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Military commission hearings resume in Guantánamo in the case of child “enemy combatants”

Military commission pre-trial hearings at Guantanamo are set to resume today in the cases of Mohammed Jawad and Omar Khadr; both were juveniles when detained by the US military in Afghanistan in 2002. These are the first commission hearings to take place since the US Supreme Court ruled last week that the Guantánamo detainees had the right to challenge their detention in the federal civilian courts. Amnesty International has an observer at the hearings.

As well as challenging the legality of the proceedings, the lawyers for the two detainees are raising disturbing allegations of torture and other ill-treatment and continuing concerns about the detainees’ physical and mental health.

The lawyer for Mohammed Jawad, Air Force Major David Frakt, has filed a motion to dismiss attempted murder charges against him on the ground that the US military had tortured him in Guantánamo through severe sleep deprivation and other ill-treatment. Records revealed that Mohammed Jawad was subjected to what is known as the “frequent flyer program” in the course of a two-week period in May 2004, when he was transferred to different Guantanamo cells 112 times every two hours. Mohammad Jawad, who was still a teenager at the time, had already tried to commit suicide some months before.

At the time he was subjected to the treatment, his lawyer said, custody records showed Mohammed Jawad had already been determined to have “no intelligence value” – one alleged purpose of the “frequent flyer” program (which reportedly stopped in March 2004). His record further showed only minor disciplinary infractions, such as calling out to fellow detainees in Pasto (his own language) while in isolation.

Amnesty International is deeply concerned by these allegations as well as by recent allegations of ill-treatment in Mohammed Jawad’s case. He is alleged to have sustained injuries just over two weeks ago, when he was restrained for banging his foot with his flip-flops against his cell door. He was shackled and allegedly pepper-sprayed in the face while being held face-down on the ground. He allegedly still bore signs of visible injury when his lawyer saw him yesterday. He is believed to be currently held in Camp Five where he is reportedly on a restricted diet. A complaint by his lawyer is reportedly pending investigation.

During his last appearance before a military commission in March, Amnesty International’s observer noted that Mohammed Jawad was visibly agitated; at one point he removed his headphones (for interpretation) saying he had a severe headache, and he put his head down on the table and did not raise it again for the rest of the proceedings.

Omar Khadr, a Canadian national who, was 15 years old when taken into US custody, also faces a military commission hearing today, at which legal motions will be considered. He has reportedly complained recently of feeling unwell and suffering dizziness, although a military health professional who visited him reported yesterday that he found him to be “in good health with no complaints or problems”.

Two days ago, Amnesty International’s observer made a request jointly with other NGO observers from Human Rights Watch, Human Rights First and the ACLU to be allowed to view the cells where Mohammed Jawad and Omar Khadr are currently held, because of concerns raised about the impact of their conditions on their mental and physical health. No response has yet been received from the authorities to this request.

Background information

Mohammed Jawad is an Afghan national who was aged 16 or 17 when detained in Kabul in December 2002; he has been charged with attempted murder in relation to a grenade incident in Afghanistan in which US soldiers were injured. Omar Khadr is facing five charges, including a murder charge in relation to the death of a US soldier who was killed by a grenade during a firefight in which Omar Khadr was himself shot and injured.

Amnesty International considers that no-one under 18 should ever have been transferred to Guantanamo or that anyone who was a child at the time of the alleged crime should be subjected to a military commission. Apart from fundamental flaws in the proceedings generally, the commission have no juvenile justice provisions as required under international law.

Under international law, in all actions concerning children the best interests of the child must be a primary consideration. The US has violated international standards by failing to recognize the status of the above two detainees as minors and treat them accordingly. The USA has also ratified the Optional Protocol to the Convention of the Rights of the Child in armed conflict (Optional Protocol). Among other things, the Optional Protocol forbids the recruitment or use in hostilities by non-state armed groups of under-18-year-olds, and requires states to provide any such child who comes within their jurisdiction “all appropriate assistance for their physical and psychological recovery and their social reintegration”.

Amnesty International considers that the Military Commissions scheme, both in its constitution and practice, is fundamentally flawed and contravene international standards governing the right to a fair trial and has called for a repeal of the legislation establishing the Commissions.¹

Amnesty International has called on the US authorities to abandon the fundamentally unfair military commissions in all cases; to close Guantánamo promptly and either release or charge and try the detainees held there in US federal civilian courts.

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¹ <http://www.amnesty.org/en/library/info/AMR51/154/2006>