HOUSE OF COMMONS
CANADA

DETENTION CENTRES AND SECURITY CERTIFICATES

Report of the Standing Committee on Citizenship and Immigration

Norman Doyle, M.P.
Chair

APRIL 2007

39th PARLIAMENT, 1st SESSION

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THE STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

has the honour to present its

TWELFTH REPORT

Pursuant to its mandate under Standing Order 108(2), your Committee has conducted a study on *Detention Centres and Security Certificates.*

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DETENTION CENTRES AND SECURITY CERTIFICATES

INTRODUCTION

The security certificate process, by which non-citizens may be detained and deported based largely on unproven allegations that they pose a risk to the security of Canada, has existed in Canada's immigration law since 1978. At the legal proceedings concerning the reasonableness of the certificate, the government can present the Court with confidential and secret evidence, which is disclosed to the detainee in the form of a summary. Other evidence on which the security certificate can be based, consisting of information that would reveal the sources of information and investigative techniques, or information supplied in confidence by a foreign government, does not need to be disclosed in the summary.

Despite the fact that security certificates have been employed infrequently since their inception, the process has garnered criticism from civil liberties advocates, legal scholars and the judiciary, including the Supreme Court of Canada. Criticism has become particularly vocal since the events of September 11, 2001. Opponents argue that the government has been unfairly using immigration legislation to deal with terrorism concerns, instead of using the arsenal of tools available under the Canada's *Anti-terrorism Act,* and charging individuals who have allegedly contributed to the activities of a terrorist group, or facilitated terrorist activities, with *Criminal Code* offences. Opponents also assert that the process discriminates unfairly against non-citizens, denies individuals subject to certificates the right to be heard, and to respond to and test the evidence against them, and raises the spectre of indefinite detention without charge in Canada. The risk of indefinite detention without charge becomes most palpable in cases where individuals subject to security certificates would likely face risk of torture if deported to their countries of nationality or habitual residence.

At the beginning of this parliamentary session, the House of Commons Standing Committee on Citizenship and Immigration determined that both the security certificate process and the conditions of detainment merited further study. The Committee is aware that two other parliamentary committees, the Senate Special Committee on the *Anti-terrorism Act* and the Subcommittee on the Review of the *Anti-terrorism Act* of the House of Commons Standing Committee on Public Safety and National Security, have been studying the security certificate process as part of their comprehensive studies of the *Anti-terrorism Act* and Canada's national security framework. This Committee was of the view that a study focused specifically on the process itself, and the effects and conditions of detention at the Kingston Immigration Holding Centre (KIHC), would provide some insight into the physical and psychological costs of Canada's use of security certificates. While recognizing that it is not always possible to bring to trial individuals who have been determined, on reasonable grounds, to be inadmissible to Canada, the Committee has

attempted, in this report, to address some of the procedural fairness concerns raised by the security certificate process. The Committee has also assessed the conditions of detention for those subject to security certificates and the effects detention can have on their families, and has recommended changes to ameliorate these effects.

During the course of its study, the Committee heard from a number of witnesses and government officials. Members of the Committee travelled to Kingston, Ontario on October 31, 2006 to view the KIHC, and speak to the officials in charge of the facility and the individuals who are currently detained there. In addition, members of the Committee travelled to Montreal where they spoke to an individual subject to a security certificate who has been released from detention on conditions.

The issues related to the conditions of detention took on additional significance after the detainees at KIHC engaged in a hunger strike, beginning in late 2006. By early February, one of the detainees had been on hunger strike for over 70 days, and the health of the detainees was reportedly deteriorating. On February 12, 2007, members of the Committee again travelled to Kingston to ascertain the wellbeing of detainees, and to see if the members could be of any assistance in resolving the increasingly worrisome state of affairs. The hunger strike continues: as of March 26, 2007, one of the detainees at KIHC had been on hunger strike for 110 days.

THE SECURITY CERTIFICATE PROCESS

The process by which non-citizens may be detained and deported on the basis of confidential evidence that they represent a security risk is outlined in sections 77 to 85 of the *Immigration and Refugee Protection Act* (IRPA).[1] Prior to 2007, a number of Federal Court rulings had upheld the constitutionality of the security certificate process.[2] In the case of *Suresh v. Canada (Minister of Citizenship and Immigration)*, the Supreme Court left the door open to the possibility of deporting individuals subject to security certificates to their countries of nationality or habitual residence in exceptional circumstances, even though they may face risk of torture.[3] *Suresh* found the process constitutional notwithstanding Canada's ratification of the *Convention Against Torture* (CAT),[4] in which Article 3(1) explicitly prohibits state parties from returning people to torture, and Article 2(2) does not

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1 S.C. 2001, c. 27.

2 See, for example, *Ahani* v. *Canada*, 1996] F.C.J. No. 937 (FCA), affirming the more detailed reasons of McGillis J. of the Trial Division at [1995] 3 F.C. 669, in which the Federal Court of Appeal held that the security certificate process in the former *Immigration Act*, and detention resulting from it, did not violate the rights to life, liberty and security of the person under section 7 of the *Canadian Charter of Rights and Freedoms*). Also see Charkaoui *(Re)*, 2004 FCA 421, where the Federal Court of Appeal came to the same conclusion about the security certificate process as outlined in IRPA.

3 *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002, particularly para. 78.

4 The *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* Can. T.S. 1987 No. 36, is available on the Web-site of the Office of the United Nations High Commissioner for Human Rights at: http://www.ohchr.org/english/law/cat.htm.

permit derogation from this prohibition. However in a judgement released on February 23, 2007, the Supreme Court of Canada allowed an appeal challenging the constitutionality of the security certificate process. In the case of *Charkaoui v. Canada (Citizenship and Immigration),*[5] the Supreme Court struck down certain provisions of the security certificate process, and gave the government one year from the date of the judgement to amend the provisions in order to make them compliant with the *Canadian Charter of Rights and Freedoms* (the Charter).

A. The Legislation

The basis for issuing a certificate is set out in section 77 of IRPA, which states:

> The Minister [of Citizenship and Immigration] 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.

Sections 82 and 83 of IRPA allow for the arrest and detention of permanent residents and foreign nationals against whom security certificates have been issued. In the case of a foreign national (someone who is neither a Canadian citizen nor permanent resident) detention is mandatory and no warrant for arrest is required. In the case of a permanent resident, arrest and detention are discretionary, and require prior authorization by warrant. If a permanent resident (someone who is not a Canadian citizen, but has more than a temporary right to enter or remain in Canada) is detained prior to the Federal Court hearing on the reasonableness of the security certificate, he or she is entitled to a detention review by the Federal Court, to see whether continued detention is justified. The first review must take place no later than 48 hours after the beginning of the permanent resident's detention, and at least once every six months thereafter, until he or she is removed from Canada or allowed to stay. In contrast, a foreign national is not entitled to a detention review until the Federal Court has rendered a decision on the reasonableness of the certificate. Following such a determination, however, under section 84 of IRPA, the foreign national is entitled to apply for a detention review if he or she has not been removed from Canada within 120 days. A judge may order release on conditions if satisfied that the person will not pose a danger to the national security of Canada if released.

Section 80 of IRPA provides that once a certificate has been issued, a judge of the Federal Court "shall, on the basis of the information and evidence available, determine whether the certificate is reasonable …" The "reasonable grounds to believe" standard requires that the Court consider whether "there is an objective basis ... which is based on compelling and credible information."[6] The test used to determine whether the detainee is a

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5 2007 SCC 9

6 Ibid., at para. 39

danger to the security of Canada and should be detained is that of an “objectively reasonable suspicion." As was explained in the Supreme Court of Canada case of *Suresh v. Canada (Minister of Citizenship and Immigration)*:

> [A] person constitutes a "danger to the security of Canada" if he or she poses a serious threat to the security of Canada, whether direct or indirect, and bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be "serious", in the sense that it must be grounded on objectively reasonable suspicion based on evidence and in the sense that the threatened harm must be substantial rather than negligible.[7]

At the hearing, the Federal Court judge is required, at the request of the Minister of Citizenship and Immigration, to hear “all or part of the information and evidence in the absence of the permanent resident or the foreign national … and their counsel if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person.”[8] The permanent resident or foreign national must be provided with a summary of the evidence so that he or she is reasonably informed of the reasons on which the decision to issue a certificate was based. As an official from the Department of Justice who appeared before the Committee described, the summary of evidence excludes “information that would disclose the sources of information, particularly when the safety of the source would be at risk; information that would reveal investigative techniques; and information that was provided in confidence by foreign governments.”[9] The judge may, however, consider information excluded from the summary in coming to a decision on the reasonableness of the certificate, if determined to be relevant.[10] The judge may also receive into evidence “anything that, in the opinion of the judge, is appropriate, even if it is inadmissible in a court of law, and may base the decision on that evidence.”[11]

Section 79 of IRPA provides that, during the course of the Federal Court hearing on the reasonableness of the certificate, either the Minister of Citizenship and Immigration or the individual against whom the certificate is being issued, may request that the proceeding be suspended in order for the Minister to consider an application for a Pre-Removal Risk Assessment (PRRA). The PRRA is conducted to determine whether the individual would be at risk of torture, at risk of life, or at risk of cruel and unusual treatment or punishment if removed to his or her country of nationality or habitual residence.[12] If the Minister determines that he or she would be at risk, and is satisfied that the danger the person would face if removed outweighs the danger to security, the Minister may stay the

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7 2002, 1 S.C.R. 3

8 IRPA, section 78(*e*)

9 Daniel Thérrien, Senior General Counsel, Office of the Assistant Deputy Attorney General, Department of Justice, Meeting No. 21, October 26 2006 at (09:10)

10 IRPA, section 78(*e*)

11 Ibid., section 78(*j*)

12 Ibid., sections 79(1), 97, 112 and 113

removal.[13] If the Minister is not satisfied that this is the case, he or she may refuse the application for protection.[14] In either case, once the Minister has made a decision, the Federal Court judge resumes the hearing on the reasonableness of the security certificate. During that process, the judge must also review the lawfulness of the decision made by the Minister on the person's application for a PRRA.

In accordance with sections 80(3) and 81 of IRPA, once the judge has made a decision on the reasonableness of the certificate, the decision may not be appealed or judicially reviewed. The certificate becomes conclusive proof that the individual subject to it is inadmissible to Canada, and may be removed from Canada without an admissibility hearing. In addition, once a decision on the reasonableness of the certificate has been made by the judge, the person cannot submit an application for a PRRA.

The government agency most involved in the security certificate process is the Canada Border Services Agency (CBSA), which is part of the Department of Public Safety and Emergency Preparedness. Since December 2003, the CBSA has been responsible for the intelligence, interdiction and enforcement functions of Canada's immigration program, which were formerly performed by Citizenship and Immigration Canada (CIC). However, as noted above, CIC does have a role to play in the security certificate process, as the signatures of the Minister of Citizenship and Immigration and the Minister of Public Safety are both required before a security certificate can be issued. In addition, the Minister of Citizenship and Immigration is responsible for making the PRRA decision, if a PRRA application is made during the course of a Federal Court hearing on the reasonableness of the security certificate.

B. How Frequently Has the Security Certificate Process Been Used?

It is important to note that since 1991 only 28 security certificates have been issued. Six of these have been issued since September of 2001. Of the 28 issued, 19 have resulted in deportations, the most recent being the deportation on December 26, 2006 of a Russian citizen using the name of Paul William Hampel, whose security certificate was issued, and was subsequently held by the Federal Court to be reasonable, on the grounds that he had engaged in espionage.[15] Three certificates have been quashed by the courts

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13 Ibid., sections 113(*d*) and 114(1)(*b*)

14 Ibid.

15 The person claiming to be Paul William Hampel was detained in the Montreal area pending deportation, and was never sent to KIHC. It is unclear why he was not sent to KIHC; however, it was presumably a result of his appearance before the Federal Court in Montreal, and the fact that he was removed from Canada swiftly. He was arrested on November 14 2006, and was deported on December,26 2006.

as unreasonable, one of which was subsequently reissued.[16] There are currently six individuals in Canada who are subject to security certificates: Mohamed Harkat, Hassan Almrei, Adil Charkaoui, Mohamed Mahjoub, Mahmoud Jaballah and Manickavasagam Suresh. Three have been released from detention on strict conditions: Messrs. Suresh, Charkaoui and Harkat. Three individuals, Messrs. Almrei, Jaballah, and Mahjoub are currently detained at the KIHC. However Messrs. Mahjoub and Jaballah succeeded in their applications to be conditionally released from the KIHC in early 2007 and are awaiting court decisions on the conditions they will be subject to. Certificates were issued for the six individuals on the basis of their alleged links to terrorist organizations, and/or on the basis that they have engaged, are engaging, or will engage in terrorist activity.

