

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

Between:

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

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-and-

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PART I – OVERVIEW

1. In 2012, this Court affirmed that “[t]he right to a fair trial is a fundamental pillar without which the edifice of the rule of law would crumble.”¹
2. To respect the right to a fair hearing, certain standards must be met, including equality of arms, an adversarial process, and open justice. The unanimous judgment in *Charkaoui I* found that the previous security certificate regime failed to provide the fair hearing mandated by s.7 of the *Canadian Charter of Rights and Freedoms (Charter)*.² The question currently at issue is whether the modifications effected by Parliament in 2008 have brought Canadian law into line with longstanding and foundational fair trial principles, which are guaranteed under both domestic and international law.
3. Amnesty International takes the position that this question must be answered in the negative. We submit that the *Immigration and Refugee Protection Act (IRPA)*’s security certificate regime fails to respect named persons’ due process rights, as required under binding international human rights law. Although international law may permit some types of limitations on procedural protections under certain conditions, the *IRPA* does not meet the requisite rigorous standards for justifying these types of measures; on the contrary, it denies to named persons the very essence of the right to a fair trial. Furthermore, neither Special Advocates (SAs) nor designated judges are capable of rendering security certificate proceedings fair. We submit that the *IRPA*’s security certificate provisions cannot be restructured in such a way as to uphold fundamental due process rights, and should be struck.

PART II – QUESTION IN ISSUE

4. Does the current security certificate regime comply with due process principles, as set out in binding international human rights law?

PART III – ARGUMENT

1. Canada is bound by international human rights law

5. Parliament affirmed its intention to abide by Canada’s international commitments in section 3(3)(f) of the *IRPA*, which provides: “This Act is to be construed and applied in a manner that [...] complies with international human rights instruments to which Canada is signatory.”³ International

¹ *R v NS*, 2012 SCC 72, para. 38 [NS].

² MBA Tab 16, *Charkaoui v Canada (Minister of Citizenship and Immigration)*, [2007] 1 S.C.R. 350, para. 65 [*Charkaoui I*]; *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11, s.7.

³ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s.3(3)(f) [*IRPA*].

human rights instruments legally binding on Canada are, in the absence of contrary legislative intention, determinative of how the *IRPA* must be interpreted and applied.⁴

6. Moreover, it is well-established that Canada's international human rights obligations are an important interpretive aid in applying the *Charter*. As the Court explained in *Suresh*, the scope and content of the principles of fundamental justice expressed in section 7 of the *Charter* and the justifiable limits in section 1 are elucidated by international norms.⁵ Indeed, the "*Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified."⁶

2. Fair trial guarantees are protected under international law

a) The standards applicable to security certificate proceedings

7. The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (Special Rapporteur) has stated that "[a]ll aspects of counter-terrorism law and practice must be in compliance with international human rights law, including the right to a fair trial."⁷

8. At a minimum, fair trial safeguards generally include three elements: the right to equality of arms; observance of the principle of an adversarial process; and the principle of open justice.⁸ First, equality of arms demands that parties to the proceedings have a reasonable opportunity to present their case, under conditions in which no party is placed at a substantial disadvantage with respect to the other side.⁹ Second, an adversarial process requires both parties to know and comment upon the evidence and argument advanced by their opponent, in order to challenge it and establish by contrary evidence that it is incorrect.¹⁰ This Court, in *Charkaoui I*, cited with approval the notion that "the

⁴ *de Guzman v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436, para. 87.

⁵ RBA Tab 25, *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, para. 59.

⁶ *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, para. 59, per Dickson C.J.C. (dissenting).

⁷ *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/63/223 (6 August 2008), para. 45 [*Special Rapporteur Report*].

⁸ *Universal Declaration of Human Rights*, GA Res. 271 (III), UN GAOR, 3d. Sess., Supp. No. 3, UN Doc. A/810 (1948), Arts. 7-11; *International Covenant on Civil and Political Rights*, 19 December 1996, 99 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368, Art. 14 [ICCPR]; Amnesty International, *Left in the Dark: The Use of Secret Evidence in the United Kingdom*, AI Index EUR 45/014/2012 (2012), at p.29 [AI, *Left in the Dark*]; see, e.g.: *Ruiz-Mateos v Spain*, (App no. 12952/87), 23 June 1993 [Ruiz-Mateos]; *Lobo Machado v Portugal*, (App no. 15764/89), 20 February 1996 [Lobo Machado]; *B and P v United Kingdom*, (App no. 36337/97; 35974/97), 24 April 2001, para. 36; *Vanjak v Croatia*, (App no. 29889/04), 14 January 2010.

⁹ AI, *Left in the Dark*, *supra* note 8, at p.29; *Special Rapporteur Report*, *supra* note 7, para. 35; see, e.g.: *De Haes and Gijssels v Belgium*, (App no. 19983/92), 24 February 1997, para. 53; *Ankerl v Switzerland*, (App no. 17748/91), 23 October 1996, para. 38; *Gertruda Hubertina Jansen-Gielen v The Netherlands*, Communication No. 846/1999, UN Doc. CCPR/C/71/D/846/1999 (2001), para. 8.2; *AB v Slovakia*, (App no. 41784/98), 4 March 2003.

