



HM Government

# The Principles

relating to the detention and interviewing of  
detainees overseas and the passing and receipt of  
intelligence relating to detainees



## Foreword

In pursuing their functions, and particularly when countering threats against the United Kingdom (“UK”), personnel frequently work with a range of overseas security and intelligence services and other authorities (foreign authorities). These Principles apply to a particular aspect of this joint working, namely the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees.

It is essential that UK personnel follow the letter and the spirit of this document. Personnel whose actions are consistent with these Principles have good reason to be confident that they will not risk personal liability in the future. The Principles have been designed by reference both to UK domestic and international law.

In addition, each organisation to whom these Principles apply will continue to provide more detailed advice and guidance to their personnel where such material is necessary to describe precisely how the principles and requirements set out in this document should operate within their individual organisation. This advice and guidance may include additional details on the legal principles that govern the detention and treatment of detainees. However, such advice and guidance shall not qualify these Principles, which govern the situations in which they apply.

UK personnel should also consider whether the Overseas Security and Justice Assistance (OSJA) Guidance and any other relevant departmental guidance applies to their proposed action and complete any relevant assessment process. This is to ensure that they have properly considered and mitigated broader human rights and international humanitarian law risks which may result from assistance in the security and justice sector and which fall outside the scope of this document.

The annexes to this document include:

**Annex A** – The approach regarding the involvement of personnel with detainees overseas in the custody of a foreign authority.

**Annex B** – The standards of arrest, detention and treatment.

## The stance of the UK

1. The UK Government does not participate in, solicit, encourage or condone unlawful killing, the use of torture or cruel, inhuman or degrading treatment (“CIDT”), or extraordinary rendition. In no circumstance will UK personnel ever take action amounting to torture, unlawful killing, extraordinary rendition, or CIDT. The UK takes suggested incidents of this kind very seriously: these allegations against UK personnel are investigated and complaints in this context are brought to the attention of authorities in other countries (save where to do so might itself lead to unacceptable treatment of the detainee or the safety or security of the UK personnel raising the concern may be put at risk).

2. In relation to rendition, the UK opposes any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law, in addition to its opposition to torture or CIDT. The UK also opposes unacceptable standards of arrest and detention. These situations will need to be considered on the particular facts of (and law applicable to) the case.
3. The UK takes great care to assess whether there is a real risk that a detainee will be subjected to i) unlawful killing ii) torture iii) cruel, inhuman and degrading treatment iv) extraordinary rendition or rendition or v) unacceptable standards of arrest and detention. The UK investigates whether it is possible to mitigate any such risk. In circumstances where, despite efforts to mitigate the risk, there are grounds for believing there is a real risk of torture, unlawful killing or extraordinary rendition, the presumption would be not to proceed.
4. The UK's aim is to develop and promote human rights in those countries with which it deals, consistent with the lead the UK has taken in international efforts to eradicate the mistreatment of detainees.

## The Framework

5. The Principles apply to and must be followed by:
  - a. Officers of the UK's intelligence and security agencies (the Agencies);
  - b. Members of the UK's Armed Forces and employees of the Ministry of Defence;
  - c. Officers and staff of SO15, Metropolitan Police Service; and
  - d. Officers of the National Crime Agency.
6. These Principles apply to the passing and receipt of intelligence when personnel are:
  - a. Interviewing a person in the detention of a foreign authority, or soliciting intelligence from a detainee via a foreign authority;
  - b. Passing intelligence to a foreign authority concerning an individual detained by that authority;
  - c. Passing intelligence to a foreign authority when detention is sought or when personnel know or believe detention will occur as a result of intelligence being passed;
  - d. Passing intelligence to a foreign authority concerning an individual when detention is sought and there is a real risk that the foreign authority will unlawfully kill the individual in an extra-judicial killing rather than the individual being taken into custody;
  - e. Receiving unsolicited intelligence that has been obtained from a detainee in the custody of a foreign authority.

**AND** when **either**:

- A. Personnel **know or believe** i) unlawful killing ii) torture, or iii) extraordinary rendition will result from the passing or receipt of intelligence or in interviewing detainees.