C. The Supreme Court of Canada Appeals of Messrs. Charkaoui, Harkat, and Almrei

In June 2006, the Supreme Court of Canada heard the appeals of Messrs. Charkaoui, Harkat and Almrei, each of whom challenged the constitutionality of the security certificate process in IRPA. The appellants argued that the process violated their liberty rights under section 7 of the Charter because it allowed for deprivations of liberty otherwise than in accordance with the principles of fundamental justice. Specifically, they argued that because the security certificate process allowed the government to present evidence against them on an *in camera* and *ex parte* basis, without them or their lawyers being present, and because they were generally provided only a summary of the government evidence produced during that hearing, they were denied the opportunity to hear and to adequately respond to and test the case against them.

In addition, interveners in the case argued that the security certificate process violated the Charter's section 15 right to equality. It was argued that non-citizens are a disadvantaged group susceptible to repressive measures in times of insecurity. Since both non-citizens and citizens have rights under the Charter, and the security certificate process makes a distinction between non-citizens and citizens (and between different classes of non-citizens in regards to detention reviews), the process was discriminatory.

Finally, it was argued that the detention of prisoners violated the detainee's section 14 right not to be subject to cruel and unusual treatment or punishment, since security certificates can impose prolonged or indefinite detention, sometimes in isolation, without access to many of the programs given to convicted criminals.

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[16] In the case of *Smith v. R*., [1991] 3 F.C. 3, the security certificates of two Iraqi detainees were quashed by the Federal Court when it found that there were insufficient grounds to believe that the detainees would engage in subversive activities or acts of violence while in Canada. In the case of *Canada (Minister of Citizenship & Immigration) v. Jaballah***,** 1999 CarswellNat 2317, [1999] F.C.J. No. 1681 (Fed. T.D. Nov 02, 1999), the certificate was quashed after the judge found the evidence presented by Mr Jaballah and his wife credible. A security certificate for Mr. Jaballah was subsequently re-issued and found to be reasonable.

During the hearing before the Court, the appellants asserted that the provisions were not saved by section 1 of the Charter, because the process does not constitute a "reasonable limit prescribed by law ... demonstrably justified in a free and democratic society." Specifically, the appellants claimed that the process does not meet the "minimal impairment test" under section 1 of the Charter: the legislative measures do not impair the rights of those subject to certificates as minimally as possible. First, interveners in the case argued that the impairment was greater than necessary because criminal charges could be levelled against suspected terrorists. Counsel for the appellants, as well as many interveners in the case, also asserted that a superior alternative existed in the form of some sort of "special advocate" process, whereby a court-appointed lawyer with security clearance (although perhaps not the person's own lawyer) would be permitted to be present when the government presented its secret evidence, and would be allowed to test the evidence on behalf of the person. They argued that this mechanism would provide more procedural fairness to the person subject to the certificate and would preserve the adversarial nature of proceedings before Canadian courts.[17] The Committee notes that some Canadian judges have made public comments expressing their unease with the security certificate process, due to the fact that the process puts them in the position of having to test the evidence, a role that they are not accustomed to performing.[18]

On February 23, 2007, at the time this report was being written, the Supreme Court of Canada released its decision. In *Charkaoui*, the Supreme Court started from the premise that the "right to a fair hearing comprises the right to a hearing before an independent and impartial magistrate who must decide on the facts and the law, the right to know the case put against one, and the right to answer that case."[19] The Supreme Court held that the security certificate process suffered from two defects that rendered it inconsistent with the *Charter*. The Court found that section 78(*g*) of IRPA, which allows for the use of secret evidence that is not disclosed to the detainee, violated the section 7 *Charter* right to life,

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17 The information with respect to what was argued in the Supreme Court of Canada appeals of Messrs. Charkaoui, Harkat and Almrei comes from court transcripts of the appeal proceedings on June 13 and 14,2006, and from the factum of the Canadian Bar Association, which is available on the Canadian Bar Association's Web site at: http://www.cba.org/CBA/News/pdf/2006-06-12_factum.pdf.

18 See James K. Hugessen, Judge, Federal Court of Canada, "Watching the Watchers: Democratic Oversight" in David Daubney *et al.,* eds., *Terrorism, Law & Democracy: How is Canada changing following September 11?* (Montreal: Canadian Institute for the Administration of Justice, 2002), pp. 384.386. Also see the remarks made by retired Ontario Superior Court judge, Roger Salhany, when he appeared before the House of Commons Standing Committee on Citizenship and Immigration on March 18, 2003, where he discusses the burden that a proposed security certificate process for citizenship revocation cases would place on judges. The relevant testimony may be found in the official March 18, 2003 transcript of Meeting No. 49 of the House of Commons Standing Committee of Citizenship and Immigration, 37th Parliament, 2nd Session at (11:20).

19 Supra, note 5.

liberty and security of the person. The section could not be saved by section 1 of the *Charter* because the provision failed to meet the minimal impairment test. The Court stated that:

> 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 the person's rights.[20]

Since the Court said that a less intrusive approach would be to allow for a special advocate in the security certificate process, it is implicit that if Parliament were to amend the Act to provide for a special advocate, the security certificate process would be *Charter* compliant.

In order to give Parliament time to amend IRPA, the declaration striking down section 78(*g*) was suspended for one year from the date of this judgment. As of February 23, 2008, the security certificates that have already issued will no longer be reasonable, and the six individuals subject to them could apply to have them quashed. Presumably, however, if the Government amends IRPA in the next year, the certificates for the six individuals could be re-issued, and the Federal Court would then determine their reasonableness under the special advocate process.

The Supreme Court also found that section 84(2) of IRPA, which does not require a detention review for foreign nationals until 120 days after the reasonableness of the certificate has been judicially confirmed, infringes the guarantee against arbitrary detention found in section 9 and 10(c) of the Charter. The Court determined that foreign nationals should have the same rights as permanent residents under the detention review process, meaning they are entitled to a detention review within 48 hours after the beginning of detention.

The Court rejected arguments that the section 15 equality provisions were violated because of the distinction made between citizens and non-citizens under the security certificate process. In addition, the Court found that the possibility of indefinite detention did not violate the section 12 guarantee against cruel and unusual punishment, since detentions are reviewed every six months, and detainees have a meaningful possibility of being released on conditions. Finally, the Court decided that the rule of law was not infringed by the unavailability of an appeal of a Federal Court decision on the reasonableness of a certificate, or by the provisions allowing mandatory arrest without warrant in the case of a foreign national.

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[20] Ibid., at para. 140

WHAT THE COMMITTEE HEARD CONCERNING THE SECURITY CERTIFICATE PROCESS

A witness from the Department of Justice, who appeared before the Committee during its study, stressed the extraordinary and exceptional nature of the security certificate process.[21] He pointed out that the number of security certificates that had been issued since 1991 averaged out to fewer than two a year. He also highlighted the safeguards the process contains to achieve fairness, the first being that the Federal Court reviews the decision made by the Minister of Citizenship and Immigration and the Minister of Public Safety to issue the certificate. During that review, "the court has all of the information, including the classified information upon which the government relies."[22] The second safeguard is that the individual subject to the certificate and his or her counsel receive a summary of the evidence presented by the government that "is actually fairly extensive, so they know in some detail the information against them."[23] In response to concerns that the individual subject to the certificate and his or her counsel do not see all of the evidence, the official stated that "[t]he court tests the government's case rigorously."[24]

The Department of Justice official, who appeared as a witness before the Charkaoui decision was released, pointed out that both the Federal Court and the Federal Court of Appeal had held that the security certificate process was constitutional. In addition, the same official stated that the Federal Court had held that an *amicus curiae* is not required to render the procedure constitutional. While remarking that creating a role in the security certificate process for special advocates would possibly improve the process, he nonetheless stated:

> Obviously, even if you have a special advocate, there have to be limits or parameters around roles — concerning the communications between the special advocate and the individual once the information has been disclosed to a special advocate — which mean that there are limitations that can never bring that kind of process to the standard of criminal trials. In part for these reasons, some of the special advocates who were used [in Britain] actually withdrew from their role because of concerns with this.[25]

While highlighting the exceptional nature of the security certificate process, the Department of Justice recognized some of the dilemmas and difficulties that the process creates. The official from the Department of Justice made reference to a Federal Court case respecting Mr. Jaballah's detention, in which the court held that Mr. Jaballah was

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21 While officials from the Department of Justice, CIC and the CBSA all appeared before the Committee as witnesses, the official from the Department of Justice took the lead in testifying about the process.

22 Daniel Thérrien, Senior General Counsel, Office of the Assistant Deputy Attorney General, Department of Justice, Meeting No. 21, October 26, 2006 at (09:10).

23 Ibid.

24 Ibid.

25 Ibid., at (09:15)

entitled to a detention review, pursuant to section 15 of the Charter, prior to the court making a decision on the reasonableness of his security certificate.[26] The official also recognized that a October 15, 2006 Federal Court of Canada decision involving Mr. Jaballah, where the court held that that Mr. Jaballah could not be deported to his country of citizenship under any circumstances, because of the risk of torture he would face, meant that security certificate detainees who are unwilling to leave Canada voluntarily may find themselves in detention for very lengthy periods of time. He characterized such lengthy detentions as "worrying."[27] However, he also indicated that charging and prosecuting those subject to security certificates is extremely difficult, stating:

> No country, no liberal country, no democratic country has found a way to effectively prosecute people charged with terrorism when the nature of the case is that a part of the evidence is secret evidence that cannot be disclosed to the individual, so it is a dilemma that all western countries face and no country has solved that problem.[28]

Another perspective on the process was provided by advocacy groups seeking to either change or abolish the security certificate process, by those subject to the process themselves, and by the family members of individuals subject to certificates. These witnesses took a much more critical position with respect to the fairness of the process, bringing a variety of issues to the Committee's attention. For example, Amnesty International indicated that in its view, the mandatory detention of foreign nationals was troubling. The representative from Amnesty International who appeared before the Committee stated:

> I'm worried about discrimination. In April 2006 the UN Human Rights Committee, in reviewing Canada's implementation of the International Covenant on Civil and Political Rights, voiced particular concern over the use of security certificates under the Immigration and Refugee Protection Act, and, in particular, the mandatory detention of foreign nationals who are not permanent residents.

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[26] Daniel Thérrien, Senior General Counsel, Office of the Assistant Deputy Attorney General, Department of Justice, Meeting No. 21,October 26, 2006, at (09:05), and *Re Jaballah,* 2006 FC 115 at paras. 81 and 93. Section 15 of the Charter is the section which guarantees people equality before and under the law.

[27] Ibid. at (09:15), and ibid.

