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Canada's Response to the "War on Terror": A New Era of National Security, Erosion of Rights and Racial Injustice

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CANADA'S RESPONSE TO THE "WAR ON TERROR": A NEW ERA OF NATIONAL SECURITY, EROSION OF RIGHTS AND RACIAL INJUSTICE

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ABSTRACT

Echoing Canada's historical treatment of immigrants, the post-9/11 era has brought terrorism and national security issues to the forefront of the political agenda by dividing immigrants based on race, colour, religion and country of origin (Kruger, Mulder and Korenic, 2004). The research critically examines the major security legislation employed by the Canadian government since the events of September 11, 2001, in order to highlight the impact on marginalized communities, in particular "Muslims" and "Arabs." The paper will examine through key informant interviews, the affect the new security agenda has had on targeted individuals and on the advocacy efforts of social movements and social activists. The paper takes the position that this new era of national security undertaken by the state has resulted in a two-tiered justice system, where certain groups are now being targeted by government and security agencies, while there is an erosion of democratic rights of all Canadians.

Key words: 9/11, Canada, Anti-Terrorism Act, Immigration and Refugee Protection Act, security certificates, Safe Third Country Agreement, Smart Border Declaration, biometrics, rendition, no-fly list, government, social movements, foreigners, immigrants, refugees, terrorists, Muslims, Arabs, racism, security, war on terror, human rights, justice

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Indifference is the essence of inhumanity.

George Bernard Shaw

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Glossary

ATA (Bill C-36)	Anti-Terrorism Act
Bill C-17	Public Safety Act
Bill C-3	Special Advocate Model introduced in 2008 for security certificate cases
CAF	Canadian Arab Federation
CAIR-CAN	Canadian Council on American-Islamic Relations
CAT	Convention Against Torture
CBSA	Canadian Border Service Agency
CCR	Canadian Council for Refugees
CIC	Citizenship and Immigration Canada
CSE	Communications Security Establishment
CSIS	Canadian Security Intelligence Service
DFAIT	Foreign Affairs and International Trade
DREO	Defense Research Establishment Ottawa
Extraordinary Rendition	The apprehension and transfer of a person from one country to another for the purpose of extracting information through torture.
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
Hajj	Religious pilgrimage performed by Muslims to Mecca is one of the pillars in Islam
ICLMG	International Civil Liberties Monitoring Group
Imam	Muslim Religious Leader
IMF	International Monetary Fund
IRPA	Immigration and Refugee Protection Act
OAS	Organization of American States
No-fly List	Passenger Protect Program
RCMP	Royal Canadian Mounted Police
Refoulement	Forced expulsion or deportation of individuals
SOIA	Security of Information Act
UNCAT	United Nations Committee Against Torture
WTO	World Trade Organization
Zakat	Charitable giving to the needy is the third pillar in Islam

Introduction

Canada since the 1960s has been perceived globally as a nation with an open immigration policy that welcomes immigrants and refugees irrespective of their race, religion or country of origin. One of the more revered documents, the Canadian Charter of Rights and Freedoms, embraces diversity, democracy and the protection of human rights by stressing these as distinguishing features of Canadian identity. As a result, it is a country that has in its recent history been looked upon by countries all over the world as being at the forefront of promoting human rights and justice (Kruger, Mulder and Korenic, 2004; Crepeau and Nakache, 2006).

However, this rosy portrayal contrasts with another version of Canada. In the book by Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy*[1] the authors provide their readers with almost 500 years of immigration policy by dispelling the "myth" of Canada being a welcoming destination for immigrants. Instead they provide a shocking account of racism, exclusion and economic self-interest in an attempt to understand our present and perhaps inform our future. A major theme in Canadian immigration policy has been the extent to which economic interests have overshadowed humanitarian concerns, from the era of nation-building to present day needs for growth and prosperity. The authors provide a range of examples to demonstrate the long history of discrimination in Canada of certain racial groups such as: the historic treatment of aboriginals; the Chinese head-tax; the continuous journey requirements used to exclude South Asians; the voluntary emigration quota used as a means of reducing the number of Asians; the internment of Japanese during the Second World War and the refusal to admit Jewish refugees fleeing Nazi aggression.

By the 1960s we begin to see some changes where immigrants were selected not based on their race, but on their skills and the economic contribution they could bring to Canada. The introduction of the points system and the Immigration Appeal Board Act in 1967 eliminated much of the discretionary power of government and recognized the importance of individual rights. As a result, the demographics of the

[1] Ninette Kelley and Michael Trebilcock. *The Making of the Mosaic: A History of Canadian Immigration Policy*. Toronto: University of Toronto Press, 2000.

country began to change and cultural conformity was abandoned and replaced with the notion of diversity, a celebrated part of Canadian identity. Two pieces of legislation supported this perspective, The Canadian Charter of Rights and Freedoms which was introduced in 1982 and the Multiculturalism Act of 1988. It is during this era, that Canada began to be regarded as a welcoming place for immigrants and as a leader in human rights (Kelley and Trebilcock, 2000; Kruger et al., 2004).

Then came the watershed moment of September 11, 2001, when our neighbors to the south became preoccupied with domestic and international security. Canada went along with the "fortress North America" idea as its businesses and elite were concerned with the economic impact of the United States closing the borders between the two countries.[2] As a demonstration of Canada's commitment to this new American mentality against terrorism, Canada has followed with laws that were quickly passed, providing police with greater powers to apprehend individuals suspected of terrorist activities. Existing immigration security procedures were also used to detain non-citizens of suspected ties with terrorist networks, resulting in significant measures of detention (Jackman, 2006). At the same time the Canadian government made financial allocations to fit an expanded concept of national security. The Canadian budget in December 2001, committed an additional $7.7 billion to combat terrorism over five years (Crepeau and Nakache, 2006). Prior to 9/11, growing government deficits and the rapid increase in policing costs resulted in eight years, (1992 to 2000), of lean spending on security (Murphy, 2007).

As a result, "Muslims" and "Middle Eastern-looking people" (individuals from the Middle East, South Asia, Latin America and the Caribbean) around the world realized overnight that they were the main target of the global "war on terror" that was being waged. The war against "terrorists" has converged with a war on asylum seekers "to produce a racism which cannot tell the difference between immigrants, asylum seekers and Muslims" (Sivanandan, 2006, p 2). These diverse groups of people have been homogenized by the media, by Western politicians and by opinion-makers as "Muslims," "jihadists" and "fundamentalists," as a population to be feared and resisted.

[2] See section on Controlling Mobility and Ministerial Discretion for more details on border controls.

This attitudinal change of both the government and the public has led to feelings of isolation, alienation and social exclusion of the country's most vulnerable populations, in particular "Muslims." Many have come to realize, yet again in Canadian history, that a different version of racism is being re-enacted, where certain groups of people are being targeted, profiled and unjustly treated under the disguise of security measures.

To support this argument this paper will undertake a new area of research that has garnered little academic interest amongst those who examine the security agenda in Canada and its violative consequences on human rights. The research will embark on an overview of the major security legislation employed by the Canadian government since the events of September 11, 2001, in order to highlight the impact on marginalized communities in particular "Muslims" and "Arabs." In addition, the paper will examine through key informant interviews the affect the new security agenda has had on targeted individuals and the advocacy efforts of social movements and social activists. It is only through an examination of the various security measures that a deeper understanding of the extent to which human rights violations are taking place in Canada can truly be understood, particularly under the current environment of fear and suspicion.

The research will rely on a range of sources to support its arguments and findings, which are integrated into the analysis. The paper is divided thematically into three main sections: War on Targeted Communities, Canada's Security Response to the "War on Terror" and Social Movements Resist the Government's Security Measures. The first section is an impact assessment of the main communities affected by the various security measures in Canada in the changed environment of the "war on terror," the second examines thematically the main anti-terrorism legislations and its impacts, while the third section looks at how the tactics and perspectives of social justice organizations have changed in this new era of national security.

The paper takes the position that this new era of national security undertaken by the Canadian state has resulted in a two-tiered justice, where certain groups are now being targeted by government, and security agencies, while there is an erosion of democratic rights of all Canadians. As a result, Canadian

complicity to such abuses within government has significantly undermined the perception of Canada as an international leader for diversity, justice and human rights.

Literature Review

The following review of literature provides an understanding of Canada's historical policies and perspectives to demonstrate that similar themes of economics, racism and social exclusion exists within the current context. Canadian literature on security and human rights have primarily focused on the legal discourse, while other academics have examined the securitization agenda by reviewing specific anti-terrorism legislation and its impact on vulnerable populations. This may appear as a limited literature review; however this is due to the paucity of material on the subject.

Canada's Preferred and Non-Preferred Immigrants

Kelley and Trebilcock (2000) argue that the popular myth that exists of Canada as a country welcoming of immigrants is false, instead the government's immigration policies from pre-Confederation to the 1990s have always been selective based on economics, race and political considerations. Top of racial selection process prior to the 1960s, have historically been British, Americans, Northern Europeans, Central Europeans and then finally Eastern and Southern Europeans. At the bottom of this list have been Blacks, Jews and Asians.

Kruger et al. (2004) examine the post-9/11 era, which they determine has restored Canada's historical practice of dividing immigrants into preferred and non-preferred categories. Preferred individuals were actively sought by government agents, while non-preferred were avoided. Prior to the 1960s, discrimination was based on the selection of immigrants who were most suitable to integrate into Canadian society, while presently the concern is to protect citizens from those who are largely suspected as security threats.

The Immigration Act of 1952, included discrimination based on "nationality, ethnic group, occupation, lifestyle, unsuitability with regard to Canada's climate and perceived inability to become readily assimilated into Canadian society" (Kruger et al., 2004, p74). When preferred immigrants could not fulfill Canada's economic needs, the point system was introduced in 1962. Although intake was no

longer based country of origin or race, it instead favoured educational attainment, occupational skills and financial sources.

The events of September 11 brought terrorism and security issues to the forefront of government concerns and as a result, resurrected historical perspectives of refugees and immigrants as preferred or non-preferred based on country of origin, race and religion (Kruger et al., 2004). Two main pieces of legislation, the Immigration and Refugee Protection Act and the Anti-Terrorism Act, addressed issues of security concerns by shaping government discourse through the connection of the "foreign national" and the "terrorist" who were now to be understood as one. Thus, the immigrants who were once preferred as contributors to Canadian multiculturalism, are in this new era seen as a threat to security (Kruger et al., 2004).

Keeble (2005) supports the findings of Kelley and Trebilcock (2000), that the influence of big business has remained consistent until today. Keeble (2005) argues that the anti-terrorism measures enacted by Canada since 9/11 were not only to prosecute terrorists, but also to appease American fears that the border was not porous to terrorists. Otherwise, Canada would face significant economic recourse from the U.S., since 86 percent of Canadian exports went to the Americans in 2003, amounting to 27 percent of Canada's gross domestic product (Keeble, 2005, p 360). The Smart Border Declaration that Canada signed reconciled Canada's priority for open borders, with the American priority for security. Therefore, Keeble (2005) concludes that the border cooperation between Canada and the United States has become dangerous for Canadians and has undermined its multicultural fabric. Crepeau (2005) goes further to say that during the 1990s, immigration began to be viewed from the lens of criminality and with the events of 9/11, the deterioration of the rights of foreigners both in Canada and in Western countries was based on the belief that when security is at risk, a foreigner should not enjoy the same rights as its citizens, thus reinforcing the distinction between "them" and "us."

Crepeau (2005) also discusses some of the ways the rights of foreigners are infringed upon. With the inception of the Immigration and Refugee Protection Act (IRPA), foreigners found to be inadmissible on the grounds of "security, violating human or international rights, serious criminality or organized

criminality"[3] have been denied the right to an appeal, and the increase use of security certificates, is an instrument used for removing foreigners who pose a threat to the security of Canada, despite the fact that the claimants have not had access to the evidence. In addition, the IRPA has a provision for allowing officials to arrest and detain an asylum seeker without warrant where the officer "has reasonable grounds to suspect that the permanent resident or the foreign national is admissible on grounds of security," in order to prevent a terrorist activity. As a result, Crepeau (2005) finds that this ambiguous definition has led to an increase in detention.

Another measure that IRPA imposes is tougher penalties for organizing an illegal entry into Canada and for human trafficking, but it does not distinguish between those motivated by humanitarian concerns and those with criminal intents. Crepeau (2005) uses the example of someone who helps a family member flee persecution can be refused a refugee claim without the possibility of an appeal. The Safe Third Country Agreement signed between Canada and U.S. allowed an asylum seeker to only claim refugee status in the first country they arrive in. However, the author questions whether the U.S. is a safe country for asylum seekers. Finally, under IRPA a carrier can be charged for a traveller arriving with improper documents which enhances the efficiency of the interception of undocumented foreigners from arriving at Canadian borders (Crepeau, 2005).

Crepeau (2005) argues that these measures reinforce the government's perspective that the foreigners are a security threat, irrespective of their need to seek protection. Yet, Canada has projected itself as a country preoccupied with human rights and the duty to protect and therefore the protection of citizens should not be based on the denial of the rights of foreigners. Everyone is deserving justice and that fight against terrorism cannot be made at the expense of fundamental rights (Crepeau, 2007).

Social Exclusion and Racism

Omidvar and Richmond (2003) examine the growing contradiction between Canada's multiculturalism and anti-racism policies with the growing reality of social exclusion experienced by Canada's newcomers.

[3] See IRPA Section 64, Chapter 27

They argue that Canada must strive for a vision that begins with an anti-exclusion, anti-discrimination and anti-racist framework with a deeper value for diversity. The authors suggest that inclusion would mean reform in the economic, political, social and cultural spheres with practices that include immigrants and refugees as full participants. They describe social inclusion as involving the notion of belonging, acceptance and recognition.

Saloojee (2003) supports this view and goes further by stating that inclusion would lead to a just and equitable society that links together struggles against oppression, inequality and injustice. He proposes that a social inclusion framework must incorporate an anti-racist perspective, understanding that the limits of multiculturalism and the realities of systemic racism in Canada. The author finds that racism involves discriminatory practices that constantly exclude, marginalize and disadvantage the oppressed racialized group. It is rather incomplete citizenship, undervalued rights and undervalued participation when minorities feel "othered" (Saloojee, 2003).

Razack (n.d.) examines the "othering" and sense of exclusion from the political community in this new era of securitization, with three categories of people for whom race and national security considerations have come together. The author finds that these groups are exiled and fundamental rights are suspended. The three groups are: security certificate detainees, security delayed non-citizens and those kept in a formally indeterminate status due to the suspicion that they may present a danger to Canadian society and finally individuals cast into a state of permanent suspicion who are either deported, branded a terrorists or shipped to their countries of origin where they are tortured. Razack (n.d.) finds that racialized groups such as Arabs, Muslims, South Asians, Africans and Latinos who are non-citizens constitute the main group in these categories, although Arabs and Muslims predominate. She argues that race thinking, a structure that divides based on racial descent provides the idea that the suspension of rights for these groups are warranted in the national interest of security and becomes embedded in law and bureaucracy.

Providing a legal perspective to this discourse, Jackman (2006) finds through an examination of various anti-terrorism legislations, that non-citizens and Muslims that are subjected to invasions of their privacy and have had no access to the evidence gathered against them, have little ability to challenge

these violations and cannot rely on the Charter to ensure their protection. Kelley and Trebilcock (2000) found that the courts historically were used to uphold the position of the federal government, with little restrictions placed on its treatment of immigrants and refugees. Instead, the courts choose to enforce the ideas and notions of the time, rather than challenging them. Jackman (2006) and Razack (n.d.) find that Canadian courts still have not proven to be protectors of human rights, even though during times of crisis that there is an expectation of the courts to ensure the respect for dignity of the person is maintained, irrespective of government overreaction. Like Razack (n.d.), Jackman (2006) questions Canadian's commitment to human rights after examining the cases of five men held under security certificates and four who have experienced rendition, all of whom were Muslim men of Arab decent.

Helly (2004) describes the different forms of discrimination suffered by Muslims in Canada after 9/11, by describing the factors underlying the hostility towards Muslims, which the author suggests are unique to Canadian society, given that its claims to be multicultural and respectful of immigrants and minority rights. Fekete (2004), Sivanandan (2006) and Kundnani (2007) support the contradiction of multiculturalism policy within the European context, and finds instead government policies that are not only anti-immigrant, anti-Muslim, but xenophobic. As a result, it has led to increased security measures globally targeted at Muslims.

