JOINT SUBMISSION BY REPRIEVE AND FREEDOM FROM TORTURE TO THE INVESTIGATORY POWERS COMMISSIONER'S CONSULTATION ON THE CONSOLIDATED GUIDANCE

OCTOBER 2018

ABOUT REPRIEVE AND FREEDOM FROM TORTURE

1. Reprieve provides legal and investigative support to hundreds of prisoners on death row, survivors of torture and extraordinary rendition, and detainees in secret prisons around the world. Reprieve currently represents 8 people imprisoned in Guantanamo Bay without charge or trial, and assists 77 individuals facing the death penalty in 25 jurisdictions.

2. Freedom from Torture is the only organisation in the UK dedicated solely to the treatment of torture survivors. Each year, around 1000 survivors of torture receive holistic rehabilitation services at Freedom from Torture's specialist treatment centres in Birmingham, Glasgow, London, Manchester and Newcastle.

INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

3. Reprieve and Freedom from Torture welcome the opportunity to submit to the public consultation being conducted by the Investigatory Powers Commissioner's Office (IPCO) on the Consolidated Guidance.[1]

4. This submission is informed by cases in which Reprieve has represented individuals about whom UK intelligence agencies shared information despite knowing they would be subjected to torture and rendition - or at the very least being aware that they were at serious risk of being subjected to such treatment. These include Binyam Mohamed, about whom UK intelligence officers actively traded intelligence despite knowing he was being tortured, [2] and the Libyan dissident Abdelhakim Belhaj, who received an apology from the Prime Minister earlier this year for the UK's role in the couple's kidnap and rendition to Colonel Ghaddafi's torture chambers. [3]

5. Our submission also draws on Reprieve's experience in revealing the contents of the Consolidated Guidance and exposing it to public scrutiny for the first time. In February 2010, Reprieve brought judicial review proceedings in the High Court challenging the then-Government's refusal to publish the policy,[4] and five months later the incoming Government released the Consolidated Guidance in its current form. Since then Reprieve, Freedom from Torture and other human rights NGOs have highlighted significant flaws in the policy and campaigned for a full public consultation on how it may be strengthened. [5]

6. In preparing this submission Reprieve and Freedom From Torture have considered the two reports published this year by Parliament's Intelligence and Security Committee (ISC), [6] which revealed hundreds of historic cases where UK officials shared or received information despite knowing that torture was taking place or likely to take place, and made a number of substantive suggestions for reform of the Guidance. We have also taken into account the Committee's view that changes proposed by the Government were of a "very minor nature" and "(did) not go far enough".[7,8]

7. In making recommendations for reform of the Guidance, we have considered the most recently released figures on compliance with the policy, which suggest systemic failures in the policy's application. In a report published in December 2017, the Intelligence Services Commissioner found that in 2016 alone GCHQ reported 35 cases in which officers had wrongly failed to apply the policy, and concluded that in 8 of these cases the Guidance would have prohibited the sharing of the intelligence in question.[9]

8. In presenting our submission to the consultation we have taken into account the Commissioner's remit to arrive at "proposals to the Government about how the Guidance could be improved", and have set out 8 recommendations to this effect. In arriving at these recommendations we have paid close regard to the 11 questions set out in IPCO's consultation document, and our submission sets out how each of the recommendations would address the issues raised in these questions. In summary, we recommend that the Government should:

I. Acknowledge – clearly and unequivocally - that there is an absolute prohibition on UK action where there is a "serious risk" it may lead to torture or CIDT, and ensure that the Guidance is drafted accordingly.
II. Establish a system of post-notification for individuals subject to intelligence sharing where they may have faced mistreatment resulting from a failure to apply the Guidance properly.
III. Advance proposals to merge the Consolidated Guidance and the Overseas Security and Justice Assistance (OSJA) Guidance, addressing the serious flaws which have been identified in both documents.
IV. Publish any and all internal agency guidance which serves as a supplement to the Consolidated Guidance, and amend any aspects of these documents which alter the intent or impact of the core policy.
V. Eliminate inconsistencies in the Consolidated Guidance's treatment of torture and cruel, inhuman or degrading treatment (CIDT).
VI. Raise the standard of assurances required in cases where there is a risk of torture and mistreatment, and improve documentation of these assurances.
VII. Amend the text of the Guidance to address the issues of unlawful detention and rendition substantively.
VIII. End the exception under which the Guidance does not in principle cover intelligence sharing with non-state groups.

RECOMMENDATION 1: ACKNOWLEDGE – CLEARLY AND UNEQUIVOCALLY – THAT THERE IS AN ABSOLUTE PROHIBITION ON UK ACTION WHERE THERE IS A "SERIOUS RISK" IT MAY LEAD TO TORTURE OR CIDT, AND ENSURE THAT THE GUIDANCE IS DRAFTED ACCORDINGLY.

9. A revised version of the policy must recognise, without equivocation, that there is an absolute prohibition on UK action where there is a "serious risk" of torture or CIDT. The policy should clearly acknowledge therefore that public authorities in the UK, including ministers, cannot authorise or purport to authorise UK action if there is a serious or real risk of torture or CIDT. It should be supported by clear criteria for assessing whether action may present a "serious risk". The policy must also acknowledge that, in consequence of the absolute prohibition on UK action where there is a "serious risk" of torture or CIDT, where such a risk exists, Ministers do not have any discretion to approve UK action in those circumstances.

10. This recommendation is made in response to questions 1 and 2 in IPCO's Consultation Document ("Is the Consolidated Guidance consistent with applicable domestic and international legal principles?" and "Does the Consolidated Guidance provide appropriate legal protection for personnel and officers within the UK and overseas?). As is explained in more detail below, the Guidance fails to make it clear that there is an absolute prohibition on UK action where there is a serious risk of torture or CIDT. As a result, the Guidance fails to reflect the UK's established domestic and international legal obligations, and exposes individuals who have been detained or are being interview to torture and CIDT and officers and the UK Government to serious legal liability.

11. In its current form, the Guidance directs that: (1) where there is a serious risk of torture or CIDT which cannot be sufficiently mitigated, the matter must be referred to Ministers; and (2) where officers know or believe torture will take place, they must inform Ministers. Ministers are to assess the circumstances and decide whether to proceed. Although the Guidance suggests there is a "presumption" against UK action where the risk of torture remains,[10] it nevertheless leaves scope for Ministers to "look at the full complexities of the case and its legality".[11] It is, therefore, clear that the Guidance anticipates that Ministers can and will purport to authorise UK action where there is a serious risk of torture or CIDT which cannot be mitigated.

12. This clearly falls short of the absolute prohibition required by domestic and international law. At no point does the Guidance suggest that Ministers are prohibited from authorising operations in which there is a serious risk that the individual being detained or interviewed abroad will be subjected to torture or CIDT.[12] Indeed, the Guidance purports to give Ministers a discretion as to whether to proceed with such operations in those circumstances. No such discretion exists, nor can the Guidance in its current form be reconciled with the UK's legal obligations.