¹⁰ AI, *Left in the Dark*, *supra* note 8, at p.29; see, e.g.: *Ruiz-Mateos*, *supra* note 8, para. 63; *Lobo Machado*, *supra* note 8, para 31; *Uzukauskas v Lithuania*, (App no. 16965/04), 6 July 2010; *Anni Äärelä and Jouni Näkkäläjärvi v Finland*, Communication No. 779/1997, UN Doc. CCPR/C/73/D/779/1997 (1997).

adversarial system provides the real warranty that the outcome of what we do is going to be fair and just; without it, the judge may feel a little bit like a fig leaf.”¹¹ Third, the open justice principle, which entails public hearings and public judgments, contributes to the fairness and independence of the decision-making process and serves to maintain public confidence in that system.¹²

9. The principal international source for these elements of the right to a fair trial is Article 14 of the *International Covenant on Civil and Political Rights (ICCPR)*. As the Special Rapporteur has declared, “the right to a fair trial is broader than the sum of the individual guarantees within article 14, and depends on the entire conduct of the trial.”¹³

10. These due process protections are applicable to proceedings that can result in deportation, such as the security certificate process. Arbitrary deportation is expressly prohibited by Article 13 of the *ICCPR*.¹⁴ The Human Rights Committee (HRC), the body responsible for overseeing the *ICCPR*’s implementation, has confirmed that Article 14 protections also apply to deportation decisions:

The procedural guarantees of article 13 of the Covenant incorporate notions of due process also reflected in article 14 and thus should be interpreted in the light of this latter provision. Insofar as domestic law entrusts a judicial body with the task of deciding about expulsions or deportations, the guarantee of equality of all persons before the courts and tribunals as enshrined in article 14, paragraph 1, and the principles of impartiality, fairness and equality of arms implicit in this guarantee are applicable.¹⁵

Indeed, as this Court recognized in *Charkaoui II*, the scope of fundamental rights “does not turn on a formal distinction between the different areas of law. Rather, it depends on the severity of the consequences of the state’s actions for the individual’s fundamental interests of liberty and security and, in some cases, the right to life.”¹⁶ Where the result can be extremely grave, as in security certificate cases, the procedural protections must be correspondingly robust.

b) Any limitations must comply with rigorous conditions

11. Article 14 contains only one justifiable limitation on due process protections, which is the exclusion of the press and public – as opposed to the parties and their counsel – under certain

¹¹ MBA Tab 16, *Charkaoui I*, *supra* note 2, para. 50 (citations removed).

¹² AI, *Left in the Dark*, *supra* note 8, at p.29; *Special Rapporteur Report*, *supra* note 7, para. 45; Human Rights Committee, *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, CCPR/C/GC/32 (2007), para. 29 [HRC, *General Comment 32*]; see, e.g.: *Pretto and Others v Italy* (App no. 7984/77), 8 December 1983, para. 27; *Malhous v Czech Republic*, (App no. 33071/96), 12 July 2001, para. 55; *Bakova v Slovakia*, (App no. 47227/99), 12 November 2002, para. 30.

¹³ *Special Rapporteur Report*, *supra* note 7, para. 35.

¹⁴ *ICCPR*, *supra* note 8, Art. 13.

¹⁵ HRC, *General Comment 32*, *supra* note 12, para. 62.

¹⁶ MBA Tab 17, *Charkaoui v Canada (Minister of Citizenship and Immigration) No. 2*, [2008] 2 S.C.R. 326, para. 53.

conditions.¹⁷ The HRC's *General Comment* on this article does not mention any other permitted restrictions,¹⁸ and the HRC has affirmed that even during states of emergency threatening the life of the nation, certain aspects of Article 14 can never be limited or suspended: "the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency."¹⁹ Likewise, nowhere does the Special Rapporteur's report refer to any situation where the parties or their counsel can be excluded from the proceedings.²⁰

12. To the extent that international human rights law might permit limitations on fair trial rights, these may occur only under rigorous conditions. Any limitations on *ICCPR* rights must adhere to the general principles set out by the HRC:

States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such limitations are permitted, States must in any case demonstrate their *necessity* and only take measures which are *proportionate* to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. *In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.*²¹ [Emphasis added]

In addition, as the UN Commission on Human Rights has highlighted, "[t]he burden of justifying a limitation upon a right guaranteed under the [*ICCPR*] lies with the state."²² In national security contexts, the need to put the onus on the government is further reaffirmed by the *Global Principles on National Security and the Right to Information*, developed in consultation with hundreds of experts from around the world, including the UN Special Rapporteur.²³

3. The *IRPA* fails to respect international standards

a) Fair trial rights are undermined

13. Security certificate proceedings undermine all three elements of the right to a fair trial.

14. Regarding the *right to equality of arms*, the positions of the Minister and the named person are profoundly unequal. For example, the former is not specifically excluded from any stage of the proceeding; enjoys unfettered communication with counsel; has the benefit of full disclosure;²⁴ and

¹⁷ *ICCPR*, *supra* note 8, Art. 14(1).

¹⁸ HRC, *General Comment 32*, *supra* note 12.

¹⁹ Human Rights Committee, *General Comment No. 29 On States of Emergency*, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 16.

²⁰ *Special Rapporteur Report*, *supra* note 7.

²¹ Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para 6.

²² UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc. E/CN.4/1985/4, 28 September 1984, Principle 12.

²³ *Global Principles on National Security and the Right to Information*, Finalized in Tshwane, South Africa (12 June 2013), Principle 4.

²⁴ *IRPA*, *supra* note 3, ss.77(2), 83(1)(c),(d),(e),(i).

has the authority to withdraw evidence that previously had been presented to the judge, including exculpatory evidence, thus preventing it from informing the judge's decision.²⁵ The latter has none of these entitlements and is thus – in international legal terms – at a substantial disadvantage.

