



Ministry  
of Defence

Ministry of Defence  
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United Kingdom

Ref: FOI2020/01022

E-mail: CIO.FOI@mod.gov.uk

20 February 2020

Dear [REDACTED]

Thank you for your email of 23 January requesting the following information:

*“Please provide me with any further policy document which may have superseded the November 2018 document, and which would presumably have been published after March 2019 (when you released the Nov 2018 version).”*

*I would like copies of any similar MOD document relating to the Consolidated Guidance, as well as any document relating to The Principles Relating to Detention and Interviewing of Detainees Overseas and the Passing and Receipt of Intelligence Relating to Detainees, which came into effect on 1 January 2020.”*

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOIA).

I can confirm that information in scope of your request is held.

A copy of the MOD Policy Guidance on Implementation of ‘The Principles’, dated November 2019 can be found at annex A, some of the information falls entirely within the scope of the absolute exemptions provided for at sections 23(1) Security Bodies of the FOIA and has been redacted.

- Section 23(1) has been applied because the information relates to bodies dealing with security matters. Section 23 is an absolute exemption and there is therefore no requirement to consider the public interest in making a decision to withhold the information.

I can confirm that the document provided to you in March 2019 was not superseded and there are no further policy documents relating to the Consolidated Guidance or The Principles other than those with which you have been provided.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact us in the first instance at the address above. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail [CIO-FOI-IR@mod.uk](mailto:CIO-FOI-IR@mod.uk)). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act.

Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.org.uk>.

Yours sincerely,

Security, Policy and Operations

November 2019**Guidance on Implementation of 'The Principles'****Context**

1. The sharing of intelligence and cooperation with foreign authorities<sup>1</sup> are important enablers for many Defence activities. When these activities involve the interviewing of detainees overseas and the passing and receipt of intelligence relating to or sourced from detainees, the actions of MOD personnel must be governed by consideration of 'The Principles'<sup>2</sup>. The Principles were published by HMG as a replacement for the Cabinet Office Consolidated Guidance on Intelligence Sharing of 2010, following a review of the Consolidated Guidance by the Investigatory Powers Commissioner. MOD, along with other affected UK bodies provided substantial input to the drafting of The Principles and have now adopted them.

2. The Principles have three main aims:

- a. to protect individuals abroad from harm because of actions by UK personnel;
- b. to protect UK personnel from legal liability and ensure the UK's actions are lawful; and
- c. to ensure compliance with UK policy with regard to human rights.

3. 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 circumstances will UK personnel ever take action amounting to these activities. The UK also opposes unacceptable standards of arrest and detention and any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law. These activities are fully defined in Annex A.

**Scope**

4. This DIN provides amplifying departmental guidance to underpin effective understanding and implementation of The Principles within MOD. It has been drafted by the Strategic Operational Issues Team in the Security Policy and Operations Directorate (SPO), the policy lead for The Principles in collaboration with relevant areas of MOD. Additional theatre-specific instructions for overseas operations may be also issued by the appropriate operational headquarters if required. This DIN does not qualify The Principles, which govern the situations in which they apply.

5. The Principles apply to all members of the Armed Forces and employees of the MOD, hereafter collectively referred to as 'personnel'. Personnel proposing to conduct applicable activity as set out in paragraph 7 must complete a Principles Application Assessment Form, at Annex B. The form and the procedures set out below are designed to assess the risk that 'relevant conduct'<sup>3</sup> will be experienced by the person to whom the intelligence relates or from whom it is derived and to enable decision making about that risk to be made

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<sup>1</sup> Overseas security and intelligence services or other authorities, including non-State actors and organisations.

<sup>2</sup> The principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees.

<sup>3</sup> Unlawful killing, torture, CIDT, rendition or extraordinary rendition, or unacceptable standards of arrest and detention.

appropriately. Personnel whose actions are consistent with The Principles have good reason to be confident that they will not risk personal liability in the future.

6. If at any point it is determined that The Principles do not apply, personnel need not proceed any further from that point with either the processes described within this DIN or the associated form; partially completed forms must be retained. Personnel should still consider any other arrangements, policies or guidance that may apply and should keep their proposed activity under review in case developments engage The Principles. Consideration should be given to whether the Overseas Security and Justice Assistance (OSJA) Guidance applies to ensure that broader human rights and international humanitarian law risks have been considered and mitigated where they fall outside The Principles.