[28] Ibid., at (09:35)

> The Human Rights Committee report calls into question the automatic detention of all non-permanent-resident aliens under the security certificate process and the seeming hesitance of the Federal Court to grant bail, despite extraordinary guarantees being given. This raises serious issues of discrimination. It is a concern that Amnesty International has highlighted in our intervention before the Supreme Court.[29]

Other witnesses were concerned about the fact that the process makes a distinction between citizens, against whom security certificates cannot be issued, and foreign nationals and permanent residents. As the representative from the Coalition for Justice for Adil Charkaoui stated when she appeared before the Committee:

> The core of the question that we believe needs to be addressed is the issue of equality. The security certificate process is being applied only to people without legal status and full citizenship in Canada — permanent residents, refugees, and people who are applying for refugee status. This constitutes a situation of discrimination where people, on the basis of their legal status, are being subject to violations of their fundamental human rights to life, liberty, and security of the person.
>
> We have not yet heard a satisfactory answer to why or how that discrimination can be justified — we do not believe it can be justified — and we think that is the core question that needs to be addressed in any solution to this problem that's put forward.[30]

A number of other concerns were raised by witnesses before the Committee. The standard of proof the government has to meet in making its case before the Federal Court is the "reasonable grounds to believe" standard, a standard much lower than the "proof beyond a reasonable doubt" used in criminal trials.[31] Witnesses were concerned by the fact that evidence used by the government to substantiate the certificate may come from countries with poor human rights record and may not be reliable,[32] and the fact that there is no appeal available from the Federal Court's decision on the reasonableness of the certificate were also highlighted as areas of concern.[33] Others witnesses were concerned that there is still no absolute prohibition from deportation to torture enshrined in Canadian

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29 Alex Neve, Secretary General, English Speaking Section, Amnesty International Canada, Meeting No. 24, November 9, 2006 at (09:15). The April 2006 report, referred to in the witness' testimony, is the report of the United Nations Human Rights Committee, Eighty-fifth session, *Consideration of States Parties Under Article 40 of the International Covenant on Civil and Political Rights, Concluding Observations of the Human Rights Committee: Canada,* CCPR/C/CAN/CO/5, 20 April 2006. See para. 14 of the report in particular. This report is available on the Web site of the Office of the United Nations High Commissioner for Human Rights at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.CAN.CO.5.En?OpenDocument

30 Mary Foster, Member, Coalition for Justice for Adil Charkaoui, Meeting No. 24, November 9 2006 at (09:20-09:25).

31 Ibid.

32 Mona El-Fouli, Wife of Mohamed Mahjoub, Campaign to Stop Secret Trials in Canada, Ibid., at (10:00).

33 Mary Foster, Member, Coalition for Justice for Adil Charkaoui, Ibid., at (09:20-09:25).

law.[34] Several witnesses also expressed concern about the possibility that those subject to security certificates could face the prospect of indefinite detention, particularly if they cannot be removed from Canada because they would face a risk of torture.[35] Finally, the point was made that when a person is, in fact, a security risk, deporting that person to another country merely re-distributes the risk elsewhere:

> Deportation often is just setting a person free. Be it in Canada or elsewhere around the world, we've documented for years a far too common practice that suspected terrorists or individuals suspected of committing serious human rights abuses of another description are simply being deported, and then walking away scot-free at the other end of the plane. There is no justice and the security risk continues.[36]

Messrs. Almrei, Jaballah and Mahjoub, in their November 16, 2006 brief, described the impact that the process has had on their conditions of detention. They stated:

> Under the security certificate legislation, we have been labelled as threats to national security and accused, without benefit of any due process, of being "terrorists". The punitive and highly restrictive treatment we have received both at Metro-West Detention Centre and at KIHC is a direct result of this unjust designation. Some of us have endured extensive periods of solitary confinement. We also have endured humiliation, taunting, beatings, and threats because of the terrorism label. Improving the discriminatory *policies* at KIHC will not necessarily improve our lives, since in *practice* just being labelled as terrorists makes us targets for mistreatment by guards and staff, and is used as the excuse to deny us rights and privileges accorded to other inmates.[37]

They also spoke about the stress they feel about living with the possibility of being deported to face torture in their home countries, stating:

> Because security certificates exist to facilitate deportation, we live perpetually under the threat of being shipped off to face torture worse than Mr. Arar experienced. This daily reality is emphasized when government lawyers argue that deporting us to torture is acceptable and when the Minister of Public Safety and Security and the Minister of Immigration make public statements claiming that we can leave Canada at any time. No other prisoners face this constant threat. *We ask that you affirm that Canada should never deport people to torture, as specified under international law*.[38]

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34 Alex Neve, Secretary General, English Speaking Section, Amnesty International Canada, Ibid., at (10:55).

35 Ibid. at (09:15) and Christian Legeais, Campaign Manager, Justice for Mohamed Harkat Committee, at (09:30).

36 Ibid. at (09:55).

37 Hassan Almrei, Mahmoud Jaballah and Mohamed Mahjoub, Security Certificate Detainees, Brief, November 16,2006 at pp. 1-2. The Committee recognizes that the conditions of detention at the Metro West Detention Centre differ from the conditions at the KIHC. While acknowledging that conditions at both facilities have been the subject of complaints, the Committee is in a position to address issues relating only to the KIHC.

38 Ibid. at p. 1.

The position taken by many non-government witnesses was that the security certificate process should be abolished outright, and that charges and trials under the *Criminal Code*, evidence permitting, should be the only tool used against those suspected of having links or ties to terrorist organizations, regardless of whether or not these individuals were citizens or non-citizens of Canada. Some witnesses, however, felt that the security certificate process should be modified to make it more procedurally fair, and that criminal prosecution should be the preferred, rather than the only tool used against permanent residents and foreign nationals who are suspected of such links or acts.

Accordingly, the Committee recommends:

Recommendation 1

- **That the Government of Canada comply with the Supreme Court of Canada ruling in *Charkaoui v. Canada (Citizenship and Immigration),* and amend the IRPA to provide for the appointment of a special advocate in proceedings in Federal Court to determine the reasonableness of a security certificate.**

Recommendation 2

- **That the special advocate should be a lawyer with appropriate security clearance, who is appointed to represent the interests of the individual subject to the certificate and to test the confidential or secret evidence presented by the government.**

Recommendation 3

- **That the special advocate process that is put into place should, subject to national security considerations and with minimal impairment to the rights of detainees, afford detainees an opportunity to meet the case against them by being informed of that case and being allowed to question or counter it.**

Recommendation 4

- **That the government institute a policy stating that charges under the *Criminal Code* are the preferred method of dealing with permanent residents or foreign nationals who are suspected of participating in, contributing to or facilitating terrorist activities;**

Recommendation 5

- **That the government introduce legislation to amend IRPA to provide that permanent residents and foreign nationals shall not be removed to their countries of nationality or habitual residence if**

there are reasonable grounds to believe that they would be at risk of torture, experience risk to life, or face the risk of cruel and unusual treatment or punishment in these countries;

Recommendation 6

- **That the government introduce legislation to provide for a maximum length of detention for those whose security certificates have been upheld by the Federal Courts as reasonable, after which time they must either be charged and prosecuted under the *Criminal Code* or released from detention without conditions;**

Recommendation 7

- **That the government introduce legislation to allow for an appeal to the Federal Court of Appeal, and, with leave, to the Supreme Court of Canada, of a decision of the Federal Court on the reasonableness of the security certificate;**

Recommendation 8

- **That the government ensure that police and intelligence services have appropriate resources to investigate allegations of criminal activities related to security, terrorism, espionage and organized crime and to pursue appropriate charges under the Criminal Code.**

THE KINGSTON IMMIGRATION HOLDING CENTRE (KIHC) AND CONDITIONS OF DETENTION

Some of the detainees at the KIHC have been held for a number of years. Mr. Jaballah was in detention for seven months in 1999, and has been in detention continuously since August 2001, although it appears he will soon be released again, on conditions. Mr. Almrei has been detained since October 2001. The individuals released on conditions had also been in detention for long periods prior to their release. Mr. Harkat was detained from December 2002 until June 2006, Mr. Charkaoui, from May 2003 to February 2005, and Mr. Suresh, from October 1995 to March 1998. Mr. Mahjoub was detained in June 2000 and is presently awaiting release on conditions.

Until recently, individuals detained on security certificates were held in provincial detention facilities, such as the Toronto Metro West Detention Centre or the Ottawa-Carleton Detention Centre. These facilities are designed to house offenders that have received sentences of less than two years imprisonment, and those charged with offences (sometimes serious violent offences) who are awaiting bail hearings, or who have been denied bail and are awaiting trial. They are not designed for the needs of long-term detainees, and they lack the types of programs and services that many federal facilities possess, such as job training programs, education programs, better access to books and

better visitation privileges. Nor are provincial facilities designed to handle individuals who, by virtue of their lack of experience with the prison system, can find themselves at risk if housed with the general prison population. As a result, during the course of their detention at these facilities, some of the security certificate detainees were held in segregation units. Such units are generally reserved for extremely violent or high risk offenders, and those held in them are allowed very little in the way of programs, services or privileges.[39]

Because of the unsuitability of provincial facilities, and the fact that the detention of some or all of the security certificate detainees seemed likely to continue, the Department of Public Safety and Emergency Preparedness created the KIHC, a detention facility specifically designed to house those detained under security certificates issued under IRPA.[40] The KIHC is located on the premises of Millhaven Institution in Bath, near Kingston, Ontario. It opened its doors on April 26, 2006, and the remaining security certificated detainees were transferred to the new facility on that date.[41] The unit exists as an enclave within the walls of the Millhaven Institution; it consists of separate, self-contained buildings, one a portable trailer, and the other an administration building within the existing Millhaven facility. The detainees have no contact with the other prisoners at Millhaven. While CBSA operates the KIHC and sets the policies for it, CSC provides almost all the services for the facility, and most of the staff at the facility are CSC employees under contract with the CBSA. CSC is responsible for the day-to-day operations of the facility.

It was hoped that by creating a separate facility for the detainees, they would have access to more privileges, freedoms and programs than were available to them at the provincial detention centres. While the detainees may, in fact, have greater access at the new facility, the KIHC has not been a panacea. For example, the detainees began a hunger strike at the KIHC in May 2006. The detainees, according to media reports, pursued the hunger strike in an effort to obtain greater access to a canteen and to

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39 Such was the case of Mr. Almrei, who was held in segregation initially upon being detained, was released into the general population, but then placed once again in segregation after being beaten on the general range. Rules with respect to attire in segregation at the Toronto Metro West Detention Centre are very strict, and Mr. Almrei was not allowed to wear a sweater or normal running shoes while on the unit, despite temperature control difficulties within the facility. Mr. Almrei applied to Ontario Superior Court of Justice for an order that he be issued a sweater and shoes. He deferred his request for an order for a sweater due to improved climactic conditions at the prison and the decision of prison officials to issue him some additional clothing, but was successful in obtaining a court order for the issuance of sneakers. See *Almrei* v. *Canada (Attorney General)*, [1993] O.J. No. 5198 (Ont. S.C.J).

40 It seems likely that in deciding to create a separate detention facility for security certificate detainees, the Department of Public Safety and Emergency Preparedness was influenced by December 5,2005 report of the United Nations Commission on Human Rights' Working Group on Arbitrary Detention, which visited Canada in June 2005, and which was critical of the security certificate process generally, and the co-mingled detention of those subject to certificates in criminal high security facilities in particular. See pages 19, 20 and 23 of the Working Group's December 2005 report, entitled *Report of the Working Group on Arbitrary Detention — Visit to Canada*, UN ESCOR, 62nd Sess., UN Doc. E/CN.4/2006/7/Add.2 (2005), available online at: http://ap.ohchr.org/documents/dpage_e.aspx?c=33&su=44.

41 See the April 24 2006 news release entitled "Kingston Immigration Holding Centre Opens", available on the CBSA Web site at: http://www.cbsa-asfc.gc.ca/newsroom/release-communique/2006/0424ottawa-e.html.

telephones.[42] They ended their hunger strike in June 2006 after achieving their objectives; however, complaints of problems such as lack of air conditioning in the living quarters in which the detainees are housed, and delays in getting the necessary permission to use the telephone, have continued to persist.[43]

The security certificate detainees were, at the time this report was being considered, engaging in another hunger strike to protest their conditions of detention.[44]

WHAT THE COMMITTEE SAW AND HEARD REGARDING THE KIHC

A. Testimony of CBSA Officials

CBSA officials advised the Committee that although the CBSA is the detention authority for the facility, CSC employees on special assignment provide the services for the facility, primarily because these clients are considered to be high-risk.[45] CBSA officials also stated that all detainees are given an information pamphlet about the facility as well as "specific detention centre information."[46] There are also operational protocols in place, called the President's Directives, which govern how the KIHC is run. Protocols contained in the President's Directives include regulations on how health care is to be provided, how religious observances are to be handled, how and when access to fresh air and the gym are to be provided, and rules respecting visits, telephone calls and canteen service.[47]

In terms of how problems or grievances are handled, CBSA officials advised that they are forwarded either to the CBSA or to the CSC, depending on the nature of the complaint made. As one official stated:

> [The grievance procedure] is a three-pronged procedure. For example, if it's a health issue, it's referred directly to the Correctional Services health authority. If it's not resolved at the lowest level there, it moves up to the next level, then up to the next. Canada Border Services Agency and Correctional Service Canada are involved in each process. If it's an operational issue, then we refer it to Correctional

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42 "Three terror suspects back on hunger strike; Conditions still bad, family says 'Security' detainees fear deportation," *Toronto Star*, May 26 2006, page A7, by-line Michelle Shephard.

