

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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Military Commissions Are Fundamentally Flawed

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The trial of Omar Ahmed Khadr, the 20-year-old Canadian who was been in US detention since he was 15, and Salim Ahmed Hamdan, the 36-year-old Yemeni who successfully challenged the initial military commission proceedings before the Supreme Court, should be moved to US federal court, Human Rights Watch said today. On June 4, both men will be formally charged by military commissions in Guantanamo Bay, Cuba.

Omar Khadr: In a new [backgrounder](#) released today, Human Rights Watch said that although Khadr was just 15 when he was arrested, the United States has completely ignored his juvenile status throughout his detention. The US government incarcerated him with adults, reportedly subjected him to abusive interrogations, failed to provide him any educational opportunities, and denied him any direct contact with his family.

For the past five years, the United States has turned a blind eye to Khadr's rights as a child, said Jennifer Daskal, US program advocacy director. The US should not now add insult to injury by prosecuting Khadr before an unfair military tribunal.

The US has charged Khadr with murder for allegedly throwing a grenade during a 2002 firefight in Afghanistan that killed US Army Sergeant First Class Christopher Speer, as well as attempted murder, conspiracy, providing material support for terrorism, and spying. The government alleges that Khadr's father introduced him to al-Qaeda leaders starting at age 10 and that Khadr received formal military training from al-Qaeda members at age 15.

We have here a kid who was dragged to meet al-Qaeda leaders from the age of 10, sent to military training camps at age 15, and then out to the battlefield to be shot at, said Daskal. He hardly qualifies as the worst of the worst.

In detaining Khadr, the United States has flouted juvenile justice standards that provide for children to be treated in accordance with their unique vulnerability, lower degree of culpability, and capacity for rehabilitation. Although international standards allow for detention of juveniles only as a last resort, and require a prompt determination of all cases involving children, Khadr was held in US custody for more than two years before even being provided access to an attorney, more than three years before being charged before the first military commissions, and another two years before being prosecuted in this case.

Khadr has also reportedly been beaten, denied adequate medical treatment, held in solitary confinement for long periods of time, and left bound in uncomfortable stress positions until he soiled himself.

The treatment of Khadr also conflicts with the international obligations of the US to promote the demobilization and rehabilitation of child soldiers. Under a treaty banning children under the age of 18 from participating in armed conflict, ratified by the United States in 2002, the United States is obliged to assist in the demobilization and rehabilitation of former child soldiers within its jurisdiction. In 2004, the Pentagon released from Guantanamo three children, believed to be between the ages of 13 and 15 at the time of their capture, to rehabilitation programs operated by UNICEF in Afghanistan.

However, it refused to consider Khadr for a similar rehabilitation program, or to provide him with special protection at Guantanamo.

On Wednesday, Khadr fired his US military and civilian legal counsel. He is still represented by two Canadian lawyers, but US military commission rules prohibit foreign lawyers from acting as lead counsel at commission hearings.

Salim Hamdan: It was Hamdan's court challenge that led the Supreme Court to declare the first military commissions authorized by President Bush unlawful. On June 4, Hamdan will be charged again by the military commissions approved by Congress last September.

The administration responded to the Supreme Courts ruling in Hamdams case by pushing through Congress a new set of commissions with a few cosmetic improvements, said Daskal. But these newly created commissions remain fundamentally flawed and should be struck down as well.

Of particular concern are rules that allow the use of evidence obtained through abusive interrogation techniques prior to January 2006. The rules also allow interrogation methods and activities to be protected from disclosure, even to defense counsel and even for the purposes of challenging the use of evidence obtained by torture. This will make it difficult if not impossible to demonstrate that a particular statement is the product of torture or abuse.

Human Rights Watch expects the question of abuse to be a central in Hamdams case. Hamdan has alleged that he was beaten, forced into painful stress positions, subjected to extreme cold temperatures, and threatened with death when he was detained in Afghanistan in 2001 and early 2002. He also described being kept in such extreme isolation after being transferred to Guantanamo that he once considered pleading guilty in order to get out of here.

Hamdan is being charged with conspiracy and providing material support for terrorism based on allegations that he served as a driver and bodyguard to Osama bin Laden, transported weapons, and attended an al-Qaeda training camp.

Both Khadr and Hamdan are the second and third detainees to be charged under the new commissions. David Hicks, the only other person to be brought before these commissions, who pled guilty in April to one count of providing material support to terrorism has since returned to his home in Australia to serve a nine-month sentence.

Approximately 380 other detainees continue to be held at Guantanamo without charge and who, under the terms of the Military Commissions Act of 2006, are prohibited from bringing habeas corpus petitions to challenge the legality of their detention.

To view a Human Rights Watch Q&A on the Military Commissions Act of 2006, please visit:

<https://www.hrw.org/backgrounder/usa/qna1006/>

To view an April 1, 2007 commentary by US Program Advocacy Director Jennifer Daskal on the conviction of David Hicks by a US military commission, published in the International Herald Tribune, please visit:

<https://www.hrw.org/english/docs/2007/04/03/usdom15648.htm/>

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