15. Security certificate proceedings also undermine the *adversarial process principle* in two ways. First, named persons are impaired in their ability to challenge the facts established against them, because they are not fully aware of all the evidence that has been deployed to support the Minister's case. Named persons are granted only:

[a] summary of information and other evidence that enables [them] to be reasonably informed of the case made by the Minister but that does not include anything that, in the Minister's opinion, would be injurious to national security or endanger the safety of any person if disclosed.²⁶

Second, named persons are similarly restricted in their ability to formulate legal arguments, due to limited access to security certificate decisions. The *IRPA* specifically allows judges to base decisions on information and other evidence that has been neither summarized nor otherwise disclosed to named persons.²⁷ The reasoning process informing these judgments, to which the Minister would have access as a party entitled to disclosure of all information and other evidence before the presiding judge, is not available to named persons or their counsel, who are thereby deprived of a critical tool in the development of an effective litigation strategy. In sum, the *IRPA* prevents named persons from effectively challenging the case against them and establishing by contrary evidence that it is incorrect.

16. Finally, security certificate proceedings violate the *principle of open justice* by excluding named persons and their counsel from certain parts of the proceedings. Amnesty International is unaware of any HRC authority that would permit the exclusion of litigants or their counsel from any proceeding to which Article 14 applies, such as security certificate proceedings. Moreover, although international law may allow for the justifiable exclusion of the wider public or press under certain circumstances, the absence of public scrutiny compounds the harms arising from the inequality of arms and lack of an adversarial process, because one of the main safeguards of the fairness and independence of the judicial process has been eliminated.

²⁵ *IRPA*, *supra* note 3, s.83(1)(j).

²⁶ *IRPA*, *supra* note 3, s.77(2).

²⁷ *IRPA*, *supra* note 3, s.83(1)(i).

b) Infringements do not comply with international human rights law

17. The *IRPA*'s security certificate provisions fail to meet the criteria for justifiable limitations upon fair trial protections, as mandated by international human rights law.

18. To the extent that certain types of limitations are permitted, international law would require the *government* to demonstrate – on a case-by-case basis – that such limitations are necessary and proportionate to safeguard national security. By contrast, the *IRPA*'s security certificate provisions mandate secrecy as the default, with no onus placed upon the government to demonstrate the *necessity* or *proportionality* of the measures that impinge upon a named person's due process rights. Whereas international law requires that where any limitation on due process occurs, the *essence of the right to a fair hearing remain intact*, security certificate proceedings undermine the core of this fundamental right, since the fair trial infringements are both serious and abundant.

c) Special Advocates cannot remedy the fair trial defects

19. Contrary to the Federal Court of Appeal's statement in the judgment below,²⁸ Special Advocates do not *represent* a named person. Rather, they are tasked with *protecting a named person's interests*.²⁹ Indeed, the *IRPA* expressly stipulates that SAs do not enjoy a solicitor-client relationship with the named person, and they are not party to the proceedings.³⁰ In a solicitor-client relationship, the former has certain duties – such as timely, effective and confidential communication with the client – which a SA is specifically barred from performing.

20. The *IRPA* places Special Advocates under severe limitations. For example, SAs may make oral and written submissions,³¹ but have no express statutory authority to call their own witnesses or submit evidence. SAs may only cross-examine those witnesses who are called by the Minister and who testify at the closed proceedings.³² Although they are granted access to the same information and other evidence that is provided to the judge, they cannot communicate with any other person – including the named person – after reviewing classified information, unless they obtain prior judicial authorization.³³

21. Under these conditions, Special Advocates cannot adequately mitigate the unfairness of the process. Given the constrained and supervised nature of the communication between SAs and named

²⁸ Appeal Record, Vol II, Tab 14, *Harkat v Canada (Citizenship and Immigration)*, 2012 FCA 122, para. 84 [*Harkat* Appeal decision].

²⁹ *IRPA*, *supra* note 3, ss.85.1(1).

³⁰ *IRPA*, *supra* note 3, s.85.1(3).

³¹ *IRPA*, *supra* note 3, s.85.2(a).

³² *IRPA*, *supra* note 3, s.85.2(b).

³³ *IRPA*, *supra* note 3, s.85.4(2).

persons, the protection of communication supposedly conferred by s.85.1(4) is illusory at best. The restrictions on communications after the SA has seen secret evidence prevent named persons from providing effective instructions. Those restrictions, combined with SAs' inability to call their own witnesses, impede their ability to test the government's case or challenge Ministerial claims of non-disclosure. Moreover, the SAs' ability to conduct an effective cross-examination of the Minister's witnesses is further compromised by the restrictions on communications with the named person.

22. Another obstacle to challenging claims of non-disclosure is the breadth of the information the judge may receive into evidence, including that which would be inadmissible in a court of law.³⁴ Finally, because judicial authorization is required for communicating with any person about the secret evidence, the judge – and potentially the Minister, whom the *IRPA* does not expressly exclude from any proceedings – may gain insight into the named person's litigation strategy, and will be able to draw adverse inferences from a subsequent silence on the relevant matter. *In brief, regardless of SAs' skill, experience or diligence, the statutory scheme prevents them from fulfilling their statutory duties.*

23. The UK's Special Advocate system, though not identical to the Canadian model, has been criticized in ways that can shed light on the serious limitations inherent to this type of system. Special Advocates in Britain have asserted that their ability to challenge the government's case is often restricted to pointing out where the government's allegations might be unsupported by its own evidence,³⁵ to identifying inconsistencies in that evidence,³⁶ and to demonstrating that classified material should be disclosed because it is already available in the public domain.³⁷ Furthermore, Special Advocates have also testified before the UK Joint Parliamentary Committee on Human Rights (Joint Committee) that they:

*have no means of gainsaying the Government's assessment that disclosure would cause harm to the public interest, and Government assessments about what can and cannot be disclosed are effectively unchallengeable and almost always upheld by the court. Courts inevitably accord great weight to views on matters of national security expressed by the agencies who are particularly charged with protecting national security.*³⁸ [Emphasis added]

The Joint Committee, after hearing the Special Advocates' testimony in 2007, spoke in strong terms about the control orders system in Britain:

³⁴ *IRPA*, *supra* note 3, s.83(1)(h)

³⁵ AI, *Left in the Dark*, *supra* note 8, at p.11.

