Court File No. 36081

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

BETWEEN:

**KELLY HARTLE, WARDEN OF THE EDMONDON INSTITUTION,
ATTORNEY GENERAL OF CANADA, and
HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA**

APPELLANTS

- and -

OMAR AHMED KHADR

RESPONDENT

MEMORANDUM OF ARGUMENT IN SUPPORT OF THE MOTION FOR INTERVENTION OF AMNESTY INTERNATIONAL CANADA
(Rule 56(b) of the *Rules of the Supreme Court of Canada*)

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PART I – STATEMENT OF FACTS

A. Overview

1. Amnesty International Canada ("AI Canada") seeks leave to intervene in this appeal. The appeal raises legal issues of significant public interest, in particular regarding the correct interpretation of ss 18 and 20 of the *International Transfer of Offenders Act (ITOA)*[1] and the appropriate principles of international law, including international human rights law, to be applied in interpreting ss 18 and 20 of the *ITOA*. The appeal also raises critical issues of juvenile justice, the transfer, pursuant to treaty, of young offenders and former child soldiers, and their rehabilitation and reintegration into society. If granted leave to intervene, AI Canada will bring to the attention of this Honourable Court relevant rules and principles of international law that should be employed in the interpretation of ss 18 and 20 of the *ITOA*.

B. Amnesty International

2. AI Canada is part of Amnesty International ("AI"), a worldwide voluntary movement founded in 1961 that works to prevent grave violations of fundamental human rights. AI is impartial and independent of any government, political persuasion, or religious creed. Both AI and AI Canada are mainly financed by member subscriptions and donations. AI currently has over seven million members in over 162 countries, including 60,000 supporters across Canada. AI envisions a world in which every person enjoys all the human rights enshrined in the *Universal Declaration of Human Rights* and other international instruments. In pursuit of this vision, AI conducts research and takes action to prevent and end grave abuses of all human rights – civil, political, economic, social, and cultural. In 1977, AI was awarded the Nobel Peace Prize for its work.[2]

3. AI's research and publications are widely acclaimed in Canada and globally as accurate, credible, and unbiased, and its human rights reports are widely consulted by governments, intergovernmental organizations, journalists, and scholars.[3]

4. AI has an established reputation of engaging with courts, governments, parliaments, other domestic and international policy makers, and international bodies around the world on matters of, or impacting on, internationally recognised human rights.[4]

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[1] SC 2004, c 21 [*ITOA*].
[2] Affidavit of Alex Neve, sworn 24 March 2015 at paras 5-7, 10-13 [Neve Affidavit].
[3] Neve Affidavit at para 15.
[4] Neve Affidavit at paras 16-24.

5. AI also has a history of being involved in international human rights law public interest litigation as an interested party and intervener. AI Canada has intervened in cases engaging Canada's international human rights obligations before all levels of court, including this Honourable Court.[5]

PART II – QUESTION IN ISSUE

6. The question on this motion is whether AI Canada should be granted leave to intervene in this appeal.

PART III – STATEMENT OF ARGUMENT

7. Leave to intervene may be granted where a party has an interest or particular expertise in the issues to be decided by the Court and will be able to make unique submissions that are useful to the Court.[6] Any interest in an appeal is sufficient to support an application for intervener status, subject to the discretion of the judge hearing the motion.[7]

A. AI has a genuine interest in this appeal

8. AI Canada has a genuine interest in ensuring that the *ITOA* is interpreted and applied in conformity with international law and fundamental human rights. AI Canada also has a genuine and longstanding interest in Omar Khadr's case. AI Canada became involved in Mr. Khadr's case when it first learned of his detention by the US Military in Afghanistan in 2002. At that time, Mr. Khadr was 15 years old. AI Canada was one of the first non-governmental organizations in Canada to advocate and raise awareness of Mr. Khadr's situation. AI Canada has had extensive involvement in Mr. Khadr's case. The organisation publicly advocated for the protection of his fundamental human rights, including his rights as a child, through numerous domestic and international fora. AI Canada also intervened before this Court in the case of *Canada (Prime Minister) v Khadr* (2010).[8]

B. AI has specialized expertise and will make unique and useful submissions

9. AI Canada has a strong record as a credible and objective organization, and brings a distinct approach to the issues raised in this appeal. Owing to its work, it is uniquely positioned

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[5] AI has intervened before the Supreme Court of Canada in the following cases : *Jesus Rodriguez Hernandez et al* (2015) ; *Tsilhqot'in Nation* (2014) ; *Febles* (2014) ; *Kazemi* (2014) ; *Harkat* (2014) ; *Ezokola* (2013) ; *Van Breda* (2012) ; *Khadr 2* (2010) ; *Gavrila* (2010) ; *Charkaoui 2* (2008) ; *Charkaoui 1* (2007) ; *Suresh* (2002) ; *Schreiber* (2002) ; *USA v Burns* (2001) ; *Reference Re Ng Extradition (Can)* (1991); and *Kindler* (1991) For full citations and details, see affidavit of Alex Neve at para 17

[6] *Rules of the Supreme Court of Canada*, SOR/2002-156, rr 55, 57; *Reference re Workers' Compensation Act*, [1989] 2 SCR 335 at 339-340 [*Worker's Compensation*]; *R v Finta*, [1993] 1 SCR 1138 at 1142 [*Finta*].

[7] *Worker's Compensation*, *supra* note 6; *Finta*, *supra* note 6 at 1143-1144.

[8] Neve Affidavit at paras 17, 21, 23, 26.

to make submissions on Canada's international human rights obligations towards juvenile offenders and former child soldiers and on the interpretation of Canadian statutes that engage those obligations.

10. If granted leave to intervene, AI Canada will be mindful of submissions made by the interested parties to this appeal, and will avoid duplicating arguments and materials. AI Canada will neither make arguments with respect to the findings of fact or the characterization of the evidence in this case, nor seek to supplement the factual record.

11. AI Canada's submissions will be different from those of the parties and useful to this Honourable Court as they will provide an additional and broader international law and international human rights perspective on the interpretation of the *ITOA* as it concerns juvenile offenders and former child soldiers.

C. Amnesty International's proposed submissions

12. If granted intervener status, AI Canada will submit that the correct interpretation of ss 18 and 20 of the *ITOA* is the one that ensures Canada's compliance with its international legal and human rights obligations. In particular, AI will submit that:

a. The *ITOA* must be interpreted and applied in conformity with the treaties it implements and with Canada's international human rights obligations and commitments;
b. Sections 18 and 20 of the *ITOA* must be interpreted so as to extend special protection to juvenile offenders and former child soldiers, and treat them in accordance with the best interests of the child principle;
c. Sections 18 and 20 of the *ITOA* must be interpreted in a way that best achieves the overarching goals of rehabilitation and societal reintegration of juvenile offenders or former child soldiers; and
d. An interpretation of ss 18 and 20 of the *ITOA* that has the effect of aggravating the foreign sentence runs contrary to Canada's international human rights obligations.

a. <u>The *ITOA* must be interpreted in conformity with the international treaties it implements and with international human rights law</u>

13. As recognized by this Court in *R v Hape,* "[i]t is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law."[9] When courts are faced with two possible interpretations of a statute – as in this case – they "will avoid a

[9] *R v Hape*, 2007 SCC 26 at para 53 [*Hape*].

construction that would place Canada in breach of [its international law] obligations."[10] As a result, the values and principles enshrined in international law have long been recognized by this Court as relevant and persuasive sources for the interpretation of domestic statutes.[11] They "form part of the context in which statutes are enacted, and courts will therefore prefer a construction that reflects them."[12] These principles should be applied to the *ITOA*, which creates a doubt or ambiguity where the foreign sentence does not clearly assign a specific duration for each offence where multiple offences are concerned.

14. The presumption of conformity applies to Canada's international obligations as set out in binding treaties, including the *Convention on the Rights of the Child*[13] ("*CRC*") – the most widely ratified human rights treaty in history[14] – its *Optional Protocol on the involvement of children in armed conflict*[15] ("*Optional Protocol*"), and the *Treaty between Canada and the United States of America on the Execution of Penal Sentences*[16] and other bilateral and multilateral treaties on the transfer of prisoners.[17] The presumption of conformity also applies to customary international law, which, absent express and unequivocal contrary legislative derogation, forms part of the Canadian common law.[18]

15. Declaratory instruments, such as international guidelines, declarations, and resolutions, are also relevant and persuasive, as they often encapsulate and reflect elements of existing or evolving customary international law.[19] For the purposes of this appeal, such instruments include the *UN Standard Minimum Rules for the Administration of Juvenile Justice*[20] ("*Beijing Rules*"), the *UN Rules for the Protection of Juveniles Deprived of their Liberty*[21] ("*Havana Rules*"), the

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[10] *Ibid*.
[11] *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313 at 348, Dickson CJ, dissenting on other grounds; *Divito v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 47 at paras 22-28 [*Divito*]; *R v Sharpe*, 2001 SCC 2 at paras 175, 178 [*Sharpe*]; *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40 at paras 30-32.
[12] *R v Hape, supra* note 9 at para 53. See also, for instance, *Baker v Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817 at para 70.
[13] 20 November 1989, 1577 UNTS 3, Can TS 1992 No 3 [*CRC*]
[14] *Sharpe*, *supra* note 11 at para 177.
[15] 25 May 2000, 2173 UNTS 222 (adopted by resolution by the United Nations General Assembly, 54th Sess, UN Doc A/RES/54/263) [*Optional Protocol*].
[16] Can TS 1978 No 12 [*Canada-USA Treaty*].
[17] For a full list of bilateral and multilateral treaties on the international transfer of offenders Canada has ratified, see: Correctional Services Canada, "International Transfer of Offenders" online: <http://www.csc-scc.gc.ca/international-transfers/index-eng.shtml> [International Transfer of Offenders].
[18] *Hape*, *supra* note 9 at para 39, 54.
[19] *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*, Judgment of 27 June 1986, [1986] ICJ Rep 14 at para 188.
[20] United Nations General Assembly, UN Doc A/RES/40/33 (29 November 1985) [*Beijing Rules*].
[21] United Nations General Assembly, 68th Plenary Mtg, UN Doc A/RES/45/113 (14 December 1990) [*Havana Rules*].

