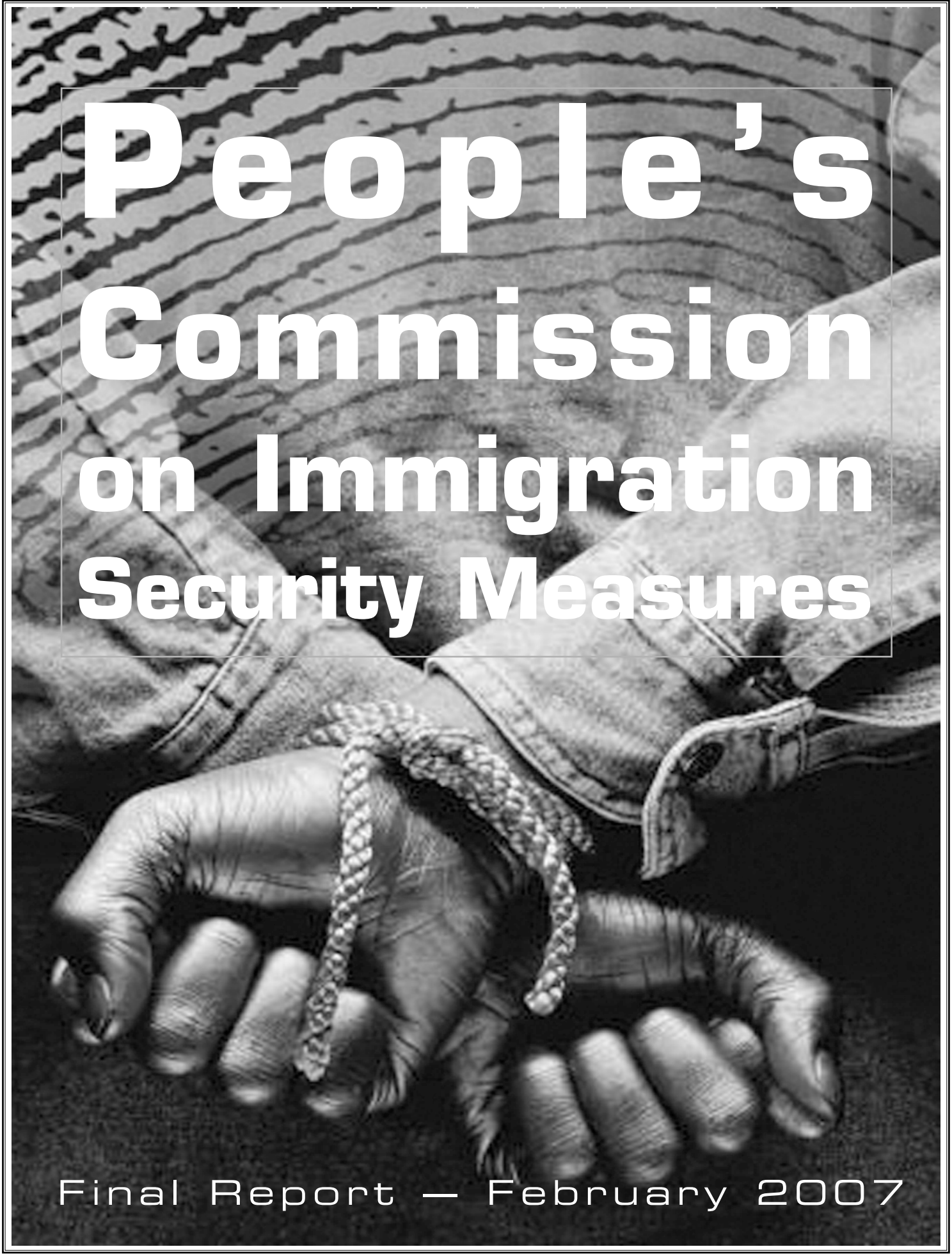

People's Commission on Immigration Security Measures

Final Report — February 2007

Initiating groups

Coalition Justice for Adil Charkaoui

Coalition Justice for Adil Charkaoui formed in Montreal in a matter of days after his abrupt arrest. The Coalition – an alliance of progressive Muslim groups, refugee and immigrant rights organizations, anti-oppression groups and the Charkaoui family – demands the immediate release of all Security Certificate detainees, no deportations, a fair trial, an immediate end to the "Security Certificate" system, an end to scape-goating in response to American pressure, and an end to the harassment of Muslims and Arabs.

Contact:
(514) 859-9023
justiceforadil@riseup.net
www.adilinfo.org

Solidarity Accross Borders

Solidarity Across Borders is a network of non-status, refugees and immigrants and their supporters. Solidarity across borders has come together on four main demands for refugees and immigrants: the regularisation of all non-status people in Canada; no deportations; no detentions; and the abolition of security certificates.

Contact:
(514) 859-9023
sansfrontieres@resist.ca
www.solidarityacrossborders.org

QPIRG-Concordia

QPIRG-Concordia is a community and student resource centre based at Concordia University that supports grassroots initiatives, projects and research related to environmental and social justice issues. QPIRG is committed to being inclusive and accessible to all; we recognize the links between various forms of oppression and are actively opposed to discrimination on the basis of gender, race, class, sexual orientation, dis/ability, health, size, citizenship status, language and spiritual beliefs.

Contact:
(514) 848-7585
qpirg@cam.org

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Acronyms

9/11	September 11, 2001
APEC	Asia-Pacific Economic Cooperation
CAIR-CAN	Council on Arab-Islamic Relations Canada
CBSA	Canadian Border Services Agency
CCR	Canadian Council for Refugees
CIC	Citizenship and Immigration Canada
COBP	Coalition Opposed to Police Brutality
CPI	Centre for Prevention of Immigration
CSIS	Canadian Security Intelligence Services
CUPW	Canadian Union of Postal Workers
DFAIT	Department of Foreign Affairs and International Trade
FARC	Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People's Army)
FBI	Federal Bureau of Investigation
FIS	Front islamique du salut (Islamic salvation front)
FRETILIN	Revolutionary Front for an Independent East Timor
GIA	Groupe Islamique Armé (Armed Islamic Group, Algeria)
ICLMG	International Civil Liberties Monitoring Group
IRB	Immigration and Refugee Board
IRPA	Immigration and Refugee Protection Act
PKK	Partiya Karkerên Kurdistan (Kurdistan Worker's Party)
PRRA	Pre-Removal Risk Assessment
PTSD	Post Traumatic Stress Disorder
RCMP	Royal Canadian Mounted Police
SIRC	Security Intelligence Review Committee
UNCAT	United Nations Convention Against Torture
UP	Union Patriotica

Glossary

Affadavit	A written declaration made under oath before a notary public or other authorized officer.
Anti-Terrorism Act	See C-36.
Arbitrary detention	Detention is arbitrary under Canadian law if it is not in conformity with the law; the law which provides for the detention is vague, imprecise or disproportionate and does not respect basic principles of human rights; the detention cannot be reviewed by a judicial authority or a person delegated with such authority; it is impossible to contest the legality of one's detention before a judicial tribunal; there is no possibility of release when the grounds for detention cease to exist.
Asylum seeker	Somebody who is waiting for their application for refugee status to be assessed.
Bail	Bail, or interim release, is a form of conditional release to the community, generally prior to trial or sentencing. Conditions of bail may include reporting to officials, or posting a financial guarantee.
C-36	The *Anti-Terrorism Act*, enacted in 2001 in response to the events of 11 September 2001 in the United States. Introduced changes to tens of other laws in order to "combat terrorism and terrorist activities at home and abroad". Had a broad-reaching impact from immigration, charitable donations to erosion of due process and privacy.
Canadian Security and Intelligence Services	Canadian spy agency established by the 1984 *CSIS Act*, largely in response to a scandal caused by illegal actions of the RCMP in the 1970s.
Communication Security Establishment	Canada's "national cryptology agency" – a federal government agency tasked with gathering communications intelligence "in support of defence and foreign policy" and protecting Canadian government electronic communications and information.
Conditional release	Release from detention on conditions prescribed by a judge, such as periodic reporting to an authority, or bans on certain behaviours or activities.

Control orders	A term used to refer to conditions imposed by a judge in place of imprisonment, such as house arrest or accompaniment.
Detention review	Judicial review of the reasons for imprisonment with a view to liberating the detainee.
Diplomatic assurances	In cases of deportation, assurances that are sought from the country that the person is being deported to, that the deportee will not be tortured or mistreated in that country.
Due process	Legal principles that aim to protect individuals from the arbitrary exercise of state power. Consisting of two elements: a set of individual rights and freedoms within the legal system designed to protect individuals against repressive state action; and a guarantee that the state will both enforce and respect these rights.
Ex parte	A hearing which takes place in the absence of one of the parties.
Extraordinary rendition	The term commonly used to refer to when one state delivers an individual to authorities in another state in order to avoid legal constraints against interrogation under torture – that is, state kidnap and torture.
Foreign national	A "person who is not a Canadian citizen or a permanent resident, and includes a stateless person". New category introduced in the *Immigration and Refugee Protection* Act in 2002.
Habeas corpus	A writ alleging that an individual has been unlawfully detained and ordering the official having custody of the individual to bring the person before a court for the purpose of determining whether the imprisonment was legal.
Huis clos	Closed hearing.
Immigration and Refugee Board	Canada's independent administrative tribunal which makes decisions on refugee and immigration matters
Immigration security measures	Security related measures that are being imposed on international migrants (immigrants, refugees and asylum-seekers) in the name of national security. These measures include security certificates, detention and deportation, rendition and general inequality of treatment such as racial profiling.
Indefinite detention	Detention for an indefinite period.
Komagata Maru	The Komagata Maru was a Japanese steam liner that sailed to Vancouver in 1914, carrying 376 passengers from Punjab, India. The passengers were not allowed to land in Canada and the ship was forced to return to India. This was one of the most notorious "incidents" in the history of early 20th century exclusion laws designed to keep out immigrants of Asian origin.
Naturalized citizen	Citizens who were born outside the country (as opposed to "natural citizens", born in the country).

Non-status	Person without a legal status; ie vulnerable to exploitation and not eligible for public social services.
Permanent Resident	Immigrants who can reside in Canada for an indefinite period of time without having citizenship status. There are, however, conditions attached to maintaining the state of permanent residency which include compulsory residence in Canada for a stipulated amount of time every year.
Precarious status	Status which does not confer a permanent right to remain in Canada and imposes dependency on a third party; e.g. work visas, student visas, undocumented, sponsored family member, live-in care-giver,
Pre-removal risk assessment	An assessment of risk undertaken by immigration officials before a deportation takes place. It is rarely conceded that a risk exists.
Protection	IRPA allows immigrants in Canada to apply for "protection" – a kind of temporary asylum – if they are at risk of torture. This is a safeguard to prevent returns to torture, death or other mistreatment.
Refoulement	Refers to the principle of non-refoulment in the UN Convention relating to the status of refugees which states that no contracting state shall expel or return (refouler) a refugee
Refugee	According to the UN definition, a person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country".
Rendition	The practice of siezing a person in one country and delivering them to another country, usually for the purpose of criminal prosecution.
Royal Canadian Mounted Police	National police force, dedicated to criminal intelligence. Before 1984, it played the role which CSIS now plays.
Safe Third Country Agreement	An agreement which prohibits refugee claimants who have passed through a designated "safe third country" from claiming refugee status in Canada. It came into effect between the US and Canada in January 2006.
Secret evidence	Evidence that is not disclosed to the individual, his or her lawyer or the public on grounds of national security.
Security certificate	Under Canadian immigration law, the Minister of Immigration and the Solicitor General of Canada can sign a certificate attesting that non-citizens should be deported because they are believed to represent a threat to national security. Refugees are automatically put in prison pending their deportation and denied due process rights, including the right to see the evidence against them. In practice, it generally means years of indefinite imprisonment on secret evidence without trial, under threat of deportation to torture. The certificate has been part of

	Canadian law since the 1970's, but has gone through various changes, most recently in 2002.
Security Intelligence Review Committee	Committee that is supposed to provide independent review of the activities of CSIS. Came into being with CSIS in 1984. It is supposed to ensure that CSIS's powers "are used legally and appropriately" by examining past operations and investigating complaint.
Special advocate	An independent lawyer who has access to the secret evidence that the government will not disclose to the individual in question, and whose role it would be to take a critical stance with respect to that evidence.
Suresh decision	A Supreme Court decision which the Federal government interprets to mean that in "exceptional circumstances" they can deport people to a risk of torture.
Turtle Island	An indigenous reference to North America.

Introduction

FOR THREE DAYS in April 2006, the People's Commission on Immigration Security Measures held Public Hearings at a community centre in Montreal's Little Burgundy neighbourhood. The first popular commission of inquiry on immigration issues to take place in Quebec, its purpose was to investigate the implications of security-related measures currently imposed on international migrants in the name of national security. The Commission, though based in Montreal, drew on support from Vancouver, Toronto, Ottawa, Kingston, Sherbrooke, Halifax and elsewhere in Canada. The Commission investigated and reported on the actions of Canadian government bodies in relation to *Immigration and Refugee Protection Act* security measures (IRPA), examining the equality of treatment of non-citizens, security certificates and similar procedures, detention and deportation (including deportation to torture). Based on its findings, the Commission has made recommendations for appropriate legal or popular action against those responsible for abuses and for changes to the current legal and procedural framework.

While the Commission followed typical procedures for public consultations and inquiries, an exceptional feature of this Commission was that it was initiated by concerned residents of Canada rather than the Canadian government. Three organisations active in the defence of migrant rights – Coalition Justice for Adil Charkaoui, Solidarity Across Borders and QPIRG Concordia – initiated the Commission, striking a working group which oversaw logistical considerations and the process to recruit the involvement of researchers, writers, commissioners and endorsing or sponsoring organisations (please see Annex B-6 for a list of these organisations).

The researchers and commissioners were people selected either because they are active members of directly affected communities or because they work with such communities. In particular, the commissioners are all anchored in communities who have felt the effect of racist "security" measures (see Annex B-5 for a list of researchers and commissioners and their short biographies). The result is that this Commission's finger is firmly on the pulse of the immigration system or, in other words, this popular commission is better situated than most government commissions to understand the challenges faced by immigrants and refugees – and members of other communities caught by racial profiling and heavy-handed security measures – during their interaction with the Canadian government.

The People's Commission was publicly launched on 18 March, 2006, with a public consultation in Montreal. Nearly 60 people attended in order to provide their input into the framework of the commission and to find out how to formally submit their testimonies through participation in a survey (see Annex B-9), written submissions, private interviews, or by giving testimony at Public Hearings. For those wishing to protect their identities, a confidential process was offered. An outreach strategy was implemented, targeting individuals or organisations who might want to participate in the

commission. A public consultation also took place in Quebec (see Annex B-10), while surveys were distributed in Halifax, Ottawa, Kingston and Vancouver and the Commission promoted during public events on related issues.

The Public Hearings, which took place April 21st 23rd 2006, were the way in which most people decided to participate in the Hearings. As time during the Public Hearings was limited, the Commissioners chose a diversity of testimonies they believed would ensure a broad representation of the issues under consideration. In the end, almost thirty experts and witnesses testified publicly (see schedule of Hearings, Annex B-7). The nine Commissioners listened carefully to the witnesses before asking their own questions or taking questions from members of the public. This was followed by an open period for those assembled to share their own experiences and commentaries. It is important to note that the Commissioners evaluated the testimonies in good faith; the aim of the Commission was not to judge individual testimonies, but rather to analyse the divergent experiences of immigrants and refugees.

Canadian national identity has long been constructed as racially tolerant and inclusive. However, this identity whitewashes Canada's past and denies the experiences of many of those who appeared before the Commission. By highlighting some aspects of Canada's history while silencing others, the mainstream media and many academics have helped to create this deceptive identity and national history. Multiculturalist policy has generally supported this official version of history and allowed Canadians to ignore their colonial, genocidal and racist past – and present. The testimonies at the Public Hearings show that Canada continues today to unjustly scapegoat and marginalize racialised peoples in the name of national security. In recent times, immigrants or refugees – especially those who are Arab or Muslim or even perceived to be Arab or Muslim[1] – are racially profiled as threats to national security. This has resulted in the inhumane and discriminatory treatment of countless individuals. This report recounts some of the abuses that Canada is committing in the name of "national security."

It is impossible to adequately discuss immigration or national security without first acknowledging the roots of what we refer to as Canada. Though many sectors of Canadian society still chose to ignore or sanitise this country's disturbing history, the reality is that the Canadian state was established through the displacement and genocide of the indigenous peoples of Turtle Island[2]. This fact had a very immediate impact on the People's Commission: an escalation of the land defence at Six Nations meant that one of the Commissioners, Kahentineta Horn, a Mohawk elder from Kahnawake, was unable to participate fully in the Hearings.

At the Hearings, Kahentineta Horn explained to the Commission what was happening at Six Nations. In 1784, European settlers had guaranteed that they would not encroach on indigenous lands six miles on either side of the Grand River, from its mouth to its source. However, the promise was broken less than twelve years after it was signed. Many cities have now been built within the area and encroachments continue to be made; indigenous people now retain less than 5% of the land. Several Clan Mothers, as the traditional keepers of the land, recently decided to stop the "development" of a small tract of land near Caledonia, Ontario. During the same weekend the Public Hearings of the People's Commission took place, a heavy police force was sent to remove the Clan Mothers and their supporters. The force was kept at bey by a strong popular presence, despite rumours of a possible military intervention, which, as Kahentineta Horn pointed out, would not be at all unusual in the context of a conflict with indigenous people in Canada.

The situation served to remind participants of the context of colonialism which frames Canadian immigration policy, and it flagged serious questions about the legitimacy of the Canadian state to decide who can and cannot cross its national borders. It raised profound questions about benefitting from theft of the land, and accepting laws which legitimize this theft and conceal a genocide.

Since the European colonization of this land, immigration to Canada has been restricted by race. The justification of these restrictive immigration policies has frequently been national security, defined both militarily and socio-culturally. Canada has too often employed inhumane and racist measures in order to restrict entry to the country in the name of national security.

The evidence presented at the Public Hearings of the People's Commission affirms that in recent years, people from the Middle East (West Asia), North Africa, and South Asia have been most negatively affected by security measures. Canada's legacy of discriminating against racialized people in the immigration process has been shaped by the current, post-September 11th, 2001 "war against terrorism" with the result that Muslims, Arabs and those that are perceived to be Muslims or Arabs are currently the focus of targetting.

Historically, other communities have been the focus of scapegoating for "national security". It is well known that both Italians and Japanese, for example, were interned in camps during the Second World War, labelled as an internal threat. The Komagata Maru 'incident' points to another important episode of targetting: at the turn of the twentieth century, Sikhs arrived on the shores of British Columbia in search of jobs. Almost immediately after the arrival of these migrant workers, a racist backlash began; Indians were thought to be rapists, murderers, and unhygienic. In her study of Vancouver daily newspapers, Doreen Indra observes:

> Without qualification, the press claimed that South Asians were fundamentally different from normal members of society. They were shown to be the chaotic carriers of a dangerous and foreign culture who threatened the existence of Vancouver as it was then constituted[3] [...]

Indra argues that these false representations of South Asians helped to whip up racist anti-immigrant fervour even before the Komagata Maru Incident (see Annex A-1 for more detail on this incident and the related racist immigration legislation).

Within the national narrative, these episodes of racism are excused as the "immature" behaviour of a young state. The narrative maintains that, by the latter part of the twentieth century, the Canadian state had learned its lessons from the past and become a reasonable state with a welcoming policy of multi-culturalism. This version of events, with its ideal of multi-culturalism, is challenged by current immigration legislation that, while no longer explicitly based on racial or ethnic categories, continues to be experienced differently according to race, as well as class and gender.

Today, security measures in immigration policies have emerged as a battlefront in the fight for equal treatment of migrants and racialised communities in Canada. The ever-widening web of racist national security measures in the post 9/11 climate has incarcerated, deported, tortured and killed thousands of people. Western states and their allies have been waging a "war on terror" through militarization and occupation globally and policies of restrictive immigration domestically. As people worldwide are forced to leave their homes in search of security, dignity and opportunity elsewhere, governments in North America have responded with new measures which exclude or marginalize

many of those who arrive on these stolen shores. At its extreme limits, the trend is making indefinite and arbitrary detention, "extraordinary rendition" (state kidnap and torture, see Chapter 4) and secret and not-so-secret torture centres seem normal.

Security measures in the Canadian *Immigration and Refugee Protection Act* (IRPA, 2002) act in many ways as the flagship of this political trend within Canada. Under immigration security measures, non-citizens are denied their rights to a fair trial, to protection from arbitrary and indefinite detention and to protection from torture. Security certificates and similar policies have raised doubts about how the principles of equality, liberty, presumption of innocence and security of the person are practiced in Canada. They raise important questions about the future direction of our society. It is for this reason that concerned individuals from across Canada banded together to investigate this renewed government focus on national security.

At the heart of the People's Commission are the people who came together on the project: directly affected immigrants and refugees, indigeous people, community organizers, concerned individuals, academics, community associations, non-governmental organizations – people from various parts of the political and social spectrum who helped pull sometimes unlikely allies together in the name of social justice. Needless to say, the points of views expressed are diverse and often contradictory. Even the tone and perspective of the different sections of this report, each written by different teams of writers, reflect the broad-based nature of this initiative. The People's Commission has tried to take the testimonies it received and present a snapshot reflecting the ways in which immigration security measures have affected the lives of migrants to Canada, their families and the broader community, and of how people have responded to these measures, without attempting to arrive at an overall analysis or unified perspective.

However, three sets of tensions which emerged during the project are worth noting. The first was a tension between indigenous rights to land and autonomy on the one hand and the influx of migrants who arrive on stolen land, sometimes with little awareness of the colonial structure or little will to challenge it, often after having fled desperate situations elsewhere and being confronted with unexpected hardships in Canada.

A second tension arose between the focus on the immigrant experience of repressive state security measures and the experience of long-established racialised communities who struggle with pervasive structural racism on a daily basis.

Finally, a third tension arose between those with secular analyses and approaches, especially those who have experienced oppression in the name of religion, and those whose religious beliefs have been the subject of oppression in Canada, given that active practice of a Muslim faith is construed in the current North American context to indicate a threat to national security.

These points of tension can be addressed in future work of the People's Commission and similar initiatives, since it is often through exploitation of such tensions that communities facing state oppression are kept from supporting each other.

This report draws on all of the written and the verbal testimonies gathered over a three month period. The major themes that arose in the testimonies inform the structure of the report. The report

is divided into four main sections: Chapter 1, "National Security and Racial profiling"; Chapter 2, "Due process is not a lot to expect from a democracy"; Chapter 3, "Arbitrary and Indefinite Detention"; and Chapter 4, "Deportation: Whose Security?" Recommendations for policy and action can be found in Chapter 5; a bibliography of background material on immigration and national security in Canada that was used in preparing this report is included at the end of the report.

Notes

1. People that are affected by racial profiling in this era are not just from the "Middle East" – they are also from North Africa, West Asia, South Asia and elsewhere.

2. Turtle Island refers to North America from an indigenous perspective.

3. Doreen Indra, "The Portrayals of South Asians in the Vancouver Press: 1905-76," Racial and Ethnic Studies: 2(2): 168.

Chapter 1

National security and racial profiling

THIS CHAPTER LOOKS AT the systemic exclusion and targeting of racialized communities in Canada in the wake of the events of September 11, 2001 in the United States (herein referred to as 9/11) and in the longer history of the formation of the Canadian state, premised on the violent erasure of indigenous peoples' rights and presence.

Historical Context

This section primarily draws on the literature review (see the Bibliography) rather than submissions to the Commission. Although it covers material that is readily available elsewhere, it has been included here to provide a convenient background to those unfamiliar with this history and analysis.

Throughout Canada's history, "national security" has been used to legitimise a series of exclusionary policies that have targeted indigenous people, racialized "non-citizens", communists, socialists, anarchists and leftists more generally, black activists, lesbians, bisexuals, gay men, and other sexual minorities, along with many others. In particular, "national security" concerns have had a direct impact on Canadian immigration policies and have been used as a tool of immigration control by creating a sense of fear and threat posed by "outsiders" to the Canadian nation and its "legitimate" citizens. Such policies have functioned as a discriminatory social filter that defines who gets to be Canadian and who poses a threat to those who qualify. As Sherene Razack, a professor at the University of Toronto who testified before the Commission, pointed out, this process has often involved the suspension of individuals' rights for the sake of the nation's "security" in a racialized process. Razack notes that immigration policy has established measures for non-citizens in matters such as security that operate in a state of exception from accepted democratic norms and practices[1].

While Canada has worked hard to construct an image of itself as an open and multi-cultural society predicated on the inclusive policies of its government, the history of Canadian immigration policy shows how racism has shaped this country.

From the outset, the legitimacy of Canada's sovereign right to be selective about whom it allows to enter and remain and under what conditions is questionable in view of Canada's colonial settler origins and its continued treatment of indigenous peoples. It is essential to comprehend the continuous

thread that links the different phases of Canadian colonialism: from overt land theft and extermination campaigns against indigenous populations to the construction of political, legal and social structures that further Canada's colonial, assimilationist and imperialist agendas.

As one of the Commissioners, Mohawk elder Kahentineta Horn, pointed out, the historical continuity is not simply of academic interest, but of very immediate and practical concern for those concerned with immigration issues:

> I'm very concerned about the long history we have here of injustices towards the indigenous people and I see that the injustices continue [...] if the Canadian gov't and its agencies can mistreat us the way they are, not listening to us, blacking out the real issue in the press which is a valid land issue and turning aside and refusing to hear it and making us out as terrorists and criminals, I just wonder if this is going against everything that you're doing [...] the Canadian public has been taught to look aside – as they will with the important issues on the table here.

A brief examination of Canadian immigration policies from the earliest days of the emergence of Canada as a nation-state through to the present day reveals the extent to which such policies have always been disproportionately directed at specific immigrant, refugee and racialized groups who, at different points, have been constituted as posing a threat to "national security".

Prior to and following confederation, many sectors of Canadian society, including railway promoters, land developers, mine operators, and manufacturers benefited from the expanding population and cheap labour provided by immigration. However, contract labour schemes ensured that many *Asian* immigrants were captive labourers with severely limited rights to citizenship[2]. At the turn of the century, while white American, British and Northern European immigrants constituted a category of "desirable" immigrants, other groups of immigrants, such as African Americans, were discouraged from settling in Canada. At the time, Canadian immigration policy relied on racist pseudosciences such as eugenics to define and select who constituted a desirable citizen, and who was an undesirable outsider. Some of the most restrictive immigration policies targeted racialized immigrants such as the Chinese (through a head tax[3]) and East Indians (through the Continuous Journey clause)[4].

These measures ensured that the volume of Asian immigrants in this country was drastically limited. In 1923, such policies were made more explicit when an Order in Council was issued which excluded "any immigrants of any Asiatic race" except agriculturalists, farm labourers, female domestic servants, and the wives and children of persons legally in Canada. Later, in 1952, a new *Immigration Act* was passed giving the Minister and officials powers of selection, admission, and deportation on the grounds of nationality, ethnic group, geographical area of origin, peculiar customs, habits and modes of life, unsuitability with regard to the climate, probable inability to become readily assimilated... and so on[5]. In fact, until the 1960's, race was a category that was overtly mentioned and considered in Canadian immigration policies[6].

