IN THE HOUSE OF LORDS
ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL
(ENGLAND)

BETWEEN:

RONALD GRANT JONES

Respondent

-and-

THE MINISTRY OF THE INTERIOR
AL-MAMLAKA AL-ARABIYA AS SAUDIYA
(THE KINGDOM OF SAUDI ARABIA)

Appellant

-and-

LIEUTENANT COLONEL ABDUL AZIZ

Proposed Defendant

AND BETWEEN:

RONALD GRANT JONES

Appellant

-and-

THE MINISTRY OF THE INTERIOR
AL-MAMLAKA AL-ARABIYA AS SAUDIYA
(THE KINGDOM OF SAUDI ARABIA)

Respondent

-and-

LIEUTENANT COLONEL ABDUL AZIZ

Proposed Defendant

AND BETWEEN:

ALEXANDER MITCHELL
WILLIAM SAMPSON
LESLIE WALKER

Respondents

-and-

IBRAHIM AL-DALI
KHALID AL-SALAH
COLONEL MOHAMMED SAID
PRINCE NAIF

Proposed Defendants

-and-

THE MINISTRY OF THE INTERIOR
AL-MAMLAKA AL-ARABIYA AS SAUDIYA
(THE KINGDOM OF SAUDI ARABIA)

Appellants

PRINTED CASE FOR THE INTERVENERS
REDRESS, AMNESTY INTERNATIONAL, INTERIGHTS AND JUSTICE

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The Interveners

1. The Redress Trust (REDRESS), Amnesty International Ltd (AMNESTY INTERNATIONAL), the International Centre for the Legal Protection of Human Rights (INTERIGHTS) and the UK Section of the International Commission of Jurists (JUSTICE) have extensive experience of working against torture and other cruel, inhuman or degrading treatment or punishment around the world. All four Interveners have extensive knowledge of the relevant international law and standards and jurisprudence in this area. Some have contributed to the elaboration of international law and standards related to the prohibition of torture. Some monitor and report on states' implementation in law and practice of these standards. Some have been engaged in litigation in national, regional and international fora involving states' obligations relating to the prohibition of torture.

B C D E

   (i) REDRESS is an international human rights non-governmental organisation with a mandate to assist torture survivors to seek justice and other forms of reparation. Over the past 14 years, it has accumulated a wide expertise on the various facets of the right to reparation for victims of torture under international law. It regularly takes up cases on behalf of individual torture survivors and has wide experience with interventions before national and international courts and tribunals. At the domestic level, it assists lawyers representing survivors of torture seeking some form of remedy such as civil damages, criminal prosecutions or other forms of reparation including public apologies. At the international level, it represents individuals who are challenging the effectiveness of

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domestic remedies for torture and other forms of ill-treatment, including the scope and consequences of the prohibition of torture in domestic law, the State's obligation to investigate allegations, prosecute and punish perpetrators, as well as the obligation to afford adequate reparations to the victims.

(ii) AMNESTY INTERNATIONAL is a company limited by guarantee. It aims to secure the observance of the Universal Declaration of Human Rights and other international standards throughout the world. It monitors law and practices in countries throughout the world in the light of international human rights and humanitarian law and standards. It is a worldwide human rights movement of some 1.8 million people (including members, supporters and subscribers). It enjoys Special Consultative Status to the Economic and Social Council of the United Nations and Participatory Status with the Council of Europe. Its mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression and freedom from discrimination, within the context of its work to promote all human rights. The organisation works independently and impartially to promote respect for human rights, based on research and international standards agreed by the international community. It does not take a position on the views of persons whose rights it seeks to protect. It is concerned solely with the impartial protection of internationally recognised human rights.

(iii) INTERIGHTS is an international human rights law centre based in London. Its main purpose is to assist judges and lawyers in the use of international and comparative law, and national, regional and international mechanisms, for the better protection of human rights. It advises on legal rights and remedies and assists lawyers and non-governmental organisations in the preparation and presentation of cases before international, regional and domestic courts and tribunals. It frequently intervenes as *amicus curia* in cases that raise issues of general importance concerning the interpretation of fundamental rights. It has previously intervened in cases before the European Court of Human Rights, the Inter-American Court of Human Rights, the African Commission on Human and Peoples Rights, the UN Human Rights Committee and in domestic courts.

(iv) JUSTICE is a human rights and law reform organisation and is the British section of the International Commission of Jurists. It has a long history of promoting the importance of international human rights principles in the development of domestic law. To this end, it has intervened in numerous cases before the House of Lords, the Privy Council and the European Courts.

2. The Interveners have previously intervened and assisted in a number of other landmark cases concerning torture and other serious violations of human rights law.

(i) Both AMNESTY INTERNATIONAL and REDRESS were granted leave to intervene and made submissions to Your Lordships' House in the cases of *Ex parte Pinochet R. v.*

Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 1)[1] and *Ex parte Pinochet R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 3)*[2], on the question of the limits of immunity for former heads of state from criminal prosecution for acts of torture. Both organisations, along with INTERRIGHTS, were also granted leave to intervene and made submissions in the recent appeal to your Lordships' House in *A and Others v. Secretary of State for the Home Department*[3].

(ii) AMNESTY INTERNATIONAL was previously granted leave to intervene and made submissions to your Lordships' House in *A (FC) and Others (FC) v. Secretary of State for the Home Department*[4] in the context of the challenge to the derogation from Article 5(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(iii) REDRESS intervened with written submissions in this matter in the Court of Appeal. REDRESS also intervened in the matter of *R (Mazin Jumaa Gatteh Al-Skeini & Ors) v. Secretary of State for Defence*[5] on the nature of the Government's obligations to conduct an effective investigation into allegations of torture and death in custody said to have taken place within a British military operated detention centre in Southern Iraq. REDRESS has also intervened before international tribunals, including the Special Court for Sierra Leone in *Prosecutor v. Morris*

[1] [2000] I AC 61
[2] [2000] 1 AC 147
[3] [2005] 3 WLR 1249
[4] [2004] UKHL 56

Kallon[6] on the applicability of the amnesty provision in the Lomé Accord to the Court's jurisdiction in light of the obligation of states to prosecute serious crimes under international law.

(iv) JUSTICE has a long history of promoting the importance of international human rights principles in the development of domestic law through interventions, including *Ullah v Special Adjudicator*[7] and *R v Lambert* [8] before the House of Lords, *Brown v Procurator Fiscal*[9] before the Privy Council, *Chahal v United Kingdom*[10] and *Khan v United Kingdom*[11] before the European Court of Human Rights, and *R v Secretary of State for the Home Department ex parte Manjit Kaur*[12] before the European Court of Justice. As the UK section of the International Commission of Jurists, JUSTICE was given leave to intervene and made submissions in Your Lordships' House in *A and Others v. Secretary of State for the Home Department.*[13]

(v) INTERIGHTS frequently intervenes as representative or *amicus curiae* in cases that raise issues of general importance concerning the interpretation of human rights. It has recently intervened before the European Court of Human Rights, the Inter-American Court of Human Rights, the African Commission on Human and Peoples Rights, the UN Human Rights Committee and in domestic courts. Recent examples of cases and interventions concerning

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[5] [2004] EWHC 2911
[6] SCSL-2004-15-AR72 (E)
[7] [2004] 2 AC 323
[8] [2001] UKHL 37
[9] [2001] 2 WLR 817
[10] [1996] 23 EHRR 413
[11] [2001] 31 EHRR 45
[12] [2001] All ER (EC) 308 ECJ

torture and cruel, inhuman or degrading treatment include: *Winston Ceasar v. Trinidad and Tobago*[14] before the Inter-American Court; *Singharasa v. Sri Lanka*[15] and *Sathasivam & Saraswathi v. Sri Lanka*[16] before the Human Rights Committee and *Mikeyev v. The Russian Federation*[17] and *Ramzy v Netherlands*[18] before the European Court of Human Rights.

Summary of submissions

3. The Interveners will advance and develop the following submissions:

(i) The prohibition of torture has the status of *jus cogens*. It is a peremptory norm of general international law from which no derogation is permitted. It has the character of an *obligatio erga omnes*: it is a universal legal obligation owed by each state to the international community as a whole.

(ii) Inherent in the prohibition of torture are those measures necessary to ensure the effectiveness of the prohibition, including the enforcement of criminal sanctions, the responsibility and accountability of those responsible for the commission of torture and the availability of effective civil remedies for breaches of the prohibition of torture.

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[13] [2005] 3 WLR 1249
[14] *IACHR Judgement*, 11 March 2005
[15] Communication No.1033/2001, decision of 23 August 2004
[16] Presented July 2005; application pending
[17] Appl. No. 77617/01
[18] Appl. No. 25424/05

(iii) Against this background, the Court of Appeal in this case was right to limit the subject matter immunity (*ratione materiae)* of individual officials by excluding torture from its reach.

(iv) The blanket application of status immunity (*ratione personae*) to civil claims by victims of torture is incompatible with the *jus cogens* nature of the prohibition of torture, the *erga omnes* nature of the obligations arising under the prohibition and the requirements of Article 6 ECHR.