13. In its report on Current Issues regarding Detainee Mistreatment and Rendition, the ISC noted that:

> *"When it comes to making a decision, the Consolidated Guidance places no constraints on Ministers' discretion, although it is limited separately by the absolute prohibition on torture enshrined in domestic and international law which means that a Minister cannot lawfully authorise actions if they know or believe torture will take place."*[13]

14. Reprieve and Freedom From Torture welcome the ISC's recognition of the absolute prohibition on torture. The ISC's report does not, however, recognise the full extent of that prohibition which: (1) applies equally to CIDT; and (2) does not only prohibit UK action where the authorities know or believe torture/CIDT will take place, but also where there is a real or serious risk of the same, such that there is no ministerial discretion to authorise UK actions in those circumstances.

15. The Cabinet Office suggested to the ISC that ambiguity over what the Guidance says is beneficial.[14] Its position is regrettable. Deliberately introducing ambiguity to the Guidance, or allowing such ambiguity to persist, serves only to engender confusion as to the UK's legal obligations, in circumstances where the obligations are themselves clear.

16. Indeed, it is notable in this respect that the Guidance, in its current form, has given rise to confusion amongst Ministers themselves such that it is difficult to find two members of the Cabinet who interpret it in the same way (see further below).[15] Anything short of an unequivocal acknowledgment of the absolute prohibition on both torture and CIDT serves only to encourage and facilitate unlawful conduct, and undermines the UK's opposition to the use of torture.

17. If the Government is to stand by its stated policy that the "the UK government condemns torture in all circumstances", it cannot logically reserve the right to authorise UK action, despite knowing or believing torture or CIDT may take place (or that there is a real risk of the same), wherever Ministers deem this to be necessary. Clearly this inconsistency seriously undermines any sense the UK takes a categorical position on this issue, as well as Foreign Office calls for "governments around the world to eradicate this abhorrent practice".[16]

18. Reserving the right to become complicit in torture ignores that torture is more likely to impede an urgent investigation than improve it. In a practical demonstration of this, the US Senate Select Committee on Intelligence's report on the CIA's detention and rendition programme could identify no documented instances in which the use of mistreatment generated actionable intelligence.[17]

19. Ambiguity in the current policy leaves Ministers open to signing off on operations that place the UK and its officers at serious legal risk. Parliament's Joint Committee on Human Rights has recognised that the UK is "likely to be in breach of the UK's international law obligations" where it "passively" receives intelligence information which has or may have been obtained under torture.[18] Similarly, the Foreign Affairs Committee has warned that the use of torture-tainted evidence "could be construed as complicity in such behaviour".[19] What the Guidance purports to encourage or condone, however, is not simply the passive acceptance of intelligence information obtained under torture but rather the active involvement of the UK authorities in situations where there is a real risk of torture. There can be no doubt that this falls short of the UK's domestic and international legal obligations.

20. These legal risks do not only affect Her Majesty's Government: they expose individual officers to liability. The former Intelligence Services Commissioner has recognised the importance of the Guidance in this respect. As the last annual report acknowledged, officers and agents rely upon the Guidance, in the belief that compliance with it "gives the best chance of an individual not being complicit in what might otherwise be a criminal offence or an offence under International Humanitarian Law."[20] This logic, however, does not hold water if the Guidance itself fails to reflect the UK's domestic and international legal obligations.

21. In his 2014 report on these issues, the UN Special Rapporteur on Torture argued that the "exclusionary rule" of international law prohibiting use of evidence obtained via torture and CIDT in legal proceedings also covers use of this evidence by the executive branch of government, "otherwise the purpose of preventing and discouraging torture and other ill-treatment is negated"[21]. He explained that a state that collects, shares or receives such information, even for operational purposes only, is in breach of the absolute prohibition on torture or CIDT if it "knew, or ought to have known, there was a real risk" the information was obtained via these impermissible

means.[22] For present purposes, it is especially important to note his statement that "Any discretion afforded in the guidelines to executive actors to proceed to work with an agency, despite a real risk of the information they receive being tainted by torture or ill-treatment, is incompatible with the obligation of the State as to the prohibition of torture. In addition, no distinction between torture and other ill-treatment should be made."[23]

22. The ISC's report warned that the "dangerous ambiguities" as to what Ministers could authorise amounted to a "structural weakness" in the policy, warning that it leaves individual Ministers with "entirely different understandings of what they can and cannot, and would and would not, authorise."[24] In the course of its inquiry, the ISC asked a number of Secretaries of State whether they believed the policy allowed them to authorise action where there was a serious risk of torture. Each gave significantly different answers. [25]

23. Reprieve and Freedom from Torture recommend resolving these concerns by ensuring that the Guidance clearly and unequivocally recognises the total prohibition on any UK action where there is a "serious risk" of torture and CIDT, and clearly sets out how intelligence officers and Ministers should establish what constitutes a "serious risk". In doing so we echo the concerns expressed by the ISC about the lack of guidance on the assessment of risk in 2010 and 2018, which led the Committee to state that this "must be addressed" to relieve "an unacceptable burden on the individual officer".[26]

24. At present, there is nothing in the Guidance as to how officers are to assess risk of mistreatment at all – despite risk being the central, operative concept in the document as a whole.

25. In order to avoid ambiguity as to what a "serious risk" constitutes, a minimum threshold test should be provided in the Guidance which should mirror the standard set down in European Convention on Human Rights jurisprudence which refers to 'substantial grounds for believing' that there is a 'real risk' of mistreatment.[27]. However, as we detail in respect of unlawful detention and rendition below, there should also be an express identification of 'red flag' risk factors to be treated as highly indicative of a further serious risk of mistreatment, listed in an Annex to the Guidance with an explanation as to how they should be treated.

RECOMMENDATION 2: ESTABLISH A SYSTEM OF POST-NOTIFICATION FOR THOSE WHO HAVE FACED MISTREATMENT RESULTING FROM A FAILURE TO PROPERLY APPLY THE GUIDANCE.

26. We propose the establishment of a framework whereby individuals who have faced mistreatment following errors in the application or non-application of the Guidance may be notified by the Investigatory Powers Commissioner, so that they may seek redress for any abuses they have suffered. To support such a mechanism we would propose that the Investigatory Powers Commissioner be resourced to provide more rigorous oversight of the intelligence agencies' compliance with the Guidance, logging errors and taking steps to notify those affected.

27. This recommendation is made in mind of consultation question 1, which asks whether the Guidance is "consistent with applicable domestic and international legal principles". As explained below, where failings in the Guidance may have led to individuals suffering abuses constituting a breach of their rights under Article 3 of the ECHR, these individuals should have the opportunity to seek redress. Without reform of the Guidance this is impossible, entrenching the risk that UK policy may contribute to repeated breaches of the European Convention on Human Rights, and of domestic criminal law.

