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European Court criticizes UK for violating human rights in Iraq

Following two landmark judgments from the European Court of Human Rights yesterday, Amnesty International is once again calling on the UK authorities to act decisively to ensure accountability for actions of UK armed forces and officials in Iraq for alleged human rights violations.

In the first of the two cases, *Al-Skeini and Others v the United Kingdom*, the Grand Chamber of the European Court of Human Rights ruled that the UK was required by the European Convention on Human Rights to conduct independent and effective investigations into the killing of six civilians during security operations carried out by UK soldiers in Iraq in 2003 and 2004. The Court found the UK had failed to ensure such investigations in five of the six cases, in violation of article 2 (right to life) of the Convention. Significantly, the Court rejected arguments by the UK that the European Convention did not apply to the UK's operations because they occurred outside the UK's ordinary territory. The Court held that the fact the UK was an occupying force over the territory in question and therefore exercised public powers there meant the European Convention applied. Such a situation, the Court held, was one among a range of scenarios where the Convention applies outside the ordinary territory of European states. (Another example the Court cited was where a state exercises effective physical power and control over an individual by taking him or her into custody, somewhere else in the world).

In the second of the two cases, *Al-Jedda v the United Kingdom*, the European Court of Human Rights found that the prolonged internment of the applicant, Hilal Abdul-Razzaq Ali Al-Jedda, for more than three years in a detention centre in Basra, Iraq, run by British forces, violated his right to liberty and security under the European Convention.

The UK claimed that Hilal Al-Jedda was not entitled to the protection of the European Convention on Human Rights at all. It argued that the United Nations alone was legally responsible for the detention, since, it argued, UK forces were acting as part of the Multi-National Force (MNF) in Iraq, under a specific mandate from the UN Security Council. The UK also argued that, even if it was legally responsible for the detention, the relevant UN Security Council resolutions authorized internment and this would override any contrary obligations the UK had under the European Convention on Human Rights.

The European Court of Human Rights rejected the UK's arguments, finding that the UK was indeed legally responsible for the internment by its forces of Hilal Al-Jedda, and that nothing in the UN mandate disentitled him to the protections of the ECHR. The Court therefore found his internment to violate article 5 (right to liberty and security) of the European Convention.

Amnesty International has long been concerned by the UK's narrow interpretation of the European Convention on Human Rights, and its ongoing attempts to deny or limit the applicability of its obligations under international human rights treaties, and domestic laws intended to implement those obligations, to the conduct of the UK's armed forces overseas. This narrow interpretation has led to the denial of an effective remedy to many individuals whose rights have been, or are alleged to have been, violated by the conduct of UK service

personnel. Amnesty International has frequently underscored that the UK's human rights obligations extended extraterritorially to anybody within its power or effective control and that the UK could not avoid accountability simply by claiming the rights did not apply. These arguments have been further vindicated by today's rulings from the European Court of Human Rights.

Following the judgment of the European Court, Amnesty International calls on the UK to ensure that it implements the judgment, including by conducting independent, impartial, thorough and effective investigations into the killings in the *Al-Skeini* case, as well as with respect to other killings by UK armed forces in Iraq during the same period. The UK must also ensure that victims of serious human rights violations committed by UK armed forces during their operations in Iraq are provided with effective remedy and reparation for those violations.

While Amnesty International welcomes the rejection of the UK's arguments that human rights treaty obligations did not apply at all in these two cases at the European Court, it remains concerned by any implication in the reasons given in the *Al-Jedda* judgment that a UN Security Council resolution might in theory, if it were clearly enough worded in this regard, allow or even oblige states to act in a manner inconsistent with their obligations under international human rights law. Given the Court's findings in the case about the specific resolution and actions at issue, the hypothetical question of whether some other resolution might have had a different legal effect did not squarely arise. Amnesty International considers that no Security Council resolution purporting to authorize, let alone oblige, states to act in contravention of fundamental principles of human rights could ever in that respect be valid under international law.

