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## INFORMATION SHARING EVALUATION COMMITTEE

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### STRUCTURE

#### MEMBERS

Note: The quorum consists of the above-mentioned six positions. The powers and responsibilities inherent in the above-mentioned positions or titles are delegated to any employee performing the duties of the position or title in an acting capacity.

#### COORDINATION

Coordinator and Secretary:

The coordinator is responsible for convening the committee members, further to a request

The coordinator is responsible to update these guidelines.

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### GUIDELINES

#### GENERAL

- Before making a decision, the Committee can request that additional checks/actions be carried out for re-evaluation purposes. For example:
  - Carry out a specific interview
  - Request assurances from the foreign entity (new or additional).
  - Ask the foreign entity for details regarding how the information was obtained.
- In the event of an imminent threat, the decisions of the Evaluation Committee and/or the Director can be made verbally. However, a report must be prepared as soon as possible afterwards.
- The decision and the justification that led to the decision from the Director and/or the Committee must be recorded in a report and saved in the appropriate files, i.e: the operational file as well as the Information Sharing Evaluation Committee File, # 370-692.

- The \_\_\_\_\_ concerned with the specific information and who participates in the Information Sharing Evaluation Committee, must ensure that the decision from the Committee and/or the Director be indicated in the relevant \_\_\_\_\_ report(s).

### EXAMPLES OF SOURCES TO CONSULT

- CSIS databases.
- "CSIS Arrangements with Foreign Governments and Institutions"
- Assurances received from the Foreign Entity in question.
- Country Human Rights reports from DFAIT.
- Reporting from organisations such as Amnesty International, Human Rights Watch, US State Department.
- Relevant open source information.
- Private databases, such as Maplecroft.

### EXAMPLES OF POINTS AND QUESTIONS TO CONSIDER

- The threat to Canada's national security or other interests, and the nature and imminence of that threat;
- The importance of sharing the information, having regard to Canada's national security or other interests;
- The status of the relationship with the foreign entity with which the information is to be shared, and an assessment of the human rights record of the foreign entity;
- The rationale for believing that there is a substantial risk that sharing the information would lead to the mistreatment of an individual;
- The proposed measures to mitigate the risk, and the likelihood that these measures will be successful (including, for example, the foreign entity's record in complying with past assurances, and the capacity of those government officials to fulfil the proposed assurance);
- The views of DFAIT;
- The views of other departments and agencies, as appropriate, as well as any other relevant facts that may arise in the circumstances;
- The likelihood that the information could be acted upon by a foreign entity;
- The pertinent Country legislation;
- CSIS S.17 arrangement with the Foreign Entity:
  - Scope of exchanges
  - Restrictions (if any)
  - Status
  - Reliability
- Assurances:
  - the foreign entity's record in complying with past assurances
  - the capacity of foreign entity to fulfil the proposed assurance
- The Human Rights assessment - Does the country and the Foreign Entity:
  - systematically violate human rights of detainees or engage in torture?
  - have safeguards in place to protect against torture?
  - signed and ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*?
  - prosecute officials who are alleged to have engaged in torture?
  - adhere to the precepts of customary international law?
  - adhere to the Non-Refoulement principle (removal to a country where an individual would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment)?
  - permit monitoring of returnees by reputable non governmental organizations?
  - timely reports to organizations such as Amnesty International?
  - participate in rendition or has the country been a party to rendition in the past?
  - have an effective complaint mechanism for victims?

- have preventive safeguards such as notification and detention records?
- If applicable, was the detention lawful under local and international law ?
  - "Incommunicado detention" (denial of access to family or legal representation)?
  - Has the detainee been given the reasons for his arrest?
  - Has the detainee been brought before a judge?
  - Can the detainee challenge the lawfulness of his detention?
  - Has the detainee received a fair trial?
- Has the individual been subject of rendition (transfer of an individual from one jurisdiction (usually country) to another or removal of an individual to another place without any legal proceeding)?

