



**OVERSEAS SECURITY AND
JUSTICE ASSISTANCE
(OSJA)**

HUMAN RIGHTS GUIDANCE

Foreword

Rt. Hon William Hague Secretary of State for Foreign Affairs

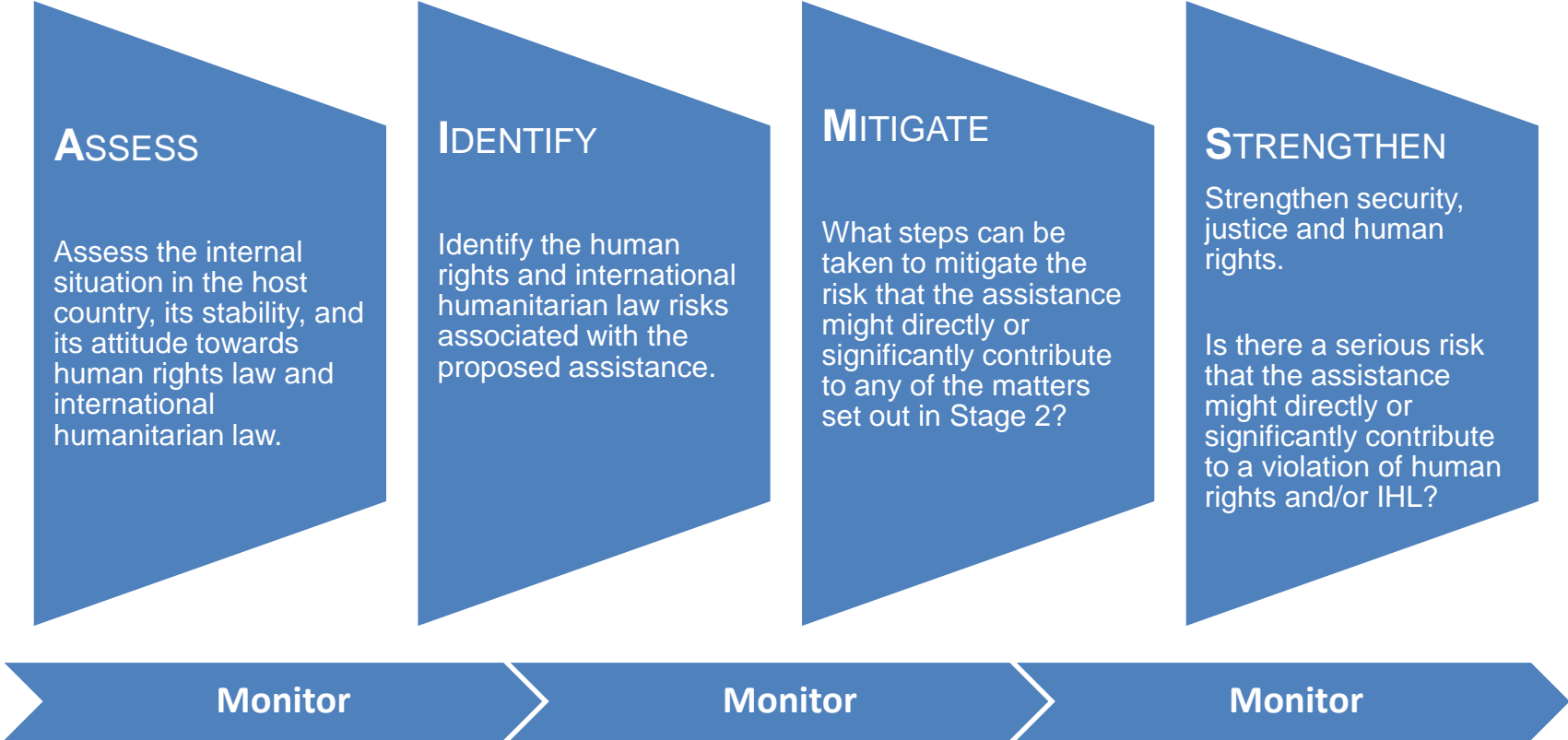
The United Kingdom is active across the globe in providing security and justice assistance to international partners. We have considerable experience and expertise to offer other countries in strengthening institutions such as the police and judiciary.

Better security sector and justice systems overseas have a positive impact not only for the citizens of the country in question but for the interests of the United Kingdom. It is important that we work with a wide range of countries. This includes some countries where we have concerns about human rights. It is of fundamental importance that HMG work on security and justice overseas is based on British values, including human rights and democracy, and this guidance is designed to support that.

We cannot take for granted that assistance provided by HMG will always have a positive impact on the human rights compliance of the institutions with which we work, which is why guidance such as this is important. Work on security and justice reform by necessity incorporates work on human rights – these are the sectors where the rights of individuals are most at risk of being violated. It is in police stations, detention centres and court houses that the state exerts its greatest powers over individuals and so where fairness, human dignity, liberty and justice are most critical.

