Court File No. 04-CV-278915CM2

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

KUNLUN ZHANG, SHENLI LIN, LIZHI HE,
TIANQI LI, CHANGZHEN SUN and NA GAN

Plaintiffs

and

JIANG ZEMIN, LI LANQING, LUO GAN, LIU JING and WANG MAOLIN

Defendants

and

ALL-CHINA LAWYERS ASSOCIATION

Intervenor

and

CANADIAN CENTRE FOR INTERNATIONAL JUSTICE
and AMNESTY INTERNATIONAL

Proposed Intervenors

FACTUM
OF THE CANADIAN CENTRE FOR INTERNATIONAL JUSTICE AND AMNESTY INTERNATIONAL

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PART I - INTRODUCTION

1. The Canadian Centre for International Justice ("CCIJ") and Amnesty International ("AI Canada") (collectively, the "Proposed Intervenors") seek leave to intervene jointly in these proceedings as friends of the court to make joint submissions on the interaction of Canada's obligations under the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ("*Convention Against Torture*"),[1] as well as customary international law, and the Canadian statutory and common law of state immunity.

2. The Plaintiffs in these proceedings seek a civil remedy in Ontario courts for the torture they suffered in China. The issues raised in this case fall squarely within the mission and mandate of the Proposed Intervenors. The Proposed Intervenors have a deep interest in these proceedings and possesses the relevant expertise and knowledge to assist the court in determining the scope of Canada's international obligation to provide survivors of extraterritorial torture with redress.

3. Motions seeking leave to intervene as a friend of the court are determined in Ontario in light of the nature of the case, the issues that arise and the ability of the proposed intervenor to make useful and non-duplicative submissions without causing injustice to the parties. Each of these considerations supports the Proposed Intervenors' joint intervention in this case.

4. The Proposed Intervenors will not call or cross-examine witnesses or otherwise add to the evidentiary record. They wish only to assist the court by making submissions on an important issue of law that arises in these proceedings.

PART II - THE FACTS

A. Proceedings

5. For the purposes of this motion and their proposed intervention, the Proposed Intervenors adopt the facts as alleged by the Plaintiffs in the Statement of Claim.

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[1] UN Doc. A/39/51 (1984); 1465 UNTS 85; R.T. Can. 1987 n° 36.

6. The Statement of Claim, issued on November 15, 2004, names as Defendants five individuals who are high ranking officials of the Chinese Communist Party and the government of the People's Republic of China, including Jiang Zemin, the former President of China, and Li Lanqing, former executive Vice-Premier of China.

7. The Statement of Claim alleges that the Defendants "directed, controlled, supervised, authorized and condoned the campaign of terror and persecution against the Plaintiffs" and numerous other practitioners of Falun Gong in China. This campaign of persecution, it is alleged, included acts of intimidation, unlawful detention, beatings and other forms of physical and psychological torture.[2]

8. The Statement of Claim alleges that the Plaintiffs, who all currently reside in Ontario, have sustained and continue to sustain damage in Ontario as a result of the injurious conduct of the Defendants. They accordingly seek general, special and punitive damages for their injuries, invoking Canadian common law and public international law as the basis for their claim.[3]

9. The Defendants have not appeared in these proceedings and were noted in default on June 16, 2008.[4] However, on November 22, 2007, the All-China Lawyers Association ("the ACLA") sought and was granted leave to intervene as a friend of the court for the purpose of making submissions on the question of whether the Defendants are immune from suit. In essence, the ACLA argues that the Canadian law of state immunity provides no exception for torture and that the individual Defendants are all immune from suit under the *State Immunity Act*, R.S.C. 1985, c. S-18.[5]

10. The present case is fundamentally concerned with the right of torture survivors to obtain redress in Canadian courts, an issue that goes to the heart of the Proposed Intervenors' mandates and missions.

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[2] Statement of Claim, Motion Record, at para. 21.
[3] Statement of Claim, Motion Record, at paras. 1 and 13.
[4] Ng Affidavit, Motion Record, at para. 6.
[5] Ng Affidavit, Motion Record, Motion Factum of the ACLA at paras. 32-58.

