

Human Rights in Canada: “Security Certificates”

No One is Illegal Campaign for rights of refugees and immigrants: Adil Charkaoui

[Adil Charkaoui, a father of two and a Permanent Resident of Canada, has been in a Montreal prison since May 2003, although he has been neither convicted nor even charged with any crime. Using a « security certificate », the Canadian government has the power to imprison refugees and permanent residents without charge, under secret evidence. Deprived of his liberty, of his right to be presumed innocent, and of a fair trial, Charkaoui, like the other four Muslim men held under certificates, faces deportation to his country of origin, Morocco, even though there is a serious risk that he will be tortured upon his return. In his second open letter, Charkaoui responds to the Federal Court of Appeal decision on the constitutional challenge to security certificates which he has launched.]

An Immigrant, Big Brother and the Three Judges

Second open letter by Adil Charkaoui
20 December 2004

This is neither a Kafka novel nor a mediocre tale unfolding in a banana republic, but quite simply the state of human rights in the very best country in the world.

The judgement on the constitutionality of security certificates, made public on 10 December 2004, international human rights day, is a revealing illustration of post-September 11th Canada.

In this decision, decried by all human rights organisations and by an impressive number of Canadian jurists (more than 60 coast to coast), the three Federal Court of Appeal judges stated that security certificates a measure of the Immigration Law in which the presumption of innocence does not exist, part or all of the evidence is withheld, hearsay is accepted, counter-examination of witnesses refused, the right of appeal denied, and closed sessions between judges and attorneys are ready currency are "an exceptional albeit permissible derogation" (extract from the Federal Court of Appeal decision).

What was surprising was less the decision itself the Federal Court of Appeal is known for its conservatism but the symbolism of the day chosen to render the decision, as well as the somewhat dishonest restriction of the legal question as a dilemma between the rights of an immigrant and those of the citizenry and their representatives; between the “right to survival” of the community as a whole and “a blind absolutism of ... individual rights”; between “liberty with order and anarchy without either” (extract from the Federal Court of Appeal decision).

Formulated in this manner, the balance of justice which has never been so blind inevitably tilts in favour of the greater number and their representatives, towards sacro-sanct National Security. However, in the argument presented to the Federal Court of Appeal, the central point of the defense was that “the right to have rights defined by a court is not tied to the context of

immigration or immigration status as such. This fundamental right relies, above all, on the recognition, in international as well as domestic law, of all persons to have their rights and responsibilities defined by an independent tribunal on the merit” (extract from the legal memo).

In denying a Permanent Resident, whose parents and children are Canadian citizens and who has lived in the country for ten years, the right to be judged by the same standards of justice as other inhabitants of the country, the Federal Court of Appeal embraces this premonitory formula of George Orwell in *Animal Farm*, “all the animals are equal, but certain are more equal than others.”

More info: Coalition for Justice for Adil Charkaoui, www.adilinfo.org,
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The No One is Illegal campaign is in full confrontation with Canadian colonial border policies, denouncing and taking action to combat racial profiling of immigrants and refugees, detention and deportation policies, and wage-slave conditions of migrant workers and non-status people.

We struggle for the right for our communities to maintain their livelihoods and resist war, occupation and displacement, while building alliances and supporting indigenous sisters and brothers also fighting theft of land and displacement.

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