³⁶ AI, *Left in the Dark*, *supra* note 8, at p.11.

³⁷ UK Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights (Sixteenth Report): Annual Renewal of Control Orders Legislation 2010 – Ninth Report of Session 2009-10*, HL Paper 64, HC 395 (23 February 2010), para. 61 [UK Joint Committee, 2010].

³⁸ UK Joint Committee, 2010, *supra* note 37, para. 62.

After listening to the evidence of the Special Advocates, we found it hard not to reach for well worn descriptions of it as “Kafkaesque” or like the Star Chamber. The Special Advocates agreed when it was put to them that, in light of the concerns they had raised, ‘the public should be left in absolutely no doubt that what is happening ... has absolutely nothing to do with the traditions of adversarial justice as we have come to understand them in the British legal system.’ Indeed, we were left with the very strong feeling that this is a process which is *not just offensive to the basic principles of adversarial justice in which lawyers are steeped, but it is very much against basic notions of fair play as the lay public would understand them.*³⁹ [Emphasis added]

In a recent judgment by the UK Supreme Court, Lord Kerr affirmed that “the challenge that the special advocate can present is, in the final analysis, of a theoretical, abstract nature only. It is, self evidently and admittedly, a distinctly *second best attempt to secure a just outcome* to proceedings.”⁴⁰ [Emphasis added]

24. Special Advocate schemes have also been the subject of criticism by international human rights bodies. The UN Committee Against Torture expressed its concern with Canadian Special Advocates’ “very limited ability to conduct cross-examinations or to seek evidence independently,” and affirmed that the restrictions on communications meant that “the advocates cannot properly know the case against [named persons] or make full answer or defence in violation of the principles of justice and due process.”⁴¹ Furthermore, the Special Rapporteur has observed that:

[t]here are real dangers that procedures accompanying the appointment of special advocates (such as the inability to communicate with the client after classified information is provided to the special advocate) frustrate and *undermine the ability of a person to instruct counsel* for the purpose of answering the case.⁴² [Emphasis added]

25. It should not be assumed that the introduction of Special Advocates has necessarily improved the situation of named persons. For instance, it is possible that the presence of SAs has inadvertently led to even more restricted disclosure. In a comparative international study of secret evidence and due process in security-related detentions, Professors Barak-Erez and Waxman suggest that “knowing that special advocates are there to help protect against government miscarriages of justice, the government may be even less forthcoming in declassifying information.”⁴³ This possibility is a

³⁹ UK Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights: 28 Days, Intercept and Post-Charge Questioning – Nineteenth Report of Session 2006-07*, HL Paper 157, HC 394 (16 July 2007), para. 210 [UK Joint Committee, 2007].

⁴⁰ *Al Rawi & Ors v The Security Service & Ors*, [2011] UKSC 34, para. 94 [*Al Rawi*].

⁴¹ UN Committee Against Torture, *Concluding Observations: Canada*, UN Doc. CAT/C/CAN/CO/6 (25 June 2012), para. 12 [CAT, 2012].

⁴² *Special Rapporteur Report*, *supra* note 7, para. 41.

⁴³ Daphne Barak-Erez and Matthew C. Waxman, “Secret Evidence and the Due Process of Terrorist Detentions” (2009) 48:3 Colum. J. Transnat’l L. 3-64, at pp.35-36.

grave concern, given that already “there is strong international evidence that governments generally overclaim the need to protect sensitive evidence.”⁴⁴

26. Finally, the presence of Special Advocates has no impact on the due process violations arising from the fact that decisions can be made based on evidence that is not summarized or otherwise disclosed to the named person,⁴⁵ or on the fact that parts of the hearing and judgment remain secret.⁴⁶ The concerns expressed by this Court in *Charkaoui I* still apply:

In the result, the judge may be required to decide the case, wholly or in part, on the basis of information that the named person and his or her counsel never see. The named person may know nothing of the case to meet, and although technically afforded an opportunity to be heard, may be left in a position of having no idea as to what needs to be said.⁴⁷

d) Designated judges cannot ensure the fairness of the proceedings

27. Designated judges are not capable of rendering security certificate proceedings compliant with fundamental fair trial principles. There appears to be an assumption, demonstrated for instance in the Federal Court of Appeal’s judgment below,⁴⁸ that seeing all the evidence allows the judge to ensure a fair trial. This assumption is misplaced, since a fair adversarial process depends upon the evidence being rigorously tested. As Lord Kerr explained in *Al Rawi* at the UK Supreme Court:

To be truly valuable, evidence must be capable of withstanding challenge. I go further. *Evidence which has been insulated from challenge may positively mislead.* It is precisely because of this that the right to know the case that one’s opponent makes and to have the opportunity to challenge it occupies such a central place in the concept of a fair trial. However astute and assiduous the judge, the proposed procedure hands over to one party considerable control over the production of relevant material and the manner in which it is to be presented. *The peril that such a procedure presents to the fair trial of contentious litigation is both obvious and undeniable.*⁴⁹ [Emphasis added]

28. This assessment is particularly germane to the type of evidence used in security certificate proceedings, at least some of which originates from the security and intelligence services. As mentioned above, section 83(1)(h) of the *IRPA* expressly allows the judge to accept into evidence – and base his/her decision upon – information that would be inadmissible in a court of law.⁵⁰ This type of material, as the Committee Against Torture observed in its review of Canada, relies heavily

⁴⁴ Helen Fenwick and Gavin Phillipson, “Covert Derogations and Judicial Deference: Redefining Liberty and Due Process Rights in Counterterrorism Law and Beyond” (2011) 56:4 McGill L.J. 862-918, para. 65.

