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Affidavit of Abousfian Abdelrazik sworn 25 June 2008

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Court File Number: T- 727 - 08

FEDERAL COURT

BETWEEN:

ABOUSFIAN ABDELRAZIK

Applicant

-and-

MINISTER OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Respondent

AFFIDAVIT OF ABOUSFIAN ABDELRAZIK

I, ABOUSFIAN ABDELRAZIK, of no fixed address, in the City of Khartoum, Sudan, MAKE OATH AND SAY:

1. I am the Applicant in the instant matter and as such, I have knowledge of the facts to which I hereinafter depose.
2. I am neither charged with nor convicted of any criminal offence, whether in Canada, Sudan, or to the best of my knowledge, anywhere else in the world. Further, at all times material to my affidavit I have never been charged nor convicted of any criminal offence. The fact of my consistent innocence underscores the injustice of my situation, as detailed in my affidavit.

ROOTS IN CANADA

3. In 1990, I traveled from Sudan to Canada and was granted status in Canada as a Convention Refugee. I became a landed immigrant in 1992, and a Canadian citizen in 1995.
4. Canada is the country that I consider home.

5. On arriving in Canada, I settled in Montreal, and I established my family there. I am the father of three minor Canadian-born children: Jioyria, Kouteyba, and Hani (aged 14, 5, and 4, respectively). I am also a father figure to an adult step-daughter, Wafa.
6. All my children and step-children remain in Canada. I have seen none of them since 2003. Owing to circumstances beyond my control, I am unable to return to Canada and participate in their lives. This fact causes me extreme mental anguish. I believe it also causes my children anguish, and has caused them harm. For example, Jioriya is effectively an orphan, as her mother is deceased.
7. I am often told by my children that they love me and wish for my return to Canada. I too ardently wish to return to Canada.
8. Although I do not understand the specifics, I am generally aware that the reasons why I cannot return to Canada stem from a suspicion by Canadian officials that I am a terrorist: for example, a person associated with Al-Qaida. Although the fact that Canada suspects me of being a terrorist affects me profoundly, I have never been given formal reasons for why I am suspected.
9. I am not associated with Al-Qaida and have never committed terrorist acts. I also do not support persons who commit acts of terrorism. As a Muslim, terrorism is against my religious beliefs. As a Canadian, terrorism endangers my family in Canada. For these reasons, I am not a terrorist.
10. As an active member of the Muslim community in Montreal, I had acquaintances, some of whom were criminally charged for terrorism-related offences. Rather than support such persons in terrorist activities, instead I became a witness for the prosecution of those who were criminally charged. In March 2000, I testified voluntarily (i.e. not under compulsion) in the trial of Ahmed Ressam, who faced trial in Los Angeles for a terrorist plot. I agreed to be examined under oath by the prosecuting attorney, and at his request, I answered questions to the best of my ability and I identified the accused.

DEPARTURE FROM CANADA

11. In March 2003, I traveled to Sudan under a valid Canadian passport. I traveled both to visit my ailing mother, and to escape harassment by officers of the Canadian Security Intelligence Service (CSIS).
12. While in Montreal, I was frightened by the intensive scrutiny that I and my family received from CSIS, which increased markedly after the events of

September 11, 2001. On occasion, CSIS followed me, and would intercept me for questioning as I left my house. Over time, I grew so afraid of this harassment that I telephoned the police for protection from CSIS. The police did not stop the CSIS harassment. Since at the time I had no explanation for why the Canadian security services were treating me in this manner, I fled to Sudan out of fear.

13. From June 10, 2003 to August 13, 2003, my former wife, Myriam St-Hilaire, and baby Kouteyba visited me in Sudan. My marriage was under strain at the time from the anxiety of CSIS's harassment of our family. I was informed By Ms. St-Hilaire that following her return to Canada, Canadian officials immediately resumed aggressive interrogation of her, including on one occasion where she was detained and interrogated at Montreal's airport for several hours, although she was in ill health and with her baby.

