Court File No: T-1580-09

FEDERAL COURT

B E T W E E N:

ABOUSFIAN ABDELRAZIK

Plaintiff

- and -

HIS MAJESTY THE KING IN RIGHT OF CANADA
and LAWRENCE CANNON

Defendants

- and -

CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS

Intervener

MEMORANDUM OF FACT AND LAW OF THE INTERVENER, CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS

Pursuant to the Order of Justice Gleeson dated December 19, 2024

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PART I – OVERVIEW AND STATEMENT OF FACTS

1. The Canadian Lawyers for International Human Rights (**CLAIHR**) intervenes in this trial to make the following submissions. **First,** in international law – a state's acquiescence and knowledge of torture, arbitrary detention, and inhuman treatment, or their reasonable foreseeability, by another state amounts to state complicity and responsibility for those acts. **Second**, as repeatedly confirmed by the Supreme Court of Canada, international law should inform the interpretation of the content of *Charter* rights, including s. 7 and s. 12 of the *Charter*. Given Canada's international law obligations and commitments – the conduct of Canadian actors amounts to complicity in acts by Sudan (and its officials) in Sudan which may deprive a Canadian national of their rights under s. 7 and s. 12 of the *Charter.*

2. CLAIHR was granted leave to intervene by an Order of Justice Gleeson on December 19, 2024 after conclusion of examination of all witnesses in this trial. CLAIHR relies on the joint agreed statement of facts of the parties, and, where necessary, will reference specific details from the trial proceedings in the analysis below.

PART II – POINTS IN ISSUE

3. CLAIHR has been granted leave to intervene to assist the court on:

   (a) What may constitute extraterritorial "complicity" in international law by the Defendant His Majesty the King where a Canadian citizen alleges they have been subjected to torture, mistreatment, unlawful or arbitrary detention by a foreign state (Sudan in the present case); and

   (b) How, in light of the evidence, international law as it relates to "complicity" might inform the Court's interpretation of sections 7 and 12 of the *Charter*.

PART III – SUBMISSIONS

A. <u>Complicity of Canada when a Canadian citizen alleges torture, mistreatment, unlawful or arbitrary detention by a foreign state</u>

International law on torture, ill-treatment and arbitrary detention

4. The prohibition of torture and arbitrary detention in customary international law are *jus cogens* – peremptory norms from which Canada cannot derogate.[1] The prohibitions of torture and arbitrary detention are also *erga omnes* violations – that is, they are obligations owed toward all.[2] International law protects victims' rights to remedies for torture regardless of where it occurred.[3]

5. It is uncontested that torture, and other cruel, inhuman or degrading treatment or punishment of individuals, are violations of international law that are an affront to Canadian values and strongly opposed by the Government of Canada.[4] Canada is party binding international treaties prohibiting such mistreatment, including the *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* (**Convention Against Torture**),[5] the *International Covenant on Civil and Political Rights* (**ICCPR**),[6] and in the context of armed humanitarian conflict, the *Geneva Conventions*.[7] Under international law, these include intentionally inflicted acts causing severe pain or suffering, whether physical or mental, to obtain a confession, punish, intimidate, or coerce "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."[8] During the so-called war on terror, extraordinary rendition programs employed the widespread practice of torture in conjunction with

[1] *Kazemi Estate v. Islamic Republic of Iran,* 2014 SCC 62, para 47; *Boloh 1(A) v. Canada*, 2023 FC 98, paras 139-141.
[2] Alice Jill Edwards (United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), "Remarks at the Opening of the Fortieth Anniversary Commemorations of the Convention against Torture #CAT40", 14 November 2024, Palais des Nations, Geneva.
[3] United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 UNTS 85 (1984), Arts 1, 14; *Kazemi Estate v. Islamic Republic of Iran,* 2014 SCC 62, paras 213-217; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422.
[4] Public Safety Canada, Government of Canada, *Information sharing for National Security: Avoiding Complicity in Mistreatment by Foreign Entities Act,* 17 May 2024 (last modified).
[5] United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 UNTS 85 (1984).
[6] UN General Assembly, *International Covenant on Civil and Political Rights*, 999 UNTS 171 (1966), Art. 7.
[7] International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 75 UNTS 287, (12 August 1949), Art. 32.
[8] United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 UNTS 85 (1984), Art 1.

