

# Human Rights Watch

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

<https://www.hrw.org/news/2008/02/01/us-stop-unfair-trial-guantanamo-youth>

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The United States should try Omar Khadr, a Guantanamo detainee arrested when he was 15 years old, in a court that meets juvenile justice and fair trial standards or repatriate him to Canada for rehabilitation, Human Rights Watch, Amnesty International, the Coalition to Stop the Use of Child Soldiers, and Human Rights First said today in a joint letter to the US Secretary of Defense Robert Gates.

On February 4, a military commission at Guantanamo Bay will consider whether the United States may proceed in prosecuting Khadr, a Canadian citizen, for war crimes and other offenses in Afghanistan in 2002. If the proceedings go forward, Khadr, now 21, will become the first person in recent years to be tried by a western nation for alleged war crimes committed as a child.

For the past five years, the United States has ignored Khadr's rights as a child, said Jennifer Daskal, senior counterterrorism counsel at Human Rights Watch. The US should not make matters worse by prosecuting him before an unfair military tribunal that fails to recognize his juvenile status at the time of the alleged crime.

US forces captured Khadr after a firefight in Afghanistan in July 2002. He has been charged with murder for allegedly throwing a grenade that killed US Army Sergeant First Class Christopher Speer, as well as attempted murder, conspiracy, providing material support for terrorism, and spying. Khadr has been detained at Guantanamo Bay since November 2002, and has alleged that he was subjected to abusive interrogations and prolonged solitary confinement. He said he was shackled in painful positions, threatened with rape, and used as a human mop after he urinated on the floor during one interrogation session.

International juvenile justice standards allow for detention of juveniles only as a last resort and require prompt determination of juvenile cases. In addition, treaties binding on the United States oblige governments to provide for the rehabilitation of former child soldiers within their jurisdiction.

Khadr, however, was detained for more than two years before he was provided access to an attorney, and for more than three years before he was charged before the initial military commissions at Guantanamo established in 2001. While other children detained at Guantanamo were given special housing and education, and were eventually released to rehabilitation programs in Afghanistan, Khadr has been housed with adult detainees and has had no access to education or other rehabilitation assistance.

Khadr has now spent a quarter of his life behind bars at Guantanamo, said Daskal. Yet he is still waiting for the United States to respect his basic rights.

At the hearing that begins on Monday, Khadr's legal counsel will argue that the US military commissions do not have jurisdiction to proceed against children, and that the case should be dropped. They will also argue that even if the commission decides it can go forward, it lacks jurisdiction to consider the specific offenses with which Khadr has been charged.

#### Other Military Commission Proceedings

Salim Hamdan, a 37-year-old Yemeni charged with conspiracy and providing material support for terrorism based on allegations that he served as a driver and bodyguard to al-Qaeda leader Osama bin Laden, will also appear before a military commission next week. Like Khadr, Hamdan will argue that the charges against him should be dismissed.

Hamdan's lawyers will also argue that they should be allowed to interview eight Guantanamo detainees including high-value detainees such as Khalid Sheikh Mohammad who may possess exculpatory or other relevant information regarding the facts in his case.

The government contends that other Guantanamo Bay detainees are presumptively off limits as witnesses, and cited fears that at least

some of them might reveal classified evidence regarding the CIA.

It's hard to see how Hamdan could ever get a fair trial if his lawyers can't talk to key witnesses simply because they have been subject to an illegal CIA detention program and possibly mistreated, Daskal said.

Other than Khadr and Hamdan, only one person is currently facing charges before the commissions. Mohammad 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 hand grenade into a vehicle carrying two American soldiers in Afghanistan in 2002. The charges against Jawad were approved by the Bush administration on January 30 and he will likely make his first appearance before the commissions in early March.

David Hicks, the only person to be convicted by the military commissions, pled 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.

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 actively considering](#) the legality of those habeas corpus-stripping provisions, and a decision is expected by June.

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