43 "Terror suspect wants out of 'Guantanamo North'; Stifling Heat, Restrictions," *National Post*, June 29 2006, page A8, by-line Allison Haynes.

44 "Day takes a peek at jailed terror suspects," *Globe and Mail*, January 27 2007, page A14, by-line Oliver Moore.

45 Susan Kramer, Director, Inland Enforcement, Canada Border Services Agency, Meeting No. 21, October 26 2006 at (09:45).

46 Ibid.

47 Ibid.

> Service Canada. If it's a policy issue, Canada Border Services Agency takes the lead on it. There's encouragement made to resolve issues at the lowest possible level, and to resolve them informally…[48]

CBSA officials admitted that there had been some problems running the facility. For example, they do not offer educational programming for the security certificate detainees, both because of the small number of detainees and because the detainees are not in detention for rehabilitation purposes. However, they indicated that they do encourage self study. Similarly, the problems with the heating and air conditioning were challenging to address, and took some time to resolve. However, according to officials, efforts are made to allow the detainees to mingle with each other in a common area, to provide them with opportunities to get fresh air outdoors in an exercise yard, as well as exercise in a gym provided for them. The CBSA also attempts to ensure that the detainees' religious and dietary requirements are respected. As examples, officials indicated that they had hired an imam to ensure that religious requirements are respected. Detainees get halal meals, and can eat with their families, although they were not able to share meals with their families in the evenings during Ramadan, since visiting hours are between 12:30 p.m. and 4:30 p.m. daily. Officials also indicated that if detainees wanted any change in their conditions of detention, they had recourse to a redress mechanism and grievance procedure, and they would do their best to accommodate special requests made by the detainees.[49]

B. The Committee's visit to the KIHC in October 2006

On October 31, 2006, members of the Committee had the opportunity to visit the KIHC and to speak to both CBSA and CSC officials in charge of the facility, as well as the security certificate detainees, about the conditions of detention.

KIHC consists of two buildings: a portable trailer, which contains the detainees' living quarters, and an administration building which houses common areas. There are six cells in the living quarters, one of which is wheelchair accessible. Each cell contains a desk, shelf, toilet and bed. Detainees are entitled to have a 13 inch TV in their cells, and the KIHC is responsible for paying the costs of cable. The cells are equipped with a window to the outdoors, which can be opened, and which has a curtain, and a small window opening onto the inside of the trailer, which has an outside curtain that the guards can move to view the cell. There is also a common room in the living quarters, where detainees can gather to visit with each other. The common room contains a microwave, washer and dryer, chairs, tables, a television and ESL audiotapes.

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48 Ibid.. at (09:50).

49 Ibid.. at (10:05), (10:15), (10:25) and (10:40).

Outside the living quarters is a concrete exercise yard. CBSA and CSC officials advised that the detainees have requested grass in the exercise yard, but that international standards for exercise yards do not require this. Officials advised that detainees are entitled to spend more than four hours a day in the exercise yard.

The detainees also have access to the administration building, where there is a small room containing several pieces of exercise equipment, which is available to detainees for 3 hours a day; a common room with tables and chairs (the tables are attached to the floor and the chairs attached to the tables) for when the detainees' family members visit; a videoconferencing room with links to equipment in Ottawa and Toronto, as well as links to the Federal Court; a room where they can speak privately to their lawyers; and a medical room, which can be used by nurses and doctors to deal with basic medical needs of the detainees. If the detainees require more substantial medical treatment, it can be provided at the Millhaven Institution, which has more comprehensive medical facilities, or if necessary, at a hospital. Treatment will only be provided at Millhaven, however, when the prisoners at Millhaven are in lockdown, to avoid any co-mingling of security certificate detainees and those convicted of criminal offences.

In terms of policies, CBSA and CSC officials advised that detainees are entitled to one hour of free domestic telephone access a day. All numbers called must be pre-approved, and CSC officials place the calls on behalf of the detainees. Once a connection has been made, however, detainees may take the telephone with them into their cell for privacy. Calls to counsel are excluded from the one hour of domestic telephone access a day and can be made at any time.

Food for the detainees is prepared by the kitchen at Millhaven. A registered dietician has been retained by the CBSA and CSC to ensure that the detainees' nutritional needs are met. According to CBSA and CSC officials, the North American Islamic Society has approved the meals and foods served to the detainees, and the society's sticker goes on the meals. Each detainee has an individualized meal plan. Detainees are also able to bring in specialized food through the canteen. The list of foods stocked by the canteen is reviewed on an annual basis. The charge for canteen items is the retail price, plus delivery costs. When their families visit, the detainees and their families can obtain food from a vending machine adjacent to the common room in the administration building. The families of the detainees can bring in $25 per visit so that the detainees can use the vending machine.

CBSA and CSC officials advised that the Canadian Red Cross monitors the conditions of detention and has visited the KIHC twice to review the CBSA's compliance with international obligations. The Canadian Red Cross also conducts on-site monitoring throughout hunger strikes, during which the detainees are provided with nutritional drinks. A nurse from Millhaven comes to the detention unit daily during hunger strikes.

While the detainees do not have access to the Correctional Investigator, who serves as ombudsman for federal offenders, they do have access to a grievance procedure. CBSA and CSC officials stated that attempts are made to address the detainee's issues informally, but that detainees are entitled to submit formal written grievances about their conditions of detention. There is a three-level grievance process. At the first level, the grievance is reviewed by those who run the KIHC. Officials stated that it may take some time for those who run the facility to respond, depending on the complexity of the complaint. CBSA and CSC officials advised that, to date, no detainee has ever filed a second level grievance. At the second level, the complaint is reviewed by a CBSA director. At the third level, it is reviewed by CBSA national headquarters. At the time of the Committee's October visit, officials told the Committee that there were three outstanding grievances. They deal with personal property issues and concerns, recreation, and escort by CSC officers respectively.

When Committee members visited the KIHC, they also spoke to Messrs. Mahjoub, Almrei and Jaballah. The detainees indicated that they were often confused about which organization (the CBSA or the CSC) had control over their activities and which agency's policies applied to them. They also said that certain requests that they had made of KIHC officials had either been refused or had not been addressed (such as requests to visit with their families after sundown during Ramadan or requests to have private visits with their families or conjugal visits with their spouses). Other requests or concerns, while eventually addressed, had taken a great deal of time to resolve (such as obtaining access to the telephone at any time, rather than having a schedule for telephone use, and ensuring that a female guard supervised the family visits in the common area so that the detainees' spouses could remove their veils and head coverings during visits). It also appeared that the detainees were more inclined to bring up their requests or concerns informally with CSC and CBSA officials, while the officials were more receptive to requests and were inclined to treat them more seriously if they had been submitted formally, in writing.

C. The Committee's visit to the KIHC in February 2007

As previously noted, the detainees have been engaging in a further hunger strike, beginning in November 2006, to protest conditions at the KIHC. The detainees are seeking changes in their conditions of detention, including improved medical treatment in their living quarters, instead of the medical examination room in the administration building. They also want improved treatment from guards, better access to the media, the elimination of daily head counts, access to conjugal and private family visits, access to phone cards for overseas calls, and more religious freedom.[50] In addition, the detainees wish to be allowed to pass between the two buildings with a supervisor, not a guard, since they are afraid of some of the guards working at the KIHC.

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[50] Ibid. Also see "Jail site costs double: $2.5 M-facility holds suspected terrorists," *Kingston Whig-Standard*, January 6 ,2007, page 2, by-line Christina Spencer.

As the hunger strike progressed, members of the Committee visited KIHC in February 2007 to ascertain the health of detainees. At that meeting, detainees told members of the Committee that their health was deteriorating, and that they had lost a substantial amount of weight. The detainees said they had not eaten since the beginning of the hunger strike, and while they had initially been drinking orange juice and soy milk, one of the detainees was now subsisting on water alone. The detainees expressed their frustration about the lack of progress on addressing their concerns, and the lack of an impartial arbitrator in disputes between the detainees and the administrators of the KIHC. They seemed particularly concerned about their relationship with some of the guards at the KIHC, some of whom they alleged were subjecting them to threats and psychological harassment. They said that their treatment at the hands of guards became worse when they made attempts to use the grievance process.

Members of the Committee again met with CSC and CBSA officials to try to ascertain their response to the latest hunger strike. Officials explained that they had relaxed the rules on the formal daily headcount, so that the detainees did not have to stop their activities while the head count was carried out. They stated that a regime allowing conjugal visits was not in place, since it was not within their mandate to provide for the rehabilitation of detainees, which was the primary purpose of conjugal visits. Members of the Committee were told that the privileges and rights afforded to detainees at the KIHC ranged somewhere between that of maximum and minimum security penitentiaries. Officials stated that some of the issues the detainees had brought forward would take time to address; for example, the detainees wish to be able to cook meals for themselves, but that adding cooking facilities to the living quarters would require renovations, and would have to conform to building and fire codes. As far as psychological harassment by guards, officials at the KIHC told the Committee that they investigated all complaints thoroughly, and, depending on the complaint, the Ontario Provincial Police were then called in to investigate. Detainees have complained of physical misconduct by guards, although the Committee notes that the alleged misconduct may have taken place at the Metro-West Detention Centre.[51]

D. Brief provided to the Committee by the Security Certificate Detainees

More comprehensive information was provided by the security certificate detainees on the concerns that they have about their detention, and the changes they would like to see to their conditions of detention, in a November 2006 brief. In this brief, the detainees asserted, that, as untried prisoners, they should be restrained as minimally as possible, in

[51] Note 37, supra.

accordance with the section of the United Nations *Standard Minimum Rules for the Treatment of Prisoners*[52] dealing with persons who have been arrested and detained but have not yet been tried. They had this to say about their conditions of detention generally:

> KIHC is not an appropriate facility for long-term detention. For years, we had been held in provincial detention centres, facilities not designed for long-term detention. When we challenged this, CBSA announced that it was constructing KIHC, as a more appropriate facility for us. It is not. In many ways it is even worse than Metro-West Detention Centre. It is a small portable unit, which creaks with every movement. All night, whenever one person rolls over, we all hear it. The strong security lights of Millhaven shine through our bedroom windows all night. Until recently KIHC refused to allow us to put up curtains. The unit is furnished with uncomfortable hard seats bolted to small tables. Each table has a large metal bolt in the middle and the tables tip. This means we have no place to eat comfortably or to spread out a board game, writing material, etc. Sitting on those chairs all day hurts our backs. What passes for an exercise yard is just a short asphalt walkway between our unit and the Administration Building, too small to run or play sports. Inside the Administration Building is a small room where we may see visitors and another tiny room crammed with several exercise machines. We are not permitted to use the washroom adjacent to the exercise room when visitors come. There is no library and no educational or recreational programming, as CBSA claims we are being held pending deportation. Unlike people held in medium or minimum security prisons or other immigration holding centres, we have only a microwave, but no kitchen.[53]

In their brief, Messrs. Almrei, Mahjoub and Jaballah requested a number of changes to their conditions of detention:

- That their families be allowed to purchase canteen goods for them, instead of having the Kingston Muslim Society do it, because the Kingston Muslim society can only purchase foods at one convenience store, and the cost of the goods is high;

- That they be given the right to wear their own clothing at all times (currently they must wear prison uniforms when visiting with their families and friends at the KIHC);

- That they be allowed to telephone their families themselves, without having the guards place their calls for them, at the expense of the KIHC. They would also like to be able to contact overseas family members (this is particularly relevant in

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[52] The United Nations *Standard Minimum Rules for the Treatment of Prisoners* are available on the Web site for the United Nations Office of the High Commissioner for Human Rights at: http://www.unhchr.ch/html/menu3/b/h_comp34.htm. Articles 84 to 93 of these rules deal with untried prisoners.