The Balance between Security and Human Rights

In their paper, Alvarez and Rosenberg (2005) investigate how the "war on terror" has introduced measures by using technology which poses a risk to civil liberties. Canada has adopted similar policies with the United States to counter terrorist threats which have impacted civil rights, but the authors find that Canada has paid less attention to these issues than the neighbours to the south. They examine some of the measures introduced such as the Anti-Terrorism Act, security certificates and the Public Safety Act, and argue that there is a lack of awareness, even complacency amongst Canadians to what is taking place (Alvarez and Rosenberg, 2005).

Supporting this perspective, Keeble (2005) discusses the security and liberty predicament in Canada and the U.S. as a result of the events of 9/11. Keeble (2005) finds that this new era has led to government surveillance, detention and executive discretion which have taken precedence over judicial review in Canada. These measures have violated individual freedoms, from the right to privacy to the right to due process in the name of national security.

Crepeau and Nakache (2006) find that the securitization agenda adopted by Canada existed in the post-Cold War period, prior to 9/11, which altered the roles of security forces and the military. The authors examine how the rights of non-citizens have been eroded through the enactment of a stricter migration regime and various anti-terrorism legislations since the events of September 11. The authors find that migrant rights have been considered an internal issue relating to border security, and they provide examples of mechanisms that have been put in place to prevent migrants from arriving in Canada such as visa regimes, carrier sanctions, Safe Third Country Agreement and Smart Border Action Plan (Crepeau and Nakache, 2006). Like Jackman (2006) and Razack (n.d.), Crepeau and Nakache (2006) also argue that the courts have not held Parliament accountable for not respecting the Charter.

Bell (2006) examines specifically the lives of non-citizens through the security certificate process and its implications for state power and political freedoms. The author finds that under the banner of the "war on terror," the security certificate functions as a legal exception for the assertion of sovereign power. Bell (2006) concludes that this compromises the rule of law and denies basic legal protection to non-citizen detainees. Ceric (2005) supports these findings from a legal perspective, by stating that there is little constitutional protection offered to those non-citizens implicated under security certificates.

However, MacKay (2006) argues that basic human rights should be carefully balanced against the collective need for security. He finds that privacy has become a casualty of the "war on terror," and racial profiling and restrictions on liberty are other issues that have emerged from the broad definition of terrorism and an expansion of executive discretion. MacKay (2006) finds that although Canada's response to terrorism has been moderate in comparison to the United States and the United Kingdom, there are still threats to privacy and other basic rights in Canada through security certificates, secrecy laws and the

export of technology to repressive governments. The author suggests that the root causes of terrorism such as poverty and global economic disparity should be examined. Democracy, the respect for human rights and the rule of law are needed in the quest for national security.

Wark's (2006) study disagrees with this view by assuming that a democratic society requires both security and human rights in equal measure, without sacrificing either. He examines eight critical issues in Canada post-9/11, where there is an overlap between national security and human rights concerns. The study finds that the new security institutions, policies and practices are too new to fully understand the impact. The report draws particular attention to areas that require further research such as border security, the Anti-Terrorism Act (Bill C-36), security certificates, and the case of Maher Arar. The author further argues that existing laws do not address the current global threat of terrorism which warrants the need for specific legislation.

Roach (2001) takes a different view and argues from a legal perspective, that enacting new laws does not make Canadians safer and more secure. He instead suggests that existing laws are already broad and by expanding the criminal law with Bill C-36, it does not necessarily prevent crime. Instead, he suggests that it endangers the rights of vulnerable people like minority groups, immigrants and refugees. Roach (2001) says that Bill C-36 goes beyond American and British legislation by defining terrorist activities to include political, religious and ideological protests as being illegal. Therefore, he finds that punishment maybe disproportionately applied to activities under Bill C-36.

As a result, the ongoing discourse amongst academics has been the extent to which there is a balance in Canada between anti-terrorism measures and human rights. However, little research to date has actually examined the individual cases under each piece of security legislation to determine if in practice there have been sufficient safeguards in place to ensure that the accused are given fair and just treatment. In addition, more analysis is needed in order to understand the consequences to integration, multiculturalism and inclusion this new security environment has ushered in.

The following research examines thematically the current security landscape since September 11, 2001, primarily through key informant interviews with those individuals and organizations most targeted

under the various anti-terrorism legislation, in order to better understand the individual and collective impact this new environment has had on the most vulnerable communities in Canada.

Methodology

The methodology involves a multiple strategy impact assessment of the targeted group(s) through the evolution of the anti-terrorism and immigration legislation. This analysis is done by examining the targeted community, by analyzing the securitization agenda of the Canadian state, and by a further analysis of the movements' resistances to the government's security measures.

The research methodology has two components. First, a limited literature review is integrated within the paper that examines the implications of government legislation. This limited review is due to the lack of literature on the subject within the Canadian context. Second, the more substantial component is a qualitative analysis of key informant interviews with those directly impacted by the government's measures. This research breaks new ground by examining the main security measures enacted by the government since 9/11 through the lens of those who have been directly affected by the Canadian state's infringement of their citizenship rights and their right to dissent. It is only through such an examination, that a proper evaluation can be made as to whether Canada has successfully balanced human rights with security.

However, in undertaking key informant interviews it is important to remember that people's perceptions and responses are shaped by events that take place around them; that they are therefore influenced by these experiences. As a result, who the researcher is affects and influences the research based on their experiences, and can also have a corresponding impact on the subjects who have been interviewed. The events of 9/11 have had consequences for many communities, including "Muslims," feeling a greater sense of marginalization and alienation under the rubric of anti-terrorism. Therefore, it is important to situate the researcher within the body of research. As a researcher from a racialized community, those targeted under various legislations felt more comfortable retelling their experiences in greater detail to someone they felt could be trusted to relate to their experiences.

The key informants interviewed for this research were individuals or their family members targeted under the different security legislation. Only those who have spoken-out publicly were contacted for an interview. In addition, two kinds of social justice organizations were invited to participate in the

research, each serving different vulnerable populations. International organizations like Amnesty International and International Civil Liberties Monitoring Group (ICLMG) are well respected mainstream institutions. While under the second kind of organizations, such as Homes Not Bombs and the Campaign to Stop Secret Trials provide a more grassroots approach of support and advocacy for issues and individuals that other mainstream organizations are unwilling to support. On the other hand, community-based groups such as the Canadian Arab Federation (CAF) and the Canadian Council on American Islamic Relations (CAIR-CAN) provided insights from communities more specifically targeted under the various security legislations.

The semi-structured interviews explored the experiences of the various organizations and individuals with the various security legislations and the affect it has had on them and their advocacy efforts. The interview guide can be found in Appendix I.

As an exploratory study, the sample size of key informant interviews were small, consisting of two interviews with community-based organizations, three with issues-based organizations and five with individuals or their relatives targeted under the government's security measures.

The ten key informant interviews are listed below:

Community-Based Organizations:

1. Canadian Arab Federation - Executive Director, Mohamed Boudjenane
2. Canadian Council on American-Islamic Relations - Vice-Chair, Faisal Kutty

Issues-Based Organizations:

1. Amnesty International Canada - Refugee Coordinator, Gloria Nafziger
2. International Civil Liberties Monitoring Group (ICLMG) - Co-ordinator, Roch Tassé
3. Homes Not Bombs and the Campaign to Stop Secret Trials - Organizer, Matthew Behrens

Targeted Individuals Under Security Legislation

1. Refugee labelled a terrorist - Interviewed Aug. 7, 2007
2. Imam - Interviewed July 28, 2007
3. Relative under Security Certificate - Interviewed August 2, 2007

4. Relative of Toronto 18 arrested under Anti-Terrorism Act - Interviewed July 30, 2007
5. Individual Renditioned - Benamar Benatta[4] - Interviewed July 23, 2007

In order to garner good quality responses from the key informants, the majority of interviews took place on a face-to-face basis. The only exception to this was the interview with ICLMG which took place via conference call. Detailed notes were taken with Amnesty, the refugee labelled a terrorist and the individual renditioned, Benamar Benatta. The other interviews were audio-taped and then transcribed verbatim. In order for targeted participants to agree to the interviews and feel comfortable in answering potentially controversial questions, as well as to protect them from any possible repercussions, every attempt was made to eliminate identifying information and only the date of the interviews are used. However, the individual who experienced rendition, Benamar Benatta, specifically requested that his name be used in an effort to bring public awareness of his experiences.

Using qualitative analysis, recurring themes were identified and shaped the structure and findings of the research. These findings are discussed below.

[4] Benamar Benatta has requested his name be disclosed in order to bring awareness to his case.

War on Targeted Communities

Foreigners as Potential Terrorists

Echoing Canada's historical treatment of immigrants prior to the 1960s, the 9/11 era has brought terrorism and security issues to the forefront of the political agenda by dividing refugees and foreign nationals[5] as preferred or non-preferred based on race, colour, religion and country of origin, thus raising the question as to what this means for human rights both in Canada and the world (Jackman, 2006, Kruger et al., 2004). Although the "securitization agenda" had emerged before the U.S. attacks, it gave the government incentive to change migration policies, making it harder for unwanted migrants to gain access into Canada (Crepeau and Nakache, 2006; Nafziger, 2007).

The Canadian government's discourse has not made the distinction between foreign nationals who are considered potential terrorists and those who are non-threatening individuals from the same targeted community. Interchangeable terms such as "immigrant," "foreign national," "terrorist" and "national security" have fostered the melding of terminologies and ideas of the foreign threat at our borders and within our borders (Kruger et al., 2004; Behrens, 2007).

In the past, the goal was to select foreigners who were suitable for integration into Canadian society. Now the concern is to protect Canadians from non-citizens who are a security threat (Kruger et al., 2004). The creation of a "them" versus "us" dichotomy has deteriorated the rights of non-citizens, which has resulted in them not enjoying the same rights as citizens. In the current era of globalization, there is a tension between international law and state sovereignty with respect to the control over human migration across borders. The current tendency is to view racialized migrants as a threat to national security, which has resulted in anti-immigrant, anti-refugee discourse[6]. Therefore, the "foreigner" is no longer considered a person who deserves justice (Crepeau, 2005).

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[5] Immigration and Refugee Protection Act, S.C. 2001, c.27. s.2 (1) "foreign national means a person who is not a Canadian citizen or a permanent resident, and includes a stateless person"
Available from http://laws.justice.gc.ca/en/ShowTdm/cs/I-2.5

[6] See Collacott, Martin. Terrorism, Refugees and Homeland Security. Royal Military College of Canada, 2002 and A Haven for Villians, The Economist, September 13, 2007

The recent use of security and immigration legislation to tackle terrorism demonstrates the extent to which the government has notions of foreigners as a security threat and the legitimacy of racial and ethnic profiling (Keeble, 2005). The Immigration and Refugee Protection Act (IRPA) has included specific clauses[7] relating security issues with refugees and providing justification for the government to control our borders (Keeble, 2005). Although the government has acknowledged that Canada has never been a major target for terrorist attacks, it has been preoccupied with perceived terrorists, specifically refugees and immigrants from Eastern countries. The perception has dramatically changed from refugees seeking protection to them as potential threats. This raises concerns amongst some immigrants of their sense of belonging in Canada, believing they are portrayed as political, cultural or religious enemies (Keeble, 2005, Aiken, 2001).

Historically, Canada has used immigration policies to discriminate against certain groups, such as the Chinese head tax, the continuous journey requirements used to exclude South Asians and the refusal to accept Jews when they were fleeing Nazi Germany. Instead, the government preferred immigrants from Northern European countries from the Judeo-Christian tradition (Boudjenane, 2007: Kruger et al, 2004; Keeble, 2005). Boudjenane (2007) finds that currently, many of Canada's immigrants come from mostly Asian countries, but they are not accepted as deserving the same rights given to other groups because of their religion, culture or because they are a perceived threat to the cultural fabric of Canada. He says that, "when you look at whose rights are being compromised, it is usually racialized minority groups."

Crepeau and Nakache (2006) argue that although the Canadian government promotes programs against xenophobia and racism, simultaneously they have implemented harsher treatment for non-citizens and racialized communities, by increasing policing and policies that act to restrict their rights. Nafziger (2007) goes further to state that the government's creation of more restrictive policies has:

> ...given refugees more reason to be fearful of travelling, being labelled, detained and having their rights ignored - they are the unseen victims. Although the changes in legislation are more restrictive for people seeking protection, it is not nearly as bad as in the U.S.

[7] See IRPA s.34 (1) and s.77 (1)

In a report published in May 20, 2005, the United Nations Committee Against Torture (UNCAT) expressed concerns at Canada's immigration and anti-terrorism policies. There concerns included the exclusion of protection for refugees falling within the security exceptions set out in the 1951 Refugee Convention; the exception of certain categories of people posing security or criminal risks from the protection against deportation to countries where they would face torture; Canada's apparent willingness to utilize the immigration processes to remove or expel individuals from its territory rather than prosecuting them for terrorism and torture offences; and Canada's reluctance to comply with all requests by individuals for interim measures of protection (Crepeau and Nakache, 2006; Nafziger, 2007).

Although the IRPA came into effect in June 2002, it had already been passed by the House of Commons in June 2001 with many of the security provisions intact from the previous Immigration Act. However, under IRPA there is a broad definition of security[8] inadmissibility for non-citizens and those who specifically fall under security certificates[9] (CCR, 2007). Individuals that are inadmissible on security grounds are therefore prevented from having their claims of refugee status considered. They are denied permanent or temporary residence and they lose any status they may already have, without the right to an appeal normally allowed for persons facing a loss of status. Furthermore, a person can be inadmissible on the basis of "membership" in a "terrorist group" where that membership might include unknowingly associating with someone suspected of being a member of a terrorist group (CCR, 2007).

Also, the IRPA allows for the detention of non-citizens entering Canada whereby an officer has "reasonable grounds to suspect" that the person is inadmissible on security grounds or for violating

[8] IRPA s.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), (c). (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."

[9] IRPA s.77. (1) "The Minister and the Minister of Public Safety and Emergency Preparedness 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" The issues arising from security certificate will be discussed in more detail later in this paper under the section entitled 'Secret Trials.'

human or international rights."[10] This means that the individual can be in detention on mere "suspicion" (CCR, 2007). This is a contentious issue based on both the definition and the problem of implementation for three main reasons: 1) The definition of security is vague and subject to interpretation, 2) evidence can be taken from unverifiable sources and 3) the interpretation allows an officer to use opinion and not fact. Thus, the IRPA allows officers to treat foreigners in ways the Criminal Code would not (CCR, 2007; Crepeau and Nakache, 2006). These provisions in the IRPA increases the risk of discrimination by giving the government discretionary powers that can be held in secrecy, with little oversight (CCR, 2007).

In 2003-2004, 13, 413 non-citizens were detained, an increase of 68% over the number from 1999-2000 (7,968) before for the 9/11 attacks (Crepeau and Nakache, 2006). Many refugees are spending a lot more time in detention, especially those from targeted countries where they are facing a higher risk of deportation to situations of real injustice. There is a lot more suspicion of refugees because they have now been equated with terrorism. As a result, refugees are not treated as people in need of asylum, but instead they are now controlled under the rubric of security and border issues (Behrens, 2007; Crepeau and Nakache, 2006). The government has looked for a tool to get rid of the "bad guys" without sufficient safeguards for the most vulnerable. As a result, there are less than adequate laws to protect refugees (Behrens, 2007).

Nafziger (2007) goes further to say: "We have to be realistic that the government has a right to take seriously the "war on terror" but the bottom line is what we do cannot trample on the rights of individuals." Therefore, the use of immigration legislation raises questions as to the extent to which the Canadian government has an image of foreigners as a security threat and the legitimacy of racial and ethnic profiling (Keeble, 2005). Immigrants, who were once seen as contributors to the multicultural fabric of Canada, are now seen as possible threats to national security (Kruger et al., 2004).

Tassé (2007) finds that when newcomers and racial minorities come to Canada they think this is a country with a strong legal regime and the Charter of Rights and Freedoms, but they suddenly realize that in the post-9/11 era their rights are not as well protected as they might have thought. Many encounter

[10] IRPA s. 55(3)(b).

harassment by agents of the government, which does not nurture good integration and leads to feelings of injustices. These feelings are not isolated incidences as the harassment of people have taken place on a fairly large scale in Canada (Tassé, 2007).

The targeting and harassment by government agents towards refugees and other racialized non-citizens since September 11, is exemplified by the case of a Latin American woman whom the United Nations High Commission for Refugees had determined was in danger in her native country because of her trade union activism. On that basis, she was admitted and granted permanent resident status in Canada in 1996 (Interview August 7, 2007). However, when she subsequently applied for Canadian citizenship, her application was denied under the anti-terrorism provisions of the IRPA - the first Latin American ever to be charged under this legislation. The Canadian Security Intelligence Service (CSIS) challenged her application accusing her of being a member of an organization listed in April 2003 by the government as a "terrorist entity"[11] (Interview August 7, 2007). As a result the government is pursuing deportation, putting her at risk of torture if she is returned. However, while her case is being processed the government has refrained from putting her in detention, to prevent any negative public attention. Her case is unique; no government other than Canada has pursued and persecuted a political refugee in this fashion (Behrens, 2007; Interview August 7, 2007).