⁴⁵ *IRPA*, *supra* note 3, s.83(1)(i).

⁴⁶ *IRPA*, *supra* note 3, s.83(1)(i).

⁴⁷ MBA Tab 16, *Charkaoui I*, *supra* note 2, para. 55.

⁴⁸ Appeal Record, Vol II, Tab 14, *Harkat* appeal decision, *supra* note 28, para. 84.

⁴⁹ *Al Rawi*, *supra* note 40, para. 93.

⁵⁰ *IRPA*, *supra* note 3, s.83(1)(h).

on information from secret intelligence sources and “may contain second- or third-hand hearsay or other material and statements that may have been obtained by torture.”⁵¹

29. In the end, designated judges, faced with inadequately tested or untested information from potentially dubious sources, find themselves in the same position as the designated judge in the *Charkaoui I*-era system:

Despite the judge’s best efforts to question the government’s witnesses and scrutinize the documentary evidence, he or she is placed in the situation of asking questions and ultimately deciding the issues on the basis of incomplete and potentially unreliable information.⁵²

4. The security certificate provisions should be struck

30. It is irrelevant whether the new security certificate regime does in fact, as the Federal Court of Appeal saw it, grant to a named person “a greater and better opportunity to know and meet the case against him.”⁵³ The appropriate standard is not *better than unconstitutional*, but rather the fundamental fair trial requirements as protected by the *Charter* and international human rights law. As one British Special Advocate put it, “as fair as can be is not fair.”⁵⁴ All deportation proceedings must fully respect the right to a fair trial, identified as a keystone in the edifice of the rule of law by this Court.⁵⁵

31. In Amnesty International’s view, it is impossible to restructure the relevant *IRPA* provisions in such a way as to uphold fundamental due process rights. The gap between the current system and the standard required by international law is too large. Neither international law nor the *Charter*, whose interpretation it informs, can countenance these severe infringements on named persons’ fair trial rights. The security certificate provisions should be struck.

PART IV – REQUEST FOR ORAL ARGUMENT

32. The Intervener requests permission of the Court to present oral argument.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10th DAY OF SEPTEMBER, 2013 BY:

Michael Bossin

Laïla Demirdache

Chantal Tie

Solicitors for Amnesty International⁵⁶

⁵¹ CAT, 2012, para. 12.

⁵² MBA Tab 16, *Charkaoui I*, *supra* note 2, para. 63.

⁵³ Appeal Record, Vol II, Tab 14, *Harkat*, *supra* note 28, para. 85.

⁵⁴ Cited in UK Joint Committee, 2007, *supra* note 39, para. 212.

⁵⁵ *NS*, *supra* note 1, para. 38.

⁵⁶ The solicitors for Amnesty International acknowledge the tremendous work done by Amnesty International’s Legal Program Coordinator, Anna Shea.

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PART VI – STATUTES, INSTRUMENTS

Domestic Statutes

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11.

Rights and freedoms in Canada	Droits et libertés au Canada
1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.	1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
Life, liberty and security of person 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	Vie, liberté et sécurité 7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

Immigration and Refugee Protection Act, S.C. 2001, c. 27.

Objectives — immigration	Objet en matière d'immigration
3. (3) This Act is to be construed and applied in a manner that (f) complies with international human rights instruments to which Canada is signatory.	3. (3) L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet : f) de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire.
Referral of certificate	Dépôt du certificat
77. (1) The Minister and the Minister of Citizenship and Immigration shall sign a certificate stating that a permanent resident or foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, and shall refer the certificate to the Federal Court. (2) When the certificate is referred, the Minister shall file with the Court the information and other evidence on which the certificate is based, and a summary of information and other evidence that enables the person who is named in the certificate to be reasonably informed of the case made by the Minister but that does not include anything that, in the Minister's opinion, would be injurious to national security or endanger the safety of any person if disclosed.	77. (1) Le ministre et le ministre de la Citoyenneté et de l'Immigration déposent à la Cour fédérale le certificat attestant qu'un résident permanent ou qu'un étranger est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée. (2) Le ministre dépose en même temps que le certificat les renseignements et autres éléments de preuve justifiant ce dernier, ainsi qu'un résumé de la preuve qui permet à la personne visée d'être suffisamment informée de sa thèse et qui ne comporte aucun élément dont la divulgation porterait atteinte, selon le ministre, à la sécurité nationale ou à la sécurité d'autrui. (3) Il ne peut être procédé à aucune instance visant la personne au titre de la présente loi tant