B. The Canadian Centre for International Justice

11. Established in 2000, the CCIJ is a federally-incorporated, registered charity. It is the only organization in Canada primarily dedicated to: (a) supporting torture survivors and their families with strong connections to Canada in their pursuit of justice; and (b) seeking and promoting accountability for torturers, war criminals and other human rights abusers through cases, law reform, education and changes in public policy.[6]

12. More specifically, the mission of the CCIJ consists of providing information, assistance and direction to torture survivors who wish to obtain redress; supporting anti-impunity government initiatives; providing education and training to legal professionals on impunity as a critical human rights issue through conferences and workshops; and serving as a resource centre for Canadian anti-impunity initiatives, including providing access to international and Canadian legislation, jurisprudence and policy on accountability for grave human rights abuses.[7]

13. The CCIJ has extensive knowledge and expertise on the *Convention Against Torture*[8] and the Canadian statutory and common law of state immunity.[9] The CCIJ's expertise comes not only from the extensive knowledge and experience of the staff but also a strong network of supporters and advisors. Through its Board of Directors, Advisory Committee and Honorary Council, the CCIJ's network includes former Supreme Court Justices, Senators, Members of Parliament and officials from international criminal tribunals, as well as human rights lawyers and international law professors.[10] The organization's knowledge and expertise has been conveyed through the activities outlined above, through a major campaign to amend the State Immunity Act and through interventions in court proceedings on matters of international justice and accountability.[11]

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[6] Eisenbrandt Affidavit, Motion Record, at para. 4.
[7] Eisenbrandt Affidavit, Motion Record, at para. 7.
[8] UN Doc. A/39/51 (1984); 1465 UNTS 85; R.T. Can. 1987 n° 36.
[9] Eisenbrandt Affidavit, Motion Record, at para. 9.
[10] Eisenbrandt Affidavit, Motion Record, at para. 11-12.
[11] Eisenbrandt Affidavit, Motion Record, at para. 15, 17-18.

14. In 2005, the CCIJ was granted intervenor status at the Supreme Court of Canada in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, a case in which the Supreme Court of Canada ordered the deportation of a permanent resident who was alleged to have incited and advocated genocide in Rwanda.[12]

15. In addition, the CCIJ has been accepted as an intervenor in proceedings in the Quebec Superior Court against Iranian government officials for their role in torture and persecution. The case was filed by the family and estate of Zahra Kazemi, a Canadian citizen who was tortured to death in Iran. In that case, the CCIJ will present arguments about the issue of state immunity.[13]

C. Amnesty International

16. Amnesty International ("AI") is a worldwide voluntary movement founded in 1961 that works to prevent some of the gravest violations to people's fundamental human rights. AI is impartial and independent of any government, political persuasion or religious creed.[14]

17. AI seeks to advance and promote international human rights at both the international and national level. As part of its work to achieve this end, AI monitors and reports on human rights abuses, participates in international committee hearings, intervenes in domestic judicial proceedings, and prepares briefs for and participates in national legislative processes and hearings.[15]

18. AI Canada has intervened in numerous appeals before the Supreme Court of Canada.[16] In addition, before the Ontario courts, AI Canada intervened in *Ahani v. Her Majesty the Queen, The Attorney General of Canada and the Minister of Citizenship and Immigration.* AI Canada made submissions on Canada's international obligations in response to the UN

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[12] Eisenbrandt Affidavit, Motion Record, at para. 17.
[13] Eisenbrandt Affidavit, Motion Record, at para. 18.
[14] Neve Affidavit, Motion Record, paras. 7 & 8.
[15] Neve Affidavit, Motion Record, at para. 14.
[16] Neve Affidavit, Motion Record, at para. 19.

Human Rights Committee's request that Canada not deport the appellant pending consideration of his complaint to the Committee.[17]

19. AI Canada has also intervened in cases specifically relating to the *State Immunity Act*. Before the Ontario Court of Appeal, AI Canada intervened in *Bouzari v. Islamic Republic of Iran*, which considered the right of a torture victim to sue for compensation from the offending government and the constitutional validity of the *State Immunity Act*. AI Canada was recently granted intervenor status in *Kazemi v. Islamic Republic of Iran*, a case presently before the Superior Court of Quebec involving a similar claim for compensation against a foreign government.[18] In that case, AI Canada will make submissions about the issue of state immunity.