In her country of origin this Latin American woman was a founding member in a coalition of leftist political parties. All the members of this organization, approximately 5000 people, had been assassinated; she was the only survivor. She was later kidnapped and tortured by a paramilitary group. After being released by her abductors, she fled the country with her family. Upon arriving in Canada, she did not hide her Communist affiliations or her family connections. Her brother is a leader in one of the largest guerrilla factions in her country, the one named on Canada's terrorist entities, and her ex-spouse has become its international spokesman. She herself claims no connection to this faction (Interview August 7, 2007).

[11] See Public Safety Canada: http://www.publicsafety.gc.ca/prg/ns/le/cle-en.asp#farc16

She settled in Toronto, got married to a Canadian and began working at a travel agency while continuing to be active politically, which included giving speeches. Her children were granted citizenship. After one of her speeches, CSIS interviewed her regarding her opinions in her country. She described the CSIS agent as "lovely and friendly" (Interview August 7, 2007).

The events of 9/11 and the U.S's "war on terror," were supported by her native country in its efforts to crush its guerrilla opponents. Canada's response to this global war was the creation of a list of terrorist entities. Although, the Latin American organizations listed do not claim any affiliation with Al-Qaeda. She says that:

> Since 9/11 it has been handy to include all organizations that the government doesn't like and it demonstrates an appearance of consistency, so that the Canadian government looks like it is treating everyone equally under the banner of security (Interview 7, 2007).

By 2004, she found CSIS was investigating her again. CSIS again interrogated her, but this time they asked her to be an informant for them using her connections to the guerrillas and her community, but when she refused they threatened her that they said would "give her life hell" (Interview 7, 2007). Agents then interviewed her friends and associates and they told her boss that if she continued to work there, the company would be labelled a "terrorist front." She was promptly fired (Interview 7, 2007).

In 2005, she was informed that the Immigration and Refugee Board had been hearing evidence in secret to determine if she should be deported to her native country. The hearings are still taking place and neither she nor her lawyer is allowed to know the allegations against her. All that they know is that CSIS "has reasonable grounds to believe" that she belongs to a terrorist group. Human rights organizations both in her country and in Canada have supported her case (Interview 7, 2007). When asked if she can move to another country she responds:

> I have no choice but to stay in Canada, as I am now labelled a "terrorist" and where can I go if I am associated and labelled with a terrorist organization. I need to find justice. I do not understand why Canada is interested in my case because I am not a danger to this country (Interview 7, 2007).

She goes further to say that she:

> …worries about Canada, because we have lost the most important value which is human rights. Canadian society is very quiet [to what is taking place] and the government is damaging the

> democratic process. Now I think Canada is not a country that respects human rights, but it is deteriorating in a way that makes it no better than other countries (Interview 7, 2007).

As a result, her current situation has "completely cancelled [her political] activism" and she is left "feeling very sad; feeling like I am not doing anything and my life is spent defending myself. This is psychological terrorism" (Interview 7, 2007).

"Muslims" and "Arabs" Guilty by Association

Both Canada and the U.S. have stated that Al-Qaeda is composed of people from countries in the Middle East, Central Asia, South and Southeast Asia who have temporarily or permanently immigrated to the United States and Canada in order to cause harm (Keeble, 2005). "Muslims" have borne the responsibility for rooting out terrorism in Canada because they shared the same faith as the 9/11 terrorists and their patriotism has been singled out as worthy of scrutiny. Racial profiling was explicitly endorsed by a number of media outlets, government and the public. Trial by media, guilt by religious identity has become the norm (Khan and Saloojee, 2003). As a result, the stereotyping of "Muslims" and "Arabs" have become common place, as they are now seen as threats to national security (Bell, 2006; Razack, n.d.).

Canadian "Muslims" and "Arabs" have felt a devaluing of their citizenship. The anti-Arab and anti-Muslim backlash in Canada, the disturbing stereotypes in the media, the suspicion of "foreigners" and the impact of hastily enacted anti-terrorism legislation have all affected their sense of entitlements to citizenship and has particularly challenged their sense of belonging (Khan and Saloojee, 2003; Keeble, 2005).

This pattern of racial profiling is exemplified by a police operation known as "Project Thread," the case of twenty-four Pakistani visa students who were arrested in August 2003 and accused of having links to Al-Qaeda by both RCMP and Immigration officials (Razack, n.d.). The men were all students of the Ottawa Business School and when their school suddenly closed and the director admitted to issuing fraudulent documents, defrauding students of thousands of dollars, he was never criminally charged (Razack, n.d.). However, the students were left stranded with invalid visas. The media had applauded

Canadian officials for uncovering a terrorist ring and just in time to mark the second anniversary of the September 11 attacks (Razack, n.d.; People's Commission on Immigration Security Measures, 2007; Crepeau and Nakache, 2006).

The evidence against these men were that they lived in "clusters," had sparse living conditions, that one man had a picture of an airplane on his wall and the fact that all the men except one were from Punjab province in Pakistan, referred to as a hotbed of "Sunni extremism" (Commission on Immigration Security Measures, 2007). Within a week of the arrests, the Royal Canadian Mounted Police (RCMP) determined that the men were not linked to terrorism, but they continued to be detained in a maximum security prison for up to five months on immigration charges. While they remained in jail, they continued to be interrogated about their religious practices and their political beliefs and even their friends whom they called from prison were later visited by intelligence agents (Razack, n.d.; People's Commission on Immigration Security Measures, 2007).

Despite the fact that all formal allegations that these men posed a security threat were dropped, immigration officials refused to publicly exonerate the detainees. In addition, Immigration Canada pursued their deportation based on minor immigration violations, specifically because they were not informed of changes in college programs (Razack, n.d.; People's Commission on Immigration Security Measures, 2007). Without legal representation when they were initially arrested, many of the men were terrified when they were first questioned and as a result they simply admitted to a variety of violations in order to be released, but instead were issued deportation orders. Those who have not yet been deported are still on bond and many of those who have been deported were taken into federal custody upon arrival in Pakistan (Razack, n.d.; People's Commission on Immigration Security Measures, 2007).

Razack (n.d.) argues that as in many security cases, Project Thread clearly relied on racial profiling supported by xenophobic fears of a specific group of non-citizens who happened to be Muslim. The Canadian Islamic Congress reported that between September 2001 and September 2002 alone, they saw an increase of 1600 percent in hate crimes against Muslims, compared to only 11 complaints before the attacks (Helly, 2004). In 2005 the Canadian Council on American-Islamic Relations (CAIR-CAN)

released results of a survey that found significant numbers of young, Arab, males have been visited by either the RCMP or CSIS since the terrorist attacks of 2001(MacKay, 2006; ICLMG, 2005). MacKay (2006) argues that racial profiling appears to offer a simple solution to a complex problem, but in the end it can add to the root causes of terrorism.

In 2003, International Civil Liberties Monitoring Group (ICLMG) jointly worked with the Muslim Lawyers Association to conduct a small survey in order to better understand the extent in which CSIS profiles the Muslim community (Tassé, 2007; Kutty, 2007). The Muslim Lawyers Association contacted 30 lawyers by telephone and out of those 30 calls they documented 36 cases of visitations by CSIS. Therefore, each lawyer had at least one or two clients who were visited at night, early mornings or at work. Of the 36 cases, 6 individuals lost their jobs after the CSIS visits. Religious leaders in the community have also received a number of complaints from people who have been visited by CSIS, but they are too fearful to lodge a complaint or to go public about their experiences. Although this was a very small study sample, it yielded 36 cases, which provided a sense of the extent to which CSIS profiling is being done (Tassé, 2007; Kutty, 2007).

The investigations and the questioning have created a chill and fear in the Muslim community, as people are being brought in for questioning by CSIS, and were being threatened with deportation and revocation of their citizenship if they did not cooperate (Kutty, 2007; Tassé, 2007; Boudjenane, 2007; ICLMG, 2003). Once CSIS has spoken to them, they would then go to their friends and employers. Some of them would get fired because their bosses would get scared (Behrens, 2007; Kutty, 2007; Interview July 28, 2007; Interview August 7, 2007). Kutty (2007) has found in at least one case, a person was simply fired because someone anonymously called CSIS alleging he was an extremist. The Muslim Lawyers Association has also received calls like these and as a result, friends are scared to mix with individuals questioned by CSIS. Thus, relationships have been impacted. Kutty says, “It is now, guilt by association.”

Even religious and community leaders have been targeted by CSIS and RCMP (Behrens, 2007). One such individual is an outspoken Imam[12] who has spoken-out against the U.S. and Canada's foreign policy. He was kidnapped on a trip to Egypt at the request of CSIS and he was prevented from being a surety for those detained under the government's anti-terrorism measures. In the most recent bail cases he was told that the government would not accept his money, they did not want him associated with the bail cases and that they did not trust him (Behrens, 2007; Interview July 28, 2007). He came to Canada in 1975 and is a professional engineer with both a Masters and PhD from Western University. He says:

> What bothers me is when I talk about certain issues I am seen as an "outsider" by people in the security service, the government and the media, even though I have been here so long. Perhaps it's my accent. When I said Afghan mission is going to fail because Canada is interfering in a civil war, the media responds by saying that I am supporting the Taliban, but this is completely wrong. One time, I was taking a group of people on Hajj[13] and before I got on the plane I was asked how much money I was taking with me, I said $10K. Later I was told by my bank that they were closing my account and they giving me back my money. People say that I should be sent home, but this is my home (Interview July 28, 2007).

Barbara Jackman (2006), an immigration and refugee lawyer has stated that CSIS and RCMP have commonly used religious and racial markers to not only identify persons of interest, but to also justify ongoing investigations into individuals of interest. Four Canadians and five non-Canadians share a number of similarities beyond their high-profile cases. All are Muslims and all have been suspected of being linked to Islamic extremist organizations. The suspicion about them appears to be largely based on their practice of Islam, suspected associations with others, suspected time spent in Afghanistan and facts that fit the profile of an Islamic extremist. All have families and some with children, all who have been affected by what has happened to them (Jackman, 2006). Suspicion of the four Canadians led to them being sent to Syria and Egypt to be tortured, with the knowledge if not support of the government. For the non-Canadians, the suspicion led to detention in poor facilities, meant to house inmates on a short-term basis. These men now face the threat of deportation to countries where they might be tortured, separated from their families, subjected to harassment due to being thought of as "terrorists" and lengthy detention

[12] Imam is a Muslim religious leader.
[13] Hajj is a religious pilgrimage to Mecca in Saudi Arabia. It is the fifth pillar of Islam that must be carried-out at least once in a lifetime by an able-bodied practicing Muslim who can afford to do so.

that has been both cruel and unjust (Razack, n.d; Jackman, 2006). Jackman (2006) has argued that there are many tragedies involving targeted and profiled individuals whose lives have been destroyed. She also argues that Canadian courts have not proved to be protectors of human rights at times of crisis and have not ensured the respect for the accused in times of hysteria.

Boudjenane (2007) and Kutty (2007) have found that since the early 1990s, there was a "latent" anti-Muslim and anti-Arab sentiment growing within government, security officials, media and the public. With the end of the Cold War, North American pop-culture began to depict "Arabs" and "Muslims" as the new villains (Boudjenane, 2007). During the Gulf War, many "Arabs" and "Muslims" were questioned by the police and their phones were tapped – this was the beginning of a unique type of surveillance against these communities (Boudjenane, 2007: Kutty: 2007). However, the situation was exacerbated by the 9/11 attacks. Racial profiling became more overt and was deemed by security officials as an accepted practice. Muslims were divided into two groups, those "good Muslims" who are secular and support the "war on terror" versus "bad Muslims" who are depicted as "barbaric," practicing the tenants of Islam and are critical of Western foreign policies (Boudjenane, 2007; Kutty, 2007).

Within the last few years the increased concern with security has alienated these communities. "Arabs" and "Muslims" have been under a veil of fear and suspicion with the increased scrutiny by police, government and media. As a result, there has been a withdrawal in community, religious organizations and charitable causes for fear of being targeted by the police. The consequence is a community that is left feeling marginalized and ghettoized with a lack of confidence in the government and security agencies (CAF and CAIR-CAN, 2005). In an interview with an Imam, he has found that the treatment of "Muslims" is very severe, as they are now seen as the "enemy within":

> They've [Muslims] lost confidence in themselves since 9/11. Extremists and committed Muslims are perceived as the same. As a result, people are scared of each other…Muslims are showing that they are not adhering to the religion and not giving money overseas or giving to local organizations (Interview July 28, 2007).

"Muslims" are also afraid of giving money[14] and the growth in relief groups is not necessarily that people are giving more, but rather that the community has grown and become wealthier (Kutty, 2007). Kutty (2007) argues that the fear within the Muslim community of being profiled has affected their political, civil and religious rights to legitimately send money overseas. All new organizations that are being established are making a point to say that they do not want to send to money overseas because of the government scrutiny, which would result in organizations prevented from gaining charitable status (Kutty, 2007).

> There is a perception of why we [Muslims] are treated this way when we contribute so much – working…taxes…you know we're part of the multicultural mosaic (Behrens, 2007).

As a result, "Muslims" who are born and brought-up in Canada are in particular feeling a sense of resentment at being targeted and profiled for practicing their religion and they have come to realize that it is a "myth" that Canada embraces diversity and treats everyone equally (Kutty, 2007). Instead there is an attack on religion, where extremists and committed "Muslims" are perceived as the same (Interview July 28, 2007). Kutty (2007) believes that if there is any kind of radicalization, it is going to happen because "Muslims" are looking at what is taking place and say:

> This is not really a war against terrorists. This is a war against "Arabs" and "Muslims." Shouldn't the [government] apply the rules equally? (Kutty, 2007) They [Muslims and Arabs] are now the "new blacks" (Boudjenane, 2007).

However, this current feeling of being ghettoized amongst those vulnerable populations in Canada, is contrasted with the newcomer aspirations of moving in search of a better home. When new immigrants arrive in Canada, they believe that this is a different country from anywhere else. They have made the struggle to come here against all odds, in particular refugees; as a result there is a real sense of investment (Behrens, 2007). Many wish they had not had to leave their homelands, but they are here now with their diaspora community. They believe that Canada is going to be their home and this is where they want to feel safe relative to where they have come from (Kutty, 2007). This is almost a universal feeling which the events of 9/11 have not changed (Behrens, 2007). Yet, there is a growing sense that

[14] Also known as Zakat is charitable giving to the needy. It is the third pillar in Islam.

immigrants are looked at differently with a more critical eye, especially if they are a visibly Muslim or perceived to be Muslim, because racism leads to equal ignorance towards other racialized groups like Sikhs, Hindus (Behrens, 2007; Tassé, 2007).

Kutty (2007) goes further to say that since September 11, Muslims and racialized minorities have become more insular and distrustful of government, especially with the new security measures that Canada has employed, which has aligned with U.S. policies. The government has asked the "Muslim" community to trust them, but the state has not demonstrated that it can trust the Muslim community. That seems to be the sense "Muslims" and "Arabs" communities have about their government (Kutty, 2007; Boudjenane, 2007).

In the end, racism has mediated the current security climate where police conduct, and immigration and anti-terrorism legislations are motivated by discrimination based on immigration status, race and religion. In this new security era, Canada's historical perspective of preferred and non-preferred status of immigrants has been resurrected, and today there is another community has become the new victim of the government's lens of suspicion. This exclusionary conduct of the state has made "Muslims" and other more vulnerable communities in Canada to feel excluded, alienated and being the "other."

This section provided a framework for understanding the vulnerable communities who have been most impacted by the Canadian government's security agenda – namely racialized non-citizens, citizens and in particular "Muslims" and "Arabs." The following two sections will examine the role of the Canadian state since 9/11 – the period in which new legislation on anti-terror and immigration laws were introduced, among other measures to combat terrorism.