The racist tendencies and effects of Canadian immigration policies have been particularly glaring in times of war. For example, in 1914, the *War Measures Act* came into effect, giving the government wide ranging powers to arrest, detain and deport. "Enemy aliens" were forced to register and were subjected to extreme restrictions, including denial of the right to vote. Later, in the early 1940s, following the bombing of Pearl Harbour, 22,000 Japanese people, 75% of whom were naturalized

Canadians, were forcibly relocated in Canada, many to detention camps in the interior of British Columbia. Their property was confiscated and they were held in detention until the end of the war when the Canadian government encouraged many to "repatriate" to Japan.

Ideology has also been a key feature of Canadian immigration policy. For example, in 1931, the Communist Party was made illegal in Canada under the Criminal Code. Even naturalized citizens who were members of the party could have their citizenship revoked and be deported. Many immigrant workers who were suspected of labour organizing, many of them Eastern European, were targeted for deportation during this period[7]. This discourse of the "threat" communism posed to national security continued to shape immigration policies for several decades. For example, in the mid-part of the century, Canada accepted large numbers of Eastern European immigrants who were fleeing communist countries, but was less generous with Chilean refugees after the Allende government was overthrown in the 1970s, since many were suspected Marxists. Victor Regalado, a leftist journalist from El Salvador who testified before the Commission, was arrested under a security certificate in this era.

As Sharryn Aiken, an immigration lawyer who teaches at Queen's University and testified before the Commission, summarizes:

> Canada's record on refugee crises during this period clearly demonstrated the extent to which ideologically defined security considerations together with a preference for White Europeans, and for linking labor market needs to all admissions, were the primary drivers of domestic refugee policies[8].

While Canadian immigration policy was revised in the latter part of the 20th century, introducing many provisions aimed at protecting the rights of immigrants and refugees, new policies such as the Safe Third Country Agreement, which prohibit refugee claimants who have passed through a "safe third country", recall many of the earlier, more overtly racist policies such as the Continuous Journey provision.

By 1990, with the end of the Cold War, the number of refugee claimants continued to increase and, with this, a shift that saw Canada admitting refugees from all continents. As it did so, security preoccupations shifted and began defining threats along a patchwork of biases entrenched in policies concerned with "illegal migration[9]". Migrants were criminalised and categorized into those who are desirable or genuinely deserving of protection versus those that are undesirable. "Genuine" refugees were distinguished from "economic migrants", while refugees travelling without valid documents became associated with criminality. Migration became framed as a security concern, and associated with terrorism. Laws and policies were enacted to tighten border controls and to restrict access to immigration and asylum.

In response to concerns that the *Immigration Act* "put the safety of Canadians at risk[10]", in June 1992, Bill C-86 was introduced in the House of Commons. Immigration security procedures were reformed by "Safety and Security of Canada" objectives that introduced "terrorism" as a new category of security inadmissibility. This category was not defined, nor were concepts such as the "security of Canada" or "membership in an organization engaged in terrorism". Instead, the approach to "membership" and "terrorism" was left to Ministerial discretion[11]. These reforms have led to the targeting of migrants and the strengthening of a general association of "outsiders" as foreign threats, as enemies who are not like "us" and should be feared.

With Bill C-86, the *Immigration Act* delegated further powers to the Canadian Security Intelligence Services (CSIS). The 1984 *CSIS Act* had already mandated the agency to provide security assessments of migrants. However, with the new provisions on terrorism, the "*Immigration Act* delegated the job of identifying possible terrorists to CSIS while retaining for its own department the ultimate authority to decide who will be excluded from Canada on the basis of possible terrorist links[12]". Certain refugee communities within Canada found themselves increasingly subject to surveillance by CSIS. Media reports, as well as testimony heard by the Commission (see Chapter 2 below), and reports by the Security Intelligence Review Committee (SIRC) have exposed how refugees have been pressured to become informants on fellow community members with promises of prompt resolution of their status applications or threats of repercussions for their files if they refuse.

In the aftermath of 9/11, the association of terrorism and migration intensified. Bill C-11 was passed in a climate fuelled by the "war on terrorism" and the concerns it expressed that the Canadian border was too porous, thereby making Canada a "safe-haven for terrorists". Implemented on the heels of the *Anti-Terrorism Act* (2001), the overhaul of the immigration system produced the *Immigration and Refugee Protection Act* (IRPA) in 2002, which further[13] eroded safeguards. With respect to security certificates, it reframed migrants without Canadian citizenship, including Permanent Residents, under the new category of "foreign nationals[14]". It also introduced mandatory detention of non-Permanent Residents named in a security certificate, on information provided by CSIS, before any judicial review whatsoever of the allegations.This has meant years of detention for refugees such as Mohamed Harkat, who spent two years in an Ottawa jail before the certificate was even reviewed by a judge.

These laws, while seemingly race neutral, in practice have a different impact on communities defined by racism. Equality cannot be said to be delivered or guaranteed: "We do not need racist laws to have racial discrimination in immigration; all we need is unlimited discretion. With an unsympathetic public, unmotivated public leadership... racism can make its way into the immigration process even with laws that appear neutral and fair[15]."

Despite its name, the *Immigration and Refugee Protection Act* has more to do with tightening border controls and protecting "Canadians" from perceived foreign threats than with protecting refugees. Built upon a foundation of racial division and a legacy of discrimination that continues to shape our institutions, relationships, and legal frameworks, the immigration regime reinforces a wider social structure permeated with racism[16].

National security and racism

The concept of national security is not fixed. At different times, "national security" labels different groups of people as a "threat to national security". Most recently, it has targeted men of Middle-eastern, Arabic and Muslim backgrounds through a significant cross-over of "national security" measures with immigration and refugee policies.

The concept of national security is not fixed. At different times, "national security" labels different groups of people as a "threat to national security". Most recently, it has targeted men of Middle-eastern, Arabic and Muslim backgrounds through a significant cross-over of "national security" measures with immigration and refugee policies.

Gary Kinsman, a professor at Laurentian University and the author of several studies on the history of "national security" in Canada, discussed these points during his expert testimony at the public hearings. According to Kinsman:

> [... there are,] two positions that get put forward around national security [...] One is that national security is just fine, but that it is not being implemented properly. [...] The other one, coming out of the social and historical analysis that I have done, is that there is something wrong at the very heart of the very concept of national security. [...] Whose national security are we talking about? What is the nation that we are talking about, whose security are we actually concerned about when national security is mentioned over and over again?

He argued that national security identified enemies and threats based on understandings of the nation and of security which exclude some groups. Groups who fit the image of the Canadian nation-state – generally, white, heterosexual males – are 'safe' and what makes them secure is central, while "others," particularly racialized communities, people who are seen as 'different', are excluded and even defined as enemies of the state. Working class immigrants are marginalized, while Arab and Muslim communities are not included in the accepted understanding of security. People identified as threats are cut off from regular social interactions and denied their civil and human rights. Essentially, Kinsman believes that national security protects the privilege of white heterosexual males at the expense of other groups[17].

These exclusionary understandings inform and organize the practices of enforcement agencies, such as the RCMP, CSIS, and Immigration Canada. Policies are thus not only implemented in a discriminatory way, they are also built on the basis of this racial and racist thinking.

Kinsman showed that "national security" has an elastic and flexible character that expands and contracts in different historical and social contexts; just as definitions of "terrorist" or "terrorism" have an elastic and flexible character that currently deflect attention away from forms of state terrorism such as bombardments, invasions and occupations. He described how, in different eras, unions, women's auxiliaries, indigenous people, high school students, birth control organizers, gays and lesbians and other dissident entities have been cast as threats to national security. Now, in the era of anti-terrorism, the focus has shifted largely to immigrants, refugees and racialized groups.

The lack of definition of these terms in immigration legislation was raised as a strong concern by several other witnesses, including Janet Dench, Executive Director of the Canadian Council for Refugees, and Sharryn Aiken. The failure to define the terms was found to facilitate the current targetting of Arab, Muslim, Middle-Eastern, South Asian and migrant communities.

However, Kinsman proposes that rather than focussing on improvements to the implementation of national security, we must ask more fundamental questions about the very concept of "national security" and take into account the social forms of security that are integral to the lives of oppressed and marginalized communities.

From a similar perspective, Sherene Razack, a professor at the University of Toronto, provided reflection on the racialized basis of contemporary immigration security practices.

Using examples from court documents in security certificate cases, she argued that the state relies upon, and the court generally accepts, the axiom that persons "who have the makings of 'Islamic extremism' possess an inherent capacity for violence." On this basis Muslim men, or men with Muslim backgrounds, are profiled as terrorists – they have "the makings of Islamic extremism".

A racist assumption thus casts them outside of the legal and political community – paradoxically through legislation. She calls the underlying structure of thought "race thinking"; this has "the force of law without law," and its basic logic is "they are not like us". The "us" in that equation refers to "people constituted as the real, original citizens, who, curiously enough, are not aboriginal people, but are white anglo-saxons protestants". The specific form that this race-thinking takes in the case of Arabs and Muslims is the "clash of civilizations": "a modern, enlightened, law-abiding society threatened by pre-modern, non-law abiding super-religious society". In this context, Razack believes that it is very important to avoid falling into the trap of "good Muslim" (which Razack points out is – ironically – a *secular* Muslim) vs "bad Muslim". This not only fails to challenge race-thinking, but perpetuates it.

Razack explained that – just as in the case of the extraordinary violence which continues to be directed against indigenous people to dispossess them of their land – the violence of the processes brought against immigrants and refugees is concealed by race-thinking and legitimized through law. Immigration law remains for the most part outside of a human rights regime and, with rare exceptions, courts have generally been willing to accept that non-citizens do not possess the same human rights as citizens. Enforcement agencies, bureaucrats, and security professionals rely on the "logic" of "*they* are not like *us*" when acting violently against immigrants; they understand such violence as simply part of carrying out their duty.

Razack counseled the Commission to recognize how central race-thinking has been in the constitution of our nation. The patterns that are now manifesting themselves in security certificate cases were securely in place long before 11 September 2001. Razack believes that the only thing that has changed is that "the net is wider and the laws stronger". She reminded the Commissioners that Canada is "a white-settled society and all of its bureaucratic processes have been very thickly contaminated with race-thinking for some time."

Current experiences of racial profiling and national security

Halima Mautbar of the Council on American Islamic Relations – Canada (CAIRCAN) spoke to the Commission about the tremendous increase in harassment and racial profiling experienced by Muslims and Arabs in latter years. She stressed how difficult it has been for her organisation to obtain solid statistics because of a climate of fear.

Mautbar believes that the record-setting number of complaints received by CAIRCAN in recent years is directly related to media bias and government policies which have produced an image of Islam as a violent religion and Muslims as a threatening presence in Canadian society. She cited several examples, including that of a man operating a legitimate money transfer business who was accused of financing terrorist operations – he was arrested and lost his business before it was acknowledged that a mistake had been made; and that of an engineer who was fired from his job after a visit by CSIS to his workplace. She also mentionned the case of an Egyptian-Canadian who was arrested and interro-

gated in Egypt after he had taken a tourist video of the CN tower. She spoke of another man who was denied a security clearance; one of the reasons provided was that he "supported Arab causes". In a survey on targetting that she carried out for her organization, Mautbar learned that during visits by intelligence officials, people had been asked inappropriate questions such as, "how strong is your faith?[18]"

The situation led Mautbar's organization to publish a "Know your rights" guide for Muslims in Canada, which includes sections on how to conduct oneself in interviews with CSIS and the RCMP. CAIRCAN has distributed around 40,000 copies of the guide across the country[19].

The case of 24 South Asian men arrested under a joint RCMP–Immigration Canada operation known as "Project Thread" in Toronto in 2003 was an important example of racial profiling discussed by several witnesses at the Public Hearings, including Mohan Mishra of Project Threadbare, a grassroots defence committee for the arrestees. The 24 men were all students at the "Ottawa Business School" who had come to Canada from Pakistan and India on student visas. When the school suddenly closed and the owner fled to Florida – in some cases defrauding students of thousand of dollars of tuition fees – they were left stranded on invalid visas.

The 24 men were arrested under suspicion of posing a security threat, and an RCMP spokesperson claimed to have "a van-load of hard evidence" to back up the allegations. This was enough for media outlets to report that an "Al Qaeda sleeper cell" had been uncovered. According to Mishra, the "evidence" actually consisted of the fact that they lived in "clusters" of 4 to 5 people, had a minimal standard of living, that one man had a picture of an airplane on his wall, the possession of pictures of "strategic landmarks" (e.g. a photo of one of the men in front of the CN tower), and the fact that all but one were from Punjab province in Pakistan, which was described as "noted for Sunni extremism".

Within a week, all charges were dropped, and the RCMP stated that there was no reason to believe there was any link to terrorism whatsoever. However, the media did not give this fact anywhere near the attention that it had given to the original allegations, and the men continued to be detained in a maximum security prison, for up to five months, on immigration charges (the fact that their visas were not valid since the school had closed). While they remained in detention, even after the original allegations were dropped, they were interrogated by intelligence officers about their religious practices and their political beliefs. According to Mishra, friends whom the detainees called from prison were later visited by intelligence agents, and asked similar questions about their political beliefs and religious practices. They also experienced racist abuse and insults in the prison, being called "Al Qaeda", "Taliban" and threatened by guards with being sent to Guantanamo Bay if they did not cooperate. The devastating impact of "Project Thread" is discussed below in Chapter 3.

What Project Thread illustrated for Mishra was the double-standard applied to migrants, and the way in which migrants are systematically rendered vulnerable to such abuse.

Warren Allmand, in his testimony on behalf of the International Civil Liberties Monitoring Group (ICLMG[20]), stated: "Certain media and politicians had a field day stoking the fires of fear and compounding stereotypes about Muslims. Ultimately it turned out what the RCMP found was nothing more than immigration irregularities. Looking at Project Thread objectively, one can only conclude that the massive RCMP overreaction was based largely on the fact the men were Muslim."

Allmand expressed his concerns with existing legislation, arguing that the *Anti-Terrorism Act* promotes racial and religious profiling because it defines terrorist acts as acts committed for religious, ideological or political purposes. His concerns in this respect have materialized: "We have been informed of several occasions where Muslims were questioned about religious practice, devotion and personal beliefs."

Allmand maintained that migrants and refugees have historically been scapegoated and that this pattern appears to be repeating itself, focusing now on Islam and terrorism, with "national security" becoming a vehicle for xenophobic fears.

Religious and community leaders have been singled out for targetting by security forces. Mautbar mentionned the examples of two religious leaders who had been targetted: one had his business raided by the RCMP and another was put on a no fly list, and detained in the US until eventually released without charge.

Similarly, Sheikh Ali Sbeiti, a leader in Montreal's Muslim community, provided the Commission with details about his personal and community experiences of harassment by CSIS. Sbeiti arrived in Canada in 1987, and has been a citizen since 1991. He has been interviewed tens of times by CSIS (starting well before 11 September 2001), often for hours at a time. People who arrive in the country are regularly asked about him and whether they plan to attend his prayers; they are made to feel as though he is dangerous. Sbeiti also began having problems at airports, even with flights in Canada; he spoke about long delays getting his boarding pass, feeling humiliated that he was asked to stand aside and wait while others were processed. He had no idea why this was happening, and no one seemed to be able to tell him. Eventually, he found out that he had been placed on the no fly list in the United States and that this was affecting him even when he was flying in Canada. Then he tried to go to the United States to visit his sister, who had just had a baby. He was arrested, handcuffed and put in a cell for six or seven hours. No explanation was given, he was just told that they were "doing their part". He was denied access to phone and to a lawyer and eventually turned around and sent back to Canada. When he spoke to Canadian authorities on the border about what had just happened to him, he was told, in effect, that such occurences were normal and that he should simply accept it. Next he was told by his bank that Canadian authorities wanted to make inquiries into his finances. Again, he was not given an explanation.

Sbeiti also testified that many of his community members have experienced long delays in their immigration proceedings. Even if they are accepted as refugees, then they have to wait – sometimes up to 9 years – to get their landed status. They are not given any information on why there is a delay. Meanwhile, they feel as if they are living in a "big prison", unable to travel abroad for family celebrations or funerals. Even if they have permanent residence, they may end up waiting years for citizenship. Some people decide to get a lawyer to find out what the problem is, but this costs thousands of dollars in legal fees.

What Sbeiti has found most frustrating about all of this is that no explanation is ever given; there is nothing concrete that can be understood or discussed; no specific charges are made. He asked, is it because of a name, because of roots, of religion, of the way you dress? Sbeiti said that many are shocked when they arrive here and find themselves still being interrogated and under suspicion. This feeling of not being accepted has a very negative impact on the community, which he finds increa-

singly difficult to address. Sbeiti explained that in this situation people become very hesitant and uncertain about the future. The message that is being sent to people is that they must accept harassment and humiliation, that they must live with fear and lack of acceptance, that there is nothing to be done about it, that the decisions are being made elsewhere. Sbeiti believes this is very dangerous. He says that people are asking whether the democracy here is a kind of decoration, while behind the scenes it looks quite different. His tone was one of profound disappointed, having come to Canada in hope, with a beautiful dream of a country where people of different backgrounds and cultures live together peacefully.

Many of the testimonies during the Hearings spoke to the psychological toll of profiling on the community as a whole. As Maubar concluded, entire communities have been stigmatized and the human impact has been "discrimination, shame, humiliation and a devastating impact on jobs, businesses, reputations, families and friendships and ultimately a feeling of total insecurity", within a silence born of fear.

It is important to note that although post-9/11 policies tend to disproportionately target members of the Arab and Muslim communities, many others are affected by racial profiling practices.

One survey respondant, a Latin American woman in her 50s, testified to the impact of CSIS interrogation practices on her life. After she, her friends, and employer were visited by intelligence agents and questioned about her involvement in Latin American politics, she was subject to "forced, aggressive interrogation at the airport for 4 hours" with "malicious, destructive comments" that "led to a threat to employment". She now faces deportation after having been declared inadmissible.

During the Public Hearings, several members of the Iranian community pointed out that most Iranian refugees were neither Arab nor Muslim and that many, like Arash A. – an Iranian refugee whose testimony to the People's Commission is reviewed in Chapter 4 – have fled the Islamic regime. While many Iranians have been the victims of racial profiling in the post-9/11 era, their particular situation is rarely addressed.

Notes

1. Razack cited the writer Giorgio Agamben, who defines "state of exception" as "a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system".

2. Kelley, Ninette and Michael Trebilcock. The Making of the Mosaic: A History of Canadian Immigration Policy, 1998, 5.

3. From 1901 to 1918, $18 million was collected from Chinese immigrants through a head tax, while at the same time, during this period, $10 million was spent on promoting immigration from Europe. Commissioner May Chiu noted at the Public Hearings that it took 50 years before the Chinese community had the confidence to ask for compensation, and another 20 before they received an apology and compensation package. She underscored the fact that, even as the Canadian government was at the time of the Hearings apologizing for these racist policies earlier in the century, it was continuing to perpetrate such policies in new ways, notably with the detention of security certificate detainees.

4. In 1908, a Continuous Journey provision in Canadian immigration policy prohibited immigrants

who did not come by continuous journey from their country of origin from entering Canada. This provision primarily targeted Indians and Japanese since steamships from their countries of origin made a stop in Hawaii before entering Canada. Also see Annex A-1.

5. Janet Dench, "A Hundred Years of Immigration to Canada 1900-1999: A Chronology Focusing on Refugees and Discrimination" (2000), online: Canadian Council for Refugees, www.web.net/~ccr/history.html.

6. In 1967, Canadian immigration regulations saw the introduction of the point system and race was officially removed as an overt category of discrimination.

7. Avery, Donald. "'Dangerous Foreigners': European Immigrant Workers and Labour Radicalism in Canada, 1896-1932." McClelland and Stewart: Toronto, 1979.

8. Aiken, Sharryn. "Of Gods and Monsters: National Security and Canadian Refugee Policy", (2001) 14:1 Revue québécoise de droit international, 8 – 36.

9. Aiken, 15.

10. House of Commons, 12504-5.

11. Aiken, 15.

12. Aiken.

13. In this context, as Sharryn Aiken reminded the Commission in her testimony, it must be stressed that, far from being new, abusive provisions such as those for secret trials have been in federal immigration law since 1872.

14. Aiken, 30.

15. David Matas. Closing the Doors: The Failure of Refugee Protection (Toronto: Summerhill Press, 1989), 33.

16. Constance Backhouse. Colour-coded : a legal history of racism in Canada, 1900-1950 (Toronto: University of Toronto Press, 1999).

17. Kinsman's book, *Whose National Security*, provides further details of this history.

18. CAIRCAN, "Presumption of Guilt: A National Survey of Security Visitations of Canadian Muslims". 2004.

19. The rights guide is available via the organization's website, www.caircan.ca.

20. The International Civil Liberties Monitoring Group (ICLMG) is a coalition of more than 50 NGOs in Canada which came together in response to the introduction of C-36 in 2001.

Chapter 2

Due process is not a lot to expect from a democracy…

IN THIS CHAPTER, the facts and submissions presented to the People's Commission on experiences with the security certificate process as well as other immigration security measures will be reviewed, with particular attention paid to the lack of due process in these legal schemes, the broad-ranging impact on the lives of those targetted, and the lack of recourse. Then, these flawed processes will be placed in the context of the practice of the Canadian security and intelligence apparatus. In this light, the lack of due process becomes increasingly troubling. The chapter will conclude with a summary of the positions taken by the witnesses on the lack of due process in this domain, canvassing the range of opinions on how to best correct the problems.

Security certificate proceedings

The concept of *due process of law* has been around for several centuries. It comprises a series of legal principles that aim to protect individuals from the arbitrary exercise of state power. The concept of due process includes two distinct and complementary elements: (1) a set of individual rights and freedoms within the legal system that are designed to protect individuals against repressive state action; and (2) the guarantee that the state will both enforce and respect these rights[1].

Due process of law is one of the principal elements of the liberal social contract: individuals are to recognize the existence and authority of the state, as well as its monopoly on the use of force, on the condition that the state respect the fundamental rights of individuals and ensure the equal and uniform application of those rights.

To protect individuals against the arbitrary exercise power by agents of the state, the following rights are supposed to be respected in the interaction of individuals with the legal system:

- the right to life, liberty and security;
- the right to silence (for a person accused of a crime) and the protection against self-incrimination;
- the right to be judges by an independent, impartial tribunal;
- the right (for a person accused of a crime) to know the facts alleged against oneself;
- the right to know the grounds of one's detention;
- the right to protection against torture;

- the right to be presumed innocent until proven guilty;
- the right to be freed, on a reasonable bail, prior to final judgment;
- the right not to be tried again once acquitted of a crime;
- the right to be tried without excessive delay.

In former Solicitor-General Warren Allmand's very succinctly expressed view, the set of measures and enforcement actors currently in place in Canada to respond to threats (CSIS, RCMP, Communication Security Establishment, *Emergency Preparedness Act* of 1988, etc.) are overly broad and violate human rights. In particular, the security certificate regime is in "serious contravention" of articles 7, 9, 10, 11 and 15 of the Charter[2].

As Allmand told the Commission[3], these articles are supposed to apply to everyone in Canada, not just citizens (also see Chapter 3). Indeed for Allmand, as for many others who testified at the Hearings, a fundamental problem with security certificates is discrimination:

> The difference is that security certificates only apply to non-citizens, to immigrants. In the case of a Canadian [...] they can't use the security certificate. They have to gather evidence, charge the person and bring them before a court and follow the usual procedures [...] The Charter of Rights and the equality provisions say, "everyone is equal before and under the law". It doesn't say "every Canadian" [...] the equality provisions apply to everyone! But what do we have with security certificates? Whereas Canadians who may be worse – who may really be guilty – they have to go before a Court. What we're suggesting is that the same provisions should apply with Canadians as with non-Canadians and section 15 on equality rights is respected. Also if you read the legal rights [articles 7 to 14 of the Charter]: it says "everyone", not "every Canadian", has the right to life, liberty and security of the person [...] Article 9 says "everyone" has the right not to be arbitrarily detained – massive violation under that article!

In Chapter 3 below, further criticism that important human rights bodies – such as the UN High Rights Committee – have made of Canada's security certificate process is examined.

The security certificate process – which is established under the *Immigration and Refugee Protection Act* (IRPA) - is set in motion when the Federal Minister of Citizenship and Immigration and the Solicitor-General of Canada, on the request of the Canadian Security Intelligence Service (CSIS), sign a certificate naming an individual as a threat to national security.

The certificate is then reviewed by a Federal Court judge in a process that has been widely criticized for failing to meet international standards for a fair trial. Some key criticisms of this process:

- the process applies only to those without citizenship in Canada;
- the standard of proof is "reasonable grounds to believe" - far lower than the criminal law standard of "beyond all reasonable doubt", and certainly low relative to what is at stake for the individual;
- the detainee and his lawyer are not given access to the information against him;
- closed hearings between the judge and the Ministers, excluding the individual and his lawyer ("ex parte"), can be held at any time;
- key terms (such as "national security", "terrorism" and "membership") are undefined;
- the standard of evidence is low, with hearsay and other questionable information admissable; and

- if the judge upholds the certificate, there is no appeal.

The certificate then becomes a deportation order.

A phenomenon that came to the attention of Commissioners after the Hearings is illuminating. This was the effort of Federal Court judges to organize self-training sessions on national security, intelligence, and counter-terrorism in order to deal with security certificate cases. The *Globe and Mail* reported in February 2006 that, in a speech in New York, Judge Simon Noël – who presides in the case of Adil Charkaoui – discussed the informal meetings that he had arranged for himself and other Federal Court judges to try to bring themselves up to speed on these issues. The meetings were arranged with CIA officials, U.S. government lawyers, a Canadian professor, and civil liberties groups. As the *Globe and Mail* reported:

> "We're trying to improve our ability to test the government's case as time goes by," Mr. Justice Simon Noel of Ottawa explained during a speech last month at a human-rights conference in New York.
>
> "It's absolutely clear that judges cannot become intelligence officers. [...] We have no intention of trying to become such officers," he said. "But that doesn't mean that we can't become quite well-informed."
>
> Judge Noel said he and his colleagues would be doing a "grave disservice" to Canada if they failed to become more intelligent about intelligence, given the complex issues they ponder[4].

That such training is considered necessary is revealing. It is difficult not to wonder how the men who have spent years in detention under security certificates view the fact that the men and women reviewing their cases have now found it necessary to try to become well-informed[5].

Testimony about security certificate process

The People's Commission heard from several witnesses about their experiences with the security certificate process. While reviewing their valuable testimony, it is important to remember that these high profile cases are just the tip of the iceberg. Sharryn Aiken estimated in her testimony that "hundreds of non-citizens are caught up in the web of immigration security measures", citing the examples of Suresh and another of her clients, both of whom are still suffering the brutal impact of security certificates and similar measures.

