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Public Statement

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United Kingdom: Amnesty International's reaction to Law Lords' judgment in the *Al-Skeini & Others* case

Amnesty International today calls on the UK authorities to act decisively to ensure accountability for actions of UK armed forces and officials in Iraq for alleged violations of human rights and humanitarian law. In particular, Amnesty International calls on the UK authorities to establish an adequately resourced civilian-led expert mechanism to conduct independent, impartial and thorough investigations into allegations of human rights violations at the hands of UK armed forces personnel.

Amnesty International makes this call in the wake of the ruling by the UK's Law Lords in the case of *Al-Skeini and others v. the Secretary of State*, arising from complaints against the UK about the deaths of six Iraqi civilians during the time when the UK was recognized as an Occupying Power in Basra, Iraq.

Amnesty International welcomes the Law Lords' ruling that, under the UK's Human Rights Act 1998 (HRA) and the European Convention on Human Rights (ECHR), the family of Baha Mousa is entitled to an independent, impartial and thorough investigation into the circumstances surrounding his death in detention at a British military base in Basra, including his torture at the hands of British troops. Baha Mousa, a 26-year-old Iraqi hotel receptionist and father of two, died on 15 September 2003, after being tortured over a period of 36 hours while detained by British troops in Basra. A post-mortem examination revealed 93 separate injuries on his body. The ill-treatment of Baha Mousa occurred both during his arrest at the hotel where he worked, and during his subsequent detention at the British military base in Basra. The Law Lords' judgment clearly reaffirmed that the UK HRA can apply to acts or omission by UK public authorities, including British troops, outside of the UK.

However, Amnesty International regrets that the Law Lords also decided that the alleged violations of the right to life of the relatives of the other five claimants who were shot and fatally wounded in the course of "patrol" operations by UK servicemen fell outside the jurisdictional scope of the ECHR. The Law Lords held that the alleged instances of unlawful killings by members of the UK armed forces did not give rise to any obligation on the part of the UK under the ECHR, and consequently the HRA.

Notwithstanding this disappointing finding, Amnesty International underscores that the UK's human rights obligations extend extraterritorially to anybody within its power or effective control. For example, the International Court of Justice and the UN Human Rights Committee have affirmed that, as Occupying Powers, states have human rights obligations, under both customary and treaty-based humanitarian and human rights law, including the International Covenant on Civil and Political Rights, the 1949 Geneva Conventions. Consistent with those obligations under

international law, as well as under its domestic law, Amnesty International considers that the UK has a duty to conduct prompt, independent, impartial and thorough investigations into serious allegations of human rights violations at the hands of UK armed forces personnel, including into the killings of the five Iraqi civilians with which the *Al-Skeini* case is concerned.

As Lord Bingham in his judgment made clear:

This does not mean that members of the British armed forces serving abroad are free to murder, rape and pillage with impunity. They are triable and punishable for any crimes they commit under the three service discipline Acts already mentioned, no matter where the crime is committed or who the victim may be. They are triable for genocide, crimes against humanity and war crimes under the International Criminal Court Act 2001. The UK itself is bound, in a situation such as prevailed in Iraq, to comply with The Hague Convention of 1907 and the Regulations made under it. The Convention provides (in article 3) that a belligerent state is responsible for all acts committed by members of its armed forces, being obliged to pay compensation if it violates the provisions of the Regulations and if the case demands it. By article 1 of the Geneva IV Convention the UK is bound to ensure respect for that convention in all circumstances and (article 3) to prohibit (among other things) murder and cruel treatment of persons taking no active part in hostilities. Additional obligations are placed on contracting states by protocol 1 to Geneva IV.

In order to fulfil its obligations under international law, Amnesty International urges the UK authorities to:

- initiate independent, impartial and thorough investigations into each of the deaths of the six Iraqi civilians with which this case was concerned;
- bring anyone allegedly responsible to justice; and
- ensure full and effective adequate reparation to the families of the victims.

Amnesty International was among 11 national and international organizations who intervened in this case because of grave concern about the practices of states during the occupation of foreign territory that have the potential impact of subverting the rule of law and state accountability by undermining and circumventing domestic and international law and standards that ensure the protection of fundamental human rights, and the attendant obligations that give them effect.

Background

The deaths of the six Iraqi civilians which are the focus of this case occurred at a time when, and in the areas where, the UK was recognized as an Occupying Power under international humanitarian law. Five of the six Iraqi civilians were shot and fatally wounded by members of UK armed forces in the course of “patrols” operations. 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 mini-bus; and Raid Hadi Sabir Al Musawi, a police commissioner aged 29, shot and fatally wounded in the street by a corporal in a British military patrol. The sixth death, that of Baha Mousa, a hotel receptionist aged 26, occurred after he was tortured over a period of 36 hours while detained by British troops.

The 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". The court martial proceedings in this case underscored the serious failures of the investigation that was conducted into the death of Baha Mousa, thus in turn emphasizing more than ever the need for reform of the system currently in place to investigate credible allegations of serious human rights violations at the hands of UK armed forces personnel.

Interveners: The Organizations intervening before the Law Lords were: The AIRE Centre, Amnesty International, The Association for the Prevention of Torture, The Bar Human Rights Committee, British Irish Rights Watch, Interights, Justice, Kurdish Human Rights Project, The Law Society of England and Wales, Liberty, and The Redress Trust. The organizations were represented, *pro bono*, by Keir Starmer QC, Richard Hermer, Charles Banner and Azeem Suterwalla, all of Doughty Street Chambers, and Raju Bhatt of Bhatt Murphy Solicitors.

For more information, see also Amnesty International's world-wide appeal on behalf of Baha Mousa, *United Kingdom: No justice for Iraqi man killed in UK custody*<http://web.amnesty.org/appeals/index/gbr-010607-wwa-eng>