

Omar Khadr Settlement: A Brief Fact Sheet

[Noor Cultural Centre](#) has compiled the following fact sheet addressing common questions and misconceptions about the Government of Canada's recent settlement with Omar Khadr. The information provided is based on the [discussion](#) at Noor Cultural Centre with University of Toronto Faculty of Law Professor [Audrey Macklin](#) (click [here](#) for the video recording of the discussion), as well as other resources embedded within and provided at the bottom of the document.

This fact sheet is organized according to common arguments advanced by those who oppose the settlement, followed by facts of the case and legal norms.

Argument: "Omar Khadr killed a medic, making the act a war crime"

- Christopher Speer – the US soldier allegedly killed by a grenade thrown by Khadr – was training as a medic, but he was [acting as a soldier](#) in the fight in which he was killed. This fact is undisputed – even by the US prosecution.
- [Killing a medic is a war crime, but killing a soldier is not.](#)
 - o Under international laws of war, "lawful combatants" – combatants who meet certain criteria, like wearing a uniform and fighting for an organized force – are allowed to kill other "lawful combatants," and they cannot be charged with a criminal offence. (Unless they commit the killing in an illegal way – through perfidy or by using a banned weapon, for example).
 - o People who do not meet the criteria for "lawful combatancy," in contrast, *can* be criminally charged for killing a soldier – but only under domestic criminal law for murder, not under international law for war crimes.
- This has two possible implications for how Khadr could be treated under law, based on the allegation that he was responsible for Speer's death:
 - o If Omar Khadr was considered a 'Lawful Combatant', then the killing he is accused of would not be considered a crime
 - o If Omar Khadr was not considered a 'Lawful Combatant', then he could be charged with murder in US domestic proceedings
- The US Government pursued a different option than what was available in existing international and domestic law: [they chose to charge Omar Khadr with a "war crime" through the creation of a new offence of "murder in violation of the law of war" or "murder by an unlawful enemy alien combatant."](#) This enabled the prosecution of Khadr in the Guantanamo military commissions - which dispensed with many of the protections accorded to defendants in regular domestic criminal proceedings ([restrictions on use of hearsay and coerced evidence, for example](#))
- This was problematic for several reasons:

- [Lack of precedent](#): There is no precedent in international law for the “war crime” Omar Khadr was charged with – while over 1,000 American soldiers were killed in Afghanistan, Khadr was the only person charged with a “war crime” for causing the death of a soldier
- [Retroactivity](#): It is a [fundamental international legal norm](#) that an individual cannot be charged for a crime that did not exist at the time of the alleged criminal activity, as this makes it impossible for an individual to act with knowledge of the possible legal consequences
- [Asymmetry](#): This law made it legally permissible for the US army to commit violence against Omar Khadr (he was shot and almost killed), while making it illegal for Omar Khadr to return that violence.
- Omar Khadr’s treatment by the United States is not a legally-legitimate response to the allegations against him

Argument: “Omar Khadr is a confessed murderer, so he is not entitled to receive compensation from the government.”

- It is not proven that Khadr actually threw the grenade that killed Christopher Speer - since [the events surrounding the incident in question are unclear](#) (there are suggestions that Speer was in fact killed by another individual who was summarily executed on site by US military personnel, or even by friendly fire from American forces). Khadr was found buried in rubble shortly after he was supposed to have thrown the fatal grenade, putting the prosecution’s version of events into question.
- What *is* certain is that Omar Khadr’s confession was [extracted through processes involving torture, and that the confessional fruits of torture are unreliable](#) and usually inadmissible in legal proceedings. (One of Khadr’s interrogators was [Joshua Claus](#), who was later found responsible for the deaths of two other detainees. Khadr was threatened with gang rape, sicced with military dogs, had bright light shined in his eyes a few hours after undergoing eye surgery, and subjected to other torture techniques.) Indeed, Omar Khadr made other “confessions” that were shown to be untrue (such as to meeting with Maher Arar in Afghanistan, later proven impossible). Khadr may or may not have thrown the grenade that killed Sergeant Speer, but his tortured confession doesn’t prove that he did.
- Regardless of whether or not Khadr is guilty, human rights are *rights* and not just the privilege of the ‘likable’ or the ‘innocent.’ They are a basic standard that all are entitled to. If this were not the case, then the [state could torture or kill prison inmates without remedy](#) - a clearly undesirable proposition, and one that is incongruent with principles of law and justice.
- Protection of rights (such as the entitlement to due process in law and freedom from torture) is not a reward for innocence, but a precondition for fair determination of guilt – which Omar Khadr was deprived of.

