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Saudi torture judgment must not undermine international torture ban

London, UK, 14 January 2014 – After more than ten years of litigation, the European Court of Human Rights has today told three British men that they cannot sue Saudi Arabia or its officials for torture they claim they were subjected to in its prisons. A fourth victim died before the case was decided.

In 2000 and 2001 Ronald Jones, Alexander Mitchell, Leslie Walker and William Sampson were arrested in Riyadh, accused of involvement in a bombing campaign. Each alleges that they were subjected to sustained periods of torture – including solitary confinement, beating, suspension, sleep deprivation, rape and mind altering drugs.

On their release the men brought legal action in the UK claiming compensation for their torture and injuries. Their case was barred on the grounds that Saudi Arabia and its officials could not be sued in UK courts as both the State and the individuals concerned enjoyed protection under the international law principle of state immunity.

The European Court of Human Rights today concludes that although international law was developing towards recognising an exception to the immunity of states from claims relating to torture, the approach of the UK courts had not been ‘manifestly erroneous’.

Human rights organisations REDRESS, Amnesty International, INTERIGHTS and JUSTICE, which intervened in the case, expressed regret at this decision.

The international prohibition on torture is designed to ensure its application is absolute and universally applied. Permitting a broad interpretation of state immunity to undermine the ban by denying individuals a remedy could send a conflicting message to would-be torturers that international law condemns their behaviour but is not willing to police it effectively. This decision must not be permitted to derail the wider international commitment to the right of victims of torture to secure redress.

If there is uncertainty in the requirements of international law both the UK Government and the international community must act to resolve it and to ensure that outdated principles of immunity cannot afford impunity to those who torture.

Carla Ferstman, Director of REDRESS, called on the UK government to take up the men’s case directly with Saudi Arabia.

“The men have no prospects of justice in Saudi Arabia, and the Court’s decision leaves them with no legal options outside of it. Their only option is for the UK government to take up the case with Saudi Arabia. Pursuing this claim on the men’s behalf, if that is what they wish, is now well overdue” said Ms Ferstman.

Vesselina Vandova, Legal Director at INTERIGHTS, echoed the calls for government to pursue the claim with Saudi Arabia and added that the government should take a more principled and consistent approach to dealing with all such cases: “The UK government proclaims itself to be a leader in the fight against torture. If that is the case, it must ensure that it assists its own nationals to achieve redress when they have been tortured by pursuing claims on their behalf against the states responsible.”

Tawanda Hondora, Deputy Director of the Law and Policy Programme at Amnesty International added:

“This judgment has serious global repercussions. It means victims of torture will be denied access to justice where the torture was committed by a national of or in a State that permits impunity for torture. This is a significant blow for the victims and for others who face similar ill-treatment. The UK should take the lead in the fight against impunity. It should change its laws so that victims of torture have redress.”

Angela Patrick, Director of Human Rights Policy at JUSTICE said:

“By lending support to the UK strike-out the Court risks sending a misleading message that the universal international prohibition on the most heinous of crimes lacks teeth. The UK Government – and the international community – must act. Uncertainty cannot mean impunity.”

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Notes for Editors

1. In 2000 and 2001 three British citizens (Ronald Jones, Alexander Mitchell and Leslie Walker) and one British/Canadian dual national (William Sampson) – were arrested in Saudi Arabia, falsely accused of involvement in a bombing campaign in Riyadh.

Held for periods of between 67 days and more than two-and-a-half years, each alleges that they were subjected to torture – including solitary confinement, beating, being suspended from a bracket, sleep deprivation, rape and administration of mind altering drugs. This torture led three of the men to make televised false confessions to the bombings.

After a secret trial, a Saudi court sentenced Dr Mitchell and Dr Sampson to death and Mr Walker to 18 years in prison. Following worldwide protests and more than 900 days in captivity, they were eventually released on an order of clemency.

On their return to the UK, the men launched legal action claiming compensation for torture.

In 2002, Mr Jones sued Saudi Arabia's Ministry of Interior and the man who he alleges tortured him. His case was struck out in February 2003 on the grounds of state immunity: a principle of international law by which a state is protected from being sued in the courts of other states.

A claim by Dr Mitchell, Dr Sampson and Mr Walker against the four individuals that they considered to be responsible for their torture was also struck out for the same reason in February 2004.

The men appealed against the decisions and the case reached the House of Lords, which decided in 2006 that none of the claims could proceed because as a state, Saudi Arabia is immune from suit, as are its officials.

