

# URGENT ACTION

## CANADA TO APPEAL COURT DECISION

**The Canadian Department of Justice has announced that it will appeal the Federal Court's decision that ordered the Canadian government to propose remedies for violations of Omar Khadr's rights. Omar Khadr faces unfair trial by military commission at Guantánamo beginning on 10 August.**

On 12 July Canada Minister of Justice, Rob Nicholson announced the Canadian government's decision to file an appeal to the Federal Court of Appeal. 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".

In his statement, Minister Rob Nicholson referred to the 29 January Canada Supreme Court's 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." He added that "the Government of Canada continues to provide consular services to Mr. Khadr." 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 had explicitly ordered the Canadian government to seek his repatriation (see [www.amnesty.org/en/library/info/AMR20/001/2010/en](http://www.amnesty.org/en/library/info/AMR20/001/2010/en)).

At pre-trial military commission hearings which resumed in July, Omar Khadr informed the military judge that he had rejected a plea deal offered by the US government. Under the plea agreement, 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 dismissed his US lawyers the week before the hearing, also said that he will not participate in his trial and requested the dismissal of his court-appointed military lawyer. This request was rejected by presiding Judge Army colonel Patrick Parrish.

### PLEASE WRITE IMMEDIATELY in English:

- Call on the Canadian authorities to drop their appeal of the Federal Court's ruling and to seek the repatriation of Omar Khadr immediately;
- Call on the US authorities to abandon military commission proceedings against him.

### PLEASE SEND APPEALS BEFORE 27 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](http://www.whitehouse.gov/contact)**

**Salutation: Dear President Obama**

This is the First update of UA: 154/10 Index: AMR 04/002/2010, 8 July 2010. Further information:

[www.amnesty.org/en/library/info/AMR04/001/2010/en](http://www.amnesty.org/en/library/info/AMR04/001/2010/en)

#### Prime Minister

Stephen Harper  
Office of the Prime Minister  
80 Wellington Street  
Ottawa, Canada, K1A 0A2  
**Fax: + 1 613 941 6900**

**Email: [pm@pm.gc.ca](mailto:pm@pm.gc.ca) or [Harper.S@parl.gc.ca](mailto:Harper.S@parl.gc.ca)**

**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

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 04/002/2010 Issue Date: 16 July 2010

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