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NGOs urge Court of Appeal to preserve access to justice to torture victims in UK rendition case

London, 21 July 2014 – For three days from today, the Court of Appeal will hear the case of *Abdul-Hakim Belhaj and Other v. Jack Straw & Others*. It involves a damages claim by a Libyan couple against former and current UK officials for their alleged complicity in the claimants' torture and illegal transfer to Libya's Gaddafi regime.

The NGOs Amnesty International, the International Commission of Jurists, JUSTICE and REDRESS intervened jointly in this case, which may set an important precedent for future claims brought by torture victims.

Mr Belhaj – an opposition commander during the Libyan armed conflict of 2011 and now leader of the Libyan Al-Watan Party - and his wife, Fatima Bouchar, allege that British officials were involved in their abduction and illegal transfer to Libya, under the CIA rendition programme, in 2004. Jack Straw and former senior intelligence officer Mark Allen are among the British officials named in the claim.

In December 2013, the High Court struck out the civil lawsuit brought by the claimants, holding that since the claim called into question activities of a foreign state on its own territory the act of state doctrine precluded the court from hearing the case. The Court rejected the UK Government's argument that state immunity (a principle of international law by which a state is protected from being sued in the courts of other states) operated as a bar to the claim.

Judge Mr Justice Simon found "with hesitation" that the case could not go ahead and expressed his concern that "what appears to be a potentially well-founded claim that the UK authorities were directly implicated in the extraordinary rendition of the claimants, will not be determined in any domestic court; and that Parliamentary oversight and criminal investigations are not adequate substitutes for access to, and a decision by, the Court."

In February 2014, the claimants were given permission to appeal the ruling on the act of state doctrine and the UK Government cross-appealed contesting that, in addition to the act of state doctrine, state immunity also precluded the claims from being heard.

The Interveners are concerned that the High Court's judgment, unless modified on appeal, may act as an absolute bar on litigation against the UK Government and its officials in cases where foreign agents are involved, precluding accountability for breaches of human rights. In blocking the claims, the judgment may also deny the claimants their right to justice and an effective remedy. This fatally undermines both the UK's domestic law commitments and the international law obligations of states to ensure accountability for torture and access to effective remedies and reparation for all gross human rights violations.

Ian Seiderman, ICJ Legal and Policy Director, said:

“Without access to effective remedies, rights are rendered meaningless. We have asked the Court of Appeal to affirm this bedrock principle by dismissing the ill placed doctrinal roadblocks that prevent alleged victims of torture and other gross human rights violations from having their day in court.”

REDRESS Director Carla Ferstman added:

“The international prohibition of torture is absolute and universal. To give the act of state doctrine the power to shut down claims against UK officials, just because there is some connection with acts of foreign officials, is a significant expansion that goes well beyond what the doctrine was intended for. All it does is to promote impunity.”

Andrea Coomber, Director of JUSTICE, said:

“The ‘they did it too’ defence traditionally hasn’t worked in the playground. Yet, this case would – in expanding the ‘act of state’ doctrine – enshrine it in common law. States cannot be encouraged to supplement the international law of state immunity with their own pick and mix patchwork of domestic rules on justiciability. This would fundamentally undercut the international rule of law and undermine the global commitment to remedies for victims of human rights violations.”

John Dalhuisen, Europe and Central Asia Programme Director at Amnesty International, noted:

“The UK authorities have tried to avoid answering to their alleged role in these sordid events, most recently by relying on the ‘act of state doctrine’. Victims of torture and ill-treatment have a right to seek a remedy. It is time for the UK government to stop hiding behind misguided and expansive legal theories and allow the claimants their day in court.”

In their written submission, the Interveners submit that the High Court’s approach is inconsistent with both national and international human rights law, including:

- the requirements of the 1998 Human Rights Act;
- existing domestic and comparative jurisprudence on the scope of the act of state doctrine;
- the UK’s international obligations on the right of access to a court and the right to an effective remedy and reparation;
- the absolute prohibition of torture, which all states recognise as a fundamental principle of international law allowing for no exceptions.

The Court of Appeal should be mindful of the jurisprudence of other countries, where courts have found ways to judge the behaviour of domestic actors, even when they have acted in concert with foreign officials.

The Interveners also contend that the application of state immunity to the facts of this case could have “similarly stark consequences for access to justice and the rule of law”. They argue that the scope of the doctrine has never been so broadly interpreted as to prevent claims being brought against UK officials in the UK courts, simply because their actions were allegedly connected to acts of foreign states.

The NGOs are represented pro-bono by Martin Chamberlain QC and Zahra Al-Rikabi of Brick Court Chambers.

The UN Special Rapporteur on Torture and the Chair- Rapporteur of the UN Working Group on Arbitrary Detention have also been granted permission to intervene.

For further information please contact:

- **Olivier van Bogaert, ICJ**, Communications Director: olivier.vanbogaert@icj.org and +41 22979 3808
- **Eva Sanchis, REDRESS**, Communications Officer: eva@redress.org and 02077 931 777.
- **Angela Patrick, JUSTICE**, Director of Human Rights Policy: apatrick@justice.org.uk and 02077 626 415.
- **John Dalhuisen, Amnesty International**, Europe and Central Asia Programme Director: John.Dalhuisen@amnesty.org and 07961421571.

Notes for editors:

1. The case is listed for hearing before a bench including the Master of the Rolls Lord Justice Dyson for three days from Monday 21 July 2014. The appeal will be heard in Court 71 after 11:00 a.m.
2. The judgment of Simon J, **[2013] EWHC 4111 (QB)** can be accessed here: <http://www.bailii.org/ew/cases/EWHC/QB/2013/4111.html>
3. A full copy of the NGO Interveners written submissions is available here: <http://www.redress.org/case-docket/belhadj-v-jack-straw-and-others>.

ABOUT the NGOs:

Amnesty International is a worldwide movement of people working for respect and protection of internationally – recognised human rights principles. It 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.

JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom. Its vision is of fair, accessible and efficient legal processes, in which the individual's rights are protected, and which reflect the country's international reputation for upholding and promoting the rule of law.

International Commission of Jurists is a non-governmental organization working to advance understanding and respect for the rule of law and the protection of human rights throughout the world. Its work includes the promotion of the adoption and implementation of international human rights standards and other legal rules and principles that advance the rule of law.

REDRESS seeks justice and reparation for torture survivors. It was founded by a torture survivor in 1992 in the UK. 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.