Guidelines for Action on Children in the Criminal Justice System[22] ("*Vienna Guidelines*"), and the *Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*[23] ("*Paris Principles*"). Canadian courts have relied upon such instruments to guide the interpretation of domestic statutes.[24]

16. Parliament intended the *ITOA* to conform to the requirements of the *Youth Criminal Justice Act*[25] ("*YCJA*").[26] References to the *YCJA* permeate the *ITOA*.[27] The *YJCA* incorporates the human rights principles enshrined in the *CRC*[28] and courts have recognized that in the event of any doubts or ambiguities between the *YCJA* and international law, "it can be presumed that Parliament legislates in a manner that respects Canada's international commitments."[29] Further, this Court found that the principles of the *YCJA*, and consequently the international obligations it incorporates, must be respected in applying any other legislation that is engaged whenever young persons are brought within Canada's criminal justice system.[30] Therefore, in enacting the *ITOA* to conform to the requirements set out in the *YCJA*, Parliament also signalled its intention that the *ITOA* be interpreted consistently with Canada's international human rights obligations towards children and youth.

b. Sections 18 and 20 of the *ITOA* must be interpreted so as to extend special protection to juvenile offenders and consistently with the paramount "best interests of the child" principle

17. The *CRC* provides that in all actions concerning children, including those undertaken by courts of law, "the best interests of the child shall be a primary consideration."[31] Parties to the *CRC* must take into account children's "evolving capacities"[32], age, and level of maturity[33] when implementing the Convention. Due to the physical and mental immaturity of children, States Parties to the *CRC* must provide them with "special safeguards and care, including appropriate

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[22] United Nations Economic and Social Council, UN Doc 1997/30 (21 July 1997) [*Vienna Guidelines*].
[23] Adopted at the international conference "Free children from war" in Paris (February 2007) online: < http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>.
[24] E.g. *Quebec (Minister of Justice) v Canada (Minister of Justice)*, (2003) 228 DLR (4th) 63 at paras 124-127 (QCCA) [*Quebec v Canada*]; *FN (Re)*, 2000 SCC 35 at para 16; *R v DB*, 2008 SCC 25 at para 85 [*DB*].
[25] SC 2002, c 1 [*YCJA*].
[26] Robin MacKay, *Bill C-15: International Transfer of Offenders Act* (Legislative Summary, Law and Government Division, 16 February 2004) online: < http://www.parl.gc.ca/Content/LOP/LegislativeSummaries/37/3/c15-e.pdf>.
[27] *ITOA, supra* note 1, ss 4(3), 8(5), 9(1), 10(3), 10(4), 16, 17, 18, 19, 20, 29(1), 34(1).
[28] *YCJA, supra* note 25, preamble. See also *R v RC*, 2005 SCC 61 at para 41[*RC*]; *R v CD*; *R v CDK*, 2005 SCC 78 at para 35; *DB*, *supra* note 24 at para 60.
[29] *Quebec v Canada, supra* note 24 at para 93.
[30] *RC*, *supra* note 28 at para 36.
[31] *CRC*, *supra* note 13, art 3.
[32] *Ibid* art 5.
[33] *Ibid* art 12.

legal protection".[34] The *Beijing Rules* add that "[t]he well-being of the juvenile shall be the guiding factor in the consideration of her or his case."[35]

18. The necessity for such safeguards, care, and protection, is increased for children involved in armed conflict.[36] The *Paris Principles* emphasize that "[c]hildren accused of crimes […] allegedly committed while associated with armed forces or armed groups are entitled to be treated in accordance with international standards for juvenile justice."[37] In ratifying the *Optional Protocol*, Canada recognized that children under the age of 18 cannot be voluntarily recruited into armed groups."[38] In doing so, Canada re-affirmed that children are often targeted in situations of armed conflict, and that their rights "require special protection."[39] The *Paris Principles* emphasize that "[c]hildren who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law not only as perpetrators."[40] As recognized by the court below, Mr. Khadr had been brought to Afghanistan by his father in order to support Al Qaeda.[41] Accordingly, AI Canada will submit that the need for enhanced safeguards, care, and protection of child soldiers also applies in the present case.

19. If granted leave to intervene, AI Canada will submit that ss 18 and 20 of the *ITOA* must be interpreted in a way that extends the maximum possible safeguards, care, and protection. These provisions must be interpreted in full respect of the international human rights principles of the best interests of the child and the recognition of the diminished moral blameworthiness of children who come into conflict with the law, particularly in situations of armed conflict. This approach is inherent to the *ITOA*, which requires the Minister to consider the best interests of the child when considering whether to transfer a young person.[42] It is also consistent with this Court's jurisprudence, which has found the best interests of the child to be an established legal

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[34] *Ibid*, preamble.
[35] *Beijing Rules*, *supra* note 20, r 17.1(d).
[36] *Optional Protocol*, *supra* note 15, preamble.
[37] *Paris Principles*, *supra* note 23, principle 8.8.
[38] *Optional Protocol*, *supra* note 15, art 4(1)-(2).
[39] *Ibid*, preamble.
[40] *Paris Principles*, *supra* note 23, principle 3.6.
[41] *Khadr v Edmonton Institution*, 2014 ABCA 225 at para 7 [*Khadr*].
[42] *Supra,* note 1: Section 10(3) provides that "In determining whether to consent to the transfer of a Canadian offender who is a young person within the meaning of the Youth Criminal Justice Act, the Minister and the relevant provincial authority *shall* consider the best interests of the young person" [emphasis added].

principle that "carries great power"[43], and that the presumption of diminished moral blameworthiness for young offenders is a principle of fundamental justice.[44]

c. Sections 18 and 20 of the *ITOA* must be interpreted in a way that best achieves the overarching goals of rehabilitation and societal reintegration of juvenile offenders or former child soldiers.

20. Sections 18 and 20 of the *ITOA* must be interpreted consistently with the over-arching objectives of juvenile justice set out in international human rights instruments: rehabilitation and "promoting the child's reintegration and the child's assuming a constructive role in society."[45] Consistent with these rehabilitative and protective goals, Article 37(b) of the *CRC* provides that the "imprisonment of a child shall […] be used only as a measure of last resort and for the shortest appropriate period of time."[46] In keeping with this principle, when custodial sentences are imposed under the *YCJA*, which sets out a hierarchy of places of detention for young persons, from youth custody facilities to provincial correctional facilities for adults to federal penitentiaries,[47] the least restrictive environment possible must be favoured.

21. Protective measures to favour rehabilitation are especially important when applied to former child soldiers. The *CRC* requires that

> "States Parties […] take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of […] armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."[48]

The *Paris Principles* specify that "[t]he release, protection and reintegration of children unlawfully recruited or used must be sought at all times, without condition".[49]

22. The bilateral and multilateral treaties that are implemented through the *ITOA* are *all* founded on the core objective of facilitating transfers of offenders to favour rehabilitation and successful reintegration into society.[50] Rehabilitation and reintegration are the primary objectives

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[43] *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4 at paras 9, 12.
[44] *DB, supra* note 24 at para 60.
[45] *CRC, supra* note 13, art 40(1).
[46] *Ibid*, art 37(b). The same principle lies at the core of the *YCJA*, see *supra* note 25 ss 38-39.
[47] *Ibid* ss 85, 89, 92 as regards youth sentences, with decisions to transfer to more restrictive environments taken in the child's best interests (e.g., s 92(2)).
[48] *CRC*, *supra* note 13, art 39.
[49] *Paris Principles, supra* note 23, principle 3.11. See also principle 7.6.4: "All appropriate measures to promote physical and psychological recovery and social reintegration must be taken."
[50] *Canada-USA Treaty*, *supra* note 16, preamble. See also, in International Transfer of Offenders, *supra* note 17, the preambles of Canada's prisoner transfer treaties with Argentina, Bolivia, Brazil, Cuba, The Dominican Republic, Egypt, France, Mexico, Mongolia, Morocco, Peru, Thailand, Venezuela. See also *Convention on the Transfer of Sentenced Persons*, 21 March 1983,

of these treaties and the *ITOA* consequently pursues the same fundamental goals.[51] These core objectives are inherent to the humanitarian basis that underlies all of the bilateral and multilateral treaties on the transfer of offenders that are implemented through the *ITOA*. Prisoner transfer agreements of this nature are "established for humanitarian ends rather than government convenience".[52] The Receiving State has the most interest regarding rehabilitation, as it is likely where the offender, being a national, will establish himself or herself upon completion of sentence.[53] Consequently, "the completion of a transferred Offender's sentence shall be carried out according to the laws and procedures of the Receiving State".[54] Where young persons are concerned, treaties such as the *Canada-USA* treaty logically provide that the Receiving State's juvenile justice laws will apply to the administration of their sentence, to maximize the young person's opportunities for rehabilitation and reintegration in that State.[55] An interpretation of ss 18 and 20 of the *ITOA* that is consistent with Canada's international obligations will be one that favours rehabilitation and reintegration.

d. An interpretation of ss 18 and 20 of the *ITOA* that respects the principles of international law regarding young offenders cannot have the effect of aggravating the foreign sentence

23. If granted leave to intervene, AI Canada will submit that ss 18 and 20 of the *ITOA* should be interpreted in accordance with the overarching goals of rehabilitation, social reintegration, and special protection for children set out in Canada's international law obligations and commitments. In the present appeal, a correct interpretation would lead to the least restrictive place of detention, namely a provincial correctional facility.

24. As a corollary to the focus on rehabilitation, reintegration, and protection set out in international law, as well as the *ITOA*,[56] Receiving States are prohibited from aggravating the

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Strasbourg, 21.III.1983, preamble; *Inter-American Convention on Serving Criminal Sentences Abroad*, preamble, online: < http://www.oas.org/juridico/english/treaties/a-57.html> [*Inter-American Convention*].

[51] *ITOA*, *supra* note 1, s 3.

[52] Michael Plachta, "Human Rights Aspects of the Prisoner Transfer in a Comparative Perspective" (1992) 53 Louisiana L Rev 1043 at 1052 [Plachta].

[53] *Ibid* at 1043.

[54] *Canada-USA Treaty, supra* note 16, art IV(1), aff'd in *Divito*, *supra* note 11 at para 33 and incorporated by section 13 of the *ITOA*, *supra* note 1.

[55] For instance, the *Canada-USA Treaty*, *supra* note 16, at art IV(2), provides: "The Receiving State may treat under its laws relating to youthful offenders any Offender so categorized under its laws regardless of his status under the laws of the Sending State". Canada's treaties with Brazil, Argentina, Barbados, Cuba, the Dominican Republic, Egypt, Mexico, Mongolia, and Thailand also provide for agreement between States to facilitate such transfers in accordance with principles underlying youth justice: See International Transfer of Offenders, *supra,* note 17. See also *Inter-American Convention*, *supra* note 50, art IX.

