

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty Briefing Note on Armed Conflict and the Human Rights Act

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SUMMARY

- The purpose of both the Human Rights Act and the European Convention on Human Rights (ECHR) is to provide an ultimate safeguard against the abuses of power which can occur during wartime, despite the vast majority of soldiers' best intentions.
- The protection of human rights overseas is a fundamental means of distinguishing the UK's military across the world. One of the Government's foremost objectives must be complying with, and being seen to comply with, the rule of law. The Government cannot leave our human rights commitments at our borders.
- In tandem with the laws of war, the Human Rights Act provides fundamental and effective safeguards of legality and humane treatment. Far from creating uncertainty, the HRA clarifies and structures the military's use of lethal force and powers of detention in ways the army itself recognises and seeks to honour.
- It has long been recognised that human rights law applies in times of armed conflict. The drafters of the Convention – many of whom were Conservative British lawyers – specifically tailored the document to apply in times of war. Arising out of the horrors of the Second World War, its drafters wanted strong but realisable safeguards in both peacetime and armed conflict.
- In the complexities of modern conflict, IHL and the HRA work together to impose effective, realistic safeguards on military operations, with sensible and common-sense standards responsive to the facts on the ground. For example, the ECHR permits the use of lethal where it constitutes a lawful act of war.
- For the UK to curtail the HRA would send a very strong signal that others can ignore human rights in times of violence. The UK's continued commitment to the role of human rights in armed conflict is crucial to forcing other Governments to do the same. The ECHR was, for example, the only recourse available to the families of those killed and abused by the Russian military during the conflict in Chechnya during the late 1990s and early 2000s.
- As the case of Baha Mousa shows, real human rights safeguards are needed in times of conflict overseas. And Anne-Marie Ellement's case demonstrates that soldiers too both need and deserve the full protection of human rights law wherever they serve. The Human Rights Act protects those who serve the UK overseas, and guarantees our commitment to human rights and the rule of law worldwide.

1. The UK Government has legal and moral obligations to its soldiers and the civilians with whom they come into contact. Neither can be ignored. The Human Rights Act ('HRA'), incorporating the European Convention on Human Rights ('ECHR'), provides a crucial means of redress for those who risk their lives to fight abroad under the UK's banner, and the individuals whose lives are inevitably affected by them.
2. The essential proposition behind the application of the Human Rights Act to armed conflict is a simple one. Its purpose, as the drafters of ECHR intended, is to provide **an ultimate safeguard against the abuses of power which, despite the best intentions of the vast majority of commanders and soldiers, occur during wartime.**
3. Immediately after the Second World War, the UK Government was faced with an armed uprising in Kenya in which – as litigation under the Human Rights Act uncovered – appalling atrocities were committed under the flag of the British Empire.¹ These abuses took place in an environment in which senior Government officials decided that human rights law should not apply. Nonetheless, the UK Government was found by the European Court of Human Rights to have breached Article 3 of the ECHR by using a set of 'Five techniques' – comprising stress positions, hooding, subjection to noise, sleep deprivation, and deprivation of food and drink – which were recognised at the time to amount to ill-treatment and are widely believed today to constitute torture.²
4. However, despite a Government ban on the use of such techniques since the Court decision, they were used once more on detainees during the war in Iraq. They resulted in the infliction of torture and ill-treatment which, most notoriously, caused the death of 26 year-old hotel receptionist, Baha Mousa. The Government has since promised once more never to use these techniques again.
5. The British army rightly seeks to uphold the rule of law and human rights, whether in peacetime at home or whilst fighting overseas. However, the risk of abuse remains, and other means of redress are all too often illusory. The Human Rights Act therefore plays a crucial role in the lives of soldiers and civilians. **In tandem with the laws of war, the Human Rights Act provides fundamental and effective safeguards of legality and humane treatment.**

¹ See, for example, the testimony of survivors in *Mutua & others v Foreign and Commonwealth Office* [2011] EWHC 1913 (QB).

² See *Ireland v the United Kingdom* (App. No. 6310/71).

Armed conflict and human rights law

6. Much of states' activities in times of armed conflict will be governed by international humanitarian law, also known as the law of armed conflict ('IHL' or 'LOAC'). In addition, states are bound by their commitments under domestic and international human rights law. In the UK, these include the Human Rights Act.
7. Some claim that the HRA stops troops from protecting themselves during the heat of battle.³ This is wrong. The HRA permits the use of lethal force in accordance with the laws of war. In fact, it provides further protections for troops, whose human rights the UK's Government is bound to respect. What the HRA requires is the accountable use of lethal force, with effective and realisable safeguards. It requires that victims have a means of redress, where abuses in breach of human rights and the laws of war are committed. **Far from creating uncertainty, the HRA clarifies and structures the Military's use of lethal force and powers of detention in ways the army itself recognises and seeks to honour.**
8. **And it has long been recognised that human rights law applies in times of armed conflict.** This essential proposition has been unequivocally upheld by the body tasked with overseeing the interpretation and development of international law, the International Court of Justice at the Hague ('ICJ').⁴ The same is true of other bodies tasked with interpreting the world's human rights' commitments, such as the Inter-American Commission on Human Rights.⁵
9. The United Nations Security Council, to take just another example, has for decades taken human rights law to apply in tandem with IHL, from as far back as 1967 – requiring the respect for human rights during the 'Six-Day War' between Egypt and Israel – to as recently as its Resolution against the Islamic State, or 'Daesh', in

³ See Policy Exchange, 'The Fog of Law: An introduction to the legal erosion of British fighting power', 2013, and 'Clearing the Fog of Law', 2015, available here:

<http://www.policyexchange.org.uk/publications/category/item/the-fog-of-law-an-introduction-to-the-legal-erosion-of-british-fighting-power> and

<http://www.policyexchange.org.uk/publications/category/item/clearing-the-fog-of-law-saving-our-armed-forces-from-defeat-by-judicial-diktat>, respectively.

⁴ See the ICJ's decisions in *Legality of the Threat or Use of Nuclear Weapons* (8 July 1996), paragraph 25, *Legal Consequences of the Construction of a Wall in the Occupied Territory* (9 July 2004), paragraph 106, *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda)* (9 July 2004), paragraphs 107-13, and *Georgia v Russian Federation* (1 April 2011), paragraph 112.

⁵ See, for example, its decisions in *Avilán v Colombia*, Case 11.142, Report No. 26/97, and *Bernard Coard and others v United States*, Case 19.951, Report No. 109/99, paragraph 39.