FIRST DETENTION (2003-2004)

14. In August 2003 I was arrested by Sudanese authorities. I was initially detained in the state security prison in Khartoum, and subsequently detained in Kober prison and the Office for Crimes Against the Republic. At no time was I given formal reasons for my arrest.
15. At various times in these detention facilities, I was interrogated by Sudanese officials using techniques characteristic of that country. I was told not to disclose the conditions I experienced.
16. When Canadian diplomats visited me, I repeatedly told them that I desired to return to Canada.
17. Canadian officials took advantage of my being in Sudanese custody to interrogate me further. In December 2003, my Sudanese jailers introduced me to two men who identified themselves as being from Canada. I was told that I must answer their questions. For two days, the Canadians interrogated me about my connections to other persons who they said were responsible for terrorism. Some of the persons they asked about were Abdulaouf Jiddi, Sakkir Busurrah and Samir Azeem (note: the spelling of these names is phonetic and approximate). At no time did the Canadians who interrogated me in December 2003 offer me assistance to return to Canada, or the right to a lawyer for that interrogation.
18. At various times in detention facilities, I was frequently abused, and in the context of interrogations or preparation for interrogations, I was tortured.

19. My conditions while detained in the state security prison were rudimentary. Shortly after I arrived, I occupied a cell of approximately 4 metres square. At any given time about eight to ten persons were held in this cell. The cell had no windows at eye level, and only one window very high up for natural light. As a result, my vision drastically degenerated and I still have eye problems. Sleeping was done on a mattress on the floor.
20. While at the state security prison I repeatedly requested to meet with Canadian diplomats, which request was repeatedly refused.
21. Part of the detention process involved tactics of dehumanization and intimidation. This took various forms. My asthma medicine and eyeglasses were taken away. I was ordered to stand upright against a wall, for what seemed 4 or 5 hours at a time, and I was threatened with beating if I did not obey. I was not allowed to speak with the guards.
22. Around December 2003, conditions worsened greatly, after some prisoners escaped from the prison. I was transferred to a solitary cell of about 1 by 2 meters, which had carpeted floors. An air conditioner was made to run almost constantly, which made the room unbearably cold. Often I was told to stand with my hands and face against the cell wall. Twice a day I was let out to the bathroom, during which time I was also beaten. The beatings were administered with a rubber hose of about 2 feet in length, applied to my back, head and legs. This abuse was in the context of interrogation by the Sudanese about the prison escape that had taken place, and interrogation by the two men who were introduced to me as Canadians (as described above).
23. To avoid further torture, at times when I answered the Canadian interrogators, I gave them what I thought they wanted to hear, irrespective of whether it was true.
24. I was thereafter transferred to detention in Kober prison.
25. At Kober prison, there was initially no interrogation, but daily punishment. For the first 10 – 12 days, I was made to stand continuously for what seemed 4 or 5 hours at a time. I resisted this treatment and asked to be dealt with through the normal judicial process of Sudan, but this was not done.
26. I went on three hunger strikes while in Kober prison. I was put in solitary confinement for doing so.
27. Around April 2004, while on hunger strike, I was beaten 2 or 3 times with the rubber hose, as previously described.

28. At times I observed other forms of abuse at Kober prison. Guards would approach from behind and insult the prisoners, and would push their faces hard into the wall. I also witnessed a technique where a person was suspended by his wrists as punishment. I avoided speaking to persons or making any requests, and was fortunate to avoid these sorts of abuse. I was isolated from the outside world for two months.
29. I was thereafter transferred to detention in the Office for Crimes Against the Republic (the "Office").
30. The Office was a less severe detention facility. I was told that a lawyer had finally been assigned to my case, although I never met him. During the day, I was allowed to go outside. It was while I was at the Office that I received most of the consular visits I was paid by Canadian diplomats.
31. The Sudanese authorities freed me from prison in July 2004, and moved me to a halfway house in Khartoum, where I had partial freedom to move about the city in the daytime.
32. At no time was I given formal reasons for this episode of detention.