[53] Hassan Almrei, Mahmoud Jaballah and Mohamed Mahjoub, Security Certificate Detainees, Brief, November 16, 2006 at page 3.

the case of Mr. Almrei, who has no family in Canada). If the KIHC does not wish to cover the costs of such calls, they request that their family members be allowed to provide them with phone cards to cover the costs;

- That they be allowed to exercise in a fenced off, large, unused yard within the grounds of Millhaven, rather than their current concrete exercise yard, which they feel is too small;

- That they be allowed to prepare their own meals;

- That they be allowed conjugal visits with their families, and that the KIHC provide a trailer for these visits;

- That they be allowed out of their cells before 7 a.m. so that they can bathe before prayers, and eat before the sun rises during Ramadan;

- That they be allowed to phone the media from their unit, and meet with them for more than one hour without having KIHC staff present;

- That the CSC staff who supervise them be replaced with CBSA staff, because CSC staff are used to dealing with criminals and treat them as such;

- That they not be required to see the nurse daily, in their cells, but only when they ask to see her;

- That they be protected from mistreatment or harassment by guards;

- That they be provided with access to educational and recreational programming;

- That they no longer be subjected to daily head counts;

- That they be provided with more privacy;

- That they be provided with access to the Office of the Correctional Investigator, who oversees the treatment of all federal inmates, just as they were provided with access to the Provincial Ombudsman when detained at provincial detention facilities, so that there can be independent investigation of their complaints; and

- That the KIHC provide them with access to interpreters to help them compose formal grievances.[54]

[54] Ibid., at pages 2-7.

E. Input from Advocacy Groups

Some of the concerns raised by the security certificate detainees, and some of the requests they made, were echoed by the advocacy groups who testified before the Committee. In particular, the advocacy groups, and the spouse of one of the detainees, Mr. Mahjoub, emphasized the need for detainees to have more access to educational programs and books, and more and better access to family members through visits (including conjugal visits) and phone calls.[55] It was also suggested that an impartial officer or agency should be charged with monitoring the conditions of detention on an ongoing basis, investigating complaints made by the detainees, and ensuring effective remedies to valid complaints.[56]

F. Previous Action by the Committee

The Committee adopted a report on February 6, 2007, concurred in by the House of Commons on February 13, 2007, to address the ongoing hunger strike by the detainees.[57] The Report recommended several solutions to resolve the hunger strike, and asked that the Ministers of Public Safety and Citizenship and Immigration respond in writing outlining the government's actions in light of the report.

G. Report of the Office of the Correctional Investigator

Finally, the Committee notes that the Office of the Correctional Investigator of Canada, in its 2005/2006 report, commented on the opening of the KIHC:

> In Ontario facilities, the detainees could legally file complaints regarding conditions of confinement with the Office of the Ontario Ombudsman. That Office had the jurisdiction to investigate complaints filed by the detainees pursuant to the *Ontario Ombudsman Act*. The Immigration Holding Centre has been built in Kingston within the perimeter fence of Millhaven Penitentiary. The Canadian Border Service Agency entered into a service contract with the Correctional Service to provide the Border Service Agency with the physical detention facility and with security staff.

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55 Alex Neve, Secretary General, English Speaking Section, Amnesty International Canada, Meeting No. 24, November 9, 2006 at (09:10) and Mona El-Fouli, Wife of Mohamed Mahjoub, Campaign to Stop Secret Trials in Canada, Meeting No. 24, November 9, 2006 at (09:45).

56 Ibid., at (10:55).

57 Report 10 — Issues raised by the use of security certificates under the *Immigration and Refugee Protection Act*, Adopted by the Standing Committee on Citizenship and Immigration on February 6, 2007; Presented to the House of Commons on February 8, 2007; Concurred in by the House of Commons on February 13, 2007. Recommendations included allowing the Office of the Correctional Investigator to have jurisdiction over detainees; allowing medical professional to enter the living quarters; releasing detainees from their cells before dawn for religious observances; allowing conjugal visits; allowing better access to the canteen; eliminating the daily head count; and requiring that the detainees be accompanied by a supervisor when passing between the buildings.

> The Border Service Agency has a contract in place with the Red Cross to monitor the care and treatment of detainees in immigration holding centres, including the new Kingston holding centre. The Red Cross, a non-government organization, has no enabling legislation to carry out a role as an oversight agency.
>
> The transfer of detainees from Ontario facilities to the Kingston holding centre means that the detainees will lose the benefit of a rigorous ombudsman's legislative framework to file complaints about their care and humane treatment while in custody. The Office of the Correctional Investigator is concerned that the detainees will no longer have the benefits and legal protections afforded by ombudsman legislation. Pursuant to the *Optional Protocol to the Convention Against Torture*, a non-profit organization with no legislative framework, such as the Red Cross, is unlikely to meet the protocol's requirement for domestic oversight.[58]

H. Institutional Culture at the KIHC

The detainees held at KIHC have not been charged with a crime and are not criminals. Indeed, in light of the Supreme Court's decision in *Charkaoui*, these individuals have been detained through a process that, at least in part, violated the *Canadian Charter of Rights and Freedoms*. It is imperative, therefore, that the institutional culture and outlook at KIHC change from one of confining convicted criminals, to detaining individuals who may not, ultimately, be a threat to Canada's security. While the KIHC shares many of the elements of a penitentiary, it cannot be run as one, and the mindset of those responsible for the facility must reflect that.

Accordingly, the Committee recommends:

Recommendation 9

- **That the Government of Canada mandate the Office of the Correctional Investigator, which has jurisdiction over all federal inmates but not the detainees held at the Kingston Immigration Holding Centre, to assume jurisdiction over the KIHC, and investigate current and ongoing complaints of those detained at the KIHC.**

Recommendation 10

- **That the Canada Border Services Agency develop its own independent procedures and rules for detention, appropriate to immigration detention and differentiated from incarceration as the result of criminal conviction.**

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[58] Annual Report of the Office of the Correctional Investigator of Canada 2005-2006, September 2006.

Recommendation 11

- **That the procedures and rules established by the Canada Border Services Agency recognize the need for a different culture for immigration detention facilities than exists at correctional institutions, and that staff receive training that clearly appreciates this difference, particularly for those staff who may come from a background in corrections.**

Recommendation 12

- **That procedures and training be in place to deal with issues of racial and religious profiling, or profiling based on other stereotypes.**

Recommendation 13

- **That solitary confinement is never appropriate for immigration detainees and other arrangements be made should there be only one person detained at KIHC.**

Recommendation 14

- **That the KIHC change its procedures to allow the families and friends of the detainees to purchase culturally appropriate canteen goods at competitive prices.**

Recommendation 15

- **That providing security protocols are followed, the detainees be allowed easy and affordable access to a telephone, and that they be allowed to telephone their families in Canada or internationally for at least one hour per day. Given the financial hardship experienced by some of the families of the detainees, the KIHC should cover the costs of such calls, or family members should be allowed to provide phone cards to cover long-distance costs.**

Recommendation 16

- **That the detainees be allowed to use the large, unused exercise yard adjacent to the facility.**

Recommendation 17

- **That the detainees be provided with proper cooking facilities, and be allowed the option to prepare their own meals.**

Recommendation 18

- **That the KIHC build the necessary facilities to allow for conjugal visits.**

Recommendation 19

- **That reasonable accommodation be made to allow detainees out of their cells to participate in *bona fide* religious observances, and that the families of detainees be allowed to join them for such observances.**

Recommendation 20

- **That medical visits be limited to instances where the detainees request such visits, or in medical emergencies.**

Recommendation 21

- **That until such a time as a correctional investigator is appointed and can investigate alleged mistreatment by guards, the detainees be escorted, on request, by a supervisor when travelling within the KIHC facility.**

Recommendation 22

- **That the detainees be provided with, at a minimum, access to educational and recreational programming equivalent to that provided for inmates under CSC policies.**

Recommendation 23

- **That the KIHC eliminate the formal daily head count.**

Recommendation 24

- **That reasonable accommodation be made to provide more privacy to detainees.**

Recommendation 25

- **That the KIHC provide detainees with access to interpreters to help them navigate the formal grievance process.**

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Canada Border Services Agency	2006/10/26	21
Kimber Johnston, Director General Policy and Program Development Directorate		
Susan Kramer, Director Inland Enforcement		
Department of Citizenship and Immigration		
Anna-Mae Grigg, Director Litigation Management		
Department of Justice		
Daniel Therrien, Senior General Counsel Office of the Assistant Deputy Attorney General		
Amnesty International Canada	2006/09/11	24
Alex Neve, Secretary General English Speaking Section		
Campaign to Stop Secret Trials in Canada		
Mona El-Fouli, Wife of Mohammad Mahjoub		
Justice Coalition for Adil Charkaoui		
Mary Foster, Member		
Justice for Mohamed Harkat Committee		
Christian Legeais, Campaign Manager		

APPENDIX B
LIST OF BRIEFS

Organisations and individuals

Hassan Almrei

Campaign to Stop Secret Trials in Canada

Department of Justice

Mahmoud Jaballah

Mohammed Mahjoub

Diana Ralph

APPENDIX C
CBSA PRESS RELEASE ON OPENING OF KIHC

Canada Border Services Agency | Agence des services frontaliers du Canada

Canada

News Release

National 2006

Kingston Immigration Holding Centre Opens

Ottawa, Ontario, April 24, 2006 - The Canada Border Services Agency (CBSA) announced today that the four individuals subject to security certificates under the *Immigration and Refugee Protection Act* held in Ontario correctional facilities have been transferred to the new Kingston Immigration Holding Centre (KIHC). The centre is located on the premises of Millhaven Penitentiary in Bath, near Kingston, Ontario.

The KIHC reflects the government's commitment to move these individuals from Ontario correctional facilities to a new federal immigration facility.

Security certificates are used in rare cases where an individual wishing to remain in Canada is deemed ineligible to do so by both the Minister of Public Safety and the Minister of Citizenship and Immigration for reasons of national security. This can include, but is not limited to, engaging in terrorist activities, espionage, violating human rights and serious criminal activity. The security certificate allows the government to place limits on the individuals who are subject to them, up to and including detaining them, while the immigration system process determines whether these individuals may be removed from Canada. The Federal Court determines whether a security certificate should be confirmed and, ultimately, whether a named individual may be removed from Canada.

Only non-Canadian citizens can be subject to security certificates. These individuals are free to leave Canada any time they wish, and return to their country of origin or to another country, provided that these countries are willing to accept them.

Individuals named in a security certificate have been determined to pose a risk to Canada's national security. The security certificate process is one of the measures used to remove non-Canadians from this country when they pose a serious security threat to Canadians.

For more information on security certificates, please visit the CBSA's website.

