



SESSION PLAN

ACTIVITY 1: THE HRA OUTSIDE OF THE UK

An activity designed for students aged 14-18.

INTRODUCTION

This activity examines the geographical extent of the application of the Human Rights Act, using the case study of two British soldiers killed whilst on duty in Iraq.

LEARNING OBJECTIVES

- To understand what is meant by 'within the UK's jurisdiction'.
- To discuss who should be entitled to the protection of the Human Rights Act and when that protection should apply.
- To recognise the right to life (Article 2, ECHR).
- To evaluate a Supreme Court Judgement and explore the difficulties the State faces in guaranteeing human rights protection.

RESOURCES

- Copies of the character role sheet



STARTER

Explain the relevant sections of the legislation to the students as outlined on page 3. Explain that public authorities must not breach human rights; this means any public service must be run in a way which respects human rights e.g. schools, health service, the military, the police and the courts. Explain that these UK public authorities must respect the rights of everyone within their jurisdiction. Explain that the ordinary meaning of this word means anyone who is in the country. However, the courts have interpreted this to include parts of other countries where the UK has a certain element of control over land or people.

MAIN

Split the students into smaller groups of approximately 6. Hand out the character role sheet to one student in each group. Explain that the nominated student should explain the role they are playing and the situation their character finds themselves in.

The group then have 15 minutes to discuss the following questions before presenting back to the class:

- Are you entitled to human rights protection? On what basis?
- Which human right(s) may have been breached?
- What steps could the UK Government have taken to ensure that your rights were not violated?

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DISCUSSION

Ask each group to feedback to the class on their discussions.

What were their conclusions in relation to each of the questions? Why did they come to those conclusions?

Using the answer sheet, provide them with further information on the real life scenario on which the character role is based and the conclusions that the court came to in deciding whether the character was entitled to human rights protection and whether their human rights had been breached. You may wish to ask the class if they agree with the court's decision, its reasoning and the practical issues arising from the case.



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FURTHER DISCUSSION POINTS

- Should soldiers be protected by the Human Rights Act while on duty?
- What preventative measures could the UK take to protect the lives of its soldiers in combat (better equipment, further training etc.)? Isn't an inherent part of the job of a soldier to put their life at risk? Does this mean their right to life is necessarily less protected than ordinary citizens?
- Is it possible for the UK to practically protect the right to life of soldiers when enemy combatants are trying to kill them?
- Should courts be able to prescribe how the Government should spend public money e.g. on more expensive military equipment? Should decisions about the allocation of finite public financial resources be the responsibility of democratically elected politicians that can be voted out by the electorate?

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THE LEGISLATION

If there are available resources, it may be useful to write the following on a board at the front of the class to enable students to refer to the relevant provisions during the class.

"Human rights must be secured by the UK to everyone within its jurisdiction."

Relevant Sections of The Human Rights Act

Section 6: It is unlawful for a public authority to act in a way which is incompatible with a Convention right. In this context the term 'public authority' includes any person certain of 'whose functions are functions of a public nature'.

Section 2: This section requires UK courts to take into account judgements of the European Court of Human Rights when determining cases connected with a Convention right.

- Therefore, UK courts must take into account decisions of the European Court of Human Rights concerning Article 1 of the European Convention on Human Rights. Article 1 requires that the UK secures to everyone within its jurisdiction the rights and freedoms defined in the Convention.

Please note: Section 2 is included in this activity, because it is the legal route by which British judges have come to analyse the application of the Human Rights Act overseas, i.e. the judges have taken into account judgments by the European Court of Human Rights interpreting the scope of Article 1, ECHR. However, this activity does not look at any of these judgments, so, depending on the level of your audience, you may choose to leave out a discussion of section 2 and focus on the wording of Article 1, ECHR instead.

Relevant Articles of The European Convention On Human Rights

Article 1: *"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention".*

Article 2: *"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law".*

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ANSWER SHEET

The jurisdiction issue is whether the soldiers are in the jurisdiction of the UK and therefore entitled to human rights protection, given that they are not in the territory of the UK. The substantive rights issue is whether the Ministry of Defence has breached the right to life (Article 2, ECHR) by providing inadequate military equipment.

This case study is based on the Supreme Court judgement of *Smith v Ministry of Defence*¹. In this case two British soldiers were killed in their armoured vehicles in Iraq by improvised explosive devices ("IEDs").

The court held that:

1. **JURISDICTION:** The soldiers were within the jurisdiction of the UK (Article 1, ECHR) and so were entitled to the protection of the Human Rights Act. They reasoned that regardless of whether the UK had effective military or governmental control over that part of Iraq, the UK did exercise authority and control over its soldiers as persons. Therefore, this authority and control was enough to create a jurisdiction link with the UK even when the soldiers were on duty abroad. The UK Government therefore was required to provide the soldiers with the rights granted by the Human Rights Act.
2. **HUMAN RIGHTS:** It could be the case that the right to life of the soldiers has been breached. The right to life requires the UK to take reasonable preventative measures to protect the lives of those in its jurisdiction. If it could be shown that it would have been reasonable to expect the Ministry of Defence to provide the soldiers with better equipment then by failing to do so they could have breached the right to life of the soldiers.

The right to life could also be breached even where the soldier has only been injured but not killed, as in the character role. This is due to the fact that the failure to take reasonable preventative measures in respect of the soldier's life has occurred and this causes the breach of the right to life. It is not necessary for the purposes of Article 2 that the soldier has died as a consequence.

Please note that the case of *Smith* was concerned only with preliminary legal questions and did not consider whether Article 2 had in fact been breached. It considered only whether the situation fell within the scope of Article 2 and decided that it did. The court required further factual evidence to be led at a trial to determine whether there had been a breach of Article 2 on the facts.

¹ *Smith v Ministry of Defence* [2013] UKSC 41