The universal recognition and *jus cogens* nature of the prohibition of torture and the *erga omnes* nature of the obligations arising under the prohibition of torture

4. The prohibition of torture is universally accepted. There are 141 states parties to the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (the UN Convention Against Torture) including Saudi Arabia and the United Kingdom, and 10 signatories that have not yet ratified the Convention.[19] The prohibition is also set out in all the major international instruments dealing with civil and political rights, including: Article 5 of the Universal Declaration of Human Rights 1948; Article 7 of the International Covenant on Civil and Political Rights 1966 (ICCPR); Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); Article 5 of the American Convention on Human Rights 1969; Article 5 of the African Charter on Human and Peoples' Rights 1981; and the Inter-American Convention to Prevent and Punish

[19] Statistics available at http://www.ohchr.org/english/countries/ratification/9.htm

A Torture 1985. Torture is also prohibited in national constitutions and domestic legislation throughout the world.

5. It is well established in national and international law that the B prohibition of torture has now achieved the status of *jus cogens*: a peremptory and non-derogable norm of international law which holds the highest hierarchical position among other norms and principles.[20]

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6. This principle was clearly affirmed by the International Criminal Tribunal for the former Yugoslavia in *Furundzija*:

> "... because of the importance of the values it protects, [the prohibition of torture] has evolved into a peremptory norm D or jus cogens, that is a norm that enjoys a higher rank in the international hierarchy than treaty law and even 'ordinary' customary rules...Clearly the jus cogens nature of the prohibition against torture articulates the notion that the prohibition has now become one of the most fundamental standards of the international community. Furthermore, this prohibition is designed to produce a deterrent effect, in E that it signals to all members of the international community and the individuals over whom they wield authority that the prohibition of torture is an absolute value from which nobody must deviate."[21]

F 7. Likewise, by the European Court of Human Rights in *Al-Adsani v UK:*

> "...the Court accepts...that the prohibition of torture has achieved the status of a peremptory norm in international law...".[22]

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[20] The concepts of obligation *erga omnes* and *jus cogens* are recognized in the ICJ's advisory opinion on *Reservations to the Convention on the Prevention and Punishment of Genocide,* 1951 ICJ Rep. 15 (May 28). The concept also finds support both in the ICJ's *South West Africa* cases (Preliminary Objections) (*Ethiopia v. South Africa; Liberia v. South Africa*), 1963 ICJ Rep. 319 (Dec 21) as well as from the *Case of the Barcelona Traction, Light and Power Co. Ltd.* (Belg v. Spain), 1970 ICJ 3 (Feb 5).

H [21] *Prosecutor v Furundzija,* Case no IT095017/1-T; 10 December 1998 38 International Legal Materials 317) paras 153-4

8. The *jus cogens* status of the prohibition of torture was recognised by Your Lordships' House in *R v Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.3)*.[23]

9. In this case in the Court of Appeal, Lord Phillips of Worth Matravers MR described the prohibition of torture in the following terms:

> "The crime of torture has acquired a special status under international law. It is an international crime or a breach of *jus cogens*. That status is reflected by the International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 ('the Torture Convention') to which there are 148 signatories, including the United Kingdom and Saudi Arabia".[24]

10. The House of Lords again recognised the *jus cogens* nature of the prohibition of torture in its recent decision on the inadmissibility of evidence obtained under torture, in *A and Others*[25]:

> "It is common ground in these proceedings that the international prohibition of the use of torture enjoys the enhanced status of a *jus cogens* or peremptory norm of general international law. For purposes of the Vienna Convention, a peremptory norm of general international law is defined in article 53 to mean "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".

11. As Lord Bingham held in *A and Others* (citing *Kuwait Airways Corporation v Iraqi Airways Co* (Nos.4 and 5)[26], the ICJ's *Advisory Opinion on the Legal Consequences of the Construction of a Wall in*

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[22] (2002) 34 EHRR 273 paras 59-61. In the Court of Appeal (*Al-Adsani v Government of Kuwait and ors*, 107 ILR 536, 541), Stuart-Smith LJ refrained from accepting that the prohibition of torture was *jus cogens* but made no finding either way on the issue.
[23] [2000] AC 147
[24] [2005] 2 WLR 808 para. 108
[25] *A and Others v SSHD* [2005] 3 WLR 1249 at para 33
[26] [2002] UKHL 19, [2002] 2 AC 883

A *the Occupied Palestinian Territory*[27] and Article 41 of the International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts) States are under a duty to refuse recognition to, and to cooperate to bring to an end by lawful means, any serious breach of an obligation under a peremptory norm of international law [28].

12. The prohibition of torture also gives rise to obligations *erga omnes*: obligations owed by States to all other members of the international community.

13. The principle that all States have a legal interest in ensuring compliance with *erga omnes* obligations is reflected in the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts. Article 48 (1) (b) of the Draft Articles provides that "any state other than an injured State is entitled to invoke the responsibility of another State" if "the obligation breached is owed to the international community as a whole." Article 48 (2) (b) of the Draft Articles provides that any State so entitled to invoke responsibility may claim from the responsible State "performance of the obligation of reparation" "in the interest of the injured States or of the beneficiaries of the obligation breached."

14. The *erga omnes* nature of the obligations arising under the prohibition of torture has long been established. In the *Barcelona Traction case* the ICJ observed that:

> "Such [*erga omnes* obligations] derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the *principles and rules concerning the basic rights of the human person,*

[27] 9 July 2004, General list No. 131
[28] *A and Others v SSHD* para 34

including protection from slavery and racial discrimination".[29]

15. See also General Comment 31 of the Human Rights Committee[30], which makes clear that every state has a legal interest in the performance by every other State Party to the ICCPR of its obligations:

> "every State Party has a legal interest in the performance by every other State Party of its obligations. This follows from the fact that the *'rules concerning the basic rights of the human person'* are erga omnes obligations."[31]

16. The judgment of the ICTY in *Prosecutor v Furundzija* explicitly stated that the prohibition of torture is a norm which gives rise to obligations *erga omnes*:

> "Furthermore, the prohibition of torture imposes upon States obligations *erga omnes*, that is, obligations owed towards all the other members of the international community, each of which then has a correlative right. In addition, the violation of such an obligation simultaneously constitutes a breach of the correlative right of all members of the international community and gives rise to a claim for compliance accruing to each and every member, which then has the right to insist on fulfilment of the obligation or in any case to call for the breach to be discontinued".[32]

17. The Inter-American Commission on Human Rights has likewise held:

> "The American Convention prohibits the imposition of torture or cruel, inhuman or degrading treatment or punishment on persons under any circumstances. While the American Declaration does not contain a general provision on the right to humane treatment, the Commission has interpreted Article I of the American Declaration as containing a prohibition similar to that under the American Convention. In fact it has specified that "[a]n essential aspect of the right to personal security is the

[29] (1970) ICJ Reports p.3 at p. 32, para. 34, emphasis added
[30] The UN Human Rights Committee was created by Article 28 of the ICCPR and monitors the implementation of the ICCPR.
[31] CCPR/C/21/Rev.1/Add.13, para. 2
[32] ICTY Trial Chamber, IT095017/1-T; 10 December 1998 38 ILM 317, para. 151

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> absolute prohibition of torture, a peremptory norm of international law creating obligations *erga omnes*".[33]

18. Most recently, Your Lordships' House accepted in *A and Others* that the prohibition of torture gives rise to obligations *erga omnes*.[34]

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19. Thus, all States have a legal interest in protecting the right not to be subjected to torture and all States have standing to invoke a breach of the prohibition of torture.

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The elements of the prohibition of torture that give it effect

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20. International human rights bodies and jurisprudence have long recognised that human rights must be practical and effective. The need for rights to be practical and effective is at its most acute when absolute rights such as the prohibition of torture are engaged.

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21. The requirement that the prohibition of torture be practical and effective was emphasised by the ICTY in *Furundzija*:

> "States are obliged not only to prohibit and punish torture, but also to forestall its occurrence: it is insufficient merely to intervene after the infliction of torture, when the physical or moral integrity of human beings has already been irremediably harmed. Consequently, States are bound to put in place all those measures that may pre-empt the perpetration of torture. As was authoritatively held by the European Court of Human Rights in *Soering*, international law intends to bar not only actual breaches but also potential breaches of the prohibition against torture (as well as any inhuman and degrading treatment). It follows that international rules prohibit not only torture but also (i) the failure to adopt the national measures necessary for implementing the prohibition and (ii) the maintenance in force or passage of laws which are contrary to the

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[33] Report on Terrorism and Human Rights, 22 October 2002, OEA/Ser.L/V/II.116, Doc. 5 rev 1 corr. para. 155

[34] *A and Others v SSHD* para 35

> prohibition [....] The value of freedom from torture is so great that it becomes imperative to preclude any national legislative act authorising or condoning torture or at any rate capable of bringing about this effect."[35]

22. Likewise in *A and Others*, Lord Bingham found that positive obligations flow from the special status of the prohibition of torture in international law:

> "the *jus cogens erga omnes* nature of the prohibition of torture requires member states to do more than eschew the practice of torture."[36]

23. The prohibition of torture imposes positive as well as negative obligations. The prohibition obliges states to refrain from torture, but also to take positive steps to prevent it, and to act in the event of a breach.

24. The prohibition of torture incorporates preventative, deterrent, retributory and remedial elements which are necessary to ensure the effectiveness of the prohibition. International human rights bodies have recognised that respect for each of the inherent elements is obligatory.

25. The elements of the prohibition of torture that give it effect include the existence of criminal sanctions against torture and of effective civil remedies against those responsible for torture.

