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## Railroading a Canadian child-soldier

Presented by



Omar Khadr was just 15 when he was seized. Why isn't Ottawa helping him?

**William C. Kuebler and Rebecca S. Snyder, National Post**

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The Canadian government has been largely indifferent to the plight of its young citizen, Omar Khadr, as he languishes for a sixth year in Guantanamo Bay. Content with assurances from the United States that Omar will receive "due process" from a special military commission, the government has failed to follow the example of every other Western nation and demand the repatriation of its citizen from the "legal black hole" that is Guantanamo Bay. Ottawa's confidence in the Guantanamo Bay military commission process is increasingly inexplicable, especially as it becomes clear that the "process" is designed to do nothing other than produce criminal convictions based on tainted evidence.

Fifteen at the time of his initial detention, Omar was allegedly sent into combat as a child soldier by his father. It goes without saying that Omar was unable to control the circumstances of his birth or his family's decision to move him from Canada to the Middle East as a child. Omar was shot and suffered near-fatal wounds in the course of a four-hour firefight during which he allegedly threw a hand grenade that killed a U.S. soldier.

Unlike other child soldiers, whom Canada and the international community view as victims deserving sympathy and rehabilitation, Omar was held by the United States and rigorously exploited as a potential source of intelligence about his father and family. Rather than receiving "assistance for his physical and psychological recovery and social reintegration" as required by international law, Omar instead faces indefinite detention and trial for "war crimes" based on nothing more than the allegation that he engaged in combat against opposing military forces during an armed conflict.

The U.S. plan to try Omar has drawn widespread condemnation. Its critics include, among many others, the United Nations Special Representative for Children in Armed Conflict and the former chief prosecutor for the Sierra Leone war crimes tribunal, who elected to hold adults responsible for putting children into combat, rather than prosecute children for the acts they committed as child soldiers.

Moreover, Omar faces trial in a system that is fundamentally flawed and unfair -- so much so that the U.S. Supreme Court has struck down military commissions once already for failing to provide the most basic protections required for a fair trial under international law. Military commissions are designed to produce convictions based on unreliable evidence derived through "enhanced interrogation techniques" (i.e., torture and coercion). They do so using special rules that allow prosecutors to admit statements and confessions extracted from detainees at Guantanamo Bay and elsewhere. If you have any doubt as to whether Omar will receive a "fair trial" from this process, look no further than the fact that only non-U.S. citizens can be tried by military commission.

There are those who will argue that the threat posed by dangerous terrorists such as Khalid Sheik Mohamed (the alleged mastermind behind the 9/11 attacks) justifies deviation from conventional rules governing the interrogation and trial of terror suspects. Whatever the merits of this argument in the context of KSM, it simply has no application to a 15-year-old boy soldier who is alleged to have thrown a hand grenade in a firefight. Nothing in the Military Commissions Act expressly compels its application to an alleged child soldier such as Omar. And such application is plainly inconsistent with U.S. obligations under the Convention on the Rights of the Child's Optional Protocol dealing with children in armed conflict, to which the United States and Canada are both parties. As a result, Omar's military commission will be asked this month to rule that the Military Commissions Act should not be applied to Omar and that the charges against him should be dismissed. Legally, this would be the correct outcome.

The Canadian government has said it wants to give the process a chance to work. The process will soon have that chance. The military judge will have the opportunity to demonstrate that the process complies with U.S. obligations under the Optional Protocol. If he does not, and this prosecution continues in clear violation of U.S. obligations under international law, the "process" in which the Canadian government has invested so much of Canada's credibility as a champion of human rights and the rule of law will have finally and unequivocally failed.

If that happens, Prime Minister Stephen Harper can ask for Omar's repatriation to face genuine "due process" under Canadian law, since Canada will have given its ally every opportunity to do the right thing. - Lt. Cmdr William C. Kuebler and Rebecca S. Snyder are lawyers assigned to the Office of Military Commissions. The views expressed are their own and do not constitute an official position of the U.S. government.

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