

Human Rights
War

Human rights still matter on the battle

By Schona Jolly

It makes no sense to rule that the Human Rights Act only applies to UK soldiers abroad up to the point they step outside their bases

THE Supreme Court's ruling that the Human Rights Act does not apply to the armed forces serving abroad outside of military bases and hospitals represents a missed opportunity to clarify the extent of the obligation Britain owes to its service personnel. No doubt unwittingly, the effect of the judgment also conveys the impression that soldiers are cut off from the state and that, for army operations abroad, all is fair in war.

The Human Rights Act protects soldiers when they are at a military base or at a military hospital. It is a bizarre and uncomfortable twist of logic to say that once the soldiers step outside their base or hospital, in the service of his country, they

are no longer entitled to the same legal protection. Yet that is precisely what the court decided on Wednesday.

The state is responsible for sending the soldier out to battle. Critically, members of the armed forces remain under the legislative, judicial and executive authority of the United Kingdom, whether serving within or outside UK territory. The legality of a soldier's presence in Helmand or Baghdad depends entirely on being subject to UK laws and jurisdiction. The man in the street may ask why it is permissible for soldiers to be court-martialled for acts they are alleged to have committed while in Iraq, but not be entitled to the protection that the Human Rights Act affords all other subjects. The Human Rights Act is a valiant piece of legislation that has sought to give protection to the most vulnerable and disadvantaged in society. It also protects people from state abuse or exploitation. It gives them, among other things, the right to a fair trial, the right to freedom of religion

or expression, the right and the right to a private life. It imposes a requirement not to discriminate in the provision of any of those rights. Importantly, in the case of armed personnel, it imposes an obligation to establish a proper framework of legal

protection, for example where the state has failed to provide functioning or appropriate equipment.

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protection in order to protect life to the greatest extent reasonably practicable. In turn, this requires the state to hold an effective public investigation into any death occurring in circumstances where that obligation may be called into ques-

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mean that soldiers, for example, have the right to be sent to Iraq and Afghanistan properly equipped and kitted out, as well as properly trained. They have the right to be fairly tried for criminal acts they are alleged to have committed. They have the right to a private life. If that is the position in the military base, why should the state not be required to ensure that the soldier's life is protected to the best of its ability outside the military base?

Moreover, by telling soldiers that their rights and freedoms are not protected abroad, the impression is given that human rights suddenly don't matter on the battlefield. With the litany of alleged abuses said to have been committed by the British army, it is a shame that one unintended impact of this judgment may be to remove the language and understanding of human rights even further from the forefront of army operations. In order for there to be full accountability by British troops, the state must ensure that they are not hung out to dry.

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There is no doubt that military commanders will be celebrating this victory. They will say that any extension of human rights protection to deployed forces will limit their ability to act during war. But, the exigencies of any wartime situation are always a relevant consideration in whether there has been a violation of convention rights. As the court of appeal recognised, rights and freedoms can be divided and tailored.

The Supreme Court obviously was troubled by the extent to which it was being asked to usurp legislative decision-making in extending human rights protection to forces outside United Kingdom territory. The European court of human rights will rule on the same issue, in a different case, before the year ends. Rightly or wrongly, servicemen and women are sent out in the name of their country. British troops must be fully accountable in their own actions abroad, but also fully accounted for. COURTESY THE GUARDIAN