26. These obligatory elements of the prohibition of torture are reflected in the UN Convention Against Torture. The UN Convention Against Torture *inter alia* requires states parties to "take effective legislative, administrative, judicial or other measures to prevent acts of torture" (Article 2); ensure that the commission of, participation in and attempts to commit torture are offences under criminal law

[35] *Furundzija* paras 148 and 150

A (Article 4)[37]; and "ensure that 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" (Article 14).

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The right to reparations

27. The right to reparations where human rights are violated is internationally recognised. This right is reflected not only in the UN Convention Against Torture (Article 14) but also the Universal Declaration of Human Rights (Article 8); the International Covenant on Civil and Political Rights (Articles 2(3); 9(5) and 14(6)); the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6); the Convention on the Rights of the Child (Article 39) ; and the Rome Statute for the International Criminal Court (Article 75). It also figures in regional instruments such as the European Convention on Human Rights (Articles 5(5), 13 and 41); the Inter-American Convention on Human Rights (Articles 25, 68 and 63(1)); and the African Charter on Human and People's Rights (Article 21(2)).

28. Reparations can take the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition[38]. For example, the UN's recently adopted *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* ["*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims*"] lists measures, such as cessation of continuing violations, apology, including public acknowledgment of the facts and

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[36] *A and Others* v SSHD para 35
[37] In the UK, this is reflected in s.134 (1) of the Criminal Justice Act 1988.
[38] See 'Redress Sourcebook on Reparations' Redress 2003

acceptance of responsibility, judicial or administrative sanctions against persons responsible for the violations, and preventing the recurrence of violations. Satisfaction may be provided by the declaration of the wrongfulness of the act by a competent court or tribunal.

29. The right of a victim of human rights abuse to reparation for their loss and suffering derives from the fundamental principle of international law that (as set out by the International Court of Justice in the *Chorzow Factory Case*[39]) the breach of an engagement involves an obligation to make reparation in adequate form.

The territorial scope of the right to compensation under Article 14 of the UN Convention Against Torture

30. It is submitted that the scope of the duty, arising from the prohibition of torture, to provide compensation for victims of torture, extends to torture committed by any person within *or beyond* the state's own territory or jurisdiction.

31. In *Furundjiza*, the ICTY suggested that victims of torture who were denied redress in the country where the torture had taken place could seek damages in a foreign court :

> "It would be senseless to argue, on the one hand, that on account of the *jus cogens* value of the prohibition against torture, treaties or customary rules providing for torture would be null and void ab initio, and then be unmindful of a State say, taking national measures authorising or condoning torture or absolving its perpetrators through an amnesty law. If such a situation were to arise, the national measures, violating the general principle and any relevant treaty provision, would produce the legal effects discussed above and in addition would not be accorded international legal recognition. Proceedings could be initiated by potential victims if they had locus standi before a

[39] (*Ger v Pol*) (1928) PCIJ Sr A No 17 at 47 (September 13)

competent international or national judicial body with a view to asking it to hold the national measure to be internationally unlawful; or the victim could bring a civil suit for damage in a foreign court, which would therefore be asked inter alia to disregard the legal value of the national authorising act." [40][emphasis added].

32. The UN's *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims* states:

> "II. SCOPE OF THE OBLIGATION
> 3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:
> (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;
> (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
> (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and
> (d) Provide effective remedies to victims, including reparation, as described below ."[41] [emphasis added]

33. Article 14 of the UN Convention Against Torture is clear in its requirement that there be an enforceable means of redress for victims of torture. On its face, Article 14 does not limit this obligation to acts of torture committed within the territory of the contracting State. This is in plain contrast to other Articles of the UN Convention Against Torture which contain express territorial limitations: see Article 2(1) (requiring effective measures to prevent torture within territory under the State Party's jurisdiction); Article 5(2) (requiring a State Party to establish jurisdiction over suspects who are on territory under the State Party's jurisdiction); Article

[40] *Furundzija* para 155
[41] C.H.R. Res 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.1 (19 April 2005)

6(1) (requiring the State Party to investigate when a suspect is found on its territory); Article 7 (1) (requiring the State Party to prosecute or extradite when a suspect is found on its territory); Article 11 (requiring the State Party to take certain measures with regard to places of detention in any territory subject to its jurisdiction); Article 12 (requiring the State Party to investigate where there are reasonable grounds to believe torture occurred in any territory under its jurisdiction); Article 13 (requiring the State Party to investigate complaints from persons alleging torture in any territory under its jurisdiction); and Article 16 (1) (requiring the State Party to prevent other acts of cruel, inhuman or degrading treatment or punishment in territory under its jurisdiction).

34. It is accepted that Articles 4, 5 and 8 of the UN Convention Against Torture put in place a framework under which State Parties are obliged to establish jurisdiction over certain extra-territorial offences of torture. But, it is submitted, this does not imply that the duty to provide victims with an enforceable right of redress in Article 14 of the Convention is limited to redress for acts committed within the territory of each State Party. There are four reasons for this. First, there is an obvious contrast, already noted, between Article 14 and those provisions of the UN Convention Against Torture which contain express territorial limitation. Second, the *jus cogens* nature of the prohibition of torture and the *erga omnes* nature of the obligations arising from the prohibition of torture, to which the UN Convention Against Torture aims to give effect, favour an interpretation of Article 14 which imposes extraterritorial obligations on State Parties. Third, long-established rules of interpretation stipulate that protective human rights provisions require a purposive and generous interpretation. Fourth, the Committee Against Torture has now interpreted Article 14 as being

A extra-territorial in nature. The third and fourth reasons are briefly developed below.

35. Entrenched principles of interpretation point to the need for a B purposive and generous, rather than restrictive, interpretation of Article 14 of the UN Convention Against Torture. The approach to be taken to the interpretation of international human rights instruments was set out by the ECtHR in *Soering v United Kingdom*:

> C "In interpreting the Convention regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms (see the *Ireland v. The United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 90, § 239). Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its D provisions be interpreted and applied so as to make its safeguards practical and effective (see, inter alia, the *Artico* judgment of 13 May 1980,Series A no. 37, p. 16, § 33). In addition, any interpretation of the rights and freedoms guaranteed has to be consistent with "the general spirit of the Convention, an instrument designed to maintain and E promote the ideals and values of a democratic society" (see the Kjeldsen, Busk Madsen and Pedersen judgment of 7 December 1976, Series A no. 23, p. 27, § 53)."[42]

36. The specialist body of independent experts created under Article 17 F of the UN Convention Against Torture to interpret the Convention and monitor the compliance of States Parties, the Committee Against Torture, has recently affirmed that the duty to provide a remedy for victims of torture extends to torture committed beyond G the State's own territory or jurisdiction. In the wake of a decision by the Ontario Court of Appeal barring the claim of a torture victim who had been tortured overseas[43], Canada had argued before the Committee Against Torture that although the right to compensation

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[42] (1989) 11 EHRR 439 at paragraphs 87 and 103

[43] The Ontario Court of Appeal had reached a decision in *Bouzari v Iran*, Ontario Court of Appeal, [2004] 71 OR(3d) 675 (Ontario Court of Appeal), dismissing a civil claim for redress against Iran, in part, because the torture took place outside of Canadian territory.

for acts of torture under Article 14 of the UN Convention Against Torture contained no express limitations, it was implicit that Article 14 did not afford a right to claim damages in one State for torture committed in another State by the agents of another State. In their consideration of the reports submitted by states parties, the members of the Committee Against Torture gave reasons for rejecting Canada's view. The Chairperson noted that:

> "as a countermeasure permitted under international public law, a State could remove immunity from another State – a permitted action to respond to torture carried out by that State. There was no peremptory norm of general international law that prevented States from withdrawing immunity from foreign States in such cases to claim for liability for torture."[44]

37. In its conclusions and recommendations, the Committee Against Torture was emphatic that civil compensation must be available for "all victims of torture" regardless of where the torture was committed. The Committee expressed its concern over "the absence [in Canada] of effective measures to provide civil compensation to victims of torture in all cases." The Committee recommended that Canada

> "review its position under article 14 of the Convention to ensure the provision of compensation through its civil jurisdiction to all victims of torture."[45]

38. It is submitted that the significance of a relevant determination from the Committee Against Torture is considerable. As the ICTY held in *Furundzija*:

> "Where there exist international bodies charged with impartially monitoring compliance with treaty provisions on torture, these bodies enjoy priority over individual States in establishing whether a certain State has taken all the necessary measures to prevent and punish torture and, if they have not, in calling upon that State to fulfil its international obligations. The existence of such

[44] CAT/C/SR.646/Add.1
[45] CAT/C/CO/34/CAN

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> international mechanisms makes it possible for compliance with international law to be ensured in a neutral and impartial manner."[46]

Against that background, it is submitted that it is not open to other bodies, including the domestic courts in the State Parties, to adopt a more restrictive approach to Article 14 of the UN Convention Against Torture.

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Why blanket immunity *ratione materiae* is unavailable for civil claims over acts of torture

Crimes under international law, violations of* jus cogens *norms and official state acts

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39. It is well established that individuals cannot evade responsibility for crimes under international law by asserting that their acts were official state acts. This principle was recognised in Article 7 of the Charter of the Nuremberg Tribunal. It is also reflected in Article 7(2) of the Statute of the International Criminal Tribunal for the Former Yugoslavia; Article 6 of the Statute of the International Criminal Tribunal for Rwanda; and Article 27(1) of the Rome Statute of the International Criminal Court.