28. In 2016 alone, GCHQ told the former Intelligence Services Commissioner of 35 occasions on which they failed to follow the Guidance, and the Commissioner judged that in eight of those cases the Guidance would have prohibited them from acting as they did.[28] The eight cases found last year may represent several individuals who faced torture or other ill-treatment arising out of the circumstances in which the intelligence was acquired or used. These figures do not include potential breaches by the Secret Intelligence Service (SIS) or the Security Service (SyS) as at the time of reporting as it appears they did not provide similar numbers to the Commissioner.

29. These figures suggest that on average in 2016 GCHQ alone wrongly ignored the Guidance every eleven days, creating a risk of involving the UK in torture once every seven weeks. However, these failings only came to light

more than a year after they happened, and there is no suggestion that the individuals exposed to the risk of torture have been notified or given any chance of redress.

30. The only action which appears to have been taken on these cases is their being recorded in the former Intelligence Services Commissioner's report. The Guidance does not contain a requirement for the agencies to follow-up with their counterparts about cases of concern to ensure compliance, or to identify when assurances or caveats have been breached. It is unclear how the agencies might come to know whether cases of non-compliance with the Guidance resulted in mistreatment. The ISC has confirmed that such information is "not routinely tracked", with the agencies claiming – without explanation – that this is "not seen as the best use of resources".[29]

31. There is a very real prospect that the individuals on whom information was shared in these cases went on to face torture and mistreatment constituting a breach of their rights under Article 3 of the ECHR. As there is no means for bringing these cases to light, these individuals are unable to bring their cases before the Investigatory Powers Tribunal (IPT). As victims of UK complicity in torture, they have a right to effective remedy, but are precluded from accessing that remedy if there is no mechanism by which the Government must notify them of the breach.

32. The UN Committee Against Torture has made clear that the right to redress under article 14 of the UN Convention Against Torture requires a State party to "promptly initiate a process to ensure that victims obtain redress, even in the absence of a complaint, when there are reasonable grounds to believe that torture or ill-treatment has taken place".[30] It also states that "under no circumstances may arguments of national security be used to deny redress for victims".[31]

33. The need for reporting of errors to victims is recognised across a broad range of intelligence activity. Under the IPA, the Investigatory Powers Commissioner is obligated to inform any person of 'serious errors' made by the intelligence agencies in the exercise of surveillance powers in connection with them, where to do so is in the public interest.[32] Although the IPA imposes a number of controversial exceptions where post-notification can be blocked,[33] it is nevertheless a comparable example of how this principle can be enacted into law, and of Parliament's willingness to do so.

34. Such a principle is crucial to ensuring that victims of mistreatment are given the information they need to seek redress. This is the standard articulated in respect of other forms of invasive intelligence activity in the decision of the Court of Justice of the European Union, through a case originally brought by the MPs Tom Watson and David Davis in respect of the Data Retention and Investigatory Powers Act 2014 (DRIPA):

> *"Likewise, the competent national authorities to whom access to the retained data has been granted must notify the persons affected, under the applicable national procedures, as soon as that notification is no longer liable to jeopardise the investigations being undertaken by those authorities. That notification is, in fact, necessary to enable the persons affected to exercise, inter alia, their right to a legal remedy, expressly provided for in Article 15(2) of Directive 2002/58, read together with Article 22 of Directive 95/46, where their rights have been infringed (see, by analogy, judgments of 7 May 2009, Rijkeboer, C-553/07, EU:C:2009:293, paragraph 52, and of 6 October 2015, Schrems, C-362/14, EU:C:2015:650, paragraph 95)."*[34]

35. This standard was echoed in the 2016 ECHR case of Szabó and Vissy v Hungary, in which the Court held that the question of subsequent notification is:

> *"…inextricably linked to the effectiveness of remedies and hence to the existence of effective safeguards against the abuse of monitoring powers, since there is in principle little scope for any recourse by the individual concerned unless the latter is advised of the measures taken without his or her knowledge and thus able to challenge their justification retrospectively."*[35]

36. Any post-notification provision must of course be subject to reasonable safeguards to protect the integrity of ongoing operations, and we would propose applying the test articulated in the *Watson* case highlighted above -

namely that notification be given "as soon as that notification is no longer liable to jeopardise the investigations being undertaken by those Authorities".

37. In order to ensure the post-notification function could be discharged in an effective and timely manner, we would propose that the Investigatory Powers Commissioner's Office be provided with appropriate resources to undertake post-facto review of a greater number of assessments made under the Consolidated Guidance, and do so on a regular basis.

38. The Investigatory Powers Commissioner is already responsible for examining a sample of references under the Guidance each year, and reports on, among other things, the number of references made annually, including the number of times the Guidance was breached or ignored that he is able to identify. However, as mentioned above, this oversight is only annual, and takes place only through the investigation of a small sample of cases, with breaches reported between one and two years after they are found.

39. There is therefore a real case for strengthening the current system of post-facto oversight to enable proactive notification of errors. Reprieve and Freedom From Torture propose that IPCO should conduct regular reviews of agency compliance with the Consolidated Guidance and ministerial authorisations of assessments made under the Guidance, and that in any case where IPCO finds that the agencies or Ministers failed to properly apply the Consolidated Guidance it should notify the subject of the intelligence sharing or an appropriate next friend. This would complement the survivor-centric approach that the UK has keenly, and commendably, promoted via the Preventing Sexual Violence Initiative.

40. Survivors of torture and rendition have few available means of learning how their treatment may have been facilitated or aided by other countries. For example, Abdelhakim Belhaj and his pregnant wife Fatima Boudchar only learned of the UK's crucial role in their kidnapping, rendition, and torture by the CIA and Libyan security services when secret documents were discovered after the fall of Colonel Ghaddafi's government in 2011. If the UK is to learn the lessons of grave mistakes such as these, victims of these practices must be given the chance to seek redress. This is a problem not only for individuals who may have been harmed as a result of the information shared, and who are then denied redress, but also the agencies, which will otherwise fail to learn important lessons for the future.

RECOMMENDATION 3: ADVANCE PROPOSALS TO MERGE THE CONSOLIDATED GUIDANCE AND THE OVERSEAS SECURITY AND JUSTICE ASSISTANCE (OSJA) GUIDANCE, ADDRESSING THE SERIOUS FLAWS IN BOTH

41. Reprieve and Freedom From Torture recommend that the Government carefully consider how the Consolidated Guidance and the Government's policy on Overseas Security and Justice Assistance (OSJA) might be combined, and publish proposals for the creation of a single human rights risk assessment framework by which all public bodies must abide. These proposals should be subject to appropriate consultation, so as to ensure that any merged policy does not replicate significant failings in the OSJA policy highlighted by parliamentary committees and regulators.

42. This recommendation responds directly to consultation questions 7 and 9, "Is the scope of the Consolidated Guidance appropriate?" and "Is the relationship between the Consolidated Guidance and the OSJA satisfactory?".

43. We see significant merit in the previous recommendations of the Intelligence Services Commissioner and the Intelligence and Security Committee that the Consolidated Guidance be merged with the OSJA, in order to eliminate undue and unhelpful duplication in these policies' application. However, it is important to consider at the same time the deep flaws in both policies, and mitigate the risk that any merged document may simply replicate the mistakes of its predecessors.