FREEDOM IN KHARTOUM (2004 - 2005)

33. While in the halfway house I was free to visit the Canadian embassy. I did so regularly, and underscored my constant desire to return home. I emphasized that my family needed me. I emphasized that my health was at risk in Sudan, owing to medical diagnoses I had received at various times for asthma, eye problems, heart problems, and malaria.
34. To solicit help for returning home, I attempted to meet prominent Canadians when they visited Khartoum, such as Senator Mobina Jaffer, Aileen Carroll, Bob Rae, and Prime Minister Paul Martin, and I was successful on some occasions. Often officials at the Canadian embassy tried to block me from meeting with these persons. Sometimes I had to wait in hiding outside the embassy gate to talk with them.
35. In October 2004, I became aware of Sudan's offer to return me to Canada on a private aircraft it supplied. I met with officials at the Canadian embassy and urged them to accept this offer. When that flight did not materialize, no Canadian official gave me an explanation, or informed me that the Canadian security services had been involved in assessing the offer of the private flight.
36. In September 2005, I completed a passport application at the Canadian embassy (my previous passport had expired). Although I understood a

passport would not make it easier for me to travel while I remained on the airlines' no-fly list, I believed that I would be safer if I had Canadian identification. I have never received a formal decision on this passport application from any Canadian official. More recently, I re-applied for a passport at the Canadian embassy on March 9, 2008, which application also has never been formally answered.

37. I was kept under watch by the Sudanese authorities for more than a year following my release from detention. I was instructed to report to Sudanese authorities every Thursday, where I was made to sign in and my activities could continue to be monitored

SECOND DETENTION (2005 - 2006)

38. In October 2005, shortly after filing my passport application, I was again arrested by the Sudanese authorities and taken to Dabak prison. At no time was I given formal reasons for my arrest.
39. My conditions while detained in Dabak prison were rudimentary. I occupied a cell of approximately 4 meters square. At any given time about eight to ten persons were held in this cell.
40. It seemed that prisoners at Dabak prison were beaten without reason. On about three to five days each month I would be beaten, and when they occurred, typically the beatings would be administered four times daily, using the rubber hose as previously described. Twice I experienced a new technique: I was chained to the frame of a door, and beaten.
41. While at Dabak prison I repeatedly requested to meet with Canadian diplomats, which request was repeatedly refused.
42. I was released from Dabak prison in July 2006.
43. At no time was I given reasons for this episode of detention.

FREEDOM IN KHARTOUM (2006 -- present)

44. Around the time of my release from prison, I became aware that the UN Security Council's 1267 Committee had listed me as a person associated with Al-Qaida. I was given no advance notice of this listing process, and I was given no opportunity to state my innocence before the decision to list me was taken. The 1267 Committee decision was taken totally without my knowledge or input, and I do not know who caused me to be listed by the 1267 Committee, or what evidence was called upon.

45. I have met with Canadian diplomats repeatedly since my release from prison. At each meeting, I have expressed my desire to return home.
46. My life in Sudan is dangerous and precarious. I have been arrested twice without charge, and fear constantly that I could be arrested again. I am impecunious, and I have no assets to my name. The total value of everything I own is perhaps \$500. I cannot earn money, since the stigma of my ordeal and the belief of others that I am affiliated with Al-Qaida has made it nearly impossible for me to become gainfully employed. As of April 2008, I was living on handouts in Khartoum, and I had no fixed address.
47. I am aware that I cannot ask my Canadian friends or family for financial help, and that if these people would directly or indirectly give me funds for my use, they could be convicted of a crime in Canada and sent to prison. My family in Sudan cannot afford to fund my needs on an ongoing basis or my return to Canada.
48. The Respondent has been providing me with a monthly loan of \$100 (U.S.) for my basic needs, which I collect at the Canadian embassy. I have repeatedly informed the officials at the Canadian embassy that this is an insufficient amount, but the Respondent has refused to provide additional support even when provided direct evidence. For example, in April 2008, I attended at the embassy with a medical prescription, and asked for money for treatment. That request was refused. My health has suffered as a result of having not enough money for medical treatment, and at times, not enough money to eat.
49. The fact that I am impecunious and in a precarious situation is known to the Respondent and the highest levels of Canada's current government. In March 2008, I met with the Parliamentary Secretary to the Minister of Foreign Affairs, Deepak Obhrai, M.P., and the Respondent Minister's Chief of Staff, Aaron Gairdner, who were visiting Sudan. I hoped to use this meeting to press for my return to Canada, but instead I was interrogated by these men on my beliefs toward terrorism. I was asked questions about the events of September 11, 2001, or Israel and Palestine, for example. Although I was in the company of senior officials, I did not observe special security arrangements at this meeting, apart from the usual ones at the Canadian embassy.
50. Since being released, I have had occasional visits by Sudanese officials as well as security intelligence agents from the United States.
51. In the Fall of 2007, Sudanese officials asked me to meet with and be interrogated by persons they said were from the U.S. Federal Bureau of