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APPENDIX D
LIST OF SECURITY CERTIFICATES

Name	Affiliation	Date of Arrest	Status
Charkaoui, Adil	*al Qaeda*	May 2003	Released on conditions
Zundel, Ernst	Right wing extremism	May 2003	Removed
Harkat, Mohamed	Bin Laden network	December 2002	Detained
Ikhlef, Mourad	GIA (Ressam link)	December 2001	Removed
Almrei, Hassan	Bin Laden network	October 2001	Detained
Jaballah, Mahmoud	*Al Jihad*	August 2001	Detained
Mahjoub, Mohamed Zeki	Vanguards of Conquest (*Al Jihad*)	May 2000	Detained
Jaballah, Mahmoud	*Al Jihad*	March 1999	Certificate quashed
Singh, Iqbal	Babbar Khalsa International	April 1998	Removed
Al Sayegh, Hani	Saudi *Hizbollah*	March 1997	Removed
Saygili, Aynur	PKK	November 1996	Removed
Seyfi, Djafar	Iranian Intelligence Service	September 1996	Removed
Nejati, Effat	MEK	August 1996	Removed
Olshevsky (Lambert), Dimitry	Russian SVR	May 1996	Removed
Olshevskaya (Lambert), Elena	Russian SVR	May 1996	Removed
Kandiah, Sakuneswaran	LTTE/PLOTE	October 1995	Fled to US prior to arrest
Suresh, Manickavasagam	LTTE	October 1995	Released on conditions
Baroud, Wahid Khalil	Force 17	June 1994	Removed
Singh, Hardeep (Maan Singh Sidhu)	KCF-P	June 1994	Removed
Al Husseini, Mohamed	Lebanese *Hizbollah*	October 1993	Removed
Khassebaf, Parvin	MEK	August 1993	Removed
Ahani, Mansour	Iranian Intelligence Service	June 1993	Removed
Zakout, Slaeh Mousba	Force 17	January 1993	Removed
Farahi-Mahda Vieh, Robub	MEK	January 1993	Removed
Shandi, Mahmoud Abu	PLO, Abu Nidal	October 1991	Removed
Smith, Sarah	Iraqi *Al Dawa*	January 1991	Certificate quashed
Smith, Joseph	Iraqi *Al Dawa*	November 1991	Certificate quashed

Source: Security Certificates and Removals, Background Brief for the House Sub-Committee on Public Safety and National Security, April 2005

APPENDIX E
LETTER FROM SECURITY CERTIFICATE DETAINEES AND RESPONSE FROM CBSA

Hassan Almrei, Mahmoud Jaballah, Mohammed Mahjoub
Kingston Immigration Holding Centre
c/o CSC RHQ Ontario Region
440 King Street West
P.O. Box 1174
Kingston, Ontario K7L 4Y8

November 16, 2006
Members of the Standing Committee on Citizenship and Immigration
6th Floor, 180 Wellington Street
Wellington Building
House of Commons
Ottawa, ON K1A 0A6

Dear Members of the CIMM:

We appreciate that some of you visited Kingston Immigration Holding Centre (KIHC) and met with each of us briefly. However, 10 minute interviews were not enough to allow you to accurately understand our conditions of detention. Therefore, we are submitting a more detailed description of the frustrating, humiliating, and unjust conditions we face at KIHC. We hope that you will require CBSA and the Crown to correct these policies.

I. Injustice of the security certificate legislation: We recognize that the mandate of CIMM is limited to considering our conditions of detention and not to addressing the injustice of the security certificate legislation itself. However, it is important to note that the security certificate legislation profoundly affects the conditions of our detention. In other words, simply making KIHC policies more humane will not substantially improve our conditions of detention. The security certificate law is unjust and must be abolished.

- **Perpetual threat of deportation to torture and likely execution:** Because security certificates exist to facilitate deportation, we live perpetually under the threat of being shipped off to face torture worse than Mr. Arar experienced. This daily reality is emphasized when government lawyers argue that deporting us to torture is acceptable and when the Minister of Public Safety and Security and the Minister of Immigration make public statements claiming that we can leave Canada at any time. No other prisoners face this constant threat. *We ask that you affirm that Canada should never deport people to torture, as specified under international law.*

- **Treatment as dangerous terrorists.** Under the security certificate legislation, we have been labelled as threats to national security and accused, without benefit of any due process, of being "terrorists.**"** The punitive and highly restrictive treatment we have received both at Metro-West Detention Centre and at KIHC is a direct result of this unjust designation. Some of us have endured extensive periods of solitary confinement. We also have endured humiliation, taunting, beatings, and threats because of the terrorism label. Improving the discriminatory *policies* at KIHC will not necessarily improve our lives, since in *practice* just being labelled as terrorists makes us targets for mistreatment by guards and staff, and is used as the excuse to deny us rights and privileges accorded to other inmates.

- **The prospect of permanent detention or lifelong house arrest under impossible conditions:** All other prisoners in Canada can look forward to a time when their sentence is served and they will be freed. However, under the security certificate legislation, we face only two options; life long detention/house arrest or deportation to torture. The conditions imposed on Mr. Harkat and Mr. Charkaoui make employment and a normal life virtually impossible. In effect, their families have become their jailers, putting a heavy burden on their relationships. Mr. Almrei has no family in Canada, and therefore cannot even look forward to the limited freedom of house arrest. Being robbed of our entire futures is an unjust and extremely damaging "condition of detention".

- **Security certificate legislation discriminates against non-citizens.** Under international law, it is illegal to set up dual justice systems which discriminate against non-citizens. But the security certificate process does just that. Many Canadian citizens who have similar profiles to ours, such as visiting Afghanistan and being associated with those on terrorist lists, are walking free while we are treated more punitively than hardened convicted criminals.

II. We should be granted the rights of "untried prisoners." Without prejudice to our demand to either be charged and given a fair, open trial or be released, we also claim the rights of untried prisoners. We have been held for years without charges. We therefore fall under the category of "untried prisoners", under the U.N. Standard Minimum Rules for the Treatment of Prisoners. Here are sections which we believe CBSA violates.

> **84 (2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.:** We are presumed guilty and treated with policies which are equal to or worse than those accorded to convicted maximum security inmates.
>
> **87. …untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration**

or through their family or friends. Otherwise the administration shall provide their food. Our families or friends have been forbidden to provide food for us. For the first few months at KIHC, we were forbidden to purchase any outside food. Recently KIHC arranged for the Kingston Muslim Society to purchase our canteen needs for us, but only at one convenience store which does not sell halal food and which charges double the price of grocery stores. This imposes a hardship both on us and on our families and friends. It is also unfair to impose this on the Muslim community, and makes us lose face in the Muslim community. Also the cost is far higher than our families, already burdened by poverty, can afford. We asked the jail to be responsible for managing our money and providing canteen. But CBSA staff told us they have no legislative mandate to handle our money. *We want our families to be allowed to buy our canteen needs themselves and send them directly to us.*

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable. Unlike those detained at other immigration holding centres, we are required to wear prison uniforms when we go to visit family and friends. We find this humiliating. *As untried prisoners, we want the right to wear our own clothing at all times.*

92. **An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.** Following our transfer to KIHC in April, 2006, we were forbidden to phone or contact our family and friends for weeks. Hassan Almrei's family lives in Saudi Arabia. When he was at Metro-West, he was allowed to make 3 way phone calls to them through a friend or to call them directly using a phone calling card through the Chaplain. But KIHC refuses to allow him to phone his family. A friend mailed him a phone card, so that he could phone his family. But KIHC mailed it back to her, saying phone cards are prohibited. Mr. Almrei has not been allowed to contact his family in over 6 months. *We ask you to require KIHC to allow the detainees to phone their family members, either at the expense of KIHC or by allowing friends to send them a phone card to make the calls.*

III. KIHC is not an appropriate facility for long-term detention. For years, we had been held in provincial detention centres, facilities not designed for long-term detention. When we challenged this, CBSA announced that it was constructing KIHC, as a more appropriate facility for us. It is not. In many ways it is even worse than Metro-West Detention Centre. It is a small portable unit, which creaks with every movement. All night, whenever one person rolls over, we all hear it. The strong security lights of Millhaven shine through our bedroom windows all night. Until recently KIHC refused to allow us to put up

curtains. The unit is furnished with uncomfortable hard seats bolted to small tables. Each table has a large metal bolt in the middle and the tables tip. This means we have no place to eat comfortably or to spread out a board game, writing material, etc. Sitting on those chairs all day hurts our backs. What passes for an exercise yard is just a short asphalt walkway between our unit and the Administration Building, too small to run or play sports. Inside the Administration Building is a small room where we may see visitors and another tiny room crammed with several exercise machines. We are not permitted to use the washroom adjacent to the exercise room when visitors come. There is no library and no educational or recreational programming, as CBSA claims we are being held pending deportation. Unlike people held in medium or minimum security prisons or other immigration holding centres, we have only a microwave, but no kitchen.

IV. We receive more restrictive and punitive treatment than maximum security prisoners. As untried prisoners, we deserve to be treated with minimum restraint. Throughout our many years of imprisonment, we have been model prisoners. Even the RCMP acknowledges that we should be classified as minimum security inmates. In minimum security, prisoners have keys to their own cells and the right to work and study. Before being moved to KIHC, we were told that CBSA would not impose CSC policies on us. However, we are being detained at Millhaven Penitentiary, a maximum security prison, and are forced to follow unnecessary, humiliating, restrictive, and disruptive CSC policies. These include:

- **3 counts a day**: Even though the three of us are constantly under surveillance, we are forced to stop whatever we are doing three times a day and be locked in our cells to be “counted”. At 8PM we have to do a “stand up” count, which means we have to go to our cell and the guards require us to stand up in front of him. The guards claim that the purpose is to prove we are healthy. This is nonsense, because we are constantly under observation. Imagine during the winter we have to leave the gym to do a stand-up count. Additional counts are imposed on us any time others such as food service staff come into the unit. This ridiculous and harassing practice disrupts our Qu’ran study and if we are exercising, we are forced to return sweaty through the cold to be locked up for one minute. *We want the count discontinued.*

- **Daily inspection by the nurse:** KIHC insists that the nurse must see us every single day. They lock us in our cells during this examination. This clearly has nothing to do with our health, since the nurse is not even allowed inside our cells. And it is harassing and insulting. *We only want to see the nurse when we ask for her for valid health reasons.*

- **No privacy:** The guards watch us constantly, even when we use the toilet. They open the curtains to the cell door and watch us use the toilet. *We need more privacy.*

In other ways, we are forced to endure CBSA policies which are worse than those imposed on maximum security, convicted inmates, even though we are immigration detainees who have never been charged or convicted:

- **Replace CSC staff with CBSA staff:** CSC staff have been trained to work with criminals, not with immigration detainees. Since KIHC employs CSC staff, they treat us in the same way that they treat criminals. *We suggest that CSC staff be replaced by CBSA staff as in other immigration holding centres.*

- **Lack of educational and recreational programming:** All Millhaven prisoners except us have access to programming for sports, recreation, and education. They also have a library, pool tables and ping pong tables. We asked for a ping pong table. But Mr.Whitehorn first claimed he never got the request and then Miss Berry refused the request.

- **Prohibition from dialling our own phone calls and limitation to 20 minutes per call and a total of one hour a day.** All other prisoners are allowed to dial phone calls themselves and to talk as often and as long as they wish. It is humiliating to have to ask guards to dial calls for us. We need to be able to talk longer than an hour, especially when there is a family issue or an issue regarding our cases which we need to discuss. If a person not on the list, such as a child, answers, the KIHC staff is required to refuse the call. Since we are not allowed to leave messages or to speak to anyone except the limited names on our lists, it is often very frustrating to try to get through to family and friends. This is a constant source of stress. *We want the right to phone friends and family like other prisoners. This should include permission to make phone card or 3-way phone calls to our overseas family members.*

- **Denial of family visits:** CSC provides facilities for private family and conjugal visits for convicted inmates. We have no such privileges. Mr. Jaballah and Mr. Mahjoub have been denied private time with their wives and children for over six years. *We want KIHC to provide a trailer for family visits.*

- **Denial of adequate exercise yard and facilities:** The UNSMRTP specifies "21.(1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits." At KIHC, our "exercise yard" consists of a small concrete walkway between two buildings, the length of two wheelchair ramps. This is not an adequate exercise facility. This walkway is adjacent

to a fenced off large, unused yard within the walls of Millhaven Penitentiary. *We want KIHC to allow us to exercise in that yard.*

- **Denial of the right to cook our own food.** Prisoners in medium-security facilities are allowed to cook their own food. Even though we are considered low-security risks, we are forbidden to prepare our own food. Because the food provided by KIHC (actually Millhaven's food service) is not culturally appropriate, being forbidden to prepare our own meals deprives us of religious and cultural access. *We want the right to prepare our own meals.*

- **Denial of access to the Federal Corrections Ombudsman:** When we were held at a provincial jail, we had access to the Provincial Corrections Ombudsman. But once we were transferred to KIHC, a federal facility, we lost access to any Ombudsman. All federal inmates are guaranteed access to the Federal Corrections Ombudsman. But because we have never been convicted, we do not fall within his mandate. As a result, there is no official oversight body to which we can complain of mistreatment. We do have access to the Red Cross, but this is not sufficient, both because we do not have permission to phone the Red Cross, only to send them a letter in English (for which interpreters are not provided), and because the Red Cross is not authorized to publicize its findings. *We need Parliament to amend the mandate of the Federal Corrections Ombudsman, to allow him to serve us as well.*

