

The Rt Hon David Cameron MP
Prime Minister
10 Downing Street
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6 October 2010

Re: Consolidated Guidance to Intelligence Officers

As you will remember, I warmly welcomed your publication of this guidance and the accompanying announcement of a judge-led inquiry into these issues in July.

Although the guidance represents an important and extremely welcome step forward in openness and the protection of human rights I am writing to suggest two ways in which it can and should be further improved.

Ministerial consultation

The new guidance could create the impression that Ministerial authorisation grants some derogation from the requirement that officials obey the law.ⁱ

Ministerial approval does not relieve individual public officials of their legal duties in respect of torture. Ministerial approval should not be given where a serious risk of torture remains. The new guidance should state this clearly.ⁱⁱ

Rendition and unlawful detention

On this, the guidance is incomplete. Most of the protections that the guidance offers from torture should also apply to unlawful detention and rendition. It is true that the guidance and its annex refer to standards of detention, but this is far from adequate.

Clearer guidance is needed for officers. They should have clear procedures to follow in circumstances where they know or believe that a detainee is being held or transferred unlawfully. This will require additions to the table referred to at paragraph 11. A re-drafted version, with additions italicised, is attached.

I will be placing a copy of this letter in the public domain.

ANDREW TYRIE
Chairman, All Party Parliamentary Group on Extraordinary Rendition

Cc. Rt Hon Malcolm Rifkind MP, Chairman, Intelligence and Security Committee

ⁱ For example, paragraph 26 of the guidance states: "*If, despite any assurances obtained, personnel believe there is a serious risk of torture or cruel, inhuman or degrading treatment or punishment of an individual taking place, Ministers must be consulted.*"

ⁱⁱ For example, the 'Roles and responsibilities' section could be expanded to say: "*15. Ministerial approval does not relieve individual public officials of their legal duties in respect of torture. Ministerial approval should not be given where a serious risk of torture remains.*"

Amended Table: Paragraph 11

Situation

Action

If you know or believe torture will take place

1. You must not proceed and Ministers will need to be informed
2. You should raise concerns with liaison or detaining authority to try and prevent torture occurring unless in doing so you might make the situation worse.

In circumstances where you judge there is a lower than serious risk of CIDT taking place and standards of arrest, detention *and transfer* are lawful

You may proceed, keeping the situation under review.

In all other circumstances

1. You must consult senior personnel. You must not proceed unless either:
 - a) senior personnel and legal advisers conclude that there is no serious risk of torture or CIDT, *or unlawful detention or transfer*, or;
 - b) you are able to effectively mitigate the risk of mistreatment *or unlawful detention or transfer* to below the threshold of a serious risk through reliable caveats or assurances.
2. If neither of the two preceding approaches apply, Ministers must be consulted. Ministers will need to be provided with full details, including the likelihood of torture or CIDT, *or unlawful detention or transfer* occurring, risks of inaction and causality of UK involvement. Ministers will consider whether it is possible to mitigate the risk of torture or CIDT, *or unlawful detention or transfer*, occurring through requesting and evaluating assurances on detainee treatment; whether the caveats placed on information/questions would be respected by the detaining liaison partner; whether UK involvement in the case, in whatever form, would increase or decrease the likelihood of torture or CIDT, *or unlawful detention or transfer* occurring. Consulting Ministers does not imply that action will be authorised but it enables Ministers to look at the full complexities of the case and its legality.