**ANNEX B**

**Checklist for Case Specific Assistance**

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| **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 where the assistance may lead to *inter alia* individuals being identified, interviewed, investigated, apprehended, detained, prosecuted, ill-treated and/or punished by foreign authorities.[[1]](#footnote-1) Often decisions on case specific assistance need to be taken quickly. This checklist ensures 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. |

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| **STAGE 1: Strategic overview – assess the situation in-country**  In countries where HMG is regularly engaged in security and justice assistance, the relevant Post will maintain this in-country assessment and provide it to all interested departments or agencies to aid them in following the OSJA process. It will also notify them when this assessment changes significantly. Project leads should ask their department or agency’s OSJA Lead to put them in touch with the relevant Post if they do not already have their details.  **What is the internal situation in the host country and its attitude and practice towards human rights law and/or international humanitarian law (IHL)?** If delivery is to take place in more than one country, then either a separate assessment should be made for each country, or a combined assessment should be made covering the entirety of the territory concerned. Focus on likely areas of concern to security and justice assistance. Broader areas of human rights such as working conditions or property rights may be irrelevant. It is also important to distinguish between IHL and Human Rights as the two are distinct areas of law that require distinct assessment. IHL applies in situations of armed conflict or occupation, though it may not always be clear whether or not a situation constitutes an armed conflict or occupation. When it doubt, it should be assumed. You should involve the expertise of legal advisors and FCO War Crimes Team where necessary. | |
| 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 Global](https://eeas.europa.eu/topics/crisis-response/8428/eu-conflict-early-warning-system_en) Conflict Risk Index, 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](https://www.gov.uk/government/collections/human-rights-and-democracy-reports), [US State Department human rights report](http://www.state.gov/j/drl/rls/hrrpt/), [UN reports](http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx), credible NGO reports, etc.) |
| C | **Does the host country retain the death penalty?** To which offences does it apply and are death sentences carried out in practice? |
| D | **What mitigations are already in place or underway to address the concerns identified in sections A-C? How effective are they and in what contexts do they apply?**  You may wish to refer to the list of suggested mitigations at Stage 3. This section should give a high-level overview; any relevant detail concerning the particular unit or institution should be reflected at Stage 2. |
| **STAGE 2: Identify risk**  When making this assessment consideration must be given to: (i) the nature of the proposed assistance and what it is intended to achieve; and (ii) the concerns assessed at Stage 1. Be sure to distinguish between direct risks and indirect risks that may nonetheless be significant. | | |
| A | **What is the proposed assistance and who are the beneficiaries?** What is the nature and extent of the UK’s relationship with this institution/unit? | |
| B | **Are there any human rights concerns about the institution/unit that will receive the assistance?** Post may have an existing assessment of the institution/unit which you should seek to draw on and contribute to. In making this assessment, you should consider the following information:   * 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 institution – e.g. under Minister of Interior * the structure and accountability of the unit * the institution and unit’s record on human rights and IHL, including allegations - Consider whether the institution has committed or sanctioned human rights violations in the past and how perpetrators were dealt with * previous/current dealings the UK has had/is having with the institution or unit and HMG’s assessment of the reliability, integrity, trustworthiness of the institution/unit * what the assistance is designed to achieve.   **If the assessment is that there are no concerns with the country and institution/unit concerned as set out in Stage 1 and this section, continue to Stage 4. Otherwise, you should proceed through all the stages below.** | |
| C | **Consider whether the assistance might directly or significantly contribute to any of the following:**   1. use of the death penalty, both the imposition of the death sentence and executions 2. unlawful or arbitrary arrest or detention 3. torture or CIDT (including standards of detention) 4. unlawful killing and/or unlawful use of force (e.g. disproportionate, indiscriminate) 5. enforced disappearance 6. unfair trial or denial of justice 7. unlawful interference with democratic rights (e.g. freedom of assembly or expression) 8. violations of the rights of the child including , including ensuring that soldiers under the age of 18 take no direct part in hostilities 9. *refoulement* (forced return where danger of torture or CIDT) 10. human trafficking and/or sexual violence 11. persecution of an identifiable group (e.g. on racial, gender, religious or ethnic grounds) in combination with any of the above violations 12. other violations not already identified (please specify).   **DO NOT consider whether you are able to mitigate these effectively at this stage. It is important that the full risks are clearly laid out before considering mitigation.** | |
| D | **Consider whether there is any reputational or political risk as a result of the proposed assistance.**  Even where it is assessed that there is not a serious risk that the assistance might directly or significantly contribute to human rights or IHL violations, 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. | |