<p>(3) Once the certificate is referred, no proceeding under this Act respecting the person who is named in the certificate — other than proceedings relating to sections 82 to 82.3, 112 and 115 — may be commenced or continued until the judge determines whether the certificate is reasonable.</p>	<p>qu'il n'a pas été statué sur le certificat. Ne sont pas visées les instances relatives aux articles 82 à 82.3, 112 et 115.</p>
<p>Protection of information</p> <p>83. (1) The following provisions apply to proceedings under any of sections 78 and 82 to 82.2:</p> <p>(a) the judge shall proceed as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit;</p> <p>(b) the judge shall appoint a person from the list referred to in subsection 85(1) to act as a special advocate in the proceeding after hearing representations from the permanent resident or foreign national and the Minister and after giving particular consideration and weight to the preferences of the permanent resident or foreign national;</p> <p>(c) at any time during a proceeding, the judge may, on the judge's own motion — and shall, on each request of the Minister — hear information or other evidence in the absence of the public and of the permanent resident or foreign national and their counsel if, in the judge's opinion, its disclosure could be injurious to national security or endanger the safety of any person;</p> <p>(d) the judge shall ensure the confidentiality of information and other evidence provided by the Minister if, in the judge's opinion, its disclosure would be injurious to national security or endanger the safety of any person;</p> <p>(e) throughout the proceeding, the judge shall ensure that the permanent resident or foreign national is provided with a summary of information and other evidence that enables them to be reasonably informed of the case made by the Minister in the proceeding but that does not include anything that, in the judge's opinion, would be injurious to national security or endanger the safety of any person if disclosed;</p> <p>(f) the judge shall ensure the confidentiality</p>	<p>Protection des renseignements</p> <p>83. (1) Les règles ci-après s'appliquent aux instances visées aux articles 78 et 82 à 82.2 :</p> <p>a) le juge procède, dans la mesure où les circonstances et les considérations d'équité et de justice naturelle le permettent, sans formalisme et selon la procédure expéditive;</p> <p>b) il nomme, parmi les personnes figurant sur la liste dressée au titre du paragraphe 85(1), celle qui agira à titre d'avocat spécial dans le cadre de l'instance, après avoir entendu l'intéressé et le ministre et accordé une attention et une importance particulières aux préférences de l'intéressé;</p> <p>c) il peut d'office tenir une audience à huis clos et en l'absence de l'intéressé et de son conseil — et doit le faire à chaque demande du ministre — si la divulgation des renseignements ou autres éléments de preuve en cause pourrait porter atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;</p> <p>d) il lui incombe de garantir la confidentialité des renseignements et autres éléments de preuve que lui fournit le ministre et dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;</p> <p>e) il veille tout au long de l'instance à ce que soit fourni à l'intéressé un résumé de la preuve qui ne comporte aucun élément dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui et qui permet à l'intéressé d'être suffisamment informé de la thèse du ministre à l'égard de l'instance en cause;</p> <p>f) il lui incombe de garantir la confidentialité des renseignements et autres éléments de preuve que le ministre retire de l'instance;</p> <p>g) il donne à l'intéressé et au ministre la possibilité d'être entendus;</p>

<p>of all information or other evidence that is withdrawn by the Minister;</p> <p>(g) the judge shall provide the permanent resident or foreign national and the Minister with an opportunity to be heard;</p> <p>(h) the judge may receive into evidence anything that, in the judge's opinion, is reliable and appropriate, even if it is inadmissible in a court of law, and may base a decision on that evidence;</p> <p>(i) the judge may base a decision on information or other evidence even if a summary of that information or other evidence is not provided to the permanent resident or foreign national; and</p> <p>(j) the judge shall not base a decision on information or other evidence provided by the Minister, and shall return it to the Minister, if the judge determines that it is not relevant or if the Minister withdraws it.</p> <p>(1.1) For the purposes of paragraph (1)(h), reliable and appropriate evidence does not include information that is believed on reasonable grounds to have been obtained as a result of the use of torture within the meaning of section 269.1 of the Criminal Code, or cruel, inhuman or degrading treatment or punishment within the meaning of the Convention Against Torture.</p> <p>(1.2) If the permanent resident or foreign national requests that a particular person be appointed under paragraph (1)(b), the judge shall appoint that person unless the judge is satisfied that</p> <p>(a) the appointment would result in the proceeding being unreasonably delayed;</p> <p>(b) the appointment would place the person in a conflict of interest; or</p> <p>(c) the person has knowledge of information or other evidence whose disclosure would be injurious to national security or endanger the safety of any person and, in the circumstances, there is a risk of inadvertent disclosure of that information or other evidence.</p> <p>(2) For greater certainty, the judge's power to appoint a person to act as a special advocate in a proceeding includes the power to terminate the appointment and to appoint another person.</p>	<p>h) il peut recevoir et admettre en preuve tout élément — même inadmissible en justice — qu'il estime digne de foi et utile et peut fonder sa décision sur celui-ci;</p> <p>i) il peut fonder sa décision sur des renseignements et autres éléments de preuve même si un résumé de ces derniers n'est pas fourni à l'intéressé;</p> <p>j) il ne peut fonder sa décision sur les renseignements et autres éléments de preuve que lui fournit le ministre et les remet à celui-ci s'il décide qu'ils ne sont pas pertinents ou si le ministre les retire.</p> <p>(1.1) Pour l'application de l'alinéa (1)h), sont exclus des éléments de preuve dignes de foi et utiles les renseignements dont il existe des motifs raisonnables de croire qu'ils ont été obtenus par suite du recours à la torture, au sens de l'article 269.1 du Code criminel, ou à d'autres peines ou traitements cruels, inhumains ou dégradants, au sens de la Convention contre la torture.</p> <p>(1.2) Si l'intéressé demande qu'une personne en particulier soit nommée au titre de l'alinéa (1)b), le juge nomme cette personne, à moins qu'il estime que l'une ou l'autre des situations ci-après s'applique :</p> <p>a) la nomination de cette personne retarderait indûment l'instance;</p> <p>b) la nomination de cette personne mettrait celle-ci en situation de conflit d'intérêts;</p> <p>c) cette personne a connaissance de renseignements ou d'autres éléments de preuve dont la divulgation porterait atteinte à la sécurité nationale ou à la sécurité d'autrui et, dans les circonstances, ces renseignements ou autres éléments de preuve risquent d'être divulgués par inadvertance.</p> <p>(2) Il est entendu que le pouvoir du juge de nommer une personne qui agira à titre d'avocat spécial dans le cadre d'une instance comprend celui de mettre fin à ses fonctions et de nommer quelqu'un pour la remplacer.</p>
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<p>Special advocate's role</p> <p>85.1 (1) A special advocate's role is to protect the interests of the permanent resident or foreign national in a proceeding under any of sections 78 and 82 to 82.2 when information or other evidence is heard in the absence of the public and of the permanent resident or foreign national and their counsel.</p> <p>(2) A special advocate may challenge</p> <p>(a) the Minister's claim that the disclosure of information or other evidence would be injurious to national security or endanger the safety of any person; and</p> <p>(b) the relevance, reliability and sufficiency of information or other evidence that is provided by the Minister and is not disclosed to the permanent resident or foreign national and their counsel, and the weight to be given to it.</p> <p>(3) For greater certainty, the special advocate is not a party to the proceeding and the relationship between the special advocate and the permanent resident or foreign national is not that of solicitor and client.</p> <p>(4) However, a communication between the permanent resident or foreign national or their counsel and the special advocate that would be subject to solicitor-client privilege if the relationship were one of solicitor and client is deemed to be subject to solicitor-client privilege. For greater certainty, in respect of that communication, the special advocate is not a compellable witness in any proceeding.</p>	<p>Rôle de l'avocat spécial</p> <p>85.1 (1) L'avocat spécial a pour rôle de défendre les intérêts du résident permanent ou de l'étranger lors de toute audience tenue à huis clos et en l'absence de celui-ci et de son conseil dans le cadre de toute instance visée à l'un des articles 78 et 82 à 82.2.</p> <p>(2) Il peut contester :</p> <p>a) les affirmations du ministre voulant que la divulgation de renseignements ou autres éléments de preuve porterait atteinte à la sécurité nationale ou à la sécurité d'autrui;</p> <p>b) la pertinence, la fiabilité et la suffisance des renseignements ou autres éléments de preuve fournis par le ministre, mais communiqués ni à l'intéressé ni à son conseil, et l'importance qui devrait leur être accordée.</p> <p>(3) Il est entendu que l'avocat spécial n'est pas partie à l'instance et que les rapports entre lui et l'intéressé ne sont pas ceux qui existent entre un avocat et son client.</p> <p>(4) Toutefois, toute communication entre l'intéressé ou son conseil et l'avocat spécial qui serait protégée par le secret professionnel liant l'avocat à son client si ceux-ci avaient de tels rapports est réputée être ainsi protégée, et il est entendu que l'avocat spécial ne peut être contraint à témoigner à l'égard d'une telle communication dans quelque instance que ce soit.</p>
<p>Powers</p> <p>85.2 A special advocate may</p> <p>(a) make oral and written submissions with respect to the information and other evidence that is provided by the Minister and is not disclosed to the permanent resident or foreign national and their counsel;</p> <p>(b) participate in, and cross-examine witnesses who testify during, any part of the proceeding that is held in the absence of the public and of the permanent resident or foreign national and their counsel; and</p> <p>(c) exercise, with the judge's authorization, any other powers that are necessary to protect the</p>	<p>Pouvoirs</p> <p>85.2 L'avocat spécial peut :</p> <p>a) présenter au juge ses observations, oralement ou par écrit, à l'égard des renseignements et autres éléments de preuve fournis par le ministre, mais communiqués ni à l'intéressé ni à son conseil;</p> <p>b) participer à toute audience tenue à huis clos et en l'absence de l'intéressé et de son conseil, et contre-interroger les témoins;</p> <p>c) exercer, avec l'autorisation du juge, tout autre pouvoir nécessaire à la défense des intérêts du résident permanent ou de l'étranger.</p>

