



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

HUMAN RIGHTS GUIDANCE

Foreword

Rt. Hon. Boris Johnson Secretary of State for Foreign and Commonwealth Affairs

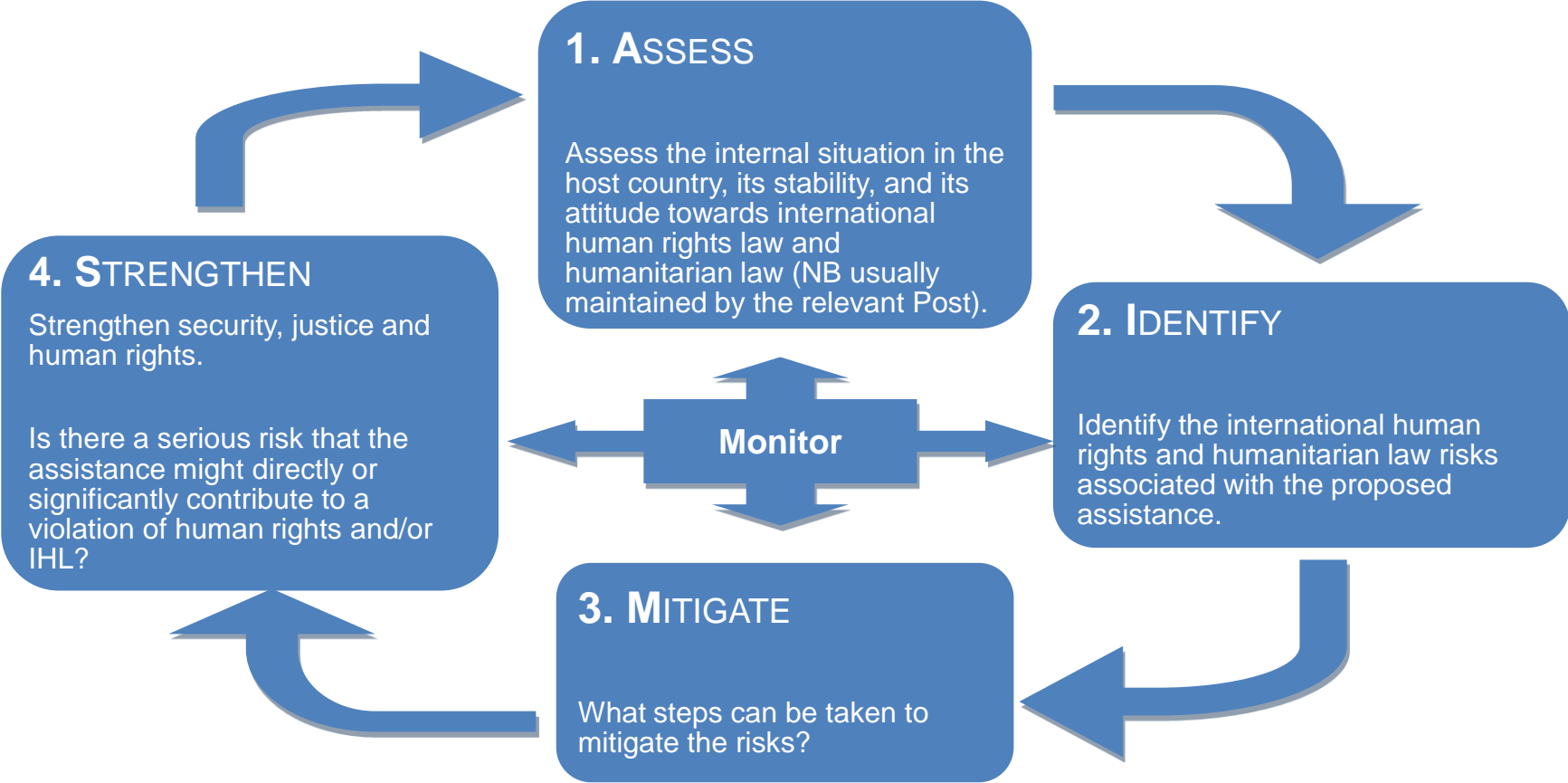
The United Kingdom is active across the globe in providing security and justice assistance. We have considerable experience and expertise to offer other countries in strengthening institutions such as the police and judiciary.

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.