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40. The International Law Commission in 1950 (quoted by Lord Hutton in *Pinochet (No. 3)*[47]) articulated the principle thus:

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> "The fact that a person who committed an act which constitutes a crime under international law acted as head of state or responsible Government official does not relieve him from responsibility under international law.
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> 103. This principle is based on article 7 of the Charter of the Nürnberg Tribunal. According to the Charter and the

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[46] *Furundzija* at para 152
[47] *Pinochet (No.3)* at p. 258

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> judgment, the fact that an individual acted as head of state or responsible government official did not relieve him from international responsibility. 'The principle of international law which, under certain circumstances, protects the representatives of a state', said the Tribunal, 'cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment . . . .' The same idea was also expressed in the following passage of the findings: 'He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorising action moves outside its competence under international law'."

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41. The rationale for the principle of individual responsibility for crimes under international law was explained by the Supreme Court of Israel in the *Eichmann Trial* :

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> "international law postulates that it is impossible for a State to sanction an act that violates its severe prohibitions, and from this follows the idea which forms the core of the concept of "international crime" that a person who was a party to such a crime must bear individual responsibility for it. If it were otherwise, the penal provisions would be a mockery."[48]

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42. Thus, where conduct is so grave and the international interest in its prohibition so great that it is criminalised under international law, such conduct cannot constitute an official state act.

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43. Torture belongs to a smaller and even more egregious class of violations under international law: the breach of a *jus cogens* norm of international law. The violation of so fundamental a prohibition of international law cannot constitute an official state act.

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[48] *Attorney General of the Government of Israel v. Eichmann* 36 ILR 277 (Supreme Court of Israel, 1962) at 310

A 44. The UN Convention Against Torture also makes it clear that torture can never constitute an official state act:

> " Article 2
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> ....
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> 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
>
> 3.An order from a superior officer or a public authority
> C may not be invoked as a justification of torture."

Immunity* ratione materiae *and acts of torture

D 45. Since torture cannot constitute an official state act, individual officers of foreign states who commit acts of torture cannot rely on the alleged official nature of their acts to invoke state immunity.

E 46. The rationale for the unavailability of immunity *ratione materiae* for crimes under international law is set out in the International Law Commission's Commentary to Article 7 of the Draft code of Crimes against the Peace and Security of Mankind:

> "The absence of any procedural immunity with respect to
> F prosecution or punishment in appropriate judicial proceedings is an essential corollary of any substantive immunity or defence [footnote omitted]. It would be paradoxical to prevent an individual from invoking his official position to avoid responsibility for a crime only to permit him to invoke this same consideration to avoid the
> G consequences of this responsibility."

47. The US courts have repeatedly affirmed that torture cannot be characterised as official state act for the purposes of immunity. In *Filartiga,* the Court of Appeals held that the actions of the Inspector
H General of the Police in Asuncion, Paraguay who, contrary to Paraguayan as well as US law, had tortured and killed a Paraguayan were not covered by state immunity:

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> "We doubt whether action by a state official in violation of the Constitution and laws of Paraguay and wholly unratified by that nation's government, could properly be characterized as an act of state."[49]

48. In *Re Estate of Ferdinand Marcos,* the US Appeals Court held that : B

> "Immunity is extended to an individual only when acting on behalf of the state ...A lawsuit against a foreign official acting outside the scope of his authority does not implicate any of the foreign diplomatic concerns involved in bringing suit against another government in United States courts...[President] Marcos' acts of torture, execution and disappearance were clearly acts outside his authority as President...."[50] C

49. In *Kadic v Karadzic* the Appeals Court held that the leader of the Bosnian-Serb forces was not immune from claims arising from atrocities committed in Bosnia and noted that: D

> " ... we doubt that the acts of even a state official, taken in violation of a nation's fundamental law and wholly unratified by that nation's government, could properly be characterized as an act of state. "[51] E

50. In *Xuncax v Gramajo* the US District Court for Massachussetts awarded damages against the former Guatemalan Minister of Defence for acts of torture, disappearance and summary execution committed by the military forces under his command. The Court held that immunity for individual officers acting in their official capacity was not available to Gramajo because: F

> "...the acts which form the basis of these [legal] actions exceed anything that might be considered to have been lawfully within the scope of Gramajo's official authority. Accordingly I conclude that the defendant is not entitled to immunity under the FSIA even if that statute were construed to apply to individuals acting in their official capacity...assassination is clearly "contrary to the precepts of humanity as recognised in both national and G H

[49] F. 2d 876 (30 June 1980) at p. 889
[50] Human Rights Litigation (25 F.3d 1467 (9th Cir. 1994) at paras 4-7
[51] (70 F.3d 232 (2nd Cir.1995)

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> international law" and so cannot be part of an official's 'discretionary authority'."[52]

51. In *Cabiri v Assassie –Gyimah* the District Court for New York cited the Court of Appeal's comments:

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> "... that states engage in official torture cannot be doubted but...no state claims a sovereign right to torture its own citizens".

52. The Court went on to hold that:

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> "the alleged acts of torture committed by Assasi-Gyimah fall beyond the scope of his authority as the Deputy Chief of National Security of Ghana. Therefore he is not shielded from Cabiri's claims by the sovereign immunity provided in the FSIA."[53]

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53. Most recently, the US Court of Appeals for the 7th Circuit held in *Abiola* that General Abubakar, the former member of a military junta running Nigeria could not invoke immunity for acts of torture, arbitrary detention and wrongful killing committed while in power.

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For an individual to fall within the scope of the US Foreign States Immunities Act "the individual must have been acting in his official capacity."[54]

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54. A similar approach underpinned the approach of the House of Lords in *Pinochet (No.1)* and *Pinochet (No.3)*.

55. In *Pinochet (No.1)* Lords Nicholls and Steyn considered that the protection of immunity could only apply to "official acts performed in the exercise of the functions of a head of state" by Senator Pinochet[55].

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[52] 886 F.Supp 162 (US District Court)
[53] (1996) 921 F Supp 1189 (US District Court)
[54] *Enahoro, Nwankwo, Aborisade, Wiwa, Doe, Fawehinmi and Abiola v General Abdusalami Abubakar* 408 F.3d 877
[55] *Pinochet (No.1)* [1998] 4 All ER 897 pp. 108-9 and 115

56. In *Pinochet (No. 3)* Lords Browne-Wilkinson and Hutton expressed similar views. Lord Browne-Wilkinson said:

> "How can it be for international law purposes an official function to do something which international law itself prohibits and criminalizes?"[56]

57. Lord Hutton found that "acts of torture were clearly crimes against international law and that the prohibition of torture had acquired the status of *jus cogens*"[57] by 29 September 1988. He concluded that Senator Pinochet's commission of acts of torture after 29 September 1988 was not "a function of the head of state of Chile under international law".[58]

58. Lord Hope took a different route. He rejected the view that "it is not one of the functions of the head of state to commit acts which are criminal according to the laws and constitution of his own state or which customary international law regards as criminal".[59] But he recognised two exceptions under customary international law, the first relating to "criminal acts which the head of state did under the colour of his authority as head of state but which were in reality for his own pleasure or benefit", the second relating to "acts the prohibition of which has acquired the status under international law of *jus cogens*". However, that did not lead him to conclude that immunity was lost in all circumstances. For immunity to be lost in national courts, he thought it necessary to find a provision in the convention to which the state asserting immunity was a party. The UN Convention Against Torture was such a convention.

59. Lord Millett held that no immunity survived in respect of international crimes committed by state officials which were *both*

[56] *Pinochet (No. 3)* [2000] 1 A.C. 147 pp.205-206
[57] *Ibid* p.261
[58] *Ibid* pp.261-263
[59] *Ibid* p.242

A (a) contrary to *jus cogens* and also (b) so serious and on such a scale as to amount to an attack on the international legal order, including since at least 1973 the use of systematic torture.[60] Lord Millett also considered that the Convention Against Torture with its wider B definition of torture was "entirely inconsistent with the existence of a plea of immunity *ratione materiae*".[61] Lords Saville and Phillips based themselves on the same conclusion.[62]

C 60. It is therefore now well established in English law that the gravity of acts of torture is such that, at least in criminal cases, immunity *ratione materiae* cannot be invoked as a shield.

D ***Immunity* ratione materiae *and civil claims over acts of torture***

61. The US Courts have repeatedly held in civil proceedings that acts of torture cannot constitute official acts of state. The US cases cited above are civil claims for damages.

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62. *Pinochet (No.1)* and *Pinochet (No.3)* did not concern immunity from civil suit. In *Pinochet (No.1)* Lords Nichols, Steyn and Saville made no mention of civil proceedings and in *Pinochet (No.3)* Lord F Browne-Wilkinson drew no distinction between criminal and civil immunity.

63. However, in *Pinochet (No.3)*, Lords Hutton[63], Millett[64] and G Phillips[65] expressed the view that Senator Pinochet would have been entitled to immunity from civil proceedings on the basis that the state would be bound to indemnify its officials in respect of any

H [60] *Ibid* pp.273-275
[61] *Ibid* pp.277-278
[62] *Ibid* pp.267 and 289
[63] *Ibid* p.264
[64] *Ibid* p.273
[65] *Ibid* p.281

damages awarded and thus would be (indirectly) impleaded in any such civil proceedings.