2015.⁶ The General Assembly's calls for human rights in armed conflict go back even further to the 1953 Korean War, and the Soviet Union's 1956 invasion of Hungary.⁷ As the UN Security Council unanimously affirmed in the late 1960s, "**essential and inalienable human rights should be respected even during the vicissitudes of war.**"

10. And this was affirmed by the foremost international body on the interpretation of IHL, the International Committee of the Red Cross. As it found in 1987, "...**Human rights continue to apply concurrently in times of armed conflict.**"⁸

11. Indeed, the ECHR is drafted with its application to armed conflict firmly in mind. Article 15 of the ECHR, for example, permits derogations "in times of war or other public emergency". Similarly, the ECHR expressly provides that states will not be liable for breaches of Article 2, the right to life, where the deaths in question result from "lawful acts of war". **The drafters of the Convention – many of whom were Conservative British lawyers – specifically tailored the document to apply in times of war.**

12. Moreover, the drafting history of a very similar human rights treaty, the International Covenant on Civil and Political Rights (ICCPR), shows the same. During its drafting, the UK sought to have included a similar derogation clause as that contained in the ECHR, with the same reference to wartime, for a powerful, principled reason:

"During the drafting of the derogation clause, the UK, which had initially proposed the inclusion of 'war' in the clause, also proposed wording that would allow derogations from the right to life 'in respect of deaths resulting from lawful acts of war,' the same wording we find today in Article 15(2) ECHR, also on the basis of the UK's proposal. To just get a flavor of the debates, this was objected to by the Soviet delegate on the grounds that such an expansive reference to the possibility of war 'would seem sheer mockery

⁶ See UN Security Council Resolution 237, S/RES/237 (1967), available here: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/E02B4F9D23B2EFF3852560C3005CB95A>, and UN Security Council Resolution 2249, S/RES/2249 (2015), available here: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2249\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2249(2015)).

⁷ See UN General Assembly Resolution 804 (VIII), A804/VIII, 3 December 1953, available here: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/086/69/IMG/NR008669.pdf?OpenElement>, and General Assembly Resolution 1312 (XIII), A38/49, 12 December 1958, available here: <http://hansard.millbanksystems.com/commons/1958/mar/17/resolution-1133-xi>.

⁸ See *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions 12 August 1949*, Sandoz, Y., Swinarski, C., and Zimmermann, B. (eds.), 1987, paragraph 4429, available here: <https://www.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/53b21d4c03070496c12563cd00439d58?openDocument>.

to the peoples of the world.' **The UK delegate, for her part, 'protested against the suggestion that she favoured war. It was because she hated and loathed war that she desired safeguards for human rights in the event of its occurrence.'**⁹

13. The UK lawyers who helped draft the ECHR took the precisely same view of the Convention's application to armed conflict.¹⁰ It could scarcely be otherwise. **As is often (but rightly) said, the ECHR arose out of the horrors of the Second World War. It is plain that its drafters wanted strong but realisable safeguards in both peacetime and armed conflict in future.**

Where does the HRA apply?

14. Both the European Court of Human Rights in Strasbourg and the UK's own Supreme Court have found that the ECHR applies not only to acts and omissions attributable to a state on its own territory, but outside it as well.¹¹ This is the standard position for international human rights treaties, such as the International Covenant on Civil and Political Rights, as accepted by, for example, the International Court of Justice and other international bodies.¹²
15. Extra-territorial jurisdiction, as it is known, is exercised, in essence, where a state exercises 'effective control' over a territory or 'power and control' over an individual. As a result, jurisdiction has been found in the case of Baha Mousa, detained, tortured, and killed on a British military base in September 2003.¹³ To take just another example, jurisdiction was found by the High Court where a civilian was allegedly beaten and shot to death by members of the British army policing a petrol station during the post-invasion military occupation in Iraq.¹⁴

⁹ Milanovic, M., 'Extraterritorial Derogations from Human Rights Treaties in Armed Conflict', 2014, available at Social Sciences Research Network, accessible here: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2447183. Footnotes removed from quotation.

¹⁰ See Schabas, pp. 588-92.

¹¹ See, for example, *Al-Skeini & others v the United Kingdom* (Application no. 55721/07) and *Smith & others v Ministry of Defence* [2013] UKSC 41.

¹² See *Legal Consequences of the Construction of a Wall in the Occupied Territory* (9 July 2004), paragraphs 108-11, and *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda)* (9 July 2004), paragraphs 166-80. See also Human Rights Committee, General Comment 31, 'Nature of the General Legal Obligation on States Parties to the Covenant', CCPR/C/21/Rev.1/Add.13 (2004), paragraph 10, and the Inter-American Commission of Human Rights, *Bernard Coard and others v United States*, Case 19.951, Report No. 109/99, paragraph 37.

¹³ See *Al-Skeini & others v the United Kingdom*.

¹⁴ See one of the test cases in *Al-Saadoon & others v Secretary of State for Defence* [2015] EWHC 715 (Admin).

16. **But the extra-territorial application of the HRA just as clearly protects soldiers abroad as well.** Take the case of military police officer, Corporal Anne-Marie Ellement, who killed herself as a result of bullying and “work related despair” in 2011. An extremely brief inquest failed to take a full, in-depth look into her death. Using the HRA, Liberty and Annie-Marie’s sisters secured a fresh inquest under Article 2, the right to life, and a rape investigation was undertaken under Article 3, the right against torture and inhuman or degrading treatment. As a result, a trial took place in which two former soldiers were accused and acquitted. And in response to the verdict of the second inquest, the Ministry of Defence announced that it would establish a Service Complaint’s Ombudsman to deal with complaints made by service men and women.
17. But Annie-Marie’s allegations related to her time working on a UK base in Germany as a military police officer. Without the protection of human rights abroad, Anne-Marie and her family would have been deprived of any semblance of justice. **The application of the HRA overseas, wherever personnel are stationed, provides real protections for those who serve in or with the UK’s military.**
18. And the extra-territorial application of human rights to situations of armed conflict has a long history. Indeed, the availability of the ECHR’s extra-territorial jurisdiction was critical for historic cases concerning Turkey, in which its government was found to violate human rights in military operations at its borders.¹⁵ It was these cases on which the UK’s courts, and Strasbourg, have relied in coming to the principled position that human rights apply extra-territorially.
19. Indeed, these cases demonstrate one essential role for the ECHR in applying to conflict overseas. In cross-border conflicts such as those between Turkey and Cyprus, IHL does not clearly or at all apply. **The extra-territorial application of the ECHR helped, for example, a British citizen who was shot – along with two British soldiers – by Turkish forces during protests along the United Nations’ buffer zone between Cyprus and Turkish-occupied Northern Cyprus.**¹⁶ Outside Turkish territory, and without any obvious protection under the laws of war, the ECHR was the only means of redress.
20. **But, most importantly, the protection of human rights overseas is a fundamental means of distinguishing the UK’s military across the world.**

¹⁵ See, for example, *Loizidou v Turkey* Judgment of 18 December 1996, Reports of Judgments and Decisions 1996-V, *Cyprus v. Turkey* (App. No. 25781/94), and *Issa and others v Turkey* (2005) 41 EHRR 27.