### **Applicability**

7. To determine if and how The Principles apply, a two-stage assessment must be conducted to consider first the type of activity, and second, the level of risk. As a first step, it must be established if any of following types of activity are involved:

- a. interviewing<sup>4</sup> a person in the detention of a foreign authority;
- b. soliciting intelligence<sup>5</sup> from a detainee via a foreign authority;
- c. passing intelligence to a foreign authority concerning an individual detained by that authority;
- d. passing intelligence to a foreign authority when detention of a specific<sup>6</sup> person or persons is sought;
- e. passing intelligence to a foreign authority when you know or believe detention of a specific<sup>7</sup> person or persons will occur as a result of the intelligence being passed;
- f. 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 rather than take them into custody; or
- g. receiving unsolicited<sup>8</sup> intelligence obtained from a detainee in the custody of a foreign authority.

8. If none of the activities listed above are applicable, then The Principles will not apply and the assessment form does not need to be initiated (although records, including any emails, in which that decision was made and any assessment forms started but discontinued should be retained, particularly in cases that could be seen as borderline, which IPCO may choose to inspect). If any one of the activities above does apply, the assessment form must be commenced.

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<sup>4</sup> Includes tactical questioning, interrogation and debriefing.

<sup>5</sup> Includes contributing questions to, or otherwise seeking intelligence from a detainee in the custody of a foreign authority.

<sup>6</sup> See further Footnote 1 to Annex A of The Principles but note that a person can be a "specific person" for these purposes even if their actual identity is not known.

<sup>7</sup> As per footnote 6 above.

<sup>8</sup> That which personnel have not requested or otherwise sought and includes intelligence received as part of general intelligence sharing.

9. If at least one of these activities are relevant, then the second step, an assessment of the level of risk, is required to determine which of the following levels of risk applies with regard to the relevant conduct:

- a. personnel 'know or believe'<sup>9</sup> unlawful killing, torture or extraordinary rendition will result from the passing or receipt of intelligence or in interviewing detainees;
- b. even if it is not known or believed such conduct *will* result, there is a 'real risk'<sup>10</sup> unlawful killing, torture, CIDT, extraordinary rendition, rendition or unacceptable standards of arrest and detention will result from the passing or receipt of intelligence or in interviewing detainees; or
- c. there is a 'lower than real risk'<sup>11</sup> (or no risk) that any of the conduct referred to in b above will result.

### **Assessment**

10. In order to make the necessary risk level assessment, personnel should take reasonable steps to familiarise themselves with the treatment of detainees by the foreign authority involved using all information at their disposal. Assessments should draw on the knowledge and experience of the personnel making the evaluation, as well as the most current risk assessments produced by organisations within MOD or other UK government bodies. Additional risk assessments produced by NGOs and Human Rights Bodies should also be considered. Common assessments should be used by all UK government bodies as far as possible and the cross-departmental liaison compliance team should be consulted. Where insufficient information exists to enable a reasonable assessment, it may be necessary to err on the side of caution.

11. A typical assessment should consider the following factors as a minimum:

- a. the foreign authority – the standards and practices at the facilities in which the detainee may be held, their organisation and management, key individuals involved in their operation, the wider legal system, and human rights context within country; and
- b. the detainee(s) – any factors in the case of the specific detainee(s) in question that may result in deviation from the overall risks identified in the foreign authority assessment.
- c. mitigations (see below) – if relevant, the extent to which mitigations put in place with the foreign authority in the past, in the context of matters engaging The Principles, have proven reliable.

12. During enduring operations in which there is likely to be a frequent requirement to share intelligence that engages The Principles, the relevant operational headquarters, in consultation with the SPO, may decide to issue standing assessments for the main foreign authorities or facilities involved. Completion and maintenance of these standing assessments is the responsibility of the operational headquarters. These assessments will be applicable to all personnel in theatre, not just those under the command of the operational headquarters that completed the assessment. In the absence of any review parameters defined in an associated Ministerial permission, these assessments should be

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<sup>9</sup> Knowledge and belief should be understood as the normal, everyday English meaning. A person being wilfully blind to an obvious situation is still deemed to have knowledge or belief.

<sup>10</sup> A real risk is one that is not theoretical or fanciful.

reviewed at six-month intervals or if significant new information comes to light. If there is no significant change in the assessment then no further action will be required, but it may be necessary to escalate to Ministers if there is change to how The Principles are engaged.

### **Procedures**

13. **Know or Believe**. If personnel know or believe that unlawful killing, torture or extraordinary rendition will occur, they must:

- a. not proceed any further with their proposed activity;
- b. inform Ministers, via senior personnel, as soon as reasonably practicable, describing any actions taken to raise concerns with the foreign authority or prevent the relevant conduct occurring; and
- c. raise their concerns with the foreign authority and try to prevent the mistreatment from taking place, except where doing so might itself lead to unacceptable treatment of the detainee or the safety or security of those raising the concern may be put at risk.

