

## The Case of Omar Khadr

Omar Khadr is a Canadian citizen born in Ottawa, Ontario in 1986. Omar has been in the custody of the United States Department of Defense since he was 15 and has been detained at Guantánamo Bay, Cuba since he was 16 years old. The United States alleges that Omar's father took him to meet Al-Qaeda leaders when Omar was ten years old, that he received military training, and fought in Afghanistan. In July 2002, Omar was captured by the U.S. military after its forces bombed and assaulted the compound in which he was living. The U.S. raid and subsequent firefight resulted in the death of a U.S. soldier and Omar being severely wounded. Thereafter, he was detained at Bagram Air Base and was subjected to cruel, inhuman, and degrading treatment and torture.

At age of 16, Omar was sent to the U.S. detention facility in Guantánamo Bay, Cuba. While detained, Omar was subjected to excessively harsh interrogation methods in violation of international law, including: shackling in painful stress positions for hours on end; beatings by guards; express threats of rendition to third countries for the purposes of torture; solitary confinement for lengthy periods; and confinement in extremely cold cells. While other minors at Guantánamo were segregated from the adult population and ultimately repatriated, Omar has never received any age-appropriate treatment. In nearly five years of imprisonment, Omar has only once been permitted contact with his family.

In November 2004, pursuant to an Executive Order establishing military commissions, the U.S. government charged Omar with murder, conspiracy, and other crimes. The U.S. Supreme Court subsequently invalidated the military commissions system as contrary to U.S. law and the Geneva Conventions. In February of 2007 Omar was recharged under the new system established by the Military Commissions Act of 2006 (MCA). On June 4, 2007, those new charges were dismissed due to a military judge's determination that the military commission did not have jurisdiction to try Omar based on his designation as an "enemy combatant." Despite having had charges against him dropped twice, Omar has been continuously held by the U.S. for nearly five years, much of it without being charged or provided access to lawyers. Moreover, it remains the position of the U.S. government that even if acquitted by a military commission, Omar could remain imprisoned at Guantánamo for the rest of his life.

### Canada's Failure to Act

In 2002, prior to Omar's transfer to Guantánamo, Canada took some steps with regard to Omar by requesting access to him, reminding the U.S. that he was a minor, and requesting that he not be transferred to Guantánamo Bay. These are the *only* Canadian efforts to ensure that Omar was not subjected to illegal detention in Guantánamo and that he be treated as a minor in accordance with international and Canadian legal standards. The U.S. refused consular access, but permitted the Canadian Security Intelligence Service (CSIS) to conduct four days of interrogation. Canadian courts have held these interrogations to have been in violation of Omar's Charter rights. With the exception of those few small steps taken in 2002, Canada has done nothing to fulfill its obligations to its own citizen or ensure the rights of Omar, who was a child at the time of his initial detention.

On February 1, 2007, six former Canadian foreign ministers spoke out against the complete silence by the Canadian government while its citizen was subjected to illegal and abusive conditions at the Guantánamo detention facility. They emphasized that silence on the part of the Canadian government “sends a signal to other governments that it is acceptable to abuse the rights of their citizens.”

#### Action by Other Western Democracies on Guantánamo

Omar is the only citizen of a Western country presently detained at Guantánamo Bay. Every Western democracy, except Canada, has criticized the Guantánamo detention center and the military commissions system constructed by the U.S. Moreover, the United Kingdom, France, Germany, and Australia have all applied substantial diplomatic pressure on the U.S., resulting in the release of their nationals from detention at Guantánamo. For example, British Prime Minister Tony Blair demanded and secured the release of all British nationals and residents detained at Guantánamo. British Attorney General Lord Goldsmith explained that the release of British nationals was sought because the military commissions system failed to offer “sufficient guarantees of a fair trial in accordance with international standards.” Australian Prime Minister John Howard, in the face of public outrage about the illegal detention of Australian national David Hicks at Guantánamo, intervened to negotiate a plea agreement in which Mr. Hicks, who was facing a potential life sentence, was repatriated to Australia to serve a nine-month sentence.

The military commissions framework devalues Canadian citizenship by exempting U.S. citizens from prosecution for war crimes. Indeed, the U.S. Congress has determined that military commission proceedings are inadequate for U.S. citizens. Only non-U.S. nationals are subject to the jurisdiction of military commissions, leaving U.S. citizens to be tried in federal civilian courts or regular courts-martial. For example, U.S. citizen John Walker Lindh, who was captured in circumstances similar to Omar’s, was afforded the full constitutional protections of a criminal trial in U.S. federal civilian courts. Furthermore, the military commission rules prevent Omar from being represented before the commissions by Canadian attorneys.

If Canada refuses to act now, it will leave Omar in the chaotic commissions system where, if he is tried at all, he will be tried without the minimum standards of due process guaranteed to all Canadian and U.S. citizens. Alternatively, Canada could follow the course of every other Western democracy with nationals detained at Guantánamo, and demand that Omar either be afforded the full protections of a civilian criminal trial or court-martial, or be repatriated to Canada where he may be tried under Canadian law.