[56] *ITOA*, *supra* note 1, s 5(1).

foreign sentence[57], and are allowed to adapt the sentence in certain circumstances.[58] As specified by the UN Office on Drugs and Crime, Receiving States like Canada "must not aggravate, by its nature or duration, the sanction imposed in the sentencing State".[59] This principle is repeated throughout the bilateral and multilateral prisoner transfer treaties Canada has entered into.[60]

25. The *ITOA* is ambiguous in addressing foreign sentences that do not clearly assign a specific duration for each offence where multiple offences are concerned. As held by this Court, it is "the overriding principle governing the interpretation of penal provisions […] that [such] ambiguity should be resolved in a manner most favourable to accused persons."[61] AI Canada will submit that Canada's international human rights obligations must be considered when resolving such ambiguities in the manner most favourable to the accused.

26. In this appeal, the Canadian authorities chose, under s 18 of the *ITOA*, to deem Mr. Khadr's eight-year unitary sentence an adult sentence by enforcing it as five concurrent eight-year sentences. This choice was incompatible with Canada's obligation to refrain from aggravating the sentence, to provide special protections, to treat Mr. Khadr in accordance with the best interests of the child, and to maximize his opportunities for rehabilitation and reintegration.

27. The characterization of Mr. Khadr's sentence has direct and practical consequences on the nature of the sentence by determining the place of detention under s 20. This consequence is important; as acknowledged by the Court of Appeal, the difference between being placed in a provincial correctional facility and a federal penitentiary constitutes "a sufficiently material difference so as to affect [Khadr's] residual liberty."[62] In light of these direct and practical consequences, an interpretation of ss 18 and 20 that is compatible with Canada's international human rights obligations would recognize Mr. Khadr's sentence as a youth sentence and provide for the least restrictive place of detention available.

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[57] *Canada-USA Treaty*, *supra* note 16, preamble, art IV(3). The prohibition against aggravation is also included in Canada's International Prisoner Transfer treaties with Argentina, Barbados, Bolivia, Brazil, Cuba, the Dominican Republic, Egypt, France, Mexico, Mongolia, Morocco, Peru, Thailand, and Venezuela: see International Transfer of Offenders, *supra* note 17. The prohibition is also specified in the *Commonwealth Scheme for the Transfer of Offenders* (1990), art 12, online: < http://travel.gc.ca/assistance/emergency-info/consular/framework/commonwealth>; and the *Inter-American Convention*, *supra* note 50, preamble, arts V, VII.

[58] *ITOA*, *supra* note 1, s 14.

[59] United Nations Office on Drugs and Crime, *Handbook on the International Transfer of Sentenced Persons* (New York: United Nations, 2012) at 7.

[60] See International Transfer of Offenders, *supra* note 17.

[61] *R v McIntosh*, [1995] 1 SCR 686 at para 38.

[62] *Khadr, supra* note 41 at para 51

28. If granted leave to intervene, AI Canada will argue that the Court should adopt the interpretation which fosters the protective aspirations of international human rights standards and principles regarding the treatment of juvenile offenders and former child soldiers. The *ITOA* must be "liberally construed so as to ensure that young persons are dealt with in accordance with the principles"[63] of youth justice in Canadian and international law. As stated by the Committee on the Rights of the Child, "the protection of the best interests of the child means [...] that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders."[64] This principle is re-affirmed in the *Beijing Rules*,[65] *Vienna Guidelines*,[66] and the *Havana Rules*.[67] Selecting an interpretation that aggravates the sentence by deeming a juvenile offender and former child soldier to be serving an adult sentence, and by ordering the sentence to be served within an environment which further limits that juvenile offender's residual liberty, fosters retribution rather than protection, and runs contrary the very humanitarian object and protective purpose of Canada's prisoner transfer treaties, the *CRC*, the *YCJA*, and the *ITOA* which incorporates all of these instruments.

PART IV – SUBMISSIONS ON COSTS

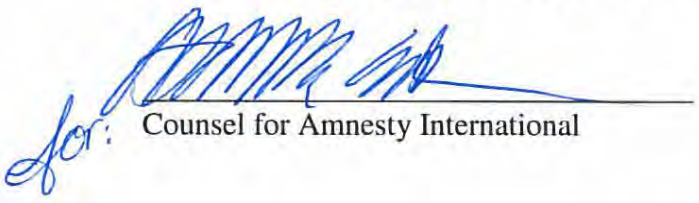
29. AI Canada does not seek costs and asks that no costs be ordered against it.

PART V – ORDER SOUGHT

30. AI Canada respectfully requests an order:

a. Granting AI Canada leave to intervene in this appeal;
b. Granting AI Canada leave to file a factum in accordance with Rules 37 and 42 of no more than 10 pages in length;
c. Granting AI Canada leave to make oral arguments at the hearing of the appeal; and
d. Such further and other order as this Court may deem appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 26th DAY OF MARCH 2015.



Counsel for Amnesty International

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[63] *YCJA*, *supra* note 25, s 3(2).
[64] United Nations Committee on the Rights of the Child, *General Comment No. 10: Children's rights in juvenile justice*, 25 April 2007, UN Doc CRC/C/GC/10 (25 April 2007) at para 10.
[65] *Beijing Rules, supra* note 20, rr 17.1(b), 19.1, 28.1.
[66] *Vienna Guidelines*, *supra* note 22, guideline 18.
[67] *Havana Rules, supra* note 21, rr 1-2.

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19.	United Nations Office on Drugs and Crime, *Handbook on the International Transfer of Sentenced Persons* (New York: United Nations, 2012).	24
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20.	Correctional Services Canada, "International Transfer of Offenders" online: <http://www.csc-scc.gc.ca/international-transfers/index-eng.shtml>	14, 22, 24,
21.	MacKay, Robin, *Bill C-15: International Transfer of Offenders Act* (Legislative Summary, Law and Government Division, 16 February 2004) online: < http://www.parl.gc.ca/Content/LOP/LegislativeSummaries/37/3/c15-e.pdf>.	16
22.	Plachta, Michael, "Human Rights Aspects of the Prisoner Transfer in a Comparative Perspective" (1992) 53 Louisiana L Rev 1043.	22

PART VII – STATUTORY PROVISIONS

	STATUTES	**PARA.**
1.	*International Transfer of Offenders Act*, SC 2004, c 21.	1, 16, 19, 22, 24
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4.	*Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, Can TS 1992 No 3.	14, 17, 20, 21,
5.	*Convention on the Transfer of Sentenced Persons*, 21 March 1983, Strasbourg, 21.III.1983.	22
6.	*Inter-American Convention on Serving Criminal Sentences Abroad* online: < http://www.oas.org/juridico/english/treaties/a-57.html>.	22, 24
7.	*Optional Protocol on the involvement of children in armed conflict*, 25 May 2000, 2173 UNTS 222 (adopted by resolution by the United Nations General Assembly, 54th Sess, UN Doc A/RES/54/263).	14, 18
8.	*Treaty Between Canada and the United States of America on the Execution of Penal Sentences*, Can TS 1978 No 12.	14, 22, 24
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9.	*Commonwealth Scheme for the Transfer of Offenders* (1990) online: <http://travel.gc.ca/assistance/emergency-info/consular/framework/commonwealth>.	24
10.	*Guidelines for Action on Children in the Criminal Justice System*, United Nations Economic and Social Council, UN Doc 1997/30 (21 July 1997).	15, 28
11.	*Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, Adopted at the international conference "Free children from war" in Paris (February 2007) online: <http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>.	15, 18, 21
12.	*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*, United Nations General Assembly, 68th Plenary Mtg, UN Doc A/RES/45/113 (14 December 1990).	15, 28
13.	*United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, United Nations General Assembly, UN Doc A/RES/40/33 (29 November 1985).	15, 17, 28

International Transfer of Offenders Act, SC 2004, c 21.

3. The purpose of this Act is to enhance public safety and to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.

3. La présente loi a pour objet de renforcer la sécurité publique et de faciliter l'administration de la justice et la réadaptation et la réinsertion sociale des délinquants en permettant à ceux-ci de purger leur peine dans le pays dont ils sont citoyens ou nationaux.

4. (3) A transfer is available to a Canadian offender who, at the time the offence was committed, was a child within the meaning of the *Youth Criminal Justice Act* even if their conduct would not have constituted a criminal offence if it had occurred in Canada at that time. That offender may not be detained in Canada.

4. (3) Le délinquant canadien qui, à la date de la commission de l'infraction, était un enfant au sens de la *Loi sur le système de justice pénale pour les adolescents* peut être transféré même si l'acte reproché n'aurait pas constitué une infraction criminelle s'il avait été commis au Canada à cette date. Ce délinquant ne peut être détenu au Canada.

5. (1) A transfer may not have the effect of increasing a sentence imposed by a foreign entity or of invalidating a guilty verdict rendered, or a sentence imposed, by a foreign entity. The verdict and the sentence, if any, are not subject to any appeal or other form of review in Canada

5. (1) Le transfèrement ne peut avoir pour effet de porter atteinte à la validité de la déclaration de culpabilité ou de la peine prononcées par l'entité étrangère, d'aggraver la peine ou de permettre que celle-ci ou la déclaration de culpabilité fassent l'objet d'un appel ou de toute autre forme de révision au Canada.

8. (5) In respect of the following persons, consent is given by whoever is authorized to consent in accordance with the laws of the province where the person is detained, is released on conditions or is to be transferred:

8. (5) À l'égard de telle des personnes ci-après, le consentement est donné par quiconque y est autorisé en vertu du droit de la province où la personne est détenue, est libérée sous condition ou doit être transférée :

(a) a child or young person within the meaning of the *Youth Criminal Justice Act*;

a) l'enfant ou l'adolescent au sens de la *Loi sur le système de justice pénale pour les adolescents*;

(b) a person who is not able to consent and in respect of whom a verdict of not criminally responsible on account of mental disorder or of unfit to stand trial has been rendered; and

b) la personne déclarée non responsable criminellement pour cause de troubles mentaux ou inapte à subir son procès, qui est incapable de donner son consentement;

(c) an offender who is not able to consent.

c) le délinquant incapable de donner son consentement

9. (1) If a foreign offender is — or a Canadian offender would, after their transfer, be — under the authority of a province or if a Canadian offender is a child within the meaning of the *Youth Criminal Justice Act*, the consent of the Minister and the relevant provincial authority is required.

