Sincerely,

Kenneth Roth
Executive Director

cc: Members of the Senate Armed Services Committee
Senator John Kerry, Chairman, Senate Committee on Foreign Relations
Senator Richard Lugar, Ranking Member Senate Committee on Foreign Relations
Senator Harry Reid, Majority Leader