Investigation (FBI). The FBI interrogators asked me about the same three men who the Canadian interrogators asked me about in December 2003 (as described above). I did not want to participate in the interrogation, but I believed I had no choice but to obey.

52. Because I was afraid of being re-arrested, at times when I answered the FBI interrogators, I gave them what I thought they wanted to hear, irrespective of whether it was true.

53. On April 12, 2008, I was intercepted by the Sudanese police on the street, as I was heading to a secretly arranged rendez-vous with a photographer for *The Globe and Mail* newspaper. The Sudanese police warned me not to speak with journalists. I do not know how the Sudanese police learned about the rendez-vous with the photographer, which never happened.

TEMPORARY SAFE HAVEN IN THE CANADIAN EMBASSY

54. I am aware that I am still carefully watched by the security services, as illustrated by the intercept on the way to meet *The Globe and Mail's* photographer. Accordingly, after *The Globe and Mail* published my story on its front page on April 28, 2008, I was very afraid I could again be taken into Sudanese detention and treated as described in this Affidavit.

55. Accordingly, on April 29, 2008, I sought refuge in the Canadian embassy, where the Respondent shortly thereafter granted me "temporary safe haven" to remain in the embassy.

56. I am aware that I may be ejected from the embassy at any time, without notice and at the Respondent's discretion.

57. Given the events of the past, I fear for my safety and well-being if I were ejected from the Canadian embassy and into Khartoum. I believe that I would go hungry, that my health would suffer, and that I might be re-arrested and returned to prison without charge. I experienced all of these problems when I was not in the temporary safe haven of the embassy. I believe that by swearing this Affidavit, and divulging evidence of torture that the Sudanese security services told me to keep secret, there is a substantial risk of retaliation—including more torture—if I were ejected from the Canadian embassy.

58. I have been subject to inhumane treatment while in the temporary safe haven of the Canadian embassy. Examples are:

- a. I have not been given proper sleeping arrangements. For several nights I slept on the floor of a toilet. My requests for a mattress were ignored. (After my counsel succeeded in getting this

situation raised in Parliament, I was given a cot, and sleeping quarters.)

b. I have been fed inconsistently. On some days, I have been given nothing but rice to eat.

c. I have been given medical attention irregularly. When I complained of blood in my stool and requested a doctor, none was provided.

d. I have been treated rudely by the embassy staff. For example, I have been yelled at for asking for drinking water.

e. I have also been given very limited access to telephone communications. In particular, I am not permitted to speak with my solicitor if I have received two telephone calls from my family in the same day. Further, I am only entitled to make or receive telephone calls between 3 and 4 pm Sudan time and have been denied access to my mobile phone.

59. During my stay in the temporary safe haven of the embassy, I have requested on numerous occasions to be returned to Canada.

60. I am informed by my counsel that the Respondent Minister stated in Parliament on April 30, 2008, "Mr. Abdelrazik is currently not able to return to Canada on his own". I agree with this statement. All options that are within my control to return to Canada have been exhausted, and to return, I must have the assistance of the Respondent as has been provided to other Canadians abroad in distress. It is my intention to remain in the temporary safe haven of the embassy until I am repatriated by the Respondent.

Sworn before me at the
City of Khartoum, Sudan
on June 25, 2008.



Commissioner for Taking
Affidavits

CHARGÉ D'AFFAIRES
CANADIAN EMBASSY
KHARTOUM

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Abousfian Abdelrazik