14. **Real Risk**. If personnel assess that, although they do not know or believe unlawful killing, torture or extraordinary rendition will result, there is a real risk of such conduct, or of CIDT, rendition or unacceptable standards of arrest and detention, they must work through the following steps in order:

- a. consult with senior personnel and legal advisers to confirm whether they agree that there is a real risk;
- b. assess whether it is possible to effectively reduce the risk to below the threshold of real risk through mitigations (see below) which have been reviewed and approved by senior personnel; and
- c. seek Ministerial authorisation to proceed if the view remains that there is a real risk, or there are perceived additional legal, policy or reputational risks. Ministers should be informed of the full complexities of the case including the likelihood of the relevant conduct occurring, the risks of inaction and the circumstances and causality of UK involvement.<sup>12</sup> Where, despite efforts to mitigate the risk, there are grounds for believing there is a real risk of torture, unlawful killing or extraordinary rendition remains, the presumption would be not to proceed.

15. **No Real Risk**. If personnel assess that there is no real risk (or no risk at all) of any of the above conduct occurring, they may proceed with their activity once they have:

- a. documented their assessment and any consultation that has informed it; and
- b. ensured that they comply with the appropriate conditions listed below.

### **Mitigations**

16. Where it is possible or necessary to use / seek assurances<sup>13</sup> or caveats<sup>14</sup> in order to reduce the level of risk, the value of any such mitigation must be thoroughly assessed. The following is non-exhaustive of relevant factors that should be considered:

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<sup>12</sup> Any submission must describe the likelihood of the relevant conduct occurring, the risks of inaction, the circumstances and causality of UK involvement, and what risk, if any, remains after proposed mitigations.

<sup>13</sup> For example, as to the treatment of detainees.

<sup>14</sup> For example, attaching conditions as to the use to which certain intelligence passed to the foreign authority may be put.

- a. the manner in which the assurance is given, or caveat is agreed, for instance whether it is written (it is not necessary that they are in writing, but a record must be kept if not);
- b. the terms and clarity of the assurance or caveat, including whether it appropriately addresses the situation;
- c. the credibility<sup>15</sup> of the person or entity giving the assurance or agreeing the caveat;
- d. the ability to verify whether the assurance will be kept or caveat will be applied;
- e. the effectiveness of previous assurances, or caveat agreed, by the person or entity;
- f. whether relevant mistreatment has been committed historically by the foreign authority in question; and
- g. whether the UK already holds information indicating non-compliance by the foreign authority in relevant situations in the past.

17. Any mitigations, including existing measures if relied upon, must be reviewed and approved by senior personnel and Ministers where necessary. Reviewing personnel will consider whether it is possible to mitigate the risk of the relevant conduct through the following:

- a. requesting and evaluating assurances on the detainee's treatment;
- b. assessing whether the caveats placed on information/questions would be respected by the detaining party; and
- c. whether the UK involvement in the case, in whatever form, would increase or decrease the likelihood of the relevant conduct occurring.

18. 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 and, if possible, obtain their agreement as soon as is practicable. Written<sup>16</sup> forms of assurances remain the preferred methods of communicating, agreeing and recording these arrangements.

19. On occasion, operational headquarters, in association with SPO, may issue guidance on what mitigating measures are appropriate for specific facilities or foreign authorities. Furthermore, personnel should consult the cross-departmental liaison compliance team who can advise on the suitability and standards of mitigations and the confidence in their effectiveness and credibility.

20. If in doubt about whether certain conduct is lawful or unlawful in the area administered by the foreign authority, personnel should seek legal advice as this may have a bearing on the credibility of assurances or mitigations. If any of the activities described as relevant conduct are lawful within the foreign authority's jurisdiction then any assessment of the credibility of any assurances or mitigations should consider the likelihood that the foreign authority will abide by those assurances/mitigations instead of its own legal regime.

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<sup>15</sup> Credibility should comprise both the position of the person / entity and the likelihood that the person / entity will be able to ensure that effect is given to the assurance / caveat.

<sup>16</sup> A formal bilateral document, memorandum of understanding or written, signed assurance.

21. Longer term methods of mitigating risk should also be considered. These may include the establishment of oversight mechanisms by HMG or third parties of detention operations and facilities or capacity building initiatives such as training and mentoring a foreign authority in compliant detention operations. Acceptance of such oversight or capacity building measures could be requested as a prerequisite to the MOD working with the foreign authority in question.

