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Afghan govt urged to reject indefinite detention without trial

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The Kabul government should reject a new law that permits indefinite detention of security suspects without trial, Human Rights Watch said Sunday.

The influential human rights watchdog said a September 2015 amendment to the Criminal Procedure Code, imposed by presidential decree, allows Afghan authorities to detain for a renewable one-year period anyone suspected of “crimes against internal or external security,” or believed “likely to commit such a crime.”

“Given President Ashraf Ghani’s sharp criticisms of United States practices at Guantanamo, it is incomprehensible why he would want to bring indefinite detention without trial to Afghanistan,” said Patricia Gossman, senior Afghanistan researcher at Human Rights Watch. “Afghanistan needs to take steps to address terrorism and protect public safety, but not by denying Afghans the right to a fair trial.”

The Judicial Committee of the Wolesi Jirga, the lower house of parliament, has been considering the presidential decree since early October. Parliament has the power to veto the decree; if it does nothing, the decree remains law. The Judicial Committee may call for a hearing on the decree and invite legal experts to testify before a decision to reject or amend it.

Article 10 of the decree provides for preventive detention – indefinite detention without charge or trial – in the following circumstances:

“A person suspected of terrorist crimes or crimes against internal or external security, when “gathering incriminating evidence is not possible,” but because of “strong indications or reliable information,” there is a “strong possibility” the person will commit a crime if released.”

“A person has served a prison sentence for a crime against internal or external security, but “there is a strong probability” that the person will again commit a crime if released.”

The one year detention period can be renewed indefinitely upon the approval of the Supreme Court. The decree does not specify whether the detainee will have access to family members, the right to legal counsel in those proceedings, the right to examine the evidence, or the right to challenge that evidence in a fair proceeding.

“Afghanistan’s progress on rule of law reform will take a big step backward if this new counterterrorism decree is kept in its present form,” Gossman said. “Abusive measures such as indefinite detention and denying suspects access to lawyers have no place in Afghan law, even to confront a dangerous enemy.”