

Canada-based Child Soldier DDR for Omar Khadr

Executive Summary

Omar Khadr, fifteen years old when captured by U.S. forces, is currently on trial before an extraordinary military commission at Guantanamo Bay, Cuba (GTMO). He has been detained for nearly six years. If Omar is prosecuted and sentenced to life-imprisonment or a term of years approaching that, as is the prosecution's stated intent, there is a substantial risk that the norms respecting the special status of child soldiers and the prevention of their recruitment will be seen as having failed, and failed in the West. This memorandum aims to demonstrate that this is not the only option.

Canada has to date not intervened on Omar's behalf, as every other Western country has done, and demanded his return from GTMO to Canada. The question therefore remains –What will Canada do with Omar Khadr?

This question is of no less significance for the credibility of child soldier DDR than it is for Omar himself. Until now, the United States and Canada have been the two leading advocates for what has become a consensus concerning the status of child soldiers as victims in need of special protection. Their joint failure in such a notorious case will be seen as hypocrisy at best and risks tainting all future efforts to address the child soldier problem in the developing world as yet another example of Western paternalism. In short, the leaders of countries such as Sierra Leone, when prevailed upon to pursue DDR, will legitimately ask why a fifteen-year-old African boy, who committed grave atrocities against civilians, should be given free schooling, when a fifteen year-old-Canadian boy, whose alleged crime was to engage *combatants* in a conventional conflict, was held, tried and sentenced at GTMO as a war criminal.

This document lays out planning that has been done for such a DDR program in Canada for Omar Khadr. It was done through consultation with mental health, legal, religious and criminology experts. This should not be considered a position paper or be in any way construed as committing any individual, organization or government to take any course of action or incur any financial obligation. Rather, this will hopefully provide the basis for constructive planning for what Canada will do with Omar Khadr.

Contents

Facts of Omar's Life, Capture and Detention.....	2
The Charges Referred	3
Legal Objections to Omar's Prosecution	3
DDR Program Components: Medical & Psychiatric	4
DDR Components: Religious Education & Community Integration	6
DDR Program Components: Education & Skill Development	7
DDR Program Components: Appropriate Facilities	7
DDR Program Components: Family Support.....	8
Deradicalization: The Saudi Experience.....	8
Deradicalization: The Singapore Experience	10

Facts of Omar's Life, Capture and Detention

Omar Khadr was born in Toronto, Canada, on September 19, 1986. His father, Ahmed Said Khadr (ASK), who was reputedly a financier for the al Qaeda terrorist organization, moved the family from Canada to the Middle East when Omar was a child and Omar spent much of his youth shuttling back and forth between Canada and the Middle Eastern countries of Pakistan and Afghanistan. In 2003, Pakistani forces killed ASK in Pakistan. The remainder of the Khadr family currently lives in Canada.

During the family's time in Afghanistan, they are alleged to have stayed in a remote, religiously oriented community. In June 2002, ASK is alleged to have sent Omar, who was fifteen, to work as a translator for Abu Layth al-Libi, a prominent member of the Libyan Islamic Fighting Group, a militant Islamic group, who had been expelled from Libya by Qaddafi and taken refuge in southern Afghanistan. Abu Layth had alleged ties to, and ultimately affiliated with al Qaeda, although the extent of his connection with the organization in 2002 is unclear.

In July 2002, US coalition forces engaged the compound where Omar was left by Abu Layth, outside Khost, Afghanistan. For four hours, US coalition forces bombarded the compound, culminating in an aerial bombardment that killed at least two, leaving alive Omar and another heretofore unidentified individual ("John Doe"). When U.S. forces entered the compound in a final ground assault, a grenade is alleged to have been thrown, fatally wounding US Army Special Forces Sgt. Christopher Speer.

U.S. coalition forces reported taking fire from John Doe, who was firing from around the corner of an approximately 1x2 meter alcove within the rubble, walled in at a height of approximately 2.5 meters on three sides. One U.S. coalition soldier reportedly charged into the direction of the fire, neutralizing John Doe. Though the details are unclear, the same U.S. coalition soldier shot Omar at least twice in the back, while Omar was either crouched or kneeling, leaning against brush and facing away from the action. Omar suffered blinding shrapnel injuries to his eyes early in the bombardment. No physical evidence was recovered that would indicate he participated in combat and no witnesses have come forward so implicating him.