20. Throughout more than four decades of investigating, documenting and reporting human rights violations around the world, AI has highlighted issues regarding the right to an effective remedy of victims of human rights violations in countries on every continent. AI has repeatedly underscored the central role that remedies play in ensuring respect for human rights and deterring future violations. In particular, AI has consistently advocated for the exercise of adjudicative universal jurisdiction over civil tort claims, including those based on genocide, crimes against humanity, war crimes, torture and other crimes and serious violations of human rights under international law, without requiring a link between the tort or underlying crime and the forum state.[19]

21. AI has actively participated in the debate regarding the right to effective remedies for human rights violations at the international level and in a number of countries and as a result has first-hand knowledge of the various ways different countries have attempted to give effect to this right in domestic legislation. AI Canada has also played a prominent role in promoting the right to compensation for human rights violations in a number of cases in Canada, including in the *Bouazri* and *Kazemi* cases.[20]

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[17] Neve Affidavit, Motion Record, at para. 20.
[18] Neve Affidavit, Motion Record, at para. 21.
[19] Neve Affidavit, Motion Record, at para. 32.
[20] Neve Affidavit, Motion Record, at para. 33.

22. AI and AI Canada have an active and long-standing interest in ensuring that state immunity is applied in a manner consistent with international law.

D. Interest of the Proposed Intervenors

23. In light of their missions and expertise, the Proposed Intervenors have an interest in issues raised in these proceedings insofar as they relate to Canada's obligations under the *Convention Against Torture* as well as customary international law. Moreover, the Proposed Intervenors are uniquely positioned to assist the court by providing argument on the peremptory prohibition of torture at international law, the obligations imposed by the *Convention Against Torture* and the effect of these obligations in Canadian law.

PART III - ISSUES

24. The sole issue to be determined on this motion is whether the Proposed Intervenors should be granted leave to intervene jointly as friends of the court for the purposes of making joint submissions on the interaction of Canada's international obligations under the *Convention Against Torture*, as well as customary international law, and the law of state immunity.

PART IV - THE LAW

A. General Principles

25. Leave to intervene as a friend of the court is governed by Rule 13.02:

> LEAVE TO INTERVENE AS FRIEND OF THE COURT
>
> **13.02** Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.[21]

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[21] *Rules of Civil Procedure*, R.R.O. Reg. 194, Rule 13.02.

26. *Peel v. Great Atlantic and Pacific Co. of Canada Ltd* [*Peel*] is the leading authority in Ontario on the criteria governing motions seeking leave to intervene as a friend of the court. In that case, Dubin C.J.O. held:

> Although much has been written as to the proper matters to be considered in determining whether an application for intervention should be granted, in the end, in my opinion, the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.[22]

B. Nature of the Case and the Issues Raised

27. Ontario Courts properly take into account the public or private nature of the case when considering motions to intervene. As McMurtry C.J.O. noted in *Authorson (Litigation Guardian) v. Canada (A.G.)*, "there has been a relaxation of the rules heretofore governing the disposition of motions for leave to intervene" in public law and constitutional cases.[23] By contrast, a more restrictive position is taken with respect to interventions in private law cases.[24] The rationale for this difference in approach is clear: while private disputes typically concern the interests of the immediate parties, public law litigation generally involves a broad range of policy considerations that engage the interests of every Canadian.

28. As the ACLA has successfully demonstrated in its motion to intervene as a friend of the court, this case raises important issues of public international law and human rights. It is, in the words of the Plaintiffs, a case of "grave importance and precedent-setting nature"[25] involving "issues of international law, the interplay between the *jus cogens* prohibition against

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[22] *Peel (Regional Municipality) v. Great Atlantic & Pacific Company of Canada Ltd.* (1990), 74 O.R. (2d) 164 at 167 (C.A.) [Motion Book of Authorities]; *Childs v. Desormeaux* (2003), 67 O.R. (3d) 385 at 390 (C.A.).
[23] *Authorson (Litigation Guardian) v. Canada (A.G.)*, [2001] O.J. No. 2768 at para. 6 (C.A.).
[24] *Peixeiro v. Haberman* (1994), 20 O.R. (3d) 666 at 670 (Gen. Div.); *Adler v. Ontario* (1992), 8 O.R. (3d) 200 at 205 (Gen. Div.).
[25] Motion Factum of the ACLA, Motion Record, at para. 26, quoting letter from K. Kempton, counsel to the Plaintiffs to the Court, dated December 1st, 2006.

