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NEWS RELEASE

Canada Risks Eroding Fundamental Rights of Asylum Seekers in the Name of Security Concerns, Says IRPP Study

François Crépeau and Delphine Nakache warn that use of security certificates denies basic Charter rights to foreign nationals

Montreal – With the Supreme Court of Canada slated to hear this summer the cases of Adil Charkaoui and two other noncitizens currently detained under controversial security certificates, the Institute for Research on Public Policy (IRPP.org) is today releasing a study that argues security certificates and other “deterrent and repressive measures” designed to enhance national security are severely eroding rights of foreigners that are enshrined in international and Canadian law.

Authors François Crépeau (Canada Research Chair in International Migration Law, Université de Montréal) and Delphine Nakache (Doctoral candidate, McGill University) note that numerous international conventions developed over the past 50 years accord fundamental rights to asylum seekers. These rights are based on the principle of nonrefoulement, which prohibits the forcible return of a refugee to a jurisdiction where his or her life or freedom would be threatened. They are enshrined in section 7 of the Canadian Charter of Rights and Freedoms, and have been upheld by Canadian court decisions.

But since the September 11 terrorist attacks, Canada has adopted new antiterrorist measures and reinforced its security policy apparatus. The centrepiece of these efforts was intended to be the *Anti-Terrorism Act*, which, according to Crépeau and Nakache, generally respects international conventions with regard to the rights of refugees.

In practice, however, Canada has used the *Immigration and Refugee Protection Act (IRPA)*, which the authors contend provides excessive powers to arrest, detain and expel foreigners on national security grounds. “The *IRPA* allows Canadian authorities to treat foreigners in ways the Criminal Code would not permit,” they write.

The most telling example of this is the increasing use of security certificates, which authorize the unlimited detention of foreign nationals deemed to pose a security threat to Canada. As well, these certificates restrict basic Charter rights such as those to cross-examine one’s accusers, to a public proceeding and to appeal. To date, court decisions have generally supported this diminished level of Charter protection.

The authors acknowledge that the balance between national security concerns and the fundamental rights of noncitizens has always been delicate, but write that “territorial sovereignty has to be conceived in a way that is compatible with existing international and national human rights regimes.” In the past, security measures that could potentially compromise the rights of noncitizens were exceptional and were subject to zealous supervision by the courts. Now, however, the authors worry that Canada may be in the midst of a fundamental shift from “a paradigm of liberty to a paradigm of security.”

A more appropriate equilibrium between security requirements and protection of rights and freedoms of migrants can only be struck by allowing the judiciary to test Canada’s new security measures against Charter standards of procedural fairness, fundamental justice and equal rights.

“There is no rule of law when human rights guarantees are applied selectively,” they conclude.

“Controlling Irregular Migration in Canada: Reconciling Security Concerns with Human Rights Protection” is the latest *IRPP Choices* study to be released as part of the IRPP’s Immigration and Refugee Policy research program. It is now available on-line in Adobe (.pdf) format on the Insitute’s Web site (www.irpp.org).

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Founded in 1972, the Institute for Research in Public Policy (IRPP.org) is an independent, national, nonprofit organization based in Montreal.

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