This guidance is the practical tool that HMG officials need to make these difficult decisions, to ensure that our security and justice work reflects our commitments to strengthen and uphold the record of the United Kingdom as a defender and promoter of human rights and democracy.

OSJA HUMAN RIGHTS RISK MANAGEMENT



OVERSEAS SECURITY AND JUSTICE ASSISTANCE (OSJA) HUMAN RIGHTS GUIDANCE

Guidance on how to ensure HMG overseas security and justice assistance work meets our human rights obligations and our values.

Introduction

1. HMG security and justice assistance to international partners to tackle threats such as terrorism, serious organised crime and conflict, and to support sustainable development, remains crucial to implementing our foreign policy and development priorities. We must continue to provide such assistance and to do so we must ensure that such assistance supports our values and is consistent with applicable domestic and international human rights obligations.
2. To ensure that such threats are dealt with effectively, we need to work closely with international partners at a strategic and operational level. At times, this will mean working with countries, institutions or units where we have concerns about their adherence to and respect for human rights and democracy. Often it is those countries or institutions where security and justice sector assistance is most needed and in many cases, security and justice assistance to these countries and institutions can form part of a wider strategy to address human rights violations. In conducting this work, HMG is determined to engage with all countries in a manner that promotes, rather than undermines, human rights and democracy.
3. This is not always straightforward. While UK assistance overseas in the field of security and justice can help achieve both security and human rights objectives in a particular country (e.g. effective investigation of a specific crime, protecting the public, proportionate use of force, enhancing procedural fairness in criminal trials, reforming a corrupt and dysfunctional armed force or police service), the assistance itself can sometimes present human rights risks, which in certain circumstances may give rise to legal, policy or reputational risks for the UK.
4. The Guidance sets out which human rights and international humanitarian law (IHL) risks¹ should be considered prior to providing justice or security sector assistance and makes clear that an assessment must be carried out of the potential impact of any proposed assistance on those risks prior to the

¹ Solely for the purpose of this Guidance, a reference to “human rights risks and international humanitarian law risks” includes all the matters set out in paragraph 14. This is not an exhaustive description. What human rights or humanitarian law risks apply will depend on the facts of the case and the country concerned.

provision of any assistance. It also sets out examples of potential measures that may be taken in order to mitigate the risk of assistance where it is assessed that there is a serious risk that the assistance might directly or significantly contribute to a violation of human rights and/or IHL. And it sets out clearly when the decision to provide assistance should be taken by senior personnel or ministers. The guidance is already applied by the Foreign and Commonwealth Office. An internal review will take place in April 2012 from which date it will be applicable to all government departments.

5. The Guidance applies to both **case specific** assistance and broader, often longer term **capacity building** assistance. The checklists attached to this Guidance are designed to assist staff make a thorough and comprehensive assessment, and set out the necessary approval process. Where departments have existing processes for assessment and approval, these will be made consistent with the principles of the OSJA Guidance and used in conjunction with it. The checklists are living documents which may be amended over time in the light of experience.

Purpose

6. The purpose of the Guidance and accompanying checklists is to:
 - Assist HMG staff called upon to advise on providing security or justice assistance overseas;
 - Assist in the identification and consideration of applicable legal obligations in the provision of HMG security or justice assistance overseas, including mitigating the risk of legal action;
 - Ensure that there is greater consistency in the approach taken across HMG;
 - Ensure that security and justice activities, while meeting HMG's national security priority, are also consistent with a foreign policy based on British values, including human rights, and the enlightened national interest;
 - Uphold HMG's reputation as a defender and promoter of human rights and democracy.

Who is this guidance for and when does it apply?

7. The Guidance and Checklists are designed to provide user friendly and clear instruction for all staff on the type of human rights and/or IHL risks that should

be taken into account when deciding whether to provide security or justice assistance overseas. They also provide suggestions for how to mitigate potential human rights and/or IHL risks relating to a particular project or programme of assistance. Neither the Guidance nor the accompanying Checklists create any new substantive policy or legal obligations; rather they are designed to ensure that all decisions involving security and justice assistance are undertaken consistently with a thorough and comprehensive assessment of the impact upon human rights and IHL risks that such assistance may have.