44. Much like the Consolidated Guidance, the OSJA policy sets out a human rights risk assessment process which British officials must follow before approving UK assistance to overseas bodies, where there is a risk that those bodies may be involved in human rights abuses.[36] The policy was introduced after 2011's Arab revolutions led to the exposure of UK assistance to abusive security forces in Libya, Bahrain, and Yemen, and its stated aim was

to "uphold HMG's reputation as a defender and promoter of human rights and democracy".[37] Today, the OSJA policy is consulted more often than ever, as the UK expands its security partnerships with governments which the FCO acknowledges to be "human rights priority countries"[38] and must increasingly navigate the human rights risks of such relationships.

45. The overlap between the Consolidated Guidance and the OSJA has been highlighted by both the former Intelligence Services Commissioner and the Intelligence and Security Committee. The Commissioner stated in 2016 that although "the intelligence services have adopted a policy of endeavouring to apply [OSJA] in practice"[39] this system of parallel authorisations was "very strange", with a real need for "a proper joining up" of both policies.[40]

46. In its Detainee reports, the Committee noted significant confusion surrounding the interaction of the Consolidated Guidance and OSJA, writing that "we question whether the use of two parallel frameworks is a practical solution, and remain concerned that it could lead to duplication and inefficiency". The ISC also found that the current approach "raises questions about the consistency of decisions being taken".

47. In its evidence to the Committee, MI5's representative stated that the combination of the Consolidated Guidance, OSJA, and the agency's internal guidance "amount to, by the way, 62 A4 pages in all that we drop on each of our individual staff to learn and operate by"; and went on to note that "If we overload it, it actually becomes less effective because we cannot expect our staff to retain it all."[41]

48. Although in January 2017 the FCO added a line to OSJA confirming that "Personnel covered by the Consolidated Guidance should also refer to the OSJA Guidance", the ISC warned that "this does not solve the underlying problem that there are two sets of guidance operating in parallel: we fail to see how this makes sense."[42] The ISC went on to propose that OSJA and the Consolidated Guidance "be merged for those bodies that are subject to both".

49. Given the expansiveness of the OSJA policy's scope – it applies to "all departmental and agency project/programme officers and HMG officials making policy decisions on UK engagement in justice and security assistance overseas, including where the actual engagement will be undertaken by external agencies on behalf of HMG and/or with HMG funding"[43] – the only way in which the two policies could be merged without replicating the duplicative approach criticised by the ISC would be the creation of a single central policy for assessing the human rights risks of UK assistance.

50. While in principle such a merger would be more efficient, it would be a mistake to simply incorporate the Consolidated Guidance into the OSJA policy without at the same time resolving OSJA's flaws. Much like the Consolidated Guidance, the OSJA policy has been widely criticised for its failure to articulate clear principles, its patchy implementation, and the secretive way it is applied.

51. In a recent inquiry covering UK assistance to foreign policing bodies, Parliament's Home Affairs Committee questioned "whether the OSJA guidance is fit for purpose" in light of the Government's refusal to disclose even basic information about UK support to overseas law enforcement projects.[44] The Committee's Chair described the Government's secrecy around such assistance as "totally unacceptable".

52. In a report released in March 2018 the Independent Commission for Aid Impact (ICAI) offered serious criticism of OSJA assessments conducted for UK aid programmes supporting overseas security and justice projects, noting that: "Several OSJAs were produced after programming had commenced and some OSJAs were incomplete or of low quality (typically with a stronger analysis of the UK's reputational risks than of the risk of CSSF support aggravating human rights violations) or had not been conducted at all."[45]

53. Given that both the Consolidated Guidance and the OSJA policy are widely acknowledged to be failing, it is not enough just to combine these two policy documents in their current form. Instead, Reprieve and Freedom From Torture propose that the Government evaluate the flaws in both policies, and replace them with a single central human rights policy that operates consistently across Whitehall, and gives officials clarity both in principle and practice.

54. The creation of a single central human rights policy is the only solution that reduces the number of risk assessment documents UK officials are required to follow without compromising critical guidance or backsliding from current protections. In addition to minimising duplication, a single central policy could eliminate existing ambiguity in UK human rights policy by establishing overarching principles by which UK intelligence sharing and security assistance should be conducted – most notably absolute prohibitions on UK support for torture, CIDT and the death penalty.

55. Doing so would provide an opportunity to address serious flaws with the OSJA policy, which since its introduction in 2011 has repeatedly failed to prevent UK involvement in abuses by foreign security forces. This has tarnished the Government's reputation as a defender of human rights, damaged the UK's relationships with overseas allies, and exposed the Government to costly litigation - in one case leading the National Crime Agency to admit it acted unlawfully by failing to effectively follow the policy.[46]

56. We propose that the Government publish a Green Paper setting out proposals for merging the two documents as part of a single human rights risk assessment framework. We would see this Green Paper as a precursor to legislation incorporating the new policy into statute and providing for its consistent implementation and oversight across Whitehall.

RECOMMENDATION 4: PUBLISH ALL INTERNAL AGENCY GUIDANCE WHICH SERVES AS A SUPPLEMENT TO THE CONSOLIDATED GUIDANCE, AND BRING THESE INTO LINE WITH THE CORE POLICY.

57. We propose that the agencies be required to publish any internal guidance which is intended to be used in parallel with the Consolidated Guidance, to ensure this does not compromise or contradict the spirit or letter of the core policy.

58. This recommendation would provide reassurance to the public and Parliament as to the issues raised in consultation questions 1 and 2, respectively that internal agency guidance is "consistent with applicable domestic and international legal principles", and is providing "appropriate legal protection" for officers.

59. As the ISC has acknowledged,[47] the Consolidated Guidance is buttressed by internal agency guidance which provides far more detail on the steps officers must take in individual cases. The public has seen historic guidance issued by the agencies from 2002 onwards, revealed years later as a result of court proceedings brought by Reprieve and others. This guidance was in force at a time when, as the ISC set out in its recent reports, agency involvement in torture and rendition was systemic. As is clear, this undisclosed internal guidance allowed serious abuses to take place.

60. With this in mind, the public needs to be reassured as to the robustness and rigour of agency guidance in operation today, with the Government working proactively to provide reassurance through the publication of this material. As David Anderson QC, the former Independent Reviewer of Counter-Terrorism Legislation, commented: "Procedures which have never seen the light of day sometimes turn out to need improvement when they are exposed to it."[48]

61. The ISC, in its report on historic detainee mistreatment, heavily criticised the Government and the agencies for failing to provide adequate guidance to officers on involvement in rendition and mistreatment.[49] The guidance that was issued was piecemeal, limited, and may have been unlawful. The first, issued in January 2002, consisted simply of an ad hoc telegram to an individual officer, after an early instance of UK involvement in mistreatment, suggesting that "the law does not require you to prevent" abuses, and that concerns should be drawn to the attention of US officials "[i]f circumstances allow".[50] The ISC reports that no further guidance was issued until 2004, prior to which the UK was, so the ISC found, involved in hundreds of cases of detainee mistreatment.[51] It was then likely under this still-secret 2004 policy that the UK's involvement in Abdelhakim Belhaj's rendition and torture was agreed.

