

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

Between:

Rachidi EKANZA EZOKOLA

APPELLANT
(Respondent)

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

RESPONDENT
(Appellant)

AFFIDAVIT OF ALEX NEVE
(in support of the application for intervention of Amnesty International
(Canadian Section, English Branch))

I, **ALEX NEVE**, of the City of Ottawa, in the Province of Ontario, make oath and state as follows:

1. I am the Secretary General of Amnesty International (Canadian Section, English Branch) (“Amnesty Canada”) and as such have knowledge of the matters hereinafter deposed to.
2. I was hired as Secretary General of Amnesty Canada in January 2000. Prior to assuming this position I had been an active member of Amnesty International (“AI”) for 15 years, during which time I was employed by Amnesty Canada and by AI’s International Secretariat in London, England for 3 years. My activities with AI have included numerous research missions to monitor and report on human rights abuses, the preparation of international and national reports on issues of concern to AI, and participation in AI national and international meetings.

3. In addition to my experience with AI, I hold a Master of Laws degree in International Human Rights Law, with distinction, from the University of Essex in the United Kingdom.

4. As Secretary General for Amnesty Canada, I am responsible for overseeing the implementation of AI's mission in Canada. This includes supervising staff and ensuring that there is a national network of volunteers to carry out AI's work in Canada. My responsibilities also include ensuring that AI's expertise is available to decision-making bodies and the general public, communicating and cooperating with others who are interested in advancing international human rights issues, and educating the public on human rights.

Overview of Amnesty Canada's Proposed Intervention

5. Amnesty Canada seeks leave to intervene in this appeal with respect to the appropriate application of Article 1F(a) of the *United Nations Convention Relating to the Status of Refugees* ("Refugee Convention"). In particular, Amnesty Canada seeks to make submissions on the human rights principles that should guide the exclusion analysis.

6. Amnesty Canada has a strong record as a credible, trustworthy and objective organization that possesses a unique expertise in both international refugee law and international criminal law, the interplay of which is at issue in this appeal. The organization has a legitimate and significant interest in this appeal, as it will affect its longstanding efforts to both promote the rights of asylum-seekers and refugees, and prevent impunity for grave international offences.

Amnesty International and Amnesty Canada: The Organizations

7. Amnesty International is a worldwide voluntary movement founded in 1961 that works to prevent some of the gravest violations to people's fundamental human rights.

8. AI is impartial and independent of any government, political persuasion or religious creed. AI and Amnesty Canada are financed by subscriptions and donations from its membership, and receive no government funding.

9. There are currently close to 3 million members of AI in over 150 countries. There are more than 7,500 AI groups, including local groups, youth or student groups and professional groups, in more than 90 countries and territories throughout the world. In 55 countries and territories, the work of these groups is coordinated by national sections like Amnesty Canada.

10. In essence, AI Canada is the Canadian branch of the global AI movement.

11. The organizational structure of Amnesty Canada includes a board of 12 directors elected across the country. There are specific country and issue-coordinators in each region and province. Amnesty Canada has a staff of about 50 employees and membership of approximately 60,000 people.

The Vision and Work of Amnesty Canada

12. Amnesty Canada implements and shares the vision of AI: a world in which every person enjoys all of the human rights enshrined in the *Universal Declaration of Human Rights* and other international instruments.

13. In pursuit of this vision, AI's mission is to conduct research and take action to prevent and end grave abuses of all human rights – civil, political, economic, social and cultural.

14. In 1977, AI was awarded the Nobel Peace Prize for its work in promoting international human rights.

15. Amnesty Canada seeks to advance and promote international human rights at both the international and national levels. As part of its work to achieve this end, Amnesty Canada:

- (a) monitors and reports on human rights abuses;
- (b) participates in domestic judicial proceedings;
- (c) participates in national legislative processes and hearings; and

- (d) participates in international committee hearings and other international human rights processes.

Monitoring and Reporting on Human Rights Abuses

16. AI's investigative work is carried out by human rights researchers who receive, cross-check and corroborate information from many sources, including prisoners and their families, lawyers, journalists, refugees, diplomats, religious groups and humanitarian and other human rights organizations. Researchers also obtain information through newspapers, web-sites and other media outlets. As well, AI sends about 130 fact-finding missions to some 70 countries each year to directly assess what is happening on the ground.

17. AI's research is recognized around the world as accurate, unbiased, and credible, which is why AI reports are widely consulted by governments, intergovernmental organizations, journalists and scholars.