Canada's Security Response to the "War on Terror"

Secret Trials, Secret Evidence

Although security certificates[15] have been around since 1977[16] and only became part of the IRPA in 1991, it has come to symbolize Canada's response to the current "war on terror" (Wark, 2006; Alvarez and Rosenberg, 2005; Bell, 2006). Within the immigration context, a certificate may be issued by the Minister of Citizenship and Immigration and the Solicitor General, permitting the detention and deportation of non-citizens who are considered a threat to national security (Razack, n.d.). Once a certificate has been issued, it is referred to the Federal Court for determination. The government's case against the accused is held in a secret hearing in the absence of the accused and his counsel, and if the person is not a permanent resident, they are kept in mandatory detention during the entire length of the proceedings. If the certificate is found to be "reasonable," then warrants are issued in the removal of the accused from Canada (Ceric, 2005; Jackman, 2006). On the other hand, permanent residents are allowed a review of the detention order after the first 48 hours and at six month intervals until a final decision is made by the Federal Court judge. However, there is no appeal of the decision by the judge. Therefore, the Minister under the IRPA[17] needs to only satisfy the court that there is a "possibility" that the accused is a terrorist or a member of a terrorist organization (Ceric, 2005; Razack, n.d.; Kruger et al., 2004). However, in February, 2007 the Supreme Court of Canada found that security certificates did not comply with the Charter and struck down the overly-secretive system (MacCharles, 2007). The details of the decision are discussed in more detail below.

Since September 11, certificates have been issued for five Muslim men of Arab descent, each having served periods of solitary confinement and each detained without charge indefinitely. The detainees are Hassan Almrei, Mohamoud Mahjoub, Mohammad Jaballa, Mohamed Harket and Adil

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[15] Security Certificates are also popularly known as 'Secret Trials.' See IRPA s.35, s.77 and s.80-81

[16] Since 1978, security certificates have been issued 28 times. The latest use was in November 2006 in the arrest of an alleged spy in Montreal. CBC News, February 23, 2007 http://www.cbc.ca/news/background/cdnsecurity/securitycertificates_secretevidence.html

[17] IRPA s.33-34.

Charkaoui. Four out of the five men, the exception being Hassan Almrei, have recently been released on strict bail conditions[18] and are now under house arrest. Adil Charkauoui, is the only permanent resident, a Moroccan citizen who was detained in May 2003 and released in 2006. The other four men that were detained were, Hassan Almrei, a Syrain citizen detained in October 2001; Mohammed Mahjoub, an Egyptian citizen detained in June 2000; Mahmoud Jaballah, an Egyptian citizen detained in August 2001 for a second time after being cleared in 1999 under security certificate; and Mohammad Harkat an Algerian citizen was detained in 2002 at an Ottawa facility (Jackman, 2006; Kruger et al., 2004).

Behrens (2007) explained how he was motivated to become politically[19] involved in the cases of the detainees:

> I sat there the first morning and listened to this guy from CSIS, whose name was Mike, but that's not his real name. He went on this long thing about Jaballah this, Jaballah that and by lunch time I was thinking, I don't know if I want to come back. This sounds really scary. What am I doing? I am with a group that believes in non-violence. Do I really want to be involved with this? I can see standing up for the guy's right to a fair trial, but it sounds like this guy is involved in some really horrible stuff based on what the CSIS guy said. And this is only the public summary. And then Rocco [Gallati the defense attorney] cross-examined the CSIS guy in the afternoon and within an hour I was convinced it was a "frame." The whole accusation by CSIS just fell apart because Rocco would say: "Where does this information come from?"
> Agent: "Well we got it from this newspaper."
> Rocco: "Where is the newspaper published?"
> Agent: "In Egypt."
> Rocco: "Does Egypt have press freedom?"
> Agent: "I can't speak to that."
> Well, everyone knows that there is no press freedom in Egypt and this guy is supposed to be a Middle Eastern expert.
> Rocco: "Does Egypt jail lawyers?"
> Agent: "I can't speak to that."
> Rocco: "How many people in jail? Do you know how many people were jailed after Sadat was assassinated?"
> Agent: "I can't speak to that."
> Rocco starts to ask this guy all these questions and he realizes the CSIS agent doesn't know what he's talking about, and he starts to break-down the case against Jaballah.

Jaballah's case is unique in that he was arrested and cleared in 1999 on a security certificate and was arrested a second time, which makes him the only person in Canadian history to have ever been re-arrested after being cleared of a security certificate. Before this arrest, CSIS had threatened that if Jaballah

[18] Release based on Supreme Court ruling in February 2007.
[19] Matthew Behrens founded the Campaign to Stop Secret Trials in Canada which came-out of the grassroots group, Homes Not Bombs.

did not work with them as a spy and did not do whatever they wanted him to do, that they would have him arrested and thrown in jail. In the second arrest, CSIS admitted that they did not have any new evidence, but they just had a new interpretation of the same evidence, that he was already cleared of in 1999. This process is described as “never ending, no matter how many times you have been cleared, they can keep coming back and say that now we have new interpretations” (Interview August 2, 2007).

Similarly, in the case of Mahjoub, CSIS argued against his release because they claimed he did not renounce Islamic extremism (Behrens, 2007). However, Mahjoub has argued, “How can you renounce something you never believed in?” And when CSIS was asked, “Would you feel more comfortable if Mahjoub fessed-up? The response by the CSIS agent was, “Well...that will certainly help” (Behrens, 2007).

Unlike the other four Muslim men, Hassan Almrei is single, therefore there are no family members or appropriate sureties deemed by the court who can monitor him 24 hours a day, which is required as part of his bail conditions (Interview August 2, 2007; Interview July 28, 2007; Behrens, 2007). Behrens (2007) argues that his incarceration has been at a cost to the Canadian tax-payer of approximately $2 million a year, but if the government had allowed bodyguards to stand outside his home and accepted individuals that have offered to be sureties, then the cost would have been significantly lower.

Furthermore, Behrens (2007) finds that the certificate process puts the accused in the “dark” whereby they cannot defend themselves. The individuals that agree to be surety for bail are considered by security officials as supporting terrorism, since they are willing to help the detainees. This further perpetuates a climate of fear within the Muslim community, of people distancing themselves from the accused (Interview August 2, 2007; Interview July 28, 2007; Behrens, 2007). In addition, it reinforces the fear within the general public that Muslims are to be feared (Interview July 28, 2007).

Recounting his experience, Behrens (2007), explains the difficulty of being deemed an appropriate surety for these detainees:

> The first time Mahjoub went to get bail, I was not considered a good bail surety for him because I was arrested for protesting security certificates, so therefore I would be biased in favor of Mahjoub. I'd say I am putting up a certain amount of money and I got my name on the line and my credibility as a [community] organizer on this issue and that's what I am putting on the line. Well, [security officials would say] "you are too biased." So we had other friends of Mahjoub who were activists and they would say to them, "no you are too biased and you won't report him." Finally we said, we will get some fancy university professor who makes $150K a year and met Mahjoub once to put down $10K. [The response would be] well, you don't know Mahjoub well enough to be surety. So, you are screwed in both ways. They [government] are constantly doing this to you and you literally have to say to yourself, now I have to be careful of what I say because of how it will reflect on those guys and their families. By the time they [detainees] went for bail I spoke to them everyday for the last 5 years and now I was not allowed to associate with them because I had a criminal record for protesting things like this. It is a non-violent record.

In 2002, the Supreme Court ruled in the case of a sixth man of Sri Lankan origin, Manickavasagam Suresh, held on a security certificate, by confirming the principle of non-refoulement, which prohibits the return of refugees to a territory where their life would be in jeopardy. In 1991, Suresh claimed and was granted refugee status in Canada, but was subsequently arrested, detained and was pending deportation for alleged links to the Liberation Tigers of Tamil Eelam (Adelman, 2002; Jackman, 2006). Released from detention, Suresh remains under a security certificate. However, the court made it clear that due process was required only in cases where there is a risk of torture and the Minister retains the discretion to deport a refugee to face torture in "exceptional circumstances" (Razack, n.d.). The court did not define in which instances "exceptional circumstance" can be applied which would not only violate the Convention Against Torture of which Canada is a signatory, but also the IRPA which states that it must to be read in compliance with international law (Behrens, 2007).

Numerous challenges have been made to the certificate process based on the protections set out in the Charter (Ceric, 2005). Wark (2006) suggests that the controversial aspects of the certificate process are around four aspects: the reliance on secret intelligence, the nature of the legal process, the conditions of detention and the question of removal to countries that practice torture. Critics have stated that national security has been given more priority than human rights protections. Jackman (2006), Boudjenane (2007) and Crepeau and Nakache (2006) go further to add that the detainees are likely to be sent by Canada to

face torture overseas, despite international law which prohibits the deportation, refoulement[20] or extradition to torture. Furthermore, extradition proceedings are sometimes based on evidence received from foreign governments with dubious human rights records.

Behrens (2007) finds that there is a further problem with deportation of detainees particularly because:

> ...if you are a logical and rational human being the first question that would arise is, if you are a threat to Canada, why would you deport that person somewhere else where you can become a threat to Canada again. This doesn't make any sense at all. The last security certificate they [government] issued was in September 2006, after they hadn't issued one in over 3 years. The only reason they haven't issued one before that is the public campaign, I am convinced of that. The reason they issued the last one against the Russian spy was because the Supreme Court was considering it [security certificates] and there was an expectation the Supreme Court would have a decision by the end of the year. I think they [government] wanted an opportunity to say, the process works and literally to sway the Supreme Court in the same way the arrest of the 18[21] were timed to scare the shit out of the Supreme Court.

Amnesty International has also criticized Canada's security certificate process, which denies an accused full access to evidence against them and may result in an individual being returned to a country where they face human rights violations (Ceric, 2005). However, Nafziger (2007) does clarify that:

> Amnesty Canada has never been on record to abolish security certificates, since we recognize there are security concerns that the government has, but whatever the model the government comes-up with, we will have to review and determine if there is sufficient protection.

On the other hand, Tassé (2007) explains the position of the International Civil Liberties Monitoring Group:

> We have a problem with security certificates where these people [detainees] are not tried using the criminal code, which means that you don't have to tell them what you're accusing them of, or if the material you are reviewing is correct or not, evidence is not cross-examined and the defense doesn't know what are the allegations. This is not an approach that respects human rights and civil liberties. The major change since 9/11, is the disrespect for the legal regime with the introduction and invention of all new legal concepts. In other words using Immigration law to go after certain individuals because you don't have to give them the protection of a criminal case or you don't have to charge them, you can accuse them and on the basis of allegations, can deport them without any defense, no appeal and no recourse. This is a justice outside the justice system. This is characteristic of the way the U.S. has led the "war on terror" by inventing a new international language that has never existed before, re-interpreting the Geneva conventions, allowing torture and people being detained indefinitely and list go on. The U.S. has invented a new legal regime, where there is no liberty or foundation whatsoever.

[20] Refoulement means the forced expulsion of individuals such as refugees.
[21] June 2006, 17 youth were arrested for allegedly planning to bomb various landmarks in Toronto and Ottawa.

Reinforcing Tassé's criticisms of the lack of transparency with respect to the secret evidence used against the suspects are that the accused are not able to challenge the accuracy of the information (Freeze, 2007). Recently, federal agents had taken unprecedented steps to install closed-circuit video cameras inside Jaballah's home, to watch his and his family's every move, presented to court the wrong photos. The Canadian Border Service Agency (CBSA) submitted photos inside the home of a Tamil asylum seeker rather than that of Jaballah's. After seeing the pictures, Jaballah clarified the mix-up. The defense lawyer noted that this incident demonstrates how important it is for suspects to have full knowledge of the allegations against them (Freeze, 2007).

Another piece of false evidence that was only made public because it was thrown-out of court, was a claim that the address of a mailbox that was used by one of the detainees, was found on a person arrested in Pakistan who claimed membership with Al-Qaeda (Interview Aug. 2, 2007). Later, it was discovered to be a false piece of evidence that was used by federal agents in the certificate allegations. Therefore, since evidence in the certificate process cannot be tested for accuracy, the question arises as to what other evidence is being used from unreliable sources (Interview Aug. 2, 2007).

Furthermore, the strict bail conditions that Harkat, Jaballah, Mahjoub and Charkaoui are under have had a significant impact on their families. The men must now have someone with them at all times, wear an electronic tracking bracelet, are not allowed to use a computer, the telephone line must be monitored by authorities and they have surveillance cameras outside their residences (MacKay, 2006; Interview Aug. 2, 2007). Behrens (2007) described the situation as a "bizarre form of life support" that the families are experiencing. The men are constantly threatened with indefinite detention, deportation and are now having to seek permission from federal officials before they leave their homes. In addition, before visitors can visit the families, they must first seek the approval of the CBSA at least 48 hours in advance and provide personal information such as name, date of birth, place of work and identification (Behrens, 2007; Interview August 2, 2007). As a result, visitors not wanting security officials to label them as supporters of terrorism and fearful of officials showing-up at their workplace or school have

stayed away, which has resulted in the families of the detainees feeling isolated and alienated (Interview August 2, 2007).

One of the family members explained their experience by saying that, "It is nice having him [the accused] home, but at the same time we have no privacy of our own whatsoever" (Interview August 2, 2007). The family is allowed to have a computer, but it has to be locked so the accused cannot have access to it. Federal agents have forced the family to install a new hardwood door on one of the rooms where the computer is stored and only one of the family members is allowed to have the key (Interview August 2, 2007). If any of the children want to use it, the family member with the key must be home to supervise. The relative goes on to say:

> Even worse than that, we are not allowed to use our cell phones inside the house, basically every time I get a phone call I have to go outside and use it or go in the computer room. On top of that, they have forced us to consent to tapping our [wife and children] cell phones, including the house phone line. It means that they [government] are not just controlling his [the accused] life, they are controlling the rest of the family's. We can't do anything, we don't have any privacy anymore...The kids also find it hard to understand, having all these restrictions in terms of what they can do and what they can't do and when they can go out. I think it is much harder for him [accused] to be controlled within his home and amongst his kids. When the (CBSA) officer comes to our house, and they can knock at the door anytime, and come in and ask questions, it makes him [accused] feel really bad to be going through all of this in front of his kids. Also, we don't receive any mail. All our mail is forwarded to CBSA and they basically go through all of our mail and they deliver it in person...So the officer that delivers the mail everyday, knocks on the door and wants to make sure that he [the accused] is home even though they have tracking devices and they would ask who is he [accused] talking to even though they are tapping the phones...If you have sufficient evidence to prove that this person is guilt of whatever it is, then charge them and give them a fair an open trial. If you look at rapists, you look at people who commit murder and heinous crimes and they get a fair trial, they get to see the evidence against them and are perceived as innocent until proven guilty (Interview August 2, 2007).

On February 23, 2007, the Supreme Court of Canada struck down the provisions of the immigration security certificates as being unfair to suspects and gave parliament a year to create a more suitable substitute (Makin, 2007). The Court found that the current security certificate system violates section 7 of the Charter – the guarantee that the state will respect fundamental justice. Therefore the court must provide a fair hearing in front of a judge and must respect the right of the accused to know the case against him (Makin, 2007 and MacCharles, 2007). Chief Justice McLachlin said:

> It is clear from approaches adopted in other democracies, and in Canada itself in other security situations, that solutions can be devised that protect confidential security information and, at the same time, are less intrusive on that person's rights (Makin, 2007).

The Supreme Court's decision was welcomed by human rights and community groups, but not for the public. Security certificates have made them feel safe since it applies to and reinforces their xenophobic fears (Kutty, 2007; Behrens, 2007).

However, on February 11, 2008, the Conservative government passed in parliament Bill C-3, which re-introduced the security certificate process with the inclusion of a "special advocate," modeled on the United Kingdom system (Barlow, Tassé and Zuberi, 2008). Under this system, the special advocate would have access to the evidence, but they remain unable to share the information with the suspect. Although the "special advocate" would be able to challenge the intelligence against the accused, they would not be able to cross-examine the source of this intelligence. Therefore, Bill C-3 is viewed as a two-tier justice, where there is one set of rights for citizens and another reduced set of rights for non-citizens (Barlow, Tassé and Zuberi, 2008). The U.K. special advocate system has also been criticized by NGOs for not providing sufficient guarantees of due process. Instead critics say that determining guilt, should be left up to the criminal justice system for both citizens and non-citizens alike (Cleveland, Aiken and Crepeau, 2007). The British Parliament's Joint Committee on Human Rights has condemned the special advocate regime and described it as "Kafkaesque," after two British special advocates resigned in protest (Walkom, 2007c). Behrens (2007) further argues that instead of the Canadian government abolishing the current regime of secrecy with the use of security certificates, it has now created another level of bureaucracy and even more secrecy, since the special advocates will not be able to disclose to their clients the evidence against them, even though they will be acting on their behalf.

In the end, the security certificate detainees describe to process as being:

> ...this is... a game. They [the government] are playing the game and we are the pawns in the game. You recognize that and you know in your heart that you have been that kind of pawn, you are the "sacrificial lamb" and that helps you to get through it, and of course, you get angry and frustrated about it. Canada is still the best country in the world and I don't want to leave …I love Canada (Behrens, 2007).