arbitrary detention in a foreign state by foreign agents.[9] Knowingly receiving and relying on intelligence obtained through torture involves complicity in the commission of an internationally wrongful act and is irreconcilable with the obligation *erga omnes* to cooperate in the eradication of torture.[10] Such state complicity in torture, ill-treatment and arbitrary detention has been the subject of extensive litigation internationally.[11]

Canadian complicity in internationally wrongful acts (including torture, inhuman treatment, and arbitrary detention) by another state

6. The rules of state responsibility (including for complicity) are derived from existing customary law, as laid out in the International Law Commission's *Articles on the Responsibility of States for Internationally Wrongful Acts* (**Articles of State Responsibility**) – they are adopted by the UN General Assembly, used by the International Court of Justice, and are generally considered a restatement of customary international law.[12] The general rule on complicity, from which the parameters of complicity under human rights treaties are derived, is found in Article 16 of ILC Articles of State Responsibility, which stipulates without territorial limits that:

> A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:
>
> (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
>
> (b) the act would be internationally wrongful if committed by that State.[13]

7. The *Articles of State Responsibility* further stipulate that states have the duty to cooperate to bring serious breaches of international law committed by other states to an end, and states are required not to give any aid or assistance to the continuation of such breaches.[14]

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[9] United Nations General Assembly Human Rights Council, "Report of the Working Group on Arbitrary Detention", A/HRC/22/44 (2012), para 51.

[10] UN General Assembly Human Rights Council, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson," 26 September 2012, A/67/396, para 48; *Prosecutor v Furundzija*, Judgement, Trial Chamber, International Criminal Tribunal for the Former Yugoslavia, 10 December 1998, IT-95-17/T10, para. 151.

[11] See for example *Abu Zubaydah v Lithuania*, European Court of Human Rights, France, 46454/11 (2018).

[12] *R. v. Tan*, 2014 BCCA 9, para 60; John H. Currie, *Public International Law*, 2nd ed. (Toronto: Irwin Law, 2008) at 535-536.

[13] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Supplement No. 10 (A/56/10) (2001).

[14] UN General Assembly Human Rights Council, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson," 26 September 2012, A/67/396, para. 48; United Nations General Assembly Human Rights Council, "Report of the Special Rapporteur on

8. Under international law, Canada is specifically obligated not to be complicit in international crimes and serious human rights violations, such as torture, ill-treatment and arbitrary detention, that take place extraterritorially. Such complicity is simultaneously a violation of the complicit state's international legal obligations. Articles 1 and 4 of the *Convention Against Torture* oblige Canada to not to be complicit in the prohibited acts.[15] Acquiescence, as provided in Article 1, on the part of State officials is sufficient for the conduct of those officials to be attributed to the State and to lead to State responsibility for torture.[16] The Committee Against Torture considered complicity to include acts that amount to instigation, incitement, superior order and instruction, consent, acquiesence (to acts of torture), concealment, and a failure to take steps to prevent torture in circumstances where it is known to be occurring.[17] The knowledge element encompasses both constructive and actual knowledge.[18]

9. The United Kingdom's House of Lords and House of Commons Joint Committee on Human Rights Report on the Allegations of UK Complicity in Torture undertook a study on state complicity in human rights violations perpetrated by, among others, the United States in Guantánamo Bay. The Report outlined what complicity means and provided examples of complicity:

> for the purposes of State responsibility for complicity in torture, however, "complicity" means simply one State giving assistance to another State in the commission of torture, or acquiescing in such torture, in the knowledge, including

torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez", A/HRC/25/60 (2014), para 53; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Supplement No. 10 (A/56/10) (2001), Art 41.

[15] United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 UNTS 85 (1984), Arts 1 & 4; United Nations General Assembly Human Rights Council, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez", A/HRC/25/60 (2014), para 48

[16] United Nations General Assembly Human Rights Council, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez", A/HRC/25/60 (2014), para 48

[17] Committee Against Torture, "General Comment No. 2 (2007) on the implementation of article 2 by States parties, 24 January 2008", CAT/C/GC/2, para. 17.