18. AI's research has been used by Canadian courts and is recognized as credible. These official reports by AI are often relied on as evidence by immigration review boards and in Canadian courts. For example:

- (a) In *Mahjoub (Re)*, [2010] F.C.J. No. 900, 2010 FC 787, Justice Blanchard of the Federal Court affirmed that reports by Amnesty International are "well known, credible and heavily relied upon internationally. These are the same reports regularly relied on by the Minister of Citizenship and Immigration under the [*Immigration and Refugee Protection Act*] in refugee cases before the Immigration and Refugee Board and this Court".
- (b) Likewise, in *Mahjoub v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1503, Justice Tremblay-Lamer found "the [Minister's] delegate's blanket rejection of information from agencies with worldwide reputations for credibility, such as AI [...] puzzling, especially given the institutional reliance of Canadian courts and tribunals on these very sources." Further, Justice Tremblay-Lamer

pointed out that “the Minister of Citizenship and Immigration frequently relies on information from these organizations in creating country condition reports, which in turn are used by Immigration and Refugee tribunals, in recognition of their general reputation for credibility”.

- (c) Similarly, in *Thang v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 457, the Federal Court allowed a judicial review of a Pre-Removal Risk Assessment (“PRRA”) on the basis that the PRRA officer failed to consider a detailed analysis of the applicant’s personal circumstances prepared by AI, which the Court referred to as a “credible source”.
- (d) The Federal Court has also emphasized the important evidentiary role of AI reports in *Shabbir v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 480, and *Ertuk v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1118. Finally, in *Suresh v. Canada (Minister of Citizenship and Immigration, et al)*, [2002] 1 S.C.R. 3, the Supreme Court of Canada relied on an AI report concerning Sri Lanka’s torture of members of the Liberation Tigers of Tamil Eelam.

19. In addition to being used by Canadian courts and tribunals, AI uses its research to prepare other reports, briefing papers, newsletters and campaigning materials. Among its publications is the annual Amnesty International Report on human rights conditions in countries around the world.

20. Amnesty Canada has participated in the preparation of these reports and has assisted in the distribution of these reports in Canada.

Participation in Judicial Proceedings

21. Amnesty Canada has intervened on international human rights issues in a number of cases before the Supreme Court of Canada, including the following nine cases:

- (a) *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, [2010] 1 S.C.R. 44 (granted leave to intervene with respect to what triggers a Canadian citizen’s section 7 “life, liberty, and security of the person” interests and the content of the “principles of fundamental justice”);
- (b) *Gavrila v. Canada (Justice)*, 2010 SCC 57, [2010] 3 SCR 342 (granted leave to intervene with respect to the interplay between extradition and refugee protection);
- (c) *Charkaoui v. Canada (Minister of Citizenship and Immigration) No. 2*, [2008], 2 S.C.R. 326 (granted leave to intervene with respect to whether the systematic destruction of interview notes and other information by the Canadian Security Intelligence Service in the context of security certificate proceedings violates international norms and the constitutional principles of procedural fairness);
- (d) *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350 (presented submissions on the constitutionality of the procedural protections in the *Immigration and Refugee Protection Act*’s security certificate regime and on the arbitrary detention of foreign nationals under that regime);
- (e) *Schreiber v. Canada (Attorney General)*, [2002] 3 S.C.R. 269 (argued that the right to the protection of mental integrity and to compensation for its violation has risen to the level of a peremptory norm of international law, which prevails over the doctrine of sovereign immunity);
- (f) *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 (presented submissions to the Court regarding the nature and scope of the international prohibitions against torture, and the mechanisms designed to prevent and prohibit its use, to which the Court referred);

- (g) *United States v. Burns*, [2001] 1 S.C.R. 283 (provided information to the Court on the significant international movement towards the abolition of capital punishment);
- (h) *Reference Re Ng Extradition (Can.)*, [1991] 2 S.C.R. 858 (provided information regarding the international movement towards the abolition of capital punishment); and
- (i) *Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779 (provided information regarding the international movement towards the abolition of capital punishment).

22. In addition to advocacy before the Supreme Court of Canada, Amnesty Canada has appeared before lower Canadian courts and public inquiries as either an intervener or a party.

23. For instance, Amnesty Canada has intervened before the Ontario Court of Appeal in:

- (a) *Bouzari v. Islamic Republic of Iran*, [2004] O.J. No. 2800, 71 O.R. (3d) 675, involving the right of a torture victim to sue for compensation from the offending government; and
- (b) *Ahani v. Canada (Minister of Citizenship and Immigration)*, [2002] O.J. No. 431, 58 O.R. (3d) 107, where submissions were made on Canada's international obligations in response to the UN Human Rights Committee's request that Canada not deport the appellant pending consideration of his complaint to the Committee.