22. Personnel should monitor the foreign authority's compliance with assurances and caveats using any appropriate means<sup>17</sup> available. If at any point assurances or caveats expire or cease to be credible, personnel must pause relevant activity immediately and consult senior personnel and legal advisers. Assurances and caveats should be reviewed and / or renewed as necessary when:

- a. monitoring suggests that the foreign authority is no longer abiding by an assurance or caveat; these should no longer be considered credible or effective;
- b. there has been a material change in the original circumstances of the case;
- c. there has been a material change in the political, social, economic, or human rights environment of the foreign authority;
- d. the personalities involved in maintaining the relationship change; this is an opportunity to reassert terms or request alteration; or
- e. twelve months have elapsed since the initial agreement.

23. When using caveats attached to intelligence as a means of risk mitigation, they should only be relied upon where the risks are narrow and there is sufficient evidence or other indications such caveats will be adhered to. The standard caveat should read:

This information had been communicated in confidence to the recipient and shall not be disseminated further without the agreement of the British government.

Additional caveats, along the following example lines, may be added if deemed appropriate:

- a. This information should not be used as the basis for executive action.
- b. This information should not be used as the basis for questioning any individual.
- c. If this information is to be used as the basis for questioning any individual, such questioning and the detainee's treatment should conform with international legal standards.
- d. The information sought should not be obtained from any individual in detention.
- e. If the information may be obtained from any individual in detention, the questioning and the detainee's treatment should conform with international legal standards.

24. Personnel are responsible for ensuring that assurances and caveats are understood by the foreign authority. Where it is necessary to translate these into a local language, personnel should if feasible seek specific reassurance from a competent authority within the foreign authority that they are not lost in translation.

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<sup>17</sup> Using a combination overt and covert means.



**Joint Working**

25. UK Bodies. [REDACTED] Where the MOD shares or receives intelligence from a foreign authority via another UK body to which The Principles apply, and The Principles themselves may be engaged, it is the responsibility of the UK body that is engaging directly with the foreign authority to assess the risk of relevant conduct occurring on behalf of all other UK bodies. It should not be necessary for other bodies to repeat the assessment.

26. Where one of the aforementioned UK bodies is the 'last pair of hands' in the passing of intelligence to a foreign authority, or the 'first pair of hands' to take receipt of intelligence from a foreign authority that body is responsible for ensuring compliance with the Principles. It is not necessary for other UK bodies involved in the chain of intelligence sharing to also conduct an assessment under the Principles in relation to that passing or receipt, unless specifically agreed otherwise by those bodies

27. If the MOD works jointly with a UK body not covered by The Principles on matters covered by the same, there must be clear understanding and agreement on respective responsibilities and liabilities. Consideration should be given to preparing a memorandum of understanding to encapsulate this relationship.

28. The procedures set out in The Principles should be followed notwithstanding the fact that an authorisation under section 7 of the Intelligence Services Act 1994 may have been granted to other UK bodies involved in joint activity with the MOD on matters covered by this guidance.

29. Joint Units. The Principles cover the activities of a unit of a foreign authority which engages in overseas operations directly with and in support of the UK, and is, for the purposes of undertaking the activity covered by The Principles, acting under UK direction<sup>18</sup>.

30. Examples of activity possibly amounting to direction for these purposes are, but are not limited to:

- a. Feeding intelligence to a joint unit concerning a subject of interest to be detained;
- b. Determining the use of intelligence resources within the joint unit in order to solicit a detention;
- c. Approving the receipt of intelligence within the joint unit from a detainee in custody of the wider foreign authority; and
- d. Approving the sharing of a joint unit's intelligence regarding a detainee.

31. Examples of activity not ordinarily amounting to direction include, but are not limited to:

- a. Mentoring, training, funding and equipping a joint unit;
- b. Accompanying, advising and assisting a joint unit;

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<sup>18</sup> Direction is likely to occur when the joint unit is acting under the effective command and control of the MOD or where MOD personnel authorise, or veto relevant activity conducted by the joint unit.

- c. Educating and influencing strategy and tactics in relation to decisions taken by the joint unit; and
- d. Sharing building block intelligence with the joint unit.

32. Where the joint unit is engaged in sovereign operations which do not involve the UK MOD, or rely upon intelligence shared by MOD, The Principles are not engaged.

33. The Principles apply insofar as possible when working with non-State organisations or groups.

### **Special Cases**

34. Unsolicited Intelligence. When personnel receive unsolicited 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. Senior personnel and / or Ministers will consider whether action is required to avoid the foreign authority believing that 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. They will also consider whether the concerns were such that this would impact on engagement with that foreign authority in relation to other detainees and whether further engagement should cease.