U.S. coalition forces took Omar to Bagram Airbase, where he was aggressively interrogated regarding the activities and whereabouts of his father. Omar's principal interrogator at Bagram was SGT C., who was court-martialed for his role in the abuse of a detainee who died in U.S. custody. In October 2002, Omar was transferred to Guantanamo Bay (GTMO), where he has been held undifferentiated from adult prisoners ever since, at times in solitary confinement for weeks and months at a time.

In November 2005, Omar was charged "war crimes" under a military commission system established by the Bush Administration for detainees at GTMO. In June 2006, the U.S. Supreme Court invalidated the military commission system for, among other reasons, lacking legislative authority. In September 2006, Congress provided legislative authority for the military commission system to prosecute war criminals. Not only is the current military commission system very similar to the military commissions struck down by the U.S. Supreme Court, it provides that detainees cannot enforce rights provided by the Geneva Conventions and denies

detainees access to U.S. federal courts to challenge the validity of their detention and the jurisdiction of the military commission.

The Charges Referred

In February 2007, Omar was charged with (I) murder in violation of the law of war, (II) attempted murder in violation of the law of war, (III) conspiracy, (IV) material support of terrorism, and (V) spying.

The legal theory underlying Charges I & II is that the military force on whose behalf Omar allegedly fought in July 2002 did not have a legitimate military status, which thereby made any belligerent act committed by the members of this force a war crime regardless of whether it would otherwise qualify as a war crime. Though the type and source of the ordinance that killed Sgt. Speer is unknown, the government alleges that Omar threw a grenade from behind the wall of the alcove. In the alternative, the prosecution takes the position that as the only remaining survivor Omar is liable as a principal on a theory analogous to U.S. legal doctrine of felony-murder.

The legal theory underlying Charges III and IV is rooted in an “enterprise” theory of vicarious liability (taken by analogy from U.S. racketeering law) that makes Omar criminally liable for all of al Qaeda’s criminal acts. The charges sworn by the prosecutor allege conduct committed by Omar’s father and other alleged members of al Qaeda from 1989 through 2002, as the basis for Omar’s liability.

The legal theory underlying charge V is unclear from the face of the charges referred, other than the assertion that Omar collected information for use by al Qaeda or Taliban associated forces.

Legal Objections to Omar’s Prosecution

While there is no legal impediment to Omar’s prosecution in an appropriate forum, numerous legal objections have been made to Omar’s prosecution as a war criminal before the military commission in GTMO. Some of the more significant ones relate to the retroactive creation of criminal offenses. For example, while present in some domestic jurisdictions, “enterprise” and “status” theories of liability have traditionally not been punishable as war crimes, yet the MCA declares new offenses war crimes and applies them retroactively. Other significant objections include the failure of the military commission procedures to satisfy Common Article 3 guarantees of due process, particularly with respect to the admissibility of evidence obtained from coercion and torture; and the military commissions failure to stand as a “regularly constituted court” insofar as their jurisdiction extends exclusively to non-U.S. citizens. Military commissions simply do not afford the basic procedural guarantees necessary for a fair trial, let alone the appropriate juvenile justice safeguards essential for the lawful prosecution of a minor.

The most significant objection to Omar’s prosecution is the choice by the prosecutor to charge Omar for conduct allegedly committed as a child soldier. Nothing in the legislative authorization for the military commissions grants the prosecutor the authority to proceed against juvenile crimes, nor does it provide for any of the safeguards for juvenile offenders found in the Statute of

the Special Court for Sierra Leone (SCSL) or domestic criminal statutes. With respect to age, there is only legislative silence, including with respect to the imposition of the death penalty and life imprisonment.