Making accurate decisions requires officials to be candid in their assessments of the intent and ability of other countries to uphold international law. These assessments will often, though not always, be sensitive. HMG is therefore only rarely able to publish the full reasoning behind its decisions. This is not borne out of any aversion to external scrutiny, but rather is a necessary corollary of conducting a thorough assessment. We continue to welcome external challenge to our decision-making on human rights, including through our Annual Human Rights Report, parliamentary scrutiny, regular dialogue with civil society and consultation with our international partners.

This guidance, first put in place in 2011 by my predecessor the then Foreign Secretary Lord Hague of Richmond, is the practical tool that officials need to make these difficult decisions in order to ensure that our security and justice work defends and promotes human rights. It is one of the most comprehensive and demanding such tools anywhere in the world and has inspired similar processes in other countries that pride themselves on their human rights record. We will continue to evolve and adapt it in the light of experience.

OSJA HUMAN RIGHTS RISK MANAGEMENT



OVERSEAS SECURITY AND JUSTICE ASSISTANCE (OSJA) HUMAN RIGHTS GUIDANCE

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

Introduction

1. The British Government believes in helping other states' justice and security systems when it is consistent with our domestic and international law obligations and useful, safe and in the national interest to do so. We offer assistance to help raise standards of protection of human rights, to help address threats such as terrorism, serious and organised crime and conflict, and to support sustainable development. In order to provide such assistance we must ensure that it supports our values and is consistent with our domestic and international human rights obligations.
2. 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, training in protecting the public and proportionate use of force, enhancing procedural fairness in criminal trials, supporting reform of corrupt and dysfunctional armed forces or police services), the assistance itself can sometimes present human rights or IHL risks, which in certain circumstances may give rise to legal, policy or reputational risks for the UK.
3. The Guidance sets out which human rights and international humanitarian law (IHL) risks¹ must be considered prior to providing justice or security sector assistance. It specifies that an assessment must be made of the potential impact of any proposed assistance on those risks, as well as on reputational or political risk, prior to the provision of any assistance. It also sets out examples of measures that may be taken to mitigate the risk that the assistance might directly or significantly contribute to a violation of human rights and/or IHL. And it sets out when the decision to provide assistance should be taken by senior personnel or ministers.
4. The Guidance applies to both **case specific** assistance and broader, often longer term **capacity building** assistance. The checklists annexed to this

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 Section 2 of the Checklists. This is not an exhaustive description. What human rights or international humanitarian law risks apply will depend on the facts of the case and the country concerned.

Guidance will assist staff in making a thorough and comprehensive assessment and following the necessary approval process.

5. Departments and agencies may tailor the OSJA process to suit their own requirements, but this should in no way weaken or dilute the rigour of the OSJA process. Explanatory notes and annexes are preferred over alterations of the text. All organisations regularly involved in security and justice assistance should have a designated internal **OSJA Lead**, known to the FCO, who can advise their personnel on the OSJA process and ensure consistency of application. If tailoring the OSJA process, the department or agency's OSJA Lead must consult the FCO.
6. 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.

Purpose

7. The purpose of the Guidance and accompanying checklists is to:
 - Ensure that security and justice activities, while meeting HMG's national security priorities, are also consistent with a foreign policy based on British values, including human rights, and the enlightened national interest;
 - Assist 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 security or justice assistance overseas, including mitigating the risk of legal action;
 - Ensure consistency in the approach taken across HMG; and
 - Uphold HMG's reputation as a defender and promoter of human rights and democracy.

Who is this guidance for and when does it apply?

8. The Guidance applies to all departmental and agency leads for proposed assistance work and officials making decisions on UK justice and security assistance overseas, including where the engagement is undertaken by external agencies on behalf of a Department or agency and/or with UK funding or endorsement.
9. The types of assistance envisaged may result in changes 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. The OSJA Guidance should also be used as part of considering requests for Mutual Legal Assistance². 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, humanitarian law, political or reputational risks.