**or**:

- B. There is a real risk i) unlawful killing ii) torture iii) cruel, inhuman and degrading treatment iv) extraordinary rendition or rendition or v) unacceptable standards of arrest and detention will result from the passing or receipt of intelligence or in interviewing detainees.
7. The Security Agencies have no powers of detention either in the UK or overseas. UK Armed Forces, may exercise a power to detain individuals in overseas operations (e.g. to remove or understand threats to Armed Forces Units). Interviewing for MOD and UK military personnel, therefore, includes tactical questioning, interrogation and debriefing.
  8. When UK personnel listed in paragraph 5 above are jointly working on conduct covered by this guidance with UK bodies to whom these Principles do not apply, there needs to be a clear understanding on the part of all the bodies as to their respective responsibilities and legal liabilities. Regard should be had to preparing a formal memorandum of understanding when working with UK bodies not listed under paragraph 5.
  9. These Principles cover the activities of a unit of a foreign authority (which may be wholly or partly funded or trained by the UK) which engages in overseas operations directly with and in support of the work of UK personnel listed in paragraph 5 and is, for the purpose of the unit undertaking the activity described at paragraph 6 a) – e) above, acting under UK direction.
  10. There may be occasions when UK personnel will work with non-state organisations or groups, where the UK's obligations and liabilities may be different. In those circumstances, these Principles should apply insofar as possible.

**The Principles regarding i) unlawful killing ii) torture iii) cruel, inhuman and degrading treatment iv) extraordinary rendition or rendition v) unacceptable standards of arrest and detention**

**A. Action when personnel know or believe i) unlawful killing ii) torture or iii) extraordinary rendition will take place.**

11. Personnel must not proceed, and Ministers must be informed.
12. Personnel should raise their concerns with the relevant foreign authority and try to prevent the i) unlawful killing ii) torture or iii) extraordinary rendition from taking place, except where doing so might itself lead to unacceptable treatment of the detainee or the safety or security of the UK personnel raising the concern may be put at risk.

**B. Action when there is a real risk of i) unlawful killing ii) torture iii) cruel, inhuman and degrading treatment iv) extraordinary rendition or rendition or v) unacceptable standards of arrest and detention.**

13. Where a real risk exists, personnel should not proceed unless either:
  - i. There has been consultation with senior personnel and legal advisers who have concluded there is no real risk;or
  - ii. It has been possible to effectively mitigate the risk to below the threshold of real risk through reliable caveats or assurances which have been reviewed and approved by senior personnel.
14. If neither i) or ii) are possible, Ministers must be consulted. They should be provided with full details, including the likelihood of the relevant conduct (as set out in Annex B) occurring, the risks of inaction and the circumstances and causality of UK involvement.
15. Ministers will consider whether it is possible to mitigate the risk of the relevant conduct through requesting and evaluating assurances on the detainee's treatment; assessing whether the caveats placed on information/questions would be respected by the detaining party; and whether the UK involvement in the case, in whatever form, would increase or decrease the likelihood of the relevant conduct occurring.
16. Consulting Ministers does not imply that action will or will not be authorised. Instead, it enables Ministers to look at the full complexities of the case and its legality, taking account of the longstanding stance of the UK as set out in paragraphs 1 – 4 above.

17. When UK Armed Forces or other personnel are operating in a coalition with others and are under time-sensitive operational conditions, they may find themselves engaged in tactical questioning of detainees held by other nations, or in possession of threat to life intelligence, with no opportunity to refer to senior personnel or Ministers. If such a situation arises, all personnel should continue to observe this guidance insofar as is practicable and report all the circumstances to senior personnel at the earliest opportunity. This does not apply when personnel know or believe i) unlawful killing ii) torture or iii) extraordinary rendition will take place, when they will not proceed.
18. Each agency, department or authority to whom these Principles apply shall identify, particularly for the benefit of relevant personnel and the Investigatory Powers Commissioner's Office (IPCO), the job titles or positions of the "senior personnel and legal advisers" who may need to be consulted and who may need to make relevant decisions.
19. Comprehensive written records shall be kept by personnel of their decisions and the matters they considered in the context of the application of these Principles.

