



INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

RULING ON CORE PARTICIPANT APPLICATION MADE BY ACTION ON ARMED VIOLENCE

The Rt. Hon. Sir Charles Haddon-Cave:

Introduction

1. I have been appointed by the Secretary of State for Defence, the Right Honourable Ben Wallace MP, to conduct an Inquiry under the Inquiries Act 2005 (“the Act”) into allegations of alleged unlawful activity by British armed forces during Deliberate Detention Operations (“DDOs”) in Afghanistan during the period mid-2010 to mid-2013 and related matters.
2. The Terms of Reference task the Inquiry with examining four matters:
 - Whether the investigations carried out by the Royal Military Police were properly and effectively conducted.
 - Whether there is credible information that unlawful killings were carried out by members of British armed forces in Afghanistan between mid-2010 and mid-2013.
 - Whether the circumstances of any such unlawful killings were covered up at any stage.
 - What lessons are to be learned.
3. The Inquiry will also take account of subsequent developments and reviews, in particular into Service Policing and the Service Justice System.
4. On 6th April 2023, I invited anyone who wished to be identified as a “Core Participant” within the meaning of Rule 5 of the Inquiry Rules 2006 (see below) to make an application by 20 April 2023.
5. The Inquiry has received a number of applications for Core Participant status. In this Ruling, I will give my decision on the application made in an email from the Executive Director, Dr. Iain Overton, dated 20th April 2023 on behalf of Action on Armed Violence (“AOAV”) (“the Application”).

Statutory Framework and Relevant Matters for Consideration

6. Section 41 of the Act provides that rules may be made under it for certain purposes, and those rules have now been enacted as the Inquiry Rules 2006 [S.I. 2006 No. 1838] (“the Rules”). Thus, applications for Core Participant status fall to be considered under Rule 5 of the Rules which provides as follows:

“5.—(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.

(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—

(a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;

(b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or

(c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.

(3) A person ceases to be a core participant on—

(a) the date specified by the chairman in writing; or

(b) the end of the inquiry.”

7. It is clear from this provision, therefore, that in determining this Application, I am bound to consider the matters contained within Rule 5(2), although this list is not exhaustive. It is also open to me to take into account any other relevant matters when exercising my discretion.
8. I note that in making these, and indeed all, decisions regarding the procedure or conduct of the Inquiry, I am required to “*act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)*”: see Section 17(3) of the Act.

Determination

9. In determining this Application, I have carefully considered the matters advanced in Dr. Overton’s email of 20th April 2023, in which he has drawn attention to AOAV’s extensive work and reports on the issue of armed violence in Afghanistan and explained that AOAV wish to be of assistance to the Inquiry.
10. I should make it clear that one does not have to be a Core Participant to assist an inquiry. There are a number of ways in which individuals, organisations and members of the public can usefully assist an inquiry such as this, for instance, by providing documents or other materials, by providing expertise or by being invited to appear as a witness. The Inquiry hopes to gain assistance from a wide variety of sources.
11. The Terms of Reference require me to conduct a wide-ranging investigation into a series of grave allegations relating to British armed forces, the resolution of which is a matter of great public importance. It is in the public interest that I am able to establish the facts and reach conclusions as effectively, efficiently and speedily as possible.
12. I am conducting a statutory inquiry under the Inquiries Act 2005. The nature and format of a statutory inquiry is inquisitorial. It is not adversarial litigation. Whilst Core

Participants have a role to play in any inquiry, there are no parties to an inquiry with an entitlement to put a case or have their cases heard. It is for the Inquiry itself to identify the key issues and determine the best ways, processes and procedures to resolve them so as to get to the truth and fulfil the Terms of Reference

13. It follows that the overall guiding principle to my decision-making as regards matters involving process and procedure is as follows: What would best assist me and my team in our work to fulfil the Terms of Reference and what would best facilitate the effective and efficient management of the Inquiry process?
14. Accordingly, in relation to the present application for Core Participant status, I direct myself as to three questions:
 - (1) Does the applicant meet the criteria set out in rule 5(2) of the Rules?
 - (2) If so, acting fairly, is it appropriate in principle to designate them as Core Participants, having regard to the need to avoid unnecessary cost?
 - (3) Overall, what would best assist me and my team in our work to fulfil the Terms of Reference, and what would best facilitate the effective and efficient management of the Inquiry process?
15. Having taken account of all these considerations, I decline to designate AOAV as a Core Participant for the following reasons:
 - (1) First, AOAV do not meet the criteria set out in rule 5(2) of the 2006 Rules. They have not “*played a direct and significant role*” in relation to the matters to which the Inquiry relates within the meaning of rule 5(2)(a). Whilst they may be interested in the subject matter of the inquiry, they do not have “*a significant interest in an important aspect of the matters to which the inquiry relates*” within the meaning of rule 5(2)(b). Further, they are not likely to be subject to any criticism by the Inquiry (rule 5(2)(c)).
 - (2) Second, in any event, in my view, it is not appropriate to designate AOAV as Core Participants, having regard to the need to avoid unnecessary cost.
 - (3) Third, it would not, in my view, best assist me and my team in our work to fulfil the Terms of Reference, or best facilitate the effective and efficient management of the Inquiry process, to designate AOAV as a Core Participant.
16. For these reasons, the Application is refused.

Dated 12th May 2023