10. 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 and prosecution services.
11. The Guidance should be considered for all new proposed assistance and extensions to existing assistance, and where a substantial change in circumstances has significantly altered the risk for existing assistance. Sometimes assistance is given in countries which, when compared to the UK, have a comparable human rights framework and compliance record. Even in such cases, the risks inherent in the assistance must be considered. If this consideration shows no prospect of any human rights, IHL, political or reputational risks, a full OSJA assessment need not be completed, although the consideration must still be recorded.
12. Where more than one department or agency is involved, for instance where one department or agency is funding or coordinating activity undertaken by another, both bodies will need to work through the OSJA process together to satisfy themselves about the level of risk they will carry. They will also need to agree which department and minister will have the final sign-off. In most cases the implementing body will lead on the project-specific assessment, and the funding or coordinating body will lead on securing the necessary approval.
13. If providing assistance in multiple countries, the project lead should consider whether each country needs to be assessed separately. The key requirement is not that an individual OSJA process is followed for each country, but that the risks have been properly assessed through the OSJA process, including for each country. Properly assessing the risks means taking into account specific and relevant country, regional or institutional context.
14. In exceptional circumstances where it is imperative that officers already deployed overseas act quickly to protect the public or safeguard the integrity of evidence, a decision may need to be made by departments or agencies to

² For further information please contact the Home Office's International Criminality Unit.

act immediately without completing a full OSJA assessment beforehand. In such circumstances it is imperative that lead departments still consider the human rights, IHL, political and reputational risks and seek to act within the spirit of the Guidance, including remaining within the bounds of UK policy, respecting legal obligations and making efforts to mitigate risk and seek appropriate approvals for their actions. These considerations should be recorded before giving the assistance, and a full OSJA assessment including an explanation of why the circumstances were exceptional must be completed at the earliest opportunity, and within 24 hours after the decision to give assistance.

15. **Cabinet Office Consolidated Guidance** ([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 Cabinet Office has guidance concerning the interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees. It applies to some UK personnel including officers of the UK's intelligence and security agencies, members of the UK's Armed Forces and employees of the Ministry of Defence. OSJA Guidance is based on the same principles, but covers a broader range of activity and screens for a wider range of risk at a lower level of detail. Personnel covered by the Consolidated Guidance should also refer to the OSJA Guidance prior to starting activity to ensure they have properly considered and mitigated broader human rights/IHL risks which may result from assistance and which fall outside the scope of Consolidated Guidance. Personnel should also consider sharing their assessments using the OSJA network to support cross-Government consistency of assessment.
16. **Provision of Licensable Equipment** ([Arms Export Licensing process](#)). An assessment under the OSJA Guidance is not in itself sufficient when the provision of licensable equipment is envisaged as part of a project. A further assessment under the Consolidated EU and National Arms Export Licensing Criteria will be required. Please contact the Export Control Joint Unit within the Department for International Trade for further advice. There is also no requirement to undertake an OSJA assessment if assistance consists solely of the gifting of licensable equipment and an assessment under the EU Consolidated Criteria has been or will be undertaken.
17. **Advice and assistance rendered by UK police.** Section 26 and 97 of the Police Act 1996 (as amended) requires all police officers seeking to provide advice or assistance overseas to gain authority to do so from the Home Secretary. Section 26 is required for any deployments which are primarily for the benefit of a foreign government or institution. This assistance must always be at the request, or with the agreement of, the foreign government or

institution. Additionally, the International Police Assistance Brief (IPAB) process requires that officers seeking to provide non-operational assistance to other countries, whether carried out overseas or in the UK, submit their proposal to the Joint International Policing Hub to enable cross-agency coordination. Neither of these processes removes the need for the consideration of OSJA. The OSJA process also helps to cover all overseas police deployments which may not be covered by the Section 26, Section 97 or IPAB process.

18. The checklists below are tailored to guide those engaged in either Capacity Building or Case Specific assistance through the human rights risk assessment process. Assistance should be regularly monitored to ensure that it complies with this guidance, and a human rights risk assessment should be built into evaluation processes.
19. **Checklist A – Capacity Building** Checklist A will assist staff responsible for designing and assessing the programme or project to satisfy themselves that any human rights, IHL, political and/or reputational risks have been properly considered and that appropriate mitigation measures are or will be in place. 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).
20. **Checklist B – Case Specific Assistance**. When deciding whether to provide case-specific assistance, e.g. police deployment overseas following a crime, the decision maker should be satisfied that any human rights, IHL, political and/or reputational risks have been properly considered and that appropriate mitigation measures are or will be in place. The assessment should be recorded in writing either as part of a submission or in another record of the decision taken.