64. The Court of Appeal in this case expressly disagreed with the analysis of Lords Hutton and Millett in *Pinochet (No.3)*. As Lord Phillips (who changed his mind about the limits of civil immunity) observed, once the conclusion is reached that torture cannot be treated as the exercise of a state function so as to attract subject-matter immunity in criminal proceedings against individuals, it cannot logically be so treated in civil proceedings against individuals. No question of vicarious liability arises.[66] According to Mance LJ, if torture was found, the state would disown the official and no liability to indemnify would arise.[67]

65. Instead, the Court of Appeal followed the approach taken in the US cases set out above. In doing so, it distinguished *Propend*[68] and the cases cited in it (*Church of Scientology*[69], German Supreme Court, *Jaffe v Miller*[70], Ontario Court of Appeal, and *Herbage v Meese*[71], US Supreme Court). Mance LJ noted that those cases did not concern acts of torture 'against which no state could be required to provide an indemnity'. Mance LJ noted moreover that the rationale in those cases for civil immunity (that the foreign state would have to indemnify its functionaries) was difficult to reconcile with the incongruity of postulating any requirement for states to indemnify their functionaries for illegal or malicious conduct. [72]

[66] Paras 127-128, Court of Appeal in this case
[67] *Ibid* para 76
[68] (1998) 113 ILR 611, Ct App
[69] (1978) 65 ILR 193
[70] (1993) 13 OR (3d) 745
[71] (1990) 747 F Supp 60
[72] Para 35, Court of Appeal in this case

66. The Court of Appeal also distinguished the older common law cases of *Twycross*[73], *Rahimtoola*[74] and *Zoernsch*[75] on the basis that none of them was concerned with conduct that should be regarded as outside the scope of any proper exercise of sovereign authority or with international crime, let alone systematic torture[76]. The only exception was the US case of *Saudi Arabia v Nelson*[77]; however, although that pleaded torture, the allegation was really one of negligence/abuse of power.[78]

67. The Interveners respectfully submit that the Court of Appeal was correct. To find that immunity *ratione materiae* can be invoked for acts of torture in civil proceedings requires that torture be capable of being an official function of the state. Such a finding would be inconsistent with the *jus cogens* status and absolute nature of the prohibition on torture. As the UN Convention Against Torture has confirmed, torture can *never* be an act of state. And, as Lord Phillips stated:

> "Once the conclusion is reached that torture cannot be treated as the exercise of a state function so as to attract immunity *ratione materiae* in criminal proceedings against individuals, it seems to me that it cannot logically be so treated in civil proceedings against individuals."[79]

68. Further, since many legal systems mingle elements of civil and criminal proceedings in one, universal criminal jurisdiction *already* carries with it the possibility of recovery of damages.[80]

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[73] (1877) 5 Ch D 605, CA
[74] [1958] AC 379
[75] [1964] 1 WLR 675
[76] Para 39, Court of Appeal in this case
[77] (1993) 507 US 349
[78] Para 39, Court of Appeal in this case
[79] *Ibid* para 127
[80] See for example articles 3 and 4 of the Belgian Code of Criminal Procedure and s.3 of the French Code of Criminal Procedure, which permit victims of crime to take action for damages as civil claimants in the course of criminal proceedings.

69. In the Court of Appeal in this case, Mance LJ cited the following passage from the judgment of Breyer J in the US Supreme Court case of *Sosa v Alvarez-Machain*:[81]

> "[international] consensus as to [universal] criminal jurisdiction itself suggests that universal tort jurisdiction would be no more threatening. That is because the criminal courts of many nations combine civil and criminal proceedings, allowing those injured by criminal conduct to be represented, and to recover damages, in the criminal proceeding itself...Thus, universal criminal jurisdiction necessarily contemplates a significant degree of civil tort recovery as well."[82]

70. Likewise, in *A and Others* the House of Lords rejected formalistic distinctions between criminal and civil proceedings for the purposes of the application of the exclusionary rule against evidence obtained under torture. The Secretary of State for the Home Department had argued in that case that the exclusionary rule applied in criminal but not civil proceedings. The House of Lords rejected that argument and observed (citing the Council of Europe Commissioner for Human Rights) that:

> "judicial proceedings are judicial proceedings, whatever their purpose."[83]

Why immunity *ratione personae* is unavailable for the State in cases of torture

71. The Interveners submit that the principles underpinning the loss of immunity for acts of torture cannot be limited to the acts of individual officials. The reasoning that the prohibition of torture, being universally accepted, requires adjustment to the rules of immunity in the civil and criminal spheres cannot, as a matter of

[81] Para 60, Court of Appeal in this case
[82] 542 US 692 (2004)

A logic and principle, be restricted in the civil sphere to the acts of individual officials. There should be no immunity *ratione personae* for the State, just as there can be no immunity *ratione materiae* for individual officials, for acts of torture.

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The limits of state immunity

72. It is well established in international and domestic law that States do not enjoy absolute immunity before foreign courts. States enjoy immunity for acts of a "sovereign nature" (*acta jure imperii*) but not for their private law dealings (*acta jure gestionis*). This is reflected in sections 3 to 9 of the State Immunity Act 1978 which set out exceptions to state immunity. This is also reflected in the well established principle that the commercial dealings of States are not shielded by immunity because they are not acts within the sphere of sovereign authority.

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73. Lord Denning summarised the development of a doctrine of restrictive immunity in *Trendtex*[84]:

> "In the last 50 years there has been a complete transformation in the functions of a sovereign state. Nearly every county now engages in commercial activities. It has its departments of state -- or creates its own legal entities -- which go into the market places of the world. They charter ships. They buy commodities. They issue letters of credit. This transformation has changed the rules of international law relating to sovereign immunity. Many countries have now departed from the rule of absolute immunity. So many have departed from it that it can no longer be considered a rule of international law. It has been replaced by a doctrine of restrictive immunity. This doctrine gives immunity to acts of a governmental nature, described in Latin as *jure imperii,* but no immunity to acts of a commercial nature, *jure gestionis*."

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[83] *A and Others* para 120
[84] [1977] QB 529

74. In *I Congreso del Partido*[85], in a judgment subsequently referred to by Lord Goff in *Kuwait Airways Corp v Iraqi Airways Corp*[86] as the "authoritative statement" on the issue, Lord Wilberforce emphasised the need to examine the nature of the acts for which the foreign state sought to invoke immunity:

> "The conclusion which emerges is that in considering, under the restrictive theory, whether State immunity should be granted or not the court must consider the whole context in which the claim against the State is made, with a view to deciding whether the relevant act(s) on which the claim is based should, in that context, be considered as fairly within an area of activity, trading or commercial or otherwise of a private law character, in which the State has chosen to engage or whether the relevant act(s) should be considered as having been done outside that area and within the sphere of governmental or sovereign authority." [emphasis added].

Lord Wilberforce also stated in *I Congreso* that conduct capable of performance by private persons, not only by States and their officials, is not a sovereign act and thus attracts no immunity.[87]

75. Likewise, in *Letelier*, Chile had sought to argue that the assassination of a former ambassador by a car bomb, if committed or ordered by the Chilean government, was an act *jure imperii* because it was an act of "policy judgment and decision" immunised under the US Foreign Sovereign Immunities Act 1976. The US District Court for the District of Columbia dismissed that argument and held:

> "Whatever policy options may exist for a foreign country, it has no 'discretion' to perpetrate conduct designed to result in the assassination of an individual or individuals, action that is clearly contrary to the precepts of humanity as recognised in both national and international law."[88]

[85] [1983] 1 AC 244
[86] [1995] 3 All ER 694 at pp.704-705
[87] [1983] 1 AC 244 at 268
[88] 63 ILR 388

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76. As is pointed out by Alexander Orakhelashvili in *Peremptory Norms in International Law*, in assessing whether an act is *jure imperii* and thus attracts sovereign immunity:

> "the test is not whether an act is lawful, but whether an act would by its nature fall within the sovereign powers of a State...In order not to attract immunity, illegality must be a characterizing feature of an act itself and not merely a circumstance of its performance or a result it brings about. In other words, the illegality of an act must be substantive and not merely ensuing. It must be demonstrated that a State is not even *prima facie* permitted under international law to perform a particular act in relation to which immunity is claimed, since it would be outside its sovereign powers."[89]

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77. Torture is an act which by its nature falls outside the sovereign powers of a State: "breaches of *jus cogens* are definitionally outside the scope of acts *jure imperii*."[90] The Interveners submit that if torture cannot constitute an official act of state for the purposes of the immunity, *ratione materiae,* of individual officials, it follows that torture cannot constitute an act "within the sphere of government or sovereign authority" for the purposes of state immunity. Breaches of a *jus cogens* norm of international law cannot constitute *acta jure imperii*, regardless of the status of the person committing the acts.