¹⁶ See *Andreou v Turkey* (App. No. 45653/99).

Indeed, it is surely a key component of the military's sense of integrity, honour, and self-respect that it conducts its operations to the highest legal standards. **The Government cannot leave the UK's human rights commitments at our borders.**

Human rights in war time

21. Important among the rights guaranteed during armed conflict is the right to life, protected by Article 2 of the HRA, along with Article 3, the right against torture and inhuman or degrading treatment, and Article 5, the right against arbitrary detention.
22. The rights guaranteed by the HRA are an entirely different matter from the separate regime of negligence law. The HRA and the ECHR provide a system of rights protection different in kind and character from the UK's tort law. Where the law of negligence seeks compensation, the HRA seeks accountability. 'Just satisfaction' comes in many different forms of redress, only some of which will constitute compensation in the form of a monetary award.
23. The focus of some critics, therefore, is misplaced. Policy Exchange, in its reports, devotes a lot of its attention to claims for compensation brought by British troops under the law of negligence. Tort law is no doubt very important in achieving compensatory justice for those affected by wrongdoing. However, the HRA is a distinct system for the vindication of the rights of individuals and ensuring of accountability.
24. In addition, claims are made that human rights seek to displace the laws of war, or to impose unrealistic standards on the use of lethal force, or generate uncertainty as to the governing legal regime. These claims are manifestly false. The rights under the HRA respond to the circumstances of each case. In light of the control and authority exercised over Baha Mousa, for example, in a UK detention centre outside of Basra, Iraq, the UK rightly owed a significant number of duties to him. They had, in effect, complete control over him.
25. Human rights law is recognised to be, and always has been, complementary to the laws of war. This provides certainty and clarity, with soldiers seeking to act in accordance with the rule of law and the ethics of human rights protection. **In the complexities of modern conflict, IHL and the HRA work together to impose effective, realistic safeguards on military operations, with sensible and common-sense standards responsive to the facts on the ground.**

Article 2 and the right to life

26. Article 2 prohibits the use of lethal force other than in defence against unlawful violence, where effecting lawful arrest or preventing the escape of a person lawfully detained, and in action lawfully taken for the purpose of quelling a riot or insurrection. Where lethal force is used, it must be no more than is “absolutely necessary”. However, **the ECHR permits the use of lethal where it constitutes a lawful act of war.**
27. The use of force is also governed by IHL. In essence, IHL permits the use of lethal force against combatants as a first resort. Nonetheless, attacks must be undertaken using permissible means – for example, without the use of unlawful weapons such as cluster bombs – and must not target, or disproportionately harm, civilians.
28. Where a combatant is shot in circumstances of international armed conflict and in accordance with IHL, the HRA and the ECHR permit the use of lethal force. **The ECHR allows the use of lethal force where permitted under the laws of war.** Indeed, the reports of the Policy Exchange – far from advocating amendment or repeal of the HRA – make precisely the same recommendation that the UK Government derogate in times of armed conflict.¹⁷
29. But some critics of the HRA grossly over-simplify the kinds of armed conflict faced by UK forces today.¹⁸ International armed conflicts in which the full range of IHL’s rules applies form only one kind of conflict fought by British troops. Such a conflict took place between the US, the UK, and their allies against Saddam Hussein’s regime during the summer of 2003.
30. However, what followed thereafter was very different. The situation was at one point a non-international armed conflict, fought between a state and non-state armed groups, in which far fewer rules of IHL apply. But British forces also sought to exercise military and police control and keep the peace, just as they sought to do during the conflict in Afghanistan. In these conflicts, the rules of IHL are rather different. For example, unlike in fights between states, there is no provision for a detainee’s status as a ‘prisoner of war’. Similarly, unlike in state-on-state conflict, there is no rule expressly providing immunity for combatants who lawfully use lethal force against other combatants. In short, the rules are simply less well-developed.
31. It is widely recognised that in the latter kind of conflict, human rights law is a necessary complement to IHL, bringing greater clarity and welcome safeguards on

¹⁷ See pp. 8 and 28-35 of their 2015 report.

¹⁸ See, for example, the two Policy Exchange reports.

the use of force – often in circumstances where the army’s relationship with civilians is of paramount concern. **To encompass the myriad complexities of modern warfare, the law has a range of complementary tools to ensure best practice. These include both IHL and the HRA, whose requirements naturally vary according to the nature of the conflict and the facts of the case.**

32. And this is increasingly the view of domestic courts worldwide. The Israeli Supreme Court, for example, in 2005 found that, in non-international armed conflict, human rights apply in military operations alongside IHL, following the standards of the right to life under Article 2 of the ECHR.¹⁹ It held that human rights law is especially needed in situations of modern armed conflict, in which the distinction between civilian and combatant may not be as clear as in traditional warfare. As the President of the Court stated, **“It is when the cannons roar that we especially need the laws...Every struggle of the state – against terrorism or any other enemy – is conducted according to rules and law. There is always law which the state must comply with. There are no ‘black holes’.”**

33. Article 2 has an extremely important role in providing real and effective safeguards on the use of force during occupation and peace-keeping. Indeed, the lead claims brought by alleged victims of rights abuses by the UK Government in the conflicts in Iraq and Afghanistan concern killings outside the heat of battle. Instead, they allege unlawful killings and other abuses by British soldiers acting as occupying forces, conducting peace-keeping, and policing civil disorder.²⁰

34. Take the conflict in Afghanistan. It was alternately characterised as post-conflict peace-keeping, nation-building, and counter-terrorism in the ‘War on Terror’. The military conditions alternated between fighting with Taliban forces and the keeping of civil order – during the latter, the army sought to create stability and the rule of law. The same was true of Iraq, in which the UK’s goal of counter-insurgency and the creation of a viable police and security system was a clear objective of military planners. In such circumstances, **one of the Government’s foremost objectives must be complying with, and being seen to comply with, human rights and the rule of law.**

35. Adherence to the rule of law is precisely the approach which the UK has recognised elsewhere, such as the conflict in Northern Ireland. Former top military lawyer,

¹⁹ *The Public Committee against Torture in Israel v The Government of Israel* (HCJ 769/02).