- **Denial of the right to contact the media:** Until recently KIHC would not allow the media to contact us or allow us to speak to them. Now KIHC will not let us talk to the media from our living unit and in the Administration building only for 1 hour. When we have given media interviews, KIHC staff sit in and intimidate us. We deserve more freedom to talk to the media in person and by telephone. *We want the right to phone or meet with the media from our unit and to meet with them for the same times as visiting hours and without KIHC staff present.*

- **Obstructing our religious practices:** KIHC refuses to allow us to leave our cells before 7AM claiming it is CSC policy. But we aren't Millhaven prisoners. We are just 3 people who are detained by CBSA. There are two religious issues here. As Muslims, we must bathe before prayers if we are unclean. Therefore we must shower before 5AM, the first prayer time. We also want to be able to pray together during the 5 daily prayer times, including first prayer. Being locked up until 7AM means we have no ability to shower and therefore, if we are unclean, we cannot pray for first prayer, and we cannot pray together. Our faith encourages us also to fast. We like to fast on Monday and Thursday, and therefore must eat before first prayer time. But we can't do that because we're locked up before 7AM. This policy of keeping us locked up posed a particular

hardship during Ramadan. During Ramadan, we are required to fast from dawn to sunset with no food or water. So Muslims need to eat breakfast and bathe before dawn. Of course, we were unable to do so, and as a result, deprived of a good breakfast, we suffered all day. Our lawyer, our families, and two Imams spoke to KIHC and CBSA staff to argue that we should be released before 5AM. But they refuse to allow it. *We want to be allowed out of our cells before daybreak..*

- **Protection from harassment and threats by guards:** Some of the guards at KIHC harass us and threaten us. Some also have implied that they have the power to accuse us of bad behaviour when they frisk us or when they are walking alone with us from building to building and no witness is available to contradict their lies. As a result, we have asked that when we go out to exercise or to go to a visit (in the Administration building), that the guard be accompanied by a supervisor. This request has repeatedly been denied. After we complained about a guard's behaviour, CBSA punished us by requiring when we go for a visit that we have to hold our hands up in the air. As a result, we decided we had no choice but to refuse to leave our unit since August, and have therefore had no fresh air, exercise, or visits. *We need protection from mistreatment by the guards.*

- **Denial of access to interpreters**. Arabic is our first language, and none of us has ever had English classes or is skilled in writing English. (Our friend, Diana Ralph has put our concerns here into good English, in consultation with us.) Neither KIHC nor CBSA provides us with interpreters to help us write complaints or other letters necessary to our defence and to challenges to our conditions of detention.

We hope that you will meet with us at more length to discuss these concerns and, more importantly, that you will take principled and decisive action to defend our rights.

Sincerely,

Hassan Almrei
Mahmoud Jaballah
Mohammad Mahjoub

Canada Border Services Agency

December 15, 2006

Mr. Mahmoud Jaballah

RE: RESPONSE TO YOUR HUNGER STRIKE DEMANDS

On December 08, 2006, the CBSA Manager met with you at our request to discuss the reasons for engaging in a hunger strike. During the discussion you indicated the action taken is in protest to the condition of detention at the Kingston Immigration Holding Centre (KIHC).

Given that Correctional Service Canada (CSC) has entered into a service agreement with Canada Border services Agency (CBSA) for the security and operations of the KIHC, CSC will only address operationally related issues. Therefore, non-operationally related issues will be addressed under separate letter by the CBSA Manager.

I have reviewed the list of your concerns and provide the following clarifications to your concerns:

1. Request to cancel all counts at the KIHC

Counts are conducted as a requirement to monitor the whereabouts and well-being of individuals subject to security certificates (ISSC) at all times. Detention Officers are required to verify that ISSCs are present, safe and in good health during counts and security patrols of accommodation areas in the facility. All counts at KIHC are conducted in the least intrusive manner possible while protecting the safety of individuals and the security of the facility. Detention Officers conduct counts in a manner that respects gender, religious and cultural considerations, in particular, with regard to religious and cultural events or ceremonies.

2. Request to dial the telephone number without the assistance of a detention officer

Read in conjunction with CBSA response dated December 15, 2006. The KIHC has developed procedures to allow you to communicate with legal counsel and maintain family and community ties through telephone communication which are consistent with principles of protection of the public, staff members and other ISSCs residing within the KIHC.

The detention officer must ensure that the number and person being contacted has been approved by the CBSA in accordance to your individual call allow list.

3. Request the use of a calling card to contact your family in Saudi Arabia

Read in conjunction with CBSA response dated December 15, 2006. Telephone calling cards or instruments of monetary value are prohibited within the KIHC.

4. Request to cook your own food

The KIHC facility has been designed and constructed for limited food preparation (re-heat) only. KIHC has an agreement with Millhaven Institution Food Services Department to provide the daily meals which meet your dietary and religious needs. The common room is equipped with a refrigerator, microwave, toaster and kettle for your use. The items available to you must meet the fire regulations for the facility and have been approved.

5. Request to be released from your cell at 0500 hrs to shower before prayer and eat before sunrise during Ramadan and volunteer fasting

KIHC respects your religious and dietary needs during Ramadan. The necessary food items are provided to you to break the fast before sunrise and in the evening. During the evening meals, double portions of Halal food are provided and at least one meal provided can be re-heated.

There is no religious requirement for group prayers. However, KIHC provides the ability to pray together in the common area throughout the day and evening.

6. Request that all complaints be addressed by CBSA and not CSC as you believe that our complaints addressed by the KIHC Operations have been negative

Refer to CBSA response dated December 15, 2006

7. Request to attend Millhaven Health Services without the application of handcuffs

The application of restraint equipment is used to ensure your safety and security, and that of the staff, Millhaven Institution and the public. As such, restraint equipment must be utilized during all escorts outside the KIHC facility. The Millhaven Institution, Health Care Unit is outside the perimeter of the KIHC facility and therefore, restraint equipment will be applied.

8. Request to wear your personal clothing during visits with families and friends

During regular business hours there is a greater volume of activity in the KIHC administration building. Therefore, in order to distinguish staff, and other personnel from ISSCs, it is important that institutional clothing be worn during business hours in the administration building. You are permitted to wear personal clothing within the housing unit and in the administration building after hours, including weekends and during court proceedings.

9. Request access to an Ombudsman

Refer to CBSA response dated December 15, 2006.

10. Request privacy during a media interview

Media access has been provided while ensuring that security is not compromised. A detention officer is in the room to ensure the safety and security of everyone concerned, including the ISSC, the media personnel and accompanying equipment.

11. Request additional time during media interviews

Refer to CBSA response dated December 15, 2006

12. Request to receive all property currently being held in A&D

The KIHC has established procedures for the receipt and issuance of personal property. All property received at the KIHC must receive prior approval by the KIHC Director. The amount of items within a cell is limited to ensure the safety of any person and the security of the KIHC and is compliant with the fire regulation of a confined living space. Any personal property must be received within the prescribed timeframes (every 6 months) and must not exceed a total cell value of $1,500.

13. Request the assistance of an interpreter file a complaint as you believe your English is not adequate

Refer to CBSA response dated December 15, 2006

14. Request access to private family visits

Refer to CBSA response dated December 15, 2006

15. Request access to a teacher

Read in conjunction with CBSA response dated December 15, 2006. Any requests for self-study or distance learning materials must be pre-authorized by the KIHC Director. In addition, the CBSA Manager will review each request and may refer the ISSC to the Department of Citizenship and Immigration Canada to determine if proper student authorization is required.

If you have any questions, please do not hesitate to contact me.

C. Berry
A/Director
KIHC

cc. : P. Whitehorne, CBSA Manager
B. Roscoe, CHC

APPENDIX F
RELEVANT PORTIONS OF ANNUAL REPORT OF THE OFFICE OF THE CORRECTIONAL INVESTIGATOR OF CANADA 2005-2006, SEPTEMBER 2006 (PAGES 19, 20)

Two additional broad policy issues are of concern to this Office: Canada's endorsement of the *Optional Protocol to the Convention against Torture* and the situation of national security detainees.

First, the protocol was adopted by the United Nations General Assembly in December 2002. Canada was a member of the group that drafted it and voted in favour of its adoption. The protocol establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment.

In my last Annual Report 2004-05, I encouraged the Canadian Government to yet again demonstrate its leadership by signing and ratifying this important human rights instrument. Moving quickly on signature and ratification would add to Canada's long historical tradition of promoting and defending human rights at home and abroad. It would also provide an opportunity to review the role and mandate of oversight agencies involved in the monitoring and inspections of "places of detention" and strengthen oversight mechanisms where required.

The second policy issue that concerns my Office is the situation of individuals detained pursuant to national security certificates. A national security certificate is a removal order issued by the Government of Canada against permanent residents and foreign nationals who are inadmissible to Canada on grounds of national security. A recent decision has been made by the federal government to transfer security certificate detainees held under the *Immigration and Refugee Protection Act* from Ontario facilities to a federal facility, pending their removal from Canada.

In Ontario facilities, the detainees could legally file complaints regarding conditions of confinement with the Office of the Ontario Ombudsman. That Office had the jurisdiction to investigate complaints filed by the detainees pursuant to the *Ontario Ombudsman Act*.

The Immigration Holding Centre has been built in Kingston within the perimeter fence of Millhaven Penitentiary. The Canadian Border Service Agency entered into a service contract with the Correctional Service to provide the Border Service Agency with the physical detention facility and with security staff. The Border Service Agency has a contract in place with the Red Cross to monitor the care

and treatment of detainees in immigration holding centres, including the new Kingston holding centre. The Red Cross, a non-government organization, has no enabling legislation to carry out a role as an oversight agency.

The transfer of detainees from Ontario facilities to the Kingston holding centre means that the detainees will lose the benefit of a rigorous ombudsman's legislative framework to file complaints about their care and humane treatment while in custody. The Office of the Correctional Investigator is concerned that the detainees will no longer have the benefits and legal protections afforded by ombudsman legislation. Pursuant to the *Optional Protocol to the Convention against Torture*, a non-profit organization with no legislative framework, such as the Red Cross, is unlikely to meet the protocol's requirement for domestic oversight.

APPENDIX G
TENTH REPORT - ISSUES RAISED BY THE USE OF SECURITY CERTIFICATES UNDER THE IMMIGRATION AND REFUGEE PROTECTION ACT

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
OTTAWA, CANADA

39th Parliament, 1st Session

The Standing Committee on Citizenship and Immigration has the honour to present its

TENTH REPORT

On Tuesday, February 6, 2007 and pursuant to Standing Order 108(2), the Committee adopted the following motion:

Whereas the Standing Committee on Citizenship and Immigration has a mandate to consider issues raised by the use of security certificates under the Immigration and Refugee Protection Act;

Whereas the Standing Committee on Citizenship and Immigration has visited the Kingston Immigration Holding Centre (KIHC), where three of those subject to security certificate are currently held;

Whereas a life-threatening hunger strike by KIHC detainees Mohammad Mahjoub (day 75), Mahmoud Jaballah (64) and Hassan Almrei (64) has long passed a critical stage;

Whereas a key complaint of the detainees is the lack of an independent ombudsman, a concern originally flagged by the 2005/2006 annual report of the Office of the Correctional Investigator that found "the detainees...no longer have the benefits and legal protections afforded by ombudsman legislation."