torture and state immunity".[26] In its endorsement granting the ACLA intervenor status, Justice Forestell noted that both the "intervenor and Plaintiffs acknowledge the broad public importance" of the issues raised in this case.[27]

29. Of central importance to this case is the interaction of Canada's international obligations under the *Convention Against Torture*, as well as customary international law, with the evolving law of state immunity. The proposed intervention of the CCIJ and AI Canada will address these important public law questions. Accordingly, it is respectfully submitted that the Proposed Intervenors' motion to intervene should also benefit from the more generous standard for interventions in public law cases.

C. The Proposed Intervenors Will Make a Useful Contribution to the Resolution of the Issues

i. The Proposed Intervenors' Submissions Will Not Be Duplicative

30. The Proposed Intervenors seek leave to intervene jointly for the purpose of making joint submissions on the issue of Canada's obligations under the *Convention Against Torture* (particularly under Article 14), as well as customary international law, and the interaction of those obligations with the evolving law of state immunity. These submissions will pertain to the structure of the *Convention Against Torture* and the international monitoring system it established, the evolving international practice with respect to Article 14, the jurisdiction of the Committee against Torture and the effect of its recommendations at international and Canadian law.

31. No other party to these proceedings will make detailed submissions on the framework and function of the *Convention Against Torture*. Though the Plaintiffs cite the *Convention Against Torture* as one of several grounds for their claim,[28] their consent to the Proposed

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[26] Motion Factum of the ACLA, Motion Record, at para. 27, quoting letter from K. Kempton, counsel to the Plaintiffs to the Court, dated December 1st, 2006.
[27] *Zhang et al. v. Zemin et al.*, Court File No. 04-CV-278915CM2, Endorsement of Justice Forestell dated November 23, 2007, Motion Record, at para. 7.
[28] Statement of Claim, Motion Record, at para. 12(f)

Intervenors' motion suggests that the Plaintiffs' submissions will primarily be based on other points of law.

32. The ACLA has limited leave to file written submissions and only on the invitation of the court to make oral argument "only on the issue of the application of the State Immunity Act."[29] The ACLA "is not entitled to notice of, or participation in, any other steps in the proceeding" and has no standing to oppose this motion.

ii. The Proposed Intervenors' Submissions Will Be Helpful

33. 26. The Proposed Intervenors' submissions will be helpful to the court in determining the scope of Canada's general obligations under the *Convention Against Torture* and its specific obligations under Article 14 to provide torture survivors with redress and an enforceable right to fair and adequate compensation. The Proposed Intervenors will provide the court with recent case law and other authorities addressing the interaction of Canada's obligations under the *Convention Against Torture*, as well as customary international law, and the evolving law of state immunity. A summary of the proposed submissions of the Proposed Intervenors follows to assist the court in determining the usefulness of the Proposed Intervenors' proposed submissions on the *Convention Against Torture*.

iii. Summary of the Proposed Submissions of the Proposed Intervenors

34. The Proposed Intervenors will argue that Article 14 of the *Convention Against Torture* recognizes the universal right of torture victims to obtain civil redress and the commensurate obligation of state parties to provide it. Article 14 reads in part as follows:

> Article 14
>
> 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of

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[29] *Zhang et al. v. Zemin et al.*, Court File No. 04-CV-278915CM2, Endorsement of Justice Forestell dated November 23, 2007, Motion Record, at para. 19.

> the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

35. The Proposed Intervenors will argue that the ordinary meaning, context, object and purpose of Article 14 support the conclusion that the *Convention Against Torture* requires state parties to provide all victims of torture within their jurisdiction with an enforceable right to fair and adequate compensation regardless of where the torture occurred.

36. In 2004, the Court of Appeal for Ontario noted in *Bouzari v. Iran* "that Article 14 ... has not been interpreted to date to require a state to provide access to its courts" with respect to acts of torture committed outside its jurisdiction.[30] The court therefore upheld the dismissal of the case under the *State Immunity Act*.