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78. It is submitted that support for this approach can be found in the comments of Lord Nicholls in *Pinochet No.1*:

> "International law does not require the grant of any wider immunity. And it hardly needs saying that torture of his own subjects, or of aliens, would not be regarded by international law as a function of a head of state."[91]

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[89] Alexander Orakhelashvili *Peremptory Norms in International Law* Oxford University Press, forthcoming pp.324-325

[90] Ibid p.341

[91] Pinochet (No.1) p. 109

79. Lord Hutton in *Pinochet No.3* also concluded that Senator Pinochet's commission of acts of torture after 29 September 1988 was not "a function of the head of state of Chile under international law".[92] Lord Browne-Wilkinson similarly found that the commission of international crimes against humanity and violations of a *jus cogens* prohibition could not constitute the official functions of a head of state.[93]

80. It is accepted that in *Al-Adsani*, a nine-to-eight majority of the ECtHR found that an interpretation of the State Immunities Act 1978 which granted blanket immunity *ratione personae* for acts of torture did not constitute an unjustified restriction on the applicant's right to access to a court. But the Interveners submit that:

(i) The majority of the ECtHR in *Al-Adsani* began from the false premise that immunity *ratione personae* is an absolute immunity. The ECtHR majority did not address the well-established restrictive approach to sovereign immunities or the question of whether torture can constitute *acta jure imperii* for the purposes of the invocation of immunity *ratione personae.*

(ii) As a consequence, the ECtHR majority asked itself the wrong question, namely whether there is evidence of a specific rule of customary international law permitting derogation from an absolute sovereign immunity in cases of torture. There is no rule of customary international law *requiring* States to grant an absolute immunity *ratione personae*. As Lord Denning commented in *Trendtex*,

> "The nations are not in the least agreed upon the doctrine of sovereign immunity. The courts of

[92] *Pinochet (No.3)* p.261-263
[93] *Ibid* p.203-205

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every country differ in their application of it. Some grant absolute immunity. Others grant limited immunity, with each defining the limits differently."[94]

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(iii) In any event, since the decision in *Al-Adsani*, the Committee Against Torture has interpreted Article 14 of the UN Convention Against Torture more widely than it had been interpreted at the time of the decision in *Al-Adsani*. That, it is submitted, has a profound effect on

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para.61 of the European Court's judgment in *Al-Adsani*. Contrary to the view expressed there by the majority, it is now clear that the very widely ratified UN Convention Against Torture does restrict the extent to which State

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Parties enjoy immunity from civil suit in courts of another State where acts of torture are alleged: see the Committee Against Torture's comments on Canadian compliance, analysed above.

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The invocation of immunity by parties to the UN Convention Against Torture

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81. The principle that a State should not be allowed to shelter behind the alleged official or state nature of acts of torture has particular force where, as in this case, the State concerned is a party to the UN Convention Against Torture.

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82. The consideration by Your Lordships in this case of the scope of the guarantee of an effective remedy under Article 14 of the UN Convention Against Torture is against a background in which the individual appellants allege that Saudi Arabia has failed to adhere to

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its multiple obligations under the UN Convention Against Torture to

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[94] Paras 552-553

refrain from, prosecute, investigate and provide a remedy for acts of torture.

83. In *Pinochet No. (3)*, Lord Browne Wilkinson held that, notwithstanding the lack of any specific reference to state immunity in the Convention Against Torture, Chile waived the right to invoke immunity *ratione materiae* for acts of torture on becoming a party to the UN Convention Against Torture:

> "Chile had agreed to outlaw such conduct and Chile had agreed with the other parties to the Torture Convention that all signatory states should have jurisdiction to try official torture (as defined in the Convention) even if such torture were committed in Chile."[95]

84. Lord Saville did not follow the waiver route, but held that the express terms of the Convention were incompatible with immunity *ratione materiae* for acts of torture:

> "So far as the states that are parties to the Convention are concerned, I cannot see how, so far as torture is concerned, this immunity can exist consistently with the terms of that Convention."[96]
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> "To my mind these terms [of the UN Convention Against Torture] demonstrate that the states who have become parties have clearly and unambiguously agreed that official torture should now be dealt with in a way which would otherwise amount to an interference in their sovereignty."[97]

85. Likewise Lord Millett:

> "My Lords, the Republic of Chile was a party to the Torture Convention, and must be taken to have assented to the imposition of an obligation on foreign national courts to take and exercise criminal jurisdiction in respect of the official use of torture. I do not regard it as having thereby waived its immunity. In my opinion there was no immunity to be waived."[98]

[95] *Pinochet (No.3)* p.205
[96] *Ibid* p.266
[97] *Ibid* p.267
[98] *Ibid* p.277

A 86. And Lord Phillips:

> "There are only two possibilities. One is that the States Parties to the Convention proceeded on the premise that no immunity could exist ratione materiae in respect of torture, a crime contrary to international law. The other is that the States Parties to the Convention expressly agreed that immunity ratione materiae should not apply in the case of torture. I believe that the first of these alternatives is the correct one, but either must be fatal to the assertion by Chile and Senator Pinochet of immunity in respect of extradition proceedings based on torture."[99]

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87. The parties to the UN Convention Against Torture have undertaken obligations to prevent, refrain from, punish, investigate and afford civil remedies for acts of torture. They have also committed to an international regime to uphold the prohibition of torture and ensure that the torturer finds no safe haven. The Committee Against Torture has now made it clear that the obligations undertaken by the parties to the UN Convention Against Torture include an obligation to provide a civil remedy even where the torture was committed abroad. On the living instrument approach, it is submitted, this now forms part of the obligations undertaken by the States Parties. The continuance of sovereign immunities – whether *ratione personae* or *ratione materiae* - for acts of torture is inconsistent with the obligations undertaken by the parties to the UN Convention Against Torture.

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International Public Policy

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88. State immunity has developed as a norm of international law because it has been in the interest of the international community to ensure that certain state activity is not subject to adjudication by other states.

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[99] *Ibid* p.277

89. In the US case of *The Schooner Exchange v. McFaddon*[100], Marshall J found that states waive their right to adjudicatory jurisdiction over a foreign state with respect to conduct that promotes the 'mutual benefit' of the community of nations.

90. Lord Reid held in *Rahimtoola v Nazim of Hyderabad*:

> "The principle of sovereign immunity is not founded on any technical rules of law: it is founded on broad considerations of public policy, international law and comity.[101]

91. It is submitted that if state immunity is based on considerations of international public policy, it should not apply to conduct that is clearly contrary to a *jus cogens* norm of international law and in breach of *erga omnes* obligations. On the contrary, the interests and duties of the international community lie in preventing torture and investigating, prosecuting and providing redress where torture has occurred.

92. The interest of all States in enforcing the prohibition of torture is reflected in the development of universal criminal jurisdiction. As Lord Browne-Wilkinson stated in *Pinochet (No.3)*:

> "The jus cogens nature of the international crime of torture justifies states in taking universal jurisdiction over torture wherever committed. International law provides that offences jus cogens may be punished by any state because the offenders are "common enemies of all mankind and all nations have an equal interest in their apprehension and prosecution": *Demjanjuk v. Petrovsky* (1985) 603 F. Supp. 1468; 776 F. 2d. 571."[102]

93. In *Pinochet (No.3)*, Lord Phillips found that immunity *ratione materiae* was inconsistent with the existence of extraterritorial jurisdiction for the prosecution of international crimes because the

[100] 11 US 116 (1812) at 136
[101] [1958] AC 379, 404
[102] *Pinochet (No.3)* p.198

A interests of the international community lie in the suppression of these acts whether or not they are committed under colour of office:

> "The exercise of extraterritorial jurisdiction overrides the principle that one state will not intervene in the internal affairs of another. It does so because where international crime is concerned, that principle cannot prevail. An international crime is as offensive, if not more offensive, to the international community when committed under colour of office."[103]

94. Where the State in which the alleged torture took place fails to take steps to investigate the torture or to provide local effective remedies, the forum State, in giving the complainant access to its courts, acts in performance of its *erga omnes* obligations arising from the prohibition of torture.

95. As with the exercise of universal criminal jurisdiction, it is submitted that the exercise of universal tort jurisdiction over acts of torture adheres to the interests of the international community. As Breyer J held in the US Supreme Court judgment of *Sosa v Alvarez-Machain*:

> "The fact that this procedural consensus exists [viz a consensus that 'universal jurisdiction to prosecute a subset' of certain universally condemned behaviour which includes torture] suggests that recognition of universal jurisdiction in respect to a limited set of norms is consistent with principles of international comity. That is, allowing every nation's courts to adjudicate foreign parties in such cases will not significantly threaten the practical harmony that comity principles seek to protect. That consensus concerns criminal jurisdiction but consensus as to criminal jurisdiction itself suggests that universal tort jurisdiction would be no more threatening."[104]

96. The Interveners submit that arguments of international comity no longer support blanket state immunity for acts of torture. Once it is accepted that state *immunity ratione materiae*, being based on

[103] *Ibid* p.289

considerations of international public policy, is incompatible with the universal interest in the deterrence, prosecution and eradication of torture, it follows that state immunity *ratione personae*, similarly based on considerations of international public policy, is also incompatible with the universal interest in upholding the prohibition of torture.

97. The notion that conduct contrary to the interests of the international community cannot be the subject of foreign state immunity finds support in the reasoning of Richardson J in the New Zealand Court of Appeal case of *Controller and Auditor-General v Davison KPMG*[105]. Though that case did not concern torture, Richardson J held that there was an "iniquity" exception to foreign state immunity:

> "It is not a matter of the forum state simply preferring public policies underlying its domestic laws to those of the foreign state. Fundamental values must be at stake. Where the conduct of the foreign state is in question, refusal of a claim to sovereign immunity could be justified only where the impugned activity, if established, breaches a fundamental principle of justice or some deep-rooted tradition of the forum state."

