

# Sign up for our newsletter

SIGN UP



OPENDEMOCRACYUK

## "Gentleman at home, hoodlums elsewhere": Britain's approach to human rights abroad

A European Court case into the deaths of Iraqi civilians caused, or said to be cause, by British soldiers, recently published its judgement. The judges found that the UK Government were operating on double standards, under the guise of opposition to "human rights imperialism"

[Carla Ferstman](#)

29 July 2011

On July 7th the European Court of Human Rights published its judgement on a landmark case into the deaths of Iraqi civilians caused, or said to be caused, by British soldiers. It paints a damning picture of a hypocritical Britain, upholding its human rights obligations at home, but unwilling to keep to the same commitments abroad. "Gentlemen at home, hoodlums elsewhere." That was Judge Bonello's searing indictment of the UK Government's perception of its human rights obligations relating to the actions of the military serving abroad. Judge Bonello was one of 17 European Court judges, all of whom queried Britain's approach to its human rights obligations outside of the UK.



Image: EPA

The *Al Skeini v. the United Kingdom* case dealt with the investigation of Iraqi civilian deaths caused or said to be caused by British soldiers in Basrah, South East Iraq in 2003. The family members of the victims brought their case to Europe when they were told by UK courts that there was no obligation to fully investigate the deaths, because they occurred outside UK territory and effective control. The deaths occurred in a wide array of non-custodial circumstances, and UK courts held, and the UK Government continued to assert, that its human rights obligations did not apply. In July, however, all the judges of the Grand Chamber of the European Court begged to differ:

*"I confess to be quite unimpressed by the pleadings of the United Kingdom Government to the effect that exporting the European Convention on Human Rights to Iraq would have amounted to "human rights imperialism". It ill behoves a State that imposed its military imperialism over another sovereign State without the frailest imprimatur from the international community, to resent the charge of having exported human rights imperialism to the vanquished enemy. It is like wearing with conceit your badge of international law banditry, but then recoiling in shock at being suspected of human rights promotion." (Judge Bonello's concurring opinion, para. 37)*

The principles set out in the *Al Skeini* case and the problems of disregard for, and poor enforcement of, states' obligations when they operate abroad, is a serious concern. We might think that soldiers have the same code of conduct whether they are posted at home or abroad. Similarly, that intelligence officers, police investigators and other officials are subject to the same laws, wherever they might be operating. But do they?

In the aftermath of the September 11 2001 terrorist attacks, the United States tried to avoid certain human rights obligations like the prohibition against torture and ill-treatment – prohibitions recognised as absolute – by moving investigations, interrogations and detentions outside of their territory. Easy examples are Guantanamo Bay in Cuba and other overseas CIA-operated secret detention facilities. The US effectively 'outsourced' interrogations to states like Egypt, Jordan, Morocco, Pakistan, and Syria, including by transferring the detainees to be interrogated, providing the questions and monitoring the questioning sessions and more widely, the sharing of intelligence information procured through torture.

Part of the rationale for such a strategy was a simple exercise of distraction: out of sight, out of mind. There would be less scrutiny of the treatment of terror suspects if the suspects themselves were not easily accessible or visible – keeping up appearances at home while descending to 'hoodlums' elsewhere.

The extraterritorial handling of detainees and transfer from one location to another also managed to keep the practice in the margins. By tangling up the actions of several intelligence agencies and officials from multiple countries, it was always going to be difficult to assess who did what and who was complicit in what. The reasoning was that unravelling the acts and all the actors would be so hard that it would be too difficult to make any one person or government accountable. It also allowed the actors to avoid the full weight of the law, by using the flawed analysis that human rights obligations are negotiable, or indeed do not apply, to the extraterritorial actions of officials.

Now, years on, part of governments' extraterritorial torture antics in the 'war on terror' are known, thanks to the courage of some of the victims who have come forward, revealing stories of illegal detention, kidnapping and rendition, torture and ill-treatment. But, despite freedom of information requests, litigation and perseverance on the part of lawyers, human rights groups, investigative journalists,

some parliamentarians and others, the truth of what happened is still opaque. Justice for most victims is a distant prospect.

In the United States, some of the information about the Bush administration's High Value Detainee Program is still shielded from the public. Efforts by former detainees to sue the US administration and others for torture and related abuses have largely failed, as a result of a very wide interpretation of the doctrine of 'state secrets', which has extinguished cases the US administration deemed as too sensitive from being adjudicated in court.

In August 2009, US Attorney General Eric Holder announced that there would be a review of whether federal laws were violated in connection with the interrogation of detainees in US custody overseas. This was already an overly narrow review, given that it only considered low-ranking officials acting outside of legal guidance. It also did not extend to the practice of 'extraordinary rendition'. Given the numerous indications of involvement of senior officials and the very questionable and cynical legal guidance that was provided to the CIA and others at the time, it was a paltry response. Soon after the review was announced, the Attorney General was already on record saying that he shared the President's conviction that as a nation, America must to the extent possible, look forward and not backward when it comes to issues such as these.

Just recently, on 30 June 2011, Attorney General Holder announced that as a result of the review, the Justice Department would launch a "full criminal investigation" into the deaths of two detainees in CIA custody. Whilst one could argue this is a positive step, it is incredulous to imagine that the extent of the barbarity of the US counter-terrorism offensive is the culmination of the acts of two rogue officials.