35. Interviewing / Questioning. 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 bring complaints to the attention of the detaining authority, except where to do so might itself lead to unacceptable treatment of the detainee (see Annex A). When interviewing personnel have withdrawn from an interview, 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 the relevant conduct occurring, Ministers must be notified. Senior personnel and Ministers 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.

36. Personnel conducting or witnessing an interview must complete a record of the interview (or an agreed record if more than one person involved). This record must include any concerns about the standards of detention, a statement on the physical and mental health of the detainee as observed by personnel in attendance, and a statement of any undertakings given to the detainee.

37. Time Sensitivity. In situations where personnel are operating under time sensitive conditions and need to pursue activity relevant to The Principles, it is recognised that there may not be opportunity to seek further risk assessments, refer to senior or legal personnel for further advice, or consult Ministers for approval. Applicable situations are listed below:

- a. time-sensitive tactical questioning of detainees held by other nations, providing that this is conducted by suitably qualified personnel;
- b. intelligence related to an imminent threat to life which must be shared immediately in order to avert that threat; or
- c. intelligence related to an attack on UK or Coalition forces which must be shared immediately to facilitate operations post-attack to pursue the perpetrators else the opportunity would be lost.

38. In such situations, the decision to proceed should be approved at the highest level possible in the limited time available. Personnel should continue to follow this guidance insofar as is possible and report all the circumstances to senior personnel at the earliest opportunity. The Principles Application Assessment Form can be completed retrospectively, but within 48 hours of the decision being made. This does not apply when personnel know or believe unlawful killing, torture or extraordinary rendition will take place, when in these circumstances they will not proceed.

39. Biometric Information. Where biometric, photographic or other evidential information about a detainee in UK custody is to be passed to a foreign authority for the purpose of transfer of custody, and / or prosecution, the risk assessment made under The Principles should have already been made by senior personnel and transfer of the detainee authorised in advance as a matter of policy. However, The Principles are not engaged where forensically recovered biometric information which is not linked to known individuals is shared with foreign authorities.

40. Shared Databases. MOD personnel frequently operate with foreign authorities using shared intelligence databases as part of intelligence sharing relationships or coalition operations. The Principles must be considered before any interactions with existing databases or the establishment of new ones. Considerations made with regard to The Principles should be reviewed if new information becomes available or circumstances develop that indicate that the level of risk has changed materially.

41. Volume / Frequency. There may be occasions when the volume or frequency of activity covered by The Principles, within a distinct operational area, is such that it is not practicable to fully complete an assessment form for every instance. In these cases, providing that the overall situation, risk assessment and mitigations remain valid for the foreign authority and operational context, it may be permissible to produce a single overarching assessment using the form, in conjunction with a supporting log of individual activities. Consideration must still be afforded to each case and the validity of the standing assessment must be regularly reviewed. Ministerial agreement is required before adopting this approach and should be sought through senior personnel and SPO.

### **Record Keeping**

42. Comprehensive written records must be kept by personnel to document their decisions and the matters they considered in the context of the application of The Principles. These must be retained by the local organisational record holder relevant to the originating personnel.

43. Personnel at all levels are responsible for the accurate completion of written documentation. They must clearly identify any areas where they do not have all the relevant information about an individual, organisation or likely outcome. Where applicable, the

written record should clearly articulate, the operational benefits of proposed activity and the likelihood of these materialising, the risks, mitigations and their likely effectiveness, the legal risk in terms of likelihood of legal challenge and, if challenged, the prospects of the challenge's success.

44. Records will include, but are not limited to, completed or partially completed assessment forms, emails, supporting transaction logs for overarching assessments, witness statements concerning detainee conditions or interviews, written evidence of assurances or caveats, and Ministerial submissions and associated responses.

45. The assessment form is provided as a word document and may be printed and held in hard copy where personnel might not have access to the necessary technology. Text boxes may be expanded, or additional boxes added as required.

46. Records must be made available to SPO on request in preparation for inspection by the Investigatory Powers Commissioner's Office (IPCO). IPCO is responsible for monitoring implementation of The Principles and looks to SPO to provide full records of when they are engaged in order to facilitate audit, inspection and investigation.

### **Raising Concerns**

47. When personnel are concerned that there has been material non-compliance with The Principles, they should immediately raise the issue with senior personnel. Non-compliance for these purposes is a failure to comply with The Principles. An instance where a sustainable assessment, made in good faith, subsequently proves to be incorrect will not count as non-compliance but must still be raised with senior personnel.