98. The iniquity exception to state immunity would apply in

> "cases where the alleged conduct of the foreign state is directed in a real sense against the forum state or so directly affects it and is so outrageous that the protection international law would otherwise give to the foreign state in matters properly within the jurisdiction of the forum state should not be allowed."

The hierarchy of international law norms

99. It is submitted that where a *jus cogens* norm of international law conflicts with a norm that has not achieved that status, the latter

[104] 542 US 692 (2004)
[105] [1996] NZAR 145; [1996] 2NZLR 278 (New Zealand Court of Appeal)

must yield to the former. This finds formal expression in Article 53 of the Vienna Convention on the Law of Treaties which provides that:

> "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

100. Even if immunity under customary law can properly be interpreted as providing immunity for acts of torture, state immunity, a norm of customary international law status, must yield to the requirements of the prohibition of torture, a norm of *jus cogens* status.

101. The majority of the ECtHR in *Al-Adsani* noted the observation of the ICTY in *Furundzija* that the *jus cogens* prohibition of torture takes primacy over general customary law but refused to accept that the prohibition of torture prevails over conflicting claims of state immunity.[106] The inconsistency of this approach is highlighted in the minority opinion, which notes that "The majority, while accepting that the rule on the prohibition of torture is a *jus cogens* norm, refuse to draw the consequences of such acceptance."[107]

102. The Interveners respectfully submit that the minority of the ECtHR in *Al-Adsani* were correct in stating that:

> " the acceptance therefore of the jus cogens nature of the prohibition of torture entails that a State allegedly violating it cannot invoke hierarchically lower rules (in this case, those on State immunity) to avoid the consequences of the illegality of its actions."[108]

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[106] *Al-Adsani*, 34 EHRR 11(2002), 291, paras 60-61
[107] Joint Dissenting Opinion, para. 4
[108] Joint Dissenting opinion of Judges Rozakis, Calfish, Wildhaber, Costa, Cabral, Barreto and Vajic in *Al Adsani v United Kingdom* (2001)34 EHRR 273

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103. Against that background, it is respectfully submitted that Mance LJ was wrong to suggest in the Court below that immunity only "qualifies the jurisdictions in which and means by which the peremptory norm may be enforced"[109] so that no conflict arises between the *jus cogens* prohibition of torture and sovereign immunity. Where, as in this case, the only available remedy is in the court of a State other than that in which the torture allegedly took place, immunity frustrates the right to an effective remedy for acts of torture. Since the prohibition of torture must be "practical and effective" and the right to an effective remedy is integral to the prohibition, a norm of international law which interferes with the enforcement of the prohibition of torture is in conflict with the *jus cogens* prohibition itself. It is further submitted that the reasoning that immunity only "qualifies the jurisdiction in which and means by which the peremptory norm may be invoked" is wrong in that it neglects the logically anterior question of whether state immunity encompasses actions involving violations of *jus cogens* norms, such as torture.

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104. Other courts have reasoned that states cannot invoke sovereign immunity from civil liability for acts which violate fundamental norms of international law. In the ICTY Trial Chamber Judgment in *Prosecutor v Furundzija*, the Court remarked *obiter* that a victim of torture could pursue a civil claim against one state in the courts of another.[110] The Hellenic Supreme Court in *Prefecture of Voiota v Federal Republic of Germany*[111] denied immunity to Germany for actions in breach of *jus cogens* obligations by the German occupying forces on the island of Distomo during the second world war. The

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[109] Court of Appeal in this matter at para 17
[110] *Furundzija at* para 155
[111] Case No.11/2000 May 4th 2000

Hellenic Supreme Court found that the violation of *jus cogens* norms by Germany constituted an implied waiver of immunity.

105. More recently, the Italian Supreme Court in *Ferrini v Federal Republic of Germany*[112] denied state immunity to Germany for acts which constituted crimes under international law. The Italian Supreme Court found it relevant that the impugned actions – the deportation of an Italian national to Germany for forced labour – had begun in the forum state, but went on to find that acts contrary to certain universal values, shared by the international community, could not be the subject of state immunity. The granting of sovereign immunity for states accused of such acts "hinders rather than furthers, values whose protection must be considered fundamental for the international community as a whole…no doubt such antinomy must be resolved by giving priority to the rules of higher rank."[113]

> "Respect for the inviolable rights of the human being amounts today to a fundamental principle of the international legal system…and this principle cannot but affect the scope of other traditional principles of international law such as that on the 'sovereign equality' of States to which the granting of State immunity from foreign civil jurisdiction is linked."[114]

The approach to Article 6 ECHR

106. A restriction on the right to access to a court under Article 6(1) ECHR must be pursuant to a legitimate aim, necessary and proportionate (*Golder v. The United Kingdom*).[115]

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[112] *Corte de Cassazione (Sezione Unite)* judgment No 5044 of 6 November 2003, registered 11 March 2004

[113] *Ibid* para 9.1, translation taken from Carlo Focarelli, *Denying foreign state immunity for commission of international crimes: the Ferrini decision,* ICLQ vol 54, Oct 2005 pp.951-958

[114] *Ibid* para 9.2

[115] 18 (1975) 1 EHRR 524 at para 38

107. The EctHR has held that the assessment of proportionality in Article 6 ECHR cases is fact-specific and must proceed on a case-by-case basis. In *Waite and Kennedy v Germany*, the EctHR held:

> "As to the issue of proportionality, the Court must assess the contested limitation placed on Article 6 in the light of the particular circumstances of the case."[116]

108. The requirement that restrictions on access to the Courts be legitimate and proportionate extends to restrictions imposed in pursuit of a State's international obligations:

> "the Court, while attentive of the need to interpret the Convention in such a manner as to allow the States Parties to comply with their international obligations, must nevertheless in each case be satisfied that the measures in issue are compatible with the Convention or its Protocols."[117]

109. Factors considered by the ECtHR in assessing whether restrictions are necessary and proportionate include: the nature of the rights restricted; the extent of the interference, in particular whether the right is effectively 'extinguished'; and the availability of alternative measures and mitigation of the effects of the restriction. [118] Thus, for example, in a series of cases concerning immunity from suit for parliamentarians in Italy, the ECtHR has found that restrictions on plaintiffs' right of access to the courts were disproportionate.[119]

110. In determining whether Article 6 ECHR would be breached where state immunity is invoked to bar an individual from seeking a remedy in the courts against the acts of a foreign state, the Court

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[116] *Waite and Kennedy v. Germany* 26083/94 [1999] 30 EHRR Para 64
[117] *Capital Bank v Bulgaria* Application 49429/99 [2005] ECHR 752 para 111
[118] *Connors v. The United Kingdom, Application no. 66746,* 27 May 2004 at para 82
[119] *Cordova v Italy (No.2)* Application No. 45649/99; *De Jorio v Italy* Application No.73936/01; *Ielo v Italy* Application No. 23053/02.

must assess whether immunity constitutes a legitimate and proportionate limitation on the right to access to a court[120].

111. The Interveners submit that this assessment must proceed on a case by case basis. The need for an individualised approach to questions of immunity (though concerning only claims against individual officials) was recognised by Mance LJ in the court of Appeal in this case :

> "[Blanket immunity for individual state officials] could deprive the right of access to a court under article 6 of real meaning in a case where the victim of torture had no prospect of recourse in the state whose officials committed the torture. But a proportionate approach in pursuit of a legitimate aim is not the same as an approach requiring all states to either assume universal civil jurisdiction or (in the cases of countries like England) to forgo all discretionary qualifications on the breadth of their technical jurisdictional rules. In order to determine whether a claim for systematic torture should be allowed to proceed in the English courts, it would thus, on any view, be necessary for the court to consider and balance all relevant factors, including any evidence before it as to the availability or otherwise of an effective remedy for the torture in the state responsible for it."

> "[Such an approach] caters for our obligation under article 6 of the Human Rights Convention not to deny access to our courts, in circumstances where it would otherwise be appropriate to exercise jurisdiction applying domestic jurisdictional principles, unless to do so would be in pursuit of a legitimate aim and proportionate."[121]

112. The existence of a blanket rule granting state immunity from civil suit would, like the existence of a blanket rule granting individual immunity from civil suit, be inconsistent with the requirement for the Courts to assess the facts of a particular case in determining whether the interference with the right to access to the court was

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[121] Paras 85 to 96 Court of Appeal in this case

justified. The Interveners respectfully adopt the reasoning of Judge Loucaides, dissenting, in the EctHR in *Al-Adsani*:

> "Any form of blanket immunity, whether based on international law or national law, which is applied by a court in order to block completely the judicial determination of a civil right without balancing the competing interests, namely those connected with the particular immunity and those relating to the specific claim which is the subject matter of the relevant proceedings, is a disproportionate limitation on Article 6(1) of the Convention and for that reason it amounts to a violation of that Article. The courts should be in a position to weigh the competing interests in favour of upholding an immunity or allowing a judicial determination of a civil right, after looking into the subject matter of the proceedings."[122]

113. The Interveners submit that the majority of the ECtHR in *Al-Adsani* erred in that, having recognised that restrictions are permitted on the right of access to a court provided only "that the limitations do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired", they failed to go on to consider the practical consequences in individual cases of a blanket immunity *ratione personae*. There will be cases in which immunity *ratione personae* extinguishes an individual's right to an effective remedy for torture and right of access to a court altogether. The problem is compounded by the fact that blanket immunity *ratione materiae* has the effect of preventing national courts from weighing the impact of the immunity on the individual applicant, leaving no mechanism by which a breach of Article 6 ECHR can be avoided in those circumstances.