In 2006, the men challenged the House of Lords' decision in the European Court of Human Rights. Human rights organisations REDRESS, Amnesty International, INTERIGHTS and JUSTICE did not represent the victims, but were given permission to make submissions on the international law of state immunity. After a long delay, the Court issued its judgment in the case on 14 January 2014, finding that – while further development in the law of state immunity was to be expected – the House of Lord's decision was not 'manifestly erroneous' and the United Kingdom had not breached its obligations by barring the claim from proceeding.

Regrettably one of the men, William Sampson, died in 2012, before the judgment was handed down.

The case may now be referred to the Grand Chamber to be considered again, at the request of the applicants. However such requests are only accepted on an exceptional basis.

2. REDRESS, Amnesty International, INTERIGHTS and JUSTICE intervened in this case to argue that international law did not require the application of immunity to individual officials – as opposed to States – in civil damages claims alleging torture. On the contrary, international law required individuals to have access to a remedy, including through civil compensation. The interveners were also granted permission to intervene before the House of Lords. Further information about the intervention can be found at: <http://www.redress.org/case-docket/jones-v-uk-and-mitchell-and-others-v-uk>

3. The judgment of the European Court of Human Rights is available on the Court's website, here: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-140005>

The Court concluded that there had been no violation of the European Convention on Human Rights:

“213. ...there is in the Court's view some emerging support in favour of a special rule or exception in public international law in cases concerning civil claims for torture lodged against foreign State officials, the bulk of the authority is, as Lord Bingham put it in the House of Lords in the present case, to the effect that the State's right to immunity may not be circumvented by suing its servants or agents instead. Taking the applicants' arguments at their strongest, there is evidence of recent debate surrounding the understanding of the definition of torture in the Torture Convention; the interaction between State immunity and the rules on attribution in the Draft Articles on State Responsibility; and the scope of Article 14 of the Torture Convention (see paragraphs 206-208 above). However, State practice on the question is in a state of flux, with evidence of both the grant and the refusal of immunity *ratione materiae* in such cases. At least two cases on the question are pending before national Supreme Courts: one in the United States and the other in Canada (see paragraphs 125 and 134 above). International opinion on the question may be said to be beginning to evolve, as demonstrated recently by the discussions around the work of the International Law Commission in the criminal sphere. This work is ongoing and further developments can be expected.

214. In the present case, it is clear that the House of Lords fully engaged with all of the relevant arguments concerning the existence, in relation to civil claims of infliction of torture, of a possible exception to the general rule of State immunity (compare and contrast *Sabeh El Leil*, cited above, §§ 63-67; *Wallishauser*, cited above, § 70; and *Oleynikov*, cited above, §§ 69-72). In a lengthy and comprehensive judgment (see paragraphs 24-38 above) it concluded that customary international law did not admit of any exception – regarding allegations of conduct amounting to torture – to the general rule of immunity *ratione materiae* for State officials in the sphere of civil claims where immunity is enjoyed by the State itself. The findings of the House of Lords were neither manifestly erroneous nor arbitrary but were based on extensive references to international law materials and consideration of the applicant's legal arguments and the judgment of the Court of Appeal, which had found in the applicants' favour. Other national courts have examined in detail the findings of the House of Lords in the present case and have considered those findings to be highly persuasive (see paragraphs 131-133 and 135 above).

215. In these circumstances, the Court is satisfied that the grant of immunity to the State officials in the present case reflected generally recognised rules of public international law. The application of the provisions of the 1978 Act to grant immunity to the State officials in the applicants' civil cases did not therefore amount to an unjustified restriction on the applicant's access to a court. There has accordingly been no violation of Article 6 § 1 of the Convention in this case. However, in light of the developments currently underway in this area of public international law, this is a matter which needs to be kept under review by Contracting States.”

REDRESS was founded by a torture survivor in 1992 in London. Since then, it has consistently fought for the rights of torture survivors and their families in the UK and abroad. It has intervened in a range of leading torture cases. **Amnesty International** is a worldwide movement of people working for respect and protection of internationally-recognised human rights principles. The organisation has over 2.8 million members and supporters in more than 150 countries and territories and is independent of any government, political ideology, economic interest or religion. **INTERIGHTS** is an international human rights law centre, based in London. It is a registered charity, independent of all governments. It works to promote the effective application of international human rights standards and procedures, including through litigation. **JUSTICE** is an independent all-party law reform organisation. Its mission is to advance access to justice, human rights and the rule of law. It is the UK section of the International Commission of Jurists.