

URGENT ACTION

CANADA ORDERED TO FIND REMEDY AS TRIAL LOOMS

Omar Khadr, a Canadian national who was a child when taken into US custody eight years ago, faces unfair trial by military commission at Guantánamo beginning on 10 August. Canada has refused to request his repatriation despite court rulings that his rights have been violated. On 5 July a Canadian Federal Court judge ordered the Canadian authorities to propose remedies for these violations within seven days.

Omar Khadr was taken into US military custody in Afghanistan in 2002 when he was 15 years old. He has been subjected to torture or other cruel, inhuman or degrading treatment in US custody. He faces unfair trial by military commission for crimes he is alleged to have committed when he was a child. The trial is due to begin on 10 August.

On 29 January 2010 the Supreme Court of Canada ruled unanimously that Omar Khadr's human rights had been violated when Canadian officials participated in his unlawful treatment in Guantánamo in 2003 and 2004. The Court ordered that Omar Khadr was entitled to a remedy, but overturned previous lower court orders that required the Canadian government to seek his repatriation (see <http://www.amnesty.org/en/library/info/AMR20/001/2010/en>). Despite the Court's conclusion that the Canadian government should decide the remedy to which Omar Khadr was entitled, the only action they are known to have taken was to request assurances from the US government that statements or evidence obtained by Canadian officials would not be used in military commission or any other proceedings. The US government has failed to provide those assurances.

On 5 July, Canadian Federal Court 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 Russel 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". It is not yet known whether Canadian authorities will appeal this decision.

PLEASE WRITE IMMEDIATELY in English:

- Call on the Canadian authorities to seek the repatriation of Omar Khadr immediately;
- Call on the US authorities to abandon military commission proceedings against him.

PLEASE SEND APPEALS BEFORE 19 AUGUST 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: www.whitehouse.gov/contact

Salutation: Dear President Obama

Prime Minister

Stephen Harper
Office of the Prime Minister
80 Wellington Street
Ottawa, Canada, K1A 0A2

Fax: + 1 613-941-6900

Salutation: Dear Prime Minister

Also send copies to diplomatic representatives accredited to your country. Please check with your section office if sending appeals after the above date.

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Additional Information

Pre-trial military commission hearings on Omar Khadr's case – on the question of whether statements he has made in custody can be used against him at trial – took place at Guantánamo US military base, Cuba in late April and early May 2010 and further pre-trial proceedings are scheduled for July.

Omar Khadr is facing five “war crimes” charges, including a murder charge in relation to the death of a US soldier during a firefight in Afghanistan in July 2002 (see <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 <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.

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