

Canada: Security certificates overturn long-standing democratic rights

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Two recent events have underlined the anti-democratic nature of the Canadian state's "security certificates" and the determination of the new Conservative government to intensify the assault on long-established democratic rights that its predecessor, the Chrétien-Martin Liberal government, initiated in the name of the "war on terrorism."

The first is the announcement that a special prison will be constructed to hold those detained under a security certificate—a legal document that authorizes the government to imprison indefinitely and without charge any non-Canadian citizen it deems a "threat" to national security.

The special prison will be constructed within an existing maximum-security penitentiary in Kingston, Ontario. It will be used to indefinitely incarcerate people who are presently detained under security certificates at a number of other locations and any new persons whom federal authorities designate a security threat.

Sections of the press have rightly drawn a parallel between the special prison under construction in Kingston and the concentration camp to which the Bush administration has disappeared alleged "enemy combatants" in Guantanamo, Cuba, labeling the planned Canadian facility "North Guantanamo" or "Guantanamo Lite."

Four individuals will soon be transferred to the new prison: Mohamed Harkat, detained since December 2002; Hassan Almrei, detained since October 2001; Mahmoud Jaballah, detained since August 2001; and Mohammad Majhoud, detained since June 2000. Majhoud staged a 79-day hunger strike in 2005 to obtain basic medical care and the right to receive monthly visits from his two children, aged six and eight.

In the new prison, Majhoud and the other detainees will likely face even harsher conditions. Although it is being built inside the walls of the Kingston penitentiary, the new facility will remain completely separate from it. At all times, prisoners held there will be segregated from the regular inmates of the Kingston penitentiary and, most probably, from each other. The authorities are refusing even to reveal the size of the cells in which the security-certificate detainees will be held.

The second event that merits note is the mid-March decision of a Federal Court judge upholding the deportation of security-certificate detainee Mahmoud Jaballah to Egypt, where he faces possible torture and execution. Judge Mackay invoked the security certificate issued against Jaballah as grounds for refusing to grant him asylum and authorizing his deportation.

In his decision, Judge Mackay claimed that evidence indicated Jaballah shouldn't receive Canada's protection as a refugee because he posed too much of a risk to national security. The evidence to which the judge refers has never been divulged to Jaballah or to his lawyers, who suspect that at least some of it comes from people tortured in foreign prisons. The use of such "evidence" was authorized by the Canadian government in the anti-terrorist legislation it rushed through parliament following the September 11, 2001, terrorist attacks.

Judge Mackay admitted that his decision violates the International Convention Against Torture. The Convention, signed by Canada, forbids deportation to a country that practices torture under any and all circumstances. But, Mackay added, even if it might be a useful interpretive tool, the Convention doesn't apply to persons considered a threat to national security. The

decision in Jaballah's case marks the third time that the Federal Court has refused to grant asylum to someone detained on a security certificate even while admitting that its decision may result in the rejected refugee-claimant facing torture and death in a foreign country.

Under Canada's security-certificate regime, the minister of public security is empowered to issue a ministerial decree, based on information provided by the security services, naming an individual who is a visitor to Canada, a refugee applicant, or a landed immigrant a potential threat to national security. The person named in such a security certificate can then be arrested and held indefinitely without any charge being laid against them and without any access to the information that reputedly shows they are a threat to national security.

"Illegal combatant" or "threat to national security"—in both cases, the person so designated is denied legal rights historically guaranteed to all who are detained, such as the right to know the exact nature of the actions alleged and of the crime committed, the right to be brought before a judge and be heard by an impartial and public court, and the right to be presumed innocent.

In 2005, the Federal Court concluded that security certificates were constitutional, indicating at the same time that, whether in the name of national security or diplomatic convenience (i.e., maintaining friendly relations with countries where torture takes place), whole sections of evidence can be withheld from public examination and remain the sole property of the security agencies and the judges. As a last resort, the executive can impose an absolute veto on revealing any of the evidence, even over the objections of the courts themselves.

This decision of the Federal Court has been appealed, and the Supreme Court is to issue its ruling in the coming months. But already in 2002, Canada's highest court ruled that deportation of persons facing torture and death is permitted in exceptional cases.

Following September 11, 2001, the Canadian government passed a slew of anti-terrorist legislation, modifying many laws, including the Criminal Code and immigration laws, with the goal of undermining long-standing democratic principles and opening the door to authoritarian methods of governing.

Security certificates were on the law books prior to

September 11, but it is only after this date that they became a regular instrument in the government's purported war on terrorism. The definition of terrorism, it need be added, has been dramatically expanded to the point where someone who has neither committed nor planned a terrorist act can be deemed a terrorist by the government, if he or she has had links with an organization that the government has categorized as "terrorist." Thus, a person involved in fund-raising or disseminating pamphlets for an organization like the Kurdish nationalist PKK or the Liberation Tigers of Tamil Eelam (LTTE) can be designated by the Canadian government to be a terrorist and indefinitely incarcerated without the most basic rights of due process.

Although security certificates have been denounced by numerous international and national human rights organizations, the Canadian government has announced its intention to expand their scope.

At present, the law does not permit the issuing of a certificate against a Canadian citizen. The Conservative government intends to modify this law and to gain the possibility of withdrawing citizenship from anyone who obtained it fraudulently—for instance, by hiding links with organizations categorized as terrorist. Once again, any evidence would remain secret.



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