

HUMAN RIGHTS WATCH

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February 18, 2009

The Right Honorable Stephen Harper
Prime Minister
80 Wellington Street
Ottawa, Ontario
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Dear Prime Minister Harper:

We write in advance of US President Barack Obama's first official visit to Canada on February 19, 2009, to request that you address the important question of detainees held at Guantanamo.

As you are aware, Omar Khadr, the now 22-year old Canadian citizen who has been in US custody since he was 15, is the only western national still held at the military detention facility at Guantanamo. President Obama has announced a plan to close the facility, but the fate of Omar Khadr remains unresolved. You could take a concrete step toward helping Obama to achieve the goal of closure by requesting Khadr's immediate repatriation when you meet later this week.

Your government can also assist the new US president with his goal of closing Guantanamo by accepting for resettlement some of the detainees who cannot be repatriated due to the risk of torture or persecution in their home countries. Such a decision would allow your government to reassert Canada's longstanding reputation for human rights leadership. It would also be welcomed by the US government, which would see it as a sign that Canada was willing to work constructively to help achieve one of its most challenging goals.

Omar Khadr

US military forces captured Omar Khadr in July 2002, after a firefight in Afghanistan that resulted in the death of US Army Sergeant First Class Christopher Speer and injuries to other soldiers. Khadr was seriously wounded and initially detained at Bagram Air Base in Afghanistan. According to his lawyers, he was forced into painful stress positions, threatened with rape, and hooded and confronted with barking dogs at Bagram.

In October 2002, Khadr was transferred to Guantanamo Bay, where the abusive interrogations continued. Khadr told his lawyers that his interrogators shackled him in painful positions, threatened to send him to Egypt, Syria, or Jordan for torture, and used him as a “human mop” after he urinated on the floor during one interrogation session. According to Canadian government documents recently released by the Federal Court of Canada, he was also subjected to a severe sleep deprivation technique known as the “frequent flyer program.” In its decision to release these documents, the Federal Court noted that such treatment amounted to cruel, inhuman, and degrading treatment.

Khadr was not allowed to meet with a lawyer until November 2004, more than two years after he was first captured. In violation of international juvenile justice standards and international law relating to the involvement of children in armed conflict, Khadr was housed with adult detainees, barred from contact with his family, and denied access to education, counseling, and other rehabilitation assistance.

During his third year of detention, Khadr was charged with murder and other related crimes under the first set of military commissions authorized by President Bush. Those charges were dismissed when the Supreme Court ruled the commissions unlawful in the case of *Hamdan v. Rumsfeld*. In 2007, under newly authorized commissions, the United States government charged Khadr with murder, attempted murder in violation of the laws of war, conspiracy, providing material support for terrorism, and spying. Among many concerns, these newly authorized commissions allow for the use of certain evidence obtained through coercion and abuse.

In May 2008, the Supreme Court of Canada ruled in *Canada (Justice) v. Khadr* that the United States’ detention of Khadr at Guantanamo Bay “constituted a clear violation of fundamental human rights protected by international law” and concluded that Canadian officials who interviewed Khadr at Guantanamo in 2003 participated in a process that violated Canada’s international human rights obligations. As a remedy, the court ordered that Khadr be given access to all records of interviews conducted by Canadian officials with him at Guantanamo Bay.

Khadr’s military commission trial was set to commence on January 26, 2009. On January 21, President Obama signed an executive order that suspended military commission proceedings at Guantanamo Bay for 120 days, including Khadr’s pending trial. Omar Khadr remains at Guantanamo Bay, in legal limbo after seven years of unlawful detention, mistreatment, and continuous violations of his rights as a child.

In the past, you have stated that Canada would not ask for Omar Khadr’s repatriation because he was charged with serious offenses and was subject to a legal process in

the United States. But now that case has been suspended, there is no longer any justification for inaction.

We urge you to now formally request that unless the Obama administration acts quickly to prosecute Khadr in US federal court, it repatriate him to Canada. Canada is the only western nation that has not secured the release from Guantanamo of all its citizens. It is now time for Canada to intercede.

Resettlement of other Guantanamo Bay detainees

The military detention facility at Guantanamo Bay currently houses some 245 detainees. Approximately 60 detainees—from places such as Algeria, Azerbaijan, China, Egypt, Libya, the Occupied Palestinian Territories, Russia, Syria, Tajikistan, Tunisia and Uzbekistan—have expressed fears of torture or persecution if returned to their home countries, and at least one is stateless.

Human Rights Watch recognizes that the United States created the problem of Guantanamo, and has the primary responsibility for closing it down. To that end, we have long urged the US government to admit into the US some of the detainees who have been cleared to leave Guantanamo but cannot be returned safely to their own countries. Release into the United States, however, is not likely to be a practical solution for all of the detainees who cannot be returned home. Moreover, some of the men are former residents of or have family ties to other countries, enhancing their prospects for meaningful integration once released.

We understand that there are private efforts underway to help bring some of these men to Canada. Canadian church groups, working in collaboration with other civil society organizations, have already submitted refugee sponsorship applications for some Guantanamo Bay detainees under Canada's Private Sponsorship of Refugees Program. By privately sponsoring these men, church communities have committed the resources to assist with the men's integration, including counseling, housing, employment, education, and other forms of social support.

We call on the Canadian government to act quickly to consider these and future applications and to grant refuge in Canada to those who meet the requirements of the sponsorship program.

The Uighurs

The remaining detainees include a group of Chinese Uighurs whom the United States had cleared for release years ago, yet who continue to be detained at Guantanamo because there is nowhere for them to go. In October 2008, a US federal court ordered the government to release the Uighurs and admit them to the US mainland because

the government had failed to secure places for the men in safe third countries. The Bush administration appealed the ruling, and the Uighurs remain detained at Guantanamo.

Canadian church groups have submitted sponsorship applications for three Uighur detainees. Anwar Hassan, detained at Guantanamo for seven years, has been sponsored by a group of United Church congregations in Toronto. Two other Uighurs, also detained at Guantanamo for seven years, have been sponsored by the Catholic Diocese of Montreal. These men have asked that their names not be published for fear of reprisals against their families.

Djamel Ameziane

In October 2008, Human Rights Watch joined a coalition of groups to request that the Canadian authorities grant the refugee sponsorship application of another Guantanamo detainee, Djamel Ameziane, an Algerian national, sponsored by the Anglican Diocese of Montreal.

Ameziane was sold by bounty hunters to US forces in 2001 and has been detained at Guantanamo Bay for over six years. He has never been charged with any offense, and has been cleared to leave Guantanamo by US authorities. He cannot be returned to Algeria due to a credible fear that he would be tortured or abused.

Ameziane lived in Quebec for five years, and has a brother in Canada. His family ties and ability to speak French make his prospects for reintegration into Canadian society particularly strong.

We urge you to act decisively on the important occasion of President Obama's visit to push for Omar Khadr's repatriation or fair trial, and to agree to resettle detainees who cannot be returned home and who have been promised housing, job training, and other support by Canadian sponsors.

Sincerely,



Joanne Mariner
Terrorism & Counterterrorism Director



Jasmine Herlt
Canada Director

CC: United States President Barack Obama;
The Honorable Lawrence Cannon, Canadian Minister of Foreign Affairs;

The Honorable Peter Kent, Canadian Minister of State of Foreign Affairs (Americas).