interests of the permanent resident or foreign national.	
<p>Obligation to provide information</p> <p>85.4 (1) The Minister shall, within a period set by the judge, provide the special advocate with a copy of all information and other evidence that is provided to the judge but that is not disclosed to the permanent resident or foreign national and their counsel.</p> <p>(2) After that information or other evidence is received by the special advocate, the special advocate may, during the remainder of the proceeding, communicate with another person about the proceeding only with the judge's authorization and subject to any conditions that the judge considers appropriate.</p> <p>(3) If the special advocate is authorized to communicate with a person, the judge may prohibit that person from communicating with anyone else about the proceeding during the remainder of the proceeding or may impose conditions with respect to such a communication during that period.</p>	<p>Obligation de communication</p> <p>85.4 (1) Il incombe au ministre de fournir à l'avocat spécial, dans le délai fixé par le juge, copie de tous les renseignements et autres éléments de preuve qui ont été fournis au juge, mais qui n'ont été communiqués ni à l'intéressé ni à son conseil.</p> <p>(2) Entre le moment où il reçoit les renseignements et autres éléments de preuve et la fin de l'instance, l'avocat spécial ne peut communiquer avec qui que ce soit au sujet de l'instance si ce n'est avec l'autorisation du juge et aux conditions que celui-ci estime indiquées.</p> <p>(3) Dans le cas où l'avocat spécial est autorisé à communiquer avec une personne, le juge peut interdire à cette dernière de communiquer avec qui que ce soit d'autre au sujet de l'instance, et ce jusqu'à la fin de celle-ci, ou assujettir à des conditions toute communication de cette personne à ce sujet, jusqu'à la fin de l'instance.</p>

International Instruments

International Covenant on Civil and Political Rights, 19 December 1996, 99 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368.