9. (1) Le consentement du ministre et celui de l'autorité provinciale compétente sont nécessaires dans le cas du délinquant étranger qui relève de cette autorité ou du délinquant canadien qui soit en relèverait après son transfèrement, soit est un enfant au sens de la *Loi sur le sysème de justice pénale pour les adolescents*.

10. (3) In determining whether to consent to the transfer of a Canadian offender who is a young person within the meaning of the *Youth Criminal Justice Act*, the Minister and the relevant provincial authority shall consider the best interests of the young person.

10. (3) Dans le cas du délinquant canadien qui est un adolescent au sens de la *Loi sur le système de justice pénale pour les adolescents*, le ministre et l'autorité provinciale compétente tiennent compte de son intérêt pour décider s'ils consentent au transfèrement.

(4) In determining whether to consent to the transfer of a Canadian offender who is a child within the meaning of the *Youth Criminal Justice Act*, the primary consideration of the Minister and the relevant provincial authority is to be the best interests of the child.

(4) Dans le cas du délinquant canadien qui est un enfant au sens de la Loi sur le système de justice pénale pour les adolescents, son intérêt est la considération primordiale sur laquelle le ministre et l'autorité provinciale compétente se fondent pour décider s'ils consentent au transfèrement.

13. The enforcement of a Canadian offender's sentence is to be continued in accordance with the laws of Canada as if the offender had been convicted and their sentence imposed by a court in Canada.

13. La peine imposée au délinquant canadien transféré continue de s'appliquer en conformité avec le droit canadien, comme si la condamnation et la peine avaient été prononcées au Canada.

14. Subject to subsection 17(1) and section 18, if, at the time the Minister receives a request for the transfer of a Canadian offender, the sentence imposed by the foreign entity is longer than the maximum sentence provided for in Canadian law for the equivalent offence, the Canadian offender is to serve only the shorter sentence.

14. Sous réserve du paragraphe 17(1) et de l'article 18, si, au moment de la réception par le ministre de la demande de transfèrement d'un délinquant canadien, la peine imposée à celui-ci est plus longue que la peine maximale dont il aurait été passible s'il avait été déclaré coupable de l'infraction correspondante au Canada, le délinquant ne purge que cette dernière peine.

16. A foreign sentence that consists of a period of supervision, other than by reason of conditional release — or a period of supervision that is, other than by reason of a

16. Toute période de surveillance — non liée à une mise en liberté sous condition — qui a été imposée au délinquant canadien, à titre de peine unique ou en tant qu'élément d'une

conditional release, an element of a foreign sentence of imprisonment of less than two years — is deemed to be a probation order under section 731 of the *Criminal Code*, to a maximum of three years, or under paragraph 42(2)(k) of the *Youth Criminal Justice Act*, to a maximum of two years.

peine d'emprisonnement inférieure à deux ans, est assimilée à une période de probation prévue par une ordonnance de probation rendue en vertu de l'article 731 du Code criminel ou de l'alinéa 42(2)k) de la Loi sur le système de justice pé- nale pour les adolescents; la durée de la probation ne peut être supérieure à trois ans dans le premier cas et à deux ans dans le second.

17. (1) Subject to subsection (2), and if the following conditions are met, the maximum sentence to be enforced in Canada is the maximum youth sentence that could have been imposed under the *Youth Criminal Justice Act*:

(a) the Canadian offender was, at the time the offence was committed, 12 or 13 years old; and

(b) their sentence is longer than the maximum youth sentence that could have been imposed under that Act for an equivalent offence.

17. (1) Sous réserve du paragraphe (2), si le délinquant canadien transféré était âgé de douze ou treize ans à la date de la commission de l'infraction et si la peine qui lui a été imposée est plus longue que la peine spécifique maximale prévue par la *Loi sur le système de justice pénale pour les adolescents* pour une infraction correspondante, la peine maximale qui est réputée lui avoir été imposée est la peine spécifique maximale qui aurait pu lui être imposée sous le régime de cette loi, au Canada, pour l'infraction correspondante.

(2) A Canadian offender who was 12 or 13 years old at the time the offence was committed and whose conduct, if it had occurred in Canada, would have constituted first or second degree murder within the meaning of section 231 of the *Criminal Code* is required to serve

(a) the sentence imposed by the foreign entity — if less than ten years, in the case of first degree murder, or less than seven years, in the case of second degree murder — consisting, in the same proportion as in paragraph 42(2)(q) of the *Youth Criminal Justice Act*, of a committal to custody and a placement under conditional supervision to be served in the community; or

(b) the maximum sentence that could be imposed under paragraph 42(2)(q) of that Act

(2) Le délinquant canadien transféré âgé de douze ou treize ans à la date de la commission de l'infraction qui a donné lieu à sa condamnation et qui, commise au Canada, aurait été qualifiée de meurtre au premier ou au deuxième degré au sens de l'article 231 du *Code criminel* est tenu de purger :

a) soit la peine imposée par l'entité étrangère, si elle est inférieure à dix ans, dans le cas du meurtre au premier degré, ou à sept ans, dans le cas du meurtre au deuxième degré, le rapport entre la portion à purger sous garde et celle à purger sous condition au sein de la collectivité devant être identique à celui que prévoit l'alinéa 42(2)q) de la *Loi sur le système de justice pénale pour les adolescents*;

if the sentence imposed by the foreign entity was ten years or more in the case of first degree murder or seven years or more in the case of second degree murder.

18. A Canadian offender is deemed to be serving an adult sentence within the meaning of the *Youth Criminal Justice Act* if

(a) the Canadian offender was, at the time the offence was committed, from 14 to 17 years old; and

(b) their sentence is longer than the maximum youth sentence that could have been imposed under that Act for an equivalent offence.

19. (1) A Canadian offender who was from 14 to 17 years old at the time the offence was committed, and who was sentenced to imprisonment for life for conduct that, if it had occurred in Canada, would have constituted first or second degree murder within the meaning of section 231 of the *Criminal Code*, is deemed to be serving an adult sentence within the meaning of the *Youth Criminal Justice Act*. They are eligible for full parole on the day on which they have served the shorter of

(a) the period of ineligibility imposed by the foreign entity, and

(b) either

(i) five years, if they were 14 or 15 years old at the time the offence was committed, or

(ii) ten years, in the case of first degree murder, or seven years, in the case of second degree murder, if they were 16 or

b) soit la peine maximale prévue par l'alinéa 42(2)q) de cette loi, si la peine imposée par l'entité étrangère est égale ou supérieure à dix ans, dans le cas du meurtre au premier degré, ou à sept ans, dans le cas du meurtre au deuxième degré.

18. Si le délinquant canadien transféré avait entre quatorze et dix-sept ans à la date de la commission de l'infraction et si la peine qui lui a été imposée est plus longue que la peine spécifique maximale prévue par la *Loi sur le système de justice pénale pour les adolescents* pour l'infraction correspondante, il est réputé purger une peine applicable aux adultes au sens de cette loi.

19. (1) Le délinquant canadien transféré ayant entre quatorze et dix-sept ans à la date de la commission de l'infraction qui a donné lieu à sa condamnation à l'emprisonnement à perpétuité et qui, commise au Canada, aurait été qualifiée de meurtre au premier ou au deuxième degré au sens de l'article 231 du *Code criminal* est réputé purger une peine applicable aux adultes au sens de *la Loi sur le système de justice pénale pour les adolescents* et est admissible à la libération conditionnelle totale après l'accomplissement de la plus courte des pé- riodes d'emprisonnement suivantes :

a) la période préalable à son admissibilité qui est applicable à la peine imposée par l'entité étrangère;

b) l'une des périodes suivantes :

(i) cinq ans, s'il était âgé de quatorze ou quinze ans à la date de la commission de l'infraction,

(ii) dix ans, dans le cas du meurtre au premier degré, ou sept ans, dans le cas du

17 years old at the time the offence was committed.

meurtre au deuxième degré, s'il était âgé de seize ou dix-sept ans à la date de la commission de l'infraction

(2) A Canadian offender who was from 14 to 17 years old at the time the offence was committed and who received a sentence for a determinate period of more than ten years for conduct that, if it had occurred in Canada, would have constituted first degree murder within the meaning of section 231 of the *Criminal Code* — or of more than seven years for conduct that, if it had occurred in Canada, would have constituted second degree murder within the meaning of that section — is deemed to have received an adult sentence within the meaning of the *Youth Criminal Justice Act*.

(2) Est réputé purger une peine applicable aux adultes au sens de la *Loi sur le système de justice pénale pour les adolescents* le délinquant canadien transféré qui avait entre quatorze et dix-sept ans à la date de la commission de l'infraction et qui a été condamné à une peine d'emprisonnement d'une durée déterminée supérieure soit à dix ans, pour une infraction qui, commise au Canada, aurait été qualifiée de meurtre au premier degré au sens de l'article 231 du *Code criminel*, soit à sept ans, pour une infraction qui, commise au Canada, aurait été qualifiée de meurtre au deuxième degré au sens de cet article.

(3) A Canadian offender who was from 14 to 17 years old at the time the offence was committed and who received a sentence for a determinate period of ten years or less for conduct that, if it had occurred in Canada, would have constituted first degree murder within the meaning of section 231 of the *Criminal Code* — or of seven years or less for conduct that, if it had occurred in Canada, would have constituted second degree murder within the meaning of that section — is deemed to have received a youth sentence within the meaning of the *Youth Criminal Justice Act*.

(3) Est réputé avoir fait l'objet d'une peine spécifique au sens de la *Loi sur le système de justice pénale pour les adolescents* le délinquant canadien transféré qui avait entre quatorze et dix-sept ans à la date de la commission de l'infraction et qui a été condamné à une peine d'emprisonnement d'une durée déterminée égale ou inférieure soit à dix ans, pour une infraction qui, commise au Canada, aurait été qualifiée de meurtre au premier degré au sens de l'article 231 du *Code criminel*, soit à sept ans, pour une infraction qui, commise au Canada, aurait été qualifiée de meurtre au deuxième degré au sens de cet article.