Ahmad Jaballah testified about the experiences of his father. Mahmoud Jaballah was first arrested and detained under a security certificate in May 1999. In November 1999, that security certificate was deemed unreasonable and was quashed, which led to his release. However, Mahmoud Jaballah was arrested again in August 2001, under a second security certificate, and has been in prison ever since. Ahmad Jaballah testified that CSIS had admitted in court that they had no new evidence since the first certificate was quashed in 1999, and that they merely had a "new interpretation" of the evidence on which the first certificate was issued. That second certificate was also thrown out – this time on procedural grounds – but the government immediately issued a third, under which Jaballah is currently detained. Ahmad Jaballah expressed his feelings about the injustice of a system in which, no matter how many times the certificate is quashed, one's name is never cleared, and the government is always entitled to issue yet another security certificate.

Mathew Behrens, who has worked closely with the families of the security certificate victims in Toronto in their campaigns against security certificates, exposed the astonishing weakness of the cases against the security certificate detainees. Behrens stressed that Canadian immigration law explicitly permits the use of *any* information in security certificate cases – including hearsay and newspaper articles – and that Canadian intelligence agencies had taken full advantage of this clause; at the same time, deploying the secrecy provisions to hide the flimsiness of their case.

Behrens told the Commission how, in the case of Jaballah's second security certificate, after admitting that they had no new evidence, CSIS eventually did come up with what they presented as new information. This consisted of one newspaper article, rife with evident inaccuracies, published in Egypt. When questionned in court about the quality and freedom of press in Egypt relative to this article, the CSIS witness had nothing to say.

Behrens then provided information to the Commission about a "photo book" that the RCMP had presented as evidence against Almrei. It consisted of photos that had been downloaded from Almrei's computer, of Bin Laden, of machine guns, and so on. When the computer was returned to Almrei's friends, they discovered that the photos had been selectively chosen from the web browser's photo cache, having accumulated there automatically when Almrei had browsed news websites – as everyone did – after September 11th, 2001. Behrens testified that photos of angels weeping over the ruins of the twin towers, soft porn images, weight loss ads and other less suspicious pictures which were also in the cache had been omitted from the compilation of pictures presented to the judge. Almrei asked to cross-examine the RCMP officer who had compiled the "book", but this was not granted.

Behrens also explained how Almrei's admission that he once worked selling honey from a stand in Saudi Arabia was presented as further evidence of his guilt. To substantiate this assertion, the government produced a New York Times article in which a link between Al Qaeda fund-raising and honey production was investigated. A second piece of evidence was a BBC report on the same subject, which turned out to be based on the original New York Times piece. A CBC report, also based on the original article, was presented as a third piece of evidence.

Behrens told the Commission that these examples simply illustrate the way in which evidence is put together in these cases: selectively and through decontextualization in order to corroborate pre-existing theories about a person whose "guilt" has been pre-established by racial profiling. He quoted Jean-Luc Marchesand, a former CSIS officer who testified in Harkat's case, as saying that if CSIS has one piece of evidence that might make an individual look guilty, and one hundred pieces of evidence that make them look innocent, it will stick to the one piece of evidence that corroborates its theory. Behrens also stated that the Security Intelligence Review Commission (SIRC), which publishes annual reviews of CSIS, has consistently criticized CSIS for producing exaggerated threat assessments, for withholding information that undermines their theory, for getting facts wrong, and for substituting feelings and ideological approaches for facts. (Further information about CSIS practices is examined later in this chapter.)

Finally, Behrens brought the Commission's attention to a confidential memo obtained by the Arar commission, in which it is frankly admitted that "the evidence against [Almrei] does not meet the threshold for criminal charges to be laid against him in Canada[6]".

Adil Charkaoui's testimony described a similar experience of the security certificate process. He told the Commission how 400 pages of "evidence" had been divulged after his arrest under a security certificate in 2003. These files contained all sorts of information – from a biography of Bin Laden, to a report on weapons of mass destruction in Iraq, to speeches by Saddam Hussein – but included only a few dozen pages of very general information pertaining to Charkaoui himself – that he had travelled, that he was a karate expert, that he was a university student, and so on.

During his almost two years of detention, Charkaoui and his lawyers sought, on several occasions, to cross-examine three high profile individuals whose names had been divulged – *very* publicly – as having provided information against him. The right to cross-examine these individuals was not granted; finally, it emerged that no affadavits from the individuals concerned existed. Any information that they may have provided was, at best, hearsay. At worst, it was produced through torture, as will be seen later in this chapter.

Without access to the case against him, it is impossible for Charkaoui and his counsel to adequately defend himself.

Other immigration security measures

Me. Johanne Doyon, an immigration lawyer and legal counsel for Adil Charkaoui and Sogi Bachan Singh, drew the Commission's attention to the fact that government authorities don't even need to invoke the increasingly high-profile security certificate procedure in order to use secret evidence and ex parte hearings in many immigration procedures.

Section 86 of the *Immigration and Refugee Protection Act*, which came into effect in 2002, provides that the Minister of Immigration can apply for ex parte hearings and use secret evidence in a wide variety of instances before the various sections of the Immigration and Refugee Board. This means that secret evidence and ex parte hearings are used not only at the Federal Court in security certificate proceedings, but also before administrative tribunals in other types of cases such as detention reviews, appeals and admissibility hearings. In these proceedings, section 86 renders the very same provisions that govern the security certificate process applicable.

Doyon knows, from informal sources, of about ten cases – other than security certificate cases – in which secret evidence and ex parte hearings are being used. She highlighted the case of her client, Bachan Sogi Singh, who has been held in prison in Montreal on secret evidence since 2002. Rather than using a security certificate, the Minister invoked section 86 in Sogi's detention reviews and his admissibility hearing to introduce secret evidence and ex parte hearings into the process. Moreover, on the basis of the same secret evidence, the Minister has taken the position that he is not eligible for protection against deportation to torture, despite Immigration Canada's assessment in 2003 – reconfirmed in 2005 – that he is at risk of torture if deported. Since August 2002, the only evidence disclosed to Sogi and his lawyers has been a three paragraph summary of the Minister's allegations; it says, essentially, that the Minister believes he is not who he says he is, that he is a member of the Babbar Khalsa, and that he is a threat to national security. Thus not only has Sogi lost his Geneva Convention rights to asylum, but he has also lost his freedom indefinitely and is being held under a threat of deportation to torture – all on the basis of secret evidence[7].

Doyon said that, legally speaking, the major difference between security certificate cases and cases like Sogi Singh's, where the government has chosen not to use a security certificate, is the amount of power the court is given to quash the case. Whereas in Sogi's case, the government has to show that their case is valid; in the case of security certificates, the government only has to show that it is reasonable. According to Doyon, this means that security certificate cases are pretty much lost in advance; the judge's jurisdiction is severely restricted. Other than this main difference, Doyon said that Sogi is in the same position as security certificate detainees of being unable to defend himself because of the lack of access to the information against him.

Doyon believes that there are two principal reasons the government might chose to use a security certificate rather than section 86. The first is that the security certificate gives the government a better chance of winning its case, since it is almost impossible to quash a certificate. The second is purely political: the security certificate is a public process (that is, it goes through the Federal Courts) and the publicity may have important political utility, such as showing the US and other governments that Canada is "taking care of terrorism".

Doyon concluded that the system of secrecy, in which security checks take place from the moment someone asks for asylum, leads to "extraordinary injustices". People who are struggling to change their country and thus become targetted by their *own* government and in need of asylum may be denied protection by Canada on the basis of evidence provided by their own government's intelligence forces! Moreoever, the asylum-seeker is not able to challenge the evidence because it is secret.

Janet Dench, of the Canadian Council for Refugees (CCR), provided an overview of non-security certificate immigration security measures, and the problems they raise. She highlighted, in particular, the overly broad construal of 'terrorism' and security inadmissibility, which not only leads to arbitrary and inequitable applications of the law, but also renders individuals who pose no threat whatsoever inadmissible to Canada on 'security' grounds[8]. Some of Dench's central criticisms of the security measures in current Canadian immigration legislation can be summarized as follows:

- The provisions in immigration legislation violate the fundamental principle of **non-discrimination**, penalizing immigrants and refugees, most of whom are racialized persons, for actions or associations that are not illegal for citizens and subjecting them to processes that are not permitted for citizens. An example of the discriminatory approach: "terrorism" was defined in the new *Anti-Terrorism Act*, which applies to citizens, yet continues to be undefined in the *Immigration and Refugee Protection Act*. This discriminatory treatment cannot be justified on the basis of security concerns. Persons who represent a security threat can be citizens just as well as non-citizens. If the immigration measures were indeed necessary to protect security they would need to apply to citizens as well.
- The heart of the problem lies in the **definition** of security inadmissibility. Despite the grave consequences of security inadmissibility (denial of right of appeal, denial of the right to have a refugee hearing, denial of the right to be considered at all according to the refugee definition, denial of the right to refugee protection even if you are found to be at risk of torture), the definition is so broad that it captures many people who may not represent – and may not even be claimed to represent – any kind of security threat. It includes not only people who engage in subversion by force of any government (which presumably covers the Bush administration), engage in terrorism (undefined), and are a danger to the security of Canada, but also people who

are "members" (undefined) of an organization that there are "reasonable grounds to believe" engages in any of these things. The government defends the lack of definition by pointing to the discretionary power of the Minister to intervene and declare someone admissable, but in practice this means unaccountability, lack of transparency and long delays.

- Another major problem is the **process** - or lack of process. Once a person is identified as of interest on security grounds, the person faces long delays and a lack of information, even if eventually they are found not to be security inadmissible. This is compounded by the fact that decisions are made by officers who may have no specialized knowledge or training on the issues and on the often-complex political context from which the person comes.

In Dench's view, some of the key problems in the application of security inadmissibility measures are: lack of accountability; lack of transparency; arbitrariness; racism; isolation, lack of communication and contact; and lack of sophistication of analysis or knowledge on the part of decision-makers.

Dieter Misgeld, married to Amparo Torres, who is currently ensnared in Canadian security inadmissibility proceedings, shared their experiences of the lack of due process that, in essence, defines those proceedings. His testimony poignantly illustrated some of the criticisms articulated by Janet Dench. Asked what it was like to attend hearings where secret evidence was being invoked, he replied that he does not know, because the hearings have twice been postponed and Torres is yet to have her "day in court[9]". There has been no disclosure of the case against Torres by CSIS or any other Canadian agency, and even the allegations against her are vague and have changed without explanation. In the original written claim, Torres was accused of "association" with the FARC (a Colombian revolutionary movement), but the representative of the Ministry of Immigration has variously appeared to claim that Torres was FARC, then that she was a "member" of FARC, and even that she was their representative in Canada. Torres has consistently replied that all of these allegations are entirely false; that she had been a member of the "Union Patriotica", a left wing political party in Colombia. UP was founded, more than two decades ago, on the basis of a peace agreement between the Colombian government and the insurgency, with FARC as its major group, which permitted FARC members and others to enter into the normal electoral political process. After the collapse of this peace agreement and a campaign of mass-murder carried out against the UP, FARC separated from the party and UP continued entirely independently. Today the UP no longer exists. However, in the absence of due process, making herself heard on this point may prove impossible for Torres, despite the presentation of well-documented, convincing evidence to support her defence.

Broader impact of immigration security measures

Several witnesses shared with the Commission their experiences of the effect of immigration security measures on their lives, their families and their communities. In the Commissioners' view, the issue of due process can only be properly evaluated in this context. In many cases, while due process would be most welcome, the damage of an abusive immigration security apparatus has already been done before an individual's rights to due process in his or her legal proceedings are at issue.

This issue is also touched on above in Chapter 1, in the section on racial profiling where Halima Mautbar of CAIR-CAN is cited as testifying about consequences such as the devastation of a business, job loss, as well as important intangibles such as stigmatization, shame and humiliation, while Sheikh

Ali Sbeiti about testified unexplained delays in immigration files, impediments to travel, humiliation and harassment, as well as uncertainty, frustration and widespread cynicism.

The case of the 24 Project Thread victims – summarized in Chapter 1 above – clearly illustrates the broad impact these measures can have on the individuals targetted, their families and friends, and the broader communities. Because of the detention, the men lost jobs in Canada, experienced social ostracization as former friends became too afraid to speak to them, and even experienced marriage break-down.

The role the media played in the Project Thread incident was significant. The mens' pictures and names were published as terrorist suspects not only across Canada, but also in Pakistan. As Mishra testified, this turned them from immigrants into refugees. Most disturbingly, despite the new risk they faced, several of them, while still in prison, were coerced by Immigration Canada authorities into signing a waiver to their right to have a pre-removal risk assessment (PRRA). They were told that they would get out of detention sooner if they signed; according to Mishra, they were *not* told that this was their only defence against deportation.

Mishra told the Commission that all but two of the men were eventually deported based on the fact that their student visas had expired with the closure of the school. One of the detainees, Fahim, was tricked by Immigration Canada into appearing for a hoax removal, and was instead detained and transferred to a detention facility in Montreal, in what Mishra believes was a clear effort to separate him from his support base in Toronto and to handicap the efforts to expose the injustices of Project Thread. In Pakistan, some of the men were arrested and interrogated on suspicion of terrorism, had their passports confiscated, at least one was attacked and beaten by vigilantes on the street, and some have experienced continuing difficulty finding employment, which they attribute to lingering suspicions hanging over them. The two who remained in Canada at the time of the Commission's Hearings were awaiting pending immigration decisions. Although Mishra believed that they were no longer under surveillance, he related that they had difficulties in getting work visas. Their lives had been devastated by the experience.

The community impact was also significant. Mishra reported that, despite knowledge that the allegations were baseless, former friends, acquaintances, and the broader community were too fearful to support them publicly. This fear was compounded by the practice of security agencies of visiting people whom the arrestees contacted for help while in prison. These friends were asked to provide information on the arrestees and on other members of the community[10].

Thus, the victims of Project Thread – direct and indirect – were denied due process not simply in virtue of Canadian immigration legislation, but also by the cavalier and irresponsible conduct of the RCMP, immigration officials and the corporate media.

Sophie Lamarche and Deiter Misgeld also highlighted the grave consequences of media coverage of immigration security suspicions. In the case of the latter, in 2005, the *National Post* published an article about Misgeld's wife Amparo Torres, which Misgeld believes was government spawned. In the article, the *Post* falsely quoted Torres as having said, in a talk in Ottawa in 1999, that the guerillas (FARC) were the only hope for Colombia, a statement she did not make. This false report was picked up by Colombian television which went on to identify Torres as a FARC spokesperson, a claim which

is also completely false. The report then appeared on CNN Spanish. The article put the lives of her family in Latin America in danger and caused her mother, who saw the report on CNN, great concern.

Sophie Lamarche told the Commission how a news outlet stated that a "large, suspicious box" had been delivered to her house prior to her husband's, Mohamed Harkat, arrest. Such a box had, in fact, been delivered, but it had contained a 32-inch television, Lamarche's anniversary present to her husband. Similarly, the *Citizen* published a totally fabricated allegation that Harkat had been "in possession of a gun" when arrested. On another occasion, an inexact comment that a sleepy Lamarche had made in an early morning interview was taken out of context and used by media to cast further suspicion on her husband. Lamarche also testified that the level of media attention was unbearable and, in the days following her husband's arrest, she was forced to leave her home as media from across the country parked outside her apartment, "filming her balcony and her windows".

Abdel Raouf Neifer testified that, although he was accepted as a political refugee in 1994, his immigration file has remained in limbo ever since. He has no idea why. Although he was twice interviewed by CSIS, he was informed that he had passed his security check. He described the terrible stress which this prolonged uncertainty has caused him. The worst concrete impact is that it has separated him from his mother, who remains in Tunisia. This has caused her a great deal of grief.

Similarly, Ahmad Jaballah told the Commission that, although he, his mother, and his three non-Canadian siblings were accepted as convention refugees in 2003 – around 8 years after their arrival in Canada – their application for Permanent Resident status has been frozen, presumably due to the situation of Ahmad Jaballah's father. (Further far-reaching consequences of immigration security measures specifically on security certificate detainees and their families is reviewed in Chapter 3 below.)

Another who testified about his personal experience was Boualem B. In 1999, without any evidence and without ever being interrogated or accused, Boualem was falsely accused of being involved in a militant Algerian organization associated with Osama bin Laden, the GIA. He found out about the allegations only when his name and photographs were published in newspapers across Canada, Europe and Algeria. He was never charged or even interrogated. The police later admitted their error, but Boualem remains without status and the experience has left a deep imprint. He is still troubled by the question of why the suspicions fell on him, but has not been able to find an answer. He still experiences fear, anxiety and has become very mistrustful.

Nouredine K., who fled the civil war in Algeria in the 90's, courageously shared his story with the Commission. Arriving in Canada after several years of being bounced around by European immigration systems, he was visited in October 2001 by the RCMP. The RCMP asked him about an individual who had lived in the same abandoned building in which Nouredine had found shelter while living in Italy. Nourredine testified that this individual, a devout Muslim, was someone that everyone knew; he was very well-known. So Nouredine told the RCMP that they should ask the Italians about him; since the individual in question had been accepted as a refugee in Italy, they would certainly have better information about him than Nouredine did. A few months later, Nouredine learned from his mother in Algeria that she had been visited by the Algerian police and questioned about Nouredine. It was clear to Nouredine that they were acting on information from Canadian authorities.

Nouredine's refugee hearing was subsequently twice postponed, and finally he was told to present himself for an interview with CSIS. He was not told that he had the right to bring a lawyer or friend, and so he went alone. He was again asked about the individual who had shared the abandoned building in Italy, but also about details of his personal life which Nouredine found offensive: what café do you go to, why aren't you married, why are you alone, why do you use a certain email address. Two months later, the RCMP again visited him, at home. This time Nouredine felt they were being accusatory, asking him if he had been to this country or another country, showing him photos of people. After this, the RCMP closed his file. Nouredine eventually had his hearing, but was denied refugee protection in 2004. The delays caused by CSIS and the RCMP rendered Norredine ineligible for the Special Procedures that were put in place for other refused Algerians in 2002.

Nouredine throughout was very active in trying to find answers and a solution to the problem; the steps he took are reviewed in the section on recourse below. Nouredine told the Commission that he felt as though his image had been sullied. He took pride in the fact that he was very "clean" when he left Algeria, and this damage to his reputation concerns him greatly. He also confided that he was afraid to be sent back to Algeria with this cloud hanging over his head, and he asked why Canada had put him in such a position: engaging the Algerian state on the issue and then moving on without an apology or anything he could show to protect himself or clear his name.

In general, testimonies heard by the Commission revealed the impact on those under suspicion, how families and lives are affected long after official suspicions are dropped; the personal costs and long-term psychological damage, isolation, fear, as well as the sense of helplessness felt by those under suspicion, who fear that complaints will only bring on more abuse.

A pattern of incompetence and abuse by Canadian intelligence agencies

To understand the depth of the problem, it is important to look at the pattern of abuse and ineptitude of intelligence agencies in Canada.

Warren Allmand, who, as former Solicitor General of Canada (1972 to 1976), had direct experience with deficient intelligence, demonstrated the fallibility and excesses of Canadian intelligence agencies. Allmand told the Commission: "Part of my responsibilities as Solicitor General was to approve requests for electronic eavesdropping, wire taps, covert surveillance and from time to time I came across serious mistakes [...]"

Allmand went on to provide anecdotal evidence about situations where he was able to question the integrity of the rationale for surveillance only because he or another Minister happened to be personally acquainted with the proposed targets. In one such case, he looked into how the individual had fallen under suspicion and found it be based on hearsay – pieced together gossip from neighbours – and on profiling based on ideology and sexual orientation. He also described the general problem of being presented with information from one party, the security agency, and having no way to properly examine the information or the basis of the agency's suspicions. In a revealing insight into that world, Allmand confided that he had found himself to be in a difficult position, but was reluctant to say no to the security agents in case the person did turn out to be someone who would "blow up a hospital or put poison in the water system".

A woman who came forward to testify during the Hearings told the story of how she and two other women had been targetted by the RCMP in the late 1970s. All three were militants in the same leftist political group. She described how she and her two friends had deliberately sought non-traditional work for women. They found jobs at Pratt and Whitney in Quebec. Three months after they began their work, they were all laid off, even though they worked in different departments. They were told that it was a general lay off due to personnel surplus, but found out that they alone had been fired from the company. They found new work, this time working at two different companies: Canadian Marconi and Canadair. Two months into the job, all three were once again laid off "due to a personnel surplus". The Human Rights Commission agreed to do an investigation. Through this process, they found out that the RCMP had approached the companies and informed their bosses that the women were political militants. They fought through the courts for five years, an enormously costly effort, but did not succeed in getting their jobs back. The woman testified that she found out afterwards that hundreds of other people had been targetted in a similar way in the 1970's, but had decided to remain silent instead of fighting back.

Professor Sharryn Aiken drew the Commission's attention to the 1981 report of the McDonald Commission (Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police), which had been set up in 1977 to investigate very serious abuses and illegal activities by the RCMP in the 1970s. In the report, Justice McDonald argued that any effort to reconcile security with democracy must reflect the fact that democracy itself is a means to security; in this light, he recommended a number of reforms to Canadian security measures. Many of the proposed reforms were never implemented, and Aiken believes the effects of that failure are now evident. The report was largely responsible for the creation of CSIS.

Evert Hoogers, of the Canadian Union of Postal Workers (CUPW), discussed the spy activities of Canadian security services on his union from the 1960's to the present, a period which spans the transition from the RCMP to CSIS. He said that the records obtained on RCMP surveillance from 1965 to 1984 (when CSIS was founded), showed that the union was under constant surveillance, which went well beyond an interest in the union's strike activities, but extended to daily activities. Hoogers explained that the RCMP's starting assumption was that "revolutionary elements, radical factions, and communist factions" dominated the unions's agenda. It was clear from the documents obtained that the post office bosses were not only fully aware of the RCMP's activities, but were supportive of the agency spying on its workforce. Hoogers believes that 'national security' is tied directly to the control of workers, and maintaining capitalist power relations.

Hoogers said that CSIS is more secretive and that it has been more difficult to get records of surveillance since the agency was formed in 1984. Nevertheless, CUPW learned that, in the late 80's and throughout the 90's, during a particularly bitter labour dispute, CSIS had infiltrators working within the postal system. They collected information on labour activists which included addresses, schools of children, credit checks, marriages and divorces. Union activists had their mail intercepted, their garbage sorted through, and their cars broken into by CSIS agents[11].

Many witnesses testified about contemporary experiences with Canadian intelligence. Halima Mautbar provided information about the abuses committed by CSIS in its surveillance of the Arab and Muslim communities in Canada. A 2004 survey conducted by her organization CAIRCAN, revealed some of the unethical practices employed by Canadian security agencies: warning people not

to contact advocacy groups, discouraging them from legal representation, using threats and coercion to force individuals to speak and to become informants, and improperly identifying themselves. The survey results recorded that agents referred to their powers under the *Anti-Terrorism Act* in order to intimidate those subject to interrogations. In this context of coercion, it is little surprise that 90% of those who responded to the CAIRCAN survey cooperated with CSIS, despite their legitimate right to remain silent and despite inappropriate questions (see also Chapter 1 above).

Ahmad Jaballah testified at the Public Hearings via teleconference call about CSIS harassment of his father, beginning in 1998. CSIS agents presented themselves at the family's apartment in 1998 and 1999. They came three times, always very late at night, past midnight, and interrogated Mahmoud Jaballah for 2 to 3 hours. During the third interrogation, Ahmad surreptitiously tape-recorded the interrogation as a safety precaution for the family, who were disturbed and worried by the visits. Ahmad thus recorded CSIS's threats to deport Mahmoud Jaballah to Egypt if he refused to cooperate, "[...] I had to witness the agent threatening my dad in these very words: That if my dad wouldn't cooperate with CSIS and spy on his community, on local mosques and so on, and do as they tell him to do, then he will be arrested and sent back home to Egypt." Ahmad Jaballah said this cassette later played a central role in the quashing of the first security certificate issued against his father. Later in the same interview, the CSIS translator fell asleep and Ahmad Jaballah, who was 12 years old at the time, was forced to translate. Ahmad Jaballah believes that his father is being punished for having refused to become an informer for CSIS and for having exposed them with the tape recording.

Ahmad Jaballah also testified that people in the Muslim community in Toronto and Scarborough have been afraid to speak up and support his family, "CSIS has had the Arab community and the Muslim community especially under this umbrella of fear in which every one of them thinks that, if I speak up, then I will be the next target." He related how CSIS had visited his family's acquaintances after his father was arrested.

In his testimony to the Commission, Behrens related how the use of 60 armed RCMP officers, with machine guns and bullet-proof jackets, at Mohammad Mahjoub's first bail hearing contributed to the climate of fear around Mahjoub. Behrens believes this was a deliberate attempt to communicate to the judge, to the people offering bail, to the media, and to the general public that Mahjoub was far too dangerous to release.

Behrens also explained how one of the individuals who came forward to offer bail to a security certificate detainee in Toronto, an Egyptian man, was arrested on a visit to Egypt. He was held for three days, and eventually released. According to Behrens, he was told by Egyptian security forces that he should not get involved in offering bail for the security certificate detainees in Canada and that they had nothing against him, but were acting as a favour to CSIS.

In a similar vein, Abdel Raouf Neifer told the Commission that, although he can't prove it in detail, he has no doubt that there is collaboration between Tunisian and Canadian security agencies. Neifer was questioned by Canadian intelligence twice; they had details of his life in Tunisia which he believes can only have been furnished by Tunisian intelligence. The sharing of information appears to have also gone in the other direction, just as in the case of Nourredine K (reviewed above). To Neifer this cooperation between Canada, which he described as a democratic country which respects liberty, and Tunisia, which he considers to be a dictatorship, remains a real paradox.

Such collaboration between Canadian security and intelligence agencies and their foreign counterparts, when it involves the sharing of information about immigrants and refugees in Canada, not only violates rights to confidentiality, but also places family members or the individuals themselves at risk if they are later deported. Behrens told the Commission that family members of the Jaballahs and the Mahjoubs had been harassed and even arrested in Egypt due to the situation in Canada.

Another frightening aspect of these dangerous liaisons was brought to light in Denis Barrette's testimony, who discussed the revelation that CSIS travelled back and forth to Syria during the period in which Mahar Arar and other Canadian citizens were being detained and tortured in Syria. (The "extraordinary rendition" – state kidnap and torture – of Arar and others is examined further in Chapter 4 below.) The Arar commission's report discussed how information that CSIS obtained from Syrian authorities during these trips was passed on to other Canadian authorities.

In both Charkaoui and Harkat's cases, CSIS introduced information allegedly provided by someone known as "Abu Zubaydah". Kidnapped in 2002 in Pakistan by the Americans, Abu Zubaydah is often used as an example of someone who has been tortured in one of the United States' notorious secret prisons. According to a book by Ron Suskind, *The One Percent Empire*, for example: "They strapped Abu Zubaydah to a water-board, which reproduces the agony of drowning. They threatened him with certain death. They withheld medication. They bombarded him with deafening noise and harsh lights, depriving him of sleep. Under that duress, he began to speak of plots of every variety [...]" While it is impossible for the Commission to judge the verity or genesis of such reports, it is obviously of concern that CSIS relies on information from such morally and factually dubious sources.

According to a report by the Security Intelligence Review Committee (SIRC) released in October 2005, CSIS has been giving false assurances to the government that it can guarantee the intelligence it receives from foreign agencies is not obtained by torture. In fact, it "is rarely in a position to determine how information that went to a foreign agency is used, or how information it receives was obtained."

