

# URGENT ACTION

## CANADIAN CITIZEN FACES UNFAIR TRIAL IN WEEKS

**An Appeal Court judge has stayed an order requiring Canada to propose remedies for violations suffered by Omar Khadr, a Canadian citizen who has been in US custody for eight years. Unless the US authorities drop plans to try Omar Khadr before a military commission, he could face an unfair trial within weeks for crimes allegedly committed when he was a child.**

On 22 July, Canadian Federal Appeal Court Judge Pierre Blais found that the judge who made the earlier ruling, Judge Zinn, had overstepped his authority by ordering Canadian authorities to propose remedies for the violations suffered by **Omar Khadr**. He ruled that Judge Zinn's order be stayed pending the conclusion of Canadian authorities' appeal, which may not be determined before Omar Khadr's military commission trial is due to begin in August.

At pre-trial military commission hearings which resumed in July, Omar Khadr informed the judge that he had rejected a plea deal offered by the US government. Under the terms of this deal, he would have pleaded guilty to committing war crimes and been sentenced to 30 years in prison, with all but five years of the sentence suspended. Omar Khadr, who had dismissed his US lawyers the week before the hearings, also requested the dismissal of his court-appointed military lawyer. This request was rejected by the presiding judge. Omar Khadr has now agreed to be represented by the military lawyer.

In a letter to his Canadian lawyer written on 26 May and recently made public, Omar Khadr described his feelings towards the upcoming military commission trial:

"About this whole MC [military commission] thing we all don't believe in and know it's unfair and...there must be somebody to sacrifice to really show the world the unfairness, and really it seems that it's me...I don't want that, I want my freedom and life, but I really don't see it coming from this way....it might work if the world sees the US sentencing a child to life in prison, it might show the world how unfair and sham this process is, and if the world doesn't see all this, to what world am I being released to? A world of hate, unjust and discrimination! I really don't want to live in a life like this."

### **PLEASE WRITE IMMEDIATELY in English or your own language:**

- Urging the US authorities not to try Omar Khadr by military commission;
- Calling on them to release him and repatriate him to Canada; or else try him in a civilian court in conformity with international standards;
- Urging them to treat Omar Khadr in accordance with its obligations under international law, particularly given that he was a 15-year-old child when he was detained;
- Calling for justice and redress for Omar Khadr for the human rights violations that he suffered.

### **PLEASE SEND APPEALS BEFORE 09 SEPTEMBER 2010 TO:**

President  
Barack Obama  
The White House Office of the President, 1600  
Pennsylvania Avenue NW, Washington DC 20500 USA  
**Fax: + 1 202 456 2461**  
**Email via: [www.whitehouse.gov/contact](http://www.whitehouse.gov/contact)**  
**Salutation: Dear President Obama**

General Counsel of the Department of Defense  
Jeh Johnson  
General Counsel of the Department of Defense  
1400 Defense Pentagon  
Washington, DC 20301-1400, USA  
**Email: [jeh.johnson@osd.mil](mailto:jeh.johnson@osd.mil)**  
**Salutation: Dear Mr Johnson**

**Also send copies to diplomatic representatives accredited to your country.** Please check with your section office if sending appeals after the above date. This is the second update of UA 154/10 (AMR 04/001/2010). Further information: <http://www.amnesty.org/en/library/info/AMR04/001/2010/en> and <http://www.amnesty.org/en/library/info/AMR04/002/2010/en>

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### ADDITIONAL INFORMATION

On 5 July, Judge Russel Zinn found that “Canada has taken only one positive action in response to the declaration that it breached Mr. Khadr’s rights; it sent the diplomatic note to the US. It received a response and has done nothing further...I do not share the view that Canada, in its actions taken to date, has remedied the breach or that there are no other potential curative remedies available.” Judge Zinn noted that the only alternative remedy he could see would be for Canadian authorities to request Omar Khadr’s repatriation but that alternative remedies may be suggested by either party. He ordered the government to propose alternative remedies within seven days, having noted that because Omar Khadr’s military commission trial is imminent, “this process must be undertaken with some urgency”.

Canada Minister of Justice, Rob Nicholson subsequently announced the Canadian government would appeal against this decision, referring to an earlier Canadian Supreme Court decision which affirmed that “it would not be appropriate for the Court to give direction as to diplomatic steps necessary to address the breaches of Mr. Khadr’s Charter rights.”

Omar Khadr is facing five military commission charges, including a murder charge in relation to the death of a US soldier during a firefight in Afghanistan in July 2002 (see [www.amnesty.org/en/library/info/AMR51/028/2008/en](http://www.amnesty.org/en/library/info/AMR51/028/2008/en)). He faces the possibility of a life prison sentence if convicted. Even if acquitted he could be returned to indefinite military detention (see [www.amnesty.org/en/library/info/AMR51/036/2010/en](http://www.amnesty.org/en/library/info/AMR51/036/2010/en)).

Nearly eight years after he was first taken into custody, Omar Khadr has still not been able to challenge the lawfulness of his detention in court and to have that court rule on the lawfulness of his detention. 12 June 2010 marked two years since the US Supreme Court ruled that the detainees held at Guantánamo have the right to a “prompt” hearing to make such a challenge.

The treatment of Omar Khadr throughout his detention has violated the USA’s obligations under international law, including the requirement that in all actions concerning children the best interests of the child must be a primary consideration. The USA has ratified the Optional Protocol to the Convention on the Rights of the Child which 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”. The UN Committee on the Rights of the Child, as part of its review of US compliance with the Optional Protocol, has called on the USA not to try before a military tribunal anyone detained as a child in any armed conflict. On 26 May 2010, UNICEF called for an end to the military commission trial of Omar Khadr. UNICEF’s executive director stated: “anyone prosecuted for offenses they allegedly committed while a child should be treated in accordance with international juvenile justice standards, which provide them with special protections. Omar Khadr should not be prosecuted by a tribunal that is neither equipped nor required to provide these protections and meet these standards.”

Amnesty International considers that no one under 18 years old should ever have been transferred to Guantánamo, and that no Guantánamo detainee, let alone one who was a child at the time of his alleged crime, should be subject to a military commission trial.

No existing international tribunal has ever prosecuted an individual for war crimes allegedly committed when he or she was a child.

Further information on UA: 154/10 Index: AMR 51/067/2010 Issue Date: 29 July 2010

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