[18] United Nations General Assembly, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin", A/HRC/10/3 (2009), para 54; United Nations General Assembly Human Rights Council, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez", A/HRC/25/60 (2014), para 53; United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 UNTS 85 (1984), Arts 1, 16.

> constructive knowledge, of the circumstances of the torture which is or has been taking place.
>
> …We are in no doubt that … the sending of interrogators to question a suspect who is being tortured and of observers to sit in on interrogations, are all forms of assistance and facilitation capable of amounting to complicity in torture by the State concerned when those things are done in the knowledge that the person concerned is being, has been or will be tortured by the State which is detaining him, or where that ought to be obvious to the State providing the assistance.[19]

10. Similarly, the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism indicated that merely taking advantage of the coercive environment where people are tortured would also constitute a violation of international human rights law - he emphasized that "[a]t a minimum, States which know or ought to know that they are receiving intelligence from torture or other inhuman treatment, or arbitrary detention, … are complicit in the human rights violations in question."[20]

11. State complicity has also developed in decisions based in general human rights treaties, such as the ICCPR, which has codified the right to life, the prohibition of torture, and the right to liberty and security of person,[21] and which has informed interpretation of *Charter* rights, as discussed further below. The United Nations Human Rights Committee (**HRC**)'s jurisprudence based on the ICCPR has determined that states bear responsibility when they fail to fulfill their positive obligations to protect their nationals or when they acquiesce to certain human rights violations committed by other states.[22]

12. The HRC has directly addressed the extraterritorial application of the right to life under the ICCPR in situations of extraterritorial complicity. Presumably, this principle extends

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[19] United Kingdom House of Lords and House of Commons Joint Committee on Human Rights, *Report on the Allegations of UK Complicity in Torture* (London: The Stationery Office Limited, 2009), paras 35, 37.
[20] United Nations General Assembly Human Rights Council, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin", A/HRC/10/3 (2009).
[21] United Nations General Assembly, *International Covenant on Civil and Political Rights*, 999 UNTS 171 (1966), Arts 6, 7, 9.
[22] *Alzery v Sweden*, United Nations Human Rights Committee, CCPR/C/88/D/1416/2005 (2006) at para 11.6; United Nations Office of the High Commissioner on Human Rights, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13 (2004), para 6.

to other obligations under the ICCPR, including the prohibitions on torture and arbitrary or unlawful detention. The HRC in its General Comment 36 states:

> In light of article 2 (1) of the Covenant, a State party has an obligation to respect and ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State whose right to life is nonetheless affected by its military or other activities in a direct and reasonably foreseeable manner (…).[23]

13. These requirements do not just focus on the complicit State's control over the geographical area, but also on the State's power or control over the enjoyment of the right itself irrespective of geography. Such control exists when a person's right to life is directly and reasonably foreseeably affected by a State's conduct. In addition to the issue of state complicity in extraterritorial human rights violations – States have positive obligations to prevent and investigate violations of international human rights.[24] The HRC has held in cases that these obligations remain even when the impugned conduct occurs extraterritorially when a special relationship exists between the State and the victims.[25]

B. International law informs the content and interpretation of s. 7 and s. 12 of the *Charter*

International law in *Charter* interpretation

14. As the Supreme Court of Canada has repeatedly confirmed, "binding" international law should "assist in delineating the breadth and content of *Charter* rights."[26] This includes "supplying content to such imprecise concepts as the right to life"[27] under s. 7 as well as understanding the inextricably anchored in "human dignity" prevention of degrading and humanizing treatment under s. 12 of the *Charter*.[28] The Court "has sought to ensure

