

# Human Rights Watch

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

<https://www.hrw.org/news/2010/11/04/trial-wasnt-sentencing-omar-khadr>

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A layer of mold covered my tent in "Camp Justice" at Guantanamo last week. It was on the walls, on the thick yellow cables that bring in power from the noisy generators, and even on my pillow. As I left the isolated military base Monday afternoon after the sentencing of [Omar Khadr](#), the Canadian citizen who was only 15 when he was captured by US forces in Afghanistan, it was hard not to see decay everywhere I turned.

Khadr was slated to be tried by a [military commission](#) in Guantanamo. Days before trial, he entered into a [plea bargain](#). The flaws of the military commission system were shockingly apparent last week. The jury tasked with determining Khadr's sentence had only heard a portion the case against him before a plea bargain was reached - putting an end to the contested portion of the trial and sending the case directly to the sentencing phase. Khadr's case was only the fifth to reach the military commissions system and the third to end by plea bargain. Khadr pled guilty to several charges including murder in violation of the laws of war and attempted murder in violation of the laws of war.

During the sentencing hearing, when Khadr should have had an opportunity to present mitigating facts, the judge barred the defense from presenting significant evidence of Khadr's ill-treatment while in custody. Additionally, because this case was a plea bargain, Khadr had to waive his right to appeal so none of the fundamental flaws of the military commission process that were a part of his case can be challenged.

Presented with an admission of guilt that Khadr had previously adamantly denied, and with the limited case the defense put forward, it is no wonder the jury returned the sentence they did. Although the plea agreement set a maximum of eight years, the military jury (which, following ordinary courts-martial practice, was not told of the plea bargain) handed down a sentence of 40 years - 15 more than even the prosecution had asked for. Coupled with the eight years Khadr has already spent in US custody, it amounts to a 48-year sentence. This, for someone who was only 15 years old at the time he committed the crime.

Khadr was born in Canada. At age 10, his father, an al Qaeda financier, took him to Pakistan and then Afghanistan, raising his young son among al Qaeda fighters and using him as an interpreter. At 15, Khadr was given weapons training. On July 27, 2002, he was inside a compound with an al Qaeda cell that had been building and planting Improvised Explosive Devices (IEDs) targeting US and coalition forces. US forces engaged the cell. During the firefight a grenade exploded, killing US Army Sgt. 1st Class Christopher Speer. Former US Army Sgt. Layne Morris was also blinded in one eye and suffered other injuries. At some point in the exchange, Khadr was shot twice in the back and blinded in one eye. Khadr's guilty plea aside, the facts are not clear as to who threw the grenade killing Speer.

US forces airlifted Khadr to Bagram air base, where he was interrogated on a stretcher while receiving medical treatment and subjected to harsh interrogation techniques, including being told by his primary interrogator that he would be sent to a prison where he would be raped. We know this not only because Khadr told it to his attorneys but also because the interrogator testified to it under oath.

Despite his age, Khadr never received the special protections that must be extended to juveniles under international law by the US either during his three months of interrogation at Bagram or once he was moved to Guantanamo where the US did hold other juvenile detainees in a separate housing block. But Khadr was seen as having blood on his hands, and from the beginning he was made to pay for the death of a US soldier.

No one should be tried in a military commission at Guantanamo. The commissions are a widely discredited, sub-par form of justice that do not meet basic fair trial standards. They permit the admission of inferior forms of evidence, including evidence obtained by coercion, and they operate with virtually no precedent. The time-tested federal court system on the other hand prohibits the use of evidence obtained through coercion and has a history of precedent and rules that guide it.

The military commissions have been so mired in appeals that since their creation in November 2001 they have only processed five cases, and only one other detainee is currently facing charges, despite the fact that roughly 174 prisoners continue to be held at Guantanamo. By contrast, in the last nine years, US federal courts have convicted over 400 people of terrorism-related offenses.

Any prosecution before the US military commissions is wrong, but Khadr's case is especially so, not only because US authorities ignored his juvenile status and disregarded their obligations under international law to provide him with rehabilitation, but also because the conduct he was accused of should never have been charged as a war crime. Charging an adult for his alleged crime would be a drastic departure from common understanding of the laws of war. But the prosecution of a former child soldier for such wartime offenses is even more troubling.

More than 1,200 US service members have died in Afghanistan since the war began. Nine years into the war, Khadr is the only person to ever have been charged with war crimes for one of those deaths. His case also makes the US the first Western nation since World War II to convict a former child soldier with war crimes.

Protests against the trial of Omar Khadr came from around the world. United Nations human rights experts implored the US not to prosecute him and to live up to its international legal obligations with respect to juvenile offenders. Every other Western nation repatriated its citizens who were detained at Guantanamo, but Canada refused to seek Khadr's return. Only at the 11th hour did the Canadian government exchange diplomatic notes with the US in which it agreed to favorably consider a prisoner transfer request to be filed by Khadr after serving one more year in Guantanamo. Despite questionable evidence presented at sentencing that Guantanamo is full of radical jihadis who have negatively influenced Khadr, immediately upon sentencing he was moved to a post-conviction wing of the maximum-security prison at Guantanamo, where he will reside with two other convicted al Qaeda members.

Despite government claims that Khadr is in need of de-radicalization, no such program exists at Guantanamo. Indeed, since 2003, Guantanamo has not even had a Muslim chaplain who could provide for the spiritual needs of the detainee population.

The military commissions are not just, either by their rules or in practice. Khadr never should have been tried. Perhaps his conviction will send a message, if not the message the prosecution urged the jury to send, one that says that the experiment with military commissions has failed and that the time has come to put it to rest. The federal courts are open and waiting and they justice they provide is real.

Injustice at Guantanamo last week was as pervasive as the mold. Tents can be scoured. But the reputation of the US will prove more difficult to cleanse.

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