²⁰ See, for example, the test cases in *Al-Saadoon & others v Secretary of State for Defence* [2015] EWHC 715 (Admin).

Nicholas Mercer, has stated publicly his advice to the UK Government that it must detain prisoners in Iraq compatibly with both IHL and human rights law. As he relates, such an approach has a substantial history in British military practice:

“The application of the law in the conduct of military operations is no surprise to the generation of UK military lawyers who served in Northern Ireland before the Belfast Agreement in 1998. Every time a suspected terrorist was captured by UK forces operating in Northern Ireland there was an inevitable legal challenge, both to the arrest and the subsequent process of detention and questioning. Such challenges were anticipated as a matter of course and indeed the only way to protect UK forces and the security services against legal challenge (and to secure a conviction) was to ensure that their treatment was of the ‘highest legal standards’ at all times. **By adopting such standards, the UK military was in a position where a suspected terrorist could be tried successfully and the armed forces were confident that they were operating in accordance with the law at all times and that public opinion would remain on the side of the security forces, or, at the very least, it would ensure that they did not assist the terrorist and their constituents. This is the only effective way to deal with prisoners.**”²¹

36. **And the UK’s military plainly wants to comply with the highest standards.** This is surely why the UK Military explicitly prohibited its soldiers in Iraq from using lethal force as a first resort. Instead, it framed its rules of engagement in accordance with Article 2, the right to life, to permit lethal force only where absolutely necessary.²²
37. As stated on the Army’s ‘Card Alpha’, issued to every soldier to remind them of those rules, “You may only open fire against a person if he/she is committing or about to commit an act likely to endanger life and there is no other way to prevent the danger.” As Card Alpha continues, if soldiers “have to open fire”, they must fire “only aimed shots”, fire “no more rounds than are necessary”, and take “all reasonable precautions not to injure anyone other than [the] target”.
38. The cross-over with the Human Rights Act is obvious: **as Article 2 requires, the army recognised that the circumstances of Iraq, for instance, required that the army use force only where “absolutely necessary”. It is in circumstances of occupation, peace-keeping, or the policing of civil disorder that the British**

²¹ See Mercer, 2014, p. 166.

²² Reproduced in *Al-Skeini v the United Kingdom*, paragraph 24.

army itself recognised that the use of lethal force must be subject to effective, realisable safeguards.

39. And it is extremely important to remember that where IHL has been breached, it remains extremely difficult for those gravely affected by the events of war to get redress. Whilst this is true of the UK, it remains all the more difficult for those who live in countries the governments of which fail to respect the rule of law. **The ECHR was, for example, the only recourse available to the families of those killed and abused by the Russian military during the conflict in Chechnya during the late 1990s and early 2000s.**
40. The UK Government has indicated that Syrian President Bashar Al-Assad and others – who are alleged to have committed war crimes and crimes against humanity during the ongoing civil war in Syria – should face international trial.²³ Human Rights Watch have argued that the same was true of Russia’s actions in Chechnya, which included the enforced disappearance of at least 3,000 people between 1999-2005.²⁴ This, if true, would constitute a crime against humanity under the Rome Statute of the International Criminal Court, in addition to breaches of IHL amounting to war crimes.
41. As successive judgments of the European Court of Human Rights have found, there has been no criminal or civil accountability within Russia for perpetrators of these crimes. This demonstrates that the safeguards of human rights are fundamental to armed conflict across the world. **The ECHR was *the only way* in which victims of violence in Chechnya received justice. The HRA and the ECHR therefore work as a complement to the laws of war, to ensure redress for rights violations during armed conflict.**
42. For example, the European Court of Human Rights held that the right to life applied to the indiscriminate bombing of civilians in towns and convoys during the second war in Chechnya conflict, requiring the Russian Government to take measures to protect non-combatants and properly investigate their deaths.²⁵ The vital importance

²³ See *The Telegraph*, ‘President Assad should face war crimes trial, David Cameron’, 27 September 2015, available here: <http://www.telegraph.co.uk/news/politics/11895363/President-Assad-should-face-war-crimes-trial-David-Cameron-indicates.html>.

²⁴ See Human Rights Watch, ‘Worse Than a War: “Disappearances” in Chechnya—a Crime Against Humanity’, March 2005, available here: <https://www.hrw.org/legacy/backgrounder/eca/chechnya0305/chechnya0305.pdf>. See also Human Rights Watch, ‘Justice for Chechnya: The European Court of Human Rights Rules against Russia’, July 2007, available here: https://www.hrw.org/sites/default/files/related_material/justice_for_chechnya_2.pdf.

²⁵ See, for example, *Isayeva, Yusupova and Basayeva v Russia* (Application nos. 57947/00, 57948/00, and 57949/00) and *Isayeva v Russia* (Application no. 57950/00).

of both Articles 2 and 5 in times of armed conflict was powerfully illustrated by another case brought by Chechen victims of Russian military action: the Russian Government was found to have breached both articles by the military abduction, detention, and disappearance of a 19 year-old Chechen individual, one of thousands detained by the Government during the conflict as alleged security threats.²⁶

43. In the absence of real criminal accountability, the ECHR provides a measure of justice for victims of armed conflict. Just satisfaction has been paid to the victims as compensation for the abuses they have suffered, and they have had the transparency and accountability that a court judgments brings. As one expert notes,

“The court’s role as a partial corrective to the impunity in Chechnya has witnessed the burgeoning of one of the most important legal recourses for Chechen civilians...**the reality is that the European Court of Human Rights is the one consistent judicial recourse that remains dedicated to exposing the seriousness of the crimes in the Northern Caucasus and building a case of documentary evidence.** As with the Kurdish cases in southeast Turkey in the 1990s, the volume and critical nature of the violations in Chechnya are forcing the Council of Europe, albeit slowly and under pressure from civil society, to intensify pressure on Russia to reform the country’s domestic legislation and to open criminal trials in response to the Chechen judgments”.²⁷

44. Indeed, as shown below, the Government recognised the inadequacy of the limited and flawed criminal prosecutions of those involved in the death of Baha Mousa by ordering an Inquiry into what truly happened. Other means of redress – through the pursuit of breaches of IHL in the criminal courts – proved insufficient. It took the HRA to get justice for Baha Mousa’s family.