62. Another form of this guidance from 2006, released in 2011, was similarly flawed, leaving officers who followed it at clear legal risk. While this document was far clearer on the legal obligations to which officers are subject – clearer, in fact, than the Consolidated Guidance is now – it also stated that senior personnel could "balance the

risk of mistreatment and the risk that the officer's actions could be judged to be unlawful against the need for the proposed action".[52]

63. A previously classified report produced by the ISC in 2010 suggests that the original form of the Consolidated Guidance – which the report describes as the "Consolidated Policy" - "contains details of the circumstances under which UK personnel would be required to halt an interview or interrogation of a detainee".[53] Further, the 2010 report suggests that MI6's internal guidance at that time included the following information:

- "Flow charts explaining the detailed process to be followed, the factors to be considered, key decisions to be taken, and approvals required."
- "Practical examples to demonstrate to staff how the guidance would be followed when dealing with particular countries and particular risks to detainees."
- "Detailed instructions regarding how to assess the risks and the steps to be taken to try and minimise, or mitigate, the risk of mistreatment or torture."
- "Training programmes for all staff and tailored programmes for those likely to have contact with detainees or involvement in detainee-related operations."[54]

64. We strongly support the ISC's recommendation, made in both 2010 and 2018, that "the public should be given as much information as possible about the underlying decision-making process in this area", and that "there is more information which could be published about the way officers apply the Guidance."[55] Publication of any and all internal guidance would serve this objective.

RECOMMENDATION 5: ELIMINATE INCONSISTENCIES IN THE CONSOLIDATED GUIDANCE'S TREATMENT OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT (CIDT).

65. We propose that any revised version of the policy must clearly set out that cruel, inhuman or degrading treatment (CIDT) is prohibited in domestic and international law (such that it can never be authorised), and make clearer that some of the examples listed in the Annex may in themselves amount to CIDT.

66. This recommendation is made in response to consultation question 3, which asks whether the Guidance "sufficiently define(s) and distinguish(es)" between torture, CIDT, and "standards of arrest, detention and treatment"; and whether "the right balance is struck as to when a decision can be made to proceed in circumstances where a serious risk is identified in relation" to these. It also addresses consultation question 5: "Does the Consolidated Guidance provide sufficient assistance when making relevant decisions including when considering an unmitigated risk of torture or CIDT?"

67. The Guidance retains a number of serious ambiguities regarding officers' responsibilities where UK action could contribute to CIDT. These ambiguities are especially concerning in view of the documented divergence in views of former and current Ministers, many of whom suggested that they are able to authorise operations that involve a serious risk of CIDT.

68. In a table provided as a shorthand version of the Guidance, the text seems to suggest that, where there is a serious risk of CIDT, "senior personnel" need only be consulted in the first instance, before escalating the matter to a Minister if it cannot be resolved.[56] This contrasts with the approach to cases in which there is a serious risk of torture, in respect of which Ministerial escalation is the first resort. Further, while on two occasions the Guidance states clearly that Ministers will need to be consulted in the event of a serious risk that torture and CIDT will take place,[57] it states that, regarding CIDT in particular, "different considerations and legal principles may apply depending on the facts of the case".[58]

69. Since the Guidance provides no detail on the relevant considerations and legal principles, these statements remain of little value to an officer in identifying and avoiding complicity in such treatment. In fact, the Guidance fails to mention highly relevant law and principles, including that Article 3 of the European Convention on Human Rights, which is incorporated into UK law through the Human Rights Act 1998, provides an absolute prohibition on both torture *and* CIDT and that neither form of treatment can therefore lawfully be authorised: see further *AKJ v Commissioner of Police of the Metropolis* [2013] 1 WLR 2734, per Tugendhat J at [92]. It further fails to

mention that, if used against prisoners of war within the context of an armed conflict, the practice of CIDT amounts to a breach of the Geneva Conventions and a war crime.[59] As indicated above, the UN Special Rapporteur on Torture, in his review of international law in this area, was categorical that "no distinction between torture and other ill-treatment should be made" in guidance for intelligence agencies.[60]

70. Instead, the Guidance only focuses on whether the conduct in question amounts to CIDT, suggesting only that officers "should seek guidance from senior personnel", who themselves "may take appropriate advice".[61] The non-exhaustive list in the Annex to the Guidance lists practices which, it suggests, only "could" amount to CIDT.[62]

71. In view of this, the Guidance provides little assistance as to how officers are to make judgments. If some of the practices listed were thought to be occurring – the use of stress positions, sleep deprivation, and sexual abuse, for example – it is hard to imagine that there would be *any* 'considerations and principles' that render the issue a difficult one to resolve. The use of these practices would clearly amount to CIDT and may even amount to torture, thus requiring officers to halt operations. Despite this, the Guidance appears to leave this question worryingly open.

72. This ambiguity is heightened by the 'Further information' document provided alongside the release of the Guidance in 2010, which suggests that since the concept of CIDT "covers a spectrum of conduct", decision-making regarding it can take into account "whether there is an overwhelming imperative for the UK to take action of some sort", among other considerations.[63]

73. This appears to suggest that the absolute prohibition on CIDT in human rights law may be circumvented in situations of perceived urgency, by suggesting that officers can decide whether certain treatment amounts to CIDT depending on the value of the intelligence to be extracted. Such a statement radically misunderstands the UK's legal obligations: see, for example, *Tomasi v France* (1993) 15 EHRR 1; *Selmouni v France* (2000) 29 EHRR 403; and, in particular, *Gafgen v Germany* (2011) 52 EHRR 1 at [107]-[108]. This leaves officers at real risk of becoming involved in unlawful actions and must be remedied immediately.

RECOMMENDATION 6: RAISE THE STANDARD OF ASSURANCES REQUIRED IN CASES WHERE THERE IS A RISK OF TORTURE AND MISTREATMENT, AND IMPROVE DOCUMENTATION OF THESE ASSURANCES.

74. This recommendation responds directly to consultation question 6: "Is the 'assurance process' in the Consolidated Guidance adequate?".

75. The Guidance permits officers to proceed with operations where they believe they can "mitigate the risk of mistreatment…through reliable caveats or assurances." However, assurances remain an inherently flawed means of assessing compliance, and the UK has been criticised by international human rights bodies for its policy and practice in this area. Often given by regimes that routinely practice mistreatment, and whose assurances are therefore not credible, the UK appears at present to accept assurances on trust, with no mechanism for verifying adherence, or overseeing the process by which such assurances are acquired.

