

13 August 2010 Ottawa Citizen

Editorial

We should be embarrassed

The Harper government has long made it clear it believes the American military justice system is an appropriate place for Omar Khadr. Now that his trial is finally underway, that contention is looking ever flimsier.

Khadr is a Canadian citizen who was detained at the age of 15 in 2002. He has been held without trial for eight years — a delay that would be considered unconscionable in Canada's civilian justice system, a delay that makes a mockery of the axiom "innocent until proven guilty." It is not at all clear that he even committed a crime.

He is accused of throwing a grenade that killed a U.S. soldier; the United States considers him an "unlawful enemy combatant" and has charged him with murder, among other things. Whether he threw the grenade or not is very much an open question, but it is not the most important element of his case.

His age at the time he was detained makes him, in the eyes of many experts in international law, a child soldier. A United Nations special representative for children and armed conflict issued a statement on Aug. 9, saying "the Omar Khadr case will set a precedent that may endanger the status of child soldiers all over the world."

"Even if Omar Khadr were to be tried in a national jurisdiction, juvenile justice standards are clear; children should not be tried before military tribunals," the statement from Radhika Coomaraswamy explains. "The United States and Canada have led the way in creating and implementing these norms. ... I urge both governments to come to a mutually acceptable solution on the future of Omar Khadr that would prevent him from being convicted of a war crime that he allegedly committed when he was a child."

Canada's government has ignored this, as it has ignored questions about the implications of Khadr's age all along.

His age, though, is not the only factor that makes many observers of his trial queasy.

There is also the fact that the judge has ruled that statements Khadr made to his interrogators are admissible, even though they were, as Khadr's defence argued, "fruit of a poisonous tree." Khadr was, in the words of a defence submission, "asphyxiated, terrorized by dogs, doused with freezing water and left in the cold." He was threatened with rape.

By remaining silent as evidence extracted from this mistreated teenager is used against him, the Canadian government is sending the message that it has no problem with torture — not even the torture of its own citizens.

The military commission does not use the same rules as a civilian trial. Hearsay evidence is admissible that would not be in a civilian court. The jury is composed, not of Omar Khadr's peers, but of the victim's: members of the U.S. armed forces. Even this jury need not be unanimous to convict him.

The odds are, clearly, stacked against Khadr. It's not surprising that the young man has considered boycotting the process and whispered to his lawyer, at one point, that they were embarrassing themselves by being in the courtroom.

In fact, it is Canada that continues to embarrass itself by disregarding the fundamental rights of one of its citizens.

Letter to Ottawa Citizen re: Editorial "We should be embarrassed" on Omar Khadr, August 13 2010

Published Wednesday, August 18 2010

Dear Citizen:

Kudos to the Citizen for its lead editorial on Friday, August 13, "We should be embarrassed". Your view captures the key factors in the Omar Khadr case, balances the issues of security and rights, and communicates important values of our Canadian society. This editorial is admirably supported by Keith Spicer's "He is a citizen" on the Op Ed page. This is not a simple sphere of policy or public discourse. Citizens want to be and feel secure in their communities, but they also want to have their rights protected and promoted. But what is the dividing line? How does the State balance these basic elements that are sometimes in conflict in domestic and international policy? How do they translate into concrete initiatives and practical reactions by government in the hurly burly of everyday public and international affairs? Clearly in the plight of Omar our government draws this line quite differently from the Ottawa Citizen and, I would venture, most Canadians.

These issues and questions will soon be addressed by the Group of 78, a Canadian foreign policy association, at a conference on the theme of "Security and Human Rights in Canadian foreign policy" in Ottawa, September 24 to 26. People wishing more information can check on-line at www.web.net/~group78. The conference will debate these issues and generate advice for the government and our wider society on how these important cornerstones should influence future policy choices.

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Ottawa

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