45. **Therefore, in applying to armed conflicts of all kinds, the HRA does not stop soldiers from using lethal force on the battlefield. However, it provides real and effective means of redress for those unlawfully killed or abused in breach of both IHL and human rights law.**

Articles 2 and 3: the death of Baha Mousa

²⁶ *Takhayeva and others v Russia* (App. No. 23286/04).

²⁷ See Gilligan, E., *Terror in Chechnya: Russia and the Tragedy of Civilians in War*, Princeton: Princeton University Press, 2010, pp. 184-5.

46. A crucial component of the right to life is the right to a full and proper investigation into a person's death. The importance of this right is nowhere illustrated more clearly than the case of Baha Mousa, a 26 year-old Iraqi hotel receptionist arrested with a number of others after a discovery of weapons by British forces in Basra, Iraq, on 14 September 2003.²⁸ He was killed at a British military base in Basra, after his arrest at the hotel in which he worked.
47. Whilst the Baha Mousa Inquiry found that there was sufficient reason to conduct an arrest of Baha Mousa and the other detainees, in the circumstances, it was "highly unlikely" that they were insurgents or terrorists.²⁹ However, those detaining them repeatedly suggested that they were, which the Inquiry Report found may have contributed to the severity of their treatment by creating the "obvious risk" that guards may seek "retribution" for the recent killing of British service personnel.³⁰ What happened as a result of the arrests shocked both the UK and the world.
48. Once he was placed in detention by the British army, abuses of appalling cruelty were inflicted. As substantiated by the Baha Mousa Inquiry Report, these include punching, kicking, and kneeling, being placed in a circle and beaten sequentially so as to form (as stated by the soldiers involved) "a choir", hooding, stress positions, beating and kicking where detainees failed to uphold those stress positions, being forced to dance, eye-gouging, shouting, threats to kill (including pouring liquid on a detainee and purporting to start a light, whilst suggesting that it was petrol), covering with toilet water, irritants being sprayed up a detainees' nose (on the pretence that it would assist breathing difficulties), being forced to place their faces over toilets for extended periods of time, and deprivation of food and water. These abuses resulted in terrible physical and psychological injuries, including broken bones, damage and swelling to internal organs, and post-traumatic stress disorder.
49. In the case of Baha Mousa, it ended with his death. The autopsy conducted after his death uncovered 93 identifiable external injuries to his body, not including the separate internal injuries he sustained. Like the other detainees, he was repeatedly beaten and abused. But the final assault came when he attempted to protect himself by freeing his hands from his plastic handcuffs and removing his hood. The Inquiry found that his final beating was a punishment for having done so. His death was found to be a result of a variety of causes, including the injuries he suffered during

²⁸ See The Baha Mousa Inquiry Report, 8 September 2011, available here:

<https://www.gov.uk/government/publications/the-baha-mousa-public-inquiry-report>.

²⁹ See Baha Mousa Inquiry Report, Volume III, Summary of Findings, paragraph 13.

³⁰ See Baha Mousa Inquiry Report, Volume III, Summary of Findings, paragraph 54.

the beatings and asphyxia resulting from the position in which he was placed while his handcuffs were secured.³¹

50. Only one person, Donald Payne, was even remotely held to account over these abuses. This is despite the fact that the Baha Mousa Inquiry report identified at least 19 individuals who participated in the abuse. That same report also heavily criticised the senior officers at the military base for failing to properly supervise the detentions and put a stop to the abuse.

51. Payne was convicted and sentenced not in respect of Baha Mousa's death but only his 'inhumane treatment'. He received merely one year's imprisonment. It is especially important to recall the words of the judge presiding over his court martial, describing the other personnel implicated in the abuse: "**None of those soldiers has been charged with any offence, simply because there is no evidence against them as a result of a more or less obvious closing of ranks.**"³² Indeed, it was by the very fact of the court martial's inadequacy that the Government accepted the need for a full Inquiry into Baha Mousa's death.

52. Along with the deficiencies of the criminal law, IHL does not set out specific requirements to investigate suspicious deaths in wartime. However, after a House of Lords decision and a subsequent judgment of the European Court of Human Rights, Baha Mousa was found to fall within the UK's jurisdiction for the purposes of the ECHR.³³ As a result, Article 2 required a proper investigation into his death, resulting in the Government agreeing to the Baha Mousa Inquiry. In addition to the lack of likely criminal prosecutions, the HRA is especially important in conflicts such as that in Iraq where international agreements rendered UK forces immune from prosecution under Iraqi law.³⁴ Without proper criminal justice for Baha Mousa and the other detainees, an inquiry was the least they and their families deserved. This is the important legacy of the HRA.

53. There remains evidence of a pattern of treatment of Iraqi detainees by some members of the UK's armed forces, which many attribute to a failure to properly

³¹ See Baha Mousa Inquiry Report, Volume III, Summary of Findings, paragraphs 127-43.

³² See *The Observer*, 'How army's £20m trial failed to find the killers', 18 March 2007, available here: <http://www.theguardian.com/uk/2007/mar/18/iraq.military>.

³³ See *Al-Skeini & others v Secretary of State for Defence* [2007] UKHL 26 and *Al-Skeini & others v the United Kingdom* (Application no. 55721/07).

³⁴ Under Coalition Provisional Authority Order No. 17, available here: http://www.usace.army.mil/Portals/2/docs/COALITION_PROVISIONAL.pdf.

incorporate the ECHR's standards for humane treatment of detainees.³⁵ These were standards adopted after the European Court of Human Rights found the UK Government to have breached the rights of those interned during the conflict in Northern Ireland and subjected to 'five techniques', that is, stress positions, hooding, subjection to noise, sleep deprivation, and deprivation of food and drink.³⁶ **The UK Government promised never to use these brutal methods. Nonetheless, as successive observers have found – including the report of the Baha Mousa Inquiry – these techniques were found to be used once more in Iraq.**

54. And better safeguards on detention are effective and feasible. Indeed, **it was the Military's top legal adviser on the ground in Iraq, Lieutenant Colonel Nicholas Mercer, who advised the Ministry of Defence that it can and must abide by the rights contained in the HRA, since he had been "always been of the view that the ECHR would apply"**.³⁷

55. As Nicholas Mercer relates, the use of judicial tribunals to assess the legality of detention and the treatment of those within it was feasible, legally required, and morally right. Nonetheless, he queries why it was not implemented, and notes that:

"...it is not beyond the realms of probability that the MOD resisted such a request because their own direction over prisoners may have come under great scrutiny and possibly faced allegations that UK Armed Forces, under the direction of the MOD, were operating so called 'black sites' for prisoners within the Western Desert, which would almost certainly have been challenged if an independent judge had come into theatre to oversee detention...**it became clear that when a lesser standard was applied, or there was room for legal debate, then there was the potential for abuse – with tragic consequences in the case of Baha Mousa.**"³⁸

56. This was a key finding of the Baha Mousa Inquiry. As it concluded, the Ministry of Defence was guilty of a "corporate failure" to properly address its treatment of

³⁵ See, for example, legal scholar Andrew Williams and his *A Very British Killing: The Death of Baha Mousa*, London: Vintage, 2013. See also *Guardian* journalist Ian Cobain in his *Cruel Britannia: A Secret History of Torture* London: Portabello, 2013, in particular chapter 9. See also Jack Fairweather, *A War of Choice*, London: Vintage, 2012, pp. 32-36.