76. The UN Committee Against Torture has urged the UK to tighten the Guidance to " eliminate the possibility of having recourse to assurances when there is a serious risk of torture or ill-treatment, and require that intelligence agencies and armed forces cease interviewing or seeking intelligence from detainees in the custody of foreign intelligence services in all cases where there is a risk of torture or ill-treatment."[64] The Committee has sought an update on measures to strengthen the Guidance ahead of its next review of the UK in 2019.[65]

77. As the ISC's recent reports have demonstrated, some of the UK's closest international partners have provided assurances that should not have been accepted as credible. Moreover, officers are told that they need only "consider" attaching conditions to the use of the information or obtaining assurances.[66] However, the Guidance provides no detail on how officers might assess the reliability of an assurance, nor any safeguards to ensure the process of seeking, receiving, and relying on them is a sound one.

78. It is difficult to see how it could ever be considered satisfactory to rely on assurances not to engage in torture, given that few, if any, authorities permit such treatment under domestic or binding international law in the first

place and therefore an assurance offers little or no additional reassurance or protection where those laws are not themselves respected.

79. While it is not accepted that assurances can ever be considered adequate mitigation in this context, the problems are exacerbated and the UK government's position undermined where, as is the case at present, the assurances are not even required to meet the same standards established in other contexts to ensure that an assurance is both adequate and reliable. While an in depth analysis is outside the scope of these submissions, it is possible to draw certain foundational principles regarding the form, content and implementation and reliability of assurances from contexts such as extradition which cannot be watered down in the context of the UK government's opposition to torture without undermining HMG's position entirely.

80. It cannot, for example, be acceptable for officers to claim that the risk of torture and CIDT could conceivably be mitigated where an assurance does not even meet the following basic criteria, many of which are established and enshrined in domestic laws in the context of extradition:

- be written and public;
- be of sufficient scope to mitigate the risk of the human rights breach in question (i.e. not be a partial assurance);
- be given by someone who has the power and authority to provide such an assurance, including having effective control over any and all agents or organs of the state who would otherwise be responsible for ensuring compliance;
- be binding on the organs of state responsible for compliance;
- be capable of being verified and include mechanisms to monitor and ensure compliance, including access to meaningful remedies in the event of non-compliance.

81. The Government has been repeatedly advised by the Intelligence Services Commissioner and the ISC to ensure that the agencies operate a system of written, rather than merely verbal, assurances. Despite this, the ISC was told that the agencies "hardly ever" obtain written assurances.[67] Moreover, as mentioned above, the agencies appear to have no direct means by which they are able to test the reliability of assurances, since compliance with them is "not routinely tracked", the agencies claiming – without explanation – that this is "not seen as the best use of resources".[68]

82. As it stands, the process of seeking and acquiring assurances under the Guidance is not at all "adequate", as asked in Consultation question 6. Assurances should not provide the sole basis for proceeding with action, and wherever they are used in conjunction with other considerations, the Guidance should require the full documentation of both the assurances received and how they were sought, as expressly recommended by the former Intelligence Services Commissioner in 2017.[69] The Investigatory Powers Commissioner, at the very least, should then have oversight of this process. Moreover, further guidance is needed on the means by which officers are to assess the 'reliability' of assurances, with express reference to information on Foreign and Commonwealth Office 'countries of concern'[70] and any other relevant data, forming a process over which the Commissioner should also have oversight.

RECOMMENDATION 7: AMEND THE TEXT OF THE GUIDANCE TO ADDRESS THE ISSUES OF UNLAWFUL DETENTION AND RENDITION SUBSTANTIVELY.

83. As both the ISC and the Intelligence Services Commissioner have stressed, there remains significant ambiguity in the Guidance around other forms of mistreatment, such as unlawful detention and extraordinary rendition. As the former Intelligence Services Commissioner has stated, these abuses are "no less important or serious than torture or [cruel, inhumane, or degrading treatment]",[71] and often enable abuses such as torture to take place. We recommend that the Guidance expressly and substantively address these issues, and provide clear steps officers should take where they arise.

84. This recommendation responds to consultation question 3, which asks whether the Guidance "sufficiently define(s) and distinguish(es)" between torture, CIDT, and "standards of arrest, detention and treatment"; question 8, which asks "should the Consolidated Guidance apply to rendition?"

85. The Guidance currently fails to provide adequate assistance to officers regarding unlawful detention and extraordinary rendition. As Sir Mark Waller found, the Guidance is "inconsistent and vague" on unlawful arrest or detention and procedural unfairness, remaining "not as clear as it should be" on such matters.[72] The ISC has heavily criticised Government refusals to include rendition in the Guidance , stating that its excuses for not doing so are "not sufficient" – since it is "precisely because of the uncertainty in the term that officers should be prompted to consider it."[73]

86. The Guidance includes a table of steps officers should take, presented as a shorthand form of its requirements, which chiefly covers torture or CIDT.[74] Where the table mentions arrest and detention, it implies that "senior personnel" need only be consulted where standards of arrest and detention are not "lawful". Moreover, the Annex provided on 'Standards of arrest, detention, and treatment' lists considerations that apply, but provides no detail on how to weigh them, nor details on when it would be unlawful for officers to conduct an operation.[75]

87. Unlawful detention and rendition should be expressly identified as forms of mistreatment in the Guidance, amounting in many cases to CIDT and at the very least as mistreatment in which officers should not be involved. Further, the Guidance's requirement to "take account of" considerations including unlawful detention should be buttressed by a system of 'red flags' and risk factors that are not only treated as mistreatment in themselves but indicative of further serious mistreatment. This should include any form of incommunicado detention or the use of rendition, practices that carry a high risk of being accompanied by torture or other kinds of further mistreatment. The Guidance should provide a clear statement of how these practices should be treated as 'red flags' indicating a potentially serious risk.

RECOMMENDATION 8: END THE EXCEPTION UNDER WHICH THE GUIDANCE DOES NOT IN PRINCIPLE COVER INTELLIGENCE SHARING WITH NON-STATE GROUPS.

88. We propose that the Guidance should be amended to expressly apply to intelligence cooperation with joint state units and non-state groups.

89. This recommendation is made in consideration of consultation question 7, which notes that the Guidance "does not expressly apply to conduct by (i) other agencies of foreign States or (ii) non-State actors, and asks "Should it do so?"

90. The Guidance's lack of jurisdiction over cases involving such parties represents a concerning gap in protection. Where UK agencies are increasingly forced to work with non-state groups in situations of conflict and instability, the same – if not even more serious – risks of complicity in mistreatment will arise. The Guidance should apply to intelligence cooperation with non-state groups as well.

91. Additionally, there remains a concerning gap in protection regarding the UK's work with joint units, whether officers are working alongside or within them, or where the UK provides funding or other assistance. Unless the Guidance is taken to apply to such arrangements, any UK agency would be left able to "outsource action it is not allowed to take itself", as the ISC has rightly warned.[76] The Intelligence Services Commissioner's 2016 criticism of MI6's engagement with the Guidance concerned operations involving joint units, demonstrating how important it is that the agencies are subject to clear standards in this area.[77]

92. The ISC's recent reports suggest that MI6 still refuse to apply the Guidance in cases of joint units, noting that this difference of opinion is "of serious concern".[78] It is particularly concerning in view of the extensive number of UK agencies using similar arrangements in the past, becoming complicit in torture and rendition in the vast swathes of cases identified by the ISC. To ensure this can never happen again, it is crucial that the same safeguards are applied to UK operations and arrangements with joint state units.