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[23] United Nations Office of the High Commissioner on Human Rights, General Comment No. 36 on Article 6: Right to Life, CCPR/C/GC/36 (2019), para 63.
[24] General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13 (2004), para 8.
[25] *AS and others v Italy and Malta*, United Nations Human Rights Committee, CCPR/C/130/D/3042/2017 (2020), paras 8.5-8.6.
[26] *Quebec (Attorney General) v 9147-0732 Québec inc*, 2020 SCC 32, paras 32, 34, 44; *Kazemi Estate v Islamic Republic of Iran*, 2014 SCC 62, para 150; *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313, para 57-58.
[27] *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313, para 57-58.
[28] *Quebec (Attorney General) v 9147-0732 Québec inc*, 2020 SCC 32, paras 32, 34, 44

consistency between its interpretation of the *Charter*, on the one hand, and Canada's international obligations and the relevant principles of international law, on the other"[29] and has drawn from international law to aid in interpretation and supply content to *Charter* rights. For example:

a. In *Health Services and Support - Facilities Subsector Bargaining Assn v British Columbia*, Canada's adherence to international conventions helped establish a right to collective bargaining under the *Charter*'s s. 2(d) freedom of association;[30]

b. In *Godbout v Longueuil (City)*, Canada's adherence to the ICCPR,[31] art. 12, helped to determine the content of s. 7 of the *Charter*, namely that the right to decide where to establish one's home forms part of the "irreducible sphere of personal autonomy" protected by the s. 7 right to liberty.[32]

c. In *Suresh v Canada (Minister of Citizenship and Immigration),* Canada's adherence to the ICCPR, art. 7, read in conjunction with General Comment 20 to the ICCPR, informed the content of the principles of fundamental justices under s. 7 of the *Charter* as rejecting deportation to where one is subject to torture.[33]

15. The Supreme Court of Canada has consistently relied on the *Convention Against Torture* to interpret the *Charter*.[34] In addition to ratified conventions, the Supreme Court of Canada has relied on customary international law to aid in the interpretation of the *Charter* and confirmed the doctrine of adoption to interpret the *Charter's* scope.[35] Non-binding international instruments and the decisions of foreign and international courts, although not "determinative", can also be relevant and persuasive in the *Charter* analysis.[36]

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[29] *R v Hape*, 2007 SCC 26, para 55; *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4, para 64.
[30] *Health Services and Support - Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27, para 69-79. The relevant conventions (all ratified by Canada) were the United Nations, *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3; United Nations, *Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organize,* 68 UNTS 17; and United Nations General Assembly, *International Covenant on Civil and Political Rights*, 999 UNTS 171 (1966).
[31] United Nations General Assembly, *International Covenant on Civil and Political Rights*, 999 UNTS 171 (1966).
[32] *Godbout v Longueuil (City)*, [1997] 3 SCR 844, para 69.
[33] *Suresh v Canada (Minister of Citizenship and Immigration),* 2002 SCC 1, para 59-76.
[34] *e.g., Quebec (Attorney General) v 9147-0732 Québec inc*, 2020 SCC 32, para 117; *Suresh v Canada (Minister of Citizenship and Immigration),* 2002 SCC 1, para 75.
[35] *R v Hape*, 2007 SCC 26 at paras 35-39, *R. v. McGregor,* 2023 SCC 4, para 57.
[36] *Quebec (Attorney General) v 9147-0732 Québec inc*, 2020 SCC 32, para 35, 37, 43.

Canadian complicity in Sudan (in light of its human rights record) and *Charter* rights

16. Although bound by customary international law, Sudan was not a Party to the *Convention against Torture* at any material time in relation to the events in this trial and only became a Party in 2021.[37] According to the expert evidence of Elizabeth Hodgkin, the Sudanese intelligence agency (**NISS**) is particularly notorious for committing serious human rights abuses and that while not every person detained by the NISS is tortured, the practice is "certainly routine and widespread" and "[e]vidence of widespread or even systematic torture or other cruel, inhuman, or degrading treatment at the hands of the NISS has been raised in every report by practically every human rights organization and UN body over the last twenty years."[38] Some Canadian government officials also testified at this trial about their knowledge and belief regarding Sudan's poor human rights record which includes torture, mistreatment and beatings. The experiences of the Plaintiff that amount to torture, inhuman treatment, arbitrary detention, violence and risk to life are documented in the Plaintiff's submissions and the Partial Agreed Statement of Facts.