20. A Canadian offender who was from 12 to 17 years old at the time the offence was committed is to be detained

20. Si le délinquant canadien transféré avait entre douze et dix-sept ans à la date de la commission de l'infraction, le lieu de sa détention est déterminé de la façon suivante :

(a) if the sentence imposed in the foreign entity could, if the offence had been committed in Canada, have been a youth sentence within the meaning of the *Youth Criminal Justice Act*,

a) dans le cas où la peine qui lui a été impose aurait pu, si l'infraction avait été comise au Canada, être une peine spécifique au sens de la *Loi sur le système de justice pénale pour les adolescents*, il est placé:

(i) in the case of an offender who was less than 20 years old at the time of their transfer, in a youth custody facility within the meaning of that Act, and

(i) dans un lieu de garde au sens de cette loi s'il est âgé de moins de vingt ans au moment de son transfèrement,

(ii) in the case of an offender who was at least 20 years old at the time of their transfer, in a provincial correctional facility for adults; and

(ii) dans un établissement correctionnel provincial pour adultes s'il est alors âgé de vingt ans ou plus;

(b) if the sentence imposed in the foreign entity could, if the offence had been committed in Canada, have been an adult sentence within the meaning of that Act,

b) dans le cas où la peine qui lui a été impose aurait pu, si l'infraction avait été comise au Canada, être une peine applicable aux adultes au sens de cette loi, il est placé:

(i) in the case of an offender who was less than 18 years old at the time of their transfer, in a youth custody facility within the meaning of that Act,

(i) dans un lieu de garde au sens de cette loi s'il est âgé de moins de dix-huit ans au moment de son transfèrement,

(ii) in the case of an offender who was at least 18 years old at the time of their transfer in a provincial correctional facility for adults if their sentence is less than two years, and

(ii) dans un établissement correctionnel provincial pour adultes s'il est alors âgé de dix-huit ans ou plus et si sa peine d'emprisonnement est de moins de deux ans,

(iii) in the case of an offender who was at least 18 years old at the time of their transfer, in a penitentiary if their sentence is at least two years.

(iii) dans un pénitencier s'il est alors âgé de dix-huit ans ou plus et si sa peine d'emprisonnement est d'au moins deux ans.

29. (1) Subject to this Act, a Canadian offender who is transferred to Canada is subject to the *Corrections and Conditional Release Act*, the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* as if they had been convicted and their sentence imposed by a court in Canada.

29. (1) Sous réserve des autres dispositions de la présente loi, la *Loi sur le système correctionnel et la mise en liberté sous condition*, la *Loi sur les prisons et les maisons de correction* et la *Loi sur le système de justice pénale pour les adolescents* s'appliquent au délinquant canadien transféré comme si la condamnation et la peine avaient été prononcées au Canada.

34. (1) Subject to the other provisions of this Act — and, in the case of a young person, section 141 of the *Youth Criminal Justice Act* — Part XX.1 of the *Criminal Code* applies to

34. (1) Sous réserve des autres dispositions de la présente loi et, dans le cas d'un adolescent, de l'article 141 de la *Loi sur le système de justice pénale pour les adolescents*, la partie

a person who is transferred to Canada under an administrative arrangement that was entered into under section 32. The verdict of the foreign court is deemed to be a verdict of not criminally responsible on account of mental disorder and to have been made on the day of their transfer.

XX.1 du *Code criminel* s'applique à la personne qui, sur le fondement d'une entente administrative conclue en vertu de l'article 32, est transférée au Canada, la décision de la juridiction étrangère étant assimilée à un verdict de non-responsabilité criminelle pour cause de troubles mentaux rendu le jour du transfèrement.

***Rules of the Supreme Court of Canada*, SOR/2002-156**

55. Any person interested in an application for leave to appeal, an appeal or a reference may make a motion for intervention to a judge.

55. Toute personne ayant un intérêt dans une demande d'autorisation d'appel, un appel ou un renvoi peut, par requête à un juge, demander l'autorisation d'intervenir.

57. (1) The affidavit in support of a motion for intervention shall identify the person interested in the proceeding and describe that person's interest in the proceeding , including any prejudice that the person interested in the proceeding would suffer if the intervention were denied.

57. (1) L'affidavit à l'appui de la requête en intervention doit préciser l'identité de la personne ayant un intérêt dans la procédure et cet intérêt, y compris tout préjudice que subirait cette personne en cas de refus de l'autorisation d'intervenir.

(2) A motion for intervention shall

(2) La requête expose ce qui suit:

(a) identify the position the person interested in the proceeding intends to take with respect to the questions on which they propose to intervene; and

a) la position que cette personne compte prendre relativement aux questions visées par son intervention;

(b) set out the submissions to be advanced by the person interested in the proceeding with respect to the questions on which they propose to intervene, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

b) ses arguments relativement aux questions visées par son intervention, leur pertinence par rapport à la procédure et les raisons qu'elle a de croire qu'ils seront utiles à la Cour et différents de ceux des autres parties.

Youth Criminal Justice Act, SC 2002, c 1.

WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, and have special guarantees of their rights and freedoms;

Attendu: que le Canada est partie à la Convention des Nations Unies relative aux droits de l'enfant et que les adolescents ont des droits et libertés, en particulier ceux qui sont énoncés dans la C*harte canadienne des droits et libertés* et la *Déclaration canadienne des droits*, et qu'ils bénéficient en conséquence de mesures spéciales de protection à cet égard;

3. (2) (2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

3. (2) La présente loi doit faire l'objet d'une interprétation large garantissant aux adolescents un traitement conforme aux principes énoncés au paragraphe (1).

38. (1) The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

38. (1) L'assujettissement de l'adolescent aux peines visées à l'article 42 (peines spécifiques) a pour objectif de faire répondre celui-ci de l'infraction qu'il a commise par l'imposition de sanctions justes assorties de perspectives positives favorisant sa réadaptation et sa réinsertion sociale, en vue de favoriser la protection durable du public.

(2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:

2) Le tribunal pour adolescents détermine la peine spécifique à imposer conformément aux principes énoncés à l'article 3 et aux principes suivants :

(a) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;

a) la peine ne doit en aucun cas aboutir à une peine plus grave que celle qui serait indiquée dans le cas d'un adulte coupable de la même infraction commise dans des circonstances semblables;

(b) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;

b) la peine doit être semblable à celle qui serait imposée dans la région à d'autres adolescents se trouvant dans une situation semblable pour la même infraction commise dans des circonstances semblables;

(c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;

c) la peine doit être proportionnelle à la gravité de l'infraction et au degré de responsabilité de l'adolescent à l'égard de l'infraction;

(d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons;

d) toutes les sanctions applicables, à l'exception du placement sous garde, qui sont justifiées dans les circonstances doivent faire l'objet d'un examen, plus particulièrement en ce qui concerne les adolescents autochtones;

(e) subject to paragraph (c), the sentence must

e) sous réserve de l'alinéa c), la peine doit :

(i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),

(i) être la moins contraignante possible pour atteindre l'objectif mentionné au paragraphe (1),

(ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and

(ii) lui offrir les meilleures chances de ré-adaptation et de réinsertion sociale,

(iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community; and

(iii) susciter le sens et la conscience de ses responsabilités, notamment par la reconnaissance des dommages causés à la victime et à la collectivité;

(f) subject to paragraph (c), the sentence may have the following objectives:

f) sous réserve de l'alinéa c), la peine peut viser :

(i) to denounce unlawful conduct, and

(i) à dénoncer un comportement illicite,

(ii) to deter the young person from committing offences.

(ii) à dissuader l'adolescent de récidiver.

(3) In determining a youth sentence, the youth justice court shall take into account

(3) Le tribunal détermine la peine spécifique à imposer en tenant également compte :

(a) the degree of participation by the young person in the commission of the offence;

a) du degré de participation de l'adolescent à l'infraction;

(b) the harm done to victims and whether it was intentional or reasonably foreseeable;

b) des dommages causés à la victime et du fait qu'ils ont été causés intentionnellement ou étaient raisonnablement prévisibles;

(c) any reparation made by the young person to the victim or the community;

c) de la réparation par l'adolescent des dommages causés à la victime ou à la collectivité;

(d) the time spent in detention by the young person as a result of the offence;

d) du temps passé en détention par suite de l'infraction;

(e) the previous findings of guilt of the young person; and

e) des déclarations de culpabilité antérieures de l'adolescent;

(f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.

f) des autres circonstances aggravantes ou atténuantes liées à la perpétration de l'infraction ou à la situation de l'adolescent et pertinentes au titre des principes et objectif énoncés au présent article.

39. (1) A youth justice court shall not commit a young person to custody under section 42 (youth sentences) unless

39. (1) Le tribunal pour adolescents n'impose une peine comportant le placement sous garde en application de l'article 42 (peines spé- cifiques) que si, selon le cas :

(a) the young person has committed a violent offence;

a) l'adolescent a commis une infraction avec violence;

(b) the young person has failed to comply with non-custodial sentences;

b) il n'a pas respecté les peines ne comportant pas de placement sous garde qui lui ont déjà été imposées;

(c) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of either extrajudicial sanctions or of findings of guilt or of both under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985; or

c) il a commis un acte criminel pour lequel un adulte est passible d'une peine d'emprisonnement de plus de deux ans, après avoir fait l'objet de plusieurs sanctions extrajudiciaires ou déclarations de culpabilité — ou toute combinaison de celles-ci — dans le cadre de la présente loi ou de la *Loi sur les jeunes contrevenants*, chapitre Y-1 des Lois révisées du Canada (1985);

(d) in exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38.

d) il s'agit d'un cas exceptionnel où l'adolescent a commis un acte criminel et où les circonstances aggravantes de la perpétration de celui-ci sont telles que l'imposition d'une peine ne comportant pas de placement sous garde enfreindrait les principes et objectif énoncés à l'article 38.

(2) If any of paragraphs (1)(a) to (c) apply, a youth justice court shall not impose a custodial sentence under section 42 (youth sentences) unless the court has considered all alternatives to custody raised at the sentencing hearing that are reasonable in the circumstances, and determined that there is not a reasonable alternative, or combination of alternatives, that is in accordance with the purpose and principles set out in section 38.

(2) En cas d'application des alinéas (1)a), b) ou c), le tribunal pour adolescents n'impose le placement sous garde qu'en dernier recours après avoir examiné toutes les mesures de rechange proposées au cours de l'audience pour la détermination de la peine, raisonnables dans les circonstances, et être arrivé à la conclusion qu'aucune d'elles, même combinée à d'autres, ne serait conforme aux principes et objectif énoncés à l'article 38.

(3) In determining whether there is a reasonable alternative to custody, a youth justice court shall consider submissions relating to

(3) Dans le cadre de son examen, il tient compte des observations faites sur :

(a) the alternatives to custody that are available;

a) les mesures de rechange à sa disposition;

(b) the likelihood that the young person will comply with a non-custodial sentence, taking into account his or her compliance with previous non-custodial sentences; and

b) le fait que l'adolescent se conformera vraisemblablement ou non à une peine ne comportant pas de placement sous garde, compte tenu du fait qu'il s'y soit ou non conformé par le passé;

(c) the alternatives to custody that have been used in respect of young persons for similar offences committed in similar circumstances.

c) les mesures de rechange imposées à des adolescents pour des infractions semblables commises dans des circonstances semblables.

