REPORT BY LORD GARDINER ON PROCEDURES FOR THE INTERROGATION OF PERSONS SUSPECTED OF TERRORISM

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By reason of doubts raised in the Compton Report, the British Government appointed a Committee of Privy Councillors which became known as "the Parker Committee" to consider authorised procedures for the interrogation of persons suspected of terrorism.

The Committee failed to agree and published a majority and a minority report. The minority report written by Lord Gardiner was the one in fact accepted by the British Government. Because of this and because of its incisiveness and high quality, this minority report has been reprinted by the Irish Section of Amnesty International for distribution to members.

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THE MINORITY REPORT

1. I very much regret that I am unable to agree with my distinguished colleagues in their report.

2. It seems to me clear that the "procedures" which our terms of reference require us to consider are the procedures of "interrogation in depth" so described in the report of the Compton Committee of 3rd November 1971 ("the first Compton report") and in the further report of Sir Edmund Compton of 14th November ("the second Compton report"). If there were any doubt, it is clear from the statements in the House of Commons made by the Home Secretary on 16th, 17th and 29th November and by the Minister of State for Defence on 9th December that those are the "procedures" intended to be referred to.

3. The questions which arise therefore appear to me to be:

(*a*) Of what did those "procedures" consist?

(*b*) Were they "authorised"?

(*c*) What were their effects?

(*d*) Do they, in the light of their effects, require amendment and, if so, in what respects?

Of what did those procedures consist?

4. The first Compton report considered the cases of 11 out of 12 men who had been submitted to "interrogation in depth" at an interrogation centre in Northern Ireland from 11th to 17th August 1971 and the second Compton report considered the case of one of two men who had been so interrogated from 11th to 18th October.

5. Their conclusions were that the procedures consisted of:

(*a*) Keeping the detainees' heads covered by a black hood except when being interrogated or in a room by themselves and that this constituted physical ill-treatment.

(*b*) Submitting the detainees to continuous and monotonous noise of a volume calculated to isolate them from communication and that this was a form of physical ill-treatment.

(*c*) Depriving the detainees of sleep during the early days of the operation and that this constituted physical ill-treatment.

(*d*) Depriving the detainees of food and water other than one round of bread and one pint of water at six-hourly intervals and that this constituted physical ill-treatment for men who were being exhausted by other means at the same time.

(*e*) Making the detainees stand against a wall in a required posture (facing wall, legs apart, with hands raised up against wall) except for periodical lowering of the arms to restore circulation, and that

detainees attempting to rest or sleep by propping their heads against the wall were prevented from doing so and that, if a detainee collapsed on the floor, he was picked up by the armpits and placed against the wall to resume the required posture and that the action taken to enforce this posture constituted physical ill-treatment.

They found that the 11 men were at the wall for periods totalling 9, 9, 13, 14, 15, 20, 23, 29, 30, 40 and 43½ hours. The second Compton report shows that the man the subject of that report was at the wall for periods totalling 35 hours.

6. I have thought it essential to state what the procedures referred to in the Compton reports were because they were never published or even written down anywhere. We have been told that these procedures of interrogation in depth, namely hooding, a noise machine, wall-standing and deprivation of diet and sleep, were never committed to writing in any directive, order, syllabus or training manual. They had been for some time orally taught for use in emergency conditions, in Colonial-type situations, at an army intelligence centre in England. They had been used in Aden, although, surprisingly, it does not appear from the report of Mr. Roderic Bowen, Q.C., on Interrogation in Aden (Cmnd. 3165 of 1966) that he ever discovered that these interrogation procedures were used there. Officers and men of the English Intelligence Centre held a seminar on the procedures in Northern Ireland in April 1971 to teach orally the procedures to members of the Royal Ulster Constabulary; officers from the English Intelligence Centre were present in the control room of the interrogation centre in Northern Ireland throughout the periods covered by the Compton reports.

