

Human Rights Watch

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

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Tribunal Handicaps the Defense

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The trial of Salim Hamdan, a Yemeni who has admitted to serving as Osama bin Ladens driver and mechanic, exposed fundamental flaws of the US military commissions at Guantanamo Bay. The six-member panel of military officers today found Hamdan guilty of providing material support to terrorism, but acquitted him of a conspiracy charge after two days of deliberations.

A trial that depends on handicapping the defense cant possibly be fair, said Jennifer Daskal, senior counterterrorism counsel at Human Rights Watch. The military judge tried at times to mitigate the commissions most unjust rules, but the flaws in the system won out.

Hamdans case was the first military commission at Guantanamo to proceed to a full trial. Human Rights Watch attended his two-week trial as an observer. From day one, it was marred by irregularities that prevented Hamdan from receiving a fair trial and underscored the problems inherent to the military commissions system.

Human Rights Watch said it was deeply troubling that Hamdans defense team only received hundreds of pages of relevant documents including information about reportedly abusive interrogations just days before the trial began. Other documents trickled in after the trial was under way, making it near impossible for the defense to conduct follow-up investigations.

The military commissions lax hearsay rules permitted government prosecutors to introduce inflammatory and prejudicial material into evidence that had little or no connection to Hamdan. Near the beginning of the trial and over defense objections, the prosecution introduced a graphic video of the death and destruction wrought by al-Qaeda, starting with the 1998 US embassy bombings in Africa through the September 11 attacks. Prosecution witnesses later conceded that Hamdan was never involved in planning or executing these or any other attacks.

Although the military commissions judge excluded certain statements of Hamdans obtained through abusive interrogations prior to his arrival at Guantanamo, statements made at Guantanamo were allowed into evidence, despite reports that Hamdan had been subject to extensive sleep deprivation, sexual harassment, and other abuse. These statements in which Hamdan reportedly admitted to pledging allegiance to bin Laden became a central part of the governments case.

Throughout the trial, the military commission relied on classification powers in ways that belied the governments claims of openness and transparency. The judicial order allowing Hamdans Guantanamo statements was almost completely redacted, making it impossible to assess the judicial reasoning. Defense attorneys were prohibited from even mentioning the [US Central Intelligence Agency](#) (CIA) or its treatment of Hamdan in late 2001 when he disappeared into a CIA-run prison in Afghanistan. None of the CIA agents or the reports from CIA interrogations of Hamdan was made available to the defense, even though the defense attorneys had top-secret security clearances.

Human Rights Watch also expressed concern that evidence was admitted in closed session not to protect confidential sources but to keep information on government mistreatment of detainees from the public. Documents and witnesses that reportedly detail abuse of Hamdan were kept secret from the media and other independent trial observers including papers that reportedly document a program of sleep deprivation, harassment, and inappropriate touching by a female interrogator. Two defense witnesses a major part of the defenses case were also required to testify in a session closed to the media and observers, including a psychologist who reportedly had first-hand information about interrogation methods used on detainees at Guantanamo.

A trial of this magnitude should have a meaningful public record, Daskal said. Its much harder to trust the verdict of the military jury when evidence and witness testimony is unnecessarily kept secret.

Human Rights Watch [repeated](#) its call for Guantanamo detainees charged with criminal offenses to be tried before US federal courts. Human Rights Watch expressed concern that the Bush administration asserts the authority to continue to detain Hamdan even if he is

acquitted, on the basis that he is an enemy combatant who can be detained indefinitely until the end of the global war on terror.

The fact that Hamdan could be acquitted and still not released makes arguments over the trial rules more than a little absurd, said Daskal. But convicting someone with unfair rules cant ever be just.

More than 260 detainees remain in Guantanamo, most of whom have been held for over six years. A dozen of these detainees, including [Khalid Sheikh Mohammed](#), the alleged 9/11 mastermind, have been formally charged by military commissions, but no other trial dates have yet been set.

Human Rights Watch observers were in Guantanamo during the entire Hamdan trial.

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