

**Justice for Mohamed Harkat Committee**  
**individual submission**  
**Canada**  
**February 2009**

**Executive Summary**

- 1 Through its continued use and application of Security Certificates against immigrants and permanent residents, most of them being of Muslim faith or originating from countries in North Africa and the Middle East, the Government of Canada is in breach of Articles 2, 3, 5, 7, 9, 10, and 13 of the UN Charter.
- 2 The Government of Canada is in breach of Articles 2, 5, and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.
- 3 The Government of Canada is in breach of Articles Article 4, paragraph 1 and 2; Article 6, paragraph 1; Article 7; article 9, paragraphs 1, 2, 3, and 4; Article 10, paragraph 2; Article 12, paragraph 1; Article 14; and Article 26 of the International Covenant on Civil and Political Rights.
- 4 The Government of Canada is in breach of Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**Introduction**

- 5 Canada is a signatory to the UN Charter, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, it has adopted a Canadian Charter of Rights and Freedoms based on international rights principles. This is laudable.
- 6 However, in the past four years a serious situation of state-sanctioned human rights abuse in Canada has been allowed to continue, despite lawful public pressure and political and legal campaigns through existing channels. This practise is called a Security Certificate under the *Immigration and Refugee Protection Act*, sections 33 and 77 to 85 (previously, since 1977, a "security report"; revised after September 11, 2001).
- 7 The Security Certificate is a tool to detain and deport non-citizens in a process where Canada applies the Certificate with impunity. It involves the use of secret evidence to detain non-citizens of Canada, without charge, based only upon allegations of possible past or future misconduct. No charges are ever laid, and crimes need not have been committed.
- 8 A Security Certificate is signed by two Cabinet Ministers against non-citizens of Canada. The certificates are converted into deportation orders if they are upheld by a judge in a Federal Court process which permits secret hearings in which neither the detainee nor his/her lawyers are permitted to attend, review or cross-examine the evidence or face any accusers.

- 9 currently in Canada five men are detained on Security Certificates. According to Amnesty International, all of their lives are at risk if deported from Canada. They are:
- 10 Mohammad Mahjoub, an agricultural engineer who fled torture in Egypt. Married with three children, he was arrested in June 2000, and was placed under a house arrest control order in February 2007 after nearly seven years in prison.
- 11 Mahmoud Jaballah, also from Egypt, detained since August of 2001. A teacher, married, with six children, Jaballah is also now under house arrest. His order bans him from holding Arabic-language or Koranic classes at his home.
- 12 Hassan Almrei, a poet who ran a small import shop in Saudi Arabia. Held since October 2001, he spent over 4 years in solitary confinement. He is now back in effective solitary confinement as the only detainee with no family to serve as supervising sureties in a control order situation.
- 13 Adil Charkaoui, married, with three children, held from May 2003 to February 2005. Like the others, he was released with severe control order conditions.
- 14 Mohamed Harkat, in Canada since 1995. In 1997, he was given refugee status from government persecution if he were to return to Algeria. On December 10, 2002, Mohamed was detained. He spent one year of his 3 1/2 year detention in solitary confinement. He was released under a control order on June 21, 2006, with the strictest conditions in Canadian history, including a GPS monitoring device at all times to track his movements both inside and outside his residence, which he must pay for; 24 hour supervision by either his wife, Sophie Harkat, or another court-appointed surety; three outings per week which must be approved 48 hours in advance by the Canadian Border Services Agency (CBSA); visitors to the Harkat residence must be pre-approved by the CBSA; all mail is intercepted and telephone conversations are monitored, no matter who they are addressed to or with.
- 15 Canada is seeking to deport these five men to countries where they will face torture, harsh imprisonment, or death. Canada justifies these deportation orders by relying on so-called "diplomatic assurances" from those countries. Such diplomatic assurances have been identified as completely unreliable by Amnesty International and others.
- 16 The broad-based Canadian campaign against the use of these Certificates (including Amnesty International Canada, lawyers' groups, citizens' groups, civil liberties and human rights defenders, and thousands of individuals) was successful. In February of 2007 the Supreme Court of Canada ruled that the Security Certificate process was in violation of sections 7 (right to life, liberty, and security of the person), 9 (freedom from arbitrary detainment or imprisonment) and 10 (right to legal counsel and the guarantee of habeas corpus).
- 17 In response to this ruling the Government of Canada passed a law in February of 2008 to alter the Security Certificate process slightly to include Special Advocates. However, the fact is that the Special Advocates are very limited in their ability to conduct cross-

examinations or to seek evidence independently from the Federal court and the legal counsel of the Government of Canada and the Canadian Security Intelligence Service. The Justice for Mohamed Harkat Committee views the Special Advocates as potentially having a negative impact on the process because this kind of system sanctions and prolongs secret trials. The addition of Special Advocates may thereby provide a way for the Government of Canada to pretend it has addressed the problem, while continuing with impunity to detain and deport non-citizens based on secret evidence.

- 18 All five men currently detained under Security Certificates are Muslim men. While theoretically the process can apply to any non-citizen, in practise it has almost always been used against Muslims.