24. Amnesty Canada was also an applicant in two matters before the Federal Court concerning fundamental human rights issues:

- (a) In *Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe v. Canada*, 2008 FCA 229, the applicants asserted

that Canada's "safe third country" agreement with the United States was invalid and unlawful because the United States failed to comply with its international human rights obligations, particularly the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*; and

- (b) In *Amnesty International Canada and British Columbia Civil Liberties Association v. Chief of the Defence Staff for the Canadian Forces, Minister of National Defence and Attorney General of Canada*, 2008 FCA 401, the applicants asserted that Canada breached its obligations under the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* when it transferred Afghan detainees into the custody of Afghan officials, where they were at serious risk of torture or cruel, inhuman or degrading treatment.

25. Furthermore, Amnesty Canada was granted intervener status in the following inquiries:

- (a) The Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar ("Arar Inquiry"), where it made submissions on the subject of security and human rights; and
- (b) The Internal Inquiry into the Actions of Canadian officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin ("Iacobucci Inquiry") where it made submissions on the substantive issues before the Commissioner on the source of applicable standards under international law; the prohibition against torture; providing or exchanging information and travel plans with foreign officials; the inadequacy of diplomatic assurances with respect to the use of torture; the prohibition against the use of information obtained through torture; communication, the provision of information, and assistance in questioning detained Canadians; requirement of consular officials to ensure that basic human rights are protected; and the presumption of innocence of Canadians detained abroad, among other things.

26. AI and its local national organizations have made submissions in other countries on a variety of matters, including international refugee law and international criminal law, such as:

- (a) AI was amicus curiae before the Supreme Court of the United States in *Graham v. Florida*, 982 So. 2d 43 (2010), arguing the relevance of international law to the question of whether a juvenile offender can be sentenced to life in prison without parole for a non-homicide crime;
- (b) AI was amicus curiae before the Supreme Court of the United States in *Boumediene v. Bush; Al Odah v. United States*, 128 S. Ct. 2229 (2008) where AI argued that the *Military Commission Act* of 2006 is an unconstitutional suspension of habeas corpus under United States law and in violation of the United States' international obligations; and
- (c) In 2006, the British House of Lords granted AI intervener status in *Al-Skeini and others v. the Secretary of State*, [2007] UKHL 26, an appeal concerning the applicability of the *European Convention on Human Rights* and the UK's *Human Rights Act 1998* to the actions of British armed forces in Iraq.

27. AI has also intervened in cases at the International Criminal Court and ad hoc tribunals, including:

- (a) In 2009 at the International Criminal Court, with respect to the situation in the Central African Republic (*Amicus Curiae Observations on Superior Responsibility submitted pursuant to Rule 103 of the Rules of Procedure and Evidence*, ICC-01/05-01/08-406); and
- (b) In 2005 at the Special Court for Sierra Leone (*Amicus Curiae Brief of Amnesty International Concerning the Public Interest Information Privilege*, case No. SCSL-04-16-AR73B).

28. Other cases where AI has made submissions on international human rights in judicial proceedings in other countries include the following:

- (a) *A and others v. Secretary of State for the Home Department (No. 2)*, [2005] UKHL 71, (regarding the admissibility of evidence obtained through torture);
- (b) *A and others v. Secretary of State for the Home Department*, [2005] 2 A.C. 68 (regarding indefinite detention of suspected terrorists under the *Anti-Terrorism, Crime and Security Act 2001*);
- (c) In 2004, Amnesty International submitted an amicus curiae brief to the Federal High Court of Nigeria (regarding the interpretation of 1F of the *Refugee Convention*, in the context of Nigeria's grant of asylum to Charles Taylor and his subsequent indictment by the Special Court for Sierra Leone);
- (d) *R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 3)*, [2000] 1 A.C. 147 (U.K.H.L.) (regarding state immunity for international crimes); and
- (e) *Chahal v. United Kingdom*, (1997) 23 E.H.R.R. 413 (E.Ct.H.R.) (regarding the absolute prohibition against returning an individual to face a risk of torture).