8. The Guidance is applicable to project/programme officers and officials making policy decisions on UK engagement in justice and security assistance overseas. The types of engagement envisaged may result in changes being made to the laws, policies, practices or capabilities of foreign justice or security institutions and/or result in individuals being identified, investigated, arrested, detained, interviewed, interrogated, prosecuted, tried or sentenced by foreign authorities. These types of activities will be in support of legitimate security or justice objectives, including support for human rights, but may also give rise to human rights or humanitarian law risks, and it is therefore important that when considering whether and how to provide assistance, the Guidance is applied. The institutions typically (but not exclusively) of relevance in this context are: armed forces, police, gendarmeries, paramilitary forces, presidential guards, intelligence and security services (military and civilian), coast guards, border guards, customs authorities, reserve or local security units (civil defence forces, national guards, militias), judiciary, defence, interior and justice ministries, and criminal investigation services.
9. **Checklist A – Capacity Building.** All HMG project/programme documents should incorporate an assessment of human rights and/or IHL risks, which the project/programme implementer or designer will be required to consider. Checklist A will assist HMG staff responsible for designing and assessing the programme or project to satisfy themselves that any human rights and/or IHL risks potentially associated with a proposed programme have been properly considered and that, if needed, appropriate mitigation measures have been or will be put into place. The findings of the assessment should be included in existing department programme formats. The Checklist sets out the process for involving senior personnel in the decision making process. Staff should also refer to Checklist A when designing or developing a strategy or package of security or justice work (as distinct from an individual project).
10. **Checklist B – Case Specific Assistance.** Staff should use the process set out in Checklist B when considering a request for specific assistance e.g. SO15 Counter-Terrorism Command deployment following a terrorist or criminal attack. When taking the decision whether to provide the assistance,

the decision maker should be satisfied that any human rights and/or IHL risks potentially associated with the assistance have been properly considered and that appropriate mitigation measures have been or will be put into place. The human rights and/or IHL risk assessment should be recorded in writing either as part of a submission or in another record of the decision taken. Checklist B sets out the factors that should be taken into account in making the decision and at which point senior personnel should be involved.

Assessment and Approvals Process (AIMS)

11. The human rights risk assessment process is to be conducted in four stages – the AIMS Framework:
 - i) **Assess** the internal situation in the host country, its stability, and its attitude towards human rights law and international humanitarian law.
 - ii) **Identify** the human rights and/or international humanitarian law risks associated with the proposed assistance.
 - iii) Consider what step(s) can be taken to **mitigate** any risk that the assistance might directly or significantly contribute to any of the matters set out at Stage 2.
 - iv) Make an overall assessment of whether there a serious risk that the assistance might directly or significantly contribute to a violation of human rights and/or IHL, and determine whether senior personnel or Ministers need to approve this assessment.
Where possible, the assistance should seek to **strengthen** compliance with human rights and/or international humanitarian law in the host country. Where no serious risk is identified, you should also consider whether there is a risk to HMG’s reputation in providing the assistance.

The steps are summarised in the diagram on page 2.

12. The checklists guide you in more detail through the human rights risk assessment process. They require you to consider the human rights record of the country in question as well as the record of the specific institution or unit to which we would like to provide assistance. They set out the main potential human rights and/or IHL risks that you should consider and they provide a wide range of practical steps that may assist the mitigation of the specific risk identified. The suggested mitigation steps will not all be applicable to each case of assistance and there may be other mitigating factors that are not listed. Assistance should be regularly monitored to ensure that it complies with this guidance, and a human rights risk assessment should be built into the normal evaluation process.

13. The types of human rights and IHL risks that should be considered are:

- use of the death penalty;
- unlawful or arbitrary arrest or detention;
- torture or cruel, inhuman or degrading treatment (CIDT) (including standards of detention);
- unlawful killing and/or unlawful use of force (e.g. disproportionate, indiscriminate);
- enforced disappearance;
- unfair trial or denial of justice;
- unlawful interference with democratic rights (e.g. freedom of assembly or expression);
- violations of the rights of the child including ensuring that soldiers under the age of 18 take no direct part in hostilities;
- *refoulement* (forced return where there is a danger of torture, CIDT or flagrant denial of another right);
- human trafficking and/or sexual violence;
- persecution of an identifiable group (e.g. on racial or ethnic grounds) in combination with any of the above violations;

other violations not already identified. You should consider whether the assistance may inadvertently support terrorism or whether it may undermine the principles of conflict prevention as defined in HMG's Building Stability Overseas Strategy (BSOS).

14. Each checklist also sets out in which circumstances senior personnel (at SCS or Head of Mission level) or Ministers must be consulted. Consulting senior personnel or Ministers does not imply that action will be authorised but it enables senior personnel or Ministers to look fully at the complexities of the case, including legal issues.

15. If you require any assistance or advice in carrying out the human rights assessment for any particular project or programme, you should consult your legal advisers. You may also want to consult the relevant FCO geographical department or post. If you need any further advice on how to use this Guidance, please contact the Human Rights and Democracy Department in the FCO.

16. Annexes

Annex A - Checklist for capacity building work overseas.

Annex B - Checklist for case specific assistance overseas.