Rendering the prohibition of torture practical and effective

114. Inherent in the prohibition of torture is the requirement that victims of torture have access to an effective remedy. The EctHR has held

[122] *Al Adsani* p.301

A in *Öneryildiz v. Turkey*[123] that where individuals and state authorities are identified as responsible for a wrongful act, to only hold the individuals to account fails to guarantee respect for the underlying right because the body ultimately responsible is not held to account.

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115. The Interveners submit that the principle that the State, as ultimate wrongdoer, must be held to account applies with particular force in cases of torture. It is inherent in the definition of torture that it is the

C State that commits or instigates torture (see Article 1 of the United Nations Convention Against Torture). The requirement, inherent in the prohibition of torture, that compensation be available in cases of torture has the dual function of providing an effective remedy for victims and deterring future acts of torture by the perpetrators. If

D victims are denied redress against the State they are denied an effective remedy, both in that the ultimate wrongdoer is not held to account and in that the individual officer (who, as was recognised in the Court of Appeal, may not be indemnified by his employer) may

E not have funds to pay compensation. Further, the deterrent effect of the right to compensation is weakened or obviated if the State, which is directing or permitting its officials to carry out acts of torture, is not held to account.

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116. Unlike the immunity *ratione personae* of high officials (who can be sued on leaving office) the immunity *ratione personae* of the State itself is not time-limited. The ICJ found in the Arrest Warrant case

G that a Foreign Minister was shielded by immunity *ratione personae* but reasoned that he could be subject to criminal prosecution in another country on leaving office.[124] By contrast, if the State holds blanket immunity, a person whose only remedy lies against the State

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[123] Application No. 48939/99 30 November 2004 paras 111-118

[124] *Democratic Republic of the Congo v Belgium (The Arrest Warrant Case)* 14 February 2002

will, in most cases, never enjoy a remedy. In these circumstances, immunity is tantamount to impunity.

The State Immunities Act 1978

117. Section 1(1) of the State Immunity Act 1978 provides:

> "A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of the Act."

118. Section 5 provides:

> "A State is not immune as regards proceedings in respect of -
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> a) death or personal injury; or
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> b) damage or loss of tangible property,
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> caused by an act or omission in the United Kingdom."

119. Section 14 provides:

> (1) "The immunities and privileges conferred by this Part of this Act apply to any foreign or commonwealth State other than the United Kingdom; and references to a State include references to—
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> a) the sovereign or other head of that State in his public capacity;
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> b) the government of that State; and
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> c) any department of that government,
>
> but not to any entity (hereafter referred to as a "separate entity") which is distinct from the executive organs of the government of the State and capable of suing or being sued.
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> (2) A separate entity is immune from the jurisdiction of the courts of the United Kingdom if, and only if—
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> a) the proceedings relate to anything done by it in the exercise of sovereign authority; and

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b) the circumstances are such that a State (or, in the case of proceedings to which section 10 above applies, a State which is not a party to the Brussels Convention) would have been so immune."

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Why the State Immunity Act 1978 does not extend immunity* rationae materiae *to individual officials for acts of torture

120. It is submitted that individual officials other than heads of State cannot invoke immunity under the State Immunity Act 1978. S. 14(1) of the 1978 Act refers only to the State, its government and departments and to the sovereign or other head of State. The rationale underpinning the immunity in s.14(1) is that a serving head of state has a

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> " ... special status as the holder of his state's highest office. He is regarded as the personal embodiment of the state itself. It would be an affront to the dignity and sovereignty of the state which he personifies and a denial of the equality of sovereign states to subject him to the jurisdiction of the municipal courts of another state."[125]

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121. The same rationale cannot apply to every police officer, fireman and bailiff. S.14(1) does not refer to individual officials other than the head of state. The immunity in s.14(2) for "separate entities" extends immunity to bodies which are separate from the executive organs of government but which perform public functions, such as banks or airlines, when engaged in their public functions. Individual officials do not come within s.14(1) or s.14(2) of the 1978 Act. To this extent, it is submitted that the application of the principles set out in *Propend Finance Property Ltd & Others v Sing and*

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[125] *R v Bow Street Magistrates ex p Pinochet* (No.3) HL[2000] 1 AC, Lord Millett at 269

Another[126], which did not involve acts of torture, need to be reconsidered.

122. In the alternative, it is submitted that the Court below was correct to find that even if individual officials do fall within the scope of the 1978 Act, immunity cannot be invoked for acts of torture. This is because individual officials should only enjoy immunity for their acts done in the exercise of their public duties. If individual officials fall under s.14(1) their immunities can only extend to acts committed in a public capacity. If individual officials fall under s.14(2) as "separate entities" they can enjoy immunity "if and only if" their acts were done "in the exercise of sovereign authority". This corresponds to the position under customary international law: lesser officials enjoy only immunity *ratione materiae*, an immunity attaching solely to official functions. It cannot be part of an official's public functions to carry out acts of torture: immunity *ratione materiae* therefore cannot shield an individual from liability for torture.

Why the State Immunity Act 1978 does not extend immunity* ratione personae *to the State for acts of torture

123. The Interveners submit that conduct amounting to torture should be excluded from the operation of s.1 (1) of the State Immunity Act 1978. For the reasons already set out above, a blanket sovereign immunity for acts of torture is incompatible with Article 6 ECHR read in light of Article 14 of the UN Convention Against Torture. S.3 Human Rights Act 1998 requires that s.1(1) of the State Immunity Act 1978 be interpreted, in so far as it is possible to do so, as excluding acts of torture. The Interveners submit that this result can be achieved by finding that s. 1(1), applying as it does to acts of

[126] (1998) 113 ILR6111, Ct App in which it was held that a police officer would fall under s.14(1) of the 1978 Act.

A the State, applies only to acts capable of constituting *acta jure imperii*, and therefore excludes acts contrary to *jus cogens* norms of international law. Alternatively, the Interveners submit s.1 (1) of the 1978 Act is incompatible with the ECHR.

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Conclusion

C 124. As a consequence of the *jus cogens* nature of the prohibition of torture and the *erga omnes* nature of the obligations arising under the prohibition of torture, all states are under positive obligations to take steps to prevent and eradicate torture and have a legal interest in upholding the prohibition of torture.

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125. The right to a civil remedy for victims of torture, wherever that torture is committed, is inherent in the prohibition of torture. Access to a civil remedy is necessary in order that the prohibition of torture

E be practical and effective.

126. The Court of Appeal was right to find that immunity *ratione materiae* cannot be invoked by individual state officials in cases of

F torture: torture can never constitute an official state function.

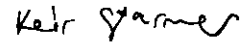
127. Foreign states should not be able to shelter behind immunity *ratione personae*. Torture cannot constitute sovereign acts of state (*acte*

G *imperii*) for the purposes of the restrictive doctrine of state immunity. The international public policy considerations which underpin state immunities do not require that state immunity be available in cases of torture; on the contrary, the international

H community shares an interest in upholding and enforcing the prohibition of torture. In the event of any conflict, state immunity, a norm of customary international law, must yield before the

prohibition of torture, a *jus cogens* norm of international law. Blanket immunities to civil claims by victims of torture are incompatible with the requirement, under Article 6 ECHR, that courts assess, on a case by case basis, whether an interference with the right to access to a court is necessary, proportionate, and pursuant to a legitimate aim. For individuals to have an effective remedy, they must be allowed to sue the State, the ultimate wrongdoer.

3 April 2006



Keir Starmer QC
Peter Morris
Laura Dubinsky

Doughty Street Chambers

Bhatt Murphy

27 Hoxton Square
London N1 6NN

Agents for the Interveners

A

IN THE HOUSE OF LORDS
ON APPEAL FROM HER MAJESTY'S COURT
OF APPEAL (ENGLAND)

BETWEEN:

RONALD GRANT JONES

Respondent

-and-

B

THE MINISTRY OF THE INTERIOR
AL-MAMLAKA AL-ARABIYA AS SAUDIYA
(THE KINGDOM OF SAUDI ARABIA)

Appellant

-and-

LIEUTENANT COLONEL ABDUL AZIZ

Proposed Defendant

C

AND BETWEEN:

RONALD GRANT JONES

Appellant

-and-

THE MINISTRY OF THE INTERIOR
AL-MAMLAKA AL-ARABIYA AS SAUDIYA
(THE KINGDOM OF SAUDI ARABIA)

D

Respondent

-and-

LIEUTENANT COLONEL ABDUL AZIZ

Proposed Defendant

AND BETWEEN:

ALEXANDER MITCHELL
WILLIAM SAMPSON
LESLIE WALKER

E

Respondents

-and-

IBRAHIM AL-DALI
KHALID AL-SALAH
COLONEL MOHAMMED SAID
PRINCE NAIF

Proposed Defendants

F

-and-

THE MINISTRY OF THE INTERIOR
AL-MAMLAKA AL-ARABIYA AS SAUDIYA
(THE KINGDOM OF SAUDI ARABIA)

Appellants

G

**PRINTED CASE FOR THE INTERVENERS
REDRESS, AMNESTY INTERNATIONAL,
INTERIGHTS AND JUSTICE**

H

Bhatt Murphy
27 Hoxton Square
London N1 6NN

Tel: 020 7729 1115
Fax: 020 7729 1117
Ref: RB/892/1

Agents for the Interveners