The military judge, however, accepted the prosecution's position that there is "military commission jurisdiction over all unlawful enemy combatants, *irrespective of their age.*" UNICEF, the UN Special Representative for Children in Armed Conflict, Rhadika Coomaraswamy, the former Chief Prosecutor for the SCSL, David Crane, and the French Government, among others, have all publicly condemned this prosecution and invoked the applicability of the Optional Protocol to the Convention on the Rights of the Child for Children in Armed Conflict ("Child Soldier Protocol"). The Child Soldier Protocol sets a minimum age of 18 for voluntary recruitment into a non-state guerilla force and obligates states who find child soldiers within their jurisdiction to provide for their "reintegration into society." These obligations are supplemented by a body of U.S. military law that has historically excluded illegally recruited minors from military tribunals and a U.S. statutory scheme that defines the parameters for federal prosecutions of minors both domestically and abroad.

This is the first prosecution in the history of modern war crimes tribunals of a former child soldier as a war criminal and yet, there is no indication that the U.S. Congress intended the Bush Administration to expand its authority in this way. Unfortunately, because of the denial of habeas corpus, Omar will not be able to present this claim to a regular civilian court until after he is tried and convicted and exhausts his appeals through the special military commission review process (perhaps years). Moreover, in contrast to the obligations states such as the U.S. and Canada have undertaken to seek the rehabilitation of captured child soldiers through DDR programs, the prosecutor has taken the position that there is *no minimum age* one must be to be prosecuted and held undifferentiated from the adult population at GTMO. The Canadian government has taken the position that Omar's age must be appropriately taken into account in connection with any prosecution. Indeed, a representative of the Canadian government expressed the view to a military commission prosecutor that any sentence Omar received from a military commission must be, consistent with the Child Soldier Protocol, rehabilitative in nature. Prosecutors have provided no assurances in response and suggested in numerous discussions that the government will seek (and likely obtain) a sentence of several decades of imprisonment.

DDR Program Components: Medical & Psychiatric

The benefits to be obtained from aggressive medical intervention for a child soldier admitted into a DDR program are twofold. First is the message it sends to the child soldier. Child soldiers are a uniquely vulnerable class, who develop a justified suspicion in their dealings with others. They typically have lost their parental guardians and have rarely been in an environment where they feel as if another individual, especially an adult/authority figure, is pursuing their best interests. The rapid and aggressive deployment of medical, palliative and psychiatric care sends the child soldier the clear message that those days are past. It tells them that they are in a new environment, free of the dangers and predation that they had become accustomed to have looming always in the background. This clearly demonstrates the transition from the combatant environment into the civilian.

Omar is no different. First exploited by his family as a child soldier and then by the U.S. government as an intelligence asset, Omar desperately lacks the confidence that anyone in a position of authority over him has his interests at heart. Transition to an appropriate DDR program, especially if it comes upon action of the Canadian government, will go a long way towards building Omar's confidence in people, and in particular, the people and institutions of Canada.

The Saudi government, for example, in implementing its adult DDR program for returning GTMO detainees, initiates intensive medical and psychiatric care as soon as the detainees board the airplane home. One objective of the Saudi DDR program is to build and ensure loyalty to the Kingdom itself, and this tactic is self-consciously a sudden, overwhelming demonstration of benevolent force.

Second are the obvious untreated medical and psychiatric needs common to all child soldiers. Brutalization of child soldiers is common. According to Dr. Stuart Lustig, who has extensive experience treating children affected by armed conflict and who has agreed to consult in the development of this DDR program, "Many may have endured bone fractures invisible without an x-ray. Head trauma may have affected cognitive abilities or other neurological functions such as vision, hearing, or behavioral control." The psychiatric problems typically suffered by child soldiers are largely obvious. They are exposed to often extreme forms of violence, danger and personal loss at an early stage in their cognitive development. They are socialized to embrace overt displays of aggression as the only means of expressing their emotions. Post-traumatic stress disorder is routinely observed.

In most respects, Omar's experiences are archetypical to that of the average child soldier, and his confinement for the past nearly six years has likely compounded his cognitive and developmental deficits. Physically, he suffered severe trauma from bombardment and at least two gunshot wounds to the back. The bombardment caused shrapnel injuries to his eyes. He is blind in his left eye and the vision of his right eye is deteriorating. Observations by attorneys who have visited with him have shown that he is very immature for his age, requesting age-inappropriate recreation such as crayons and demonstrating a childlike lack of appreciation for the gravity and details of his legal case.