7. We are not a court of appeal from the Compton Committee and I accept their conclusions subject to the following points:

(*a*) While records were kept of the movements of the detainees for 11th, 12th and 13th August, the records for most of them were discontinued some time on 14th or 15th and for four on 16th August, so that the figures of wall-standing in the first Compton report only relate to the dates for which there were records, wall-standing being discontinued thereafter.

(*b*) The report does not indicate for how long any detainee was standing continuously at the wall. We have seen copies of the partial records. They show that, subject to breaks for bread and water and for toilet visits, some detainees were standing continuously at the wall for periods of 6, 6, 7, 7, 7, 7, 7, 8, 9, 9, 9, 9, 9, 9, 9, 9, 9, 9, 9, 10, 10, 10, 11, 12, 13, 15 and 16 hours.

(*c*) The first Compton report states in paragraph 68 "Weight. The records kept by the doctor for each detainee on entering and leaving the centre all show loss of weight during the time spent there." We have ascertained that, as there was no weighing machine when the 11 men arrived, the recorded entry weights were mere estimates made by the doctor looking at the man. On the assumed weights there were losses up to 1 stone 2 lbs. in six days.

(*d*) In paragraph 105 of the first Compton report the Committee say "We consider that brutality is an inhuman or savage form of cruelty, and that cruelty implies a disposition to inflict suffering, coupled with indifference to, or pleasure in, the victim's pain." Lest by silence I should be thought to have accepted this remarkable definition, I must say that I cannot agree with it. Under this definition, which some of our witnesses thought came from the Inquisition, if an interrogator believed, to his great regret, that it was necessary for him to cut off the fingers of a detainee one by one to get the required information out of him for the sole purpose of saving life, this would not be cruel and, because not cruel, not brutal.

Were they authorised?

8. We have found this a point of some difficulty because our terms of reference appear to assume that the procedures were or are authorised. The only evidence before us on this point was that it could not be said that U.K. Ministers had ever approved them specifically, as opposed to agreeing the general principles set out in the Directive on Military Interrogation. If any document or Minister had purported to authorise them, it would have been invalid because the procedures were and are illegal by the domestic law and may also have been illegal by international law. I regard this point as so important that I must develop it.

9. I agree with my colleagues that the only relevant document is the Directive. This lays down two requirements:

(*a*) Those concerned are to acquaint themselves with the laws of the country concerned, and are not to act unlawfully under any circumstances whatever.

(*b*) They are to follow the principles laid down in Article 3 of The Geneva Convention Relative to the Treatment of Prisoners of War (1949) and these include the prohibition of "outrages upon personal dignity, in particular, humiliating and degrading treatment".

10. *Domestic law*

(*a*) By our own domestic law the powers of police and prison officers are well known. Where a man is in lawful custody it is lawful to do anything which is reasonably necessary to keep him in custody but it does not further or otherwise make lawful an assault. Forcibly to hood a man's head and keep him hooded against his will and handcuff him if he tries to remove it, as in one of the cases in question, is an assault and both a tort and a crime. So is wall-standing of the kind referred to. Deprivation of diet is also illegal unless duly awarded as a punishment under prison rules. So is enforced deprivation of sleep.

(*b*) In Northern Ireland in normal times the powers of the police and prison officers in relation to those in custody are substantially the same except for an immaterial difference in their Judges' Rules. Of the Regulations scheduled to the Civil Authorities (Special Powers) Act (Northern Ireland) 1922, Regulation 10 provides that "Any-

officer of The Royal Ulster Constabulary, for the preservation of the peace and maintenance of order, may authorise the arrest without warrant and detention for a period of not more than 48 hours of any person for the purpose of interrogation". This Regulation does not in any way extend the ordinary police powers as to the permissible methods or limits of interrogation. Regulation 11 provides a limited power of detention and a limited right to photograph and finger-print and Regulation 12 a limited right of internment. Regulation 13(5) provides that "Persons detained or interned in any of Her Majesty's prisons shall be subject to any rules for the government of prisoners awaiting trial including such general rules as are applicable to such prisoners, for the time being in force, except in so far as the said rules are inconsistent with this regulation". We have seen the Prison Rules and certain Directions made by the Minister for Home Affairs, Northern Ireland, with regard thereto. There is nothing in them to extend the ordinary police powers of interrogation or to validate the procedures.