### **Relevant Instruments, Articles and Clauses Breached**

- 19 We believe that the following sections of the agreements to which Canada is a signatory, have been breached by this process. In addition, it may be that other clauses are indirectly breached.
- 20 The Government of Canada is in breach of Articles 2, 3, 5, 7, 9, 10, and 13 of the UN Charter.
- 21 The Government of Canada is in breach of Articles 2, 5, and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.
- 22 The Government of Canada is in breach of Articles Article 4, paragraph 1 and 2; Article 6, paragraph 1; Article 7; article 9, paragraphs 1, 2, 3, and 4; Article 10, paragraph 2; Article 12, paragraph 1; Article 14; and Article 26 of the International Covenant on Civil and Political Rights.
- 23 The Government of Canada is in breach of Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **Basis of Claim**

- 24 The Security Certificate detainees are experiencing **discrimination** on the basis of their religion, skin colour, and countries of origin. As a result, they have been **deprived of their liberty**.
- 25 The process aims to **deport the detainees to countries where they will face torture, harsh imprisonment, or death**. The Government of Canada has also thereby **deprived the detainees of their rights to life and to security of person, and freedom of movement**.
- 26 Security Certificate detainees are detained in one of three situations. They can be **incarcerated in a facility which is not segregated from the criminal population**, although they have not been charged with any crimes – **a breach of the ICCPR**. They can be **detained in a situation which amounts to solitary confinement** in the Kingston

Immigration Holding Centre, where detainee Hassan Almrei is currently the sole inhabitant. Or they can be placed under house arrest control orders, features of which constitute additional breaches of the international charters and instruments (see below, section titled “Conditions of Detention”).

- 27 The Security Certificate process **deprives the detainees of their equality before the law**, because the threshold of evidence in the process is so low as to be nonexistent. In the Security Certificate process crown lawyers can present hearsay as evidence in a situation where insufficient evidence exists to actually lay charges, because such evidence would not be tolerated in any other Canadian judicial proceeding. The Security Certificate process is therefore quite extreme in the context of Canadian laws. It constitutes a mechanism for the Government of Canada to sidestep normal judicial processes in order to deport people it deems undesirable.
- 21 The Supreme Court of Canada ruled that in proceeding in this manner under the Security Certificate process, the Government has **violated the most fundamental principle of *habeus corpus***. Because the bulk of the evidence in the reasonableness hearing on the Certificate is heard behind closed doors, out of the presence of the detainee, his/her legal counsel, or the public, the detainees are **deprived of their entitlement to a fair and public hearing**. Because the Special Advocates provided are not permitted to communicate with the detained once they have reviewed the secret evidence, their impact on this situation is negligible at best, and the **violation of the right to be heard and defend oneself inherent in *habeus corpus* continues**.
- 22 By its use of the Security Certificate process, the Government of Canada is implicitly, if not explicitly, **approving discrimination on the basis of religion, skin colour, or country of origin**.
- 23 By detaining Security Certificate detainees without charge while their cases move forward, whether in jail or under house arrest, and by virtue of the facts laid out in paragraph 13, the Government of Canada has **arbitrarily detained them** and has **deprived them of their right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defence**.

#### **Conditions of Detention – “Control Orders”**

- 24 The conditions of detention for all of the current Security Certificate detainees except Hassan Almrei consist of a house arrest control order. **The conditions of their house arrest vary from detainee to detainee, which itself may constitute a breach of the right to equality before the law**. That said the conditions in all four control orders may be categorized as follows:
- 25 **Deprivation of the right to liberty and freedom of movement, for the detainees, and for their families who are not permitted to leave the detainee unsupervised**. Three of four detainees under control orders are not allowed to remain at home alone, no matter what the families propose to the court as assurances – locked doors, additional cameras, cameras

placed inside the home, etc. Effectively, the families of these detainees are simultaneously prisoners in the home themselves, and jailers of their loved ones.

- 26 **Deprivation of the right to freedom of assembly, for the detainees, and for their families who are not permitted to leave the detainee unsupervised.** A condition banning the detainees from attending political rallies and demonstrations was initially imposed due to CBSA claims of fears of insecurity if their officers were exposed to any kind of political gathering, including a panel discussion or other such forum. This claim seems spurious at best, since the broad-based campaign against Security Certificates knows full well what would be at stake should any incident occur. However, even if this fear is considered valid, recently the ban on political events was applied to a birthday celebration. This condition is beginning to appear as a ban on any gatherings, no matter of what character, of a certain size. There can be no doubt that the condition is an infringement on the detainees' right to freedom of assembly.
- 27 **Deprivation of the right to work, for the detainees, and for their families who are not permitted to leave the detainee unsupervised.** Only one of the four detainees under house arrest control orders is allowed to work for a living. The others are forced to subsist on government assistance and must ask for donations for such expenses as dental care. Further, at least one detainee must somehow pay for the cost of his GPS tracking bracelet himself, despite having no recourse to secure an income, since he cannot leave his home except three times a week for four hours and he can go nowhere, including his home, unaccompanied by a court-appointed surety.

### **Conclusion**

- 28 Although Article 29 of the UN Charter and Article 12 of the Covenant on Civil and Political Rights sets out limits to these rights, the limits are to be "solely for the purpose of securing... respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." These detainees have committed no crimes. They have threatened no one and no institutions.
- 29 These abuses have been primarily aimed at non-citizens. However, increasingly, similar measures are being taken against immigrants and Canadian citizens. We note particularly the denial of access to the evidence in the recent criminal proceedings under Canada's anti-terrorism Act. The Security Certificates have created a situation within which it has become acceptable for the Government to routinely deny rights to immigrants and permanent residents, most of them being of Muslim faith or originating from countries in North Africa and the Middle East.
- 30 The opponents of the Security Certificate process in Canada have called for a fair trial for Security Certificate detainees – a right under Canadian and International law. If any evidence actually exists that they have broken laws they should be charged and tried in fair, open and independent trials with proper access to the evidence and with their rights to face their accusers and to be considered innocent until proven guilty upheld.