### **Mitigations of Risk: Assurances and Caveats**

20. In evaluating the value of the assurance or caveat, the following is a non-exhaustive list of relevant considerations:
  - a. The manner in which the assurance is given, or caveat is agreed, for instance whether it is written (albeit it is stressed that it is not a prerequisite that they are in writing);
  - b. The terms and clarity of the assurance or caveat, including whether it appropriately addresses the situation;
  - c. The credibility of the person or entity giving the assurance or agreeing the caveat;
  - d. The ability to verify whether the assurance will be kept or whether the caveat will be applied;
  - e. The effectiveness of previous assurances given, or caveat agreed, by the person or entity;
  - f. Whether relevant mistreatment has been committed historically by the body or organisation in question; and
  - g. Whether the UK already holds information indicating non-compliance by the body in relevant situations in the past.
21. When an assurance or caveat is not made in writing, personnel must keep an accurate record of any discussions and, whenever feasible, should share it with the foreign authority as a formal note as soon as is practicable.

## Section 7 Intelligence Services Act 1994

22. The procedures set out in these Principles should be followed notwithstanding the fact that an authorisation under section 7 of the Intelligence Services Act 1994 may be granted.

### Reporting non-compliance.

23. Each agency, department or authority to whom these Principles apply shall report any incident of non-compliance of which it is aware to the Investigatory Powers Commissioner (IPC) as soon as reasonably practicable after the event has been identified by internal governance procedures. In any event, cases in this category shall be reported to the IPC on inspection.
24. Non-compliance for these purposes is a failure to comply with these Principles. An instance where a sustainable assessment, made in good faith, subsequently proves to be incorrect will not count as an incident of non-compliance.
25. The IPC will determine whether non-compliance has occurred and, if so, assess the level of seriousness.
26. The IPC will determine the appropriate response and, for instances of serious non-compliance, this may involve raising the matter with the principal of the relevant agency, department or authority and the matter may be reported to the Prime Minister, either in the annual report or immediately by separate letter. If the IPC has concerns that criminal conduct may have taken place, he will raise the matter with the relevant agency, department or authority, and if he has continuing concerns, may refer the matter to the relevant UK authorities.

### Continuing Oversight

27. The IPC reviews the application of these Principles, including by way of audit, inspection and investigation.
28. When a relevant public authority becomes aware that any conduct to which this document applies has or may have led to an unlawful killing, torture, CIDT, extraordinary rendition or rendition, or unacceptable standards of arrest and detention, it shall notify the IPC as soon as is reasonable after the event has been identified by internal governance procedures. In any event, cases in this category shall be reported to the IPC on inspection.

### Whistleblowing

29. When UK personnel are concerned that there has been material non-compliance with these Principles, consideration should be given immediately to raising the issue with the relevant senior personnel in line with internal systems for reporting non-compliance.



30. However, an issue can be raised at any stage directly with the IPC, if the individual concerned considers that this is a necessary step.

### Review of this policy

31. These Principles shall be reviewed by the Cabinet Office every five years, albeit changed circumstances may result in an earlier review. The views of the IPC and other interested parties will be sought as part of this process.
32. The Cabinet Office shall keep under consideration whether other bodies should be bound by this document.
33. Public Authorities may seek guidance from the IPC as to the application of these Principles.

## Annex A

### The approach regarding the involvement of UK personnel with detainees overseas in the custody of a foreign authority

#### Prior to an interview

1. Before interviewing or seeking intelligence from detainees in the custody of a foreign authority, or before seeking an individual's detention by a foreign authority, personnel must consider whether the detainee or individual may have been, or there is a real risk in the future will be, subjected to relevant conduct.
2. Paragraphs 11 – 19 of the above Principles set out what personnel should do if they know or believe i) unlawful killing ii) torture or iv) extraordinary rendition will take place **or** when there is a real risk of i) unlawful killing ii) torture iii) cruel, inhuman and degrading treatment iv) extraordinary rendition or rendition or v) unacceptable standards of arrest and detention.