Controlling Mobility and Ministerial Discretion

Since 9/11, border security between Canada and U.S. has been of particular concern for the United States. Immediately after the attacks a dramatic slowdown in border crossing has had a direct effect on trade between Canada and the United States. This created the economic conditions that encouraged Canada to abide by U.S. policies around border security (Kruger et al., 2004). United States and Canada have an estimated $1.4 billion in goods and services exchanged daily and almost 200 million people crossing the border each year (Crepeau and Nakache, 2006). However, the American desires greater control over migration flows and Canada has an economic interest[22] in complying with this (Martin, 2006). As a result of the tension between economic interests in support of open borders and strong security interests in favour of a closed border, has led to both governments seeking "smart borders" (Crepeau and Nakache, 2006).

On December 12, 2001 Canada and U.S. signed the Smart Border Agreement with a 30-point action plan which included but was not limited to: the development of biometric identifiers, the development of permanent resident cards with built-in security capabilities, the increase security screening and exchange of information of asylum and refugee claimants, the Safe Third Country Agreement, a coordinated visa policy, a sharing of passenger information on flights between Canada and the U.S., at international airports in Canada and the U.S., joint passenger analysis, the development of compatible immigration databases and the increase of immigration officers at overseas airports (Crepeau and Nakache, 2006). In essence, it referred to the joint interests of both countries with respect to economic viability, immigration and policing powers (Axworthy, 2007). Public Safety Canada described the vision of the Agreement:[23] "To develop a 21st century border that advanced both facilitation of movement and security. It is founded on the principle that national security and economic security are not competing objectives" (Public Safety Canada, n.d.) The United States now accounts for more than 80 percent of Canadian exports, but Canada also buys almost a quarter of American exports, more than all

[22] In 2005, Canadian exports to the US totaled $369 billion CDN and imports totaled $258 CDN billion (Martin, 2006)

[23] See Public Safety Canada site: http://www.publicsafety.gc.ca/prg/le/bs/sbdap-en.asp

members of the European Union combined and three times as much as Japan. More than half a million people and 45,000 trucks cross the Canada/U.S. border each day (Canadian Council of Chief Executives, 2003).

The events of 9/11 can be described as a watershed moment in Canada, not so much in terms of policy changes motivated by a fear of terrorism in Canada, but instead motivated by a commercial interest in keeping the border open (Tassé, 2007). This was the bottom line agenda for the Canadian government. During the Arar Commission[24] three Ministers were subpoenaed to testify in front of Justice O'Connor: John Manley, who at the time of the U.S. attacks was responsible for U.S. Relations, Bill Graham for Foreign Affairs and Wayne Easter, the Solicitor General. All three Ministers were asked separately: "What was on your mind in the hours that followed 9/11?" And they all gave same answer, "To keep the border open," omitting to mention the protection of Canadians (Tassé, 2007). As a result, the Smart Border Agreement was adopted. This dramatically changed the nature of Canada to a far greater degree than any anti-terrorism measure, since it transferred power from the legislation to the Executive, giving Ministers discretionary powers in decision making, without parliamentary discussion or debate (Tassé, 2007). The agreement between Canada and U.S. allows for the sharing of immigration databases, biometric passports for screening of airline passengers and the introduction of a no-fly list. One of the many results of this integrated border security arrangement between Canada and U.S. was Arar's rendition to torture (Tassé, 2007; Kutty, 2007).

The strengthened border was intended to ensure safety from terrorist activities, but this has a number of implications for human rights. These can be viewed in three broad areas: increased sharing of intelligence; increased security enforcement cooperation and integration and Canada-U.S. harmonization initiatives (Wark, 2006). The association created between immigrants and potential terrorists allow the terrorist threat to be an imported rather than domestic problem, therefore encouraging yet more regulations preventing 'outsiders' from entering Canada. Public Safety and Emergency Preparedness

[24] ICLMG was granted intervener status in the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar.

Canada states that "the best way to stop terrorists from entering Canada is to stop them before they get here" and that many of the real and direct threats to Canada originate from beyond our borders." As a result, two objectives are met: to prevent and target foreigners before they enter Canada and to increase surveillance on those already within Canada. Under the national security objectives a "foreigner" can be tracked, assessed and monitored (Kruger et al., 2004; p 79). The Smart Border Declaration has also created an intelligence branch that shares immigration cases inside and outside Canada. As a result, there is a belief held by government officials that immigration is the vehicle for terrorism (Kruger et al., 2004). However, groups like the Council of Canadians and the Canadian Labour Congress have argued that border cooperation has gone too far and has also proven dangerous for Canadian citizens (Keeble, 2005).

In December 2002, Canada and the U.S. signed the Safe Third Country Agreement, which came into effect on December 2004. The agreement permits each country to refuse asylum-seekers who have reached its borders. Asylum seekers are forced to remain in the country of first arrival where they must make a refugee claim. In practice this affects refugee claimants who pass through the U.S. on their way to making a refugee claims in Canada. As a result, they are now forced to make their claims in the U.S. It currently only applies to entry by land and not by air or ferry. NGO's and the UNHCR have questioned whether the U.S. is actually a safe country for asylum seekers, based on its detention procedures and removal process (Crepeau and Nakache, 2006; CCR, 2005).

The Canadian Council for Refugees (2005) argue that the U.S. and Canada have different approaches to the treatment of claims based on both gender-based persecution and for those who make refugee claims without the appropriate documentation. In addition, the U.S. imposes a one-year filing deadline for asylum claims. Therefore, refugee claimants in the U.S. risk serious human rights violations which include arbitrary detention and refoulement. The agreement also prevents people who are in the U.S. or travelling through the U.S. to make a claim in Canada. Amnesty International Canada takes the following position on this agreement:

> We are not opposed to Safe Third Country Agreement in principle, but do not consider the U.S. a safe and genuine partner. [The agreement] should have adequate safeguards, the U.S. is not a worthy partner and Canada isn't either without a refugee appeal process" (Nafziger, 2007).

On November 29, 2007 the Federal Court ruled that the Safe Third Country Agreement between Canada and the U.S. violates refugee rights. The Court concluded that it was unreasonable to conclude that the U.S. complies with the UN Convention against Torture and the UN Refugee Convention. However, the Canadian government is appealing the decision (CCR, 2007).

Another aspect of the Smart Border Agreement that has caused much concern amongst civil liberty groups is the adoption of biometrics - the use of physical characteristics such as facial appearance, an iris scan or fingerprints as a means of linking a passport, visa or permanent resident card holder to the right to travel. As a result, all travelers have unwittingly been impacted with no public debate (Tassé, 2007). Through a chip in passports, biometric identifiers are able to access massive databases that are kept on every citizen of the world. Each time travelers provide identification, the biometrics will open-up an integrated database that screens all passengers. The computer program accesses the level of risk of passengers from 1-10 and the score cannot be appealed or reversed since it is done through an integrated computer system that will be accessed internationally (Tassé, 2007). Vulnerable communities like "Muslims", "Arabs" and racialized citizens and non-citizens are at greater risk of being racially profiled (Tassé, 2007; Kutty, 2007). Crepeau and Nakache (2006) argue that there are human rights implications in the collection, processing and distribution of a person's physical attributes which has caused debates around security interests and the right to privacy of those seen under the lens of suspicion.

In addition, many privacy advocates reject the use of biometrics as part of an increasing trend towards a society based on surveillance, in which governments and private corporations collect increasing amounts of personal data, sometimes without justification (Tassé, 2007; Acharya, 2007). Instead, they propose that the government should only be tracking individuals for whom they have evidence of wrongdoing (Tassé, 2007; Acharya, 2006; Kutty, 2007). Another privacy concern is the possibility of 'function creep:' the expansion of a system in which the data collected for one specific purpose can subsequently be used for another unintended or unauthorized purpose (Acharya, 2006).

Building on the Smart Border Agreement, in 2005 Canada, United States and Mexico adopted the Security and Prosperity Partnership of North America, which called for the creation of a security perimeter and common security zone by 2010 (Crepeau and Nakache, 2006). The trilateral partnership was established to increase security and enhance prosperity through increased co-operation and information sharing (Canadian Press, 20 August 2007). The program falls under three areas: the creation of border documents, developing compatible immigration measures and sharing information on high-risk travellers. Critics have argued that the trilateral partnership has introduced a secretive agenda without the inclusion of public or parliamentary debate (Canadian Press, 20 August 2007).

As part of the objective of identifying passengers who are considered a risk in both the Smart Border Agreement and the Security and Prosperity Partnership of North America, the Passenger Protect Program, (more commonly known as the Canadian no-fly list) came into effect on June 18, 2007 (Tassé, 2007; Canadian Labour Congress, 2007). The discretionary powers granted under the Public Safety Act gave the Minister of Transportation, representatives from the RCMP, CSIS and the Justice Department, authorization to provide a list of people suspected as a threat to national security. As a result, an individual's name is placed on a list, preventing them from travelling on any aircraft departing from Canada (Tassé, 2007; Kutty, 2007).

The information on the list can be obtained by foreign intelligence or from the U.S. version of the list and can be shared with other countries that participate in detention or torture abroad. Identified individuals will not be notified that their names are on the list and they are not granted access to their file, making it difficult to refute the accusations (Tassé, 2007; Canadian Labour Congress, 2007; Kutty, 2007). This information is considered confidential for reasons of national security. The result of this is that individuals are denied freedom of movement, without ever being charged with an offence, without having a trial and without access to the information held against them (Kutty, 2007; Tassé, 2007; Canadian Labour Congress, 2007). The names of passengers on all flights flying over the U.S. are compared against the U.S. list, irrespective of whether the flight is destined to the U.S. The U.S. no-fly list has an estimated 44,000 people on it. Included on this list is Maher Arar who was suspected of having links to terrorism

and was sent to Syria to be tortured based on incorrect information provided by federal officials in Canada. As a result, he has been trying unsuccessfully to have his name and that of his family's name taken off the U.S. no-fly list (Tassé, 2007; Canadian Labour Congress, 2007).

Privacy guardians, both federally and provincially are calling on the government to suspend and overhaul the no-fly list in favour of greater privacy protection for Canadians, saying that it involves the secretive use of personal information that impacts privacy and other human rights such as freedom of association and expression and the right to mobility (Office of the Privacy Commissioner of Canada, 2007).The Commissioners state:

> It is alarming that Transport Canada has not provided assurances that the names of individuals identified on its no-fly list will not be shared with other countries. We do not want to see, through the failure to take adequate safeguards, other tragic situations arise where the security of Canadian citizens may be affected or compromised by security forces at home or abroad. There is a very real risk people will be stopped from flying because they have been incorrectly listed or share the name of someone on the list (Office of the Privacy Commissioner of Canada, 2007).

The Canadian no-fly list contains about 500 to 2,000 names; however the list is expected to be expanded with the integration of various intelligence agencies (Kutty, 2007. The fear is that the primary target will be "Muslims", "Arabs" and racialized immigrants, whose names cannot be removed without a judicial process and this could lead to abuse. Kutty (2007) argues that there are clear differences between a "watch list" and the no-fly list: A "watch list", though still susceptible to abuse, can be considered as a surveillance tool. Under this mechanism, an intelligence agency, can apply for a judicial warrant for surveillance, meaning that suspected individuals can be watched and monitored, without being deprived of their basic freedoms and rights. However, with the no-fly list, CSIS, RCMP, or the Minister of Transportation can say, "Well this person might be a risk. Let's not let him fly anywhere" (Kutty, 2007).

Another problem is that an individual placed on the no-fly list, does not know until they arrive at the airport that they are on the list. As a result, many people are booking short distance flights to see if they are on the list (Kutty, 2007; Interview July 28, 2007). There are no apparent reasons why individuals cannot be told if they are on the list in advance. Also, it can be argued that if an individual is truly so dangerous that they warrant their name on the list, then they should be arrested (Kutty, 2007). One Imam

interviewed says, “This is not really a security measure, but a tool to punish people who oppose the government” (Interview July 28, 2007).

Behrens (2007) recounts an incident that demonstrates the fallacy of the no-fly list being used as a security measure:

> There is an individual whose name appears on the no-fly list and is invited to participate in a meeting with Paul Martin and other religious leaders within the Muslim community. This individual is able to walk into the hotel without a security check. Therefore, the individual wonders how can he be on the no-fly list on one hand, and then get invited to a meeting with the Prime Minister and he is able to just walk-in?

Boudjenane (2007) further adds that the no-fly list:

> goes against one of the most fundamental principles and rights for citizens to have the right to movement. It’s one of those McCarthyism type politics and it doesn’t make sense. This society in supposed to be modern, democratic, free and based on some principles.

Authorization for Surveillance, Profiling and Criminalizing Dissent

In December 2001, the Canadian parliament passed into law the Anti-Terrorism Act (ATA), also referred to as Bill C-36, which amended twenty other laws including the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime Act (Money Laundering) and the National Defence Act (Adelman, 2002). Bill C-36 gave police significant powers to act on suspected acts of terrorism; it defined a terrorist activity and provided stringent penalties for persons convicted of these offenses; it permitted for surveillance against terrorist groups; allowed suspects to be detained without charges for up to three days, allowed police to provide investigative hearings before a judge; created criminal sanctions for persons who collected or gave funds in order to carry out terrorism; enhanced federal capacity to deny or remove charitable status to organizations that supported terrorist groups; allowed information of national interest to be suppressed during judicial hearings and allowed for the arrest of people on the grounds of suspicion of carrying out a terrorist activity (Daniels, Macklem and Roach, 2001; Kruger et al., 2004). It also empowered the Communications Security Establishment (CSE) to intercept private communications on a Minister’s, as opposed to a judicial, authorization (Roach, 2007).

The Canadian government has argued that the ATA is necessary to meet its international efforts against terrorism and that the existing criminal law was insufficient to address the current global threat of terrorism, therefore warranting the need for specific legislation (Wark, 2006). Also, given that there have been few charges under Bill C-36, they say it provides proof that the government has not misused its powers. Officials also say that the legislation ensures the protection of human rights as defined under the Charter. Canada's former minister of justice, Anne McLennan defended the new anti-terrorism law by insisting that it was "Charter-proof" (Wark, 2006).

The Ontario Privacy Commissioner, Cavoukian (2003), has found that many critics of the ATA felt that it was too broad in scope and its many statutes too complex, as well there was a lack of consultation, debate and comprehensive analysis. Nafziger (2007) has suggested that the ATA was written before the September 11 attacks, saying: "Bill C-36 was sitting on the back-burner as a piece of legislation that came-out too fast in response to 9/11." Kutty (2007) supports this view, arguing that the legislation was so comprehensive and yet it was passed quickly in parliament as an overreaction to the events in the U.S. During the Gulf Crisis in the early 1990s, Israeli lobbyists were speaking to the government about tightening the anti-terrorism laws and revoking charitable status. The attacks in the U.S, merely led to an intensification of these closed door discussions (Kutty, 2007).

Behrens (2007) goes further to say that Bill C-36 was not meant to be used against terrorists, but to be used against activists. Of particular concern was the Bill's definition of terrorism, which jeopardized freedom of speech and political association, therefore criminalizing dissent. In the first draft of the ATA, the language suggests that anything that seriously impairs the economic security of Canadians, which is a broad term, would fall under the definition of terrorist offences. Behrens says that:

> Everything that is in C-36 they were doing that informally in Windsor at the Organization of American States protest back in June 2000 and the protest in Quebec City during the Summit of the Americas [April 20, 2001]. That was a Martial Law situation. In Quebec the security officials had to order away tear gas canisters from the U.S. because they ran out of them. There were so many thousands of tear gas canisters. It was scary stuff and [security officials] would stop you on the street and ask you for your I.D. and if you would ask why they would say you're coming in with us. Coming in where? They had a secret location where they would keep people detained which wasn't public information. I had a cell phone and called a friend to bring the car over. Of course they were monitoring all wireless information and I was immediately surrounded.

Supporting Behrens's perspective, the International Civil Liberties Monitoring Group (ICLMG, 2003) found an article published in late 2001 in the RCMP *Gazette*, which identified advocacy groups and individuals as potential terrorists who should be monitored. Examples of groups and individuals identified were those who participated in activism around "genetically modified food and ongoing environmental concerns about water, forest preservations and animal rights" (Gazette, 2001 cited in ICLMG, 2003, p 7). In addition, CSIS's briefing report in 2003 to Wayne Easter, former Solicitor General, identified "violent fringes of the anti-globalization movement" as being an ongoing security concern (National Post, 2003 cited in ICLMG, 2003, p 7). These are just some examples ICLMG has found that demonstrate the targeting of political activists by security officials (ICLMG, 2003).