ANNEX A

Checklist for Capacity Building Overseas

When should you use this Checklist?

This Checklist should be used when considering the overall strategic approach to engagement with security or justice actors in a particular country or when completing a programme or project proposal or business case.²

STAGE 1: STRATEGIC OVERVIEW – ASSESS THE SITUATION IN-COUNTRY

What is the internal situation in the host country and its attitude towards human rights law and/or international humanitarian law (IHL)? (if delivery is to take place in more than one country, then a separate assessment should be made for each country)

A	Are there concerns about the stability of the host country now or in the next 5 years or ongoing conflict in any part of the country? (Sources: HMG Conflict Assessments, Conflict Risk Index, EU Watch List, CT priority country, etc.)
B	Are there serious human rights and/or IHL concerns about the host country? When making this assessment consideration must be given in particular to the violations listed in Stage 2 below. Consideration must also be given to the extent that the rule of law both exists and is upheld in the country and what, if any, effective democratic oversight and accountability exists. (Sources: FCO annual human rights report, US State Department human rights report, UN reports, credible NGO reports, HMG Conflict Assessments, DFID Country Governance Analyses etc.)
C	Does the host country retain the death penalty?
D	<p>Are there <u>any</u> human rights concerns about the institution/unit that will receive the assistance?</p> <p>In making this assessment , you should consider the following information:</p> <ul style="list-style-type: none"> • The name of the institution/unit and its head; and the ability and will of the command structures to adhere to human rights standards; • The structure and accountability of the <u>institution</u> – e.g. under Minister of Interior; • The structure and accountability of the <u>unit</u>; • The institution and unit’s record on human rights and IHL - Consider whether the institution has committed or sanctioned human rights violations in the past and how perpetrators were dealt with; • Previous/current dealings HMG has had/is having with the institution or unit and HMG’s assessment of the reliability, integrity, trustworthiness of the institution/unit.

If the assessment is that there are no concerns with the country or institution concerned as set out in A-D above, continue to Stage 4. Otherwise, you should proceed to Stage 2

² The Checklist is not intended to cover situations already covered by the Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas and on the Passing and Receipt of Intelligence Relating to Detainees. The Checklist is not intended to cover the export of military or security equipment although much of the information relevant to this Guidance will be relevant to assessments made under the Export Licensing Criteria. If the provision of equipment is part of your assistance, you must consult the Consolidated Arms Export Licensing Criteria.

STAGE 2: IDENTIFY RISK

Consider whether the assistance might directly or significantly contribute to any of the following:

When making this assessment consideration must be given to: (i) the nature of the proposed assistance that is sought to be provided and what that assistance is intended to achieve; and (ii) the concerns assessed at Stage 1.

- i. use of the death penalty;
- ii. unlawful or arbitrary arrest or detention;
- iii. torture or CIDT (including standards of detention);
- iv. unlawful killing and/or unlawful use of force (e.g. disproportionate, indiscriminate);
- v. enforced disappearance;
- vi. unfair trial or denial of justice;
- vii. unlawful interference with democratic rights (e.g. freedom of assembly or expression);
- viii. violations of the rights of the child including ensuring that soldiers under the age of 18 take no direct part in hostilities;
- ix. refoulement (forced return where danger of torture or CIDT);
- x. human trafficking and/or sexual violence;
- xi. persecution of an identifiable group (e.g. on racial, gender, religious or ethnic grounds) in combination with any of the above violations;
- xii. Other violations not already identified (please specify);
- xiii. Support to terrorism or undermine the principles of conflict prevention as defined in HMG's Building Stability Overseas Strategy (BSOS).

STAGE 3: MITIGATE RISKS

What steps have been taken in the past, are being taken or could be taken to mitigate any risk that the assistance might directly or significantly contribute to any of the matters set out at Stage 2?

The list below provides examples of the types of mitigation measures that could be adopted. The list is intended as a guide only. It is not expected that all the potential mitigating measures listed would need to be in place for every proposed project/programme. Clearly identify which of the measures are relevant, realistic and effective for the particular project or programme being considered. The assessment should also set out any other mitigation steps not listed here that you have identified and put into place. Consider whether you need to involve senior personnel to ensure effective implementation of a particular mitigation step, e.g. making high level representations.

Death Penalty

Consult HMG Death Penalty Assistance Policy and ensure that the necessary action has been taken.

1	Project design and exit strategy: Consider the structure and delivery of the project and whether there is an opportunity for regular or periodic review/assessment in order to identify and/or consider any human rights and/or IHL risks. Consider whether the programme or project provides an opportunity for HMG to withdraw. Consider delivering UK assistance in <u>phased deployment</u> , dependent on the result of human rights monitoring and evaluation.
2	Assurances: assurances have been or will be obtained from the host Government and/or the recipient institution/unit before the start of the project or programme on compliance with the relevant international human rights and/or IHL standards.