REFERENCES

[1] 'Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees', July 2010, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/62632/Consolidated_Guidance_November_2011.pdf.
[2] [2008] EWHC 2048 (Admin), paragraph 35.A.
[3] 'Belhaj and Boudchar: Litigation Update', HC Deb 10 May 2018, vol 640 col 926 onwards, available at: https://hansard.parliament.uk/commons/2018-05-10/debates/B9AD50CD-9D54-41DA-A18B-1526E7658593/BelhajAndBoudcharLitigationUpdate.
[4] https://www.theguardian.com/uk/2010/feb/23/government-legal-challenge-torture-detainees
[5] Fair Trials, Liberty, Privacy International, Redress, Freedom From Torture, and Reprieve, 'Joint Statement by leading human rights organisations on the review of the UK's torture policy', August 2018, available at: https://reprieve.org.uk/wp-content/uploads/2018/08/2018_08_21_PUB-Joint-Statement-by-leading-human-rights-organisations-on-the-review-of-UK-torture-policy-FINAL.pdf./
[6] Intelligence and Security Committee, 'Detainee Mistreatment and Rendition: 2001–2010', 28 June 2018, available at: https://b1cba9b3-a-5e6631fd-s-sites.googlegroups.com/a/independent.gov.uk/isc/files/20180628_HC1113_Report_Detainee_Mistreatment_and_Rendition_2001_10.pdf?attachauth=ANoY7cpsSGnx9t62g95FdHfJB3l2jnKL4KW86qtPfZDklD4ATXSm3U6zEGP_Ewwdmvu6B96YEcdzNnVS83Y-hjoraDh9fU_KmILtg6uFMBcNAp9C5CiveLQo0I6dyL415sr1LK64ysvPgwP5t0srvxcLoVlQywKRAvNvkgIJpYAQo8X8h3Ep6_Octd9ttS8F_9X4_ZppJRG2VaWSoF9wu6mTkns0lHljUQ7e0T1I_8My7N8xY3ctOVmX_DB03ATVW3Z9FyKuTL55rTM5Z9uv9-fzvFHSxZlb4leoukud3_Fr2vKBxnVGTkk%3D&attredirects=0.
[7] Intelligence and Security Committee, 'Detainee Mistreatment and Rendition: Current Issues', 28 June 2018, available at: https://b1cba9b3-a-5e6631fd-s-sites.googlegroups.com/a/independent.gov.uk/isc/files/20180628_HC1114_Report_Detainee_Mistreatment_and_Rendition-Current_Issues.pdf?attachauth=ANoY7coQEg3g_deGYGs1Z-gkCagD5JJGimQP60TrtDZIWHrTCb1iScc3lAGW96CT23xmQV7jOXUCuo8qdCFVIrfmtsWE2ZYVzD2TrlXkFBZdh5rVHCgKxmY_irKAT2zXdQQIBDT3tPGRvXnCQPk3hM26csBWjizJYX_O1If2s8BSDDi8d1ufks6VduL0SqcvYMOUDG6d1I2IYCUSaU1vvxsnZyKTJS0eYYDskfNvgSaHvzJpHCrfy8S8dIkfOR9ye1VcWi8Pg2tTn74VGZmMDd5ncntEHHa-DgavAWtXBCKoEqwVuR5yIfc%3D&attredirects=0, p. 36.
[8] ISC, 'Detainee mistreatment', 28 June 2018, p. 52.
[9] Intelligence Services Commissioner, 2016 report, 20 December 2017, p. 35. https://www.ipco.org.uk/docs/Intelligence%20Services%20Commissioner%20Annual%20Report%202016.pdf
[10] Consolidated Guidance, p. 3.
[11] Consolidated Guidance, p. 6.
[12] Consolidated Guidance, p. 6.
[13] ISC, 'Current issues', 2018, p. 75.
[14] ISC, 'Current issues', 28 June 2018, p. 77.
[15] ISC, 'Current issues', 28 June 2018, p. 144.
[16] https://www.gov.uk/government/news/uk-government-reaffirms-its-commitment-to-combat-torture
[17] https://www.intelligence.senate.gov/sites/default/files/publications/CRPT-113srpt288.pdf
[18] https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/152/15209.htm
[19] Foreign Affairs Committee, 'Human Rights Annual Report 2008', Seventh Report of Session 2008-09, 21 July 2009, available at: https://publications.parliament.uk/pa/cm200809/cmselect/cmfaff/557/55702.htm, paragraph 54.
[20] Intelligence Services Commissioner, 2017 report, 2016, p. 34.
[21] A/HRC/25/60, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez", paragraph 73, available at https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session25/pages/listreports.aspx
[22] A/HRC/25/60, paragraph 56.
[23] A/HRC/25/60, paragraph 60.
[24] ISC, 'Detainee Mistreatment and Rendition: Current Issues', 28 June 2018, pp. 3-4, available at: https://b1cba9b3-a-5e6631fd-s-sites.googlegroups.com/a/independent.gov.uk/isc/files/20180628_HC1114_Report_Detainee_Mistreatment_and_Rendition-Current_Issues.pdf?attachauth=ANoY7cpn9lkUC1Yo6Nnh6SW7Ml_APZv8TlBNLRek38kHC66X5qnDRy3DTrTHqz8wQwTxx_t6EyE4nOsE82TGF1WbkCWbx5-WDgbLkkstOx0PYLn4Ljb9k-6FIfc_isDNNRYilO-kh1X1jAxOhBeBx6yVk0Df4HQkspmk7kROtuVT66hNBdzRdmaTMGb1B3CqFTrAxnNixV8rbUmCwx4fkhHZAAlq4Yejfx0MbZoIN625vrQrHFLA4eeJHC9CgDlhB3SMKZFPSZvP8FY4pjo7KGbiTaEy02SLKvetlL6xzah1HTVbLSVoPEc%3D&attredirects=1.
[25] ISC, 'Detainee Mistreatment and Rendition: Current Issues', 28 June 2018, pp. 3-4, available at: https://b1cba9b3-a-5e6631fd-s-sites.googlegroups.com/a/independent.gov.uk/isc/files/20180628_HC1114_Report_Detainee_Mistreatment_and_Rendition-Current_Issues.pdf?attachauth=ANoY7cpn9lkUC1Yo6Nnh6SW7Ml_APZv8TlBNLRek38kHC66X5qnDRy3DTrTHqz8wQwTxx_t6EyE4nOsE82TGF1WbkCWbx5-WDgbLkkstOx0PYLn4Ljb9k-6FIfc_isDNNRYilO-kh1X1jAxOhBeBx6yVk0Df4HQkspmk7kROtuVT66hNBdzRdmaTMGb1B3CqFTrAxnNixV8rbUmCwx4fkhHZAAlq4Yejfx0MbZoIN625vrQrHFLA4eeJHC9CgDlhB3SMKZFPSZvP8FY4pjo7KGbiTaEy02SLKvetlL6xzah1HTVbLSVoPEc%3D&attredirects=1.
[26] ISC, 'Current issues', 28 June 2018, pp. 66-67.
[27] Soering v. United Kingdom, Judgement of 7 July 1989, Appl. No. 14038/88, Series A, No. 161; Chahal v UK (1997) 23 EHRR 413; *The Equality, Human Rights Commission v The Prime Minister & others* [2011] EWHC 2401 (Admin).
[28] Intelligence Services Commissioner, 2016 report, 2017, pp. 33 and 35.
[29] ISC, 'Current issues', 28 June 2018, p. 30.
[30] CAT/C/GC/3, "General Comment No. 3 of the Committee Against Torture - Implementation of Article 14 by States parties", paragraph 27.
[31] CAT/C/GC/3, paragraph 42.
[32] Section 231, Investigatory Powers Act 2016.
[33] https://privacyinternational.org/sites/default/files/2017-12/Privacy%20International%20-%20Response%20to%20Consultation%20on%20IPA%20Codes%20of%20Practice%20-%20April%202017.pdf.
[34] Cases C-203/15 and C-698/15, 21 December 2016, paragraph 121, available here: https://www.daqc.co.uk/wp-content/uploads/sites/22/2016/12/Watson-judgment-1.pdf.
[35] (Szabó and Vissy v Hungary, App No. 37138/14, ECHR judgment (12 January 2016))
[36] 'Overseas Security and Justice Assistance (OSJA) Human Rights Guidance', available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583304/OSJA_Guidance_2017.pdf.
[37] FCO, 'Written Ministerial Statement: Publication of the Overseas Security and Justice Assistance Guidance', 15 December 2011, available at: https://www.parliament.uk/documents/commons-vote-office/18-FCO-Publication-of-the-Overseas-Security-and-Justice-Assistance-Guidance.pdf.