(4) The previous imposition of a particular non-custodial sentence on a young person does not preclude a youth justice court from imposing the same or any other non-custodial sentence for another offence.

(4) L'imposition à un adolescent d'une peine ne comportant pas de placement sous garde n'a pas pour effet d'empêcher que la même peine ou une autre peine ne comportant pas de placement sous garde lui soit imposée pour une autre infraction.

(5) A youth justice court shall not use custody as a substitute for appropriate child protection, mental health or other social measures.

(5) Le placement sous garde ne doit pas se substituer à des services de protection de la jeunesse ou de santé mentale, ou à d'autres mesures sociales plus appropriés.

(6) Before imposing a custodial sentence under section 42 (youth sentences), a youth justice court shall consider a pre-sentence

(6) Avant d'imposer le placement sous garde en application de l'article 42 (peines spécifiques), le tribunal prend connaissance du rapport prédécisionnel et des propositions

report and any sentencing proposal made by the young person or his or her counsel.

(7) A youth justice court may, with the consent of the prosecutor and the young person or his or her counsel, dispense with a pre-sentence report if the court is satisfied that the report is not necessary.

(8) In determining the length of a youth sentence that includes a custodial portion, a youth justice court shall be guided by the purpose and principles set out in section 38, and shall not take into consideration the fact that the supervision portion of the sentence may not be served in custody and that the sentence may be reviewed by the court under section 94.

(9) If a youth justice court imposes a youth sentence that includes a custodial portion, the court shall state the reasons why it has determined that a non-custodial sentence is not adequate to achieve the purpose set out in subsection 38(1), including, if applicable, the reasons why the case is an exceptional case under paragraph (1)(d).

85. (1) In the youth custody and supervision system in each province there must be at least two levels of custody for young persons distinguished by the degree of restraint of the young persons in them.

(2) Every youth custody facility in a province that contains one or more levels of custody shall be designated by

(a) in the case of a youth custody facility with only one level of custody, being the level of custody with the least degree of restraint of the young persons in it, the lieutenant governor in council or his or her delegate; and

relatives à la peine à imposer faites par le poursuivant et l'adolescent ou son avocat.

(7) Il peut, avec le consentement du poursuivant et de l'adolescent ou de son avocat, ne pas demander le rapport prédécisionnel s'il est convaincu de son inutilité.

(8) Il fixe la durée de la peine spécifique comportant une période de garde en tenant compte des principes et objectif énoncés à l'article 38, mais sans tenir compte du fait que la période de surveillance de la peine peut ne pas être purgée sous garde et que la peine peut faire l'objet de l'examen prévu à l'article 94.

(9) Toute peine spécifique comportant une période de garde doit donner les motifs pour lesquels une peine spécifique ne comportant pas de placement sous garde ne suffirait pas pour atteindre l'objectif mentionné au paragraphe 38(1), y compris, le cas échéant, les motifs pour lesquels il s'agit d'un cas exceptionnel visé à l'alinéa (1)d).

85. (1) Dans chaque province le régime de garde et de surveillance applicable aux adolescents offre, pour leur placement, au moins deux niveaux de garde qui se distinguent par le degré de confinement.

(2) Les lieux de garde d'une province — offrant un ou plusieurs niveaux de garde — sont désignés par le lieutenant-gouverneur en conseil ou son délégué dans le cas où ils n'offrent qu'un seul niveau de garde comportant le degré de confinement minimal et par le lieutenant-gouverneur en conseil dans tous les autres cas.

(b) in any other case, the lieutenant governor in council.

(3) The provincial director shall, when a young person is committed to custody under paragraph 42(2)(n), (o), (q) or (r) or an order is made under subsection 98(3), paragraph 103(2) (b), subsection 104(1) or paragraph 109(2)(b), determine the level of custody appropriate for the young person, after having taken into account the factors set out in subsection (5).

(4) The provincial director may determine a different level of custody for the young person when the provincial director is satisfied that the needs of the young person and the interests of society would be better served by doing so, after having taken into account the factors set out in subsection (5).

(5) The factors referred to in subsections (3) and (4) are

(a) that the appropriate level of custody for the young person is the one that is the least restrictive to the young person, having regard to

(i) the seriousness of the offence in respect of which the young person was committed to custody and the circumstances in which that offence was committed,

(ii) the needs and circumstances of the young person, including proximity to family, school, employment and support services,

(iii) the safety of other young persons in custody, and

(iv) the interests of society;

(3) Dans le cas où l'adolescent est placé sous garde en application des alinéas 42(2)n), o), q) ou r) ou sous le régime d'une ordonnance rendue en application du paragraphe 98(3), de l'alinéa 103(2)b), du paragraphe 104(1) ou de l'alinéa 109(2)b), le directeur provincial détermine le niveau de garde indiqué pour le placement de l'adolescent après avoir pris en compte les facteurs prévus au paragraphe (5).

(4) Le directeur provincial peut, après avoir pris en compte les facteurs prévus au paragraphe (5), décider de faire passer l'adolescent d'un niveau de garde à un autre, s'il est convaincu que cette mesure est préférable dans l'intérêt de la société et eu égard aux besoins de l'adolescent.

(5) Pour déterminer le niveau de garde indiqué au titre des paragraphes (3) et (4), le directeur provincial tient compte des facteurs suivants :

a) le niveau de garde imposé est le moins élevé possible compte tenu de la gravité de l'infraction et des circonstances de sa perpétration, des besoins de l'adolescent et de sa situation personnelle — notamment proximité de la famille, d'une école, d'un emploi et de services de soutien — , de la sécurité des autres adolescents sous garde et de l'intérêt de la société;

(b) that the level of custody should allow for the best possible match of programs to the young person's needs and behaviour, having regard to the findings of any assessment in respect of the young person; and

b) le niveau de garde imposé doit permettre la meilleure adéquation possible entre le programme destiné à l'adolescent, d'une part, et les besoins et la conduite de celui-ci, d'autre part, compte tenu des résultats de son évaluation;

(c) the likelihood of escape.

c) les risques d'évasion.

(6) After the provincial director has determined the appropriate level of custody for the young person under subsection (3) or (4), the young person shall be placed in the youth custody facility that contains that level of custody specified by the provincial director.

(6) Une fois le niveau de garde déterminé au titre des paragraphes (3) ou (4), l'adolescent est placé dans le lieu de garde — offrant ce niveau — choisi par le directeur provincial

(7) The provincial director shall cause a notice in writing of a determination under subsection (3) or (4) to be given to the young person and a parent of the young person and set out in that notice the reasons for it.

(7) Le directeur provincial fait donner un avis écrit de la décision prise en application des paragraphes (3) ou (4), motifs à l'appui, à l'adolescent et à ses père ou mère.

89. (1) When a young person is twenty years old or older at the time the youth sentence is imposed on him or her under paragraph 42(2)(n), (o), (q) or (r), the young person shall, despite section 85, be committed to a provincial correctional facility for adults to serve the youth sentence.

89. (1) L'adolescent âgé de vingt ans ou plus au moment où une peine spécifique lui est imposée en vertu des alinéas 42(2)n), o), q) ou r) doit, malgré l'article 85, être détenu dans un établissement correctionnel provincial pour adultes pour y purger sa peine.

(2) If a young person is serving a youth sentence in a provincial correctional facility for adults pursuant to subsection (1), the youth justice court may, on application of the provincial director at any time after the young person begins to serve a portion of the youth sentence in a provincial correctional facility for adults, after giving the young person, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard, authorize the provincial director to direct that the young person serve the remainder of the youth sentence in a penitentiary if the court considers it to be in the best interests of the

(2) Dans le cas où l'adolescent est détenu dans un établissement correctionnel provincial pour adultes au titre du paragraphe (1), le tribunal pour adolescents, sur demande présentée par le directeur provincial à tout moment après que l'adolescent a commencé à purger sa peine spécifique dans cet établissement, peut, après avoir donné l'occasion de se faire entendre à l'adolescent, au directeur provincial et aux représentants des systèmes correctionnels fédéral et provincial, s'il estime que la mesure est préférable pour l'adolescent ou dans l'intérêt public et si, au moment de la demande, le temps à courir sur la peine est de deux ans ou

young person or in the public interest and if, at the time of the application, that remainder is two years or more.

(3) If a young person is serving a youth sentence in a provincial correctional facility for adults or a penitentiary under subsection (1) or (2), the *Prisons and Reformatories Act* and the *Corrections and Conditional Release Act*, and any other statute, regulation or rule applicable in respect of prisoners or offenders within the meaning of those Acts, statutes, regulations and rules, apply in respect of the young person except to the extent that they conflict with Part 6 (publication, records and information) of this Act, which Part continues to apply to the young person.

92. (1) When a young person is committed to custody under paragraph 42(2)(n), (o), (q) or (r), the youth justice court may, on application of the provincial director made at any time after the young person attains the age of eighteen years, after giving the young person, the provincial director and representatives of the provincial correctional system an opportunity to be heard, authorize the provincial director to direct that the young person, subject to subsection (3), serve the remainder of the youth sentence in a provincial correctional facility for adults, if the court considers it to be in the best interests of the young person or in the public interest.

(2) The youth justice court may authorize the provincial director to direct that a young person, subject to subsection (3), serve the remainder of a youth sentence in a penitentiary

(a) if the youth justice court considers it to be in the best interests of the young person or in the public interest;

plus, autoriser le directeur à ordonner que le reste de la peine soit purgé dans un pénitencier.

(3) Les lois — notamment la *Loi sur le système correctionnel et la mise en liberté sous condition* et la *Loi sur les prisons et les maisons de correction* — , règlements et autres règles de droit régissant les prisonniers ou les délinquants au sens de ces lois, règlements ou autres règles de droit s'appliquent à l'adolescent qui purge sa peine dans un établissement correctionnel provincial pour adultes ou un pé- nitentier au titre des paragraphes (1) ou (2), dans la mesure où ils ne sont pas incompatibles avec la partie 6 (dossiers et confidentialité des renseignements) de la présente loi, qui continue de s'appliquer à l'adolescent.