3	Lobbying and representations: lobbying or representations will be made on the importance of complying with international human rights and/or IHL standards.
4	Training on human rights: the project or programme includes or will include training related to promoting compliance with international human rights and/or IHL standards. (If appropriate, identify the training manual used.)
5	Evaluation: all project or programme evaluations will include an assessment of any violations of human rights and/or IHL committed by the unit/institution in receipt of the assistance and or components thereof.
6	Monitoring: a system of monitoring will be used to identify and record violations that occur during or as a result of the project, or events which could materially alter the level of risk.
7	Reporting: a system for reporting allegations of any violations of human rights and/or IHL committed by the unit/institution in receipt of the assistance and or components thereof.
8	Data control: where projects involve data collection which identifies individuals (e.g. Biometric data, intelligence data), measures are in place/will be taken to ensure the proper control and use of the data.
9	Complementary HMG projects: other HMG projects or programmes by a relevant UK agency(s)/department(s) contribute to human rights and/or IHL compliance by the unit/institution (e.g. strengthening accountability mechanisms, detention monitoring, promotion of fair trials, improving detention conditions). Consideration must also be given to whether the assistance proposed under the project or programme could in itself be a mitigating factor e.g. if the main objective of the programme is to instil a human rights culture into the unit or institution. You should also ensure that any other relevant HMG policy has been complied with.
10	MOU or other terms of reference: Legal advice must be sought prior to the completion of an MOU however an MOU could include one of more of the following elements: <ul style="list-style-type: none"> • Set out the terms under which the assistance can be provided or any limits on the assistance; • promote accountability for past and future human rights/IHL violations; • promote reform of policies or practices not in conformity with international standards; • promote greater transparency and consultation between institutions, civil society and the general public • promote greater acceptance of international scrutiny (e.g. acceptance of open invitations to UN special experts).
11	Vetting: <ul style="list-style-type: none"> • Measures will be taken to carry out vetting of participants (e.g. criminal record checks, past involvement in human rights violations, identification of potential rogue elements such as terrorist sympathisers, possible use of child soldiers). • If systematic vetting is not feasible, written confirmation will be sought from the recipient unit or institution as to integrity of participants. • A training log will be maintained with the details of those trained.
12	Weapons handling: <ul style="list-style-type: none"> • Provisional view received from FCO, BIS or MOD, as appropriate, on whether arms gifted or supplied as part of the project could be used in contravention of the Consolidated EU and National Arms Export Licensing Criteria (particularly criteria 2, 3 or 4).

	<ul style="list-style-type: none"> Any old weapons decommissioned and/or destroyed under controlled conditions. Weapons storage facilities provided or reinforced. UK-supplied arms serialised in accordance with UN standards.
13	Operational guidelines/doctrine: where project activity relates to advice on operational guidelines or military doctrine, ensure they comply with the human rights and/or IHL obligations of that state.
14	Identification: distinctive identification will be provided to recipient units (e.g. vehicles/uniforms/lapel badges) to enable public identification of units/individuals.
15	Equality of arms in the justice sector: consider training provided or ongoing in country as a whole to ensure overall training is fairly balanced e.g. that defence lawyers as well as prosecutors receive support and training.
16	Any other mitigation measure not identified above.
<p>Consider whether, following implementation of the mitigating measures identified, there remains a serious risk that the assistance might directly or significantly contribute to any of the risks set out at Stage 2. You should assess whether the measures identified are sufficient to reduce the risk to <u>less than a serious risk</u>.</p>	

REPUTATIONAL RISK TO HMG

Consideration must also be given to whether there is any reputational or political risk to HMG as a result of the delivery of the project or programme. Even where it is assessed that the provision of the assistance might not directly or significantly contribute to any of the matters set out at Stage 2, there may be a reputational risk, for example, because the assistance in being provided to an institution which has historically been associated with human rights and/or IHL violations.

Please note that a media strategy does not mitigate human rights risks but can mitigate the reputational risk.

