

Human Rights Watch

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

<https://www.hrw.org/news/2008/02/01/letter-us-secretary-defense-robert-gates-omar-khadr>

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Robert M. Gates
Secretary of Defense
Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Via Facsimile

Dear Secretary Gates:

We write regarding Omar Khadr, a Canadian citizen whom the United States government has detained at Guantanamo Bay, Cuba, for more than five years, since he was 15 years old. On February 4, 2008, a military commission at Guantanamo will consider whether the United States may proceed in prosecuting Khadr for war crimes and other offenses before the commission. If the proceedings go forward, Khadr will become the first person in recent years to be tried by any western nation for alleged war crimes committed as a child.

Throughout Khadr's lengthy detention, the United States has flouted international juvenile justice standards that provide for children to be treated consistent with their unique vulnerability, capacity for rehabilitation, and lower degree of culpability. The United States should not compound these violations by prosecuting Khadr before a military tribunal that is not equipped to meet juvenile justice standards as well as other fair trial requirements, and in a manner inconsistent with its legal obligations to assist in rehabilitating former child soldiers within its jurisdiction.

Accordingly, if the United States is not prepared to prosecute Khadr in a judicial system that incorporates fundamental standards of juvenile justice and other fair trial rights, it should promptly release Khadr and repatriate him to Canada for appropriate rehabilitation.

Background

According to allegations made by the United States, Omar Khadr's father introduced him to al-Qaeda leaders when Khadr was just 10 years old, then sent him to receive military training from al-Qaeda members at age 15 and out to the battlefield shortly afterwards.

On July 27, 2002, Khadr was captured by US forces after a firefight in Afghanistan that resulted in the death of US Army Sergeant First Class Christopher Speer, as well as injuries to other soldiers. Khadr, who was seriously wounded, was initially detained at Bagram Air Base in Afghanistan and transferred to Guantanamo Bay in November 2002, where he remains today.

Khadr was not provided an attorney until he had been detained for over two years. In the third year of his detention, Khadr was charged with crimes under the initial military commissions authorized by President George W. Bush. Those charges were dismissed when the Supreme Court ruled the commissions unlawful in the 2006 case of *Hamdan v. Rumsfeld*. In 2007 the United States charged him under the commissions authorized by the Military Commissions Act with murder in violation of the laws of war, attempted murder in violation of the laws of war, conspiracy, providing material support for terrorism, and spying.

Khadr has reported to his lawyers that he has been subjected to abusive interrogations, as well as prolonged periods in solitary confinement while incarcerated at Guantanamo.

Failure to Comply with International Standards for Juvenile Detention

First detained at age 15, Khadr now has been held by the United States at Guantanamo Bay for more than a quarter of his life. The US government's failure to properly treat Khadr as a child in detention violated US legal obligations under the laws of war, the International Covenant on Civil and Political Rights, and international juvenile justice standards. International standards allow for detention of juveniles only as a last resort and require prompt determination of juvenile cases; however, Khadr was detained for more than two years before being provided access to an attorney, and for more than three years before being charged before the first military commission.

Further, despite international legal requirements that juveniles in custody be treated in accordance with their age, and that juveniles and adults be segregated from each other, Khadr has been incarcerated with adult detainees, even when other child detainees his age were being housed together in Guantanamo's Camp Iguana.

In Guantanamo, Khadr has been held in prolonged detention in solitary confinement. He has told his lawyers that he was also subjected to abusive interrogation. He said his interrogators shackled him in painful positions, threatened him with rape, and used him as a "human mop" after he urinated on the floor during one interrogation session. Such treatment of a detainee, particularly one who was a child, violates Article 7 of the International Covenant on Civil and Political Rights, which prohibits torture and other cruel, inhuman, or degrading treatment or punishment, and analogous provisions of other treaties to which the United States is a party. These abuses during detention, coupled with the lack of fundamental safeguards required for the treatment of juveniles in custody, raise serious concerns about the voluntariness of any statements that Khadr may have made and which may be used against him at his trial.

Failure to Comply with the Optional Protocol on Children in Armed Conflict

International law recognizes the special situation of children who have been recruited or used in armed conflict. The Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict ("Optional Protocol"), which the United States ratified in 2002, requires that all states parties provide for the rehabilitation of former child soldiers within their jurisdiction, including "all appropriate assistance for their physical and psychological recovery and their social reintegration."

In its 2007 Initial Report to the United Nations pursuant to the Optional Protocol, the United States declared that it is "committed to continue to develop rehabilitation approaches that are effective in addressing" the problem of child soldiers and that it "espouses the principle that family reunification and community reintegration are both goals and processes of recovery for former child combatants."

During the time that Khadr was detained at Guantanamo without charges and otherwise in violation of basic juvenile justice protections, the United States funded millions of dollars to programs dedicated to the rehabilitation of child soldiers, including \$4.5 million to a major initiative launched by UNICEF in 2003 to rehabilitate and reintegrate former child soldiers in Afghanistan.

Yet in its handling of Khadr, an alleged child combatant in its custody, the United States has ignored its professed commitments and its legal obligations under the Optional Protocol. It has failed to provide him with access to education, vocational training, counseling, a family or community environment, or other assistance that is essential to successful rehabilitation and social reintegration.

Failure to Incorporate Juvenile Justice Standards in Military Commission Proceedings

The military commissions created by the United States to try unlawful enemy combatants for war crimes and related offenses do not meet international standards for fair trials. Of particular concern, the commissions allow the use of evidence obtained through abusive interrogations so long as a judge finds the evidence "reliable." Moreover, the Military Commissions Act (MCA) permits prosecutors to shield interrogation methods from the defendant and his lawyer, making it virtually impossible for a defendant to demonstrate that testimony was obtained through such abusive techniques. This lack of adequate due process safeguards are particularly harmful to child offenders, given the increased risk that they will be unduly influenced by coercive methods.

The MCA lacks any explicit juvenile justice safeguards. It has no provisions requiring that judges have expertise in juvenile justice to preside over the trials of children. This is particularly important given the likelihood that the judge will be asked to decide the reliability of statements Khadr gave while he was still just a child. Similarly, there is no indication that the military commissions will appropriately consider Khadr's age at the time of the alleged offenses in making its sentencing determination. The United States' failure to comply with international juvenile justice standards or provide any rehabilitation assistance to Khadr throughout his detention provides little assurance that his special circumstances will be taken into account in the future.

In short, because the military commissions fail to provide key due process protections and are not equipped to take into account Khadr's juvenile status, they are not an appropriate forum for proceedings against Khadr.

Ensure Khadr's Basic Rights Are Protected

Unless the US government will prosecute Khadr in accordance with international juvenile justice and fair trial standards, the United States should promptly release Khadr and repatriate him to Canada for rehabilitation. A fair and appropriate prosecution would require that Khadr be charged within a judicial system suited to address juvenile justice standards and therefore able to assess Khadr's culpability relative to his need for rehabilitation. At all times the United States must treat child soldiers in its custody in accordance with the Optional Protocol. None of these requirements can be met by the current US proceedings against Khadr before the military commissions at Guantanamo Bay.

Sincerely,
Human Rights Watch

Human Rights First
Coalition to Stop the Use of Child Soldiers
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