³⁶ See *Ireland v the United Kingdom* (App. No. 6310/71).

³⁷ Quoted (from documents made available as a result of the Baha Mousa Inquiry) in Mercer, N., 'The future of Article 5 tribunals in the light of experiences in the Iraq War 2003', in *Contemporary Challenges to the Laws of War*, Harvey, C., Summers, J., and White, N. (eds.), Cambridge: Cambridge University Press, 2014, pp. 149-68, p. 158.

³⁸ See Mercer, 2014, pp. 161-2 and 165.

detainees.³⁹ Government and military planners had failed to learn the lessons of Northern Ireland and implement the internationally recognised ban on prohibited detention and interrogation techniques. **The military rightly demands clear, realisable rules for detention and interrogation which both protect those under their control and give soldiers confidence in the legality of their actions. This is precisely the role of the HRA.**

57. And there are other cases of serious violations. The Ministry of Defence has, in fact, recently apologised for the mistreatment and death of a 15-year-old boy, Ahmad Jabbar Kareem, in May 2003.⁴⁰ He was unlawfully detained by British troops in Basra during a period of looting and – as a report by a former High Court judge found – “aggressively manhandled and assaulted” during his arrest and detention. He – along with several other detainees – was then forced at gunpoint into a canal, and he drowned. The report found that the soldiers simply walked off as he struggled for life, it being “plain and certain” that their forcing him into the canal and failing to assist him caused his death. As the judge found:

“[The victims] must have been terrified. They probably had no knowledge or understanding of what was going to happen. They are likely to have feared for their lives. None of the soldiers gave a satisfactory explanation for their actions in directing the looters into the canal.”

58. Indeed, the practice of “wetting” – in which suspected looters were thrown into Basra’s canals – is alleged to have been widespread among British forces at the time.⁴¹ For example, the Ministry agreed to compensate the family of 18-year-old Saaed Shabram, who drowned in May 2003 after being detained and forced into a river by British troops.⁴² Their deaths were likely in violation of both Article 2 and Article 3 of the Human Rights Act, and their cases demonstrate the paramount need for human rights safeguards during armed occupation and military policing operations. No operational need could justify these practices; their only effect was to

³⁹ See Baha Mousa Inquiry Report, Volume III, Summary of Findings, paragraph 293.

⁴⁰ *The Guardian*, ‘Apology from MoD over Iraqi boy’s drowning at hands of UK soldiers’, 16 September 2016, available here: <https://www.theguardian.com/uk-news/2016/sep/16/apology-from-mod-over-iraqi-boys-drowning-at-hands-of-uk-soldiers>.

⁴¹ See, for example, *The Guardian*, ‘Senior British officers knew of ‘wetting’ of Iraqi civilians, inquiry told’, 4 July 2016, available here: <https://www.theguardian.com/uk-news/2016/jul/04/senior-british-officers-knew-of-wetting-of-iraqi-civilians-inquiry-told>.

⁴² *The Guardian*, ‘Ministry of Defence pays £100,000 to family of drowned Iraqi teenager’, 21 July 2011, available here: <https://www.theguardian.com/world/2011/jul/21/iraq-drowning-british-army-compensation>.

alienate British forces from the population whose hearts and minds they sought to win. The Human Rights Act is a crucial tool for the achievement of these aims.

Article 2 and military planning and provision

59. However, Article 2 also requires that states take reasonable and proper measures to protect individuals under its jurisdiction from threats to their life. In the case of *Catherine Smith*, a mother of a UK Private brought proceedings against the Ministry of Defence for its failure to properly safeguard the life of her 21 year-old son, Private Jason Smith. He was stationed at Camp Abu Naji, Iraq, in June 2003. By August, he faced temperatures of 50 degrees centigrade – well over 100 degrees Fahrenheit – in the shade. On 9 August, he reported that he was unwell as a result of the extreme heat. Nonetheless, he was required to perform duties off base, and on the evening of 13 August he was discovered collapsed on the floor, and taken back to base. He died, almost immediately, of heatstroke.

60. An inquest was held into his death. However, it was inadequate and, as a result of Article 2 of the HRA, the Ministry of Defence accepted that a new one must be ordered. However, the MoD still refused to accept that they owed Catherine Smith's son any duty to take reasonable steps to safeguard his life, as he died whilst off-base. As Lord Mance stated in his judgment in the Supreme Court, he strongly supported the view that the Ministry of Defence had a positive obligation, in the circumstances, to do what was reasonable to safeguard Private Smith's life. As Lord Mance wrote:

“The United Kingdom's jurisdiction over its armed forces is essentially personal. The United Kingdom cannot and cannot be expected to provide in Iraq the full social and protective framework and facilities which it would be expected to provide domestically. But the United Kingdom could be expected to take steps to provide proper facilities and proper protection against risks falling within its responsibility or its ability to control or influence when despatching and deploying armed forces overseas.”⁴³

61. As he concluded, **“there is nothing that makes the Convention impossible or inappropriate of application to the relationship between the state and its armed**

⁴³ See *R (Smith) v Secretary of State for Defence* [2010] UKSC 29, paragraph 194. Whilst she won an inquiry by agreement with the Ministry of Defence, Catherine Smith lost her case in front of the Supreme Court.

forces as it exists in relation to overseas operations, in matters such as, for example, the adequacy of equipment, planning or training.⁴⁴