STAGE 4: OVERALL RISK ASSESSMENT AND APPROVAL PROCESS

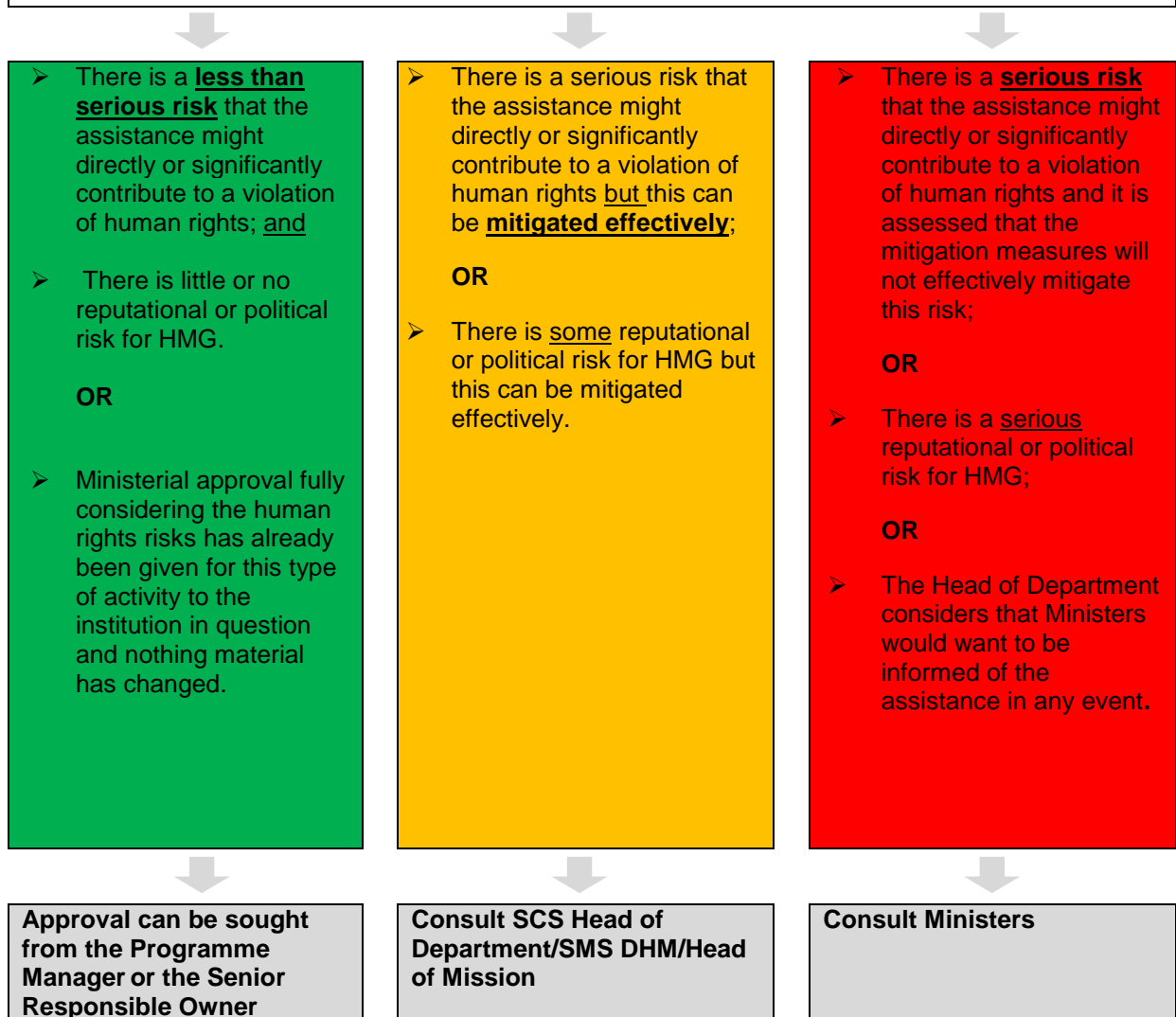
You should now consider:

1. Is there a **serious risk*** that the assistance might **directly or significantly contribute to a violation of human rights and/or IHL?**
2. Is there a **reputational or political risk to HMG?**

*What amounts to a serious risk will depend on the facts of each case. But the possibility of a violation should be a real possibility and not just theoretical or fanciful.

You should always consider consulting your legal advisers and the relevant FCO department or post when considering the human rights and IHL risks of implementing a programme or project, particularly where there is uncertainty about any of the issues arising under this Checklist or if a submission to Ministers is required.

NEXT STEPS



ANNEX B

Checklist for Case Specific Assistance

When should you use this Checklist?

This checklist is intended for the use of officials making policy decisions on the provision of case specific UK overseas security and justice assistance (e.g. investigative assistance after a terrorist attack or serious crime), where the assistance may lead to *inter alia* individuals being identified, interviewed, investigated, apprehended, detained, prosecuted, ill-treated and/or punished by foreign authorities.³ It aims to help you assess and seek to mitigate any human rights risks involved in this assistance. Often decisions need to be taken quickly when considering case specific assistance. This checklist should ensure that relevant factors have been taken into account and should be reflected when submitting to ministers.

Your legal advisers should be consulted, in particular where you have doubts about whether the risk is serious and also in identifying mitigation steps or where a submission to ministers is necessary.