Suleyman Goven came forward to testify about his epic struggle against CSIS. Goven, a Kurdish man born in Turkey, arrived in Toronto in 1991. He was accepted as a refugee shortly afterwards. He opened a Kurdish cultural centre which acted as a support base for other recently arrived refugees. In Goven's words:

> For the first three years, I found physical safety, hope, and protection. However, all that changed dramatially after I was interrogated by CSIS in 1994. CSIS misinterpreted my law-abiding, legitimate activities to provide a place for the Kurdish community. Since then, harassment, intimidation and threats have become part of my life.

Goven's 1994 'interview' lasted seven hours, during which time he was not given food. He was threatened and asked to become an informer in exchange for landed status. At the end of the interview, Goven informed the CSIS interrogators that he saw no difference between them and Turkish interrogators, except physical torture. Goven related how his phone was tapped, he was followed and, in a failed coup de grace, a forged document against him was introduced into his refugee file. Goven eventually filed an official complaint with SIRC. His apartment was broken into and some belongings stolen; just before he was due to testify in front of SIRC, his briefcase was stolen.

Many Kurds and some Turks were asked about Goven, pressured to inform against him. Goven related this practice to the "village guard" system in Turkey, where Kurds were used against each other by the Turkish government. He also saw this as parallel to the way in which indigenous police are used against indigenous communities by the Canadian government.

During SIRC's review of Goven's case, it transpired that informers had indeed provided evidence against Goven. Goven believes that they were either paid or were offered landed status in exchange for statements against him. CSIS also seriously misrepresented what Goven had said in his 1994 interview. SIRC eventually confirmed that a forgery had been used against Goven; they stated that Goven was not a member of a terrorist organization and recommended that Goven be given his status immediately. However, Goven was refused his landed status in 2001, and though he won on a judicial review of that decision, his case has been "hung" ever since[12]. He described living in this limbo as being a second-class citizen and as having a sword of damocles hanging over his head, of living in a constant state of insecurity. He cannot travel, family members abroad have been refused visas to visit him, and hasn't been able to get meaningful work. Goven believes that CSIS targets community leaders in order to suppress communities.

Dieter Misgeld, Amparo's Torres' husband, had harsh words not only for CSIS "dirty tricks" but also for their incompetence. A researcher himself, he alluded to the agency's inexcusably poor facility in Spanish, stating that the product of CSIS work is shameful for Canada and could scarcely be called "intelligence[13]".

In a similar vein, Christian Legeais, Matthew Behrens and Adil Charkaoui questionned the competence of CSIS officers who had appeared in security certificate hearings. Charkaoui related how "Jean-Paul", the head of CSIS's Sunni Islamic Anti-Terrorist section, admitted in court that he could not speak Arabic and that he had never read the Koran. In Charkaoui's view, these are elementary necessities for someone in Jean-Paul's position to understand his work.

Behrens and Legeais both drew the Commission's attention to a short document thought to have been prepared by a CSIS agent who testified in several of the security certificate cases and identified himself only as "JP". The thesis of this embarassing paper, strongly racist in its assumptions, is that the "violent beliefs of Islamic extremists will not fade with time, rendering these individuals threats to public safety for years to come". Behrens showed how JP's work drew on a *Washington Post* article about former Guantanamo Bay detainees having rejoined fighting in Afghanistan after their release. JP's article used a misleadingly partial quote from the *Washington Post* – which it failed to cite as a source – as an argument in favour of continuing the indefinite detention of the security certificate detainees[14].

Sophie Lamarche, in her testimony, told the Commission that neither the RCMP nor CSIS had ever questionned her before or after her husband's arrest, nor did they search the couple's apartment or computer.

Jaggi Singh provided important information about the experiences of "anti-globalization" activists with the Canadian security apparatus. Singh was active in organizing popular protests against a meeting of the inter-governmental Asia Pacific Economic Cooperation (APEC) held in Vancouver ten years ago. Police abuse created a scandal, leading to an official RCMP Public Complaints Commission APEC Inquiry ("APEC Inquiry"). Singh described how documents he had obtained through this

process revealed that 59 groups had been monitored by a joint security operation called "Operation Mandible" in the lead up to the protests. The targetted groups included the Raging Grannies and the BC Teachers' Federation. Singh noted that CSIS had identified two "terrorist" threats vis-à-vis the APEC summit: FRETILIN (Revolutionary Front for an Independent East Timor; i.e. the East Timor resistance to the Indonesian occupation) and the Zapatistas, both very far from what might ever be considered "terrorist" groups. Singh believes that CSIS' preoccupation with these two movements had more to do with the fact that many people in Vancouver were organizing in support of these struggles at the time. Similarly, the Vancouver Police Department (VPD)'s "Terrorist Extremist Section" targetted the East Timor Alert Network (ETAN), a volunteer solidarity and public education group, and APEC Alert, a student group organizing against the summit. Singh also noted the level of surveillance; showing the Commission a photo sheet of key organizers which had been distributed to police before the protests. Singh highlighted the fact that all but one of the individuals whose pictures appeared on the photo-sheet had never even been arrested. Singh himself was arrested a day prior to the protests, nabbed off campus in an obvious effort to undermine the protests. Of the documents that Singh obtained through the inquiry, he noted that the CSIS documents were the most secretive – in some cases entire pages had been blacked out.

Singh also summarized a more recent case, in which a group of young students and workers in Québec City, who called themselves Germinal, were infiltrated by police prior to anti-globalisation protests of the Summit of the Americas in Quebec city in 2001. Police acted as "agents provocateurs", inciting the group to an escalated level of action. Seven members of the group were arrested one day before the mass rally, amidst wild allegations of a "terrorist threat". The most serious charges were eventually dropped, and in the end, none of the arrestees were sentenced to any prison time.

Alex Popovic, an activist and researcher with the Coalition Opposed to Police Brutality (COBP), went so far as to suggest that CSIS, in its infiltration of other organizations, including labour movements, where it played the role of "agent provacateur", had itself become "the most significant and most dangerous terrorist organization in Canada", and one which moreover benefits from the protection of the Canadian government.

To back up this claim, Popovic presented the Commissioners with four case-studies of CSIS informers or agents that support the conclusion that CSIS has been responsible for creating major threats to public security in Canada. He presented the case of Marc-André Boivin, who infiltrated the CSN for 15 years first for the RCMP and then for CSIS, and was involved in making bomb threats during a hotel strike. Then there was Brad Bristol who, between 1989 and 1994, co-founded and ran the white supremacist Heritage Front. According to Popovic, during that time, Bristol coordinated a harassment campaign against anti-racist activists, was responsible for a number of physical attacks in Toronto and the desecration of a synagogue, as well as for training members of the group how to use false names. His third example was the CSIS informer who, using the alias Yusuf Moammar, became very active in the Muslim community in Montreal and either founded or joined the boards of numerous community organizations. He was apparently responsible for sending death threats to a French counter-terrorism judge. The RCMP was forced to inform the French authorities, who were investigating Moammar, that their suspect was on the CSIS payroll. Finally, Popovic cited the case of Singh Gill, a CSIS informant who infiltrated the Babar Khalsa (a militant Sikh organization), and was one of the RCMP's top six suspects in the Air India bombing. According to Popovic, although a judge in British Columbia acknowledged that Gill was involved, he left the country and was never arrested.

With this background about the role Canadian security and intelligence agencies have played, the Commission was able to better understand the situation of those targeted by immigration security measures. This testimony also gave the Commission additional reason to be critical of the lack of due process in immigration security measures, as those legal processes place a significant amount of discretionary power in the hands of these same security and intelligence agencies.

Lack of recourse

The Commission heard testimony that those affected by immigration security measures have been effectively discouraged from reporting violations, instances of racial profiling, abuses, harassment, surveillance, or other issues out of fear of being further targeted. Several witnesses offered their criticisms of the current mechanisms in place to control and review CSIS and other security establishment activities and shared their experiences in seeking redress to the injustices they had suffered.

Ali Sbeiti, whose testimony is summarized in Chapter 1, highlighted one central problem: when people are interrogated by CSIS, they are told not to talk to anyone about the encounter. So, nobody talks about what happens to them, and everyone feels isolated and alone against CSIS: "We'll be five persons in one room, and each one is hiding what is happening to him from the others." Sbeiti himself made a formal complaint to CSIS. They did not respond but passed on his complaint to the RCMP, who responded by saying that they did not know why he was on the list, that there was nothing on his file. They suggested that perhaps there had been a confusion with someone else with the same family name. However, Sbeiti does not accept this, because he is the only person in his family who has had these problems. Then he addressed a letter to airport authorities, and got no response. He also brought up his concerns at a community meeting with CSIS, who said they would get back to him, but never did. Sbeiti noted that although the community has documented some incidents of harassment themselves, most are unwilling to go public as they believe they will just get their names in the media with no positive results.

Halima Mautbar similarly testified that people are too afraid to come forward to tell their stories of harassment and abuse – afraid of being publicly labeled as terrorists, afraid of putting their families abroad at risk. She testified that in five years of addressing the problem of racial profiling, her organization had only come across one person willing to go public with his story. She noted the particularly vulnerable position of immigrants and refugees when confronted by security officials who have a great deal of power, and can prevent people from obtaining residency, or even refugee status. People are fully aware that if they do not acquiesce quietly they could face very serious consequences. No one wants to be "Arared" or to have a security certificate unleashed against them.

As noted above in this chapter, Suleyman Goven actually did make use of the official recourse mechanism. He filed a complaint before SIRC in 1998 after CSIS introduced a forged document into his refugee file. In April 2000, he had a positive ruling from SIRC. However, the finding did not appear to have an appreciable impact on CSIS's behaviour: Goven explained that even after the SIRC finding, a Kurdish refugee was interrogated on arrival about Goven. CSIS pressured the new arrival to make a statement against Goven, to say that he was a member of the PKK. Goven noted that this incident happened after SIRC had written a report in which they called on CSIS to stop demanding that people provide information against others in their community. Moreover, despite SIRC's recommendation that Goven be immediately granted landed status, Goven was refused in 2001, and though he

then won on a legal review, he was still waiting for his papers as of April 2006. In yet another step in his battle, Goven launched a civil suit against CSIS in 2005. A hearing was scheduled for May 2006.

Nouredine, whose testimony to the Commission is summarized above in this chapter, spoke about his various attempts to find answers and to resolve his situation. After his first interview with CSIS, he filed an Access to Information request to get a transcript of his interview with CSIS. When he got the response, he found that all the important details had been blacked out. He did the same after the second interview with the RCMP, but this time they said there was nothing to give him; it was as though the interview had never taken place. He felt that this stymied his efforts to address the situation since he had no proof of what had taken place in these interviews. Nouredine has attempted to contact various members of the Canadian government, including the Minister of Justice and the Solicitor General, trying to understand what happened to him, and to find a remedy. Thus far, the replies have been insufficient. Nouredine pointed out that it is not easy to challenge the system, especially for someone who doesn't have the money to hire a lawyer.

Gary Kinsman was asked by the Commissioners about the effectiveness of the complaint mechanisms. He believes that such mechanisms produce few results, and that they are in many ways designed to defend CSIS and the RCMP from criticism. He pointed to the example of the complaint made by MP Svend Robinson after the Summit of the Americas in 2001, where the commission of inquiry, while condemning what happened to Robinson, endorsed the general policing tactics during the Summit. The mechanisms, according to Kinsman, are not designed to bring justice for victims of harassment.

Recommendations for reform and alternatives

A range of suggestions on alternatives and solutions to the existing legal framework were put forward by the witnesses. These will be canvassed in turn before proceeding to suggestions beyond the legal framework.

Professor Sharryn Aiken presented the two alternatives to the current security certificate process that she was planning to argue to the Supreme Court: first, prosecutions under the criminal code; second, a model she is calling the 'special advocate plus', which she proposes as a reform to current immigration law.

Her arguments are structured to respond to a particular legal paradigm. Pursuant to article 1 of the Canadian Charter, violations of Charter rights are allowed provided that they are "demonstrably justifiable in a free and democratic society". In the Supreme Court's previous interpretations of this provision, one of the criteria that the government must prove if they are to rely on section 1 is that there are no alternatives to the laws they are defending that could achieve the same goals but with lesser infringements on Charter rights. Therefore, Aiken is seeking alternatives to the security certificate process that could achieve the same results with less infringement on Charter rights. She acknowledges that the solutions she offers are far from ideal, but is resigned to pragmatism.

Thus, the first alternative she offers is the invocation of criminal law. With the amendments brought by the *Anti-Terrorism Act*, we now have a criminal code "more than equipped" to deal with terrorism, as Aiken put it. In Aiken's view, there is no justification for affording non-citizens second

class justice and our Charter should guarantee non-citizens the same due process that is given to citizens. She argues that where there is evidence of wrong-doing, prosecution should take place in the open, in criminal courts.

However, Aiken acknowledged that, especially with the Anti-Terrorism Act amendments to the criminal code, there are serious problems with the criminal process as well, and argued, for example, that the word 'terrorism' should be struck from the Criminal Code, as it is too broad and an "invitation to abuse". Aiken noted that pre-existing terms, such as murder, conspiracy to murder, and aiding and abetting murder, were sufficient to define proscribed activities.

She also acknowledged that the problems with racial profiling and racist application of the law are not addressed directly by reliance on the Criminal Code, and that no amount of law reform can get at this systemic racism. In her view, however, the criminal code provides more effective means for challenging racial profiling and other abusive applications of the law, as compared to the legal forums for immigration security matters, since "all kinds of racism" is formally accepted in immigration law and by immigration officials.

The second alternative Aiken proposed is to change the immigration security framework. The heart of this proposal is the addition of a "special advocate", similar to the system now used in the UK. This special advocate is an independent lawyer who has access to the secret evidence that the government will not disclose to the individual in question, and whose role it would be to take a critical stance with respect to that evidence. This is a response to concerns that, in the current process, the government is allowed to present evidence to a Federal Court judge (or member of the IRB) in an entirely uncontested manner.

Aiken does not believe that the special advocate alone before the same single judge will respond to requirements of what is "demonstrably justifiable" in a "democratic society". Simply adding one person to a flawed procedure, especially because this person would be barred from communicating with the individual in question, would not be sufficient. Which is why she calls her alternative proposal the "special advocate plus"

In her proposal, the first instance of the security certificate would not be in Federal Court. She believes that the track record of SIRC, which handled security certificate reviews prior to 2002, is better than that of the Federal Court and that for matters of such importance, we need a specialized body. The Federal Court, whose judges are generalists, do not have the necessary experience in immigration (or security) matters. Thus, she proposes going back to the system in place for Permanent Residents before 2002, in which a specialized body had wide ranging investigative power, with the addition of a special advocate.

Finally, in her view, the mark of any just judicial system is that it provides for an appeal. Aiken noted that every person in Canada can appeal a parking ticket, but non-citizens cannot appeal a security certificate. Thus, in addition to a special advocate and the return to the security review committee, there must, in her view, be an appeal process.

Of the two alternatives she advances, she prefers reliance on the criminal law structure because of its higher degree of due process. In particular, she pointed to the following features in criminal law

that are absent from the present immigration security framework: the right of appeal, the right to challenge a lack of disclosure of the evidence, and the higher burden of proof on the government (proof of guilt "beyond a reasonable doubt" as opposed to "reasonable grounds to believe"). Aiken testified in this regard that she does not believe that any of the people who are currently under security certificates would be prosecutable under criminal law, guessing that the government's use of the security certificate option against them indicates that there is not sufficient evidence against any of them which would meet criminal law standards.

Adil Charkaoui dedicated his testimony to arguing against the proposal for adding a special advocate to the security certificate process. In his view, the special advocate cannot provide the basis for a full and fair defense. He drew the attention of the Commission to the example of Great Britain, where well-known special advocate Ian MacDonald resigned because he believed his role did no more than legitimize a draconian system.

Charkaoui also pointed out that, as things now stand, the special advocate would have to be approved by CSIS. Thus, CSIS would have the role not only of recommending the issuance of a certificate, selecting the evidence to provide to the government and court, screening the Federal Court judges and issuing security clearances to the judges who will hear the certificate cases, but also of doing the same for the government lawyers involved. Thus, he argued, the special advocate model gives even more power to CSIS.

Most persuasively, he used the example of his own case to argue that the special advocate would not increase his capacity to defend himself. The advocate cannot communicate with the person held under the security certificate, and thus would be severely handicapped in his or her ability to test the evidence. Charkaoui pointed out how the evidence that he has in fact managed to defend himself with would most likely not have been obtained by the special advocate: for example, a letter obtained in Morocco from one of the apparent informants in his case stating that he (the informant) had been under torture and blindfolded when he signed a confession allegedly implicating Charkaoui (this is detailed further in Chapter 4 below); or an arrest warrant for a theft that took place in Montreal for someone that CSIS claimed had seen Charkaoui in a training camp in Afghanistan *at the same time* the theft took place in Montreal.

For Charkaoui, the addition of a special advocate would do no more than provide legitimacy to an unfair system. A just process requires a public trial without secret evidence or ex parte hearings, a high standard of proof (beyond reasonable doubt), and no threat of deportation to torture. The only viable alternative to security certificates in Charkaoui's opinion is prosecution under criminal law (*not* the anti-terror legislation, where similar injustices are operative). Charkaoui believes criminal law offers the possibility of mounting a full defense and of being treated "not only as a citizen, but as a human being".

Alex Neve also criticized the special advocate model, arguing that we need a system that allows the detainee's *own* lawyer to have access to the evidence, though, in Neve's opinion, some limitations with respect to what the advocate can disclose to his or her client could be allowed. In Neve's view, the idea of a blanket ban on the detainee and his or her counsel's access to the evidence violates any notion of fair process.

For Neve, the road to security lies through strengthening human rights. Neve believes that in almost all cases, criminal law and not immigration law provides the appropriate forum for trying "terrorist" cases. With respect to the use of immigration measures as a means of seeking "security", Neve testified that, in his opinion, international law does not go so far as to say that it is impermissible to ever use immigration measures to address security concerns. But there are severe limitations on a government's ability to do so. In particular, if individuals are facing torture at the end of the process, immigration measures are not permissible. Moreover, in his view, if there is legitimate evidence that an individual does pose a threat, there is an obligation to undertake a justice process.

Matthew Behrens said that he believed, based on his experience with the cases in Toronto, that the introduction of the "special advocate" model would be a "real regression" since it would provide the same abusive, discriminatory system with legitimacy. He believes that the Conservative government will make use of this option in order to preserve the security certificate. He pointed out that the Criminal Code already covers all activities of concern, such as kidnapping and hijacking. Behrens argued that it is only racism and political interests which distinguish between "terrorist acts" and acts already defined in criminal law.

Warren Allmand called for the application of the rule of law, transparency and accountability to the entire spectrum of national security law, policy and operations. He recommended amending the security certificate process to introduce rules of due process and the application of all charter rights. He also wanted to see racial and religious profiling by national security agencies prohibited. In Allmand's view, there must be comprehensive oversight and review for all national security measures in Canada, and he asserted that the best way to deal with mistakes is to have an effective oversight body – he believes SIRC, which oversees CSIS, is the best Canada currently has – for all security and intelligence bodies. Allmand argued in favour of tighter legislation and suggested that intelligence agencies needed to be brought under tight mandates, have recruitment strategies aimed at people with a commitment to human rights, and effective, broad-based training programmes for their officials.

Johanne Doyon called for the complete abolition of security certificates and of all secret evidence and ex parte hearings in immigration proceedings: "We do not accept, in a system based on the rule of law and on fundamental principles of justice, ruling based on secret evidence. And we believe this is discrimination." She pointed out that Canadian citizens suspected of terrorist actions are not (legally) subjected to such abuses. Doyon also advocated fighting in the public realm, through campaigning and media attention to the injustices.

Christian Legeais, on behalf of the Justice for Mohamed Harkat Committee, also called for the abolition of security certificates, arguing that such undemocratic measures establish a hierarchy of rights in Canada and open the door to fascism.

Beyond the legal framework

Several of the witnesses offered strategies and proposals on how to respond to the threat posed by CSIS and the security establishment that went beyond reforms to the existing legal framework. Several of these ideas reflected a starting point that the targetting of certain communities is not accidental, but profoundly political in nature.

Stewart I., an immigration lawyer who participated in the hearings, expressed this view as follows: "I don't believe this is a problem of lack of sophistication of immigration officials at a low level; it is a matter of political will at a very high level. These measures are designed to keep a whole lot of people out, as in: 'we' don't want these 'coloured people' to come into 'our' country, asking questions that we really don't want to have raised... " Stewart asked, "What can we do – what other strategies can we take?"

Alex Popovic offered a drastic solution to the threat posed by CSIS. He recommended placing CSIS on the list of terrorist organizations (based on the incidents described above), and seizing all of its assets. These assets should be liquidated, and the money used to pay damages to those who have suffered from CSIS abuses and their families.

Goven issued a strong call for people to stand up, speak out, be vocal and unified in refusing to accept abuse. Goven compared the experience of the Toronto Kurdish community to the Montreal community. In Toronto, enough people stayed together and they eventually won their status. But in Montreal, the Kurdish centre was closed down, and there is an atmosphere of fear, because people have been terrorized by CSIS.

Charkaoui also related how his liberation had empowered other members of his community to stand up to CSIS bullying, and even to threaten CSIS with a public scandal if they persisted in their abuse. He then offered a practical proposal along the same lines: the creation of a non-governmental analog to SIRC. That is, a grass-roots or community-based organization devoted to overseeing and reporting on the activities of CSIS.

Jaggi Singh argued that what is needed is to promote a culture of solidarity among all of those groups that are marginalized and criminalized by the security establishment. He believes that it is of paramount importance to break the isolation of those facing the security apparatus and to break the invisibility of the process. He argued that, although civil suits and complaints processes may sometimes be useful tactics, it is important that they not be allowed to demobilise popular movements of resistance.

Evert Hoogers offered a similar prescription, arguing that, first and foremost, we need to stop being quiet about the problem and that we need to form common cause among workers, immigrants and indigenous people subject to the national security apparatus. Hoogers went on to cite as positive example a resolution passed by the Canadian Labour Congress (CLC) in 1996, to disband CSIS and re-allocate its resources to initiatives to investigate tax fraud on the part of corporations.

For Gary Kinsman as well, the key lies in moving beyond criticisms of the implementation of national security policy, and to begin asking more fundamental questions: Whose nation? What is security? What other forms of security should we be more concerned with? Thus, following his line of reasoning, the very existence of an entity such as CSIS, whose purpose is devoted to protecting national security, must be questioned.

Most profoundly, Mohawk Commissioner Kahentineta Horn questioned solutions which fail to recognize the basic injustice on which the Canadian state is predicated: the theft of indigenous lands and the genocide of indigenous peoples. She expressed scepticism about how useful it would be to

focus on improving training programmes, because, in a sense, racism against indigenous people *has* to be taught, so that people will be blind to the ongoing injustices on which the Canadian system relies. And if the Canadian people are systematically taught to turn aside in the case of indigenous people, and to believe that indigenous people who resist are terrorists and criminals, Kahentineta argued, then they can be told to do the same thing with all of the very important issues before the Commission: "If they can get away with it with us, then they can get away with it with everybody else." She called on people to band together to "straighten out" the situations of colonialism and violent oppression both within Canada and in the countries from which people who are now caught up in Canada's immigration security web have fled. Singh echoed this call, noting that immigrants must recognize the basic injustice on which Canada is founded in order to defeat the 'divide and rule' tactics which protect the racist foundations of its society.

Notes

1. For a summary of the legal framework of due process in Canadian law and in international law, see People's Commission website.

2. Annex A-3 includes excerpts from the Charter.

3. This was confirmed by the Supreme Court in *Singh c. ministre de l'Emploi et de l'Immigration*, [1985] 1 R.C.S. 177

4. *Globe and Mail*, 27 February 2006, "Judges tackling national security learning curve". The programme is also cited in a 10 December 2005 Federal Court decision in Charkaoui's case.

5. For the highly critical thoughts of another Federal Court judge, Judge Hugesson, on the security certificate process, see the People's Commission website.

6. "Action Memorandum" for the Minister of Foreign Affairs, re "DFAIT position and support for removal from Canada to Syria of Syrian National [Hassan Almrei]", 21 November 2003, by K. Porter, Human Rights, Humanitarian Affairs and International Women's Equality Division. Available on the website of the Commission.

7. Sogi was deported on 1 July 2006.

8. See the critique of the definition in Dench's written submission, on the People's Commission website.

9. Since the Commission's Hearings, Amparo Torres has had several hearings before the IRB, the last of which took place in fall 2006. During the hearings, most of the questions referred, not to activities in Canada, but to Torres' political and trade union organiser activities in Colombia before 1996; that is, before she had ever come to Canada.

10. This practice is not limited to Canadian intelligence. Charkaoui, in his testimony, shared how he had been kidnapped from a plane at gunpoint by FBI agents during a stop-over at JFK airport in the United States in January 2001. In the course of the interrogation that followed, Charkaoui was provided with a blank paper and pen and asked to brainstorm a list of names to share with the FBI.

11. Hooger's detailed and informative written submissions are available on the People's Commission website. A book by Andrew Mitrovica, *Covert Entry: Spies, Lies and Crimes Inside Canada's Secret Service*, delves into CSIS surveillance of CUPW organizers in the 90's.

12. Goven was finally granted Permanent Resident status in September 2006, more than 13 years after he applied.

13. Misgeld noted in a communication after the People's Commission Hearings that Torres had subsequently had several hearings before the IRB in which the immigration officials appeared to rely on CSIS reports without question, no matter how distorted those reports were.

14. "Islamic Extremists and Detention: How Long Does the Threat Last?", 24 June 2005. IB 2005-6/10(b)

Chapter 3

Arbitrary and indefinite detention

IN THIS CHAPTER, we will examine the issue of detention in the context of security certificates, and will also briefly examine detention under other provisions of the *Immigration and Refugee Protection Act* (IRPA). We will look at the legal framework of immigration detention in international and Canadian law and then review information submitted to the Commission with respect to the detention of security certificate detainees, the new "Guantanamo North" prison near Kingston, the conditions under which security certificate detainees are being released, the experience of asylum seekers in detention, the impact of detention on family members, and studies of the impact of indefinite and arbitrary detention. We conclude the section with an analysis.

Basic principle: the right to freedom

Freedom is a fundamental right, at all times and without exception. The limitations of what are considered, under international law, to be justifiable restrictions upon human freedom are strictly defined by international human rights law. Canada is subject to several international human rights instruments that provide protections against arbitrary detention, including: the *Universal Declaration of Human Rights*[1], the *International Covenant on Civil and Political Rights*[2], and the *American Declaration of the Rights and Duties of Man*[3].

Alex Neve offered the following testimony concerning the limitations placed on detention by international and Canadian law:

> First, liberty is the *norm*. The international human rights system is entirely premised on the notion that everyone has the fundamental right to enjoy their liberty, their freedom. It is at the very heart of what it is to be human, and to live a life in which it is possible to enjoy and truly benefit from the entire range of human rights. It speaks to the soul. It is a key provision in many international human rights documents treaties. It is prominently enshrined in s.7 of the Canadian Charter of Rights. Second, therefore, liberty can only be constrained when it is legitimate to do so. There has to be a clearly valid legal basis for doing so. It is legitimate to detain someone because of criminality; it is *not* legitimate to detain someone because of their political views, their religion, their gender, their ethnicity [...] Third, it is essential that anyone who is detained be given a fair and effective opportunity to challenge their detention. [...] Fourth, conditions of detention must be humane and should not be allowed to deteriorate to a point where the detention has become tantamount to torture, or cruel treatment. [...] And finally, throughout, non-discrimination is essential.