37. The Proposed Intervenors will argue that the facts analyzed by the Court of Appeal in *Bouzari* have changed and, as a result, international law regarding the scope of Article 14 has evolved significantly since that time. Notably, the United Nations body tasked with interpreting the *Convention Against Torture* has concluded, in response to *Bouzari*, that states – and specifically Canada – are required to provide civil remedies to all torture survivors. In addition, state practice now increasingly provides civil remedies to torture survivors and in some cases has overridden assertions of state immunity.

38. Furthermore, the Proposed Intervenors will argue that *State Immunity Act* did not displace the common law on immunity. Canadian common law incorporates international law, and international law – as it now stands – does not grant immunity for severe violations like torture. As a result, the common law removes immunity from governments that engage in torture.

39. The Proposed Intervenors will argue that the *Convention Against Torture* and recent international law developments mandate both the exercise of universal civil jurisdiction with respect to torture and the removal of state immunity for torture.

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[30] *Bouzari v. Iran* (2004), at para. 83 (C.A.), emphasis added.

iv. The Proposed Intervention Will Cause No Injustice to the Parties

40. The Plaintiffs consent to the Proposed Intervenors' intervention, and the Defendants were noted in default on June 16, 2008. As such, the proposed intervention will cause no injustice to the parties.

41. The Proposed Intervenors will not seek to adduce evidence not currently before the court; it will take the record as it is. The proposed intervention will be limited to submissions on the *Convention Against Torture* and the law of state immunity.

D. Conclusion

42. Recent developments have shed new light on the scope of Canada's obligations under the *Convention Against Torture* and the interaction of those obligations with the evolving law of state immunity. The Proposed Intervenors are uniquely positioned to assist the court by making full and frank submissions on these important issues as they arise in these proceedings. It is respectfully submitted that the Proposed Intervenors meet all of the criteria to intervene as friends of the court.

PART V - ORDER REQUESTED

43. The Proposed Intervenors respectfully seeks an order granting them leave to intervene jointly in these proceedings as friends of the court to makes joint submissions on the interaction between Canada's obligations under the *Convention Against Torture*, as well as customary international law, and the law of state immunity.

44. The Proposed Intervenors do not seek costs on the motion and request that costs not be awarded against them.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of August, 2009.

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Lawyers for the Proposed Intervenors

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Adler* v. *Ontario* (1992), 8 O.R. (3d) 200 (Gen. Div.)

2. *Authorson (Litigation Guardian)* v. *Canada (A.G.)*, [2001] O.J. No. 2768 (C.A.)

3. *Bouzari* v. *Iran* (2004), 1 O.R. (3d) 675 (C.A.)

4. *Childs* v. *Desormeaux* (2003), 67 O.R. (3d) 385 (C.A.)

5. *Peel (Regional Municipality)* v. *Great Atlantic & Pacific Company of Canada Ltd.* (1990), 74 O.R. (2d) 164 (C.A.)

6. *Peixeiro* v. *Haberman* (1994), 20 O.R. (3d) 666 (Gen. Div.).

SCHEDULE "B"
RELEVANT STATUTES

RULES OF CIVIL PROCEDURE

RULE 13INTERVENTION
LEAVE TO INTERVENE AS FRIEND OF THE COURT

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02.

Office of the High Commissioner for Human Rights

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984

***entry into force* 26 June 1987, in accordance with article 27 (1)**

status of ratifications
declarations and reservations

monitoring body

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It

does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3 ***General comment on its implementation***

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory

under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken

to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for

which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At. least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties. (amendment (see General Assembly resolution 47/111 of 16 December 1992); status of ratification)

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article. (amendment (see General Assembly resolution 47/111 of 16 December 1992); status of ratification)

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs I to 4 of th is article s hall be con fidential , and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions ofthis Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months afler the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective reliefto the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this

article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the SecretaryGeneral, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the SecretaryGeneral of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force onthe thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in

article 20.

2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1 . Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The SecretaryGeneral shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering an d voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the SecretaryGeneral shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from thc date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Con vention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of- the notification by the Secretary-General .

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the

date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(a) Signatures, ratifications and accessions under articles 25 and 26;

(b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

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KUNLUN ZHANG, ET AL Plaintiffs	and	**JIANG ZEMIN, ET AL** Defendants

Court File No: 04-CV-278915CM2

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at **TORONTO**

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