Participation in Legislative Proceedings

29. Amnesty Canada has also sought to advance international human rights directly through the legislative process. On many occasions, Amnesty Canada has submitted written and oral arguments to government officials, legislators and House and Senate committees. Submissions include:

- (a) *Unbalanced Reforms: Recommendations with respect to Bill C-31* (A Brief to the House of Commons' Standing Committee on Citizenship and Immigration,

outlining the ways in which Bill C-31 violates Canada's international obligations towards refugees and asylum-seekers), May 7, 2012;

- (b) *Fast and Efficient but not Fair: Recommendations with respect to Bill C-11* (A Brief to the House of Commons' Standing Committee on Citizenship and Immigration, regarding recommendations with respect to changes brought to the refugee determination process by Bill C-11), May 11, 2010;
- (c) Oral submissions before the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development regarding the repatriation of Omar Khadr, May 2008;
- (d) Oral submissions before the House of Commons' Public Safety Committee in December 2007 and the Senate Special Committee on Anti-Terrorism in February 2008 regarding Bill C-3, the proposed amendment to the security certificate regime;
- (e) Oral submissions before the House Defence Committee regarding the transfer by Canadian troops of Afghan detainees in Afghanistan (December 2006);
- (f) Oral submissions before the House Committee on Citizenship and Immigration regarding security certificates (November 2006);
- (g) Oral submissions before the Senate and House of Commons' *Anti-Terrorism Act* Review Committees (May and September 2005);
- (h) *Security through Human Rights* (submission to the Special Senate Committee on the *Anti-Terrorism Act* and House of Commons' Sub-Committee on Public Safety and National Security, as part of the review of Canada's *Anti-Terrorism Act*), May 16, 2005;

- (i) *Amnesty International: Brief on Bill C-31 (Immigration and Refugee Protection Act)*, March 2001; and
- (j) Oral submissions before the House of Commons' Standing Committee on Foreign Affairs and International Trade with respect to Bill C-19 (a bill to implement Canada's obligations under the *Rome Statute of the International Criminal Court* ("*Rome Statute*") to ensure its ability to cooperate fully with investigations and prosecutions by the International Criminal Court, and to retain and enhance Canada's capacity to prosecute and punish persons accused of crimes against humanity and war crimes), May 2000.

Participation with International Organizations

30. AI has formal relations with the United Nations Economic and Social Council (ECOSOC), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Council of Europe, the Organization of American States, the Organization of African Unity, and the Inter-Parliamentary Union.

31. Amnesty Canada has made submissions to various international organizations regarding Canada's compliance with its international human rights obligations, including:

- (a) *Canada: Briefing to the UN Committee Against Torture*, Amnesty International's submission to the Committee's review of Canada, May 2012;
- (b) *Canada: Briefing to the UN Committee on the Elimination of Racial Discrimination*, Amnesty International's submission to the Committee's review of Canada, February 2012;
- (c) *Canada: Submission to the UN Universal Periodic Review*, Amnesty International's submission to the first review of Canada's human rights record by the UN Human Rights Council, February 2009;

- (d) *Human Rights for All: No Exceptions* (Amnesty International's submission to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of the examination of the 17th and 18th Periodic Reports submitted by Canada), February 2007;
- (e) *Protection Gap: Strengthening Canada's Compliance with its International Human Rights Obligations* (Amnesty Canada's submission to the United Nations Human Rights Committee on the occasion of the consideration of the Fifth Periodic Report of Canada), 2005;
- (f) *Redoubling the Fight Against Torture: Amnesty International Canada's Brief to the UN Committee against Torture with respect to the Committee's Consideration of the Fourth Periodic Report for Canada*, October 8, 2004; and
- (g) *It's Time* (Amnesty International's Briefing to the United Nations Committee against Torture with respect to the Third Report of Canada), November 2000.

32. These international bodies recognize and trust AI's experience, objectivity and distinctive perspective. As Jean-Pierre Hocke (former United Nations High Commissioner for Refugees) noted, "It's a worn cliché, but if Amnesty did not exist, it would have to be invented. It is simply unique."

Expertise in International Refugee Law

33. Amnesty International has long been at the forefront of refugee protection worldwide. Amnesty International works to ensure that asylum-seekers are not prohibited from entering a country to seek asylum; are not returned to a country where they would be at risk of serious human rights abuses; have access to fair and effective asylum procedures; have access to the UN Refugee Agency (UNHCR) for assistance, where applicable; and are not unlawfully or arbitrarily detained.

34. Amnesty International does not oppose the return of unsuccessful asylum-seekers if they are found not to be in need of international protection, following a fair and satisfactory asylum procedure and if their return takes place in safety and dignity.

35. Some examples of Amnesty Canada's experience in international refugee law include:

- (a) Monitoring and reporting on Canada's compliance with its international legal obligations with respect to asylum-seekers and refugees;
- (b) Participation (either as a party or intervener) in relevant domestic judicial proceedings, including: *Gavrila v. Canada (Justice)*, 2010 SCC 57, [2010] 3 SCR 342; *Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe v. Canada*, 2008 FCA 229; and *Ahani v. Canada (Minister of Citizenship and Immigration)*, [2002] O.J. No. 431, 58 O.R. (3d) 107;
- (c) Participation in national legislative processes and hearings affecting Canada's immigration and refugee regime, including the frequent presentation of briefs to the relevant committees, such as the House of Commons Standing Committee on Citizenship and Immigration; and
- (d) Participation in relevant international committee hearings and processes, including the Committee Against Torture and the Universal Periodic Review process.