Assessment and Approvals Process (AIMS)

21. The risk assessment process is to be conducted in four stages – the AIMS Framework:
 - i) **Assess** the internal situation in the host country, its stability, its attitude and practice towards human rights and international humanitarian law and any mitigation efforts already underway.
 - ii) **Identify** the human rights, international humanitarian law, political and/or reputational risks associated with the proposed assistance.
 - iii) Consider how to **mitigate** the identified risks. It is also important to consider when/how to stop providing assistance if there is a significant change. When re-assessing after a significant change in circumstances, the full AIMS process should be undertaken. It will be

- important to consider as a mitigation whether stopping providing assistance is necessary, and if so when and how this should be done.
- iv) Make an overall assessment of whether there is a serious risk that the assistance might directly or significantly contribute to a violation of human rights and/or IHL or lead to a reputational or political risk and determine whether senior personnel or Ministers need to approve this assessment. The assistance should seek to **strengthen** compliance with human rights and/or international humanitarian law in the host country.
22. Once approval is given (or withheld), the full assessment should be filed with the relevant Post and with your organisation's OSJA Lead. OSJAs pertaining to ongoing activity should be regularly updated, particularly when there are changes in strategic context or incidents serious enough to warrant reassessment.
23. The types of human rights and IHL risks that should be considered are listed in Section 2 of the Checklists. You should also consider whether any other violations not already identified should be included.
24. Every department and agency regularly involved in security and justice assistance should have a designated internal OSJA Lead to advise their personnel on the OSJA process and be accountable for the consistent application of the Guidance within their department or agency. They will be able to connect personnel with the relevant Post (via the FCO if necessary), who will need to be consulted for their assessment of the situation in the country concerned. This must form the basis of your own assistance-specific assessment.
25. If you require assistance or advice, you should consult your organisation's OSJA Lead in the first instance. You may also want to consult the relevant FCO geographical department. If you need any further advice on how to use this Guidance, please contact the Human Rights and Democracy Department in the FCO via osja.fcocontactpoint@fco.gov.uk. Training and case studies are available via Civil Service Learning.

26. Annexes

Annex A - Checklist for capacity building work overseas.

Annex B - Checklist for case specific assistance overseas.

Annex C - Roles and Responsibilities of those involved in OSJA

ANNEX A

Checklist for Capacity Building Overseas

When should you use this Checklist?

This Checklist should be used by project leads 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.³

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. Where there is a 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: HMG Conflict Assessments, EU Global 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

³ 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.

	<p>particular to the violations listed in Stage 2 below.</p> <p>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.</p> <p>(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.)</p>
C	<p>Does the host country retain the death penalty?</p> <p>To which offences does it apply and are death sentences carried out in practice?</p>
D	<p>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?</p> <p>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.</p>

<p><u>STAGE 2: Identify risk</u></p> <p>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.</p>	
A	<p>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?</p>
B	<p>Are there any human rights concerns about the institution/unit that will receive the assistance?</p> <p>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:</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, including allegations. Consider whether the institution has committed or sanctioned human rights violations in the past and how perpetrators were dealt with

	<ul style="list-style-type: none"> • 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. <p>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.</p>
C	<p>Consider whether the assistance might directly or significantly contribute to any of the following:</p> <ol style="list-style-type: none"> use of the death penalty, both the imposition of the death sentence and executions unlawful or arbitrary arrest or detention torture or 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 danger of torture or CIDT); human trafficking and/or sexual violence persecution of an identifiable group (e.g. on racial, gender, religious or ethnic grounds) in combination with any of the above violations Other violations not already identified (please specify) Support to terrorism or undermine the principles of conflict prevention as defined in HMG’s Building Stability Overseas Strategy (BSOS). <p><u>DO NOT consider whether you are able to mitigate these effectively at this stage.</u> It is important that the full risks are clearly laid out before considering mitigation.</p>
D	<p>Consider whether there is any reputational or political risk as a result of the delivery of the project or programme.</p> <p>Even where it is assessed that the assistance might not directly or significantly contribute to human rights or IHL violations, 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>

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 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.

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 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 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,
9	Complementary projects: other 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 or 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, consultation and co-operation between institutions, civil society and the general public • promote greater acceptance of international scrutiny (e.g. acceptance of open invitations to UN special experts) • assurance relating to the Death Penalty and torture or CIDT.
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

	<ul style="list-style-type: none"> a training log will be maintained with the details of those trained.
12	<p>Controlled Equipment:</p> <ul style="list-style-type: none"> Provisional view received from FCO, DIT, BEIS or MOD, as appropriate, on whether weapons or other controlled equipment to be gifted or supplied as part of the project engage the Consolidated EU and National Arms Export Licensing Criteria (particularly criteria 2, 3 or 4). 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	<p>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.</p>
14	<p>Identification: distinctive identification will be provided to recipient units (e.g. vehicles/uniforms/lapel badges) to enable public identification of units/individuals.</p>
15	<p>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.</p>
16	<p>Communications strategy to manage reputational risk. <i>Please note that a media strategy does not mitigate human rights risks but can mitigate the reputational risk.</i></p>
17	<p>Any other mitigation measure not identified above.</p>

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.