Furthermore, the International Civil Liberties Monitoring Group (ICLMG, 2005; ICLMG, 2003) argue that Canada already has in place domestic and international agreements that, if used appropriately, will allow Canada to protect against threats to security. They find that the ATA is in conflict with sections of the Canadian Charter of Rights and Freedoms, in addition to the guarantees provided in such laws as the Privacy Act. They argue a review of Canada's anti-terrorism legislation has to address Charter rights including the right to life, liberty and security of person and the right to equal treatment and must take into account the rights of non-citizens, the rights of ethnic and religious minorities, the right to fair hearing, the right to be protected from arbitrary detention and the right under international law not to be sent or returned to a country that practices violations of human rights (ICLMG, 2005; ICLMG, 2003). Crepeau and Nakache (2006) argue there has been a new shift in criminal and constitutional law, which has changed from a perspective of liberty to one of security.

Cavoukian (2003) further argues that the anti-terrorism legislation has also amended or eliminated traditional checks and balances that function in a society to protect against government abuse. In a report to the federal government on Bill C-36, the Information and Privacy Commissioner stated:

> The proposed changes to the National Defense Act and Criminal Code...would result in significant reduction of the procedural and judicial controls on electronic surveillance and wiretapping. For example, Bill C-36 reduces the requirement for law enforcement agencies to justify the need for such measures in an application to the judge....I believe that such justifications

> continue to be necessary in order to ensure proper judicial supervision and oversight (Cavoukian, 2003; p 20).

The Commissioner concluded that the government should assess whether the measures are proportionate to the interest of anti-terrorism and argued that there is a lack of evidence that the broad powers have made Canada safer. Instead, it may in effect abolish the freedoms and democracy, which the government claims to defend (Alvarez and Rosenberg, 2005).

In addition, under Bill C-36, the Official Secrets Act was replaced with a new Security of Information Act (SOIA), which protects information from being disclosed if it would harm Canadian interests. As a result, the legislation has raised serious concerns around freedom of expression, specifically for the press where journalists have obtained information from confidential sources (Alvarez and Rosenberg, 2005). An example of this was in 2004, when the RCMP raided the home of journalist Juliet O'Neill in connection with leaked government documents relating to the case of Maher Arar. O'Neill had published a story on his case, citing security source and a leaked government document (Alvarez and Rosenberg, 2005). However, the Superior Court of Ontario ruled that certain sections of the SOIA were invalid and it infringed upon O'Neill's Charter rights to "expression, including freedom of the press" (ICLMG, 2005).

Roach (2001) also finds that the current anti-terrorism legislation, endangers the rights of the most vulnerable, immigrants and refugees. Bill C-36 goes beyond American and British legislation by defining the motive of terrorist activities committed "for a political, religious and ideological purpose, objective or cause." Roach (2001) further argues insufficient attention was given to anti-discrimination principles that profile minority groups and argues that not all Canadians share the burden of the ATA. However, on October 24, 2006, a Superior Court judge struck down the motive clause saying it violated the Charter (CBC, February 2007).

It has also been argued that there is no anti-discrimination provision in the legislation even though the definition of terrorism facilitates group profiling (MacKay, 2006). Security officials specifically target Muslims through security profiling, particularly at the borders, and also collect

intelligence from people who are active within the Muslim community or from Muslims whose immigration status is precarious, such as foreign students or asylum seekers. Although the justification for seeking out information is carried out in order to root out Islamic terrorists, it can be harmful to the Muslim communities (Helly, 2004). In 2005, during Senate Committee Hearings reviewing the Anti-Terrorism Act, Canadian Muslim and Arab organizations stated that the use of profiling by officers should be based on behavior and not ethnicity or religion (MacKay, 2006).

Community leaders have reported a number of cases of people being interrogated by security officials without warrants (Kutty, 2007; Boudjenane, 2007). In some cases Bill C-36 was used as a threat to obtain voluntary interviews by citing the risk of preventative detention allowed under the Act. Victims have been afraid to go public for fear of retaliation by officials. In addition, Muslims have been approached by security officials to spy on people in their mosque and are threatened that if they do not agree to the request, they will be denied citizenship (Kutty, 2007; Boudjenane, 2007).

Another issue raised under the Act is that charities operating in the Middle East could be deemed criminal. NGOs provide humanitarian assistance through other organizations that might be identified by the government as terrorist. Under this legislation any affiliation could be criminalized (Alvarez and Rosenberg, 2005). The result of this is that many within the Arab and Muslim communities are afraid to donate to charitable organizations which Boudjenane (2007) says:

> It is a major limit in the role of a citizen and in your identity as a Muslim. Zakat[25] is part of fundamental Muslim behaviour. And when you have a government who is now making illegal a certain organization just on an allegation, Muslims feel threatened and therefore their freedom of religion is impacted.

Two controversial sections of the ATA were subject to the 'sunset' provision. One which would allow a judge to compel a suspect or witness to testify about past associations or pending acts under penalty of going to jail if the suspect did not comply; and the second section allowing police to arrest suspects without a warrant and detain them for 72 hours without charges, if they were believed to be planning a terrorist act (Wark, 2006). In February 2007, the government voted against renewing these two

[25] Zakat is the Arabic word for charitable giving.

sections of the legislation, without intention of repealing Bill C-36 (CBC, 27 February 2007).However, the government has tried to reintroduce them as permanent clauses of the Anti-Terrorism Act (Kutty, 2007).

The first person arrested under the ATA was Mohammad Khawaja, who on March 29, 2004 was alleged to have participated in a British terrorist organization. Nine men of Pakistani origin were also arrested in Britain. Khawaja being the only one arrested in Canada (CBC, 24 October 2006). The men are accused of terrorist activities taking place in London and Ottawa between 2003 and 2004. Although Khawaja has made trips to Britain, his brother explains it was to find a wife (CBC, 24 October 2006). The judge hearing the Crown's application for non-disclosure in Khawaja's case accepted that Canada must rely on foreign intelligence, but did say that the government claims for secrecy were far reaching (Roach, 2007).

Roach (2007) argues that although countries are struggling to reconcile the need to keep secrets, to disclose relevant information and to ensure the accused is treated fairly, it has become apparent that Canada seems to have had an even more difficult time with these competing tensions. In the meantime, Khawaja is still awaiting trial which is to begin on May 20, 2008, four years after his arrest. The delay has been due to the constitutional challenges made against the ATA both in the Federal and Supreme Courts (Lofaro, 2008).

The second round of terror arrests that took place under the ATA came on June 2-3, 2006, where 12 men and 5 youths, all Muslim and citizens, were alleged to have been planning to "behead" the Prime Minister and bomb various locations in Toronto and Ottawa using three tons of ammonium nitrate to build the explosives. They were also alleged to have run a terrorist training camp. The arrests involved more than 400 police, security experts and at least two CSIS informants. Toward the end of the summer of 2006 an 18th suspect was also arrested (CBC, 7 June and 4 August 2006). Although the arrests garnered international praise for Canada's counter-terrorism efforts, including from U.S. Secretary of State, Condoleeza Rice, there was also criticism from other U.S. officials who claimed that Canada is a

haven for terrorists because of the apparent lax in immigration laws, porous border, and a Canadian population that have not taken terrorism seriously (CBC, 4 June 2006).

The arrests took place just two weeks after a vote in parliament in favor of extending the Canadian mission in Afghanistan, days before the Supreme Court hearings on the constitutionality of security certificates and also in time to coincide with the government's mandatory five-year review of Canada's anti-terror laws. Although there were 18 charged, the case against 7 have been stayed, effectively the charges have been dropped (Walcom, 2008e). Thomas Walkom (2006a) wrote in the Toronto Star regarding the alleged plot with respect to its timing and the credibility of the arrests:

> Before the arrests, there was a possibility that parliamentarians might recommend that the Harper government ease up on some of those laws. That now seems unlikely. For this, we can thank one of the world's most incompetent - or perhaps one of the world's most far-fetched - terrorist conspiracies.

The case of the Toronto 18 has been placed under a publication ban, but lawyers for the suspects have argued for full disclosure on the proceedings of the case, including evidence heard in court. Otherwise they argue that these cases are likened to security certificates by the use of secrecy under the Criminal Code (Behrens, 2007). Similar to the Khawaja case, the families of the 18 are not allowed under the ban to discuss with the media the cases, leaving them unable to refute the allegations against their relatives and having them feel that the cases are being approached from a perspective of guilt rather than innocence. This had led to feelings of frustration and isolation (Behrens, 2007; Interview July 30, 2007). To make matters worse, the government leaked information about the case to the media which painted in a negative light the accused (CBC, 12 June 2006). Rocco Galati, the defense attorney for some of the suspects at the time argued this further damaged the potential for obtaining unbiased jurors. He stated that, "The accused are not aliens from another planet. They are Canadians accused under the Criminal Code. No more, no less" (CBC, 12 June 2006).

The government's case against the 18 individuals rests primarily on two informants, one whose identity has not been disclosed, was paid $4 million for his role in making the alleged fertilizer bomb (Walcom, 2007d). The other informant, Mubin Shaikh received $300,000, for his role in running the

Washago terror training camp that the suspects are alleged to have participated in. In late 2007, Shaikh was in the middle of testifying when the Crown abruptly cancelled the preliminary inquiry and announced it was moving directly to trial. This unusual move by the government prevented the defense from determining if there was sufficient evidence in the case to warrant a trial and to hear the Crown's case of the accused (Walcom, 2007d). The Toronto Star journalist speculates the reason for the government's actions:

> Was something about to be revealed in court that the government didn't want anyone to hear? Was the Crown getting nervous about its informants? Is there some other reason? So you'll have to wait for the next leak - or the next overseas media interview with one of the government's star witnesses. Perhaps CNN will call up Mubin Shaikh (Walcom, 2007d).

In April 2007, Shaikh was arrested for allegedly attacking two 12-year old girls and in an interview with Maclean's later that year he admitted to becoming addicted to cocaine as a result of the stress of being Canada's most notorious mole (Friscolanti, 2007).

One of the family members explains his perspective on the case and the impact it has had on the Muslim community (Interview July 30, 2007):

> Everything is planned and they [the government] have been planning this arrest for a long time and we had no idea. You are being watched all the time. I totally feel entrapped and that's why there is mistrust in the Muslim community. They don't know if they should trust another Muslim or bearded individual because you have a so called "pious" individual who is getting the other guys arrested. He [Shaikh] claims he is religious... but this individual has gotten 18 people arrested... Personally I think this was set-up as a training for the RCMP, so that when a real threat occurs they will know what went wrong and how to fix it.

Based on the allegations, the suspects have had to endure difficult detention conditions while incarcerated:

> They were put in solitary confinement for over a year and were allowed a 20 minute shower and one call...According to Canadian law, I think, you can't keep them in solitary confinement for more than 30 days but ironically because of this law [ATA] you can keep them in longer. Because they are citizens, it doesn't matter...psychological implications are so bad...That whole year was hard, the way the guards treated them... you can't imagine this for anyone let alone a Canadian citizen... All of sudden he [suspect] is in this situation and the guards will be wearing masks, shield and every time you go in this 4x6 cell they would have them on their knees and hands on the back... In Canada we don't have the same kind of torture like in Syria, but the psychological torture is far worse. The fact someone is brown and labeled as terrorists the culture [inside the jail] is bad. They [suspects] could pray now, but initially the guards would step on the [prayer] mat and sometimes they would throw the Quran on the bench after court. There is a lot of

> disrespect... They [supposedly] get halal food but we don't know if it is halal because the food is open... they [the guards] probably spit in the food, even though it is supposed to be sealed... I called the food inspectors and now they are getting sealed food. We thought the Muslim community would be angry, but no response…Muslims should be worried because they [government] have the power to do what they want. (Interview July 30, 2007).

However, the case was further compounded by the depiction of the suspects in the media which incited fear in the demonized "Muslims" which was overtly racist (Mallick, 2006). This critique was corroborated by Robert Fisk, a journalist in the UK for the Independent. His article entitled, "*How racism has invaded Canada: What is the term 'brown-skinned' doing on the front page of a major Canadian daily?*" confronts the bias in the media as he scathingly reports:

> This has been a good week to be in Canada — or an awful week, depending on your point of view - to understand just how irretrievably biased and potentially racist the Canadian press has become. For, after the arrest of 17 Canadian Muslims on "terrorism" charges, the Toronto Globe and Mail and, to a slightly lesser extent, the National Post, have indulged in an orgy of finger-pointing that must reduce the chances of any fair trial and, at the same time, sow fear in the hearts of the country's more than 700,000 Muslims. In fact, if I were a Canadian Muslim right now, I'd already be checking the airline timetables for a flight out of town. Or is that the purpose of this press campaign? (Fisk, 2006)

He goes further to address the double standard in the media with respect to the citizenship of the suspects:

> For a very unpleasant — albeit initially innocuous — phrase has now found its way into the papers. The accused 17 — and, indeed their families and sometimes the country's entire Muslim community — are now referred to as "Canadian-born". Well, yes, they are Canadian-born. But there's a subtle difference between this and being described as a "Canadian" — as other citizens of this vast country are in every other context. And the implications are obvious; there are now two types of Canadian citizen: The Canadian-born variety (Muslims) and Canadians (the rest) (Fisk, 2006).

Fisk and Mallick's criticisms are not lost on the families of the accused. They too have been incensed by the depiction of the arrests in the media:

> The media call them "Al-Qaeda inspired" and "homegrown terrorist"... They [the media] made everything seem so huge with the ammonium nitrate…but they [security officials] controlled the order and the delivery...It is like the TV show "24 hours" which creates the fear of the terrorist. As a family member that is always in the courtroom, I never see any reporters anymore. I have only seen one from the Star... Although there is a publication ban, you can get a sense of what is happening when you are in court and then when it is lifted can write about it. There is only one reporter and that is it...It tells you if you really want to know come to court. Unfortunately they [media] don't really want to know. We saw a father going to speak and everything he said never made it on TV. He said we never taught our kids to kill…we gave them good Islamic values that doesn't teach them anything like this. The news cut and paste whatever the world wants to

> hear...you have the feeling that world has turned against you all of a sudden (Interview July 30, 2007).

As a result, both the suspects and their families are left isolated and alone with feelings of betrayal by both the government and the media.

> Everyone is scared to talk to us or be associated with us...even family is scared to talk to you because by default they are related to you. All of your Charter rights are violated and no one cares. The fact that we are Canadian doesn't matter. We have the Charter of Rights and no one cares because this is a terrorism case. Everyone think we are in Canada, but we are living an illusion and we think the Charter will protect us...we think we have a good justice system...we give-up our security like the phone companies to listen to our calls, to have the security officials to protect us but we are giving-up everything. They [security officials] are scared of Muslims, especially young people becoming practicing Muslims. I'm still grateful to God to be given this experience because if I hadn't had this experience I wouldn't have been a better Muslim. I used to call myself Muslim before, but didn't want to talk about it, but now I want to make it clear that Islam is to help people and to cause harm is condemned (Interview July 30, 2007).

Canadian-style Support for Rendition to Torture

Border cooperation and harmonizing of security policies between Canada and the U.S. since 9/11 have led to the detainment, deportation and torture of Canadian citizens (Keeble, 2005; Roy, 2005). The most notable case is that of Maher Arar, whose case has been subject to an extensive public inquiry, led by Justice Dennis O'Connor, tasked with uncovering the role of Canadian officials in his deportation (People's Commission on Immigration Security Measures, 2007). Arar, a Canadian of Syrian decent, was sent in October 2002 to Syria by the U.S. on his way back to Canada from a family trip in Tunisia. He was eventually released in October 2003 (Jackman, 2006).

The cases of three other Canadian citizens tortured in Syria and one in Egypt have garnered less media attention, but are currently being investigated in a private inquiry headed by retired Supreme Court Justice Frank Iacobucci[26]. Ahmad El Maati, a Canadian of Egyptian origin was detained and tortured in Syria in 2001 when he traveled for his wedding. He was then transferred and tortured in Egypt and was not released until 2004. Abduallah Almalki a Canadian of Syrian origin was detained and tortured in May 2002 when visiting his grandmother and was finally released in 2004. Muayyed Nureddin, a Canadian of

[26] Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin see: http://www.iacobucciinquiry.ca/en/home.htm

Iraqi origin was detained in December 2003 and tortured in Syria after entering the country en route to Canada. He was released in January 2004. It is believed that the detainment of these men was as a result of information provided to the Syrian and Egyptian authorities by the Canadian government (Jackman, 2006). This practice by the Canadian government is part of an increasing trend of Western governments, relying on non-traditional security intelligence from countries known for human rights violations (Wark, 2006).