In Canadian law, the deprivation of liberty is subjected to a host of rules designed to prevent arbitrary detention and to ensure that the rights of detainees are respected. With few exceptions, the guarantees and protections set out in the Canadian Charter of Rights and Freedoms apply to all persons present in Canada, without discrimination[4]. The legal rights set out at articles 7 to 14 of the Charter apply to everyone. These include:

- the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice (Section 7);
- the protection against arbitrary detention or imprisonment (section 9);
- in case of arrest or detention (Section 10), the right:
  a. to be informed, without delay, of the reasons for one's arrest or detention;
  b. to have access to the assistance of a lawyer without delay, and to be informed of this right; and
  c. to have the legality of one's detention reviewed (*habeus corpus*) and to be liberated where the detention is not justified.

The Supreme Court of Canada has affirmed that the detention of non-citizens must be in conformity with the principles of fundamental justice[5].

Detention is arbitrary, under Canadian law, if:

- the detention is not in conformity with the law;
- the law which provides for the detention is vague, imprecise or disproportionate and does not respect basic principles of human rights;
- the detention cannot be reviewed by a judicial authority or a person delegated with such authority;
- it is impossible to contest the legality of one's detention before a judicial tribunal;
- there is no possibility of release when the grounds for detention cease to exist.

(Il)legality of security certificate detentions

In March 2004, Amnesty International Canada wrote a letter to then Public Safety Minister Anne McLellan stating that Amnesty "is of the view that the security certificate process may very well result in **arbitrary detention** and thus violate the fundamental right to liberty. The process does not conform to a number of essential international legal standards, which are meant to safeguard against the very possibility of arbitrary detention".

Speaking of the long-term detention of security certificate detainees in provincial prisons designed for short-term imprisonment, Neve testified to the Commission that, "The concerns associated with the circumstances of [their] detention almost certainly amount to cruel treatment, including denial of educational, occupational and recreational programmes; harassment from other inmates; inadequate protection from other inmates without being in a position of restricted conditions, such as solitary confinement; and inadequate facilities for Muslim detainees to practice their religious beliefs."

Neve also spoke to the indefinite nature of the detention, "[…] security certificate detainees have undeniably faced what has been indeterminate detention, ie that there is no fixed time limit [...] the psychological effect of that has become – quite understandably – for some of the detainees,

tantamount to **indefinite detention** […] Indefinite detention is of course impermissable; but beyond that, detention that is indefinite or that is simply indefinite in nature is undeniably **cruel treatment**." Neve went on to cite a 2002 report of the European Committee for the Prevention of Torture where it was noted that the indefinite character of the detention at the United Kingdom's Belmarsh prison, added to the rest of the trauma of detention, amounted to inhuman and degrading treatment.

Neve noted that three UN Committees have raised their concerns about the security certificate procedures with Canada, including the UN Working Group on Arbitrary Detention.

Following their 2005 visit to Canada, the United Nations Working Group on Arbitrary Detention criticized numerous aspects of the security certificate process including the fact that it only applies to non-citizens, and is therefore discriminatory; that detention of non-Permanent Residents is mandatory; that detention is indefinite and may be very lengthy; that there is secrecy of evidence; and that there is a limited standard of judicial review. The Working Group wrote:

> Finally, the Working Group expresses grave concerns at the security certificate process. This procedure allows the Government to detain aliens for years on the suspicion that they pose a security threat, without raising criminal charges. Judicial review of detention occurs at excessively long intervals and does not go to the merits of the need to maintain the individual in detention. The detainee's ability to challenge detention is severely hampered by the fact that – in order to protect confidential information – he receives only a very superficial summary of the reasons for his detention. […] One of the most troubling aspects of the security certificate process is the delay with which non-citizens under a security certificate can challenge their detention. […]. The case of Mahmoud Jaballah, one of the four men currently detained under security certificates, illustrates how the process violates this fundamental principle. Mahmoud Jaballah has been detained without criminal charges for five years and been given the chance to challenge his detention only once[6].

The Working Group concluded by calling on Canada to consider abandoning this approach and using instead "the framework of criminal procedure" in accordance with relevant internationally recognized fair trial standards to deal with suspects.

In November 2005, the UN Human Rights Committee, having reviewed Canada's record of compliance with the International Covenant on Civil and Political Rights, also raised concerns about security certificates[7]. The HRC called on Canada to ensure that detention is never mandatory, that there is a legally determined maximum length to any such detention, and that those detained have access to a judicial review of their detention that is in accordance with international standards. These suggestions have not been followed by the Canadian government.

Detention under the Immigration and Refugee Protection Act (IRPA)

Currently, there is a worldwide trend towards "securitization" with regard to migration and citizenship. National security concerns are invoked to justify tightening control over migration, notably through interception, removal or detention of people suspected of not having the right travel documents, not following normal procedure to enter a country, or of posing a "threat to security".

In Canada, non-citizens are detained in several contexts, including:

1. Detention of asylum seekers (refugee claimants)
   Every year, thousands of people seek asylum in Canada because they have been subjected to persecution, violence or otherwise deprived of their rights in their country. Some may be detained upon arrival, usually on the rationale that they lack identity papers. The Canadian Council for Refugees estimated that "from October 2003 to November 2004, an average of 80 persons, many of them refugee claimants, were detained each week on ID grounds" in Canada[8]. According to a recent study by François Crépeau and Delphine Nakache of the Canada Research Chair in International Migration Law, the number of persons detained and the duration of such detentions has increased since the implementation of the new *Immigration and Refugee Protection Act* (IRPA) in 2002, "essentially because IRPA and its regulations provide the citizenship and immigration minister with stronger authority to arrest and detain people[9]" on the grounds of national security or lack of papers.

2. Detention of non-citizens under 'security certificates'
   Refugees and non-status people are automatically detained once a security certificate is issued against them; generally, they typically remain in prison for years before there is even an opportunity for release on bail. In the case of Permanent Residents, an arrest warrant must be issued before detention, and detention reviews are provided for every six months. At the time of the Public Hearings of the Commision, four people were detained under security certificates, while two – Adil Charkaoui and Manickavasagam Suresh – were out on bail. Their situations are examined in detail below.

3. Detention of non-citizens under ss. 86-87 IRPA
   As reviewed above in Chapter 2, Sogi Bachan Singh was detained according to ss. 86-87 of IRPA for several years. On request of the Minister, the IRB Commissioner can decide to hold hearings based on secret evidence during an ordinary detention review hearing. Of the approximately 10 cases of which Sogi's lawyer was aware in which secret evidence and ex parte hearings are currently being used under s. 86 (that is, without a security certificate being issued), she knew of only one case of detention, that of Sogi.

Detention of security certificate detainees

> The conditions they are held under are horrifying. Being in solitary confinement, there is no proper medical care or proper food. Some have to go on hunger strike just to get what they want. And they are not demanding much, all they are demanding is just their basic human rights. […] These men are held between four walls, in a small room, not being able to communicate with anyone, not being able to hug or interact with their children, having no one to talk to. It becomes a psychological torture.
>
> – Ahmad Jaballah (son of Mahmoud Jaballah, detained since August 2001), testifying at the People's Commission Hearings

Two of the men in detention under security certificates were prepared to testify by telephone connection during the Public Hearings, but were prevented from doing so by a prison "lock-down". Given that they could not testify before the Commission, we have drawn on other sources (past detainees, interviews, court testimony, family members' testimony, etc.) to present their experience of detention.

Mahmoud Jaballah

Mahmoud Jaballah fled Egypt after having been repeatedly arrested and tortured, and came to Canada after a period in Pakistan. He has six children, aged between 7 and 19, and will be celebrating his twentieth wedding anniversary in prison this year. Upon arriving in Canada, he worked as an assistant principal in an Islamic school in Toronto, and then founded his own school, where children received classes on the Koran in addition to the regular Ontario curriculum. On top of this work, he worked evenings as a cleaner to support his large family.

Mahmoud Jaballah was first arrested under a security certificate in May 1999, after refusing to give in to repeated pressure from CSIS to spy on other members of the Toronto Muslim community (his son Ahmad Jaballah's testimony about this is summarised above in Chapter 2). The first security certificate was quashed in November 1999, but he was arrested under a second security certificate issued in August 2001 – according to Behrens, a few days before a scheduled refugee hearing – and he has remained in prison ever since. Despite recognizing that Jaballah would be at risk of torture or death if sent back to Egypt, the Canadian government persists in trying to deport him.

Immediately after September 11, 2001, Jaballah was sent to "the hole", put in a "dry cell" with no water, toilet or sink, just a hole in the floor in lieu of a toilet, constantly monitored by a camera. He was not given water to clean himself before prayer, despite repeated demands for respect of his religious rights. On another occasion he was placed in the hole for three days with no clothing, under constant camera surveillance. From the "dry cell", he was transferred to solitary confinement for a 10-month period. The cell, designed to be used for short periods, was very cold in winter, and he developed a chronic back problem from which he continues to suffer. On several occasions he fainted, and eventually had to be hospitalized.

Jaballah was then transferred to the protective custody range, where he shared a small cell and had access to a common room during the day, with little to do but talk or watch television. There were no activities and no library. When he started having difficulty reading, it took over a year of repeated requests before he obtained glasses.

Jaballah talks of the humiliation of hundreds of strip searches since his detention, despite the fact that he has never been involved in drugs or violence, adding that it is contrary to his Islamic principles to be seen naked. The inability to change his situation weighs heavily on him; at his bail hearing, he explained: "It stresses me so much, I have to put all this stress and pain into my heart. What am I going to do? I am in the jail." Recently, he has started experiencing frequent chest pains, and sometimes finds it hard to breathe.

According to his son, Jaballah says that his detention is a psychological torture, in some ways worse than physical torture. The scars of physical torture heal, but the scars of psychological torture stay with you all your life.

Yet despite everything he has been through, Jaballah's greatest worry is not for himself, but for his children. During all this time, he could only see his family once a week, behind a plexiglass partition, and was never allowed to touch his wife or children. Visits were often arbitrarily cancelled, frequently at the last minute, after the family had made the long trek out to the prison. During an interview on May 12, 2006, he said: "The biggest problem for me, here in prison, is my kids. The reason I am

depressed, the reason it is hard for me, is because I am worried about my kids." Jaballah is concerned that his children are growing up without a father's guidance and care. He is particularly worried about his second son who has had a number of run-ins with the law.

At his bail hearing in October 2005, Jaballah said: "I am an educated man, I was a teacher, and at the same time I can't help my kids. This really kills me. Would anybody like his kids to be like that? All night I think about it. How can I eat or sleep or go to the yard when I have this situation? […] I am so stressed, I cry in front of them, and most of the time after I leave the phone. I cry too much on the phone. I hit my head on the wall. Why I pay this price? Do you want me to change my religion, take my beard? Does my wife have to change her clothing?" Jaballah explains that his wife is very tired; although she is a strong woman, raising six children on her own is too much for her to handle. He concludes: "Charge me or release me."

Mohammad Mahjoub

Mohammad Mahjoub, aged 45, has been detained under a security certificate since June 2000. He was severely tortured over a five-month period while in Egypt, but was never charged or tried for any offence. He came to Canada in 1995 and was accepted as a Convention refugee. While acknowledging that Mahjoub faces a substantial risk of torture or death if deported to Egypt, the Canadian government is still trying to send him back.

Mahjoub is married to Mona Elfouli, a Canadian citizen, with whom he has two young children now aged 6 and 8, who have only been allowed to hug their father a few times in his nearly six years of detention. His youngest child was only a few months old when Mahjoub was first incarcerated.

In June 2004, at a hearing in support of his contention that his prolonged detention constitutes cruel and unusual punishment, Mahjoub broke down when describing his feelings of humiliation and violation at being strip searched on hundreds of occasions.

For the first three years of his detention, Mahjoub was at times placed in segregation, and at times in the general prison population. In the last several years, he was placed in segregation "for his own protection". Mahjoub now suffers from hepatitis C, a severe, chronic and potentially fatal liver disease, which was contracted in prison. In September 2004, a gastroenterologist recommended a liver biopsy, the only means to establish how far the hepatitis C has progressed in order to decide whether treatment should be initiated. Treatment for hepatitis C is only effective in about 40% of cases and has very severe side effects, so treatment should not be undertaken unless clearly warranted. On the other hand, symptoms of liver damage due to hepatitis C may not be apparent for several years, by which time the damage can be considerable and even irreversible, often resulting in end-stage liver disease, cirrhosis and primary liver cancer.

In a letter dated March 15, 2005, Dr. Roland Fuca of Citizenship and Immigration Canada overruled the treating gastroenterologist's recommendation, without having personally examined Mahjoub. Dr. Fuca wrote: "It was made clear to me by CBSA that any transfer of this patient did involve considerable security risks and necessarily would result in the deployment of significant resources". Although informed that Mahjoub did not wish to initiate treatment without a biopsy, he concluded that "there does not exist a medical necessity to perform a liver biopsy on Mr. Mahjoub at this time".

In July 2005, Mohammad Mahjoub went on a hunger strike, drinking only orange juice and water, with occasional broth. His main demands were: access to the prescribed liver biopsy; proper medical care for a knee injury sustained at the jail; filling a prescription for eyeglasses; and touch visits with his young children once a month. He remained on hunger strike for 79 days. Both the Ontario and federal government remained inflexible, refusing to even discuss his demands, until Mahjoub was at death's door. Despite hundreds of emails, faxes, letters and phone calls from across Canada and around the world, demonstrations and vigils, letters from medical experts warning of the high risk of permanent organ damage and death, government authorities stonewalled until the very last minute[10].

Ultimately, the authorities agreed to allow specialists to assess Mahjoub's medical conditions, including hepatitis C and the knee injury, and to abide by their recommendations, including hospitalization if necessary; to provide eyeglasses (eight months after they were prescribed); and to work to ensure that family visits would not be subject to the kind of arbitrary interference and outright denial that had prevailed since his incarceration in June 2000. However, the denial of his right to have contact visits with his two young children was maintained.

In thanking people around the world for their support during his hunger strike, Mahjoub said "I thank every individual, starting from my wife, Mona, my kids, my lawyers, my support committee in Toronto, and every individual [...] for their support and their sympathy. I ask Allah to reward them all and [...] to make them soft in their hearts towards one another[11]."

In a letter urging government authorities to meet Mahjoub's demands and put an end to the hunger strike, a group composed of a medical, psychiatric and legal expert wrote:

> Depriving Mohammad Mahjoub of the right to periodic contact visits with his two young children for over five years is extraordinarily punitive and a form of psychological abuse, both for Mr. Mahjoub and his loved ones. This aggravates the severe, chronic stress to which Mr. Mahjoub is subjected because he is being indefinitely detained without trial, and because he is under threat of deportation to Egypt where (according to a July 2004 assessment by Immigration Canada) he would probably "suffer ill-treatment and human rights abuses".

Discussing the decision of the Immigration Canada doctor to prevent Mahjoub from having a liver biopsy, they added:

> Overruling the recommendation of the treating specialist without even examining the patient, largely on the grounds that the security costs during hospitalization would be too high, is very dubious in terms of professional ethics. More fundamentally, failure to provide appropriate medical treatment to detainees (including diagnostic testing) is unconscionable. It is also contrary to domestic law and international norms. More specifically, it is contrary to the following provisions:
>
> *Ministry of Correctional Services Act* (Ontario)
> 24 (1) Where an inmate requires medical treatment that cannot be supplied at the correctional institution, the superintendent shall arrange for the inmate to be conveyed to a hospital or other health facility.
>
> *United Nations' Standard Minimum Rules for the Treatment of Prisoners*
> 22 (2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. [...]

United Nations' Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
Principle 24. [...] medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

United Nations' Basic Principles for the Treatment of Prisoners
9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

Hassan Almrei

Hassan Almrei is a 32-year-old refugee from Syria who has been detained under a security certificate since October 2001. Except for a few days in the general population, he was in solitary confinement for four years and three months. Almrei was first placed in segregation for 15 months at the whim of the government. Later, however, he was said to have been kept in segregation "for his own protection" because, during the brief period he was in the general population, he came to the defence of a prison guard attacked by other inmates. He has gone on hunger strike six times to demand minimally decent conditions[12].

The solitary cell in which Almrei was held for four and a quarter years is a 2.5 x 3.5m concrete box furnished only with a concrete bed and a mattress, a toilet and a sink, with a small window looking onto a concrete inner yard. Contrary to international law provisions, which require at least one hour a day of outdoor exercise, Almrei was allowed out of his cell only five minutes a day (increased to 20 minutes a day after court proceedings in 2005). He had no access to TV or radio, no library, no educational programmes or other activities, and very small portions of food. In winter, the cell was virtually unheated, the temperature sometimes dropping to 10 degrees Celsius. Almrei was kept without shoes. In autumn 2003, Almrei went on a 39-day hunger strike to demand adequate heating and a pair of shoes. Guards confirmed in court that the unit was cold; Behrens told the Commission that he received a brown envelope at this time which informed him a number of people who had been held in this wing had been hospitalized, and one had even died. Finally, both demands were granted by a Superior Court judge. As Almrei later commented, his cheap sneakers cost taxpayers thousands of dollars – all because of the authorities' rigid refusal to grant the most basic rights.

In July 2005, Almrei went on a 73-day hunger strike, this time to demand one hour of fresh air a day to exercise. This was specifically recommended by his treating physician to try to overcome pain in his knees, a result of his lengthy confinement in a tiny, underheated cell. For 73 days, Almrei drank only orange juice and water, with broth on a few occasions. Like Mohammad Mahjoub, on hunger strike at the same time, Almrei received a massive outpouring of support from across Canada and overseas. People were outraged at the authorities' obstinate refusal to grant such minimal demands, and their willingness to allow both men to risk irreversible impairment, and possibly death.

Living in such a confined, barren space over such a long period can have disastrous physical, emotional, and psychological consequences. Almrei has succeeded in remaining amazingly optimistic and balanced. Yet Almrei reports that when he dreams, it is only of life inside the jail, or of Syrian authorities coming to kill him. His only activities are to read the newspaper, study the Koran, and occasionally read books sent by friends – although copies of books such as Kafka's *The Trial* and Orwell's *1984* have been intercepted by security.

Apart from his guards and his occasional court appearances, Almrei's only human contact during this period wasthrough telephone conversations with his support committee, friends and lawyers, while his only physical contact was being put in handcuffs to go to and from court. During his first year in prison, he was not allowed to phone his family in Syria. His parents are constantly worried about him, especially during his numerous hunger strikes. Almrei explained that when he called his parents shortly after his most recent hunger strike, in the autumn of 2005, his father was in tears, so overwhelmed with emotion that he was unable even to talk to his son.

People who have been in contact with Almrei since his incarceration describe him as a warm, gentle, tolerant and compassionate man. In an unusual move, three of Hassan Almrei's prison guards testified in his favour at a bail hearing in July 2005, describing him as friendly, truthful, genuine and trustworthy. One guard stated that he would have no hesitation having Hassan as a neighbour, saying: "From everything I've seen of him he's a very honourable man, I would trust him."

Mohamed Harkat

Mohamed Harkat is a 37-year-old refugee from Algeria. Before leaving Algeria, he was studying electronic engineering and was a member of the FIS (Front Islamique du Salut), a political party that won the first round of Algeria's 1991 national elections before a military takeover interrupted the election process and sparked a civil war. Since 1992, hundreds of thousands of people have been killed; of these, tens of thousands, including members of FIS, have been tortured or killed by the Algerian armed forces and police. Mohamed Harkat came to Canada in 1995 and was accepted as a refugee because his life would be threatened if he were sent back to Algeria.

Mohamed Harkat has been detained under a security certificate since December 2002. At the time of his arrest, he had three jobs, including work as a gas station attendant, and had been married for just under two years to Sophie Lamarche of Ottawa. For the first eleven months of his detention, he was placed in solitary confinement in a windowless 2x3m cell, with no television, no radio, and no activities. For the first 45 days, he was not even allowed any reading material. He was supposed to be allowed to go out into the enclosed concrete yard for 20 minutes each day, but in practice this depended on the availability of a guard to supervise him; so he sometimes went for two or three weeks locked in his windowless cell, 24 hours a day.

During the first several months of incarceration, Harkat was not allowed to shave (ostensibly because he was on suicide watch, but no alternative arrangements were made), and he felt that he was being made to look like Bin Laden, not his normal, clean-shaven self. Sophie Lamarche testified that during the first months of his detention, she never saw her usually playful husband laugh. Harkat has been allowed to see his wife only twice a week for twenty minutes, behind a plexiglass partition, with no contact permitted.

As of November 2003, Harkat was placed with the general prison population. When he was first incarcerated, he was often insulted and called a terrorist by guards and inmates, but over the years he has gained their respect.

At Harkat's bail hearing in October 2005, Dr. Colin Cameron, psychiatrist and medical director of the trauma disorders program at the St. Lawrence Valley Correctional and Treatment Centre

testified that Harkat was suffering from depression and post-traumatic stress disorder due to his incarceration. Dr. Cameron had met with Harkat for three hours. The *Ottawa Citizen* reported the psychiatrist's testimony in these terms:

> "I believe that Mr. Harkat's mental health is liable to worsen the longer he stays incarcerated," psychiatrist Dr. Colin Cameron concludes. "In particular, his vivid nightmares of facing torture in Algeria have started only since his incarceration."
>
> In those night terrors, he said, Mr. Harkat "even experiences body sensations as if his fingernails are being pulled out or his skin is being scraped off."
>
> […]
>
> "If anything, he may have a tendency to under-report the severity of his symptoms and difficulties. The severity of Mr. Harkat's depression is a cause of concern for me and I believe that it should be treated." Dr. Cameron said Mr. Harkat, who has lost 20 pounds while in custody, described his emotional state as "down, sad, lost and powerless." He writes and plays cards to distract himself; he studies the Koran daily and prays.
>
> […]
>
> Mr. Harkat's worst fear, the psychiatrist said, is of being deported to Algeria where he believes he will be tortured or killed. That fear contributes to his insomnia and fuels the nightmares that interrupt his sleep[13].

A Federal Court decision issued on 23 May 2006 ordered Harkat released on bail, and he was moved from prison to house arrest in June of the same year. His conditions of release are described below.

Guantanamo North: the new prison at Millhaven (Kingston)

On 23 April 2006, the day after the Public Hearings of the People's Commission, Jaballah, Mahjoub, Almrei and Harkat were transferred to the Kingston Immigration Holding Centre, a new six-cell facility on the grounds of Millhaven Federal Penitentiary.

Before the transfer, Matthew Behrens of the Campaign to Stop Secret Trials, who has been in contact with Jaballah, Mahjoub and Almrei on a regular basis for several years, described the new unit at Millhaven as "just a nicer cage. They say that the inmates will be able to wear their own clothes, watch TV, read newspapers. This is being used to lessen pressure for bail".

The prison, representing a $3.2 million dollar investment plus $2 million annual operating costs, clearly signalled the government's intention to stay course on its security certificate policy. According to Behrens, it was first announced in a detention review hearing of Mahmoud Jaballah, and had a significant impact on the judge's willingness to consider releasing Jaballah on bail.

It has proven considerably more difficult and more expensive for family members, lawyers and supporters to visit the detainees, as Kingston is about 2.5 hours from Toronto (Jaballah, Mahjoub and Almrei) and 2 hours from Ottawa (Harkat), and the prison is a further 40 minutes from Kingston

with no public transportation. Detainees and their families are very worried that they will be more isolated, particularly because telephone access was also drastically curtailed at the new centre. Ahmad Jaballah testified to the Commission about his mother's fear that the transfer was the government's way of removing her husband entirely from the family. Shortly after the transfer, Sophie Lamarche wrote of her husband: "He thinks everyone will forget about him since he's now there [...]"

Mona El Fouli, married to Mohammad Majoub, explained what the transfer has meant for her family (telephone interview 20 June 2006):

> When it comes to the family reaching them, [when they were in Toronto] we were able to see them. Of course, behind glass, but we could see them weekly. But there is no transportation now. We have trouble reaching there. It means more isolation for him, and a complete separation between us. [...] The taxi from Kingston is very expensive. I can't afford that, I am on social assistance, my income is very limited. It is an exhausting, tiring waste of time and money. Here they were seven minutes drive away[14].

Notably, access to the media was cut off entirely for several months following their transfer.

There is no grievance process for the detainees. In a ruling in June 2006, the Federal Court instructed the government to set one up, but this had still not been implemented by January 2007.

Three of the detainees – Jaballah, Mahjoub and Almrei – went on hunger-strike, protesting conditions of detention, shortly after the transfer. According to a press release from the Campaign to Stop Secret Trials (25 May 2006), the multi-million dollar facility is a "glorified classroom portable whose floors squeak every time the detainees move".

> It does not have curtains on the windows, so floodlights at Millhaven keep them up nights. [...] They are restricted to one hour of phone calls per day (which, for families like the Jaballahs, which include six children, Mr. Jaballah's wife, his mother-in-law, and son-in law, not to mention friends with whom he is normally in contact, severely limits contact). Unlike Metro West, where calls could be made throughout the day, the detainees must put in a written request for a guard to dial numbers for them, and must wait at least an hour for the call to be dialed. Concerns have also been expressed about the extent of monitoring of phone calls (which violates solicitor-client privilege in the case of phone calls to lawyers). The outdoor area is a small concrete block devoid of trees or grass, with nothing to sit on. They still do not have access to a canteen, as they did at Metro West, and none is likely to appear for at least another month. Food portions are small and inadequate; their cells are considerably smaller than they were at Metro West. Unlike those convicted of serious crimes – who have access to weekend-long trailer visits with family members – the secret trial detainees [...] are not allowed such visits. Rather, they are allowed two hour visits in the morning, followed by a lunch during which family members must leave the grounds and are stranded in the tiny hamlet of Bath, where there are no facilities for families to eat and rest. [...] Immediate demands at the KIHC include: proper access to an adequately stocked, reasonably priced canteen; better protocol around visits; proper amounts of nutritional, fresh food; better and less restricted access to the phone; and access to the grassy exercise area at Millhaven.

Release conditions

Adil Charkaoui, a 32-year-old father of three young children, is a Permanent Resident of Canada. He immigrated to Canada from Morocco in 1995 with his family and was doing a Master's degree in teaching French at the Université de Montréal at the time of his arrest under a security certificate in May 2003. His wife was then pregnant with their second child. In February 2005, Charkaoui was released on bail under extremely restrictive conditions, including:

- Wearing a GPS tracking bracelet, which allows CSIS to constantly monitor his movements;
- allowing police to enter his house at any moment without a warrant;
- 8:30 p.m. to 8 am curfew (recently extended);
- not being allowed out of his house unless accompanied by a "chaperone" approved by the Court – initially, only his parents and an in-law;
- reporting to a CBSA officer once a week;
- not being allowed to use a phone or cell phone, except the landline in his own house;
- no internet or text messaging;
- not being allowed to use any computer except his home computer;
- not being allowed to leave the island of Montreal[15].