STAGE 1: STRATEGIC OVERVIEW – ASSESS THE SITUATION IN-COUNTRY

What is the internal situation in the host country and its attitude towards human rights law and international humanitarian law (IHL)? (if delivery is to take place in more than one country, then a separate assessment should be made for each country)

A	Are there concerns about the stability of the host country now or in the next 5 years or ongoing conflict in any part of the country? (Sources: Cabinet Office Conflict Risk Index, EU Watch List, CT priority country, etc.)
B	Are there serious human rights and/or IHL concerns about the host country? When making this assessment, consideration must be given in particular to the violations listed in Stage 2 below. Consideration must also be given to the extent that the rule of law both exists and is upheld in the country and what, if any, effective democratic oversight and accountability exists. (Sources: FCO annual human rights report, US State Department human rights report, UN reports, credible NGO reports, etc.)
C	Does the host country retain the death penalty?
D	Are there <u>any</u> human rights concerns about the institution/unit that will receive the assistance? In making this assessment, you should consider the following information: <ul style="list-style-type: none"> • The name of the institution, its head and the ability and will of the command structures to adhere to human rights standards; • The structure and accountability of the institution and the unit – e.g. under Minister of Interior; • The institution and unit's record on human rights and IHL. Consider whether the institution has committed or sanctioned human rights violations in the past and how perpetrators were dealt with;

³ The Checklist is not intended to cover situations already covered by the Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas and on the Passing and Receipt of Intelligence Relating to Detainees. The Checklist is not intended to cover the export of military or security equipment. If the provision of equipment is part of your assistance, you must consult the Consolidated Arms Export Licensing Criteria.

	<ul style="list-style-type: none"> • Previous/current dealings HMG has had/is having with the institution or unit and HMG's assessment of the reliability, integrity, trustworthiness of the unit; • What the assistance is designed to achieve.
<p>If the assessment is that there are no concerns with the country or institution concerned as set out in A-D above, continue to Stage 4. Otherwise, you should proceed to Stage 2</p>	

<p>STAGE 2: IDENTIFY RISK Consider whether the assistance might directly or significantly contribute to any of the following:</p>	
	<ul style="list-style-type: none"> i. use of the death penalty; ii. unlawful or arbitrary arrest or detention; iii. torture or CIDT (including standards of detention); iv. Unlawful killing and/or unlawful use of force (e.g. disproportionate, indiscriminate); v. enforced disappearance; vi. unfair trial or denial of justice; vii. unlawful interference with democratic rights (e.g. freedom of assembly or expression); viii. violations of the rights of the child including , including ensuring that soldiers under the age of 18 take no direct part in hostilities; ix. <i>refoulement</i> (forced return where danger of torture or CIDT); x. human trafficking and/or sexual violence; xi. persecution of an identifiable group (e.g. on racial, gender, religious or ethnic grounds) in combination with any of the above violations; xii. Other violations not already identified (please specify).

<p>STAGE 3: MITIGATE RISKS</p> <p>What steps have been taken in the past, are being taken or could be taken to mitigate any assessment that the assistance might directly or significantly contribute to any of the matters set out at Stage 2?</p> <p>The list below provides examples of the types of mitigation measures that could be adopted. The list is intended as a guide only. It is not expected that all the potential mitigating measures listed would need to be in place for each situation but it may be often be necessary to obtain assurances if there is a possibility of mistreatment or the imposition of the death penalty. The terms of reference of the intervention may need to be adapted according to the situation. Consider whether you need to involve senior personnel to ensure effective implementation of a particular mitigation step, e.g. making high level representations.</p>	
<p>General</p>	
1	<p>Terms of reference: provide clear terms of reference to ensure that assistance will not lead to human rights and IHL violations. Consider the structure and delivery of the assistance and whether there is an opportunity for review/assessment in order to identify and/or consider any human rights and IHL concerns. Consider whether the terms of engagement allow HMG to withdraw its assistance. Determine whether there is or should be an overarching MOU in place which incorporates human rights principles.</p>
2	<p>Assurances: assurances have been or will be obtained from the host Government and/or the recipient institution/unit on compliance with international human rights and/or IHL standards. Where possible, assurances should be in place before the assistance is provided.</p>