#### During an interview

3. The essential requirements are that the detainee must be treated fairly, humanely, and with dignity and respect. Interviews must not involve torture or cruel, inhuman or degrading treatment, and there must be acceptable standards of detention. Annex B describes some of the issues that need to be taken into account when considering the acceptability of standards.
4. Interviewing personnel must withdraw from the interview should they become aware of, or witness anything, which causes them to believe that there is a real risk that the standards to which the particular detainee has been or will be subject are unacceptable, or if the detainee makes specific complaints in this respect that are considered credible by interviewing personnel. Interviewing personnel should also bring any complaints to the attention of the detaining authority, except where they believe that to do so might itself lead to unacceptable treatment of the detainee.

#### Reporting concerns and complaints

5. When interviewing personnel have withdrawn from an interview, due to concerns over the treatment of the detainee, senior personnel must be consulted, and consideration should be given to obtaining assurances from the relevant foreign authority as to the standards that have been or will be applied in relation to that detainee. When personnel believe that the assurances are reliable, they may continue with the proposed interview. If, despite any assurances obtained, personnel decide there is a real risk of torture, cruel,

inhuman or degrading treatment, extraordinary rendition or rendition, or unacceptable standards of detention, Ministers must be notified. The relevant authorities will then need to consider whether the concerns were such that this would have an impact on their engagement with that foreign authority in relation to other detainees.

## Recording the interview

6. Personnel conducting or witnessing an interview must complete a record of the interview (or, where more than one person conducts or witnesses an interview, one of them must produce an agreed record). This record must include any concerns about the standards to which the detainee may have been or may be subject, a statement on the physical and mental health of the detainee as observed by interviewing personnel, and a statement of any undertakings given to the detainee.

## Seeking intelligence from a detainee in the custody of a foreign authority

7. Before contributing questions to, or otherwise seeking intelligence from a detainee in the custody of a foreign authority, personnel must consider the standards to which the detainee may have been or may be subject. Personnel should consider attaching conditions to any information to be passed governing the use to which it may be put (where applicable) and/or to obtaining assurances from the relevant foreign authority as to the standards that have been or will be applied in relation to that detainee to address any risk in this regard.
8. When personnel believe there is a real risk that a detainee has been or will be subject to unacceptable standards, senior personnel must be consulted. Further consideration should be given to attaching conditions to any information to be passed governing the use to which it may be put (where applicable) and/or to obtaining assurances from the relevant foreign authority as to the standards that have been or will be applied in relation to that detainee before any action is taken. When personnel believe that the caveats attached will be observed, or believe that the assurances are reliable, they may continue with the proposed action, informing Ministers as appropriate. If, despite any conditions attached or assurances obtained, personnel believe there is a real risk of unlawful killing, torture, cruel, inhuman or degrading treatment, extraordinary rendition or rendition or unacceptable standards of detention, Ministers must be consulted.

## Soliciting detention by a foreign authority

9. Before soliciting<sup>1</sup> an individual's detention by a foreign authority, personnel must consider the standards to which the individual may be subject. Personnel should consider attaching conditions to any information to be passed governing the use to which it may be put (where applicable) and/or to obtaining assurances from the relevant foreign authority as to the standards that will be applied in relation to that detainee to address any risk in this regard.
10. When personnel know or believe there is a real risk that an individual will be subject to relevant conduct, senior personnel must be consulted and consideration should be given to attaching conditions to any information to be passed governing the use to which it may be put (where applicable) and/or to obtaining assurances from the relevant foreign authority as to the standards that will be applied in relation to that individual, before any action is taken. When personnel believe that the conditions attached will be observed and/or the assurances are reliable, they may continue with the proposed action, informing Ministers as appropriate. If, despite any conditions attached or assurances obtained, personnel believe there is a real risk of relevant conduct, Ministers must be consulted.

## Receiving unsolicited information obtained from a detainee in the custody of a foreign authority

11. In most instances, foreign authorities do not disclose the sources of their intelligence and it will therefore not be apparent whether intelligence received has originated from a detainee or to what standards that detainee may have been subject. However, in cases where personnel receive unsolicited<sup>2</sup> intelligence from a foreign authority that they know or believe has originated from a detainee, and there is a real risk the detainee has been or will be subject to relevant conduct, senior personnel must be informed. In all cases where senior personnel believe the concerns to be valid, Ministers must be notified of the concerns.
12. In such instances, the relevant authorities will consider whether action is required to avoid the foreign authority believing that HMG's continued receipt of intelligence is an encouragement of the methods used to obtain it or adversely affects the conditions under which the detainee is held. Such action could, for example, include obtaining assurances, or demarches on intelligence and/or diplomatic channels. They will also consider whether the concerns were such that this would have an impact on engagement with that foreign authority in relation to other detainees.