[38] FCO, 'Human Rights and Democracy: The 2017 Foreign & Commonwealth Office Report', July 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725552/FCO1124_Human_Rights_Report_2017_ONLINE.PDF.
[39] Intelligence Services Commissioner, 'Supplementary', 2016, p. 41.
[40] ISC, 'Current issues', 28 June 2018, pp. 45-46.
[41] ISC, 'Current issues', 2018, p. 75.
[42] ISC, 'Current issues', 28 June 2018, p. 46.
[43] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583304/OSJA_Guidance_2017.pdf
[44] College of Policing: three years on, Fourth Report of Session 2016–17, House of Commons Home Affairs Committee, https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/23/23.pdf.
[45] https://icai.independent.gov.uk/html-report/cssf/
[46] *The Guardian*, 'UK police broke law in case of British backpackers murdered in Thailand', 29 August 2017, available at: https://www.theguardian.com/uk-news/2017/aug/29/uk-police-broke-law-in-case-of-british-backpackers-murdered-in-thailand.
[47] Intelligence and Security Committee, 'Detainee Mistreatment and Rendition: Current Issues', 28 June 2018, available at: https://b1cba9b3-a-5e6631fd-s-sites.googlegroups.com/a/independent.gov.uk/isc/files/20180628_HC1114_Report_Detainee_Mistreatment_and_Rendition-Current_Issues.pdf?attachauth=ANoY7crOJYAUSh6qQj0Ndbn2W7MIxqwJK6GEum2gOoWAMVFeby1HMZZIMA0GCi87KoEgWXs7ZWyddX2atLrND-BEuZpzfBVY3Jb2uBhKIi_tilfb1X4HoGszIc58e6Mhe_0PlIjm3hf5kOnlFP6mnknMAfNshzEgjBPScI1iKE3eXqxQFjxo7u6p22RhDV6niqPuVigZwNOQvDpUUHqaxuIId0pPtroo9UrrD_8uFaRo8h1vKMNJPlwUXx_LjbWtKS5PM6PCgCiwYJ57GU5O5EVBOcAAF-x0thE0FifpkdSqkfO30nzGYsw%3D&attredirects=0, p. 14.
[48] https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2015/06/IPR-Report-Print-Version.pdf
[49] ISC, 'Detainee mistreatment', 28 June 2018, pp. 31, 39, 61, 62, and 87.
[50] *BBC News*, 'Guantanamo papers: The UK's handling of detainees', 15 July 2010, available at: https://www.bbc.co.uk/news/uk-10641330.
[51] ISC, 'Detainee Mistreatment', 28 June 2018, pp. 73-4.
[52] *The Guardian*, 'UK's secret policy on torture revealed', 4 August 2011, available at: https://www.theguardian.com/politics/2011/aug/04/uk-allowed-interrogate-tortured-prisoners.
[53] ISC, 'Current issues', 28 June 2018, p. 145.
[54] ISC, 'Current issues', 28 June 2018, p. 154.
[55] ISC, 'Current issues', 28 June 2018, p. 100.
[56] Consolidated Guidance, p. 6.
[57] Consolidated Guidance, pp. 8 and 10.
[58] Consolidated Guidance, p. 3.
[59] International Committee of the Red Cross, IHL Database, Customary IHL, 'Rule 90. Torture and Cruel, Inhuman or Degrading Treatment', available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule90.
[60] A/HRC/25/60, paragraph 60.
[61] Consolidated Guidance, p. 14.
[62] Consolidated Guidance, pp. 13-14.
[63] 'Note of Additional Information from the Secretary of State for Foreign and Commonwealth Affairs, the Home Secretary, and Defence Secretary', July 2010, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/62633/additional-information-fcohods_0.pdf.
[64] CAT/C/GBR/CO5, "Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013)", paragraph 11.
[65] CAT/C/GBR/QPR/6, "List of issues priorto submission of the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland", paragraph 7.
[66] Consolidated Guidance, p. 4.
[67] ISC, 'Current issues', 28 June 2018, p. 59.
[68] ISC, 'Current issues', 28 June 2018, p. 30.
[69] Intelligence Services Commissioner, 2017 report, 2016, p. 36.
[70] Foreign and Commonwealth Office, 'Human Rights and Democracy Reports', 2017, available at: https://www.gov.uk/government/collections/human-rights-and-democracy-reports/?redirected_from=human-rights-in-countries-of-concern.
[71] Intelligence Services Commissioner, 'Supplementary', 2016, p. 98.
[72] Intelligence Services Commissioner, 'Supplementary', 2016, pp. 98-99.
[73] ISC, 'Current issues', 28 June 2018, p. 3.
[74] Consolidated Guidance, p. 6.
[75] Consolidated Guidance, pp. 13-14.
[76] ISC, 'Current issues', 28 June 2018, p. 49.
[77] Intelligence Services Commissioner, 'Supplementary', 2016.
[78] ISC, 'Current issues', 28 June 2018, p. 51.