Originally, the practice of "extraordinary rendition" involved seizing a person in one country and delivering them to another, usually for the purpose of criminal prosecution. However, within the current context of the "war on terrorism," this U.S.-led practice has meant the capture of suspected individuals, placing them in unmarked planes and sending them without charge to countries that practice torture in an effort to extract information (People's Commission on Immigration Security Measures, 2007; Saunders, 2007). According to U.S. media reports, more than 150 men, all mostly Muslim of Arab origin have been subjected to extraordinary rendition (CBC, 5 February 2007). In a report released in 2007 by the European Union, it was revealed that as many as 20 rendition cases have taken place in Europe, as part of the European cooperation with the American anti-terrorism efforts. Court cases are taking place in Germany, Sweden, Portugal and Italy against agents of both the U.S. and Europe for kidnapping citizens and sending them to Arab countries to be tortured. Germans now know about the case of Khaled el-Masri who was renditioned and Italians know of Abu Omar who remains in an Egyptian prison (Saunders, 2007). Gijs de Vries, the former head of anti-terrorism for the European Union spoke publicly about his loss of faith in his U.S. partners by saying:

> The CIA renditions, together with Abu Ghraib, Guantanamo Bay and the military commissions act, unfortunately have tarnished the image of the United States in the fight against terrorism, among Muslims and non-Muslims...I hope the United States...can return to a mainstream interpretation of international human rights (Saunders, 2007).

Canadians too have learned of their government's complicity in the torture of Maher Arar who spent ten months and ten days in a "grave-like" cell that was three feet wide, six feet deep and seven feet high (Arar, 2007). He was beaten repeatedly with a shredded electrical cable, interrogated to the point that

he urinated twice on himself and was forced into confessing falsely that he attended a training camp in Afghanistan (Arar, 2007). Almost a year into his ordeal, he was placed temporarily in a collective prison cell and meets another Canadian who has also been tortured: in his case with a tire and a cable and hung upside down. This man was Abdullah Almalki who he knew as an acquaintance. Although now back Canada, Arar says that the psychological scars of his torture are still with him (Arar, 2007). He stated in a testimony before the United States House of Representatives regarding his experiences that:

> I now understand how fragile our human rights and freedoms are, and how easily they can be taken from us by the very same governments and institutions that have sworn to protect us. I also know that the only way I will ever be able to move on in my life and have a future is if I can find out why this happened to me, and help prevent it from happening to others (Arar, 2007).

Amidst much media and public attention, the Canadian government announced in January 2004, a public inquiry into the actions of government officials in the rendition of Arar would be held. Over two years later, Judge O'Connor found that Arar was never a threat to Canadian national security and that the decision to detain and send Arar to Syria was based on inaccurate information provided by the RCMP, of which some of the information had "potential to create significant consequences" for Arar. The Commissioner also found that the RCMP sent questions to Syria to be posed to Abdullah Almalki concerning Arar and Canadian officials knowingly used information obtained through the use of torture. Officials not only leaked information on Arar to the media in an effort to damage his reputation and protect their self-interest, but the government also tried to censor information from being made public by O'Connor, in order to avoid embarrassment, rather than for reasons of national security (Commission of Inquiry into the Actions of Officials in Relation to Maher Arar, 2006; Clark, 2007; Freeze, 2007).

The O'Connor Commission made a number of recommendations including, security agencies have clear policies and more training on issues of racial and religious profiling; that a new review agency for the RCMP be created and new review processes be created for agencies such as Citizenship and Immigration Canada (CIC), Canadian Border Service Agency (CBSA), Transport Canada, Foreign Affairs and International Trade (DFAIT) and Financial Transactions and Reports Analysis Centre of Canada (FINTRAC); a five-year review by an independent person to examine the effectiveness of how

the new review structure is working and the need for a separate investigation into the role of Canadian officials in the torture of El Maati, Almalki and Nureddin (Commission of Inquiry into the Actions of Officials in Relation to Maher Arar, 2006).

Former Canadian Foreign Affairs Minister, Lloyd Axworthy (2007), commented on the findings in the O'Connor Commission by saying that Maher Arar's case demonstrates that the present cross-border security with the United States poses a threat to the cornerstone of Canadian society, namely the Charter of Rights and Freedoms. The trumping of security over human rights since 9/11 points to more dangerous consequences; therefore, now is the time to reaffirm the Charter:

> The war on terrorism is a new kind of war against an ill-defined enemy. A paranoia about those who are from different cultures leads to an insidious intolerance and a fear of those from within…It should be an occasion to affirm the principles of our Charter recognizing that all people on Canadian soil share equal standing and respect (Axworthy, 2007).

As a sequel to the Arar inquiry and based on the findings in the O'Connor report, the Minister of Public Safety sanctioned the Iacobucci inquiry, on December 11, 2006, into the actions of government officials in relation to the three other men tortured in the Middle East: an investigation that has been proceeding entirely behind closed doors. Lawyers for the men have argued that the secretive process should be made public; otherwise it will not instill confidence that the inquiry is credible (Clark, 2007). Assurances have still not been given that key witnesses will be asked to testify. These include former RCMP commissioner Giuliano Zaccardelli or Randy Walsh a RCMP officer who applied for search warrants based on information obtained from the Syrians while El Maati was detained, or MP Dan McTeague who was parliamentary secretary for consular cases (Clark, 2007). Furthermore, the lawyers have expressed concern that the government imposed a restrictive mandate on the inquiry because of fears that it would demonstrate a pattern of Canadian complicity in allowing foreign countries known for torture to interrogate detainees in an effort to advance intelligence. Another issue is that the lawyers are denied the ability to be present during the interviews and hearings (Clark, 2007).

In a letter to Prime Minister Harper the three men along with organizations that were given Intervener Status in the inquiry, such as Amnesty International, Canadian Arab Federation, International

Civil Liberties Monitoring Group, Human Rights Watch and Canadian Council on American-Islamic Relations, requested the inquiry be made public. They argue that to date no documents have been released to the men, their counsel, Interveners or the public, nor have they received any testimony, full or partial, from interviews with CSIS, RCMP or Foreign Affairs. They argue that there is no witness list nor have they been allowed to cross-examine the witnesses (Walcom, 2007b). In addition, they and their lawyers have not been granted access to the evidence. Even the letter was kept a secret from the media because it dealt with the commission's operation (Walcom, 2007b).

Paul Copeland, the lawyer for Almalki expressed his frustration regarding the secretive inquiry by saying:

> I'm not all that trustful of some of the government officials and some of their willingness to be forthright about what they did. There's lots of people, I think, who may have things to hide, like Foreign Affairs, the Department of Justice, CSIS and the RCMP (Mayede, 2007)

However, in a rare disclosure the Department of Justice has said that although El Maati, Almalki and Noureddin are all Canadian citizens and information might have been given by Ottawa to countries that practice torture, which might have caused the arrest and detention abroad, it still would not put Canada in breach of its obligation under the International Convention Against Torture (CAT) (Bahdi, 2008). The Department of Justice believes that the CAT only requires that Canadian officials prevent torture from taking place on Canadian soil, but creates no obligation for Canadian officials to prevent events that take place in foreign countries. Therefore, according to the government there is no legal obligation on its part even if the men are Canadian citizens. The logic appears to justify any government actions in the contracting-out of torture (Bahdi, 2008). The International Civil Liberties Monitoring Group responds to the issue of rendition by saying:

> Now enters the whole territory of illegality. This [rendition] is outside international legal regime and violates every notion of legality. Kidnapping and torturing and keeping people for years and denying people any legal process. When we look at the number of Canadian people, 5 cases, Arar, Benatta, El Maati, Almalki and Nureddin that were part of extraordinary rendition, it raises questions as to whether there is a pattern of an unspoken Canadian policy of collaborating so closely with the US and CIA, by willful blindness, agreeing that the US can deal with them as they want to do 'by closing our eyes and not saying a word'. The Iacobucci inquiry will reveal that there were no coincidences that the three men ended up abroad on the part of Canada (Tassé, 2007).

The Iacobucci inquiry is due to release its findings on September 2, 2008. Unfortunately, there is another case, which has not been included as part of the Iacobucci inquiry, nor has this individual been given Intervener status (Behrens, 2007; Benatta, 2007). The case involves another Arab Muslim, one of the first to be renditioned after 9/11. He was part of the Algerian air force on an exchange program in the U.S. On September 5, 2001, he crossed the border into Canada with false documents, claiming refugee status and was as a result put in detention (Behrens, 2007; Benatta, 2007). This is not uncommon in the treatment of asylum seekers (Behrens, 2007). He chose to claim refugee status in Canada because he believed that it would act fairly in his case. However, while in detention he was not aware of the 9/11 attacks, and was subsequently driven across to the U.S. on Sept. 12, 2001 and placed in a solitary confinement in a Brooklyn jail, where he was physically tortured and was detained for almost five years (Behrens, 2007; Benatta, 2007).

While in prison in the U.S., he was subjected to an illuminated cell 24 hours a day and for weeks they would pound loudly on the jail door every half-hour to wake him up. He was denied access to a lawyer, harassed by guards, physically abused while shackled and was interrogated by FBI agents about his job, ethnicity and religious beliefs. However, he was unaware that on November 15, 2001, the FBI had cleared him of any connection to terrorism, yet he remained incarcerated (Powell, 2003).

He was eventually allowed to return to Canada, where he claimed refugee status and on November 28, 2007 he was granted refugee status, almost six years after his original claim. However, he has been unsuccessful in his requests for a federal government review in his case (Benatta, 2007). As a result, he has since launched a $35-million lawsuit against the government for his rendition to the U.S. In the interview he commented that:

> Such illegal actions are in complete disregard to Canadian and international law and must not be tolerated in a country were the rules of law apply. I deserve an answer as to how I came to be illegally handed over to U.S. officials in violation of Canadian and international law. In addition, Canadians need to know what went wrong in my case, whether there are any other similar cases and how future such injustices can be prevented. Only by doing so and by correcting past mistakes, will Canada be able to restore a defamed reputation that was once cherished: a leader in the protection of human rights provisions around the globe (Benatta, 2007).

Unfortunately, Canada's global reputation is further tarnished by the case of Canadian Omar Khadr who was shot and captured in Afghanistan, allegedly accused of throwing a grenade that killed an American soldier. He is to stand trial on May 2008, on five charges of war crimes. Under international humanitarian law and international criminal law he would be classified as a war solider that was recruited involuntarily and illegally (Campion-Smith, 2008; Edwards, 2008). In addition, the military tribunal that will be trying his case fails to meet either Canadian or American standards of criminal justice. Yet, classified documents recently released, it was revealed that there might have been another survivor who may have thrown the grenade instead. The French government has urged the U.S. to treat Khadr as a minor who deserves consideration because of his age. However, unlike other countries such as the United Kingdom, France and Germany, the current and previous government has resisted asking the United States for Khadr to be sent back to Canada, making him the only Western detainee in Guantanamo. The Canadian government has stated that they have been given assurances that he is being treated humanely (Campion-Smith, 2008; Edwards, 2008).

In an affidavit signed by Khadr and censored in some parts by American officials (for fear that interrogation techniques would be leaked), Khadr has admitted that he has been tortured while in U.S. custody, amidst indifference by Canadian officials who accused him of lying (Edwards, 2008). These officials have visited him numerous times to extract information from him while he has been in Guantanamo Bay detention centre. He claims to have been used as a mop after urinating on himself and the floor, after being cuffed in contorted positions, as well guards have grabbed various pressure points on his body, he has been kneed repeatedly in the thighs and his eyes were badly injured by interrogators. He claims that he has been refused shower, food and water at certain times (Edwards, 2008).

The Supreme Court judge has challenged the government's need for secrecy in the case of Omar Khadr, pressuring them to disclose information they shared with the United States regarding their detainee. The former director of CSIS, Jack Hooper, testified in 2005 regarding the interrogation of Khadr by Canadian officials that no assurances were sought from the United States with information derived from their interviews with him. Khadr's lawyers have argued that the government has been complicit in

the controversial trial for fear of jeopardizing relations with the U.S. and they have further stated that Canada has violated the detainee's constitutional rights by interrogating him (Shephard, 2008).

Worldwide protests and the UN Secretary General have urged the United States to close the Guantanamo prison, while the Canadian government has remained silent on this issue (Shephard, 2008). The lack of public sympathy for the Khadr case can be attributed to the revelation that his father knew Osama bin Laden and comments made by his sister and mother in a CBC documentary nationally broadcasted (Shephard, 2008). Kent Roach a law professor at the University of Toronto explains the reaction to Khadr's case:

> Some of it may be this failure of imagination or empathy for many Canadians to put themselves in Omar Khadr's shoes. Some of it may be the unpopularity of the family in general and I think some of it is probably related to the fact that he's alleged to have killed an American medic (Shephard, 2007).

However, Dennis Edney one of Khadr's lawyer's says:

> A Canadian youth has been detained for five years where he has been abused and not provided with the most basic of rights and still we do nothing. And by doing nothing, we become complicit with the Americans (Shephard, 2007).

Behrens (2007) further adds that the government's response to questions of their participation in rendition, is to deny participation, even though they are secretly involved. Yet, the United States openly admits to participating in rendition arguing it is for the safety of Americans.

These six cases sadly demonstrate a Canadian-style pattern in the participation in the illegal act of extraordinary rendition of vulnerable Muslim Arabs who have been deemed unworthy of protection by the very country they seek to embrace. However, other unknowns are those cases that have not been made public and as a result these unknown people have languished in darkness. The world is watching as Canada continues to ignore its commitment to human rights.

Social Movements Resist the Government's Securitization Agenda

A Change of Tactics

Since the events of 9/11, social justice organizations serving refugees, non-citizens and in particular "Muslims" and "Arabs" have shifted their focus to the numerous security measures undertaken by the Canadian government in its effort to combat terrorism, with significant implications on the human rights of the communities they serve (Kutty, 2007; Boudjenane, 2007). Although specific groups have been directly affected by the government's response to the 'war on terror,' another intended and often overlooked group were also social activists, anti-war, anti-globalization movements who have experienced both legal and community implications on their legitimate political dissent (Tassé, 2007; Behrens, 2007).

In an internal assessment on the anti-globalization movement conducted by the RCMP and CSIS into the G8 meeting that was held in Canada in 2002, they found that with the adoption of the Anti-Terrorism Act (ATA) in 2001, the movement had lost its momentum as the protesters were now afraid that their activism would be perceived as supporting terrorists. As a result, security officials believed the movement was under control and it was no longer as strong as it was before (Tassé, 2007). In the 1990's the peace and anti-globalization movement were growing in strength and by 1999 it led to the shutdown of the summit held by World Trade Organization (WTO) in Seattle. Then activists moved onto the International Monetary Fund (IMF) meetings, followed by the meetings held by the Organization of American States (OAS) in Windsor and finally the Summit of Americas in 2001. This social movement was growing in Canada and around the world. Behrens (2007) from Homes Not Bombs and the Campaign to End Secret Trials says:

> There was a real sense that capitalism was unraveling and we had the power to make it unravel. There was a whole new generation of folks who were getting turned onto that.

Then when 9/11 occurred there was a retreat by social activists who felt that Canada was at war against terrorism and it was no longer appropriate to be protesting, particularly due to the implications of the new security measures. Any anti-war protest would be deemed as unpatriotic and disloyal to not only

Canada but also the troops, consequently it would be seen as a sign of support for terrorism. As a result, the attacks have had dramatic implications for the peace movement, which has yet to recover and began coming apart at the seams. As an example, the opposition to the war in Afghanistan has not yet taken on a national campaign, because of the linkage to 9/11 (Behrens, 2007).

There was also a belief by activists that the introduction of the ATA was not meant to be used against terrorists, but rather against social activists (Behrens, 2007). This belief is based on the language of the legislation which refers to the definition of terrorism in broad terms, as anything which seriously impairs the economic security of Canadians,[27] falls under the definition of terrorist offenses. As a result, activists were afraid to participate in demonstrations despite not being from targeted communities.

Yet, Homes Not Bombs, which was formed in 1998 after homelessness was identified as a critical national issue, comprises of a network of people who believe in consensus, the idea of accountability and participation in non-violent direct action, decided in this new environment to challenge the anti-terrorism legislation (Behrens, 2007). In one of their flyers for a planned demonstration in November 2001 at the Defense Research Establishment Ottawa (DREO), they announced as Behrens (2007) says that:

> Star Wars is terrorism from the skies and if Canada is serious about ending terrorism this has to stop...Homes Not Bombs is dedicated to transforming and eliminating the economic security of a society that forces the majority of the world's population to starve for our benefit. So we wanted to be clear. We are under the definition of terrorism in violation because we are against economic security in Canada because of what it means. It was good for the people who were there because ultimately that demonstration was about saying you can't be fearful. It is scary, but if we are fearful how are we going to stand-up for injustice. We thought if we were arrested we are going to be held under Bill C-36 [ATA] which would be great. Better us than the people being targeted right now, which are the Muslim community. We would have more of a chance of challenging this stuff.