No independent medical or mental health examination has been thus far permitted, even for the purposes of competency to stand trial, but Drs. Stuart Lustig and Clive Chamberlin of the Toronto-based Center for Addiction and Mental Health (CAMH) and Dr. Donald Payne of the Canadian Centre for Victims of Torture have all agreed to work either directly with Omar or in consultation with Omar's ultimate physician. All are child psychiatrists who have dealt directly with children affected by violence or former child soldiers specifically. Their combined expertise and intervention will provide a substantial foundation for providing Omar the necessary medical and mental health screening and treatment that he is likely to require.

DDR Components: Religious Education & Community Integration

According to a report by Dr. Lustig, “Many child soldiers identify strongly with the fighting units they joined, and they and other soldiers form a family of sorts. Thus, the identification of other non-combatants with whom the child can affiliate and form or renew meaningful bonds is very important for reunification.” This is especially so in the case of Omar, where his recruitment to be a child soldier was at the instigation of his father. A further complicating factor is the religious-political context. While there is no indication that Omar’s actions in Afghanistan were motivated by religious zeal (as opposed to parental obedience), the significance of religion as a source of identity and meaning for him, especially throughout his confinement, must not be underestimated. Any DDR program that seeks his ultimate reintegration into Canadian society needs to directly address the value he places on religion and its importance to how he organizes the moral framework through which he views the world.

DDR programs in the Muslim world, most notably in Singapore and Saudi Arabia, directed at Islamic radicals of all ages, have shown very high rates of success by actively deepening the individual’s religious knowledge rather than attempting to separate them from it. (*See below* Deradicalization: The Saudi Experience; Deradicalization: The Singapore Experience). These programs typically place an Islamic Imam, Sheik or Ustaz in an almost paternal role, engaging the individual in a non-confrontational way with the religious vocabulary that is meaningful to them. This is done in a closed environment for a period of months, which creates a relationship of comfort and trust. It provides the type of personal growth and identity reformation of the kind recognized by Dr. Lustig as crucial for former child soldiers in coping with and moving past the trauma associated with armed conflict.

This not only gives individuals the opportunity to deepen their understanding of their own faith, but it encourages them to debate the weak theological underpinnings of radical political Islam. Indeed, in both Singapore and Saudi, this strengthened religious identity has been shown to reduce one’s susceptibility to radicalization once released. The engagement of local religious organizations provides the kind of community support network that is necessary for the child soldier’s ultimate social reintegration.

Omar, in many respects, is an ideal candidate for this type of approach. His youth and the context of his upbringing mean that while Islam is a potent force in how he defines himself, the depth of his knowledge remains superficial and open to question, especially by bona fide religious authorities. These individuals will likely have enormous sway over the goals Omar sets for his own future and the outlook he will bring to living in civilian society.

Toronto-based Imam Hamid Silmi of the Islamic Muslim Organization, has expressed a strong interest in working with Omar to ensure he is protected from potentially harmful religious influences that he may confront upon his return to Canada. He said that with a team of mental health and education professionals, he could be a religious mentor to Omar and provide him a constructive outlet for religious expression. This, he said, would ensure that Omar has the mental strength to deflect the negative influences likely to come from members of his family and will provide him the means to become a full member of the community.

DDR Program Components: Education & Skill Development

Central to child soldiers' identity formation is not only their place within the community, but what they offer to the community. Any DDR program must, according to Dr. Lustig, "[f]ind activities or functions which can bring a fairly immediate source of satisfaction to the child soldier apart from their use of military skills."

Omar has been deprived any formal education from at least the age of eleven. The need to provide academic and skills training may be a significant long-term challenge. Omar has himself expressed an interest in working as a paramedic, because he says that he wants to help people and working with his hands is rewarding. One promising avenue is with the Toronto District School Board, which has developed both correspondence programs for secondary education and which has some expertise in the special education requirements of both adults and refugees granted asylum in Canada and has provided them high-school equivalency courses. The Toronto District School Board has the resources to provide Omar a foundation for higher education and the facilities to allow him to have obtain a high-school diploma and learn in a class-room setting, which is something Omar has frequently expressed a desire to do.