48. It is expected that concerns or issues will normally be brought to the attention of senior personnel in the first instance and escalated accordingly, ultimately through SPO to IPCO if required. However, personnel may make direct contact with IPCO if they have any reason to consider that this is a necessary step.



49. If personnel become aware that any conduct to which The Principles apply has or may have led to unlawful killing, torture, CIDT, extraordinary rendition or rendition, or unacceptable standards of arrest and detention, they must notify senior personnel as soon as is reasonable after the event has been identified. Where applicable, personnel should also raise their concerns with the foreign authority and try to prevent mistreatment from taking place, except where doing so might itself lead to unacceptable treatment of the detainee or their own safety or security may be put at risk.

### **Contact Points**

50. Where there is uncertainty over any aspect of The Principles or where further advice or decision is required, senior and / or legal personnel must be consulted before proceeding.

51. It is impractical to list all posts that could be consulted in the course of an assessment, since these will vary greatly depending on the specific operation, but personnel will always have a recognised command chain to follow which can be used to seek advice or escalate issues.

52. The following posts have some level of policy or legal responsibility for, or routine involvement in, matters covered by The Principles and can be approached for advice as appropriate:

- a. Security Policy and Operations: SPO SpecOps-StratOps2
- b. MOD Legal Advisers: CLS-OIHL1
- c. Permanent Joint Headquarters: PJHQ-J9 LA2  
PJHQ-J9-PolOps1  
PJHQ-J9-PolOps2  
PJHQ-J9-PolOps3
- d.  
- e. Defence Intelligence CDI-Legad  
DI Res Sec 7  
JFIG-JIOC LEGAD  
JFIG- DHU-LEGAD

## Guidance on Implementation of The Principles

### Annex A – Definitions

1. This annex includes more terms than are defined within The Principles and it is not exhaustive, nor is it descriptive of any legal term.

#### **Unlawful Killing**

2. 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).

#### **Torture**

3. There is an absolute prohibition on torture under international law. Torture is defined under UK law as a public official (but for current purposes is not limited to such individuals) intentionally inflicting severe mental or physical pain or suffering in the performance or purported performance of his or her duties.

#### **Cruel, Inhuman or Degrading Treatment (CIDT)**

4. 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:

- a. use of stress positions;
- b. sleep deprivation;
- c. hooding;
- d. 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)
- e. physical abuse or punishment of any sort;
- f. withdrawal of food, water or medical help;
- g. degrading treatment (sexual embarrassment, religious taunting etc); and
- h. deliberate use of 'white' or other noise.

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

6. In any case of doubt interviewing personnel should consult JDP 1-10 (Captured Persons) and seek guidance from senior personnel who may take appropriate advice on whether any conduct may amount to torture or CIDT.

#### **Rendition and Extraordinary Rendition**

7. 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.

### **Unacceptable Standards of Arrest and Detention**

8. There is no exhaustive definition of what constitutes unacceptable standards. Personnel should consider the lawfulness of the arrest (under local law), lawfulness of the detention (under local and international law) and access to due process. Considerations here may include:

- a. 'incommunicado detention' (denial of access to family or legal representation, where this is incompatible with international law);
- b. whether the detainee has been given the reasons for his or her arrest;
- c. whether the detainee will be brought before a judge and when that will occur;
- d. whether the detainee can challenge the lawfulness of their detention;
- e. the conditions of detention; and
- f. whether the detainee will receive a fair trial.

9. Legal advice should be sought when there are concerns about the lawfulness of detention under local and international law, particularly when dealing with States where the government is not recognised by the UK.

10. Although not defined within the Principles, consideration of due process in this case should be made with regard for its level of compliance with any international obligations (such as the International Covenant on Civil and Political Rights (ICCPR)) the State is bound by, rather than a comparison being made with the UK legal system, in terms of speed and efficiency for example.

### **Capital Punishment**

11. Capital punishment will be lawful in a number of countries with which the MOD is engaged, although it is contrary to UK Government policy. For the purposes of this internal guidance, it will be sufficient that, in any case in which there is believed to be a real risk that someone will receive the death penalty, Ministers must be consulted (with the exception of where MOD will already have considered this risk when approving the detainee transfer route).

<b>Case</b>	Knowledge / Belief	Real Risk	Lower Than Real	Novel / Contentious	Unsolicited Intelligence	Non-Compliance
<b>Type:</b>	yes or no	yes or no	yes or no	yes or no	yes or no	yes or no

November 2019

**Guidance on Implementation of The Principles**

**Annex B – Principles Application Assessment Form**

**1. Activity Summary**

Provide a brief overview of the proposed activity.