(*c*) We have received both written and oral representations from many legal bodies and individual lawyers from both England and Northern Ireland. There has been no dissent from the view that the procedures are illegal alike by the law of England and the law of Northern Ireland. We have seen the Constitution of Aden and the relevant Statutory Instruments and Regulations relating to Aden and the same applies to Aden law.

(*d*) This being so, no Army Directive and no Minister could lawfully or validly have authorised the use of the procedures. Only Parliament can alter the law. The procedures were and are illegal.

11. *International law*

(*a*) It has been submitted to us that the procedures also involved infringement of

(i) Article 5 of the Universal Declaration of Human Rights which provides that

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

(ii) Articles 7 and 10 of The International Covenant on Civil and Political Rights (which the United Kingdom has signed but not yet ratified) which provides that

"7. No one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

10. (i) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

(iii) Article 3 of each of the four Geneva Conventions scheduled to the Geneva Conventions Act 1957 which, so far as material, provides that

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely . . .

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(*a*) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; .....

(*c*) Outrages upon personal dignity, in particular humiliating and degrading treatment".

(iv) Article 3 of the European Convention on Human Rights which provides that

"3. No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

Article 15(i) provides that in time of war or other public emergency some of the provisions of this Convention may be derogated from but Article 15(*a*) provides that "No derogation from . . . Article 3 . . . shall be made under this provision."

(*b*) I do not propose to express any opinion on these submissions because

(i) It may be open to argument which Convention or Conventions apply in the conditions of Northern Ireland.

(ii) The most eminent lawyers notoriously differ on questions of construction. Words like "torture", "inhuman" and "degrading" are clearly open to doubt.

(iii) As the procedures were admittedly illegal by the domestic law and no Minister had power to alter the law, it is not necessary, for the purpose of the point I am discussing, to decide whether or not they were also illegal by international law.

(iv) The Government of the Republic of Ireland has laid a complaint of a breach or breaches of The European Convention before the European Commission on Human Rights. This question is therefore *sub judice* and it would not, I think, be proper for me, unnecessarily, to express any opinion upon it.

What were their effects?

12. It is necessary to consider this in some detail. The situation in Northern Ireland is one in which members of the Irish Republican Army are conducting a campaign of terror which includes brutal murders, arson, the use of explosives against innocent men, women and children and outrages of all

kinds. There is virtually a war going on between the Government of Northern Ireland and the Irish Republican Army and in this conflict the lives, not only of innocent civilians but of the police and army, are at stake in circumstances of appalling difficulty for the members of those forces whose courage, resolution and behaviour are all so well known.

It has been submitted to us that because these things are so—and in my opinion they are so—the procedures were necessary to obtain, for the purpose of saving lives, information which could not otherwise have been obtained or alternatively not obtained so quickly, that they are therefore morally justifiable, that the same may well be so in future conditions of emergency elsewhere and that the procedures with such amendments as may be thought desirable, should remain available.

This raises questions, including moral questions, which cannot be determined without considering the effects of the procedures on the obtaining of intelligence information, on the detainees, on the relations between the forces of law and order and the people of Northern Ireland and on the reputation of the United Kingdom.

13. *Their effect on the detainees*

Their immediate effect was on the detainees. We have had to consider both the physical effects and the mental effects.

(*a*) *Physical effects*

(i) It would seem unlikely that the procedures would not result in some minor physical injuries. Eleven men made complaints of physical ill-treatment and some of them who had no injuries on arrival at the interrogation centre were found by the Compton Committee to have had minor injuries when they left. Like the Compton Committee we have not seen any of the detainees and, like them, we cannot say how these injuries were occasioned.

(ii) We have received unchallenged medical evidence that subjection to a noise level of 85 decibels (at the interrogation centre it was 85 to 87 decibels) for 48 hours might result for 8 per cent in temporary loss of hearing and in 1 per cent (with ear disorders) in some permanent loss of hearing.

