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Long overdue, not ‘premature’: Canada must pursue Omar Khadr’s repatriation

The government of Canada must urgently reconsider its position that for it to seek Omar Khadr’s repatriation from Guantánamo would be “premature”. This young Canadian national has been in US military custody since he was 15 years old. He is now 21. During this time his rights have been systematically violated, and US assurances about its commitment to the rule of law have rung increasingly hollow. Far from being premature, vigorous action by Canada is long overdue.

In a new report, *In whose best interests? Omar Khadr, child ‘enemy combatant’ facing military commission*, Amnesty International examines the circumstances of Khadr’s capture in a firefight with US forces in Afghanistan in July 2002, his allegations of torture and other ill-treatment, first in the US base at Bagram and then at Guantánamo, and the military commission trial he is now facing. The organization considers that the procedures of the commissions – tribunals lacking independence from the branch of government that has authorized human rights violations and tailored to be able to turn a blind eye to such abuse – do not meet fair trial standards and should be abandoned.

On 31 March 2008, Canada’s Minister of Foreign Affairs told parliament that any discussion of Omar Khadr’s repatriation was “premature” until the “legal process” had been exhausted. Omar Khadr’s trial, originally due to start in early May, has been postponed, with no new date yet set. Canada should use this delay to oppose his trial by military commission and to pursue his repatriation as a matter of priority.

Every step of the way, the USA’s treatment of Omar Khadr has failed to comply with international law, including the special protections owed to children taken into custody. While the USA’s treatment of “enemy combatants” generally has violated its international obligations, the fact that children have been among the targets of this detention policy has added an extra layer to the assault on the rule of law and respect for human rights in the “war on terror”.

Five months after it took Omar Khadr into its custody, the US government ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Among other things, the Optional Protocol prohibits 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 information which the USA has itself released about Khadr’s background and the circumstances of his capture places him squarely within the reach of the Optional Protocol, as well as juvenile justice standards under international law. Instead of recognizing the rehabilitative priority, however, the USA confined Omar Khadr to the harsh conditions of Guantánamo – with Canada only told of his transfer to the naval base after it had happened.

Canada, a state party to the Convention on the Rights of the Child and its Optional Protocol, should demonstrate its commitment to the bedrock principles underlying these international instruments, including that the best interests of the child must always be a primary consideration. The USA's treatment of Omar Khadr and other child "enemy combatants" has been conducted through the prism of its own perceived national security interests. Canada should act urgently where the USA has failed.

For further information, see:

USA: In whose best interests? Omar Khadr, child 'enemy combatant' facing military commission, <http://www.amnesty.org/en/library/info/AMR51/028/2008/en>.

For a summary of the report, please see:

<http://www.amnesty.org/en/library/info/AMR51/029/2008/en>.

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