Expertise in International Criminal Law

36. Amnesty International strongly supports government efforts to ensure that individuals who have committed crimes against humanity and other serious human rights violations are brought to justice. It has long argued that deeply entrenched impunity for human rights violations in countries around the world is a major obstacle to ensuring stronger human rights protection.

37. Amnesty International has also actively campaigned for more robust international laws and institutions in the area of international criminal law. For instance, Amnesty International began campaigning for the establishment of International Criminal Court in 1993. The organization was very active in the drafting of the *Rome Statute* of the Court, and other supplementary documents, including the *Rules of Procedure and Evidence* and the *Elements of Crimes* prepared by the Preparatory Commission for the International Criminal Court between 1998 and 2002. AI has acted as amicus curiae to international criminal justice institutions, including the International Criminal Court and Special Court for Sierra Leone.

38. Amnesty International has also urged the adoption and enforcement of human rights treaties that clearly establish that – through the principle of universal jurisdiction – all governments have a shared responsibility to ensure that individuals who have committed serious crimes are brought to justice, regardless of their nationality or where the crimes took place.

39. Amnesty Canada welcomed law reform initiatives that enshrined universal jurisdiction in the Canadian justice system, including amendments to the *Criminal Code* in the late 1980s dealing with torture, and the passage of the *Crimes against Humanity and War Crimes Act* in 2000.

40. Some examples of Amnesty Canada's expertise in international criminal law include:

- (a) Participation in relevant domestic judicial proceedings, including *Bouzari v. Islamic Republic of Iran* [2004] O.J. No. 2800, 71 O.R. (3d) 675;
- (b) Participation in national legislative processes and hearings pertaining to international criminal justice, including with respect to the implementation of Canada's obligations under the *Rome Statute* as well as participation in the Arar Inquiry and Iacobucci Inquiry; and
- (c) Participation in relevant international committee hearings and processes, including the Committee Against Torture and the Universal Periodic Review process.

Amnesty Canada as a Proposed Intervener

41. If granted leave to intervene, Amnesty Canada would focus on the human rights principles that should guide this Court in determining the test for excluding an individual under Article 1F(a) of the *Refugee Convention*. Amnesty Canada does not intend to take a position on issues that are specific and personal to the Appellant. Rather, the submissions will pertain only to the appropriate guiding principles for the exclusion analysis.

42. In particular, Amnesty Canada proposes to make the following submissions:

- (a) the exclusion provisions must be strictly construed;
- (b) the exclusion analysis must be individualized; and
- (c) the exclusion analysis must encompass the subjective and objective elements of a recognized international crime and established modes of international criminal liability.

43. Amnesty Canada has a legitimate interest in the issues raised in this appeal. It has demonstrated this interest through its extensive monitoring and reporting work in the areas of protecting the rights of refugees and preventing impunity for grave international crimes. Furthermore, the organization's longstanding efforts to advance both protection and accountability at the Canadian level – in legislative and judicial proceedings – as well as in the international sphere, show the significance of both these issues to Amnesty Canada.

44. The Court's determinations regarding the issues in this appeal will have a significant impact on the work of Amnesty International, within Canada and elsewhere, to ensure that asylum-seekers' rights are adequately protected and that perpetrators of serious international offences are held accountable for their crimes.

45. I believe that Amnesty Canada can make a unique and valuable contribution. As an international non-governmental organization, AI is well-positioned to apply a truly international

human rights perspective to the issues raised in this appeal. Amnesty Canada has extensive knowledge of the international norms that are relevant in this appeal, most notably the *Refugee Convention* and the *Rome Statute of the International Criminal Court*. Moreover, AI has expertise in both international refugee law and international criminal law. Given that the interplay between these two areas of law is at issue in this appeal, the perspective of an organization whose work encompasses both will be essential.

46. If granted leave to intervene, Amnesty Canada will be mindful of submissions made by parties and other interveners in this appeal and will seek to avoid duplication of argument and materials before the Court.

47. I make this affidavit in support of Amnesty Canada's application to intervene and for no other or improper purpose.

SWORN BEFORE ME at the City of)
)
Ottawa in the Province of)
)
Ontario this ____ day of)
)
September, 2012)
)
)

ALEX NEVE

A Commissioner of Oaths