(*b*) *Mental effects*

(i) We have received a great deal of evidence from medical experts on this question.

According to our information, interrogation in depth as described in the first Compton report is a form of sensory isolation leading to mental disorientation which was itself invented by the K.G.B. in Russia where they first placed suspects in the dark and in silence.

As one group of distinguished medical specialists put it: "Sensory isolation is one method of inducing an artificial psychosis or episode of insanity. We know that people who

have been through such an experience do not forget it quickly and may experience symptoms of mental distress for months or years. We know that some artificially induced psychoses, for instance those produced by drugs like L.S.D. or mescaline, have in fact proved permanent; and there is no reason to suppose that this may not be a danger with psychoses produced by sensory deprivation. Even if such psychotic symptoms as delusions and hallucinations do not persist, a proportion of persons who have been subjected to these procedures are likely to continue to exhibit anxiety attacks, tremors, insomnia, nightmares and other symptoms of neurosis with which psychiatrists are familiar from their experience of treating ex-prisoners of war and others who have been confined and ill-treated."

(ii) There is a considerable bibliography of experiments in this field, particularly in Canada. Some experiments have been done in England with troops and civilian volunteers, but it was the cumulative effect of the techniques which was important in the present context and naturally neither troops nor civilians had ever been submitted to such cumulative techniques as were used in Northern Ireland and it was impossible scientifically to prove that they would, or that they would not, have lasting effect. Some of our medical witnesses believed that they would, but others thought that they would not last more than two months. All emphasised the fact that in the field of mental disorientation everyone had a different threshold, which made the imposition of specific time limits of great, and some thought insuperable, difficulty.

(iii) In an experiment in England, fully described in the "Lancet" of 12th September, 1959, 20 men and women volunteer members of a hospital staff, aged between 20 and 55 were each placed in a "silent room" standardised up to a mean sound-pressure-level difference of 80 decibels and the further sensory deprivation consisted of having to wear translucent goggles which cut out patterned vision and padded fur gauntlets. On the other hand they had four normal meals a day when they were visited by colleagues on the hospital staff and could take off the goggles and gloves, and they had "dunlopillo" mattresses on which they could sleep or rest, or they could walk about. They were promised an amount of paid time off equal to that spent in the room and were asked to stay there as long as they could.

Six remained for 48, 51, 51, 75, 82 and 92 hours, but 14 of the 20 gave up after less than 48 hours (two of them after only 5 hours), the usual causes being unbearable anxiety, tension or attacks of panic. Dreams were invariable in those who slept for any length of time and in a quarter of the 20 included nightmares of which drowning, suffocating, killing people etc. were features.

These were the results although they were volunteers in their own hospital who knew that there was no reason for any panic and who were not submitted to any wall-standing or deprived of any food or sleep.

14. *Their effect on the obtaining of information*

(*a*) There is no doubt that a considerable quantity of intelligence information was obtained at the intelligence centre in Northern Ireland which, in the opinion of the army and of the interrogators, would not have been obtained, or not so quickly, by other means.

(*b*) On the other hand

(i) Some of the 14 were only too anxious to give information and were " co-operative " from the start and in their case the procedures appear to have been unnecessary.

(ii) During the period after 9th August there was a sudden and considerable increase in the number of people arrested and questioned so that a dramatic increase in intelligence information was in any case to be expected, whether or not those interrogated were submitted to ill-treatment.

(iii) An important element in the procedures was their surprise: once their nature and limits were known, their effect would naturally be greatly limited.

(iv) It is natural that those applying the procedures should consider that they would not have obtained so much information, or not have obtained it so quickly, by other means.

(*c*) We have read a number of statements made by men who interrogated thousands of prisoners and some civilian suspects in the last world war and have heard oral evidence thereon.

(i) Article 17 of the Third Geneva Convention provides that

> " No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind."

It must have been appreciated by our Government when it signed the Convention in 1949 and ratified it in 1958 that in time of war there is a pressing need to obtain information from captured soldiers, information upon which the very survival of the State and the outcome of the war might depend.