Omar has repeatedly expressed his desire to one day be a paramedic. This is encouraging both because it is an attainable goal that will help motivate his education, but also because it demonstrates that despite all he has been through, he remains optimistic about the future. He has indicated that he wants a productive place in Canadian society and the question will ultimately be whether Canadian society will make a place for him.

One opportunity may also be Omar's own embrace of the DDR program. Like Ishmael Baeh, Omar has a powerful story to tell and if it ultimately has a positive outcome, there could be opportunities for him to develop similarly into a civilian leader or voice for youth and child soldiers generally.

DDR Program Components: Appropriate Facilities

Consultation with psychiatric professionals has repeatedly raised the lack of knowledge about Omar's current mental state as an impediment to devising a comprehensive treatment plan. The first phase of any DDR program would, therefore, place Omar in a secure, residential facility for at least 6-12 months, depending on a thorough evaluation of his mental state. This would likely be followed by a transfer to a minimum security, community-based residential facility for another 6-18 months.

Dr. Howard Barbaree, clinical director of the Law and Mental Health Program at the University of Toronto and a Director of the Centre for Addiction and Mental Health (CAMH), stated that CAMH would consent to admitting Mr. Khadr to the Law and Mental Health Program at CAMH for the purpose of assessment and treatment if legally sanctioned. CAMH is an in-patient, 157-bed facility equipped to handle a range of patients in both high security and community-based environments. Specifically, CAMH is staffed by a team of multidisciplinary professionals, including psychiatrists, psychologists, nurses, social workers, recreationists and others. Post-

traumatic stress disorder was identified as likely and consistent with the observations of his attorneys, thereby making CAMH a suitable facility for such purposes.

The third phase would involve Omar's transfer to live with his maternal grandparents in the suburbs of Toronto, supervised for a period of 24-36 months. Discussed below (DDR Program Components: Family Support), his maternal grandparents were never associated with the activities of their son-in-law, ASK, and have been very pro-active from Omar's capture to the present in pursuing his best interests. They have also agreed to supervise Omar in their home during this period and to help him readjust to urban life. The fourth phase would simply be a period of supervised release, lasting anywhere from 12-36 months. A variety of legal mechanisms are available to make the entirety of a DDR program enforceable and could place judicially enforceable conditions on Omar's conduct (i.e. to refrain from certain activities, such as drug use, petty crime, interacting with individuals, etc.).

DDR Program Components: Family Support

The individual believed to have been primarily responsible for the circumstances of Omar's upbringing was his father, ASK, who left him in the custody of a militia in an active war-zone. ASK was killed by Pakistani forces in South Waziristan on October 2, 2003.

Omar has many family members now living in the greater Toronto area, including his mother Maha. Maha and her family presently reside in an apartment in Scarborough. While his eldest brother remains incarcerated, his other older-brother, Abdurahman ("Ricky"), has publicly eschewed the radical religious-political philosophy espoused by his father, lives on his own and is consistently employed. Omar's youngest brother Kareem was rendered a paraplegic in the action that resulted in the death of ASK. Although mentally and physically injured, Kareem is now attending public high-school, where he is in the top of his class and is adjusting well to life as a Canadian teenager.

Maha's parents, Fatmah and Muhammed Elsamnah, own their own house in Scarborough. They live separately from Maha's family and have resided quietly in Canada for thirty years. They have never been associated with the radical ideology or the activities of their son-in-law, ASK.

The Elsamnahs have also been particularly supportive of Omar. Long before he was charged with any offences, they retained Canadian legal counsel to act for him and initiated legal proceedings to ensure that Omar had consular services in Guantanamo Bay. Mrs. Elsamnah, his grandmother, has also acted as Omar's "Next Friend" before various courts both in Canada and the U.S. The Elsamnahs have confirmed that they would support Omar in any way they can, and would be willing to have him live with them should he be released.

Deradicalization: The Saudi Experience

Confronted with widespread youth radicalization, the Saudi government has, for the past five years, developed a comprehensive rehabilitative approach to deradicalization (in contrast to what would perhaps be expected from the traditional Saudi approach to law enforcement). The broad-based program initiated by the Saudi Interior Ministry exploits the superficiality of religious knowledge typical of Muslim radicals, through religious education and social reintegration.

