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An independent judicial inquiry into the British torture allegations must be sufficiently transparent to attract public confidence



Ken Macdonald
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Have we been too complacent in thinking that the Americans were alone in developing creative techniques of extradition, interrogation and imprisonment? In recent weeks and months reports have been growing which, if they turn out to be true, tend to confirm hints that have been surfacing over a number of years. I'm talking of the extent to which, if at all, British officials may have sought to benefit from, or indeed indirectly taken part in, [unlawful extraditions](#) and coercive interrogations around the world.

I wish to make clear my admiration for the work of our security services. Within them, dedicated men and women work tirelessly to keep us free, and our democracy safe. This work is critical to our ability to go about our daily lives as safe as possible from the spectre of sudden and awful violence.

Yet it does seem likely, following the recent correction of a ministerial statement, that there was some British complicity in extraordinary rendition. Whether this complicity was contrary to UK law is not yet certain, although it seems likely to have been. Equally uncertain is whether it was pursuant to official policy. This is an important question. Obviously we can't be kept in the dark about it. We need to know.

So far as complicity in torture is concerned, I have no idea the extent to which the claims that have been made recently are true or false. But concern at the highest levels is demonstrated by the prime minister's [statement this week](#) that guidance to the security services in this area will be considered by the intelligence and security committee, and ultimately published.

If there is concern at head of government level, it is not surprising. There should be. These are allegations of the utmost gravity. If they are substantiated they could, at the very least, signal grave breaches of international law and a humiliating betrayal of our international obligations.

The UK's plain public position is that torture is unacceptable in all circumstances. Our opposition to the deliberate application of pain and violence to confined prisoners is an article of faith in our long commitment to the rule of law. It is an aspect of our approach to life that defines us. Any suggestion that we have, as a matter of state policy, pursued a private position different to this, needs to be examined with rigour, and with as much transparent as possible in the circumstances. Otherwise a finding exonerating the state will lack credibility.

Similarly, a finding that British officials were complicit in applying illegal violence to detainees would need to attract public confidence in its prescription for avoiding similar abuses in the future. For if allegations of complicity in torture turn out to be true, this would undermine to a shocking degree repeated statements by very senior ministers, including to parliament. The public would therefore wish to be very clear indeed about where responsibility lay, and how these criminal assaults could be avoided in the future.

The [attorney general](#) has been asked to investigate these matters and she has invited the director of public prosecutions to advise her. She has now had the papers for five months and we await developments.

One thing we may all agree upon is that it is quite unthinkable that our country should not have in place mechanisms for reassuring the public that all state agents, including those who work so tirelessly to protect us, remain accountable under the rule of law. So

the question arises as to whether the attorney general, whose commitment to that same rule of law I know to be fierce and unshakable, can deal with this problem alone. These issues are central to our deepest values as a nation, and speak eloquently to our proper place in a violent and lawless world.

This is not simply a narrow question about whether particular UK offences may or may not have been committed by individual British agents. If crimes have been committed, to deal with them alone would probably amount to scapegoating and would, in any event, only scratch at the surface of the problem that such criminality would represent. It is what lies beneath the surface that counts. I believe that an independent judicial inquiry, sufficiently transparent to attract public confidence, is best placed to explore these depths.

This is an edited extract of a lecture Ken Macdonald gave at Queen Mary, University of London, last night

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