(ii) The evidence we heard from the main interrogation centres during the war where so much vital information was obtained was that the prisoners and suspects were treated with kindness and courtesy and without anything which would contravene Article 17, that, as is now well known, it was accompanied by interrogation, the cross-referencing of information and the use of microphones and " stool pigeons " in cells. We were

told that there were occasions when information was wanted, and was obtained in a matter of hours, relating particularly to the course of U-boat packs or the path to be taken on the next air-raid and that, even after the Germans knew of the methods and warned their men about microphones in cells and the use of " stool pigeons ", the methods were still effective owing to the overwhelming desire to talk to another human being whatever the circumstances.

(iii) The planning of the interrogation centre in Northern Ireland began in March 1971. There was ample time to train a team of interrogators in our well tried and effective war-time methods.

(iv) I am not persuaded that substantially as much information might not have been obtained by those methods.

15. *Their effect on the relation between the forces of law and order and the people of Northern Ireland*

If, however, the view is taken that the use of the procedures may initially have saved lives, this has to be balanced against the fact that in a guerilla-type situation the position of the forces of law and order depends very much on how far they have the sympathy of the local population against the guerillas. If the sympathy of a large part of the population is lost, the difficulties of the forces of law and order are increased. How far the loss of that sympathy since 9th August is due to internment or to the procedures or how far in the end they may have saved lives or cost lives, seems to me impossible to determine.

16. *Their effect on the reputation of the United Kingdom*

It is more convenient to deal with this under the next question to be considered.

Do they, in the light of their effects, require amendment and, if so, in what respects?

17. Our terms of reference are no doubt expressed as they are because it was assumed that the procedures were authorised. As, however, they were not authorised the question which really arises is " should the procedures be continued, or abandoned or amended and, if amended, in what respects? "

18. As they were illegal by our domestic law and by the domestic law of Aden and of Northern Ireland and are likely to be so by the domestic law of any place in which we might consider their use, and as no Minister can alter the law, their use cannot be continued without legislation.

19. The real question at the end of the day, therefore, is whether we should recommend that Parliament should enact legislation making lawful in emergency conditions the ill-treatment by the police, for the purpose of obtaining information, of suspects who are believed to have such information and, if so, providing for what degree of ill-treatment and subject to what limitations and safeguards.

20. I am not in favour of making such a recommendation for each of the following five reasons:

(1) I do not believe that, whether in peace time for the purpose of obtaining information relating to men like the Richardson gang or the Kray gang, or in emergency terrorist conditions, or even in war against a ruthless enemy, such procedures are morally justifiable against those suspected of having information of importance to the police or army, even in the light of any marginal advantages which may thereby be obtained.

(2) If it is to be made legal to employ methods not now legal against a man whom the police believe to have, but who may not have, information which the police desire to obtain, I, like many of our witnesses, have searched for, but been unable to find, either in logic or in morals, any limit to the degree of ill-treatment to be legalised. The only logical limit to the degree of ill-treatment to be legalised would appear to be whatever degree of ill-treatment proves to be necessary to get the information out of him, which would include, if necessary, extreme torture. I cannot think that Parliament should, or would, so legislate.

(3) Our witnesses have felt great difficulty in even suggesting any fixed limits for noise threshold or any time limits for noise, wall-standing, hooding, or deprivation of diet or sleep.

All our medical witnesses agreed that the variations in what people can stand in relation to both physical exhaustion and mental disorientation are very great and believe that to fix any such limits is quite impracticable. We asked one group of medical specialists we saw to reconsider this and they subsequently wrote to us

> "Since providing evidence to your Committee we have given much thought to the question of whether it might be possible to specify reasonably precise limits for interrogators and those having charge of internees. The aim of such limits would be to define the extent of any 'ill-treatment' of suspects so that one could ensure with a high degree of probability that no lasting damage was done to the people concerned.
>
> After a further review of the available literature, we have reluctantly come to the conclusion that no such limits can safely be specified. Any procedures such as those described in the Compton Report designed to impair cerebral functions so that freedom of choice disappears is likely to be damaging to the mental health of the man. The effectiveness of the procedures in impairing willpower and the danger of mental damage are likely to go hand in hand so that no safe threshold can be set."