Your Details:	<i>Enter your rank, name and post</i>
Operation Name:	<i>If applicable</i>
UK Partner(s):	<i>If applicable, state which UK bodies you are working with on this activity and the nature of the relationship, e.g. who is last pair of hands</i>
Subject of Interest:	<i>Enter the name and nationality of the person to whom the intelligence relates</i>
Foreign Authority:	<i>The foreign authority passing or receiving the intelligence concerned, including any non-state actors</i>
Relationship:	<i>Outline the relationship with the foreign authority, including the exact nature of any joint working</i>
Summary:	<i>Provide a brief, clear description of the issue and the intelligence that you are proposing to share (either by passing to, or receiving from, the foreign authority)</i>
Justification:	<i>Explain the necessity and benefit of the proposed activity including the likelihood of benefits materialising and the risks of inaction</i>



**2. Proposed Activity**

State which proposed relevant activity is involved.

Interviewing a person in the detention of a foreign authority?	<i>Answer yes or no</i>
Soliciting intelligence from a detainee via a foreign authority?	<i>Answer yes or no</i>
Passing intelligence to a foreign authority concerning an individual already detained by that authority?	<i>Answer yes or no</i>
Passing intelligence to a foreign authority when detention is sought?	<i>Answer yes or no</i>
Passing intelligence to a foreign authority when you know or believe detention will occur as a result of the intelligence being passed?	<i>Answer yes or no</i>
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 rather than take them into custody?	<i>Answer yes or no</i>
Receiving unsolicited intelligence obtained from a detainee in the custody of a foreign authority?	<i>Answer yes or no</i>
<i>Explain your assessment if necessary.</i>	
[Signed electronically] Name:	Post: Grade:
Date:	

**3. Risk Assessment**

Determine the level of risk associated with your proposed activity.

3(a). Do you know or believe that any of the following will result from the passing or receipt of intelligence, or from interviewing detainees?

Unlawful killing	<i>Answer yes or no</i>
Torture	<i>Answer yes or no</i>
Extraordinary rendition	<i>Answer yes or no</i>

*Please explain your assessment*

[Signed electronically]  
Name:

Post:  
Grade:

Date:

**Have you:**

**Answered 'No' in all cases in 3(a)?** – Proceed to Section 3(b) to assess any residual risks.

**Answered 'Yes' in at least one case in 3(a)?** – You must not proceed with your proposed activity. Go directly to Section 6. You may also provide further detail within Section 5 if necessary.

3(b). Do you assess that there is a real risk that any of the following will result from the passing or receipt of intelligence, or from interviewing detainees?

Unlawful killing	<i>Answer yes or no</i>
Torture	<i>Answer yes or no</i>
Cruel, inhuman or degrading treatment	<i>Answer yes or no</i>
Extraordinary rendition	<i>Answer yes or no</i>
Rendition	<i>Answer yes or no</i>
Unacceptable standards of arrest (including its lawfulness)	<i>Answer yes or no</i>
Unacceptable standards of detention (including denial of due process)	<i>Answer yes or no</i>

*Explain your assessment. If you have assessed that there is no real risk of any of the above happening i.e. that there is less than real risk, you must fully explain your reasoning here including any consultation that has taken place.*

[Signed electronically]  
Name:

Post:  
Grade:

Date:

**Have you:**

**Answered 'No' in all cases in 3(b)?** – The Principles do not apply and you need not proceed any further with this form.

**Answered 'Yes' in at least one case in 3(b)?** – The Principles apply so you must explore whether your risk assessment can be downgraded or whether the risk identified can be mitigated. Go to Section 4.

**4. Risk Reduction**

You should now examine measures to reduce the level of real risk.

4(a). Where a real risk is initially thought to exist, personnel should not proceed unless either:

Following consultation with senior personnel and legal advisers it has been concluded that there is in fact no real risk	<i>Answer yes or no</i>
It has been possible to effectively mitigate the risk to below the threshold of real risk through reliable caveats or assurances that have been reviewed and agreed by senior personnel	<i>Answer yes or no</i>
<i>Provide further explanation in addition to that set out in the applicable boxes below.</i>	
[Signed electronically] Name:	Post: Grade:
Date:	

**Have you:**

**Answered 'Yes' in either case in 4(a)?** – Proceed to either Section 4(b) or 4(c) as appropriate to explain your method of risk reduction in more detail, then complete Section 8. You may also provide further detail within Section 5 if necessary.