In the United Kingdom, the situation is hardly any better. On 6 July 2010, the Prime Minister announced the creation of an inquiry into whether the UK Government and its intelligence agencies were implicated in the improper treatment of detainees abroad in the aftermath of 9/11. This followed revelations that UK nationals and former UK residents detained at Guantanamo Bay and in other locations (such as Pakistan, Jordan, the United Arab Emirates, Syria, Egypt and Kenya) alleged that security services were complicit in their rendering and/or their subsequent torture and/or ill-treatment, and the rendering of individuals through the UK territory of Diego Garcia. So the issue here is complicity in torture.

The Inquiry is headed by Sir Peter Gibson, a retired appellate judge and former intelligence commissioner. It has not yet begun its work in earnest. The terms of reference for the Inquiry, which were just released on 6 July 2011, about a year after the Inquiry was first announced, make clear that the purpose is more about fixing the tarnished reputation of the security services than providing any sort of justice or truth. As a result, lawyers representing many of the victims have indicated that they would boycott the hearing. Many civil society groups have expressed similar concerns.

One of the most significant failings of the Inquiry – if we can still call it an inquiry – is the rules on public disclosure. It has been made clear that the Inquiry will respect any understandings or commitments made or given by the Government, including through its intelligence and security agencies, concerning the confidentiality, security and protection against public disclosure of information. It has also been made clear that the Government will decide which material should not be disclosed. The ultimate decision on disclosure lies with the Government and it alone. So the government is to be the sole arbiter of what is, or is not, a matter that can be shielded from the public, when it is the very actions of government that are the subject of the inquiry.

Just recently, the UK Foreign and Commonwealth Office underscored in its 2010 Human Rights Annual Report:

*"The Government and its armed forces and intelligence agencies do not participate in, solicit, encourage or condone the use of torture or cruel, inhuman or degrading treatment or punishment for any purpose. The guidance emphasises that there are no circumstances in which our armed forces and intelligence agencies would take action in the knowledge or belief that torture would take place at the hands of a third party."*

I suppose we should take the Government's word for it, as its word is all we are ever going to get.

# *Who is bankrolling Britain's democracy?*

Which groups shape the stories we see in the press; which voices are silenced, and why?

Sign up here to find out.

Email address

First name (optional)

Last name (optional) →

## Comments

We encourage anyone to comment, please consult [the oD commenting guidelines](#) if you have any questions.

Comments for this thread are now closed



0 Comments

Login ▾

Share

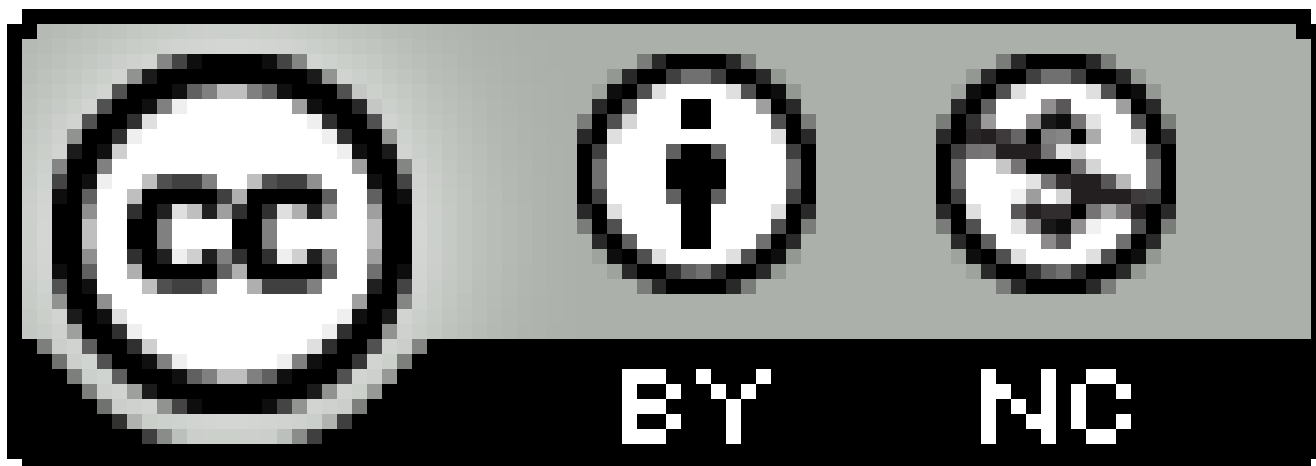
Best Newest Oldest

This discussion has been closed.

[Subscribe](#) [Privacy](#) [Do Not Sell My Data](#)

### Related

- DEMOCRACY AND GOVERNMENT
- CONFLICT
- UK
- CONFLICT & SECURITY
- EUROPE
- POLITICS & ACTIVISM
- UNITED KINGDOM



This article is published under a [Creative Commons Attribution-NonCommercial 4.0 International licence](#). If you have any queries about republishing please [contact us](#). Please check individual images for licensing details.

## All our projects



---

© openDemocracy 2025

[About](#)

[People](#)

[Contact](#)

[Write for us](#)

[Jobs](#)

[Privacy notice](#)