Ending UK involvement in torture: lip service is not enough

democraticaudit.com/2018/07/26/ending-uk-involvement-in-torture-lip-service-is-not-enough/

By Democratic Audit UK 26 July 2018

The Intelligence and Security Committee recently published its report on British involvement in torture up to 2010 and as part of the 'war on terror'. **Ruth Blakeley** *and* **Sam Raphael** *comment on the report, and explain how the government must respond in order to comply with its human rights obligations.*

Protest against illegal detention, Picture: Justin Norman, via a (CC BY-NC-ND 2.0) licence

The long-delayed reports of the UK Parliament's Intelligence and Security Committee (ISC) investigation into Detainee Mistreatment and Rendition have finally been published. The ISC's investigation, chaired by MP and QC Dominic Grieve, has revealed that the UK's role in prisoner abuse was even more extensive than our research has found to date. This abuse took place both as part of the CIA's Rendition, Detention and Interrogation programme, and at military detention facilities established in Afghanistan and Iraq.

The two ISC reports are hard-hitting. The first, documenting British involvement in torture in the early 'war on terror', makes previous UK governments' denials of involvement completely untenable. Although Jack Straw famously asserted that only conspiracy theorists should believe the UK played any role in rendition or torture, we now know that British intelligence knew about, suggested, planned, agreed to, or paid for others to conduct rendition operations in more than 70 cases. In hundreds of others, UK officials

knew that their allies were subjecting prisoners to cruel, inhuman or degrading treatment (CIDT), and yet continued to supply questions to, and receive intelligence from, those who were tortured.

The second report is no less important. It catalogues a series of failures in government policy, as well as in training and guidance provided to UK security services. The implications are serious: there is every possibility British collusion in torture is being, or could be, repeated.

In our testimony to the ISC, we encouraged the scrutiny of the so-called 'Consolidated Guidance', issued to all security agencies and the military from 2010 onwards. The Guidance is intended to assist UK personnel in their dealings with overseas partners, and to protect them from personal liability if abuse of prisoners occurs. We have long argued that the Guidance is little more than a rhetorical, legal and policy scaffold which enables the government to demonstrate a minimum procedural adherence to human rights commitments. The ISC draws much the same conclusion, arguing that urgent review is needed.

Unbelievable as this may sound, the government has no clear policy on rendition. Although the Foreign and Commonwealth Office supposedly has government oversight, it has failed to regularly review policy and was unable to provide a comprehensive picture of its areas of responsibility. The government has resisted including rendition as a form of CIDT in the Guidance, arguing that the absence of a clear definition is grounds for its exclusion. With the ISC, we share the view that this is unacceptable, not least because there is excellent academic work which provides clarity.

There are 'dangerous ambiguities' in the Guidance and the ISC concluded that in fact it contains very little guidance. It has to be supplemented by Agency-level material, but there are inconsistencies in how separate agencies are interpreting the Guidance. The ISC insists that the supplemental guidance ought to be made public. We agree.

There is also considerable confusion among ministers about how concerns relating to prisoner abuse should be treated. Ministers were unclear on whether they could lawfully allow operations to go ahead where there was a risk that prisoners would be tortured. Disturbingly, when giving evidence, senior ministers including Theresa May, Amber Rudd, Boris Johnson, and Philip Hammond all made references to 'ticking bomb' scenarios as potentially justifying operations where torture might occur. This is despite the fact that the scientific record shows that intelligence obtained through torture is notoriously unreliable. The Guidance must be updated to specifically refer to the prohibition on torture enshrined in domestic and international law, and it should be crystal clear that Ministers cannot lawfully authorise action which they know or believe would result in torture.

Operations conducted in collaboration with a range of external partners, including non-state actors, failed states, and joint unit operations with third party states, fall outside the scope of the Guidance. This means that, in theory, prisoner abuse could be outsourced to

external partners (a mechanism which the ISC found was used extensively 2001-2010 to hide the UK's role in abuse).

There is considerable reliance on seeking assurances that prisoners will not be abused from overseas partners. Several concerns arise. First, the assurances are not a pre-requisite, according to the Guidance, and operations can still go ahead even if assurances cannot be obtained. Second, assurances can be provided orally rather than in writing, with very obvious scope for confusion and malfeasance. Relatedly, the UK Agencies have no real mechanism for following up on those assurances to ensure they are enforced. Last, record-keeping on the securing of assurances was poor.

The testimony from torture victims themselves demonstrates the human cost of torture. UK security actors appear to be concerned only with the letter and not the spirit of the Guidance. This is perhaps to be expected, given that the underlying logic of the Guidance is not to make UK personnel aware of the human effects of torture, but rather to shield agents from personal liability. Every aspect of the Guidance seems to be geared towards allowing UK personnel and Ministers to operate as close to the wire as possible. Yet the conclusions of the ISC demonstrate gaps in the Guidance so wide that a coach and horses could be driven through. It fails to offer the protections the security agencies are seeking. But most of all, it fails to protect prisoners.

With the anti-torture norm being eroded at the very top of the US government, it is high time the UK government took rendition and torture seriously. Indeed, we share the view that only a judge-led inquiry, with full powers of subpoena, can bring to justice those at the highest levels of government that colluded in torture. Only this will demonstrate that the government pays more than lip service to its human rights obligations.

This article gives the views of the authors, not the position of Democratic Audit. It was first published on LSE's British Politics and Policy blog.

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