

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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Lawyers' Rights Watch Canada calls for repatriation of Omar Khadr to Canada for rehabilitation

The Under Secretary-General of the United Nations and Special Representative for Children and Armed Conflict, Ms. Rhadhika Coomaraswamy, has called for the repatriation of Omar Khadr to Canada for rehabilitation because of his status as a child soldier at the time of the events leading to the current military tribunal proceedings. Lawyers Rights Watch Canada (LRWC) joins with Ms Coomaraswamy in this recommendation.

LWRC is deeply concerned about the illegitimacy of the military commission proceedings and the illegality of the Guantánamo Bay sentencing of Omar Khadr now in process.

There has never been any factual doubt that Omar Khadr was recruited, indoctrinated, trained, deployed as a soldier while he was a child, and that he has been imprisoned since 2002 at which time he was 15 years of age. Despite the fact that neither the United States nor Canada have recognized Omar Khadr as a child soldier, Omar Khadr's status as a child soldier is confirmed by Ms. Coomaraswamy in her October 27th submission to the Guantánamo Bay military commission:

"[i]n every sense Omar represents the classic child soldier narrative; recruited by unscrupulous groups to undertake actions at the bidding of adults to fight battles they barely understand..."

Canada's Federal Court found on 23 April 2009 that "Mr. Khadr's detention in Guantanamo Bay is illegal under both U.S. and international law." On 14 August 2009, the Federal Court of Appeal found his treatment by Canadian officials to be,

"...a breach of international human rights law respecting the treatment of detainees under the United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Can. T.S. 1987 No. 36 and the 1949 Geneva Conventions."

Common Article 3 of the *Geneva Conventions* and Protocol I prohibits—at any time and in any place—the passing of sentence when charges have not been determined, “by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people.”^[1] The denial of a fair trial violates the *Geneva Conventions*, the *Rome Statute of the International Criminal Court* and Canada's *Geneva Convention Act and Crimes against Humanity and War Crimes Act*.

^[1] *Geneva Conventions*, common Article 3. Adopted 12 August 1949; Entry into force 21 October 1950. Ratified by 194 countries. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 75.

The Supreme Court of Canada in 2010 found that:

“Canadian officials are contributing to K[hadr]’s continued detention...[and that the] deprivation of K[Khadr]’s right to liberty and security of the person is not in accordance with the principles of fundamental justice. The interrogation of a youth detained without access to counsel, to elicit statements about serious criminal charges while knowing that the youth had been subjected to sleep deprivation and while knowing that the fruits of the interrogations would be shared with the prosecutors, offends the most basic Canadian standards about the treatment of detained youth suspects.”

International treaties violated by the imprisonment and treatment of Omar Khadr include the *Convention on the Rights of the Child*, the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, the *International Covenant on Civil and Political Rights*, the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* and the *Geneva Conventions*. All of this law is binding on Canada. The United States signed the CRC in 1995 and is expected to respect its provisions pending ratification.

Both the United States and Canada are States Parties to the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*. The Optional Protocol, which is binding on both the United States and Canada as a matter of international law, stipulates that:

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.

LRWC is extremely troubled that despite requests from Ms. Coomaraswamy, as well as from UN High Commissioners for Human Rights, Louise Arbour and Navi Pillay and UN Special Rapporteur on Torture, Manfred Nowak, the United States and Canada have ignored binding international law in the case of Omar Khadr.

Instead, both Canada and the United States have cooperated to deny Omar Khadr the protection of universally applicable international law and a fair trial.

LRWC calls on the United States and Canada to cooperate to ensure that Omar Khadr is repatriated to Canada immediately in the terms Ms. Coomaraswamy suggests, and that arrangements be made for him to enter a rehabilitation program in Canada in accordance with the terms of the *Optional Protocol* and the *Convention on the Rights of the Child*.

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Lawyers Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally.

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