<p>Article 13</p> <p>An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.</p>	<p>Article 13</p> <p>Un étranger qui se trouve légalement sur le territoire d'un Etat partie au présent Pacte ne peut en être expulsé qu'en exécution d'une décision prise conformément à la loi et, à moins que des raisons impérieuses de sécurité nationale ne s'y opposent, il doit avoir la possibilité de faire valoir les raisons qui militent contre son expulsion et de faire examiner son cas par l'autorité compétente, ou par une ou plusieurs personnes spécialement désignées par ladite autorité, en se faisant représenter à cette fin.</p>
<p>Article 14</p> <p>1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and</p>	<p>Article 14</p> <p>1. Tous sont égaux devant les tribunaux et les cours de justice. Toute personne a droit à ce que sa cause soit entendue équitablement et</p>

<p>obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.</p> <p>2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.</p> <p>3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:</p> <p>(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;</p> <p>(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;</p> <p>(c) To be tried without undue delay;</p> <p>(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;</p> <p>(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;</p> <p>(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;</p> <p>(g) Not to be compelled to testify against himself or to confess guilt.</p> <p>4. In the case of juvenile persons, the procedure</p>	<p>publiquement par un tribunal compétent, indépendant et impartial, établi par la loi, qui décidera soit du bien-fondé de toute accusation en matière pénale dirigée contre elle, soit des contestations sur ses droits et obligations de caractère civil. Le huis clos peut être prononcé pendant la totalité ou une partie du procès soit dans l'intérêt des bonnes moeurs, de l'ordre public ou de la sécurité nationale dans une société démocratique, soit lorsque l'intérêt de la vie privée des parties en cause l'exige, soit encore dans la mesure où le tribunal l'estimera absolument nécessaire lorsqu'en raison des circonstances particulières de l'affaire la publicité nuirait aux intérêts de la justice; cependant, tout jugement rendu en matière pénale ou civile sera public, sauf si l'intérêt de mineurs exige qu'il en soit autrement ou si le procès porte sur des différends matrimoniaux ou sur la tutelle des enfants.</p> <p>2. Toute personne accusée d'une infraction pénale est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie.</p> <p>3. Toute personne accusée d'une infraction pénale a droit, en pleine égalité, au moins aux garanties suivantes:</p> <p>a) A être informée, dans le plus court délai, dans une langue qu'elle comprend et de façon détaillée, de la nature et des motifs de l'accusation portée contre elle;</p> <p>b) A disposer du temps et des facilités nécessaires à la préparation de sa défense et à communiquer avec le conseil de son choix;</p> <p>c) A être jugée sans retard excessif;</p> <p>d) A être présente au procès et à se défendre elle-même ou à avoir l'assistance d'un défenseur de son choix; si elle n'a pas de défenseur, à être informée de son droit d'en avoir un, et, chaque fois que l'intérêt de la justice l'exige, à se voir attribuer d'office un défenseur, sans frais, si elle n'a pas les moyens de le rémunérer;</p> <p>e) A interroger ou faire interroger les témoins à charge et à obtenir la comparution et l'interrogatoire des témoins à décharge dans les mêmes conditions que les témoins à charge;</p> <p>f) A se faire assister gratuitement d'un interprète si elle ne comprend pas ou ne parle pas la langue employée à l'audience;</p>
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<p>shall be such as will take account of their age and the desirability of promoting their rehabilitation.</p> <p>5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.</p> <p>6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.</p> <p>7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.</p>	<p>g) A ne pas être forcée de témoigner contre elle-même ou de s'avouer coupable.</p> <p>4. La procédure applicable aux jeunes gens qui ne sont pas encore majeurs au regard de la loi pénale tiendra compte de leur âge et de l'intérêt que présente leur rééducation.</p> <p>5. Toute personne déclarée coupable d'une infraction a le droit de faire examiner par une juridiction supérieure la déclaration de culpabilité et la condamnation, conformément à la loi.</p> <p>6. Lorsqu'une condamnation pénale définitive est ultérieurement annulée ou lorsque la grâce est accordée parce qu'un fait nouveau ou nouvellement révélé prouve qu'il s'est produit une erreur judiciaire, la personne qui a subi une peine en raison de cette condamnation sera indemnisée, conformément à la loi, à moins qu'il ne soit prouvé que la non-révélation en temps utile du fait inconnu lui est imputable en tout ou partie.</p> <p>7. Nul ne peut être poursuivi ou puni en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi et à la procédure pénale de chaque pays.</p>
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Universal Declaration of Human Rights, GA Res. 271 (III), UN GAOR, 3d. Sess., Supp. No. 3, UN Doc. A/810 (1948).

<p>Article 7</p> <p>All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.</p>	<p>Article 7</p> <p>Tous sont égaux devant la loi et ont droit sans distinction à une égale protection de la loi. Tous ont droit à une protection égale contre toute discrimination qui violerait la présente Déclaration et contre toute provocation à une telle discrimination.</p>
<p>Article 8</p> <p>Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.</p>	<p>Article 8</p> <p>Toute personne a droit à un recours effectif devant les juridictions nationales compétentes contre les actes violant les droits fondamentaux qui lui sont reconnus par la constitution ou par la loi.</p>
<p>Article 9</p> <p>No one shall be subjected to arbitrary arrest, detention or exile.</p>	<p>Article 9</p> <p>Nul ne peut être arbitrairement arrêté, détenu ou exilé.</p>

<p>Article 10</p> <p>Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</p>	<p>Article 10</p> <p>Toute personne a droit, en pleine égalité, à ce que sa cause soit entendue équitablement et publiquement par un tribunal indépendant et impartial, qui décidera, soit de ses droits et obligations, soit du bien-fondé de toute accusation en matière pénale dirigée contre elle.</p>
<p>Article 11</p> <p>1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.</p> <p>2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.</p>	<p>Article 11</p> <p>1. Toute personne accusée d'un acte délictueux est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie au cours d'un procès public où toutes les garanties nécessaires à sa défense lui auront été assurées.</p> <p>2. Nul ne sera condamné pour des actions ou omissions qui, au moment où elles ont été commises, ne constituaient pas un acte délictueux d'après le droit national ou international. De même, il ne sera infligé aucune peine plus forte que celle qui était applicable au moment où l'acte délictueux a été commis.</p>