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<sup>1</sup> Where personnel have requested the detention of a specific person or persons or pass intelligence knowing or believing it will be used to effect the detention of a specific person or persons.

<sup>2</sup> Intelligence which personnel have not requested or otherwise sought and includes intelligence received as part of general intelligence sharing

## Procedures for interviewing detainees held overseas in UK custody

13. Individuals may be detained and questioned by UK Armed Forces overseas in accordance with the rules of engagement for the specific operation. Interviewing detainees for intelligence purposes may only be undertaken by authorised personnel. All detainees held by UK Armed Forces must be treated humanely at all times, in accordance with international law and any UK law that may be applicable. Separate guidance on the handling of detainees is published by the MOD in Joint Doctrine Publication 1-10 (Edition 3). All UK facilities for the holding of detainees are subject to inspection by Provost Marshal Army, and by the International Committee of the Red Cross.
14. On occasion, subject-matter experts may be authorised to observe or join the questioning of detainees in the custody of UK or other forces. In such circumstances they must only be involved in the posing of specialist questions to the detainees which are specifically directed to their area of expertise. Any participation must always be conducted in the presence of authorised personnel, and the conduct of these experts during the questioning must comply with applicable UK law and international law at all times.

## Annex B

### STANDARDS OF ARREST, DETENTION AND TREATMENT

This Annex is not exhaustive, nor is it descriptive of any legal term. However, when considering what might be unacceptable conduct by a foreign authority, personnel should take account of –

#### 1. Unlawful killing

Any act which is performed without legal justification or excuse and is a substantial cause of death (including unlawful extrajudicial killing). The right to life is a fundamental principle of international law (and of common law).

#### 2. Torture

There is an absolute prohibition on torture under international law. Torture is defined under UK law as a public official intentionally inflicting severe mental or physical pain or suffering in the performance or purported performance of his or her duties.

#### 3. Cruel, inhuman or degrading treatment or punishment (CIDT)

There is an absolute prohibition on cruel, inhuman or degrading treatment or punishment (CIDT) under international law. This covers a wide spectrum of conduct. Although there is no exhaustive definition of what constitutes CIDT, in the context of this guidance, the UK Government considers that the following practices, which is not an exhaustive list, are likely to constitute CIDT:

- (i) use of stress positions;
- (ii) sleep deprivation;
- (iii) hooding;
- (iv) methods of obscuring vision (except where these do not pose a risk to the detainee's physical or mental health **and** is necessary for security reasons during arrest or transit)
- (v) physical abuse or punishment of any sort;
- (vi) withdrawal of food, water or medical help;
- (vii) degrading treatment (sexual embarrassment, religious taunting etc); and
- (viii) deliberate use of 'white' or other noise.

If CIDT is prolonged, it may constitute torture depending on the circumstances.

In any case of doubt interviewing personnel should seek guidance from senior personnel who may take appropriate advice on whether any conduct may amount to torture or CIDT.

#### **4. Extraordinary rendition or rendition**

The term “rendition” is most commonly used to cover the extra-judicial transfer of an individual from one jurisdiction or State to another and “extraordinary rendition” is generally used to refer to rendition when there is a real risk of torture or CIDT.

#### **5. Unacceptable standards of arrest and detention**

There is no exhaustive definition of what constitutes unacceptable standards. Personnel should consider:

The lawfulness of the arrest (under local law).

The lawfulness of the detention (under local and international law) and access to due process.

Considerations here may include:

- (i) ‘incommunicado detention’ (denial of access to family or legal representation, where this is incompatible with international law);
- (ii) whether the detainee has been given the reasons for his or her arrest;
- (iii) whether the detainee will be brought before a judge and when that will occur;
- (iv) whether the detainee can challenge the lawfulness of their detention;
- (v) the conditions of detention; and
- (vi) whether the detainee will receive a fair trial