17. The *Charter* applies to Canadian authorities involved in an investigation conducted abroad when Canadian participation in a process violates Canada's international law obligations.[39] Additionally, actions of Canadian officials abroad cannot be in violation of its international obligations in respect of human rights, and deference to the foreign law ends where clear violations of international law and fundamental human rights begin.[40] CSIS officials testified in this trial that they sent questions to NISS and also interrogated the Plaintiff while in detention in Sudan (in the presence of Sudanese officials).[41] There is no evidence that any assurances of humane treatment was obtained – which in any event would not be sufficient under international law to displace Canada's complicity, given Sudan's human rights record of "systematic torture".[42] These amount to complicity and derogation of state responsibility under the ICCPR and the *Convention Against Torture*, as well as the Articles

[37] United Nations Human Rights Treaty Bodies, Ratification Status for Sudan, accessed January 9, 2024
[38] Curriculum Vitae of Dr Elizabeth Hodgkin [Exhibit 979]; and Expert Report of Dr Elizabeth Hodgkin, dated July 31, 2018 ("Hodgkin Report") at pp. 1-2, 7 [Exhibit 980]
[39] *R. v. Hape*, 2007 SCC 26, paras 51, 52, 101; *Canada (Justice) v. Khadr*, 2008 SCC 28, [2008] 2 S.C.R. 125, paras 18-19.
[40] *R v Hape*, 2007 SCC 26, para 52.
[41] Also found in the Partial Agreed Statement of Facts, paras 19-20.
[42] United Nations General Assembly Human Rights Council, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez", A/HRC/25/60 (2014), paras 54, 55, 56.

of State Responsibility.[43] Furthermore, Canada's international obligations are recognized in the *Avoiding Complicity in Mistreatment by Foreign Entities Act* which in line with Canada's commitment to human rights and prohibiting mistreatment (while conducting information-sharing activities with foreign entities to fulfill its fundamental responsibility of national security and safety), authorizes, and in some cases requires, the Governor in Council to issue written directions to deputy heads of government institutions related to: disclosing information to any foreign entity that would result in a substantial risk of mistreatment of an individual; making requests for information to any foreign entity that would result in a substantial risk of mistreatment of an individual; and, the use of information that is likely to have been obtained through the mistreatment of an individual by a foreign entity.[44] This 2019 federal statute illustrates a clear recognition of Canada's binding international obligations in relation to state responsibility and complicity.

18. In applying the Supreme Court's analysis in *Khadr* in this case – while Sudan may be the primary source of deprivation of the Plaintiff's liberty and security when in Sudanese custody, Canada has contributed to this deprivation of liberty through, among other activities, the Canadian agency CSIS providing questions to the Sudanese NISS for investigation and conducting an investigation of the Plaintiff in Sudan while the Plaintiff was in NISS custody.[45] Such conduct by Canadian officials amounts to state complicity in the violation of various international human rights and *Charter* rights of the Plaintiff --"a sufficient causal connection between [the Canadian] government's participation and the deprivation [of liberty and security of the person] ultimately effected" under s. 7 the C*harter*.[46]

19. A similar analysis may assist in respect of the deprivation of the Plaintiff's rights under s. 12 of the *Charter* (related rights are found in articles 1, 2, 16 of the *Convention Against Torture*) given the protection of s. 12 is expected to evolve over time.[47] In light of Canada's

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[43] United Nations General Assembly Human Rights Council, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez", A/HRC/25/60 (2014), para 54.
[44] *Avoiding Complicity in Mistreatment by Foreign Entities Act,* S.C. 2019, c. 13, s. 49.1, Section 3.
[45] Partial Agreed Statement of Facts, paras 19-20.
[46] *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, para 54; *Canada (Prime Minister) v. Khadr* 2010 SCC 3, paras 19, 21.
[47] *R. v. Smith*, 1987 CanLII 64 (SCC)

acquiescence and complicity to Sudan's torture of the Plaintiff[48] and that such conduct from Sudan was reasonably foreseeable is a sufficient casual connection. Canadian officials and organs benefited from the Plaintiff's arbitrary detention and torture, and Canadian officials and organs either knew or ought to have known about both the widespread use of torture in Sudan and the use of torture specifically of the Plaintiff. Such complicity may constitute a "treatment" under s. 12 with the "effect" and disproportionate consequence of mistreatment and harm to the Plaintiff.[49]

