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Jawad and Al-Darbi Slated to Be Charged by Unfair Military Commissions This Week

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The US government should transfer the military commission trials of Mohammad Jawad and Ahmed Mohammad al-Darbi to federal court, Human Rights Watch said today. The Guantanamo military commissions are expected to formally charge Jawad and al-Darbi this week, making them the fourth and fifth detainees to be so charged.

The Bush administration should end this failed experiment with military justice, said Jennifer Daskal, senior counterterrorism counsel at Human Rights Watch. Even the commissions former chief prosecutor, Colonel Morris Davis, has now said that full, fair and open trials are not possible under the current system.

Jawad, a 23-year-old Afghan who has been in US custody since he was 17, is being charged with attempted murder for allegedly throwing a grenade at a military vehicle, injuring two US soldiers and their interpreter in Afghanistan in December 2002. Al-Darbi, a 33-year-old Saudi who has been in US custody for close to six years, is being charged with conspiracy to commit terrorism and material support of terrorism based on alleged connections to al-Qaeda that date back to 1996.

The rules of the military commissions do not provide for a fair trial, and therefore the cases should be transferred to US federal courts, Human Rights Watch said. Human Rights Watch has been particularly concerned by rules that allow the use of evidence obtained through abusive interrogation techniques prior to January 2006, so long as the military judge finds the evidence reliable and in the interests of justice.

The military commission 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 makes it difficult if not impossible to demonstrate that a particular statement is the product of torture or abuse.

Human Rights Watch expects the use of evidence obtained through abuse to be central concerns in both cases. Jawad has told a panel of US military officers that he falsely confessed after being beaten and tortured by Afghanistan police when first taken into custody in 2002. Al-Darbi was held in the US detention center at Bagram, Afghanistan for eight months in late 2002 and 2003, during the period of time when some of the worst abuses took place there as has been documented in the Oscar-winning documentary Taxi to the Dark Side.

Al-Darbi has said that while at Bagram, he was kicked, beaten, dragged around by his calves, and hung by his wrists for days on end by US soldiers.

Its time for the US to start rebuilding its moral authority and credibility around the world, Daskal said. Prosecuting someone based on statements obtained through abuse would be a step in the wrong direction.

Jawads status as an alleged juvenile offender is also likely to be a key issue in the case. Lawyers for Omar Khadr, the 21-year-old Canadian who has been in Guantanamo since he was 15, [argued](#) at a February hearing that the Guantanamo military commissions fail to take into account the unique status of juvenile offenders. Khadr's judge has not yet ruled whether the case should be dismissed on those grounds, but his decision will undoubtedly affect Jawad's case as well.

As with Khadr, the United States in its treatment of Jawad has ignored [juvenile justice standards](#) that allow for detention of juveniles only as a last resort, require juveniles and adults to be housed separately, and mandate a prompt determination of all cases involving children. Jawad's treatment in detention also conflicts with the international obligations of the US to promote the demobilization and rehabilitation of child soldiers defined as those under the age of 18 within its jurisdiction. Whereas other children detained at Guantanamo were given special housing and education programs, and were eventually released to rehabilitation programs in Afghanistan, Jawad has been housed with adults, not provided any rehabilitation assistance, and now held for over six years prior to

being charged.

For the past six years, the Pentagon has ignored Jawads special status as an alleged child soldier, Daskal said. It should not make matters worse by prosecuting him in an unfair system that fails to take into account the fact that he is accused of committing a crime while still a child.

Other Commission Cases

Only two other detainees Khadr, the 21-year-old Canadian, and Salim Hamdan, the 37-year-old Yemeni accused of being Osama bin Ladens driver have charges currently pending before military commissions. David Hicks, the only person to be convicted by the system, pleaded guilty in April 2006 to one count of providing material support to terrorism and has since then completed his nine-month sentence in his native Australia.

In February 2008, the United States announced that it [planned](#) to charge six high-profile detainees before military commissions. These detainees include Khalid Sheikh Mohammad, the alleged mastermind of the September 11, 2001 attacks in the United States, and Mohammad al-Qahtani, the alleged would-be 20th hijacker in those attacks. So far, however, no formal charges against these men have been issued.

Khadr's lawyers will also be before the commissions this week, seeking access to documents and other information key to his defense, such as the identity of other eyewitnesses in the case, interrogators notes and Khadr's own statements, none of which has yet been disclosed.

How can lawyers put on an effective defense if they can't even get a complete copy of the defendant's own statements? asked Daskal.

Approximately 270 other detainees continue to be held at Guantanamo without charge. Under the terms of the [Military Commissions Act of 2006](#), they are prohibited from bringing habeas corpus petitions to challenge the basis for their detention. The US Supreme Court is [currently considering](#) the legality of those habeas corpus-stripping provisions, and a decision is expected by June 2008.

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