It is noteworthy that the certificate issued against Charkaoui has not yet even undergone a review in Federal Court[16].

Mohamed Harkat obtained a conditional release in the month following the Hearings. Harkat's conditions include most of Charkaoui's and then go even further:

- he must be accompanied at all times *inside* his home by a Court approved supervisor, currently his wife, mother-in-law and several friends;
- he is allowed out of his home only 3 times a week for a maximum of 4 hours each time, and only with approval 48-hours in advance by the CBSA, and under supervision by a Court approved supervisor, currently his wife and mother-law;
- all visitors to his home must be pre-approved by the CBSA.
- he is not allowed to go to airports, bus or train stations, car rental agencies, nor board a boat.
- he must not associate with anyone he knows "or should know" supports terrorism or violent jihad, or whom he knows "or should know" has a criminal record.

Non-use of Arabic was also discussed as a potential condition on Harkat during court proceedings, but it was not included in the decision.

Recently, in Canada and elsewhere, this type of measure has been touted as a kinder, gentler alternative to incarceration for individuals suspected of representing a potential risk to 'national security'.

The Commission unequivocally rejects this position. Keeping people under constant, intrusive surveillance and depriving them of basic rights for an indefinite period, on the grounds that they are *suspected* of being a *potential* "threat" is worthy of a police state. It is completely incompatible with the presumption of innocence and fundamental rights enshrined in the Charter. It follows the logic of racism, and represents a dangerous expansion of state powers.

Even if the conditions imposed were less restrictive, this type of "probation" would be unacceptable: as Amnesty International wrote in a letter to Minister Stockwell Day, dated 16 February 2006, Charkaoui's "fundamental right to liberty and security of the person accords him the right to due process or release from the restrictive bail conditions that have been imposed on him."

However, the Commission is all the more convinced that "control orders" do not constitute an acceptable alternative to detention because of the extreme restrictiveness of the conditions that have been imposed on Adil Charkaoui and Mohamed Harkat, and the experience of Charkaoui living under the conditions. In April 2006, Charkaoui testified in Federal Court that his right to work, to practise his religion, to lead a family life and to enjoy leisure activities have all been diminished by the conditions placed on him. Having to wear a GPS bracelet allowing his every movement to be tracked, and knowing that the police can arbitrarily enter his house at any moment is extraordinarily intrusive. For a married man and father of three to not be allowed to leave home without a chaperone is humiliating. It also places a very heavy burden on the accompaniers. Charkaoui cannot take his children to the park to play, go to the gym, go to the mosque, or engage in any other activity outside the home unless one of his "chaperones" is available to accompany him. If he is outside of the home, he cannot phone his wife to ask her if she wants him to pick up strawberries that are on special at the grocery store.

Finding work under these conditions has proven extremely difficult. Working outside the home requires that one of his accompaniers has the time to remain with him during working hours at his place of work. Charkaoui is barred from using a telephone, the internet or even using a computer outside of his home – tools that are essential for a person doing intellectual work. Even the process of applying for jobs has been made difficult by the interdiction on internet and fax use and the requirement for accompaniment. Working from home is made difficult by the denial of access to the internet. In short, such restrictive conditions go a long way towards condemning an individual and their family to poverty and precarity, with the stress and humiliation that entails.

Alex Neve, Secretary General of Amnesty International Canada (English Branch) gave his opinon that under such conditions "release does not mean liberty. The conditions of release can be as onerous as being in a prison cell itself".

The UN Working Group on Arbitrary Detention noted in its 2005 report that: "The case of Adil Charkaoui also illustrates the concerns raised by the security certificate procedure. Mr. Charkaoui, a Permanent Resident of Canada, was detained under a security certificate for more than 20 months. He was released in February 2005, but is subject to very strict terms and conditions that disrupt the life of his entire family. He asked to be indicted and put on trial in order to enjoy a fair hearing, but the authorities deny him this right[17]."

Neve added: "The government needs to be held accountable to show that the conditions imposed are based on the real concerns. The restriction needs to go no further than that which is required to meet the concern, we cannot use a sledgehammer. If you are going to impose restrictions on use of internet or telephone, you have a very high onus to demonstrate that such release conditions are necessary. In Amnesty's opinion, these standards have not been met in these cases."

Detained asylum seekers

Drawing on her clinical experience with asylum seekers who have been detained, Dr. Marie-Jo Ouimet, a physician who testified before the Commission on behalf of ASILE[18], said:

> We encounter many cases of problems with mental health among asylum seekers in our daily practices. Numerous cases have been triggered or exacerbated by detention. It is often difficult to determine from the symptoms what part is due to the initial trauma which led the individual to leave his or her country and what is due to the new trauma of detention. Very often, both seem to play a role. However, one thing is certain: mental health cases are systematically aggravated by detention. This is confirmed by what is reported in scientific literature.

Ouimet cites the example of Ms. V., an African asylum seeker who had been persecuted for her political beliefs in her country of origin, but without physical violence. Detained for three months upon arrival in Canada on the grounds that her identity was in doubt, she developed symptoms of Post-traumatic stress disorder (PTSD) and depression. Her flashbacks and nightmares relate to her detention; she constantly revisits the moment when she was handcuffed and taken to the Centre for Prevention of Immigration (CPI). She felt deeply humiliated. The hopes she had before arriving have vanished because of her detention. She feels mistrustful, despairing, and has frequent suicidal thoughts.

The Commission heard the testimony of Arash A., an Iranian asylum seeker who was detained for 10 months at the Centre for Prevention of Immigration, in Laval, during which time he went on hunger-strike for one month to try to draw attention to his case. Having fled Iran after experiencing physical torture, he described the experience of detention in Canada as psychological torture. He graphically described the sense of powerlessness in detention – "sit down, sir... stand up, sir" – exacerbated by the frustration of monthly detention hearings where he was not listened to, but rather scolded for having, on his lawyer's advice, concealed the fact that he had been in Europe before arriving in Canada.

Impact on families of security certificate detainees

Ahmad Jaballah

In his telephone testimony before the Commission, Ahmad Jaballah, the eldest son of Mahmoud Jaballah, now aged 19, gave a deeply moving account of his experience. As noted above in Chapter 2, he was 12 when CSIS agents first came to question his father, late one night in 1998. He describes the experience of hearing his father threatened by CSIS on their third visit in the following words:

> That was the most horrifying experience in my life because we, as a family, we came here to this country for one specific reason, which is to live a peaceful life [...] We came here thinking that this country respects people's rights, that it does not judge people or discriminate against people based on their colour, race or religion. That's why this moment that I had to witness was so horrifying, because I came to realize that the view I had of Canada isn't really what it appears to be.
>
> Shortly after that meeting, my dad was indeed arrested, because he refused to sell his religion and to spy on his community. It doesn't take a genius to understand that spying on another person is wrong. It's morally wrong and ethically wrong, it's wrong in any way you look at it.

As mentioned above, the Canadian government issued a second security certificate against Mahmoud Jaballah after the first one was quashed. Ahmad Jaballah now feels that even if his father is released, he could well be re-arrested at any moment. This creates a tremendous sense of insecurity for the entire family. The entire family lives in fear that Mahmoud Jaballah may never again see the light of day, or that he may be deported, despite the acknowledged risk of torture. Although they continue with their daily routine, this fear is always there to haunt them.

Describing the effect of his father's imprisonment on the family, Ahmad Jaballah explains that the families are "going through severe stress and hard times that many cannot cope with". He said that it is very difficult to explain to the younger children that they can only see their father behind a glass partition. His little brother Ali actually asked: "Take us in there with him, if you won't let him out with us." The children see their school friends who have both their parents, and are able to go on vacation together, and they cannot understand.

As for Ahmad Jaballah personally, he has had to grow up very quickly, missing the normal fun and adventure of teenage years, because he has had to take on a fatherly role since an early age. He also was held back a year in high school because he was frequently absent to go to court and to undertake other family responsibilities. At school, he had to go through endless explanations and trouble until it came to a point where everybody knew him and his situation, and this was very difficult for him. Ahmad Jaballah adds: "The worst part is coping with all this. Explaining to the little ones. Trying to fill the gaps in their lives. For a 19-year-old, this is a huge responsibility."

Ahmad Jaballah concludes by saying that although his view of Canada has changed, he has not lost hope: "If we all struggle to make this country what we want it to be, then one day it will happen. I have never lost hope in Canada. We can make Canada the place we wanted to live in."

Many other witnesses echoed the same sense of shock and betrayal at the gap between their vision of Canada as a just society and the reality of CSIS harassment, arbitrary detention of many non-citizens, and the security certificate process. Several witnesses who came to Canada as refugees or immigrants said that one of their main reasons for choosing Canada was its reputation as a just and democratic society that respects human rights and in which all people, whatever their origin, will be treated fairly. Their experiences, and those of other members of their community, have seriously shaken the image they had of Canada.

Sophie Lamarche

The Commission heard testimony from Sophie Lamarche, married to Mohamed Harkat, about some of the difficulties she has experienced because of her husband's incarceration. Ms. Lamarche explained that she moved shortly after her husband's arrest largely because of all the media attention. She has since had to move again, because of financial problems: lawyers' fees have been extremely costly. Ms. Lamarche's mother sold her house and withdrew part of her pension to help pay for lawyers' fees, and Ms. Lamarche has had to go into debt, before finally gaining access to legal aid. She has had to leave her federal government job, due in part to the pressure she was feeling from colleagues and supervisors related to her media appearances in defence of her husband.

Ms. Lamarche has lost her privacy, and the situation has created divisions among her own family. She has been subjected to racist remarks about her husband. She testified that CSIS taps her phone and that she is under constant surveillance. She reports that the severe stress she has experienced has affected her health: her diabetes has worsened, and she frequently has high blood pressure, migraines, irritability, constantly upset stomach and difficulty sleeping. She confided that she feels as though her life has been taken away from her, and that she feels like a widow.

Latifa Charkaoui

The mother of Adil Charkaoui, Latifa Charkaoui testified that her family has lived in "continual stress" since her son's arrest.

> [During his detention] we went to see him three times a week, through the window. It was difficult for the children. Khawla understood nothing, she was still very, very young. She wanted to hug him through the window. We suffered, we cried. I remember once – we didn't yet know the prison rules – we even begged the guard to let the child hug her father, but they said we can do nothing, it's the rules. [...] I should say that we are a very close family; even though they are adults, I still cover them at nights. During the Muslim feasts, when we were separated from him, we didn't find that [...] we found that somehow abnormal, because he did nothing, he is innocent. We passed difficult moments, crying day and night. We didn't understand. We counted the days, the hours, the minutes[19]. [...]

The impact of the detention was compounded by the feelings of frustration and injustice: Mrs. Charkaoui expressed as well the confusion and frustration experienced by the whole family at the lack of due process, noting that Adil Charkaoui's young daughter, 4 years old at the time of the Hearings, never stopped asking for her father: "The question became embarassing. How could we respond to her, if even we adults didn't understand what was happening to us? [...] We were separated from him, but we knew he was innocent. They accused him of nothing, just suspicions, didn't allow him to defend himself."

Mrs. Charkaoui describes their current situation as "très surveillé": "We are followed everywhere, our telephone lines are tapped, a camera has been installed on the street where we live."

Named as one of the "chaperones" of Charkaoui, she says she has "the same conditions as my son. I have to follow him everywhere. I must do the work of a police officer [...] even though I am not paid! At the same time that I survey my son, I am myself also surveyed". This puts her in a position of making very difficult choices; her husband works and her daughter has a severe form of diabetes in which she experiences frequent and dangerous drops in blood sugar level and should not be left alone. In one such dilemma, she decided to accompany her daughter to Morocco, so that the latter could complete a divorce process. This practically confined Charkaoui to his house for several weeks, and a special arrangement had to be made so that he could even fulfill his requirement to sign in weekly with the CBSA. The situation has also made it impossible for Mrs. Charkaoui to seek work, although she would prefer to return to work.

Since receiving news of the new six-cell prison in Kingston, Mrs. Charkaoui has lived in the fear that her son will be re-arrested. She confided that she does not yet see the light at the end of the tunnel, but believes they must continue to struggle for their rights.

Studies of the impact of indefinite and arbitrary detention

Dr. Marie-Jo Ouimet presented an overview of the scientific literature on the effect of indefinite detention on the mental health of asylum seekers and other migrants. It confirms the firsthand testimony heard by the Commission.

In 2005, a group of medical clinicians published a study on the mental health problems suffered by the eight men detained for several years under the British equivalent of security certificates[20]. The study is based on numerous interviews with each of the detainees by 11 psychiatrists and one psychologist, all specialists in the field of refugees and torture. Three of the detainees were victims of torture and detention in their countries of origin, and all had been exposed to political violence.

The authors observed that all of the detainees suffered significant degrees of depression and anxiety and that their condition had deteriorated as the length of their detention extended. Several detainees who had suffered previous traumas suffered from Post-Traumatic Stress Disorder (PTSD). Several had suicidal ideas and some had attempted suicide or self-mutilation. This is even more troubling because all of the men were practicing Muslims, for whom suicide is against the precepts of their faith. With time, some of the men developed psychotic symptoms, which they never had before their detention. The clinicians concluded that the deterioration of the mental health of the eight detainees was linked to the feelings of powerlessness and despair which are inextricably linked to indefinite detention.

The authors also met the wives of three of the detainees. The three wives suffered from depression. One of them was diagnosed with PTSD linked to the detention of her husband, and another manifested symptoms of phobic anxiety. Their isolation was an aggravating factor. The clinicians were all of the opinion that the symptoms of these women were directly linked to the indefinite incarceration of their spouses.

A situation similar to detention under security certificates is that of the detention of asylum seekers. In both cases, migrants, who were in many cases exposed to violence before arrival, are detained without ever being accused of a crime.

In 2003, a group of 12 doctors and psychologists specializing in treatment for victims of torture published the results of a study of 61 asylum seekers in the United States[21]. The detainees' symptoms of depression, anxiety and PTSD were evaluated on two occasions, at intervals of several months. At the time of the second evaluation, almost half had been liberated, and the rest remained detained. During the first evaluation, 77% of the asylum seekers showed significant levels of anxiety, 86% suffered from depression, and 50% from PTSD.

The gravity of the symptoms was directly proportional to the length of detention. During the second evaluation, the asylum seekers that had been released showed a marked reduction in all of their symptoms, while the symptoms of those who were still detained had worsened. The authors concluded – not surprisingly – that the results suggest that detention has a negative effect on the mental health of asylum seekers.

There are several Australian studies on the effect of indefinite detention on the mental health of asylum seekers. Australia has the world's most repressive policy for the detention of asylum seekers. Since 1992, all asylum seekers who arrive without valid identity documents are detained until the

determination of their refugee claim. This lasts months, sometimes years, often in refugee camps. One such study[22] of 241 people who had been freed for an average of three years following a median detention of six months observed that most still had mental health problems as a result. The severity of their mental health problems increased proportionally with the length of detention they had endured. Moreover, the researchers showed that the uncertainty caused by temporary refugee protection, as opposed to permanent refugee protection, was an important factor. Finally, they showed that family separation also had an important impact on mental health.

Conclusions

The conditions in which the security certificate detainees have been, and continue to be held, constitute severe psychological (and sometimes physical) abuse. At minimum, this is cruel and unusual punishment. Certain periods of their detention have been particularly horrific and may well qualify as psychological torture; for example, the 45-day period during which Mohamed Harkat was detained in a tiny, windowless cell, 24 hours a day, with no activities whatsoever (not even reading material) probably fits the criteria of psychological torture – and almost certainly fits the definition of cruel and unusual punishment. The relevant criteria include: prolonged isolation; lack of sensory or intellectual stimulation, lack of activities; prolonged confinement, with little or no access to exercise or the outside world; arbitrary nature of the detention (no charge, no conviction); indefinite nature of the detention.

It is also important to keep in mind that the psychological effects of these inhumane conditions often continue long after the abusive conditions have ceased. Once a person is "broken" psychologically, he may continue to experience despair and terror for a very long time, even if his conditions are improved. This is exemplified in the case of Mohamed Harkat, who continues to experience gruesome night terrors, anxiety and depression, although his conditions of detention are somewhat less severe than they were in the first year (and particularly the first 45 days) after his arrest. Once a person is pushed to a breaking point – to the point of despair – he remains vulnerable, so that even somewhat lower levels of stress can trigger new episodes of depression or severe anxiety.

In the case of the security certificate detainees, there are a number of severe stressors.

The first is the **indefinite nature** of the detention. There is no end in sight. In 2002, following visits to men detained under the British equivalent of security certificates Belmarsh Prison (UK), the European Committee for the Prevention of Torture noted that: "The trauma of detention had become even more detrimental to their health since it was combined with an absence of control resulting from the indefinite character of their detention. For some of them, their situation could be considered as amounting to inhuman and degrading treatment."

The second is the **arbitrary nature** of the detention. The security certificate detainees have no clear explanation of the reason for their detention, and virtually no access to the evidence against them. With unlimited time on their hands and few activities, this can easily lead to endless rumination and questioning: Why me? Why am I targeted? What did I do to deserve this? They are placed in a situation which they cannot make sense of.

Third: **being powerless under constant threat of deportation to torture or death** and unable to act effectively to master the threat is a source of severe stress. Being faced with a chronic threat to one's personal integrity, and feeling that one has little control over one's life combine to create severe anxiety. Detainees are subjected to repeated humiliations, continual reminders that they are powerless and not respected as human beings. The most severe form of humiliation is the strip search. These are humiliating for anybody, as they imply that the person's privacy and physical limits are violated while he is forbidden to resist or protect himself. In addition, they are contrary to certain Islamic precepts. The detainees are also subject to numerous other reminders that they are powerless, such as having to wait for months or years for something as simple as a pair of eyeglasses prescribed by an eye specialist, or an essential diagnostic test (liver biopsy) for a life-threatening disease contracted in prison (hepatitis C). Detainees with families experience the humiliation of not being able to provide financially for their families (which can be a central component of masculine identity and self-respect), and the anxiety of being unable to provide care and guidance to their children. Control orders can be another form of humiliation.

Finally, these men and their families are **labelled** as terrorists, and associated with the most heinous crimes. The public nature of the allegations and the obstacles to clearing one's name, because of the climate of suspicion and the lack of due process, is a source of constant stress. When initially jailed, the security certificate detainees were often verbally abused by guards and sometimes by other inmates as "terrorists", although they have since succeeded in gaining respect. Families of security certificate detainees have been subject to the same insults, and have been subjected to ostracism, cold-shouldering, isolation and suspicion within their own communities because of the "terrorist" label. Many people in their community may avoid them simply out of fear of "guilt by association".

Overall, the conditions of detention are such that these men are stripped of a sense of agency, which is a fundamental human need. They are rendered powerless, subject to humiliation and arbitrary treatment, under constant threat of deportation to torture or death – a threat that they can only avert by accepting perpetual detention.

Notes

1. Rés. AG 217 (III), Doc. Off AG NU, 3e sess., supp. N.13, Doc. NU A/810 (1948) Article. 9.

2. Rés.A.G. 2200A (XXI), Doc. Off AG NU, 21 U.N. GAOR Supp. No. 16 at, NU. Doc. A/6316 (1966), 999 U.N.T.S. 171, entrée en vigueur le 23 mars 1976., Article 9.

3. OÉA, *Déclaration américaine des droits et devoir de l'homme*, Doc. Off. OEA/Ser.L.V/II.82 doc.6 (1992). art. XXV.

4. *Singh c. ministre de l'Emploi et de l'Immigration*, [1985] 1 R.C.S. 177.

5. Arrêt *Sahin c. Canada (ministre de la Citoyenneté et de l'Immigration)*, [1995] 1 C.F. 214 (1re inst.), appel rejeté.

6. Commission On Human Rights, Sixty-Second Session, Civil And Political Rights, Including The Question Of Torture And Detention, Report Of The Working Group On Arbitrary Detention, Addendum, Visit to Canada (1-15 June 2005), E/CN.4/2006/7/Add.2, 5 December 2005, Summary and par.85.

7. CCPR/C/CAN/CO/5, 2 November 2005.

8. Canadian Council for Refugees, "Annual Status Report on Refugees and Immigrants", November 2004.

9. Crépeau, François, and Delphine Nakache. 2006. "Controlling Irregular Migration in Canada:Reconciling Security Concerns with Human Rights Protection." IRPP Choices 12 (1) p.16.

10. By way of comparison: in 1981, Bobby Sands and 9 other IRA prisoners on hunger strike died after periods varying from 46 to 73 days after sustaining severe organ damage (e.g., blindness). Several survivors of the strike remained permanently handicapped. In 1996, a number of Kurdish hunger strikers in Turkey died after periods of 65 to 69 days.

11. Mr. Mahhjoub has twice been on hungerstrike since this time; once after his transfer to the "Guantanamo North" prison in Kingston. A third time beginning in December 2006 and continuing through January 2007.

12. Since the Commission's Public Hearings, Mr. Almrei has gone on hungerstrike two more times, both times seeking minimal dignity in detention.

13. Ottawa Citizen, 24 October 2005.

14. "Guantanamo North", *Bulletin Femmes et Justice,* Societé Elizabeth Fry du Québec, hiver 2006.

15. There have been a few minor changes to Charkaoui's conditions, won through numerous court hearings and approaches by Charkaoui and his lawyer. But, as this report is published, the conditions remain, in essence, the same.

16. This is still the case at time of publication of this report.

17. Commission On Human Rights, Sixty-Second Session, Civil And Political Rights, Including The Question Of Torture And Detention, Report Of The Working Group On Arbitrary Detention, E/Cn.4/2006/7/Add.2, 5 December 2005, par.86.

18. ASILE is a group of health professionals advocating for the health-related rights of refugees, asylum seekers, immigrants and non-status migrants.

19. The original testimony was in French.

20. Robbins I, MacKeith J, Davison S, Kopelman M, Meux C, Ratnam S, Somekh D and Taylor R. (2005). "Psychiatric problems of detainees under the 2001 *Anti-Terrorism Crime and Security Act*" (Great Britain). *Psychiatric Bulletin*, 29, 407-409.

21. Allen S Keller, Barry Rosenfeld, Chau Trinh-Shevrin, Chris Meserve, et al. (2003). *Mental health of detained asylum seekers*. Lancet, 362, 1721-23.

22. Steel, Z., Silove, D., Brooks, R., Monmartin, S., Alzuhairi, B., & Susljik, I. (2006). "Impact of immigration detention and temporary protection on the mental health of refugees," *British Journal of Psychiatry*, 188, 58-64.

Chapter 4

Deportation: whose security?

Introduction and context

ACCORDING TO FORMER Public Safety Minister Anne McLellan, Canada deports an average of 9000 people a year[1]. The threat of deportation hangs over the heads of all non-citizens, some more immediately than others – as several individuals testified before the People's Commission. As free trade is promoted world-wide, there is not an equivalent acceptance of the free movement of people. Deportations of individuals and their families – some established in Quebec or Canada for years – are justified by Immigration Canada on a variety of grounds: lack of job skills, lack of "integration", health, criminal record, national security, or simply not following the rules regulating your status, such as letting your papers expire, or errors on your application form. The discourse about who should be allowed to stay in Canada and who should not enjoy this right encourages distinctions between "worthy" and "unworthy" immigrants.

Current deportation practices can be linked to historical practices of expulsion, exile, transportation and population transfer. The way deportation practices today are mainly targeting refugees from developing countries echoes former colonial practices of transportation to the colonies and population transfers between colonies[2]. This colonial project continues in Canada as growing numbers of people overwhelm the voice of indigenous peoples in determining political outcomes and the distribution of power.

Deportation is legitimized by international law, although within defined limits. However, deportation when there is risk of torture is not allowed under any circumstances under international law.

In reality, the norm against *refoulement* is violated by Canada and other countries whose immigration systems fail to provide adequate safeguards, but the prohibition on sending someone to a situation where they are likely to be tortured has nevertheless been upheld as a principle. What is new in the current climate of rising national security fears and the "War on Terrorism", is that governments are attempting to explicitly justify practices which expose people to the risk of torture, and undermining long-established standards of conduct.

Canada is contributing to this global trend, which Human Rights Watch refers to as the "legalisation of torture[3]". The Canadian government takes the position that "in exceptional circumstances" it can

deport people to countries where they face torture. Canada is actively pursuing this policy in several cases; some of these individuals were represented before the People's Commission public hearings.

Deportation to torture: legal framework

International law

A number of Human Rights conventions, as well as organizations such as Amnesty International, have clearly determined that certain rights can never be violated, no matter what the justification. This includes the right to protection against torture.

Article 5 of the *Universal Declaration of Human Rights* prohibits the use of torture and Article 30 reiterates that nothing in the declaration can be interpreted in a way that gives states or persons "any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein".

Article 3 of the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT) clearly prohibits a state from expelling persons to another state where there is a risk of torture. It also imposes the obligation on the state to determine whether such a risk exists, including the determination of a consistent pattern of human rights violations.

To ensure the point was clearly understood, the UN Human Rights Committee wrote in its November 2005 report on Canada (CCPR/C/CAN/CO/5):

> Torture, cruel, inhuman or degrading treatment [...] can never be justified on the basis of a balance to be found between society's interest and the individual's rights under article 7 of the Covenant. No person, without any exception, even those suspected of presenting a danger to national security or the safety of any person, and even during a state of emergency, may be deported to a country where he/she runs the risk of being subjected to torture or cruel, inhuman or degrading treatment [...]

Canadian law

The application of immigration security measures generally strips people of their rights to refugee asylum in Canada. This condemns individuals to precarity and may place them under threat of deportation to torture.

Although the *Immigration and Refugee Protection Act* (IRPA) states that the law is to be applied in a manner that "complies with international human rights instruments to which Canada is signatory", and although Canada has ratified (thus is bound not to violate its provisions according to international law) the UNCAT, Canada is taking the position that, in "exceptional circumstances," it can deport people who face torture.

IRPA allows immigrants in Canada to apply for "protection" – a kind of temporary asylum – if they are at risk of torture. This is a safeguard to prevent returns to torture, death or other mistreatment. However, in the case of people who have been labelled as "security threats", the government

"weighs up" the risk of torture they face with the threat they could potentially pose to Canada. Johanne Doyon, who is currently legal counsel for Adil Charkaoui, testified before the Commission that, under international law, "national security" concerns are simply irrelevant in pre-removal risk assessments, which should only be about the risk faced by the individual. Canada has nevertheless carried out this weighing up process, and invoked a certain interpretation of the Supreme Court of Canada's *Suresh* decision, to threaten security detainees with deportation to a place where they will likely be tortured.

According to the testimony of Denis Barrette to the Commission, Canada admitted before the UN Committee against Torture in 2005 that its policy does not meet the requirements of international law.

This Canadian policy was later sharply criticised by the UN Committee against Torture (May 2005 Report) and the UN Human Rights Committee (November 2005 Report). The Human Rights Committee noted its concern with Canadian "policy that, in exceptional circumstances, persons can be deported to a country where they would face the risk of torture or cruel, inhuman or degrading treatment, which amounts to a grave breach of article 7 of the Covenant". The Committee recommended that Canada:

> should recognize the absolute nature of the prohibition of torture, cruel, inhuman or degrading treatment, which in no circumstances can be derogated from. [...] [Canada] should clearly enact this principle into its law.