The program is run by four subcommittees:¹

- **Religious Subcommittee** – Made up of approximately clerics, scholars and university professors, it directly engages in the prisoner dialogues and the reeducation process.
- **Psychological and Social Subcommittee** – Comprised of psychologists, social scientists and researchers, it is tasked with evaluating a prisoner’s social status, diagnosing any psychological problems, assessing the prisoner’s status and compliance during the process and determining what support the prisoner and his family may need.
- **Security Subcommittee** – Composed of law enforcement officers, it evaluates prisoners for security risks, makes release recommendations, advises prisoners on how to behave upon release, and monitors prisoners and who they associate with once they leave prison.
- **Media Subcommittee** – It focuses on outreach and education, and targeting young Saudi men.

From conversations with the administrators of the program, the first phase of the program broadly targets all Saudi inmates for religious education. Those committed for crimes relating to radical Islam, such as individuals who attempt to cross the border into Iraq or circulate radical literature on the internet, are evaluated by members of the various subcommittees for their suitability for rehabilitation. In making this judgment, they look to the crimes committed, the circumstances under which they were arrested and what factors motivate them other than religion (i.e. social, familial, economic, etc.).

Once an individual is selected as a candidate for the rehabilitation program, they are given six weeks of intensive religious education. Here core Islamic concepts are taught, debated, and contrasted with their interpretations by radical political Islam. They are given substantive examinations and, depending upon their performance, are transferred to the residential phase of the program.

The final phase is a minimum of two months and conducted in a group living campus on the outskirts of Riyadh. Described as a “half-way house,” its residents are provided programs aimed at their religious, economic and social integration into society. These range from how to behave in a job interview, to sports, to academic education, to art classes. They are taken on supervised excursions into the city for shopping, movies and social activities. They are encouraged to talk with their family freely, play games, and socialize in the community environment. Clergy and psychiatrists collaborate in individual, group and family counseling sessions.

Release is conditioned upon an extensive assessment of an individual’s mental health, outlook on life and propensity for violence. The evaluation is based upon the judgment of clergy, who live and work in the campus, evaluations by mental health and social work professionals, interviews

¹ For a detailed analysis, see Christopher Boucek, *Extremist Rehabilitation and Reeducation in Saudi Arabia*. Jamestown Foundation Terrorism Monitor. 5.16: 1-4 (2007).

with other residents, and the assessment by security officers, who estimate the risk they would pose to society once released.

Upon release, the Interior Ministry continues to monitor the individual's progress. A special emphasis is placed on job placement, finding potential spouses and integrating the individual into positive community and family networks. The Interior Ministry keeps track of the individual and their contacts, conducting periodic interviews with their associates and family members. Overall, they report less than a 20% criminal recidivism rate.

Deradicalization: The Singapore Experience

Like Saudi Arabia, and nearly contemporaneously, Singapore faced an increasing internal threat from radicalized youth and their recruitment by Jamaah Islamiyah. Unlike the Saudi program, which is run out of the Saudi Interior Ministry, the Religious Rehabilitation Group (RRG) was founded by Islamic scholars and teachers as an NGO directed at providing religious counseling services for captured Jamaah Islamiyah members.

The impetus for RRG was, like the Saudi program, the recognition that radicalized Muslims typically had a sincere, though shallow and distorted, belief in a collection of religious concepts that spurred and justified violence. Accordingly, Ustaz (religious legal scholars) conducted individual, group and family counseling sessions for captured Jamaah Islamiya members, who were diverted to RRG from the criminal justice system.

The emphasis is on religious debate and cultivating a deeper understanding of the traditional interpretation of religious concepts exploited by radical-political Islam. RRG has identified a four-phase counseling process:

- Having the individual explain the content of their religious beliefs
- Exposing how Jamaah Islamiyah has distorted traditional Islamic concepts
- Presenting the textual and traditional interpretation of these concepts
- Developing the individual's religious knowledge and understanding

RRG therefore has a narrower focus than the Saudi program, in part because it is an NGO, whose focus is exclusively on religious education. "The program aims to show that living Islam rightfully in Singapore is practicable and fulfilling."