62. Another case was later brought against the Ministry of Defence, drawing on long-standing allegations against it that it had failed to properly equip and train its troops fighting overseas. The case was brought by several people who had felt the devastating effects of these apparent failures. Three were relatives of British army personnel killed whilst serving in Iraq, and two more had themselves served and become wounded there. One had been killed, and two others seriously wounded in a friendly-fire incident in which they and their Challenger tanks were fired upon by another tank group. Despite being sent into combat, none had received the training or equipment necessary to protect against the risk of such incidents occurring. Three other service personnel had been killed as a result of the detonation of IEDs whilst on patrol in Snatch Land Rovers which, despite being vehicles highly vulnerable to IED attacks, had not been fitted with components capable of detecting them, nor were better-armoured vehicles, capable of shielding them from such attacks, provided.
63. The MoD had applied to strike out these claims even before any trial could be heard. However, the Supreme Court disagreed: it held that the cases should at least be examined. As the Court held, **Article 2 of the HRA requires that those tragically affected by extremely poor preparatory decision-making have the chance to hold the Government to account.**
64. The Supreme Court nonetheless cautioned against those and any future claimants. As it held, Article 2 is fact-sensitive, and will take the exigencies of MoD decision-making into account. All that the Supreme Court had found was that the cases should go to trial, not that they should win. Any such case must be established on the facts.
65. Moreover, **the Court made clear that Article 2 does not entail that individuals can bring claims against decisions made during the heat of battle.** The Convention plainly takes into account the necessities of wartime, and the specific obligations under which soldiers are placed – including their being ready to die in battle.⁴⁵ The right to life would not be breached, for instance, by orders sending soldiers to risk their lives fighting in war.

⁴⁴ *R (Smith) v Secretary of State for Defence*, paragraph 195.

⁴⁵ For the ECHR's recognition of the special characteristics of military life, see *Engel v the Netherlands* [1976] 1 EHRR 647. See also *Akbulut v Turkey* (App. No. 45624/99) and *Stoyanovi v Bulgaria* (Application no. 42980/04).

66. Rather, the Court held that **the MoD’s decision-making as to equipment and procurement, back home, “ought not be immune from scrutiny”**. As it concluded,

“It is hard to see why servicemen and women should not, as a general rule, be given the same protection against the risk of death or injury by the provision of appropriate training and equipment as members of the police, fire and other emergency services.”

67. But might there now be an open floodgate of claims against the MoD as a result of these rulings? The evidence suggests otherwise. One case provides an important illustration, brought by the mother of a Lance Corporal killed (along with five other UK service personnel) by an armed crowd at a police station in Iraq on 24 June 2003.⁴⁶ The claimant alleged that the soldiers’ deaths may have resulted from a breach by the UK of its positive obligation to safeguard their lives and, without a specific investigation in those allegations, the UK government had breached Article 2. Both courts noted the risks inherent to claims against the armed forces recognised by Lord Hope in *Smith*, and found that duty did not arise on the facts. The claim was struck out, and the decision to do was upheld on appeal.

68. The HRA simply recognises the common-sense position that a soldier’s obligation to fight does not automatically include the duty to suffer avoidable and unreasonable errors in planning, provision, and training, far away from the field of battle. Indeed, **the HRA recognises the fundamental truth that the lives of soldiers are just as valuable as the lives of civilians**. The dignity and value of both soldiers’ and civilians’ lives is what fundamentally underpins the protections of the HRA in wartime.

The ECHR’s fundamental safeguards

69. Rights under the ECHR prove especially important where states are reluctant to grant individuals the protection of IHL. They can also supplement the rules of IHL where the circumstances require it. **The HRA steps in to provide fundamental safeguards.**

70. **Sometimes, IHL’s rules simply do not provide for every eventuality.** See, for example, the findings of the 1985 UN mission to investigate prisoners of war during the Iran-Iraq War, which – in light of allegations of brainwashing – unequivocally

⁴⁶ *Long v Secretary of State for Defence* [2014] EWHC 2391 (Admin) and [2015] EWCA Civ 770.

required that “[t]he freedom of thought, religion and conscience of every prisoner of war should be strictly respected.”⁴⁷

71. **On other occasions, IHL is deemed not to apply.** To take another example, the Government of the United State of America has repeatedly claimed that those with whom they were fighting during the wars in Iraq and Afghanistan were not ‘combatants’ for the purposes of IHL, but rather ‘terrorists’. It therefore refused to apply IHL’s provisions granting them the status of ‘prisoners of war’, whilst leaving them with no other available legal protection. It is widely acknowledged that this left hundreds of individuals in a legal ‘black hole’ in which their detention in Guantanamo Bay, Bagram Airbase, and elsewhere could be legitimised. **Left without a means of redress, such as the HRA, creates a grave risk of human rights abuse, given the perception by Government actors that no legal restraints apply.**

72. This is no more amply demonstrated by the revelations culminating in the US Senate’s Report on torture and ill-treatment committed as part of the Central Intelligence Agency’s extraordinary rendition program.⁴⁸ The US’s extraordinary rendition has been the subject of repeat findings of human rights breaches by the European Court of Human Rights against countries assisting the US.⁴⁹ **The threat of extraordinary rendition by any country is surely all the more reason for the importance of extra-territorial jurisdiction, as the European Court of Human Rights and other human rights bodies have found.**⁵⁰

73. The same is true of the USA’s own record of detainee abuse in Iraq. The best-known example of this is the appalling scandal of violations at Abu Ghraib prison, in which individuals were detained indefinitely and without any apparent legal protection – demonstrating precisely what can happen where human rights safeguards are held not to apply. **Human rights law is required to fill these gaps and provide a modicum of protection.**

⁴⁷ See UN Security Council, ‘Prisoners of War in Iran and Iraq: The report of a mission dispatched by the Secretary-General’, January 1985, S/16962, available here: <http://www.refworld.org/pdfid/4a54bbfe10.pdf>.

⁴⁸ The US Senate Select Committee’s on Intelligence, ‘Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program’, available here: <http://www.nytimes.com/interactive/2014/12/09/world/cia-torture-report-document.html>.

⁴⁹ See, for example, the cases listed in the European Court of Human Rights’ Factsheet, ‘Secret detention sites’, February 2016, available here: http://www.echr.coe.int/Documents/FS_Secret_detention_ENG.PDF.

⁵⁰ See, for example, the European Court of Human Rights decision in *Öcalan v Turkey* 46221/99. See also the UN Human Rights Committee, *López Burgos v Uruguay*, Comm. No. 52/1979, CCPR/C/13/D/52/1979 (1981).