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| **STAGE 3: Mitigate risks**  **What steps have been taken in the past, are being taken or could be taken to mitigate any risks that the assistance might directly or significantly contribute to any of the matters set out at Stage 2?**  Consider what specific mitigations are required for your project/programme. You should also consider building on the mitigations listed in Section D of Stage 1 to mitigate the specific risks associated with your project/programme. The list below provides examples of the types of mitigation measures that could be adopted. 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. | |
| **General** | |
| 1 | **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 you to withdraw assistance. Determine whether there is or should be an overarching MOU in place which incorporates human rights principles. |
| 2 | **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. |
| 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 effective 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 involve data collection and/or analysis 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. This may include embedding a Terms of Use into software licences, restricting functions of software pending accreditation of human rights compliance training, built in lock down functions and/or audit logs, |
| 7 | **Communications strategy** to manage reputational risk. *Please note that a media strategy does not mitigate human rights risks but can help mitigate the reputational risk.* |
| 8 | **Any other mitigation measure** not already set out in this Checklist. |
| **Death Penalty** | |
| 9 | 1. Written assurances should be sought before agreeing to the provision of assistance that anyone found guilty would not face the death penalty. 2. Where no assurances are forthcoming or where there are strong reasons not to seek assurances, the case should automatically be deemed ‘High Risk’ and FCO Ministers should be consulted to determine whether, given the specific circumstances of the case, we should nevertheless provide assistance. |
| 10 | 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** | |
| 11 | 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). |
| 12 | 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. |
| 13 | 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. |
| 14 | 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** | |
| 15 | 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). |
| 16 | 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** | |
| 17 | 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.). |
| 18 | Assurances have been or will be obtained that access to court proceedings will be given to independent trial monitors, including HMG staff. |

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| **STAGE 4: Overall assessment and approval process**  You must 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? How effectively does your mitigation allow you to manage this risk? AND 2. Is there a reputational or political risk to HMG or agencies?   \*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. Case studies are available via Civil Service Learning.  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. You should also consider discussing with the relevant FCO department or post, particularly where there is uncertainty about the issues arising under this Checklist or if a submission to ministers is required.  Project leads may choose to not offer assistance where the risks are serious and impossible to mitigate. | | | |
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|  | **Low Risk** | **Medium Risk** | **High Risk** |
| Human Rights and IHL Risk, as per Stage 2 Section C | There is a **less than serious risk** that the assistance might directly or significantly contribute to a violation of human rights. | 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**. | 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. |
| Reputational and Political Risk | There is **little or no** reputational or political risk. | There is **some** reputational or political risk but this can be mitigated effectively. | There is a **serious** reputational or political risk. |
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| Appropriate action | **Approval can be sought from the person with day-to-day oversight of the proposal**. | **Consult senior personnel within your organisation**, usually SCS Head of Department, DHM, Head of Mission or Assistant Chief Constable. | **Consult Ministers,** unless Ministerial approval has already been given for this activity with this unit/institution and nothing material has changed. |
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| File your completed and approved assessment with the relevant Post(s) and your organisation’s OSJA Lead. Consider whether Ministers would want to be informed of the assistance in any event. | | | |

1. 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. [↑](#footnote-ref-1)