Canada has not, however, changed its policy or legislation after receiving this report.

Charkaoui is bringing a challenge to the legal framework which permits the government to subject someone to the threat of deportation to a place where they are at risk of torture[4]. Several decisions have been made on the question at the Federal Court level in the cases of other security certificate detainees, including Jaballah and Mahjoub.

Diplomatic Assurances

Governments have also tried to get around the prohibition on deportations to torture through the use of "diplomatic assurances" from receiving countries that they will not ill-treat the person who is deported.

The rising use of diplomatic assurances is in fact another way in which the global ban on torture is being undermined. The practice seeks to legitimize deportations where there is a known risk of torture or other cruel treatment. At the same time, it accepts as legitimate the denials of known perpetrators of torture such as Egypt, Morocco and Syria, though such assurances are, by definition, unreliable: if there were no risk, the assurances would not be necessary[5]. In just one example, diplomatic assurances were requested – and received – by the United States before rendering Canadian Maher Arar to torture in Syria.

In addition to attempting to deny the existence of risk in the first place, Canada is using both the justification of "exceptional circumstances" and diplomatic assurances to evade the international prohibition on returns to torture.

Behrens told the Commission that the Canadian government had used a letter from the Egyptian government promising not to torture Mahjoub as evidence to support their claim that he would not be tortured if deported to that country. Behrens told the commission that Mahjoub's name had been transliterated as "Mahgoub" in this letter, but that the CBSA officer admitted that they had made no attempt to verify that Egypt was actually referring to the same person. In addition, the very same letter was presented in Jaballah's case as evidence that he would not be tortured if deported to Egypt. The only difference between the two letters was the name "Jaballah" instead of "Mahgoub"; they were otherwise identical.

Christian Legeais told the Commission that Canada had asked for, and received, diplomatic assurances in the case of Mohamed Harkat. Legeais said that one of the assurances which the Algerian government provided to Canada was the fact that, although the legislation was still in place, there had been no executions since 1998. However, what they failed to mention was that there had nevertheless been tens of thousands of extrajudicial killings under the current regime. In any case, Legeais noted, the reasons for which Harkat had sought refugee status in Canada, and been accepted, still existed.

In the case of Adil Charkaoui, the Canadian government justified its attempts to deport him to Morocco by seeking assurances from the government of Morocco, which they obtained in April 2004. Central to these assurances was the assertion that Morocco had no proceedings or arrest warrant against Charkaoui. However, in March 2005, a Radio Canada journalist uncovered the existence of an arrest warrant for Charkaoui in Morocco, apparently dating from September 2004.

This episode was made even more troubling by the suppression of a pre-removal risk assessment (PRRA) attesting to a probability of torture and risk of death if Charkaoui were deported. The PRRA was signed by an Immigration Canada risk-assessment officer on 21 August 2003, but only given to Charkaoui's lawyer on 4 April 2004, after a letter had been sent by the Minister of Foreign Affairs to Morocco requesting diplomatic assurances that Morocco wouldn't ill-treat Charkaoui. Two weeks after the PRRA was released, Morocco provided Canada with the assurances that they had sought. Curiously, the assurances from Morocco were sent to Canada just two days after a media story – that Charkaoui had been named in a confession by a prisoner held under anti-terrorist law in Morocco – was splashed across headlines in Canada. The genesis of the media story was a small article in a Moroccan newspaper with a reputation of being close to the interior minister. The prisoner cited in the article turned out to be on a hunger-strike, claiming that he was tortured into signing a blank confession. The same Radio Canada journalist later produced a letter written by this prisoner, which said that he had been tortured for eight months and threatened with rape, before he had been forced to sign a confession that he was not allowed to read.

The assurances from Morocco provided the basis for an August 2004 decision by the Immigration Minister to refuse protection and continue deportation proceedings against Charkaoui. When Radio Canada revealed the information that an arrest warrant existed in Morocco, the Federal Court judge ordered that proceedings in Charkaoui's case be halted until Canada explained what was going on. Canada was forced to withdraw the decision to refuse protection. Charkaoui's case has been suspended ever since, pending a new decision on protection from the Minister.

The use of diplomatic assurances has been roundly condemned by many human rights organizations, including Human Rights Watch, Amnesty International, the Association for the Prevention of

Torture, the International Commission of Jurists, the International Federation for Human Rights, the International Helsinki Federation for Human Rights, Redress, the World Organisation Against Torture, an expert group of the Council of Europe, and the UN High Commissioner for Human Rights, Louise Arbour[6].

Supporting a categorical rejection of diplomatic assurances as an adequate safeguard, the UN Special Rapporteur on questions relating to torture openly questioned the good faith of governments who seek diplomatic assurances:

> The Special Rapporteur requests Governments to refrain from seeking diplomatic assurances and the conclusion of memoranda of understanding in order to circumvent their international obligation not to deport anybody if there is a serious risk of torture or ill treatment[7].

In November 2005, Canada – along with the United States, Britain, France, Sweden and Kyrgyzstan – was specifically named in a report by Manfred Nowak, a UN Special Rapporteur on Torture which stated: "Several governments, in the fight against terrorism, have transferred or proposed to return alleged terrorist suspects to countries where they may be at risk of torture or ill-treatment[7]."

Impact of threat of deportation

As noted above in Chapter 3, the threat of deportation, on security or other grounds, can have profound psychological, social and economic consequences for the individuals and their families.

Marie-Jo Ouimet, a doctor who works with refugees and immigrants, testified that the threat of deportation further exacerbates the stresses faced by migrants; namely, lack of financial support, low social status, disappearance of family, and social exclusion (particularly for women). The stress resulting from threat of deportation causes serious health problems.

Several witnesses to the People's Commission likened the threat of deportation to a form of psychological torture. The impact of this threat is significantly magnified when deportation implies a possibility of torture or other such treatment and death.

The Commission heard testimony from representatives of several people who were being threatened with deportation despite the probability of torture, including Hassan Almrei, Adil Charkaoui, Mohamed Harkat, Mahmoud Jaballah, Mohammad Mahjoub, Sogi Bachan Singh, and Amparo Torres.

For example, in the case of Mahmoud Jaballah, the Minister of Immigration's delegate acknowledged the risk he faces – writing that "there are substantial grounds for believing that the applicant would be killed or tortured should he be required to return to Egypt" – but decided that deportation proceedings should nevertheless continue (September 2005)[8].

According to the Centre for Victims of Torture:

> Situations where death is threatened [...] create a sense of complete unpredictability, and induce chronic fear and helplessness. Victims who were threatened with death speak of feeling a sense that one is already dead. They often relive these near-death experiences in their nightmares, flashbacks, and

> intrusive memories. Reliving these near death encounters can provoke feelings of intense anxiety that cause victims to act inappropriately in work and family settings and, in more extreme cases, cause injury to themselves. Staff members at CVT have dealt with victims of this sort of torture who have pleaded with torturers to kill them, preferring real death over its constant threat and continued intolerable pain[9].

Sophie Lamarche told the Commission that her husband had "terrible nightmares. He dreams of what he could go through if deported to Algeria. He imagines what torture could be like. He actually stopped laughing for a long time. He got very depressed. [...] He's stressed all the time, he's always worried about what is to come next". (This is further examined in Chapter 3 above.)

Extraordinary and "ordinary" rendition

The term rendition refers to the practice of seizing a person in one country and delivering them to another country, usually for the purpose of criminal prosecution. Within the context of the "war on terrorism", this has begun to mean the deportation of persons to another country for the purpose of interrogation. Put more plainly, it is kidnap and torture conducted by governments.

The best known Canadian case is that of Maher Arar, who was kidnapped by US authorities while passing through the United States and sent to Syria, where he spent one year being tortured in a Syrian prison. His case has been well documented and has been the subject of an extensive investigation by an official Canadian Commission of Inquiry, tasked with uncovering the role of Canadian officials in Arar's torture.

Warren Allmand noted that, following on a serious investigation by the Council of Europe into this practice, the ICLMG and other organizations have asked the Canadian government and the Arar Commission to investigate the cases of three other Arab Canadians who are known to have suffered the same fate as Arar: Abdullah Almalki, Ahmad El Maati, and Muayyed Nureddin. Taken together, these cases point to a possible pattern of Canadian complicity in the practice of state kidnap and torture.

What is striking in the case of security certificate detainees in Canada is that the same outcome is achieved under the accepted legal framework. The Commission strongly condemns this hypocrisy. This entirely legalised process should provoke the same moral shock and outrage that Canadian government complicity in the kidnap and torture of Arar, Almarki, El Maati, and Nureddin rightly does.

Effectiveness of deportation as a security measure

Beyond the ethical issues and the illegality of deportation to torture, deportation is highly suspect as a deterrent to "terrorism." The UN Committee Against Torture report questions:

> [Canada's] apparent willingness, in the light of the low number of prosecutions for terrorism and torture offences, to resort in the first instance to immigration processes to remove or expel individuals from its territory, thus implicating issues of article 3 of the Convention more readily, rather than subject him or her to the criminal process.

Amnesty International testified at the Hearings that deportation does not provide justice: it not only constitutes an abuse of human rights in many cases, but it also leaves individuals who *have* been involved in criminal activity unaccountable for their "terrorist" acts. According to Amnesty, the policy of deportation as an instrument of national security does not live up to Canada's international responsibilities to combat "terrorism". Rather than sentencing and imprisoning those involved in such crimes, it makes it possible for them continue such activities elsewhere.

Moreover, the choice of immigration proceedings, with its limited procedural safeguards, over criminal processes challenge the underpinning values that we are supposed to be seeking to protect from terrorism – those of respect for human rights, equality, freedom and an open and welcoming society.

In the view of the Commission, deportation and the threat of deportation have enormous negative impacts on the security of affected communities. Canada presents itself to the world as a refuge and a place that welcomes immigrants. Many of those who testified before the Commission, who have encountered Canada's deportation and other immigration policies, were surprised to discover a less pleasant face upon their arrival. Deportation also effectively divides society into "us and them". Alienation, division and uncertainty do not contribute to security.

Notes

1. Special Senate Committee on the *Anti-Terrorism Act*, 14 November 2005.

2. Walters, 2002.

3. Human Rights Watch, "Still at Risk: Diplomatic Assurances no Safeguard against Torture" (April 2005).

4. At the time of publication of this report, the challenge is in appeal and will be heard by the Federal Court of Appeal in February 2007.

4. Human Rights Watch, "Still at Risk: Diplomatic Assurances No Safeguard Against Torture".

5. See Human Rights Watch Press Release at:
http://hrw.org/english/docs/2006/04/03/eu13110_txt.htm. Arbour was ironically a member of Canada's Supreme Court when the torture-enabling *Suresh* decision was made.

6. UN Special Rapporteur on questions relating to torture, 23 August 2005.

7. "Torture and other Cruel, Inhuman or Degrading Treatment or Punishment", report by UN Special Rapporteur on Torture Manfred Nowak.

8. A summary of the impact of torture, based on the testimony of Richard Renshaw to the Commission, can be found on the website of the Commission.

9. Cited in the memorandum prepared by Johanne Doyon for Adil Charkaooui's challenge to the torture exceptions in the *Immigration and Refugee Protection Act*, heard in Federal Court in October 2005. Memo is available at www.adilinfo.org.

Chapter 5

Findings and recommandations

THE IMAGE OF CANADA as a tolerant and inclusive nation is challenged by the experience of many communities in Canada. The often painful stories told at the Public Hearings of the Commission confirmed that many who have arrived in this country seeking peace and security have met instead with persecution and insecurity.

This was not new terrain for the Commissioners, who are all closely connected to communities which have been subjected to racial profiling and other forms of violence legitimized by racism, and who recognize that Canada is, in the first place, built on land violently stolen from indigenous people.

However, the knowledge that was gained during this process, the personal stories that were shared during the Public Hearings, and above all the new networks that were forged, served to renew the resolve and feed the hope of those involved in the project to redouble efforts to, in the words of Ahmad Jaballah, "make Canada the place we wanted to live in".

An important lesson that arose from the process of the People's Commission is that stronger links must be forged between immigrant communities and indigenous people, between established and new racialized communities, and between different ideologies within communities subjected to racial profiling.

Racism and national security

The starting point of any serious attempt to build a society fashioned after the "beautiful dream" of a tolerant and open society with which Ali Sbeiti arrived so hopefully in Canada, is the full recognition of indigenous people as the original inhabitants of Turtle Island. Only after the fundamental fact that Canada is a settler state founded on a genocide and on the violent dispossession of land is understood and after full reparations made, can any progress be made towards the beautiful dream.

It is also crucial to grasp the extent to which Canadian immigration policy, references to liberal values notwithstanding, has from the outset been racialized and guided by economic interests. Though race is no longer an explicit referent in Canadian immigration policy, racism remains a pervasive element of the Canadian immigration regime, reflecting its centrality to the consitution of our nation and its borders.

The post-9/11 political climate has been one of a constantly manufactured crisis. In this atmosphere of panic, there is a systematic misuse of fear, a fear that names names and points fingers. Suspicion and culpability are used to "manage" the crisis and "secure" "our" safety. Systematic forms of racialized thought, of "race thinking" as Razack calls it, enable immigration policies which establish and justify different forms of exclusion.

The targeting of Arabs, Muslims and Iranians, among others, is part of a larger framework of national security that tends to generalize the perception of these groups as "dangerous". Many of the testimonies spoke to the devastating impact of living under suspicion. Becoming a target of suspicion functions as proof of guilt, inviting recriminatory actions against those under suspicion. Members of these groups are stigmatized by the media and targeted in the absence of any evidence.

The national security framework creates a culture of fear and insecurity amongst targetted groups, criminalizing, isolating and stigmatizing individuals long after security forces and media turn their attention elsewhere.

For popular action:

- Support the popular land defence struggle at Six Nations and all Haudenosaunee Confederacy territories.
- Move beyond the demand to improve *implementation* of national security measures in popular campaigns. Ask the more fundamental questions of whose nation? What constitutes a nation? Who determines its borders; what do they permit and what do they restrict (e.g. free trade vs free movement)? What is security? Whose security?
- Avoid falling into the trap of accepting divisions between "good Muslim" versus "bad Muslim" or "good immigrant" versus "bad immigrant"; build campaigns and popular movements based on full respect for the rights and dignity of everyone without qualification.
- Translate and broadly distribute the Rights Guide produced by CAIRCAN to inform and empower targetted communities.

For governments:

- Recognize that Canada is built on stolen land and begin the process of decolonization and reparations.
- Implement a profound shift in domestic policy and foreign relations by addressing social injustices, poverty, oppression, racism and discrimination and adopt this new direction as the principle strategy of the "war on terrorism".
- Implement a new curriculum in all educational institutions in accordance with this history and reality.
- Prohibit racial, religious and other forms of profiling by policing, security and intelligence officials.

Due process

The Canadian security and intelligence apparatus, and CSIS and the RCMP in particular, as well as police forceshave, through racial profiling, widespread harassment and threats, cultivated a climate of fear among immigrants, refugees and racialized communities. One tool used in those practices is the threat of invoking immigration security measures such as the security certificate. These same agencies have a long history of operations against legitimate social movements and dissident organisations in Canada. Their activities in many instances seek to defend *status quo* social power relations, rather than to protect public safety.

CSIS has demonstrated not only incompetence when it comes to providing intelligence that is supposed to protect the public, but has also participated in serious threats and aggressions against public safety.

The definition of "threat to national security" and the lack of a definition of terrorism allow Canadian authorities to invoke immigration security measures, in a draconian fashion, against individuals who pose no threat whatsoever (similar to the way, in a different context, these words are evoked to justify military offensives). These concepts are malleable. They allow "national security" to be invoked in a manner so as to exclude "undesirables". The results have been devastating for the lives of those who have been targetted and their families.

The training sessions being organized by the Federal Court for judges in security certificate cases constitute a recognition by the judges themselves that they are not in a position to properly test the government's evidence.

The use of secret evidence, especially in light of the above-mentioned conclusions, in all immigration security hearings is fundamentally unfair.

The use of *ex parte* hearings, especially in light of the above-mentioned conclusions, in all immigration security hearings is fundamentally unfair.

The special advocate model is an insufficient remedy for the use of secret evidence and *ex parte* hearings.

The alleged need to protect national security provides no justification for affording second-class justice to non-citizens.

For popular action:

- Create a popular watchdog to monitor security and intelligence agencies (CSIS and RCMP), in order to provide the recourse and accountability that SIRC has failed to provide.
- Build solidarity between different groups targetted in the name of national security – including immigrants and refugees, indigenous people and the labour movement – through public education events, mutual aid projects and joint campaigns.
- Expand the campaign to abolish security certificates to demand the abolition of all secret evidence and secret hearings in the *Immigration and Refugee Protection Act*.

- Improve links between the campaign to abolish security certificates and campaigns against the *Anti-Terrorism Act*.
- Create a campaign to have CSIS placed on the list of terrorist organizations, and to have its assets sold to pay reparations to people who have suffered at its hands.
- Initiate popular education campaigns aimed at breaking the silence, secrecy, stigmatization, isolation and fear in targetted communities.
- Build community support to deal collectively with the concrete impacts of the immigration security regime on people's lives (e.g. job loss, etc.)

For governments:

- Don't use immigration law to deal with security concerns.
- Strike the word 'terrorism' from the Criminal Code. All acts that could be construed as "terrorism" (mass murder, aiding and abetting murder, conspiracy to murder, kidnapping, etc.) are already defined and prohibited under the Criminal Code.
- Repeal the *Anti-Terrorism Act*.
- Explicitly recognize the equality of all people within Canada regardless of their status. Overhaul the entire spectrum of immigration law, regulations, and policy (including all discretionary powers) so that it is consistent with principles of equality, liberty, dignity and justice. Specifically, ensure that all in Canada are afforded due process, including a fair and open trial.
- Abolish all security measures based on the premise of racial profiling and surveillance of targetted communities, such as the "no fly list".
- Abolish security certificates and all uses of secret evidence and *ex parte* hearings in immigration matters. Repeal sections 34 and 77-86 of the *Immigration and Refugee Protection Act*.
- Implement complete transparency in the application and operation of immigration law.
- Provide reparation to individuals and families who have been victims of immigration security measures – within or outside Canada – and to those whose immigration status has been suspended for unreasonable lengths of time.
- Identify and provide effective recourse for systemic racism and racial profiling in all law enforcement and intelligence-gathering agencies.
- Cease information-sharing with other intelligence and security agencies where there is any risk of contamination of torture or any risk of endangering individuals in Canada or their families abroad.

Detention

Immigrants are being subjected to arbitrary and indefinite detention in the name of national security. Not only is this illegal, it constitutes injury of the most severe form, amounting to psychological torture.

Building and operating a new detention centre specifically for immigration security detainees is a waste of public funds, a wrong-headed investment in a discriminatory policy, which has done nothing to address either the short-term demands of the security certificate detainees for better detention conditions or the fundamental injustices. The new detention centre, like the US-run prison at Guantanamo Bay in Cuba, has become a symbol of injustice against racialized communities, and particularly against Arabs, Muslims and those perceived to be Arab and Muslim.

Without a fair and open trial, "control orders", while representing a significant improvement in conditions for the detainee, remain an unjustifiable and humiliating restriction of liberty. It is of broad concern that individuals are being subjected to such intense control and surveillance.

Immigration security measures have had a devastating impact on family members. Entirely unwarranted infringements of their liberty have been imposed, thereby forcing impossible choices on them. The impact on family members is largely ignored in the public debate over such measures.

For popular action:

- Strengthen the popular campaign to close the illegal Guantanamo North prison, as the physical symbol of policies of arbitrary and indefinite detention.
- Develop grassroots solidarity with people in immigration detention; including letter-writing campaigns, visits, radio broadcasts, support work and solidarity rallies at detention centres.
- Develop popular education tools that can be distributed to people in immigration detention as well as to their friends and family, explaining their rights and possible recourses and action.
- Develop community support for families of immigration security detainees
- Mount a campaign to challenge control orders, house arrest, and release conditions imposed without trial on immigrants.

For governments:

- Close "Guantanamo North", the Kingston Immigration Holding Centre.
- Release immigration security detainees without delay and without conditions – or charge and provide them with a fair and open trial.
- Remove the conditions of release and constant, intrusive surveillance of those who have been freed under bail – or charge and provide them with a fair and open trial.
- Ensure that all judicial and procedural guarantees that safeguard the liberty of Canadians are applied without discrimination to non-citizens.
- After a fair and open trial, make use of alternatives the least restrictive of liberty, such as regular reporting to officials. before relying on more invasive conditions or detention.
- Ensure that there is no mandatory detention and that there is a legally mandated maximum length to any detention imposed after a fair and open trial to guarantee that no one is subject to de facto indefinite detention.
- Ensure that those detained have frequent and regular access to a judicial review of their detention in accordance with international standards and Canadian legal norms applied to citizens, including access to all evidence on which their detention is based, the right to cross-examine witnesses, and the right to be present at all meetings between the judges and the ministers.
- In all cases, ensure that conditions of detention respect the dignity of detainees, on material, cultural and religious levels. In particular, Canada should immediately cease using physical restraints and strip-searches for people detained under immigration laws and ensure that detainees understand the process that is being imposed on them and are kept updated.
- Ensure that any conditions of release, imposed after a fair and open trial, minimise the deprivation of liberty, and that they take into account the private life and the mental and physical health of the person and of their family.

- Prohibit the detention of children. No child should ever be detained.

Deportation

The threat of deportation casts a pall of uncertainty over many individuals, their families and communities, condemning them to insecurity and alienation from the rest of society.

When it is combined with an acknowledged threat of torture – as is the case of people threatened with deportation on the grounds of "national security" – this threat becomes a form of psychological torture. It is deplorable that Canada has an explicit policy that in "exceptional circumstances" it can deport people to face torture, that it is actively pursuing this policy in several current cases, and that it otherwise resorts to hypocritical tricks like "diplomatic assurances" to evade international and domestic norms against return to torture. The Commission fails to see a difference between a legalized process of deportation to torture and an extra-legal programme of "extraordinary rendition".

Keeping people under an active threat of being sent to a recognized risk of torture, as Canada is doing in several cases, is horrifying. Doing so in the name of security is inconsistent and counter-productive to the point of being perverse.

Given the fact that Canada has not respected international law, and has ignored repeated reminders from UN and human rights organisations, and that the impact is so extreme and irreversible, strong popular action is particularly necessary in this area.

For popular action:

- Develop a sustained and proactive media campaign on the issue of deportations, and legally sanctioned deportations to torture which would be endorsed by all sectors of society working for social justice.
- Organise popular actions to raise the issue of Canadian deportation to torture at all UN and other international meetings in Canada in collaboration with all sectors of society working for social justice.
- In cooperation with popular movements in other parts of the world, encourage popular actions across the globe to draw attention to and denounce Canadian deportations to torture.
- Develop effective and broad-based popular education about human rights violations related to deportation.
- Strengthen the sanctuary movement and safe passage through borderlands.
- Research the role of airline companies and other agencies in facilitating deportation in order to develop effective means to end this collaboration.
- Develop effective actions to prevent deportations at airports and other points of departure.

For government:

- Uphold the established international standard of an absolute prohibition on torture. This means, minimally, ending the policy of "exceptional circumstances", revising IRPA to clearly reflect the absolute prohibition on returns to torture, and ending all cooperation in "extraordinary rendition" programmes. Canada must stop sub-contracting torture immediately.

- Cease using deportation as a security measure.
- Cease seeking and accepting diplomatic assurances to circumvent international obligations to protect people at risk.
- Stop sharing information during the immigration process in ways which create a risk for people threatened with deportation.
- Initiate a comprehensive and serious review of all Canadian involvement in sub-contracting torture overseas, through legalized or extra-legal means, holding Canadian security agencies, including RCMP and CSIS, accountable for their involvement.

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Annex A1

The Story of the Komagata Maru

The Komagatu Maru incident occurred after the Canadian government, responding to mounting racial tensions in BC, restricted immigration from India by passing the Continuous Journey Provision of the *Immigration Acts* of 1908 and 1910[1]. This law required that all immigrants travel on a continuous journey from their country of origin. Since there were no steam ships that made a direct voyage to Canada, Indians were indirectly prohibited from coming to Canada[2]. The Continuous Journey Provision was explicitly instituted to prevent further immigration of Indian migrant workers deemed undesirable by the Canadian government[3].

In 1914, a group of 376 Indians defied this racist legislation and, upon arrival in Canada, the passengers were detained on the ship for two months. They were not allowed to set foot on Canadian soil during their detainment. When it became clear that the passengers would not leave without provisions, the Canadian government attempted to take the ship by force with a navy cruiser. It was at this point of heightened tension and confrontation that the passengers of the Komagata Maru negotiated their departure. Upon arrival in India, nineteen of the passengers were shot dead by British authorities because they were considered seditious for challenging Canadian legislation[4]. Several of the leaders were also accused of sedition, and then imprisoned or hanged[5].

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2. W. Peter Ward, *White Canada Forever* (Montreal and Kingston: McGill-Queen's University Press, 2002) 86.

3. Ward, 86.

4. The British interpreted the challenge to Canadian legislation as a challenge to the authority of the Empire.

5. Johnston.

Annex A2

Key provisions of the Immigration and Refugee Protection Act

3. (3) This Act is to be construed and applied in a manner that

(d) ensures that decisions taken under this Act are consistent with the *Canadian Charter of Rights and Freedoms*, including its principles of equality and freedom from discrimination [...]

(f) complies with international human rights instruments to which Canada is signatory.

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

(a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;

(b) engaging in or instigating the subversion by force of any government;

(c) engaging in terrorism;

(d) being a danger to the security of Canada;

(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).

Exception

(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.

77. (1) The Minister and the Solicitor General of Canada shall sign a certificate stating that a permanent resident or a foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality and refer it to the Federal Court, which shall make a determination under section 80.

(2) When the certificate is referred, a proceeding under this Act respecting the person named in the certificate, other than an application under subsection 112(1), may not be commenced and, if commenced, must be adjourned, until the judge makes the determination.

78. The following provisions govern the determination:

(a) the judge shall hear the matter;

(b) the judge shall ensure the confidentiality of the information on which the certificate is based and of any other evidence that may be provided to the judge if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person;

(c) the judge shall deal with all matters as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit;
(d) the judge shall examine the information and any other evidence in private within seven days after the referral of the certificate for determination;
(e) on each request of the Minister or the Solicitor General of Canada made at any time during the proceedings, the judge shall hear all or part of the information or evidence in the absence of the permanent resident or the foreign national named in the certificate and their counsel if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person;
(f) the information or evidence described in paragraph (e) shall be returned to the Minister and the Solicitor General of Canada and shall not be considered by the judge in deciding whether the certificate is reasonable if either the matter is withdrawn or if the judge determines that the information or evidence is not relevant or, if it is relevant, that it should be part of the summary;
(g) the information or evidence described in paragraph (e) shall not be included in the summary but may be considered by the judge in deciding whether the certificate is reasonable if the judge determines that the information or evidence is relevant but that its disclosure would be injurious to national security or to the safety of any person;
(h) the judge shall provide the permanent resident or the foreign national with a summary of the information or evidence that enables them to be reasonably informed of the circumstances giving rise to the certificate, but that does not include anything that in the opinion of the judge would be injurious to national security or to the safety of any person if disclosed;
(i) the judge shall provide the permanent resident or the foreign national with an opportunity to be heard regarding their inadmissibility; and
(j) the judge may receive into evidence anything that, in the opinion of the judge, is appropriate, even if it is inadmissible in a court of law, and may base the decision on that evidence.