3	Lobbying and representations: lobbying or representations will be made on the importance of complying with international human rights and IHL standards.
4	Monitoring: a system of monitoring will be used to identify and record violations that occur during or as a result of the project, or events which could materially alter the level of risk.
5	Reporting: a system for reporting and follow-up of allegations of human rights and IHL violations will be used.
6	Data control: where the assistance involves the sharing of information or collection of data which identifies individuals (e.g. Biometric data, intelligence data), steps will be taken to ensure the safe control of the data.
7	Any other mitigation measure not already set out in this Checklist.
Death Penalty	
11	Compliance with HMG Death Penalty Assistance Policy (<u>FCO and Legal Advisers should be consulted</u>). Where there is a significant risk of the death penalty being imposed for the crime under investigation, the policy is: <ul style="list-style-type: none"> a) Written assurances should be sought before agreeing to the provision of assistance that anyone found guilty would not face the death penalty. b) Where no assurances are forthcoming or where there are strong reasons not to seek assurances, <u>Departmental Ministers (including FCO) should be consulted</u> to determine whether, given the specific circumstances of the case, we should nevertheless provide assistance. c) In exceptional circumstances, where it is imperative that we act quickly to safeguard the integrity of evidence or protect British lives, UK personnel should be allowed to deploy immediately without seeking assurances about the death penalty. Departmental Ministers (including FCO) should be consulted and consideration given to seeking assurances in slower time.
11	Where the method of death penalty could amount to torture or CIDT (e.g. stoning or excessive periods on death row), the section below on 'Torture and CIDT' has been considered.
Torture and CIDT	
12	Terms of reference for the assistance will specify limitations on the role of UK personnel (e.g. in some circumstances this might stipulate that UK personnel will not supervise, instruct or otherwise provide direct support to investigations where there is a serious risk of torture/CIDT).
15	Assurances have been or will be obtained from the host government that detainees will not be ill-treated on arrest or detention, and that any detainees who may be under particular risk whilst in detention will receive effective protection.
16	Repeated reminders to the host government, at the political and operational/tactical level, of the importance we place on respect of the absolute prohibition on torture and CIDT.
17	FCO post/mission to monitor the assistance and to report immediately to FCO any concerns of torture or CIDT in accordance with the Torture and Mistreatment Reporting Guidance.

Extra Judicial Killings	
18	Assurances have been or will be obtained from the host government that the recipient institution/unit has received training and/or has standard operating procedures (SOPs) on the use of force and firearms in accordance with international law and standards and that extra judicial killings will not be tolerated (Request a copy of the relevant SOPs).
19	Repeatedly remind the host government, at the political and operational/tactical level, on the importance we place on use of force and firearms being in accordance with international law and standards (e.g. UN Guidelines on the Use of Force and Firearms).
Fair Trials	
20	Repeatedly remind the host government, at the political and operational level, on the importance we place on legal proceedings being conducted in accordance with international fair trial standards (e.g. access to counsel, independent and impartial court, etc.).
21	Assurances have been or will be obtained that access to court proceedings will be given to independent trial monitors, including HMG staff.
<p>Consider whether, following implementation of the mitigating measures identified, there remains a serious risk that the assistance might directly or significantly contribute to any of the risks set out at Stage 2. You should assess whether the measures identified are sufficient to reduce the risk to <u>less than a serious risk</u>.</p>	

REPUTATIONAL RISK TO HMG
<p>Consideration must also be given to whether there is any reputational or political risk to HMG as a result of the proposed assistance. Even where it is assessed that the provision of the assistance will not directly or significantly contribute to any of the matters set out at Stage 2 there may be a reputational risk, for example, because the assistance is being provided to an institution which has historically been associated with human rights and/or IHL violations.</p> <p><i>Please note that a media strategy does not mitigate human rights risks but can mitigate the reputational risk.</i></p>

STAGE 4: OVERALL ASSESSMENT AND APPROVAL PROCESS

You should now consider:

1. Is there a **serious risk*** that the assistance might **directly or significantly contribute to a violation of human rights and/or IHL?**
2. Is there a **reputational or political risk to HMG?**

*What amounts to a serious risk will depend on the facts of each case. But the possibility of a violation should be a real possibility and not just theoretical or fanciful.

You should always consider consulting your legal advisers and the relevant FCO department or post when deciding whether to provide case specific assistance, particularly where there is uncertainty about any of the issues arising under this Checklist or if a submission to ministers is required.

NEXT STEPS

- There is a **less than serious risk** that the assistance might directly or significantly contribute to a violation of human rights; and
- There is little or no reputational or political risk for HMG.

OR

- You already have ministerial approval for this assistance.

- There is a serious risk that the assistance might directly or significantly contribute to a violation of human rights but this can be mitigated effectively;

OR

- There is some reputational or political risk for HMG but it can be mitigated effectively.

- There is a **serious risk** that the assistance might directly or significantly contribute to a violation of human rights and it is assessed that the mitigation measures will not effectively mitigate this risk;

OR

- There is a **serious** reputational or political risk for HMG;

OR

- There is a significant risk that the death penalty will be imposed and no assurances have been forthcoming;

OR

- The Head of Department considers that Ministers would want to be informed of the assistance in any event.

Approval can be sought from Grade 7 Deputy Head of Department or equivalent

Consult SCS Head of Department/SMS DHM/Head of Mission

Consult Ministers