**Answered 'No' to both cases in 4(a)?** – Go directly to Section 7 as Ministerial authorisation will be required to proceed. You may also provide further detail within Section 5 if necessary.

4(b). If there has been consultation with senior personnel and legal advisers who have concluded there is in fact no real risk, complete the following:

Senior personnel consulted	<i>Answer yes or no</i>
Legal advisers consulted	<i>Answer yes or no</i>

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*To be completed by senior personnel and / or legal advisers involved who should explain their assessment and their details below. Add further boxes if necessary.*

[Signed electronically] Name:	Post: Grade:	Date:
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4(c). If it has been possible to effectively mitigate the risk to below the threshold of real risk through reliable caveats or assurances that have been reviewed and agreed by senior personnel, complete the following:

Are they given or agreed in writing (or a record kept when not in writing)	Answer yes or no	
Are they given in clear and unequivocal terms	Answer yes or no	
Do they appropriately address the situation	Answer yes or no	
Are they given or agreed by a credible person or entity	Answer yes or no	
Will it be possible to verify if the assurance is kept or caveat applied	Answer yes or no	
Have previous assurances or caveats been effective	Answer yes or no	
Does the foreign authority have a history of compliance	Answer yes or no	
Have these been agreed by senior personnel (if so state below by whom)	Answer yes or no	
<i>Explain your assessment, including the name and position of any person providing assurance</i>		
[Signed electronically] Name:	Post: Grade:	Date:

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**5. Additional Comments (If Required)**

Record below, if required, any additional pertinent comment by the personnel proposing this activity or senior personnel and legal advisers reviewing this assessment.

Type of comment:	<i>For example, support, dissention, further assessment, further mitigations, consultations</i>	
Comments:	<i>To be completed as necessary. Further boxes can be added if required.</i>	
[Signed electronically] Name:	Post: Grade:	Date:

Type of comment:	<i>For example, support, dissention, further assessment, further mitigations, consultations</i>	
Comments:	<i>To be completed as necessary. Further boxes can be added if required.</i>	
[Signed electronically] Name:	Post: Grade:	Date:

Type of comment:	<i>For example, support, dissention, further assessment, further mitigations, consultations</i>	
Comments:	<i>To be completed as necessary. Further boxes can be added if required.</i>	
[Signed electronically] Name:	Post: Grade:	Date:

**6. Raising Concerns (If Applicable)**

Record below, any efforts that have been made to raise concerns with the foreign authority.

Type of Treatment:	<i>Enter unlawful killing, torture, extraordinary rendition or any relevant combination</i>
Communication of Concern:	<i>To whom was the concern raised and on what date</i>
Summary:	<i>Any further information, including reasons for not raising the</i>

	<i>concerns if applicable.</i>	
Outcome:	<i>Describe any response, including change of behaviour by the foreign authority.</i>	
[Signed electronically] Name:	Post: Grade:	Date:

**7. Ministerial Consultation (If Applicable)**

If Ministers have been consulted or their approval sought, please describe in detail below. Once complete, go to Section 8.

Approval / Acknowledgment:	<i>Answer yes or no, and by whom on what date</i>	
Justification:	<i>Provide supporting reasons if available</i>	
Caveats:	<i>Describe any conditions or time limitations etc if applicable</i>	
Comments:	<i>Provide any further pertinent information</i>	
[Signed electronically] Name:	Post: Grade:	Date:

**8. Final Outcome / Decision**

Record the final decision taken regarding the proposed activity. This should be completed by the official or senior personnel as applicable to the foregoing assessment.

Proceed?:	<i>Will the proposed activity now take place, answer yes or no</i>	
Comments:	<i>Provide further details for the basis for this decision if necessary</i>	
[Signed electronically] Name:	Post: Grade:	Date:

**9. Contrary Activity**

If you are aware, or after completing this form you subsequently become aware, of any instances of activity contrary to The Principles, you must describe them fully below.

Good faith risk assessment subsequently proved wrong / made in error	<i>Answer yes or no</i>
Deemed unsafe / undesirable to raise concerns with a foreign authority	<i>Answer yes or no</i>
Witnessed poor conditions of facilities / detainee at interview	<i>Answer yes or no</i>
Activity by UK personnel leading to relevant conduct occurring	<i>Answer yes or no</i>
Assurances or caveats not respected by foreign authority	<i>Answer yes or no</i>
Other material non-compliance or error (explain fully below)	<i>Answer yes or no</i>
<i>Explain in more detail</i>	
[Signed electronically] Name:	Post: Grade:
Date:	