79. (1) On the request of the Minister, the permanent resident or the foreign national, a judge shall suspend a proceeding with respect to a certificate in order for the Minister to decide an application for protection made under subsection 112(1).
(2) If a proceeding is suspended under subsection (1) and the application for protection is decided, the Minister shall give notice of the decision to the permanent resident or the foreign national and to the judge, the judge shall resume the proceeding and the judge shall review the lawfulness of the decision of the Minister, taking into account the grounds referred to in subsection 18.1(4) of the *Federal Courts Act*.

80. (1) The judge shall, on the basis of the information and evidence available, determine whether the certificate is reasonable and whether the decision on the application for protection, if any, is lawfully made.
(2) The judge shall quash a certificate if the judge is of the opinion that it is not reasonable. If the judge does not quash the certificate but determines that the decision on the application for protection is not lawfully made, the judge shall quash the decision and suspend the proceeding to allow the Minister to make a decision on the application for protection.
(3) The determination of the judge is final and may not be appealed or judicially reviewed.

81. If a certificate is determined to be reasonable under subsection 80(1),
(a) it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible;
(b) it is a removal order that may not be appealed against and that is in force without the neces-

sity of holding or continuing an examination or an admissibility hearing; and
(c) the person named in it may not apply for protection under subsection 112(1).

82. (1) The Minister and the Solicitor General of Canada may issue a warrant for the arrest and detention of a permanent resident who is named in a certificate described in subsection 77(1) if they have reasonable grounds to believe that the permanent resident is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.
(2) A foreign national who is named in a certificate described in subsection 77(1) shall be detained without the issue of a warrant.

83. (1) Not later than 48 hours after the beginning of detention of a permanent resident under section 82, a judge shall commence a review of the reasons for the continued detention. Section 78 applies with respect to the review, with any modifications that the circumstances require.
(2) The permanent resident must, until a determination is made under subsection 80(1), be brought back before a judge at least once in the six-month period following each preceding review and at any other times that the judge may authorize.
(3) A judge shall order the detention to be continued if satisfied that the permanent resident continues to be a danger to national security or to the safety of any person, or is unlikely to appear at a proceeding or for removal.

84. (1) The Minister may, on application by a permanent resident or a foreign national, order their release from detention to permit their departure from Canada.
(2) A judge may, on application by a foreign national who has not been removed from Canada within 120 days after the Federal Court determines a certificate to be reasonable, order the foreign national's release from detention, under terms and conditions that the judge considers appropriate, if satisfied that the foreign national will not be removed from Canada within a reasonable time and that the release will not pose a danger to national security or to the safety of any person.

85. In the case of an inconsistency between sections 82 to 84 and the provisions of Division 6, sections 82 to 84 prevail to the extent of the inconsistency.

86. (1) The Minister may, during an admissibility hearing, a detention review or an appeal before the Immigration Appeal Division, make an application for non-disclosure of information.
(2) Section 78 applies to the determination of the application, with any modifications that the circumstances require, including that a reference to "judge" be read as a reference to the applicable Division of the Board.

87. (1) The Minister may, in the course of a judicial review, make an application to the judge for the non-disclosure of any information with respect to information protected under subsection 86(1) or information considered under section 11, 112 or 115.
(2) Section 78, except for the provisions relating to the obligation to provide a summary and the time limit referred to in paragraph 78(d), applies to the determination of the application, with any modifications that the circumstances require.

Annex A3

Canadian Charter of Rights and freedoms key provisions

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

8. Everyone has the right to be secure against unreasonable search or seizure.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

10. Everyone has the right on arrest or detention
a) to be informed promptly of the reasons therefor;
b) to retain and instruct counsel without delay and to be informed of that right; and
c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

11. Any person charged with an offence has the right
a) to be informed without unreasonable delay of the specific offence;
b) to be tried within a reasonable time;
c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
e) not to be denied reasonable bail without just cause;
f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Annex B4

Framework for the People's Commission

1. PUBLIC CONSULTATION. This framework will be reviewed in a series of open, public assemblies held through March 2006.

2. The **PEOPLE'S COMMISSION** on Immigration Security Measures has been established in order:

To investigate and report on the actions of Canadian officials and Canadian government bodies in relation to the *Immigration and Refugee Protection Act* (IRPA) security certificate and other IRPA security measures, including:

- equality of treatment of non-citizens;
- the security certificate review process;
- detention;
- deportation;
- and torture.

To make recommendations for appropriate legal or popular action against Canadian officials or organizations found responsible for abuses, and for changes to the current legal and procedural frameworks governing the issues investigated.

3. LOCATION and **TIMING.** The People's Commission will be based in Montreal. Parallel and supporting events will be held in other cities in Canada. The Commission will begin to work on 18 March 2006 and conduct Public Hearings on 21, 22, and 23rd April 2006. The final report will be published before the end of May 2006.

4. COMMISSIONERS. The People's Commission will be conducted by no more than 12 Commissioners who are accountable to communities who have been directly or indirectly affected by IRPA security measures. The Commissioners will draw on the work of a support team of researchers and writers.

5. PROCEDURES AND METHODS. The Commissioners will conduct the inquiry according to procedures and methods which are fully transparent and meet popular expectations of fairness and credibility.

6. EXPERTS and **WITNESSES.** The Commissioners may invite any witness or expert they believe to be appropriate to testify during the public hearings, or to submit written evidence.

7. PUBLIC PARTICIPATION. Any member of the public who wishes in good faith to give evidence or question witnesses can do so in one of three ways: by applying to make a formal intervention during

the public hearings; by making an intervention at the public hearings during a period set aside for open participation; or by making written or recorded submissions prior to the public hearings, according to an accessible and transparent submission process. Where resources and time constrain participation, the Commissioners will give priority to those who are more directly affected by the issues under inquiry. Commissioners will have discretion to reject submissions and interventions which, in the opinion of the Commissioners, have not been made in good faith. All efforts will be made to support the capacity of individuals and organisations who wish to make such submissions and interventions, and to address barriers to full and equal participation with respect to language, gender, age, class, formal education, financial means, legal status, security of self and family, mobility and all other relevant barriers.

8. TRANSPARENCY OF EVIDENCE. Within constraints of available resources, all efforts will be taken to ensure that the public hearings are accessible, with concrete measures to address barriers to full and equal access, as above (7). All written submissions under consideration will also be made as broadly accessible as resources permit.

9. SECURITY OF WITNESSES. Where the security of an expert witness or public participant may be compromised by their participation, or that of their families, the Commissioners will ensure that their identities remain confidential.

10. FINAL REPORT. The Commissioners will compile a final report of their findings and recommendations in English and French, which will be translated into as manylanguages as resources permit, and made widely available.

Annex B5

Biographies of Commissioners and Researchers

Commissioners

Fetya Ahmed, representing the United Muslim Students Association, is a Concordia student. She is graduating from the School of Community and Public Affairs, with an interdisciplinary training and education in public policy analysis and policy advocacy. She has worked on the issue of "National Security and Immigration" and done community outreach for the CBC.

Sarita Ahooja is an anti-racist activist and organizer with No One Is Illegal–Montreal. She has worked in solidarity with Native resistance movements in Latin America and on Turtle Island for over a decade, and supports the struggle for people's liberation and the right to self-determination.

May Chiu has been active in many community initiatives, including establishing the first legal clinic for the Chinese community in Montreal, as well as a variety of Latin American and African solidarity projects. She has practised as an immigration lawyer in Canada and taught law at the Shanxi University in China. She is currently legal counsel for CRARR (Centre de recherche-action sur les relations raciales) and is on maternity leave from her position as Executive Director of Chinese Family Services of Greater Montreal.

Salam El Menyawi is the President of the Muslim Council of Montreal (MCM). He is an outspoken advocate of human rights and against racial profiling.

Kahentinetha Horn is a Mohawk Elder, Kahnawake of Mohawk Territory. She teaches "History of Indigenous Women" at Concordia University and is a writer on Indigenous issues and a founder of "MNN Mohawk Nation News" (mnn.mohawknationnews.com). She is the author of several books: *Mohawk Warriors Three*, *Where Eagles Dare to Soar*, *The Agonizing Death of Federal Indian Law*, and *Who's Sorry Now, the good, the bad and the unapologetic Mohawks of Kanehsatake*. She has been an Indigenous activist for more than five decades, is a mother and grandmother and continues to work for respect for Indigenous constitutional jurisdiction of Turtle Island.

Bassam Hussein (BEng, MBA, PhD), president of the executive committee of El-Hidaya Association, member of many other community groups, presently working as a Project Manager for a telecom company, did volunteer work with: Centraide, Police Dept, Concordia University, INRS, Hema Quebec, Heritage Canada, Immigration Canada, and many other community-based groups and initiatives.

Dan Philip has been President of the Black Coalition of Quebec, an organisation which defends the rights of the black community in Quebec against racial profiling and discrimination, since the late 70's. A graduate of Political and Social Science, Mr. Dan Philip is convinced that it is through daily battle that the imperative social changes which would engender a more equitable society can take place.

Sarwat Viqar is a humanities teacher at John Abbott College, Montreal. Previously, she has worked on refugee rights and anti-deportation campaigns with Pakistanis and other South Asians in Montreal.

Jared Will is a member of the Coalition Against the Deportation of Palestinian Refugees and Solidarity Across Borders. He is currently articling at a Montreal immigration law office.

Researchers and writers

Daredjane Assathiany is a student in law and international law. Her research has included work on detention of migrants, security certificates, and *double peine*. She's been içnvolved in legal defense of activists, and has often collaborated with No one is illegal and Solidarity across Borders.

Matthew Behrens is a social justice advocate and writer from Toronto, and founder and organizer for The Campaign to Stop Secret Trials, Homes not Bombs and Toronto Action for Social Change. Matthew's writings on social justice issues, and most recently on the Secret Trial Five, have appeared in many publications and have been disseminated around the globe. He has been working directly with all three detainees in Toronto and their families for the past several years.

Dr. Janet Cleveland is a research associate at the Canada Research Chair on International Migration Law at Université de Montréal, and has been doing research on the problems faced by asylum seekers and refugees since 2003. She has a Ph.D. in clinical psychology, as well as degrees in law and anthropology. One of her current projects is developing information sessions for asylum seekers on how to prepare for the refugee determination hearing. She is also doing research on how the Immigration and Refugee Board assesses medical and psychological evidence in the case of traumatized asylum seekers.

Pierre-Louis Fortin Legris works at the Ligue des droits et libertés. He is also a lawyer with an interest in international human rights law, consitutional law, criminal law and social law.

Indu Geita. Bio not available.

Dr. Jill Hanley is a researcher on issues of precarious immigration status and access to social rights with the Université Libre de Bruxelles and the Université de Montréal. Her recent publications have focused on the Canadian government's neglect of human rights considerations in favour of security mania in the area of migration and social policy. She is also a community organiser with the Immigrant Workers' Centre.

Julia Nicol is a second year law student at McGill. Currently co-coordinator of Equity Access (a McGill law students' group), she will become Executive Director of the McGill Legal Information Clinic in May 2006.

Leila Pourtavaf is a member of No One Is Illegal Montreal. She holds an MA in Media Studies and is a Coordiantor at QPIRG McGill.

Harsha Walia is an activist and writer based in Vancouver, Coast Salish Territories. She is currently involved with No One is Illegal Vancouver, the South Asian Network for Secularism and Democracy, Vancouver Status of Women and is also involved in supporting indigenous struggles and involved in the anti-war and anti-imperialist movement. Her writings have appeared in various alternative and mainstream publications and she has also been working as a contract researcher over the past few years, including research on anti-terrorism and national security.

Tamara Vukov. Bio not available.

Annex B6

Endorsers and Sponsors of the People's Commission*

Au Contre-Temps B&B
Black Coalition of Québec
Council on Arab-Islamic Relations – Canada (CAIR – CAN)
Campaign to Stop Secret Trials in Canada
Canadian Arab Federation (CAF)
Canadian Council for Refugees (CCR)
Canadian Union of Postal Workers (CUPW)
Centre justice et foi
CKUT 90.3 FM
Comité chrétien pour les droits humains en Amérique latine (CCDHAL)
Comité des sans-emploi Montréal – Centre
Communauté Catholique Congolaise de Montréal
Concordia Student Union (CSU)
Council of Canadians
Downtown Legal Services
Fédération autonome du collégial (FAC)
Immigrant Workers' Centre (IWC)
Institute in Management and Community Development (Centre for Continuing Education, Concordia University)
Inter Pares
International Civil Liberties Monitoring Group (ICLMG)
Jesuit Refugee Service
KAIROS: Canadian Ecumenical Justice Initiatives
Association pour la défense des droits sociaux (ADDS)
Ligue des droits et libertés
Moog Audio
Muslim Council of Montreal (MCM)
No One Is Illegal –Montreal
No One Is Illegal –Toronto

* These organizations supported the intiative; endorsement does not imply full agreement with all findings of the Commission.

No One Is Illegal –Vancouver
Nova Scotia Public Interest Research Group (NSPIRG)
Ontario Coalition against Poverty (OCAP)
People's Potato
Projet Accompagnement Solidarité Colombie
Sœurs Auxiliatrices
South Asian Women's Community Centre (SAWCC)
Table de concertation des organismes au service des personnes réfugiées et immigrantes (TCRI)
The Justice for Mohamed Harkat Committee
Toronto Action for Social Change (TASC)
United Muslim Students Association (UMSA)

Annex B7

Schedule of Public Hearings (21 to 23 April 2006, Montréal)

Friday, 21 April	Saturday, 22 April	Sunday, 1 23 April	Sunday 2, 23 April
10–12am Room 119 **Alex Neve**, Secretary General, Amnesty International Canada (English branch): Security certificates and arbitrary detention **Victor Regalado**, arrested under security certificate in 1982: personal testimony **Sophie Lamarche Harkat**, married to Mohamed Harkat: personal testimony	10–12am Bloc 4 Auditorium **Warren Allmand,** PC, OC, QC, ICLMG: international law, charter and security certificates **Sheikh Ali Sbeiti,** Al Hidaya centre: personal and community experiences **Boualem B.**: personal testimony of being targetted	10–12am Bloc 7 Auditorium **Alex Popovic,** Collective opposed to Police Brutality: CSIS as a threat to "national security" **Denis Barrette**, lawyer with Ligue des droits: Canadian policy and practice on deportation and torture **Richard Renshaw**, retired priest: Impact of torture on prisoners in Latin America	
2:30–4pm Bloc 2 Auditorium **Halima Mautbur**, CAIR-CAN: Broad impact of security certificates on Muslim communities in Canada **Dieter Misgeld**, partner of Amparo Torres who is a Colombian social activist and convention refugee, now facing deportation on false accusation of assocation with FARC	1–3pm Bloc 5 Auditorium **Gary Kinsman**, Professor, Sociology, Laurentian University: Canadian state surveillance and the creation of enemies **Jaggi Singh**, social justice advocate: The RCMP, CSIS and policing in Canada, an activist view **Evert Hoogers**, Canadian Union of Postal Workers (CUPW): CSIS and RCMP surveillance of CUPW	1–3pm Bloc 8 Auditorium **Marie-Jo Ouimet,** MD, ASILE: psychological impact of migration experience of detention, uncertainty and distrust **Abdel-Raouf Neifer**, Personal testimony of a refugee who has been in limbo for 14 years waiting for his papers **Arash A.**: Personal testimony of a refugee from Iran who spent 10 months in detention	1–3pm Bloc 11 Auditorium **Matthew Behrens**, Campaign to Stop Secret Trials in Canada: abuses in cases of Jaballah, Almrei and Mahjoub **Christian Legeais**, Justice for Mohamed Harkat Committee: Testimony on the situation of Mohamed Harkat
4:30–6pm Bloc 3 Auditorium **Sharryn Aiken**, Prof of Law at Queens University and proposed Intervenor in Supreme Court on security certificate challenges: Alternatives to security certificates **Latifa Charkaoui**: Impact of security certificates on women and family members	3:30–6pm Bloc 6 Auditorium **Johanne Doyon**, immigration lawyer bringing challenge to Supreme Court on behalf of Charkaoui: use of secret evidence and closed hearings in immigration proceedings other than "security certificates" **Sherene Razack**, Professor, OISE, University of Toronto: Race and National Security in Canada **Adil Charkaoui**, arrested under security certificate in 2003: Special advocates not a solution **Nouredine K.**, Personal testimony	4–6pm Bloc 9 Auditorium **Janet Dench**, Executive Director of Canadian Council for Refugees: other measures in IRPA that deny justice to immigrants on security grounds **Mohan Mishra**: "Project Thread" under which 20 non-status men were groundlessly detained on security grounds **Suleyman Goven**: Personal testimony of living in limbo since 1994, after being targetted by CSIS.	4–6pm Bloc 12 Auditorium **No One is Illegal -Montreal**, Challenging global apartheid: questioning borders and immigration controls **Ahmad Jaballah** (speaker phone), oldest son of Mahmoud Jaballah: Personal testimony
	6–9pm Community Dinner With a short play on deportation	6pm Closing	6pm Closing

Annex B8

Witnesses at public hearings

Arash A. is a refugee from Iran who spent months in detention in Europe, in UK, and then in Canada in his quest for security. He finally went on a hunger-strike in Canadian prison in the summer of 2005.

Sharryn Aiken is a law professor at Queen's University. In 2004 she co-authored a letter signed by over 60 law professors, national and provincial legal networks which helped bring the issue of security certificates to public attention. She represents a coalition of NGOs seeking to intervene in the challenge to security certificates and security related detention in the Supreme Court.

Warren Allmand is the former Solicitor General of Canada (1972-1976), and the former head of the International Centre for Human Rights and Democratic Development (Rights and Democracy). He is representing the International Civil Liberties Monitoring Group (ICLMG), a coalition of over 50 NGOs which formed in response to C-36, the anti-terror legislation introduced in 2002.

Boualem B., an Algerian migrant, was accused of being a member of the GIA. He was later cleared by Montreal police and they publicly acknowledged their error. He now works in a half-way house.

Denis Barrette is a lawyer with Ligue des droits et Libertés. He represented the Ligue at the UN Committee against Torture meeting in Geneva in 2005.

Matthew Behrens is a social justice activist who coordinates the Campaign to Stop Secret Trials in Canada. He has been working in support of Jaballah, Almrei and Mahjoub and their families in Toronto for four years.

Adil Charkaoui is a scholar and a father of three. He spent almost two years in arbitrary detention until he was released under severe conditions in 2005.

Latifa Charkaoui is the mother of Adil Charkaoui. She ceaselessly campaigned on behalf of her son while he was in prison; meeting MPs, speaking to media, participating in events and court hearings. Since his release, she has been forced by the court to act as one of three designated chaperones who must accompany him every time he leaves his home.

Janet Dench is the Executive Director of Canadian Council for Refugees.

Johanne Doyon is an immigration lawyer who is bringing a Charter challenge to security certificates to the Supreme Court on behalf of Adil Charkaoui. She is also legal counsel for Sogi Bachan Singh.

Suleyman Goven arrived in Canada in 1991. He was accepted as a convention refugee in 1993, but was interrogated by CSIS in 1994 and his file has been in limbo ever since. He has launched a lawsuit against CSIS.

Evert Hoogers is representing the Canadian Union of Postal Workers (CUPW). CSIS and RCMP targetted CUPW and key CUPW activists for surveillance, veiling the surveillance in a shroud of secrecy justified in the name of "national security".

Gary Kinsman is a professor of Sociology at Laurentian University. He has written extensively about how "national security" is used to target vulnerable groups in society, to control these groups and shape public opinion through fear and the creation of enemies.

Ahmad Jaballah is the oldest son of Mahmoud Jaballah. His father has been in arbitrary, indefinite detention under threat of detention to torture since being arrested under a security certificate in August 2001.

Sophie Lamarche Harkat is married to Mohamed Harkat. She has campaigned endlessly since her husband's arrest and done a great deal of work to educate the public about the issue of security certificates.

Christian Legeais is spokeperson for the Justice for Mohamed Harkat Committee. He is a political activist recognised for his work in the defence of the rights of all.

Halima Mautbur works at Council on American-Islamic Relations–Canada (CAIRCAN). CAIRCAN actively defends the rights of the Muslim population in the post-Sept 11th climate and conducted a survey on the treatment of the Muslim population by Canadian spy agencies.

Dieter Misgeld is married to Amparo Torres. Torres is a Colombian social justice activist who was accepted as a convention refugee but is now facing deportation on false accusation of association with the FARC.

Mohan Mishra is a member of No one is illegal-Toronto. He was part of Project Threadbare, a grassroots initiative to support over 20 non-status men detained on security allegations in Toronto in the summer of 2003. The allegations publicly unravelled to reveal a set of baseless, racist accusations.

Abdel-Raouf Neifer was accepted as a refugee 14 years ago. He has been waiting ever since for his papers, though he has passed a security check and has no idea why his file is not advancing.

Alex Neve is the Secretary General of Amnesty International Canada (English speaking). Amnesty International has repeatedly called on Canada to reform Canadian law on deportation to torture and security certificates.

Marie-Jo Ouimet is a medical doctor who works with refugees at a clinic in Côte des neiges. She is representing ASILE, a group of doctors and psychologists which works on refugee issues.

Alex Popovic has done research for the Collective opposed to Police Brutality, including extensive research into how CSIS operates.

Sherene Razack is a Professor at OISE, University of Toronto. She has written extensively on race issues in Canada.

Victor Regalado was accepted as a refugee in Canada after fleeing El Salvador, where he worked as a journalist. He was arrested under a security certificate in 1982. All security labelling was eventually dropped, but it took 22 years before he got his papers in Canada.

Richard Renshaw is a Catholic Priest who was active in Latin America in the 1980's. He has written a book on the impact of torture based on his research in Latin America.

Sheikh Ali Sbeiti is a leader the Shi'a community in Montreal; he is involved in the Al Hiyada Centre.

Jaggi Singh is an outspoken and tireless advocate for social justice who has himself been targetted because of his political activism.

Annex B9

Survey on immigration security measures

THE RESULTS OF THIS SURVEY will be given to the Commissioners for their consideration when writing their report.

Please tear this page out and send your responses, with as many additional pages as you wish, by fax or post. You can also email your answers to us or fill out the form online via our website. We must receive your responses by 23 April to integrate them into our final report.

Your additional comments and accounts are welcome!

Personal (optional)

1. Name
2. Gender
3. Age
4. Years in Canada
5. Country of birth
6. Legal status in Canada (Indian, citizen, non-status, etc.)
7. Annual revenue (approximate)
8. Source(s) of income (full-time work, part-time work, independent/contract work, government support, community/family support, other)
9. Formal education (number of years or highest diploma attained)

Experience

10. Has a Canadian intelligence agency (CSIS, RCMP) ever asked you for a meeting?
    - 10.1 Did you agree to meet, were you alone or accompanied by a friend or lawyer, and where did the meeting take place (work, home, CSIS offices, coffee shop, other)?
    - 10.2 Were you threatened or bribed during the meeting or in the invitation for a meeting? What was said?
    - 10.3 If you were bribed or threatened, did you take any action against the security agency? If not, why not?
    - 10.4 Did the approach have any impact on your family outside Canada?

10.5 Did it have any impact on your job, relations or immigration status in Canada or that of your family?

Please add any additional information you would like to share.

11. Has Canada tried to have you declared inadmissable or to deport you on "security" grounds? What happened?

12. Have you experienced racial profiling by Canadian officials or border agents? What were the circumstances? Did you take any action? If not, why not?

13. Have you ever been subject to detention for immigration-related reasons?
    13.1 Where and for how long?
    13.2 What kind of impact did the detention have on your health, your job, your family, other aspects of your life?

    Please add any additional information you want to share.

14. Do you know anyone who has been investigated by Canadian intelligence services?
    14.1 What were the circumstances?
    14.2 Have you been afraid of associating with that person or his/her family?

    Please add any additional information you want to share.

15. Are there any other experiences with the immigration system, border agents or security agencies that you would like to share?

    Opinions

16. How do you define "terrorist"?

17. How do you define "national security"?

18. What daily security concerns do you have personally?

19. Everyone in Canada, whether or not they have legal status, should have the right to (respond: yes/no):
    - not be imprisoned without charge
    - not be subject to physical abuse or threat of physical abuse
    - be presumed innocent until proven guilty
    - have enough to eat
    - have decent housing
    - work
    - be treated with dignity
    - participate fully in the political process
    - remain in Canada

20. Are there any other opinions on these issues that you would like to share?

21. Would you be open to us contacting you for further information? If so, please let us know how we can contact you (tel, fax, email, address or via community centre, etc.).

Annex B10

Results of public assembly in Québec

Assemblée citoyenne publique
le 28 mars 2006

LES CITOYENS ET CITOYENNES de Québec se sont penchés sur les enjeux reliés aux certificats de sécurité et aux lois qui portent atteintes aux libertés civiles.

Dans un premier temps, les citoyens et citoyennes de Québec trouvent inadmissibles l'existence de la loi sur les certificats de sécurité, qui semble être appliquée selon des principes de profilage racial et religieux et qui vont à l'encontre des principes de non-discrimination qui doivent être en vigueur au Canada.

À la suite des discussions, l'assemblée citoyenne de Québec déclare que :

- Les certificats de sécurité sont une négation des droits fondamentaux qui devraient être reconnus dans un pays dit de droit tel que le Canada et une négation des règles de justice reconnues internationalement.
- Le Canada a l'obligation, en vertu de la Convention internationale contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, de ne pas extrader un individu vers un pays où il risque la peine de mort ou la torture.
- Les certificats de sécurité doivent être abolis. Les individus qui font présentement objet d'un certificat de sécurité doivent bénéficier, dans les meilleurs délais, d'un procès public, juste, équitable et d'une défense pleine et entière incluant le droit d'appel.

La soi disant lutte au terrorisme ne doit pas servir de prétexte à une violation des droits inaliénables des personnes vivants au Canada. Nos élus doivent respecter des principes et des droits inaliénables de la façon suivante :

- Le gouvernement du Canada doit reconnaître le droit à la vie privée et le droit à la dignité à chacun et chacune tel que prévu par la Charte canadienne des droits et libertés et la Charte québécoise des droits et libertés de la personne.
- Les agissements des services de sécurité et de renseignements canadiens doivent être rendus public par des rapports transparents, écrits par des commissaires indépendants.
- Il est nécessaire que les pouvoirs et les agissements des services de sécurité et de renseignements soient soumis à un cadre légal clair et transparent.
- La reddition des coptes des services de sécurité et de renseignements et des ministères concernés doit se faire de façon systématique, sérieuse, transparente et publique.

Il est nécessaire que des mandats soient émis, en concordance avec la notion de "motifs raisonnables de croire" par des juristes, avant d'entreprendre une action de saisie, de perquisition ou d'arrestation.

people's commission
on immigration "security" measures

The People's Commission is an initiative of the Coalition Justice for Adil Charkaoui, Solidarity Across Borders and QPIRG Concordia

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