However, to make both the protestors and the security officials feel safe, Homes Not Bombs turned the demonstration into a TV show by using theatre to democratize protest through the use of roles in a script. The show was the "Wizard of Oz Meets DREO" and the idea was to diffuse the tenuous situation with the police, by exercising their right to organize and demonstrate against injustice, without threatening those who promote injustice (Behrens, 2007).

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[27] See the Anti-Terrorist Act Part II 83.01 (1) (b) (i) (B) http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=37&Ses=1&Mode=1&Pub=Bill&Doc=C-36_4&File=42

Behrens (2007) has found that the other thing that has changed and not really due to 9/11, but more the weakness of the social movement is the commitment to non-violence which was a hallmark of the Seattle protests in 1999. This got side-tracked by a new discourse on diversity of tactics. The non-violent stream stresses against the demonizing of the police and the destruction of property, but requires instead that the protesters are well informed on the issues. On the other hand, the diversity of tactics approach which takes on to some degree a non-violent approach, also advocates that if protesters are to insist on non-violence is to judge the actions of third-world liberation movements that sometimes have to resort to violence in order to bring awareness to their issues. However, the former non-violent stream, argues in support of creating the conditions for non-violent resistance, which advocates for exercising power responsibly, by not dehumanizing the opponents (Behrens, 2007).

Out of the Homes Not Bombs network, which was focused on domestic forms of terrorism sponsored by the Canadian government, came the security certificate campaign called Stop Secret Trials. With this, the campaign employed a set of tactics in support of a fair trial for Jaballah, Mahjoub, Harkat, Almrei and Charkaoui. Behrens (2007) describes the broader form of advocacy that his work has undertaken:

> Personally it has opened my eyes to a part of advocacy that I was not as familiar with. It involves working with lawyers, involves being in the courts, involves the media, involves personal care to individuals who are in distress. These cases are so all consuming and it is important we are there. Literally for the last 6 years you are political organizers, pastoral care worker...I was spending 3-4 hours a day on the phone. I would get a call from Jaballah, then Mahjoub and then Hassan would call. Not that I am upset about that. You feel you are a personal life line during times at crisis. You are a lifeline with the family. It's a weird combination of personal and pastoral care and political organizing and community organizing. I am trying to focus in on these things and I am limited politically by what I can do, and they [security officials] will use that against me, while these guys are trying to get bail. It is a broader form of advocacy... it is a very intense part of advocacy because it is personal as well as political.

Nafziger (2007) says that Amnesty Canada has also submitted briefs for the security certificate detainees who are at risk of being deported and tortured if they were sent home. However, their main mandate is to work with vulnerable populations, like refugees, who have had failed refugee claims and have been given removal orders. They are also concerned about citizens detained abroad like Omar Khadr who was detained as a child "under less than good conditions which is less than the law requires"

(Nafziger, 2007). She goes further to say, Amnesty Canada is also interested in the Iacobucci inquiry given the claims of torture which are a violation of human rights through the security angle (Nafziger, 2007). After 9/11, with the many issues to advocate on behalf of, Amnesty Canada hired a campaigner dedicated to the human rights implications of the "war on terror" (Nafziger, 2007).

The ICLMG looks at all issues from a perspective of anti-terrorism and human rights. It was established in May 2002, in response to Bill C-36 and is a coalition of over 30 organizations that comprise of NGOs, unions, professional associations, faith groups, environmental organizations, human and civil liberty advocates, as well as groups representing immigrant and refugee communities (Tassé, 2007). The mandate of ICLMG is to defend human and civil liberties based on the Charter, provincial and federal laws and international human rights instruments. Since its inception, ICLMG has monitored and reported on the impact of all the anti-terrorism legislation adopted by Canada and other countries around the world and its impact on civil society organizations and communities; they have developed partnerships by exchanging information and analysis working closely with State Watch in Europe and the U.S. with the American Civil Liberties Union; they have monitored legislation and measures that are not legislated like the Smart Border Agreement and the impacts; they have worked closely with the Council of Canadians on the Security and Prosperity Partnership agreement between Canada, U.S. and Mexico. Representatives have also testified in the adoption of Bill C-17, the Public Safety Act and were granted Intervener status, as an "interested party," on the Arar and Iacobucci Inquiry (Tassé, 2007).

Issues-based organizations like Amnesty International Canada, Homes Not Bombs, the Campaign to Stop Secret Trials and ICLMG have responded to the new security environment in Canada. However, community-based organizations like the Canadian Arab Federation (CAF) and the Canadian Council on American-Islamic Relations have experienced an even greater demand on their services with a shift in their mandates with the September 11 attacks.

CAF, was formed in 1967 as a secular organization was created by a group of Arab organizations concerned with the issue and coverage of the Arab-Israeli war, providing settlement and immigration services, helped Arab businesses in getting established and promoted better relationships with the Arab

world (Boudjenane, 2007). However, it later became a federation of 22 active member organizations across the country and 44 affiliated groups representing almost half a million Arabs and becoming the national Arab voice in government relations and lobbying. However, after 9/11 CAF began to focus on policy issues related to security measures and the civil liberties impact on their constituents. In this new environment, they began spending more time addressing hate crimes by working closely with the Toronto, York and Peel Police Forces on hate crimes, conducting public education and sensitizing security agencies. It is also currently helping to put together training tools and training sessions for the Canadian Border Services Agency (Boudjenane, 2007).

Unfortunately, CAF and CAIR-CAN have found the government unwilling to meet with them to discuss the issues facing their communities, particularly the impact of the various security measures. CAF have also found that their resources are closely scrutinized by the government. In addition, projects that they have had with Heritage Canada have not been renewed, which CAF deems as a demonstration of a clear government policy against certain groups (Kutty, 2007; Boudjenane, 2007).

Whereas CAF has had a long history in Canada, Canadian Council on American-Islamic Relations was only established in 2000, as close but distinct affiliate of the U.S-based CAIR. Like CAF in the aftermath of 9/11 they are also more involved with national policy and legal issues that are related to anti-terrorism measures, by providing submissions in the Arar and Iacobucci Inquiry, the National Commission on Jurors, the no-fly list, Air India Inquiry, and Bill C-36. However, prior to 9/11 CAIR-CAN was more focused on the coverage in the media of Muslims and Islam by advocating and educating the public on these issues. Their biggest support base has remained young professionals who were born and brought up in Canada (Kutty, 2007).

Behrens (2007) describes this change in tactics by social justice organizations as saying to government:

> …I want my voice to be heard, you have to represent my interest. Social change happens because people take risks and people really give of themselves in a ways in which makes you uncomfortable. Sometimes it lands you in jail, or gives you economic hardship, or it makes you seen as a threat to the Canadian government. All you have to do is look at the reports that CSIS identifies [the social justice groups] as threats to the security of Canadians.

The Pendulum Swing Towards Security

Although there has been much government discourse on the desire to balance security with human rights, many NGO's believe that from their experience the pendulum has shifted more towards security than the protection of the most vulnerable in society (Nafziger, 2007; Kutty, 2007; Boudjenane, 2007; Behrens, 2007 and Tassé, 2007). Many fear that the situation will worsen (Kutty, 2007; Boudjenane, 2007; Nafziger, 2007). Instead they argue that there has been an overreaction on the part of the government, security officials and media that has incited fear in the general public and has led to the marginalization and alienation of racialized groups, particularly of "Muslims" and "Arabs". However, Tassé (2007) states that there is a false dichotomy in the discourse of balancing rights and security because individuals are less free with increased security and Canada is only safe if individual rights are in place (Tassé, 2007).

Many groups have argued that there have been many of violations of the Charter with even a lack of respect for the rule of law. Within the Canadian context there are many such examples such as the no-fly list, without due process and the right of individuals to defend themselves, the use of secret evidence in the case of security certificates, the definition of terrorism, the allowance for fundamental risk of return to torture, permission in the rendition of prisoners and Afghan prisoners detained by Canadian soldiers and given to Afghan authorities without any assurances that they will not be tortured. Many of the individuals in these cases are not given a fair defense (Nafziger, 2007; Kutty, 2007; Tassé, 2007).

Instead many groups argue that there are enough provisions in the criminal law that the government can employ, perhaps with a few modifications, without the need to employ new security measures to combat terrorism (Tassé, 2007; Kutty, 2007; Boudjenane; 2007; Behrens, 2007). They believe there are already various pieces of the criminal code that can address concerns regarding terrorist acts and therefore there is not a need to weaken the law in order to increase security. Under the current laws if you harm someone, injure someone or conspire to harm someone it is classified as a crime and even in a situation of crisis Canada has the Emergency Act. Furthermore, they argue that the threat of terrorism has always existed even before 9/11. They argue that Canada has employed various anti-terrorism legislation to appease the United States who is concerned about border security. Instead, they

argue that without fundamental justice Canadian society cannot have security (Tassé, 2007; Kutty, 2007; Boudjenane; 2007; Behrens, 2007).

However, various social movements believe that there can be a balance between security and human rights once the definition of "security" has been clearly defined, as it is currently a vague term used in many situations as the government has deemed appropriate (Behrens, 2007). In addition, there are have been many recommendations provided to the government from various groups, most recently from the O'Connor Inquiry on how these violations happened, how they can be avoided, how the violations can be minimized and how the "war on terror" can be fought without sacrificing rights, liberties and the Charter. Various groups like Amnesty International, ICLMG, The Canadian Bar Association, CAIR-CAN and the Criminal Lawyers Association have put forth alternative recommendations that can be explored, but the government must demonstrate a willingness to approach security measures from alternative perspectives (Kutty, 2007, Tassé, 2007).

Boudjenane (2007) also suggests that the government should engage in the process those groups most vulnerable to security measures, otherwise it will continue to create policies that effect communities they do not understand, whether it be their religious practices, values and beliefs, which would result in further tension between certain populations and the government. Kutty (2007) goes further to say that at the political level, the government needs to look at the root causes of terrorism. If people around the world feel that they are being exploited and killed for their natural resources or for geopolitical reasons then they will react and Canada must look at the reasons why it is targeted and how the country's actions are further fueling a sense of injustice elsewhere. Nafziger (2007) sums this perspective by saying:

> If you violate rights to protect rights, you continue to build around inequity and the cycle of violence.

Conclusion

The events of September 11, 2001, has been called a watershed moment for many people around the world, as it demonstrated to a global audience the threat terrorism could have on Western society. The events brought terrorism and security issues to the forefront of the U.S. agenda. As a result, Canada responded with similar measures in an effort to demonstrate its alliance with the neighbours to the south and to ensure that its borders would be kept open to trade. This new security era, has also resurrected in Canada the historical treatment of viewing immigrants and refugees as preferred and non-preferred based on their race, colour and religion. "Muslims" and "Arabs" in particular have borne the responsibility of eradicating terrorism because they shared the same faith and ethnicity as the 9/11 terrorists. Deemed by the media, government and the public, as guilty by association, their loyalty to Canada has come into question. This post-9/11 era, has relegated only preferred immigrants and citizens as deserving protection from the Charter, while non-preferred communities such as those with precarious immigration status, have been viewed through the lens of fear and suspicion.

The government's actions have received little public scrutiny, despite the significant impact on vulnerable communities within its society. Perhaps it due to the apparent small number of individuals arrested and suspected of terrorism under the various pieces of anti-terrorism legislation that have warranted such a lack of interest from the public, policy makers and academics. However, it is only through a review of the multiple pieces of security legislation utilized since 9/11 to combat terrorism, and the impacts it has had collectively on racialized non-citizens and citizens, in particular "Muslims" and "Arabs," in addition to, social justice movements, that a true understanding of the extent to which Canada has resorted to historical practices of racism, exclusion and injustice, can truly be understood.

The Canadian government's security response to the "war on terror" has resulted in the use of secret trials and secret evidence with the security certificate process under the Immigration and Refugee Protection Act. The controlling of mobility and ministerial discretion has resulted in the introduction of the Smart Border Agreement and the Security and Prosperity Partnership of North America, which allowed for the use of biometrics, the sharing of immigration databases and the introduction of a no-fly

list. The Safe Third Country Agreement further restricted the mobility of asylum seekers by allowing Canada and the U.S. to refuse those who have reached its borders. The Anti-Terrorism Act, also known as Bill C-36 gave security officials unprecedented powers for surveillance, profiling and detaining alleged suspects; provided federal capacity to deny or remove charitable status of organizations; allowed for information of national interest to be suppressed; allowed for the arrest of people on the grounds of suspicion; and criminalized political dissent by social justice movements that challenge the economic security of Canada. Finally, the complicit use of rendition adopted by the government is a unique Canadian approach of denying involvement, but secretly participating in acts that are denounced internationally. This has led to the torture under the watchful eye of the Canadian government, of at least five individuals and one famous Canadian, Maher Arar.

As a result, it is no surprise that social justice organizations have had to respond to this new securitization agenda with a different set of tactics. The anti-globalization and peace movements have realized that they too have fallen under the scrutiny of anti-terrorism legislation with their capacity for dissent significantly weakened. Grassroots organizations like Homes Not Bombs have continued to challenge government policies and practices, by using theatre to demonstrate that they are committed to non-violence and to diffuse tenuous situations with the police, while at the same time confronting injustices (Behrens, 2007). Mainstream organizations such as Amnesty International Canada has hired a full-time staff member solely dedicated to responding to security measure enacted by the government under the banner of the "war on terror." International Civil Liberties Monitoring Group was formed in response to Bill C-36 as a coalition of almost 30 organizations concerned with the current security climate. On the other hand, organizations such as Canadian Arab Federation and Canadian Council of American-Islamic Relations have become more involved with national policy and legal issues related to the anti-terrorism measures.

In conclusion, based on the findings of this qualitative research study, it is apparent that the most vulnerable communities in Canadian have been significantly been impacted by Canada's security agenda. They have been made to feel that they are not entitled to rights or justice. These measures have eroded the

very mechanisms that Canadians profess to uphold. The respect for diversity, human rights, civil liberties, democracy and fundamental justice are now dramatically weakened and Canada's leadership role on the world stage has been tarnished. This raises further questions as to what kind of society do Canadians have, if the protection of the weak and the vulnerable are at the expense of security measures? In such extraordinary times, is it really justifiable to have such extraordinary measures? Do Canadians really want to have another dark entry of racism and exclusion as part of its history?

APPENDIX I

Interview Guide

Questions for Social Justice Organizations:

1. When was your organization established?
2. What is the mandate of your organization?
3. What are the main populations your organization works/advocates on behalf of? Why?
4. How would you describe the Canadian environment leading-up to the events of 9/11?
5. What has been the impact for the population you serve since September 11?
6. What do you think of the Canadian government's security response to the current 'war on terror'? Has it effected the population you advocate on behalf of? If so, in what ways?
7. Are there any specific measures that are of concern? Why?
8. Can you please comment on the implications of the following legislation?
    - Bill C-36?
    - Security Certificates?
    - Smart Border Declaration?
    - Extraordinary rendition?
    - No Fly List?
    - Anything else?
9. Has this new security environment changed your advocacy efforts? If so, in what ways? If not, why?
10. Do you think the government has successfully balanced the protection of human rights with security concerns? Why?
11. How does the situation in Canada compare with what is taking place in Europe/US? Is it better or worse?
12. Do you think a balance actually exists?
13. What does the current Canadian situation mean for democracy in Canada?
14. What kind of future do you foresee for Canada given the current trend?
15. What do you think Muslims, Arabs and other vulnerable populations can do in this current environment?
16. If you were to advise the government on the current post-9/11 environment. What advice would you give them?
17. What are your recommendations for balancing security measures and human rights?
18. Are there any further comments you would like to make?

Questions: Individuals or their family members targeted under Canadian security legislation

Before we begin I would like to reiterate that any questions you feel uncomfortable answering or would put you at risk in any way, the question can be withdrawn.

1. Can you describe your life before the events of 9/11?

2. What has been your experience since Sept. 11, 2001?

3. If you are not comfortable answering the following question it can be withdrawn. Do you feel that there is anything you have said or done (or your relative) that may have led the government to see you as a security risk?

4. How do [you or they] feel about Islam and being a Muslim?

5. Only if you are comfortable, can you please tell me what have been the circumstances of [your or your relatives] arrests?

6. What has been [you or your relatives] treatment during the arrests [or bail]?

7. What security measures did the government employ to detain [you or your relative]?

8. How has this experience impacted [yourself or your family]?

9. Have these experiences changed how you behave or act? How?

10. How has this experience impacted your perception of Canada and being a Canadian?

11. What would be your recommendations for the Canadian government in balancing the protection of human rights with security concerns?

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