Conclusion

20. In the aftermath of the September 11, 2001 attacks, states have avoided accountability for their assistance and complicity in the mass arbitrary detention and torture of suspects and other victims of the so-called war on terror. The participation of states in extraordinary rendition programs, and detention and torture of individuals abroad was designed to avoid responsibility. However, international law does not enable or allow this – states cannot assist or do through others abroad what they cannot do at home. Knowingly assisting and acquiescing to serious violations of international human rights such as torture, inhuman treatment, and arbitrary detention constitutes state complicity. Given Canada's international law obligations and commitments (as outlined in treaty and customary international law, and related jurisprudence/commentary), the impugned conduct of Canadian actors constitutes complicity in extraterritorial acts by Sudan, which should be considered in any analysis of the Plaintiff's s. 7 and s. 12 *Charter* rights.

PART IV – ORDER SOUGHT

21. CLAIHR takes no position with respect to the disposition of these proceedings and seeks no orders in this matter. CLAIHR asks that no costs be awarded for or against CLAIHR regardless of the disposition of the proceedings.

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[48] i.e., Canadian officials receiving information and sending questions for interrogation, and even attending or participating in interrogation when the use of torture beforehand or afterward. Partial Agreed Statement of Facts, paras 19-20, 100; Further Amended Fresh as Amended Statement of Claim, para 66.

[49] Analysis of s. 12: *R. v. Smith*, 1987 CanLII 64 (SCC); *Chiarelli v. Canada (Minister of Employment & Immigration)*, [1992] 1 S.C.R. 711; *Quebec (Attorney General) v. 9147-0732 Québec inc*., 2020 SCC 32.

DATED at Toronto, this 10th day of January, 2025.



Vibhu Sharma / Henry Off

Counsel for the intervener, Canadian Lawyers for International Human Rights

PART V – TABLE OF AUTHORITIES

Case Law

1. *Abu Zubaydah v. Lithuania*, European Court of Human Rights, France, 46454/11 (2018).

2. *Alzery v. Sweden*, United Nations Human Rights Committee, CCPR/C/88/D/1416/2005 (2006).

3. *AS and others v. Italy and Malta*, United Nations Human Rights Committee, CCPR/C/130/D/3042/2017 (2020).

4. *Boloh 1(A) v. Canada*, 2023 FC 98.

5. *Canada (Justice) v. Khadr*, 2008 SCC 28.

6. *Canada (Prime Minister) v. Khadr* 2010 SCC 3.

7. *Chiarelli v. Canada (Minister of Employment & Immigration)*, [1992] 1 S.C.R. 711.

8. *Godbout v Longueuil (City)*, [1997] 3 SCR 844.

9. *Health Services and Support - Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27.

10. *Kazemi Estate v. Islamic Republic of Iran,* 2014 SCC 62.

11. *Kazemi Estate v. Islamic Republic of Iran,* 2014 SCC 62.

12. *Prosecutor v Furundzija*, Judgement, Trial Chamber, International Criminal Tribunal for the Former Yugoslavia, 10 December 1998, IT-95-17/T10.

13. *Quebec (Attorney General) v 9147-0732 Québec inc*, 2020 SCC 32.

14. *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012.

15. *R v Hape*, 2007 SCC 26.

16. *R. v. McGregor,* 2023 SCC 4.

17. *R. v. Tan*, 2014 BCCA 9.

18. *R. v. Smith, 1987 CanLII 64 (SCC)*.

19. *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313.

20. *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4.

21. *Suresh v. Canada (Minister of Citizenship and Immigration),* 2002 SCC 1.

Conventions, Statutes, and Acts

22. *Avoiding Complicity in Mistreatment by Foreign Entities Act,* S.C. 2019, c. 13, s. 49.1.

23. International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 75 UNTS 287, (12 August 1949).

24. International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Supplement No. 10 (A/56/10) (2001).

25. United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 UNTS 85 (1984).

26. United Nations General Assembly, *International Covenant on Civil and Political Rights*, 999 UNTS 171 (1966).

27. United Nations, *Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organize,* 68 UNTS 17 (1988).

28. United Nations, *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3 (1966).

Other Authorities

29. Alice Jill Edwards (United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), Remarks at the Opening of the Fortieth Anniversary Commemorations of the Convention against Torture #CAT40, 14 November 2024, Palais des Nations, Geneva.

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