

TERMS OF REFERENCE for Independent Inquiry relating to Afghanistan

Purpose and Scope

1. To investigate into and report on alleged unlawful activity by British armed forces in their conduct of deliberate detention operations (DDO) in Afghanistan during the period mid-2010 to mid-2013.
2. To identify and review concerns expressed within and to the British armed forces and Ministry of Defence (MOD) during the period mid-2010 to mid-2013 regarding the conduct of DDO in Afghanistan and the fatalities reported during such operations.
3. To consider and determine the adequacy and appropriateness of the MOD's response to those concerns, both at the time that they were expressed or recorded and subsequently, including making any findings of fact as may be necessary for that purpose.
4. To determine whether the investigations carried out by the Royal Military Police (RMP) into alleged unlawful conduct by British armed forces in Afghanistan in the course of DDO during the period mid-2010 to mid-2013 were timely, rigorous, comprehensive, properly conducted and effective (in particular, Operation Northmoor and Operation Cestro). To determine, in particular:
 - (a) The adequacy of the RMP's investigations into DDO, in particular, DDO carried out on 16th February 2011 and on 18th October 2012 in which four Afghan nationals were killed on each occasion.
 - (b) The adequacy of the RMP's investigations into whether those deaths formed part of a wider pattern of extra-judicial killings (EJK) by British armed forces in Afghanistan at the time.
 - (c) The adequacy of the RMP's investigations into whether the circumstances of any deaths in the course of DDO during the period mid-2010 to mid-2013 were covered up (and whether any such matters were covered up).
5. To determine whether any, and if so what, further investigations are necessary arising out of the above, what form such investigations should take and, so far as is appropriate, to carry out such investigations or recommend others to do so. In particular:
 - (a) To determine whether there is credible information that any of those who died in the DDO carried out on 16th February 2011 and on 18th October 2012 were killed unlawfully.

- (b) To determine whether there is credible information that any of those who died in the course of other DDO during the period mid-2010 to mid-2013, which were referred to and/or investigated by the RMP, were killed unlawfully.
 - (c) Insofar as appears necessary, to examine any other DDO during the period mid-2010 to mid-2013, and to carry out such enquiries as are considered necessary to determine whether there is credible information that any individual who died during any such DDO was killed unlawfully.
6. Taking account of subsequent developments and reviews, in particular (a) the Review of Sir Jon Murphy into Service Policing, (b) the Review of Shaun Lyons into the Service Justice System and (c) the Review of Sir Richard Henriques into the Service Justice System for Overseas Operations, and changes of policy, practice, process and training, consider what further lessons can be learned, make recommendations and identify such further action as may be required.

Method

7. As a statutory inquiry, the Inquiry will operate within the legal framework provided by the Inquiries Act 2005. As such, the procedure and conduct of the Inquiry are to be directed by the Inquiry Chair. There will be closed hearings and all necessary steps taken to protect sensitive material and the security of witnesses.

Report

8. The Inquiry should be undertaken with sufficient pace to enable findings to be made and resulting recommendations to be actioned as soon as possible. The Inquiry will use its best endeavours to report, at least on an interim basis, within 12-18 months. The Inquiry should report to the Secretary of State for Defence, who should publish the report to Parliament. The report will be subject to all necessary declassification, redaction and security checking, with HMG making best endeavours to expedite this to avoid a delay to publication.

Principles

9. The Secretary of State is expecting maximum cooperation from MOD personnel. The Inquiry will have full access to all documents and evidence (in whatever form) and witnesses (including former and current service personnel and officials).
10. The Inquiry will bear the legal expenses for parties designated as core participant status by the Inquiry Chair.
11. It is not part of the Inquiry's function to determine civil or criminal liability of named individuals or organisations. This should not, however, inhibit the Inquiry from reaching findings of fact relevant to its terms of reference.