92. (1) Dans le cas où l'adolescent est placé sous garde en application des alinéas 42(2)n), o), q) ou r), le tribunal pour adolescents, sur demande présentée par le directeur provincial à tout moment après que l'adolescent a atteint l'âge de dix-huit ans, peut, après avoir donné l'occasion de se faire entendre à l'adolescent, au directeur provincial et aux représentants du système correctionnel provincial et, s'il estime que cette mesure est préférable pour l'adolescent ou dans l'intérêt public, autoriser le directeur à ordonner, sous réserve du paragraphe (3), que le reste de la peine spécifique imposée à l'adolescent soit purgé dans un établissement correctionnel provincial pour adultes.

(2) Le tribunal pour adolescents, sur demande présentée par le directeur provincial à tout moment après que l'adolescent a commencé à purger une partie de sa peine spécifique dans un établissement correctionnel provincial pour adultes suivant le prononcé de l'ordre visé au paragraphe (1), peut, après avoir accordé à l'adolescent, au directeur provincial et aux représentants des systèmes

(b) if the provincial director applies for the authorization at any time after the young person begins to serve a portion of a youth sentence in a provincial correctional facility for adults further to a direction made under subsection (1);

(c) if, at the time of the application, that remainder is two years or more; and

(d) so long as the youth justice court gives the young person, the provincial director and representatives of the provincial and federal correctional systems an opportunity to be heard.

correctionnels fédéral et provincial l'occasion de se faire entendre, s'il estime que la mesure est préférable pour l'adolescent ou dans l'intérêt public et si, au moment de la demande, le temps à courir sur la peine est de deux ans ou plus, autoriser le directeur à ordonner, sous réserve du paragraphe (3), que le reste de la peine soit purgé dans un pénitencier.

(3) If the provincial director makes a direction under subsection (1) or (2), the *Prisons and Reformatories Act* and the *Corrections and Conditional Release Act*, and any other statute, regulation or rule applicable in respect of prisoners and offenders within the meaning of those Acts, statutes, regulations and rules, apply in respect of the young person except to the extent that they conflict with Part 6 (publication, records and information) of this Act, which Part continues to apply to the young person.

(3) Les lois — notamment la *Loi sur le système correctionnel et la mise en liberté sous condition* et la *Loi sur les prisons et les maisons de correction* — , règlements et autres règles de droit régissant les prisonniers ou les délinquants au sens de ces lois, règlements ou autres règles de droit s'appliquent à l'adolescent qui purge sa peine dans un établissement correctionnel provincial pour adultes ou un pé- nitentier au titre des paragraphes (1) ou (2), dans la mesure où ils ne sont pas incompatibles avec la partie 6 (dossiers et confidentialité des renseignements) de la présente loi, qui continue de s'appliquer à l'adolescent.

(4) If a person is subject to more than one sentence, at least one of which is a youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r) and at least one of which is a sentence referred to in either paragraph (b) or (c), he or she shall serve, in a provincial correctional facility for adults or a penitentiary in accordance with section 743.1 (rules respecting sentences of two or more years) of the Criminal Code, the following:

(4) La personne assujettie simultanément à plus d'une peine dont au moins une est une peine spécifique imposée en application des alinéas 42(2)n), o), q) ou r) et au moins une est visée aux alinéas b) ou c) purge, par application de l'article 743.1 (règles applicables en cas de peine de plus de deux ans) du Code criminel, dans un établissement correctionnel provincial pour adultes ou un pénitencier :

(a) the remainder of any youth sentence imposed under paragraph 42(2)(n), (o), (q) or (r);

a) le reste de toute peine spécifique imposée en application des alinéas 42(2)n), o), q) ou r);

(b) an adult sentence to which an order under paragraph 76(1)(b) or (c) (placement in adult facility) applies; and

b) toute peine applicable aux adultes visée par une ordonnance rendue au titre des alinéas 76(1)b) ou c) (placement dans un établissement pour adultes);

(c) any sentence of imprisonment imposed otherwise than under this Act.

c) toute peine d'emprisonnement imposée sous le régime d'une autre loi.

(5) If a young person is committed to custody under a youth sentence under paragraph 42(2)(n), (o), (q) or (r) and is also already subject to an adult sentence to which an order under paragraph 76(1)(a) (placement when subject to adult sentence) applies, the young person may, in the discretion of the provincial director, serve the sentences, or any portion of the sentences, in a youth custody facility, in a provincial correctional facility for adults or, if the unexpired portion of the sentence is two years or more, in a penitentiary.

(5) L'adolescent placé sous garde en application des alinéas 42(2)n), o), q) ou r) et qui purge déjà une peine applicable aux adultes visée par une ordonnance rendue au titre de l'alinéa 76(1)a) (placement en cas de peine applicable aux adultes) peut, à la discrétion du directeur provincial, purger tout ou partie des peines dans un lieu de garde, un centre correctionnel provincial pour adultes ou, s'il reste au moins deux ans à purger, dans un pénitencier.

***Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, Can TS 1992 No 3.**

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Ayant à l'esprit que, comme indiqué dans la Déclaration des droits de l'enfant, «l'enfant, en raison de son manque de maturité physique et intellectuelle, a besoin d'une protection spéciale et de soins spéciaux, notamment d'une protection juridique appropriée, avant comme après la naissance»,

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 3

1. Dans toutes les décisions qui concernent les enfants, qu'elles soient le fait des institutions publiques ou privées de protection sociale, des tribunaux, des autorités administratives ou des organes législatifs, l'intérêt supérieur de l'enfant doit être une considération primordiale.

2. Les Etats parties s'engagent à assurer à l'enfant la protection et les soins nécessaires à son bien-être, compte tenu des droits et des devoirs de ses parents, de ses tuteurs ou des autres personnes légalement responsables de lui, et ils prennent à cette fin toutes les mesures législatives et administratives appropriées.

3. Les Etats parties veillent à ce que le fonctionnement des institutions, services et établissements qui ont la charge des enfants et assurent leur protection soit conforme aux normes fixées par les autorités compétentes, particulièrement dans le domaine de la sécurité et de la santé et en ce qui concerne le nombre et la compétence de leur personnel ainsi que l'existence d'un contrôle approprié.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided

Article 5

Les Etats parties respectent la responsabilité, le droit et le devoir qu'ont les parents ou, le cas échéant, les membres de la famille élargie ou de la communauté, comme prévu par la

for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

coutume locale, les tuteurs ou autres personnes légalement responsables de l'enfant, de donner à celui-ci, d'une manière qui corresponde au développement de ses capacités, l'orientation et les conseils appropriés à l'exercice des droits que lui reconnaît la présente Convention.

Article 12

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

1. Les Etats parties garantissent à l'enfant qui est capable de discernement le droit d'exprimer librement son opinion sur toute question l'intéressant, les opinions de l'enfant étant dûment prises en considération eu égard à son âge et à son degré de maturité.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

2. A cette fin, on donnera notamment à l'enfant la possibilité d'être entendu dans toute procédure judiciaire ou administrative l'intéressant, soit directement, soit par l'intermédiaire d'un représentant ou d'une organisation approprié, de façon compatible avec les règles de procédure de la législation nationale.

Article 37

Article 37

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

b) Nul enfant ne soit privé de liberté de façon illégale ou arbitraire. L'arrestation, la détention ou l'emprisonnement d'un enfant doit être en conformité avec la loi, n'être qu'une mesure de dernier ressort, et être d'une durée aussi brève que possible;

Article 39

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take

Les Etats parties prennent toutes les mesures appropriées pour faciliter la réadaptation physique et psychologique et la réinsertion sociale de tout enfant victime de toute forme de négligence, d'exploitation ou de sévices, de torture ou de toute autre forme de peines ou traitements cruels, inhumains ou dégradants, ou de conflit armé. Cette réadaptation et cette réinsertion se déroulent

place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

dans des conditions qui favorisent la santé, le respect de soi et la dignité de l'enfant.

Article 40

1. Les Etats parties reconnaissent à tout enfant suspecté, accusé ou convaincu d'infraction à la loi pénale le droit à un traitement qui soit de nature à favoriser son sens de la dignité et de la valeur personnelle, qui renforce son respect pour les droits de l'homme et les libertés fondamentales d'autrui, et qui tienne compte de son âge ainsi que de la nécessité de faciliter sa réintégration dans la société et de lui faire assumer un rôle constructif au sein de celle-ci.

***Convention on the Transfer of Sentenced Persons*, 21 March 1983, Strasbourg, 21.III.1983.**

Considering that such co-operation should further the ends of justice and the social rehabilitation of sentenced persons;	Considérant que cette coopération doit servir les intérêts d'une bonne administration de la justice et favoriser la réinsertion sociale des personnes condamnées;

Inter-American Convention on Serving Criminal Sentences Abroad

INSPIRED BY THE DESIRE to cooperate to ensure improved administration of justice through the social rehabilitation of the sentenced persons;

ARTICLE V PROCEDURE FOR TRANSFER

The transfer of a sentenced person from one state to another shall be subject to the following procedure:

The request for application of this convention may be made by the sentencing state, the receiving state, or the sentenced person. The procedures for the transfer may be initiated by the sentencing state or by the receiving state. In these cases, it is required that the sentenced person has expressed consent to the transfer.

The request for transfer shall be processed through the central authorities indicated pursuant to Article XI of this convention, or, in the absence thereof, through consular or diplomatic channels. In conformity with its domestic law, each state party shall inform those authorities it considers necessary as to the content of this convention. It shall also endeavor to establish mechanisms for cooperation among the central authority and the other authorities that are to participate in the transfer of the sentenced person.

If the sentence was handed down by a state or province with criminal jurisdiction independent from that of the federal government, the approval of the authorities of that state or province shall be required for the application of this transfer procedure.

The request for transfer shall furnish pertinent information establishing that the conditions of Article III have been met.

Before the transfer is made, the sentencing state shall permit the receiving state to verify, if it wishes, through an official designated by the latter, that the sentenced person has given consent to the transfer in full knowledge of the legal consequences thereof.

In taking a decision on the transfer of a sentenced person, the states parties may consider, among other factors, the possibility of contributing to the person's social rehabilitation; the gravity of the offense; the criminal record of the sentenced person, if any; the state of health of the sentenced person; and the family, social, or other ties the sentenced person may have in the sentencing state and the receiving state.