39e Législature, 1re Session

Le Comité permanent de la citoyenneté et de l'immigration a l'honneur de présenter son

DIXIÈME RAPPORT

Le mardi 6 février 2007 et conformément à l'article 108(2), le Comité a adopté la motion suivante :

Attendu que le Comité permanent de la citoyenneté et de l'immigration a le mandat d'étudier les questions soulevées par l'utilisation de certificats de sécurité en vertu de la Loi sur l'immigration et la protection des réfugiés;

Attendu que le Comité permanent de la citoyenneté et de l'immigration s'est rendu au Centre de surveillance de l'immigration de Kingston (CSIK), où trois individus sont détenus en vertu d'un certificat de sécurité;

Attendu que la grève de la faim des détenus du CSIK Mohammad Mahjoub (75 jours), Mahmoud Jaballah (64 jours) et Hassan Almrei (64 jours) a depuis longtemps passé le seuil critique et menace leur vie;

Attendu que la principale plainte des détenus est l'absence d'un ombudsman indépendant, soulevée pour la première fois dans le rapport annuel 2005-2006 du Bureau de l'enquêteur correctionnel, qui concluait que « les détenus ne bénéficieront plus de ces avantages ni de la protection légale que leur procure un bureau d'ombudsman. »

Therefore be it resolved that the Standing Committee on Citizenship and Immigration:

- a. acknowledge the emergency nature of the hunger strike and open discussion with regard to a resolution;
- b. call on the Government of Canada and the Minister of Public Safety and the Minister of Citizenship and Immigration to mandate the Office of the Correctional Investigator, which has jurisdiction over all federal inmates except for those held at the Kingston Immigration Holding Centre, to now assume jurisdiction over the KIHC, investigate current and ongoing complaints of those currently on hunger strike, specificially urgently addressing issues such as:
- 1) Medical attention in the living unit by Medical Licensed Practioners namely doctors in the living unit;
- 2) Detainees be released before dawn from their cells in order for them to be able to observe religious prayers as called by their religion;
- 3) They be allowed conjugal visits as it is offered to inmates;
- 4) They be allowed to access canteen facilities adhering to their religious beliefs;
- 5) Daily head count should be done away with immediately;
- 6) When transferred from the living unit to the administration building, be also accompanied by a supervisor from Correctional Services Canada;
- And prepare an independent set of recommendations for resolution of said grievances.

And be it further resolved that the Minister of Public Safety and the Minister of Citizenship and Immigration be asked to respond urgently in writing, to members of this Committee, outlining the Department's actions in light of the passage of this motion.

And be it further resolved that these protocols be put in place on a permanent basis in order to deal with these detainees and any future such cases.

And be it further resolved that the Chair of the Standing Committee on Citizenship and Immigration report this

Par conséquent, qu'il soit résolu que le Comité permanent de la citoyenneté et de l'immigration :

- a. reconnaisse la nature urgente de la grève de la faim et amorce des discussions en vue d'une résolution;
- b. demande au gouvernement du Canada et aux ministres de la Sécurité publique et de la Citoyenneté et de l'Immigration de mandater le Bureau de l'enquêteur correctionnel, dont relèvent tous les détenus sous responsabilité fédérale, à l'exception de ceux au Centre de surveillance de l'immigration de Kingston, pour dorénavant s'occuper du CSIK, enquêter sur les plaintes actuelles de ceux qui font la grève de la faim, et s'assurer de toute urgence de ce qui suit :
- 1) Que des soins médicaux soient dispensés dans l'unité résidentielle par des médecins qualifiés;
- 2) Que les détenus puissent sortir de leurs cellules avant l'aube pour faire leurs prières conformément à leurs croyances religieuses;
- 3) Que des visites conjugales leur soient offertes comme aux autres détenus;
- 4) Qu'ils aient accès à des services de cantine respectant leurs croyances religieuses;
- 5) Que le compte des présences quotidien cesse sur-le-champ;
- 6) Que lorsqu'ils sont transférés de l'unité résidentielle à l'édifice de l'administration, les détenus soient aussi accompagnés d'un superviseur de Service correctionnel Canada;
- Et préparer une série de recommandations distinctes pour régler les griefs en questions.

Qu'il soit également résolu que les ministres de la Sécurité publique et de la Citoyenneté et de l'Immigration soit tenu de répondre, par écrit, aux membres de ce Comité, pour leur donner un aperçu des mesures entreprises par le Ministère suivant l'adoption de la présente motion.

Qu'il soit également résolu que ces protocoles soient mis en place en permanence afin de pouvoir agir dans le cas de ces détenus et de cas semblables éventuellement.

Qu'il soit également résolu que le président du Comité permanent de la citoyenneté et de l'immigration fasse

motion to the House of Commons.

rapport de la présente motion à la Chambre des communes.

A copy of the relevant *Minutes of Proceedings* (Meeting No.32) is tabled.

Un exemplaire des *Procès-verbaux* pertinents (séance no 32) est déposé.

Respectfully submitted,

Respectueusement soumis,

président,

NORMAN DOYLE
Chair

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* of the Standing Committee on Citizenship and Immigration (Meetings *Nos. 21, 24, 35, 37, 39, 40, 42 and 45*) is tabled.

Respectfully submitted,

Norman Doyle, MP
Chair

Dissenting Report from Ed Komarnicki (Souris—Moose Mountain)

To say the security certificate process is based largely on unproven allegations without setting such a statement in the context of what actually happens in the process is in our view overstating the case.

It is important to take many of the statements made in the report in context, and to realize that they may not necessarily be statements of fact accepted or adopted by this committee. These include statements prefaced by remarks such as: opponents argue; opponents also assert; interveners in the case argued; it was argued; the appellants asserted; the appellants claimed; that in its view; and the like.

Without indicating whether the alleged events occurred specifically in the Metro West Detention Centre or KIHC, Messrs. Almrei, Jaballah, and Mahjoub in a November 16, 2006 brief made reference to what we would view as unproven allegations as follows: "We also have endured humiliation, taunting, beatings, and that's because of the terrorism label." The committee did not have the benefit of testing, investigating, or anyone countering these allegations yet made mention of them in the report. At the very least these statements need to be prefaced by saying they were either unsubstantiated or unproven allegations.

Although some of the reports recommendations receive varying levels of support, specifically the following recommendations are not agreed to:

- That the government institute a policy stating that charges under the *Criminal Code* are the preferred method of dealing with permanent residents or foreign nationals who are suspected of participating in, contributing to or facilitating terrorist activities;

- That the government introduce legislation to provide for a maximum length of detention for those whose security certificates have been upheld by the Federal Courts as reasonable, after which time they must either be charged and prosecuted under the Criminal Code or released from detention without conditions.

With respect to the Conditions of Detention

Page 37 of the report, in reference to the detainees, states:

"They seemed particularly concerned about their relationship with some of the guards at the KIHC, some of whom they alleged were subjecting them to threats of psychological harassment. They said that their treatment at the hands of the guards became worse when they made attempts to use the grievance process."

Again the committee did not have the benefit of testing or properly investigating these allegations.

After complaining of institutional culture at KIHC it is of interest that one of the recommendations of the majority report provides:

- That the government of Canada mandate the Office of the Correctional Investigator, which has jurisdiction over all federal inmates except for those held at the Kingston Immigration Holding Centre, to assume jurisdiction over the KIHC, and investigate current and ongoing complaints of those detained at the KIHC.

Although some of the reports recommendations to do with conditions of detention receive varying levels of support, specifically the following recommendations are not wholly agreed to:

- That solitary confinement is never appropriate for immigration detainees and other arrangements be made should there be only one person detained at KIHC.

Depending upon the specific circumstances there may be instances and periods of time where solitary confinement may be appropriate or necessary.

- That medical visits be limited to instances where the detainees request such visits, or in medical emergencies.

There may also be instances where medical visits may be required even if not requested by detainees.

- That until such a time as a correctional investigator is appointed and can investigate alleged mistreatment by guards, the detainees be escorted, on request, by a supervisor when travelling within the KIHC facility.

Matters of detainee escort would be better left to those responsible for security.

- That the KIHC eliminate the formal daily head count.

Where practical and where security is not compromised consideration be given to the daily head count being eliminated.

Dated March 29, 2007

Ed Komarnicki, M.P.
Souris-Moose Mountain

Nina Grewal, M.P.
Fleetwood–Port Kells

Rahim Jaffer, M.P.
Edmonton–Strathcona

Barry Devolin, M.P.
Haliburton–Kawartha Lakes–Brock

Dissenting Report from Bill Siksay, M.P. (Burnaby-Douglas) for the New Democratic Party

The Security Certificate Process

New Democrats do not support the security certificate process as provided for in the Immigration and Refugee Protection Act and call for its immediate repeal. Secret hearings or trials, detention without charge or conviction, detention without the ability to know, test, and respond to the evidence against you, indefinite detention without conviction, and the lack of an appeal, are fundamental violations of due process and civil liberties that must not be tolerated in a free and democratic society. The security certificate process denies permanent residents and foreign nationals the protection of Section 9 of the Charter of Rights and Freedoms that states that “everyone has the right not to be arbitrarily detained or imprisoned”. Canadian citizens are not subject to special limitations on their rights in situations where they might be charged with crimes related to terrorism. Likewise, permanent residents and foreign nationals should not be subject to special limitations. Issues of terrorism, national security, espionage, and organized crime should be dealt with through the use of the Criminal Code, not a lesser immigration process. If there is a problem with the Criminal Code’s ability to deal with these types of crimes, then those problems with the Criminal Code should be addressed and fixed.

Immigration detention should only be used for immigration purposes and should be of short duration immediately prior to legal deportation for violations of immigration law. If deportation is not possible, alternatives to detention must be pursued immediately. Immigration detention must not be used as a substitute for bringing charges and seeking conviction for serious criminal matters related to terrorism, violations of national security, espionage, and organized crime.

Given the seriousness of crimes related to terrorism it is imperative that those accused of such crimes be able to mount an effective and full defense. This is not possible in the security certificate context where the accused and their lawyers do not know the evidence against them and are not able to test that evidence in a court of law. Furthermore, a special advocate or advisory panel process falls short of ensuring fairness. The experience of this process in other jurisdictions has been very flawed, particularly in Britain, where a number of special advocates have resigned due to the serious problems with the system. Special advocates are unable to ensure that evidence is tested appropriately and cannot guarantee a fair trial, and they merely provide a façade of credibility for such a system. Tinkering with a flawed process will not ensure fairness.

Canada must never deport to torture and must be in full compliance with the United Nations Convention against Torture and Other Cruel or Inhuman or Degrading Treatment or Punishment. Evidence obtained by torture must never be admissible in a Canadian court or in any legal or immigration process.

Canada must also ensure that those who plot terrorist activities are tried, convicted and incarcerated, and not merely foisted on another jurisdiction through deportation.

In light of this, New Democrats make the following recommendations:

Recommendation:

That the use of security certificates be abolished and that Sections 9 and 76 to 87 of the Immigration and Refugee Protection Act be repealed immediately.

Recommendation:

That evidence obtained by torture and provided by governments or police and intelligence agencies that practice torture, should not be admissible in a Canadian court of law or in any criminal or legal process or hearing, or in any immigration or refugee process or hearing.

Recommendation:

That immigration detention must only be used as a short term measure immediately prior to removal related to violations of immigration law.

With regard to the recommendations made in the first section of the majority report, New Democrats support only recommendations 4, 5 and 8

The Kingston Immigration Holding Centre (KIHC) and Conditions of Detention

New Democrats support all the recommendations in the report dealing with the specific conditions of detention at the Kingston Immigration Holding Centre until such time as the security certificate process is abolished. Conditions of detention at KIHC must be improved urgently. We emphasize that the institutional culture of KIHC must be dramatically changed from that of a maximum security correctional institution, to that of an immigration detention facility, recognizing that those detained there have never been charged or convicted of any crime. Most importantly, immediate action must be taken by the Government of Canada and the Minister of Public Safety to negotiate an end to the lengthy hunger strike currently underway at KIHC. Hunger strikes of this duration are extremely serious, and can lead to long-term health consequences and death. Before there is a tragedy urgent action must be taken. No one must be allowed to die or suffer long-term health consequences related to their detention under the security certificate process. In light of this, New Democrats make the following additional recommendation regarding the conditions of detention at the KIHC:

Recommendation:

That the Minister of Public Safety urgently act to end the hunger strike at Kingston Immigration Holding Centre by appointing a neutral third person acceptable to all parties (preferably the Correctional Investigator of Canada) to investigate and make binding recommendations towards a resolution of specific issues related to conditions of detention at KIHC.