Argument: “Even if Omar Khadr was mistreated, the perpetrator of this mistreatment was the US. Canada’s crimes against him were not severe, and so the Canadian government should not be responsible for compensating him”

- Canada not only failed to repatriate Omar Khadr from Guantanamo Bay ([unlike every other Western nation with citizens or permanent residents detained there](#)), but actually participated in violating his rights by taking advantage of the opportunity to interrogate him knowing he had been tortured, and then sharing the fruits of that interrogation with the US.
- This represents [a significant violation of the Canadian Government’s responsibilities towards one of its citizens](#). The contract between the state and its citizens engenders rights and responsibilities for both parties. For example, citizens abdicate certain freedoms, such as the right to use violence with impunity, in deference to the state’s monopoly on the legitimate use of violence. In return, the state is required to ensure a minimum level of fair and humane treatment towards its citizens (as codified in law).
- [The Supreme Court of Canada stated that Khadr’s Charter Rights had been violated](#) by the Canadian Government, and the government must be held accountable for this failure.

Argument: “Omar Khadr was eventually repatriated and is now living in Canada – this should be considered sufficient compensation”

- There is a fundamental distinction between: 1) the cessation of a rights violation, and 2) compensation for injury endured because of the violation. If someone is being physically assaulted, for example, stopping the assault is necessary to end the harm, but it is not sufficient to compensate for the harm already experienced (ex broken bones, trauma).
- The remedy of repatriation was to stop the violation of Khadr’s Charter rights produced by Canada’s complicity in his unlawful imprisonment and torture. Repatriation alone fails to compensate Khadr for the serious violations he had already suffered, and continued to suffer because the government refused to repatriate him even after the Supreme Court ruled that his rights had been breached.
- The money portion of the settlement fulfills the state’s obligation to make compensation for Charter violations.

Argument: “Even if Omar Khadr deserved compensation, \$10.5 million is too much”

- Financial settlements represent human efforts at quantifying the unquantifiable. Indeed, how does one determine the monetary worth of years (including childhood) lost to torturous imprisonment and the lasting effects of physical injury and psychological/emotional trauma?
- There is no one simple or universally agreed-upon formula for translating harm into financial compensation, but Omar Khadr’s settlement is similar to those made in other

cases involving wrongful imprisonment and complicity in torture (e.g. [the Government's settlement with Maher Arar](#), or [compensations for wrongful convictions](#)).

Argument: “The primary victim in all of this is Tabatha Speer – the widow of the soldier allegedly killed by Omar Khadr – and if anyone should receive compensation, it should be her”

- This is a fallacious argument for several reasons:
 - o Sergeant Speer was a combatant: While the death of Sergeant Christopher Speer was certainly sad for his country and his family, it is a predictable consequence of war for soldiers. Speer and other soldiers are accorded both the rights attributed to lawful combatants (i.e. the right to kill) and the risks associated with the position (i.e. the danger of being killed). The belief that Speer's death was 'illegitimate' is premised upon an assumption of asymmetry: that US soldiers have the right to kill others, but may not lawfully be killed themselves. This asymmetry contravenes the purpose of the laws of war, which are to equally regulate the behaviour of all parties in a conflict.
 - o Canada's settlement with Khadr is *his* entitlement to recompense for the wrongs that the Supreme Court determined that *he* suffered. This is a separate matter from whether Tabatha Speer deserves compensation; the Utah court ruling awarding \$134 million against Khadr for Sergeant Speer's "wrongful death" is problematic, because it was based on Khadr's tortured "confession" and [contested conviction for "war crimes" invented after the fact](#). While it is true that there should indeed be more financial and other support offered to veterans and their families, it is not reasonable to suggest that this should happen at the expense of compensation to Omar Khadr.

Other Resources:

- **HIGHLY RECOMMENDED:** [VIDEO: US Department of Defense Attorney, Sam Morison, outlining why the charges against Omar Khadr and his imprisonment were illegal](#)
- [Audrey Macklin – Ottawa Failed Omar Khadr: That's why he deserves compensation](#)
- [Azeezah Kanji – The 'odious' logic behind opposition to Khadr's compensation](#)
- [Azeezah Kanji – Outrage over Omar Khadr defies reason](#)
- [Michelle Shephard – Omar Khadr fact check paints a clearer picture of the case and the incident underlying it](#)

Action Item: Please consider signing and sharing this [leadnow.ca](#) petition: [I Stand With Omar Khadr](#)