74. The UK Government has been heavily implicated in the US's torture program, and faces accusations of its own, with the recent legal claim of Abdul-Hakim Belhaj against former Foreign Secretary Jack Straw, former Head of MI6, Mark Allen, and others.⁵¹ He claims that the UK Government abducted him and his family – including his pregnant wife – and handed them over to the Gaddafi regime, resulting in their torture by a government which the UK was later to help depose on precisely the basis that it violated the rights of its citizens. **It is precisely in these legal 'black holes' where the HRA is most needed.**

75. It is especially important to remember what the laws of war can permit governments to do. The more permissive targeting regime of IHL – which allows the use of lethal force against anyone deemed an 'enemy combatant' – may be used by governments to designate whoever it deems an 'enemy' – for whatever reason – for lethal targeting. The risk of extra-judicial execution and assassination is real and grave. This is especially so in situations of armed violence with non-state groups and circumstances of civil disorder. And this is precisely the worry over the use of military drones for the killing of alleged terrorists worldwide, with serious concerns raised over whether governments such as that of the USA are killing disproportionate numbers of innocent civilians.⁵² **Human rights provide a crucial restraint on the taking of life in situations of serious uncertainty.**

The UK Government's example

76. Some critics of the ECHR claim that despotic regimes across the world pay little heed to its requirements. This is deeply disrespectful of human rights activists who face immense challenges getting their voices heard, and who face persecution for bringing cases to the European Court of Human Rights. Take, for example, the harassment of those who have investigated and helped bring legal challenges to its military operations in Chechnya. As the Parliamentary Assembly of the Council of Europe ('PACE') warned in 2007, "**acts of intimidation have prevented alleged victims of violations from bringing their applications to the Court, or led them**

⁵¹ See the decision of the Court of Appeal in *Abdul-Hakim Belhaj v The Rt. Hon. Jack Straw and others* [2014] EWCA Civ 1394.

⁵² See, for example, *The New York Times*, 'Drone Strikes Reveal Uncomfortable Truth: US Is Often Unsure About Who Will Die', 23 April 2015, available here: <http://www.nytimes.com/2015/04/24/world/asia/drone-strikes-reveal-uncomfortable-truth-us-is-often-unsure-about-who-will-die.html>, and *The Intercept*, 'The Assassination Complex', 15 October 2015, available here: <https://theintercept.com/drone-papers/the-assassination-complex/>.

to withdraw their applications. They concern mostly, but not exclusively, applicants from the North Caucasus region of the Russian Federation.⁵³

77. This includes the Russian Government's failure to even investigate the deaths of journalists such as Anna Politkovskaya⁵⁴ and Natalya Estemirova,⁵⁵ both of whom became well-known for their reporting on the wars in Chechnya the events of which became the subject of Strasbourg's scrutiny. As Amnesty International reported,

“Throughout the ongoing armed conflict in the Chechen Republic, the Russian Federation authorities have attempted to restrict the gathering and dissemination of information about the human rights situation in the North Caucasus. Human rights defenders and activists speaking out about the situation in region, those investigating such abuses and those who have sought redress with the European Court of Human Rights have themselves increasingly become victims of serious human rights violations.”⁵⁶

78. A PACE statement condemned the murder of human rights lawyer Stanislav Markelov, “whose untiring efforts to combat the impunity of those responsible for human rights violations in Chechnya and elsewhere in the north Caucasus cost him his life. This murder shows that the remedies against human rights violations are still fraught with pitfalls and dangers.”⁵⁷ As *The Washington Post* had previously reported, **“Russians who appeal to the European Court of Human Rights after their relatives disappear or are killed in Chechnya or neighboring Ingushetia face constant threats to force them to drop the cases. In at least five instances,**

⁵³ See PACE, ‘Member states’ duty to co-operate with the European Court of Human Rights’, Doc. 11183, 9 February 2007, available here: <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11636&lang=en>. See also the Report's Appendix I.

⁵⁴ See Amnesty International, ‘Russian Federation: Amnesty International condemns murder of human rights journalists Anna Politkovskaya’, 10 July 2006, available here: <http://web.archive.org/web/20061010184722/http://news.amnesty.org/index/ENGEUR460432006>.

⁵⁵ See Amnesty International, ‘Human rights activist Natalia Estemirova murdered in Russia’, 16 July 2009, available here: <https://www.amnesty.org/en/latest/news/2009/07/human-rights-activist-natalia-estemirova-murdered-russia-20090716/>.

⁵⁶ See Amnesty International, ‘Russian Federation: The Risk of Speaking Out – Attacks on Human Rights Defenders in the context of the armed conflict in Chechnya’, 9 November 2004, available here: <https://www.amnesty.org/en/documents/eur46/059/2004/en/>.

⁵⁷ See Council of Europe, ‘Statement by Dick Marty, PACE rapporteur on the human rights situation in the north Caucasus, on the murder of Stanislav Markelov’, 20 January 2009, available here: <https://wcd.coe.int/ViewDoc.jsp?p=&id=1396109&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&direct=true>.

applicants to the court were themselves killed or had disappeared, according to lawyers, human rights groups, court records and relatives.⁵⁸

79. Governments all over the world look to the UK as an exemplar of the ECHR's implementation in national law.⁵⁹ **For the UK to curtail the HRA would send a very strong signal that others can ignore human rights in times of violence. The UK's continued commitment to the role of human rights in armed conflict is crucial to forcing other Governments to do the same.**

Conclusion

80. States cannot be permitted to unilaterally declare which laws do and do not apply. The rule of law requires proper scrutiny of government decision-making, and available means of redress for those affected, whether they are civilians or soldiers. This is all the more important in armed conflict, where the law, and the rule of law, serves to safeguard all involved. It is no doubt especially important in conflicts the stated purpose of which is the promotion of democracy, the rule of law, and human rights.

81. The UK is rightly committed to the principle that the human rights of those detained in places such as Guantanamo Bay should be respected. Such examples demonstrate most strongly that the protection of individuals involved in conflict of all kinds, and those whose lives they affect, is of the utmost importance.

82. The ECHR is not just a document whose origins lie in the horrors of 20-century wars. It is directly relevant to the conflicts of today. **As one of the ECHR's trustees, the UK Government has a duty not only to implement its requirements during its own military operations, but to uphold its standards as an exemplar to others.**

Sam Hawke

⁵⁸ *The Washington Post*, 'Russians' Appeals to Court Bring Intimidation, Death', 3 July 2005, available here: <https://www.washingtonpost.com/archive/politics/2005/07/03/russians-appeals-to-court-bring-intimidation-death/b87918f0-cd36-4bec-a9ab-706f800d956a/>.

⁵⁹ See, for example, the statement of Kenya President, Uhuru Kenyatta, reported by UK Human Rights Blog, 'Kenyan President uses Tory human rights plans to defend war crimes charges', 24 October 2014, available here: <https://ukhumanrightsblog.com/2014/10/24/kenyan-president-uses-tory-human-rights-plans-to-defend-war-crimes-charges/>.