### EXAMPLES OF ASPECTS TO CONSIDER

- Persons most targeted by torture are political detainees and perceived terrorists (various interpretations of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*).
- The more self-inculpatory the nature of the information provided by an individual, the less likely the information was voluntarily provided by this individual, particularly where it could support a prosecution leading to conviction, the imposition of a lengthy prison term, hard labour, or the death penalty. The question to consider is whether it is plausible that a person would have provided that information voluntarily (various interpretations of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*).
- Corroborated intelligence does not mean that it had not been derived from torture. The level of detail or the reliability of the information are not, on their own, useful factors in assessing whether there are reasonable grounds to believe that information was obtained by torture. A person who was tortured could tell the truth or not, and therefore that torture could produce either reliable or unreliable results. The issue is therefore not to determine whether the information is true or false, whether it is corroborated or not, but whether it is obtained through torture or not (Justice Blanchard - In relation to Mahjoub's Security Certificate, June 2010 and various interpretations of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*).
- There is Federal Court jurisprudence that indicates that in the event the decision maker disagrees with the conclusions reached by credible human rights reports such as Amnesty International, the decision maker is required to state why s/he found the report to be unpersuasive (Memo from General Counsel Immigration Law Division dated 2010 09 22 citing *Thang v. Canada (Solicitor General)* (2004) and *Kazi v. Canada (Minister of Citizenship and Immigration)* (2002)).
- It is widely accepted that reports from Amnesty International, Human Rights Watch and the UN Committee against Torture represent the best evidence available since there is very little direct evidence of torture (Justice Blanchard - In relation to Mahjoub's Security Certificate, June 2010).
- The Service cannot simply rely upon anecdotal information or personal relationships that may exist between special liaison officers and security officials in foreign countries. The Service must always ask what the motivation is of the person who is providing the information. This is particularly the case when countries have poor human rights records, and may be more interested in maintaining a relationship with the Service than actually providing truthful information as to the human rights conditions in that country (Justice Blanchard - In relation to Mahjoub's Security Certificate, June 2010).
- To establish that information was obtained by the use of torture required more than simply pointing to the poor human rights records of a given country (Justice Blanchard - In relation to Mahjoub's Security Certificate, June 2010).
- There are no reasonable grounds to believe that all unsourced information was obtained by torture (Justice Blanchard - In relation to Mahjoub's Security Certificate, June 2010).

## DECISIONS FROM THE COMMITTEE

Following an assessment, the Committee must make one of the following decision:

### Information received from a Foreign Entity

a) The information is likely not derived from mistreatment:

- The information can be used for a specific action without further consultation

b) The information is likely derived from mistreatment:

- If there is no serious threat of loss of life, injury, or substantial damage or destruction of property: The information cannot be used for a specific action.
- If there is a serious threat of loss of life, injury, or substantial damage or destruction of property: The report from the Committee must be sent to the Director via appropriate chain of command and the final decision is to be made by the Director.

### Information to be sent to /solicited from a Foreign Entity

a) There is no Substantial Risk of mistreatment in sharing information:

- The information can be sent/solicited with appropriate caveats / assurances.

b) There is a Substantial Risk of mistreatment in sharing information:

- If there is no serious threat of loss of life, injury, or substantial damage or destruction of property: The information cannot be sent/solicited.
- If there is a serious threat of loss of life, injury, or substantial damage or destruction of property: The report from the Committee must be sent to the Director via appropriate chain of command and the final decision is to be made by the Director.

## TERMINOLOGY

**Mistreatment:** Torture or other cruel, inhuman, or degrading treatment or punishment, as defined in the *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)* and the *Criminal Code of Canada*.

**Likely Derived:** Means that it is more probable than not, that it is a real possibility.

**Substantial Risk:** In order to be "substantial," the risk must be real and must be based on something more than mere theory or speculation. In most cases, the test of a substantial risk of mistreatment will be satisfied when it is more likely than not that there will be mistreatment. However, the "more likely than not" test should not be applied rigidly because in some cases, particularly where the risk is of severe harm, the "substantial risk" standard may be satisfied at a lower level of probability.

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