The sentencing state shall provide the receiving state with a certified copy of the sentence, including information on the amount of time already served by the sentenced person and on the time off that could be credited for reasons such as work, good behavior, or pre trial detention. The receiving state may request such other information as it deems necessary.
Surrender of the sentenced person by the sentencing state to the receiving state shall be effected at the place agreed upon by the central authorities. The receiving state shall be responsible for custody of the sentenced person from the moment of delivery.
All expenses that arise in connection with the transfer of the sentenced person until that person is placed in the custody of the receiving state shall be borne by the sentencing state.
The receiving state shall be responsible for all expenses arising from the transfer of the sentenced person as of the moment that person is placed in the receiving state's custody.

ARTICLE VII RIGHTS OF THE SENTENCED PERSON WHO IS TRANSFERRED AND MANNER OF SERVING SENTENCE

1. A sentenced person who is transferred under the provisions of this convention shall not be arrested, tried, or sentenced again in the receiving state for the same offense upon which the sentence to be executed is based.
2. Except as provided in Article VIII of this convention, the sentence of a sentenced person who is transferred shall be served in accordance with the laws and procedures of the receiving state, including application of any provisions relating to reduction of time of imprisonment or of alternative service of the sentence.
No sentence may be enforced by a receiving state in such fashion as to lengthen the sentence beyond the date on which it would expire under the terms of the sentence of the court in the sentencing state.
3. The authorities of a sentencing state may request, by way of the central authorities, reports on the status of service of the sentence of any sentenced person transferred to a receiving state in accordance with this convention.

ARTICLE IX APPLICATION OF THE CONVENTION IN SPECIAL CASES

This Convention may also be applicable to persons subject to supervision or other measures under the laws of one of the states parties relating to youthful offenders. Consent for the transfer shall be obtained from the person legally authorized to grant it.
By agreement between the parties, this convention may be applied to persons whom the competent authority has pronounced unindictable, for purposes of treatment of such persons in the receiving state. The parties shall, in accordance with their laws, agree on the type of treatment to be accorded such individuals upon transfer. For the transfer, consent must be obtained from a person legally authorized to grant it.

***Optional Protocol on the involvement of children in armed conflict*, 25 May 2000, 2173 UNTS 222 (adopted by resolution by the United Nations General Assembly, 54th Sess, UN Doc A/RES/54/263).**

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

Réaffirmant que les droits des enfants doivent être spécialement protégés et demandant à ce que la situation des enfants, sans distinction, soit sans cesse améliorée et qu'ils puissent s'épanouir et être éduqués dans des conditions de paix et de sécurité,

Considérant par conséquent que, pour renforcer davantage les droits reconnus dans la Convention relative aux droits de l'enfant, il importe d'accroître la protection des enfants contre toute implication dans les conflits armés,

Article 4

1. Les groupes armés qui sont distincts des forces armées d'un État ne devraient en aucune circonstance enrôler ni utiliser dans les hostilités des personnes âgées de moins de 18 ans.

2. Les États Parties prennent toutes les mesures possibles pour empêcher l'enrôlement et l'utilisation de ces personnes, notamment les mesures d'ordre juridique nécessaires pour interdire et sanctionner pénalement ces pratiques.

***Treaty Between Canada and the United States of America on the Execution of Penal Sentences*, Can TS 1978 No 12.**

DESIRING to enable Offenders, with their consent, to serve sentences ofimprisonment or parole or supervision in the country ofwhich they are citizens, thereby facilitating their successful reintegration into society;

DÉSIREUX de permettre aux délinquants, avec leur consentement, de purger leur peine d'emprisonnement ou de bénéficier d'une libération conditionnelle ou d'être soumis à une surveillance dans le pays dont ils sont citoyens, favorisant ainsi leur réinsertion sociale;

ARTICLE IV

1. Except as otherwise provided in this Treaty, the completion of a transferred Offender's sentence shall be carried out according to the laws and procedures of the Receiving State, including the application of any provisions for reduction of the term of confinement by parole, conditional release or otherwise. The Sending State shall, in addition, retain a power to pardon the Offender and the Receiving State shall, upon being advised of such pardon, release the Offender.

Article IV

1. Sauf prescription contraire du présent Traité, l'exécution de la peine d'un délinquant transféré s'effectue selon les lois et règles du Pays d'accueil, y compris toutes dispositions de réduction de la durée d'emprisonnement par une libération conditionnelle, une libération sous condition ou autrement. Le Pays d'origine conserve en outre le pouvoir d'accorder le pardon au délinquant et le Pays d'accueil, après avoir été informé de ce pardon, libère le délinquant.

2. The Receiving State may treat under its laws relating to youthful offenders any Offender so categorized under its laws regardless ofhis status under the laws ofthe Sending State.

2. Le Pays d'accueil peut soumettre à sa législation concernant les jeunes contrevenants, tout délinquant ainsi classé aux termes de ses lois, sans égard au statut qu'il possède aux termes des lois du Pays d'origine.

3. No sentence of confinement shall be enforced by the Receiving State in such a way as to extend its duration beyond the date at which it would have terminated according to the sentence ofthe court ofthe Sending State.

3. Le pays d'accueil ne fait exécuter aucune peine d'emprisonnement de façon à en étendre la durée au-delà de la date où elle aurait normalement pris fin dans le Pays d'origine.

Commonwealth Scheme for the Transfer of Offenders

Continued enforcement

12. (1) The administering country shall be bound by the legal nature and duration of the sentence as determined by the sentencing country.

(2) If, however, the sentence is by its nature or duration Incompatible with the law of the administering country, or its law so requires, that country may, by court or administrative order, adapt the sanction to a punishment or measure
prescribed by Its own law. AS to its nature the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the sentencing country. It shall not aggravate, by its nature or duration, the sanctions imposed in the sentencing country.

***Guidelines for Action on Children in the Criminal Justice System*, United Nations Economic and Social Council, UN Doc 1997/30 (21 July 1997).**

18. The placement of children in closed institutions should be reduced. Such placement of children should only take place in accordance with the provisions of article 37 (b) of the Convention and as a matter of last resort and for the shortest period of time. Corporal punishment in the child justice and welfare systems should be prohibited.

18. La privation de liberté pour un enfant devrait être limitée. Elle devrait toujours être conforme aux dispositions de l'article 37 b) de la Convention, n'être qu'une mesure de dernier ressort pour une durée aussi brève que possible. Les châtiments corporels devraient être interdits dans les systèmes de justice et les établissements sociaux pour enfants.

***Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, Adopted at the international conference "Free children from war" in Paris (February 2007).**

3.6 Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles.

3.6 Les enfants accusés d'avoir commis des crimes de droit international alors qu'ils étaient associés à des forces armées ou à des groupes armés doivent être considérés principalement comme les victimes d'atteintes au droit international, et non pas seulement comme les auteurs présumés d'infractions. Ils doivent être traités d'une façon conforme au droit international, dans un cadre de justice réparatrice et de réinsertion sociale, conformément au droit international, qui offre une protection

	particulière à l'enfant à travers de nombreux accords et principes.
3.11 The unlawful recruitment or use of children is a violation of their rights; therefore preventive activities must be carried out continuously. The release, protection and reintegration of children unlawfully recruited or used must be sought at all times, without condition and must not be dependent on any parallel release or demobilisation process for adults.	3.11 Le recrutement ou l'utilisation illégaux d'enfants par des forces armées ou des groupes armés étant une violation de leurs droits, les activités de prévention de ces pratiques doivent être menées en permanence. Il faut s'employer à tout moment à libérer, protéger et réinsérer ces enfants illégalement recrutés et utilisés, sans conditions et sans faire dépendre ces activités d'un processus parallèle de libération ou de démobilisation des adultes.
7.6 4 All appropriate measures to promote physical and psychological recovery and social reintegration must be taken;	7.6.4 Toutes les mesures appropriées doivent être prises pour faciliter la réadaptation physique et psychologique et la réinsertion sociale des enfants concernés (article 39 de la CDE) ;
8.8 Children accused of crimes under international or national law allegedly committed while associated with armed forces or armed groups are entitled to be treated in accordance with international standards for juvenile justice.	8.8 Les enfants accusés d'avoir commis des crimes de droit international ou national alors qu'ils étaient recrutés ou employés illégalement par les forces armées ou des groupes armés ont le droit d'être traités conformément aux normes internationales relatives à la justice pour mineurs.

***United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*, United Nations General Assembly, 68th Plenary Mtg, UN Doc A/RES/45/113 (14 December 1990).**

1. Affirms that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period;	1. La justice pour mineurs devrait protéger les droits et la sécurité et promouvoir le bien-être physique et moral des mineurs. L'incarcération devrait être une mesure de dernier recours.
2. Recognizes that, because of their high vulnerability, juveniles deprived of their liberty require special attention and protection and that their rights and well-being should be guaranteed during and after the period when they are deprived of their liberty;	2. Les mineurs ne peuvent être privés de leur liberté que conformément aux principes et procédures énoncés dans les présentes Règles et dans l'Ensemble de règles minima des Nations Unies concernant l'administration de la justice pour mineurs (Règles de Beijing). La privation de liberté d'un mineur doit être

une mesure prise en dernier recours et pour le minimum de temps nécessaire et être limitée à des cas exceptionnels. La durée de détention doit être définie par les autorités judiciaires, sans que soit écartée la possibilité d'une libération anticipée.

***United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, United Nations General Assembly, UN Doc A/RES/40/33 (29 November 1985).**

17.1 The disposition of the competent authority shall be guided by the following principles:

…

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

…

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

17.1 La décision de l'autorité compétente doit s'inspirer des principes suivants :

…

b) Il n'est apporté de restrictions à la liberté personnelle du mineur -- et ce en les limitant au minimum -- qu'après un examen minutieux;

…

d) Le bien-être du mineur doit être le critère déterminant dans l'examen de son cas.

19.1 Le placement d'un mineur dans une institution est toujours une mesure de dernier ressort et la durée doit en être aussi brève que possible.

28.1 L'autorité appropriée aura recours à la libération conditionnelle aussi souvent et aussi tôt que possible.

Court File No. 36081

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

BETWEEN:

**KELLY HARTLE, WARDEN OF THE EDMONDON INSTITUTION,
ATTORNEY GENERAL OF CANADA, and
HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA**

APPELLANTS

- and -

OMAR AHMED KHADR

RESPONDENT

DRAFT ORDER

UPON THE MOTION by Amnesty International Canada requesting leave to intervene in the above-mentioned appeal:

AND HAVING READ the material filed:

IT IS HEREBY ORDERED THAT:

1. Amnesty International Canada be granted leave to intervene in the present appeal;
2. Amnesty International Canada may file a factum not exceeding 10 pages in length; and
3. Counsel for Amnesty International may make oral submissions not exceeding 15 minutes at the hearing of the aforementioned appeal.