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Landmark human rights rulings extend scope of the Human Rights Act outside the UK

In two groundbreaking rulings, the European Court of Human Rights today confirmed that the UK government's human rights obligations are not limited to the territorial UK but can exceptionally extend overseas to situations in which British officials exercise 'control and authority' over foreign nationals.

The Court's Grand Chamber also ruled that the UK could not rely on a resolution of the UN Security Council to justify its indefinite detention of a dual British/Iraqi national in Basra. The rulings are expected to have wide-ranging implications, not only for the activities of British officials overseas but also in any case where the UK government has justified its actions by reference to Security Council resolutions, e.g. the use of asset-freezing powers in terrorism cases.

The first case decided by the Court, *Al Skeini v United Kingdom*, concerned the killing of six Iraqi civilians by British soldiers in southern Iraq, including the brutal death of Baha Mousa during his detention at a UK army base. In 2007, the House of Lords ruled that the Human Rights Act did not apply to the soldiers' actions save those on the army base. However, the European Court today ruled that the UK government had a duty to conduct an effective investigation into the deaths of all the civilians killed by British soldiers, whether or not they were within the confines of a UK military base. It based its decision on the fact that the UK had assumed responsibility for the maintenance of security in Southern Iraq and were exercising 'authority and control' over Iraqi civilians.

The second case, *Al Jedda v United Kingdom*, involved the indefinite detention of a dual British/Iraqi citizen in a Basra facility run by British forces. In 2007, the House of Lords ruled unanimously that the detention was lawful because the UK government had been authorised by UN Security Council resolution 1546. However, the Grand Chamber today held that the Security Council resolution did not displace the UK government's obligations to protect the right to liberty under article 5 of the European Convention on Human Rights.

Eric Metcalfe, JUSTICE's director of human rights policy, said:

Today's landmark rulings send out two clear messages. The British government's duties under human rights law do not stop at Dover, and they cannot be easily displaced by rulings of the UN Security Council.

All in all, this is a good day for the international rule of law.

For further comment, please contact Eric Metcalfe, JUSTICE's human rights policy director, on 020 7762 6414 (direct line), 07939 119 369 (mobile) or emetcalfe@justice.org.uk.

Notes for editors

1. In 2009, JUSTICE was granted leave to intervene in *Al Jedda v United Kingdom* before the European Court of Human Rights in a joint intervention with Liberty. It had previously intervened in the *Al Jedda* case before the Court of Appeal in 2006 and the House of Lords in 2007. JUSTICE and Liberty were represented pro bono before the Grand Chamber by Shaheed Fatima and Iain Steele. JUSTICE was also one of a group of NGOs that intervened in the case of *Al Skeini* before the House of Lords in 2007. Copies of JUSTICE's written submissions are available on request.
2. In its ruling in *Al Jedda v United Kingdom*, the European Court of Human Rights rejected the UK government's argument that UN Security Council resolution 1546 required it to use indefinite detention: 'In the absence of clear provision to the contrary, the presumption must be that the Security Council

intended States within the Multi-National Force to contribute towards the maintenance of security in Iraq while complying with their obligations under international human rights law' (para 105). '[N]either Resolution 1546 nor any other United Nations Security Council Resolution explicitly or implicitly required the United Kingdom to place an individual whom its authorities considered to constitute a risk to the security of Iraq into indefinite detention without charge. In these circumstances, in the absence of a binding obligation to use internment, there was no conflict between the United Kingdom's obligations under the Charter of the United Nations and its obligations under Article 5(1) of the Convention'.

3. In its ruling in *Al Skeini and others v United Kingdom*, the European Court of Human Rights held that, although the UK is normally bound to uphold human rights in its own territory, it could exceptionally have responsibility for protecting human rights in other countries where it was exercising 'authority and control' over the local population: '[T]he United Kingdom assumed authority and responsibility for the maintenance of security in South East Iraq. In these exceptional circumstances, the Court considers that the United Kingdom, through its soldiers engaged in security operations in Basrah during the period in question, exercised authority and control over individuals killed in the course of such security operations, so as to establish a jurisdictional link between the deceased and the United Kingdom for the purposes of Article 1 of the Convention' (para 149).
4. The Court's ruling in *Al Skeini* is not likely to affect the position of UK soldiers on the battlefield, however, as soldiers will continue to be covered by the laws governing international armed conflict rather than international human rights law.

Chairman of Council **Baroness Kennedy of The Shaws QC** *Director* **Roger Smith OBE**

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