Background

The case of *Al-Jedda* concerned one of the so-called "security internees" detained without charge or trial by the UK contingent of the Multi-National Force (MNF) in Iraq. The applicant, Hilal Al-Jedda, was arrested by US soldiers in Iraq, apparently acting on information provided by British Intelligence services, on 10 October 2004. He was taken to Sha'aibah Divisional Temporary Detention facility in Basra city, a detention centre run by British forces, and held there, without charge or trial until his release on 30 December 2007 over three years later. This type of detention, sometimes called "internment", is prohibited by the European Convention on Human Rights (except perhaps under a valid derogation in certain types of emergencies – the UK did not seek to rely on any derogation in this case).

The case of *Al-Skeini* relates to the death of six Iraqi civilians at a time when the UK was recognized as an Occupying Power under international humanitarian law. They were: Hazim Jum'aa Gatteh Al-Skeini, aged 23, shot dead in the street by the commander of a British military patrol; Muhammad Abdul Ridha Salim, a teacher aged 45, shot and fatally wounded by a sergeant in a military unit who forcibly entered his brother-in-law's house; Hannan Mahaibas Sadde Shmailawi, aged 33, shot and fatally wounded by gunfire during an exchange involving a British military patrol while she was eating a family evening meal in her home; Waleed Sayay Muzban, aged 43, shot and fatally injured by a lance corporal during a military patrol while he was driving a minibus; and Ahmed Jabbar Kareem Ali, aged 15, allegedly beaten and forced into the Shatt Al-Arab river by British soldiers where he drowned.

The sixth death, that of Baha Mousa, a hotel receptionist aged 26, in September 2003, occurred after he was tortured over a period of 36 hours while detained by British troops. A court martial in the UK of seven UK military personnel in relation to the case of Baha Mousa concluded in March 2007. By the end of the proceedings, six of the seven defendants had been acquitted of all charges. One soldier had pleaded guilty to a charge of inhumane treatment – a war crime – and was acquitted of the remaining charges. The court martial confirmed that numerous individuals had been responsible for inflicting unlawful violence on Baha Mousa and other detainees. However, as the judge remarked, many of those responsible were "not charged with any offence simply because there is no evidence against them as a

result of a more or less obvious closing of ranks". In May 2008 a public inquiry was announced into the circumstances of the case, which concluded its oral hearings in October 2010 and is expected to deliver its final report in September 2011. In light of the Inquiry the European Court of Human Rights determined that the father of Baha Mousa, Colonel Daoud Maousa, the sixth applicant in the case of Al-Skeini was no longer of victim of a breach of the procedural obligation to conduct an effective, independent and impartial investigation into the circumstances of his son's death, under Article 2 (the right to life).

For further information:

UK: Briefing to the Human Rights Committee, AI Index: EUR 45/011/2008, 25 June 2008, <http://www.amnesty.org/en/library/info/EUR45/011/2008/en>

United Kingdom: Submission to the Universal Periodic Review, AI Index: EUR 45/20/2007, 21 November 2007, <http://www.amnesty.org/en/library/info/EUR45/020/2007/en>

Law Lords hear key case on detention without charge or trial by UK forces in Iraq, AI Index: EUR 45/017/2007, 26 October 2007, <http://www.amnesty.org/en/library/info/EUR45/017/2007/en>

United Kingdom: Amnesty International's reaction to Law Lords' judgment in the Al-Skeini & Other case, AI Index: EUR 45/008/2007, 13 June 2007, <http://www.amnesty.org/en/library/info/EUR45/008/2007/en>

UK: Eleven organisations intervene before House of Lords in case considering the role of UK military in torture and killings of Iraqi civilians, AI Index: EUR 45/007/2007, 16 April 2007, <http://www.amnesty.org/en/library/info/EUR45/007/2007/en>

UK: Human rights: a broken promise, AI Index: EUR 45/004/2006, 23 February 2006, <http://www.amnesty.org/en/library/info/EUR45/004/2006/en>

Iraq: Killings of civilians in Basra and al-'Amara, AI Index: MDE 14/007/2004, 10 May 2004, <http://www.amnesty.org/en/library/info/MDE14/007/2004/en>

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