(4) It appears to me that the recommendations made by my colleagues in the concluding part of their Report necessarily envisage one of two courses.

One is that Parliament should enact legislation enabling a Minister, in a time of civil emergency but not, as I understand it, in time of war, to fix the limits of permissible degrees of ill-treatment to be employed when interrogating suspects and that such limits should then be kept secret.

I should respectfully object to this, first, because the Minister would have just as much difficulty as Parliament would have in fixing the limits of ill-treatment and, secondly, because I view with abhorrence any proposal that a Minister should in effect be empowered to make secret laws: it would mean that United Kingdom citizens would have no right to know what the law was about police powers of interrogation.

The other course is that a Minister should fix such secret limits without the authority of Parliament, that is to say illegally, and then, if found out, ask Parliament for an Act of Indemnity.

I should respectfully object even more to this because it would in my view be a flagrant breach of the whole basis of the Rule of Law and of the principles of democratic government.

(5) Lastly, I do not think that any decision ought to be arrived at without considering the effect on the reputation of our own country.

For many years men and women and a number of international organisations have been engaged in trying patiently to raise international moral standards, particularly in the field of human rights. The results are to be found in the Universal Declaration of Human Rights, the four Geneva Conventions, which 129 countries have signed and ratified, the International Covenant on Civil and Political Rights and The European Convention on Human Rights, whose provisions are referred to in paragraph 11 above. And this is not all. The World Conference on Religion and Peace, representative of all the world's religions, held in October 1970 declared

"The torture and ill-treatment of prisoners which is carried out with the authority of some Governments constitute not only a crime against humanity, but also a crime against the moral law"

while the subsequent Consultation of all the Christian Churches declared

"There is today a growing concern at the frequency with which some authorities resort to the torture or inhuman treatment of political opponents or prisoners held by them. . . . There exists at the present time, in certain regions of the world, regimes using systematic methods of torture carried out in the most refined way. Torture itself becomes contagious . . . . The expediency of the moment should never silence the voice of the Church Authorities when condemnation of inhuman treatment is called for."

There have been, and no doubt will continue to be, some countries which act in this way whatever Conventions they have signed and ratified. We have not in general been one of these. If, by a new Act of Parliament, we now depart from world standards which we have helped to create, I believe that we should both gravely damage our own reputation and deal a severe blow to the whole world movement to improve Human Rights.

Conclusion

21. I cannot conclude this report without mentioning two points:

(1) An eminent legal witness has strongly represented to us that as Article 144 of the Fourth Geneva Convention provides that

> "The High Contracting Parties undertake, in time of peace as in time of war to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population"

and as the other three Geneva Conventions contain somewhat similar Articles, and as we do not appear to be complying with these provisions, some step should now be taken to incorporate such instructions in military training.

As we have been told by those responsible that the army never considered whether the procedures were legal or illegal, and as some colour is lent to this perhaps surprising assertion by the fact that the only law mentioned in the Directive was the wrong Geneva Convention, it may be that some consideration should now be given to this point.

(2) Finally, in fairness to the Government of Northern Ireland and the Royal Ulster Constabulary, I must say that, according to the evidence before us, although the Minister of Home Affairs, Northern Ireland, purported to approve the procedures, he had no idea that they were illegal; and it was, I think, not unnatural that the Royal Ulster Constabulary should assume that the army had satisfied themselves that the procedures which they were training the police to employ were legal.

The blame for this sorry story, if blame there be, must lie with those who, many years ago, decided that in emergency conditions in Colonial-type situations we should abandon our legal, well-tried and highly successful wartime interrogation methods and replace them by procedures which were secret, illegal, not morally justifiable and alien to the traditions of what I believe still to be the greatest democracy in the world.

GARDINER.

31st January, 1972.