	Low Risk	Medium Risk	High Risk
Human Rights and IHL Risk, as per Stage 2 Section C	There is a <u>less than serious risk</u> that the assistance might directly or significantly contribute to a violation of human rights.	There is a <u>serious risk</u> that the assistance might directly or significantly contribute to a violation of human rights but this can be <u>mitigated effectively</u> .	There is a <u>serious risk</u> that the assistance might directly or significantly contribute to a violation of human rights and it is assessed that the mitigation measures will <u>not effectively mitigate</u> this risk.
Reputational and Political Risk	There is <u>little or no</u> reputational or political risk for HMG or agencies.	There is <u>some</u> reputational or political risk for HMG or agencies but this can be mitigated effectively.	There is a <u>serious</u> reputational or political risk for HMG or agencies;



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 institution and nothing material changed.
--------------------	---	--	--



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.

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 where the assistance may lead to *inter alia* individuals being identified, interviewed, investigated, apprehended, detained, prosecuted, ill-treated and/or punished by foreign authorities.⁴ 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.

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 in 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 Conflict Risk Index,
---	--

⁴ 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.

	CT priority country, etc.)
B	<p>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.</p> <p>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.)</p>
C	<p>Does the host country retain the death penalty?</p> <p>To which offences does it apply and are death sentences carried out in practice?</p>
D	<p>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?</p> <p>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.</p>
<p><u>STAGE 2: Identify risk</u></p> <p>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.</p>	
A	<p>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?</p>
B	<p>Are there <u>any</u> 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:</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, including allegations - Consider whether the institution has committed or sanctioned human rights violations in the past and how perpetrators were dealt with

	<ul style="list-style-type: none"> • 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. <p>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.</p>
C	<p>Consider whether the assistance might directly or significantly contribute to any of the following:</p> <ol style="list-style-type: none"> i. use of the death penalty, both the imposition of the death sentence and executions 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><u>DO NOT consider whether you are able to mitigate these effectively at this stage.</u> It is important that the full risks are clearly laid out before considering mitigation.</p>
D	<p>Consider whether there is any reputational or political risk as a result of the proposed assistance.</p> <p>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.</p>

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. <i>Please note that a media strategy does not mitigate human rights risks but can help mitigate the reputational risk.</i>
8	Any other mitigation measure not already set out in this Checklist.
Death Penalty	
9	<p>a) Written assurances should be sought before agreeing to the provision of assistance that anyone found guilty would not face the death penalty.</p> <p>b) Where no assurances are forthcoming or where there are strong reasons not to seek assurances, the case should automatically be deemed 'High Risk' and <u>FCO Ministers should be consulted</u> to determine whether, given the specific circumstances of the case, we should nevertheless provide assistance.</p>
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.

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.



	Low Risk	Medium Risk	High Risk
Human Rights and IHL Risk, as per Stage 2 Section C	There is a <u>less than serious risk</u> that the assistance might directly or significantly contribute to a violation of human rights.	There is a <u>serious risk</u> that the assistance might directly or significantly contribute to a violation of human rights <u>but</u> this can be <u>mitigated effectively</u> .	There is a <u>serious risk</u> that the assistance might directly or significantly contribute to a violation of human rights and it is assessed that the mitigation measures will <u>not effectively mitigate</u> this risk.
Reputational and Political Risk	There is <u>little or no</u> reputational or political risk.	There is <u>some</u> reputational or political risk but this can be mitigated effectively.	There is a <u>serious</u> reputational or political risk.



Appropriate action	Approval can be sought from the person with day-	Consult senior personnel within your organisation,	Consult Ministers, unless Ministerial approval has already
--------------------	---	---	---

	to-day oversight of the proposal.	usually SCS Head of Department, DHM, Head of Mission or Assistant Chief Constable.	been given for this activity with this unit/institution and nothing material has changed.
--	--	--	---



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.

ANNEX C

Roles and Responsibilities of those involved in OSJA

Lead Department/Agency	Foreign and Commonwealth Office
<p>Project Lead</p> <p>Collates advice from OSJA Lead, Post and legal advisers</p> <p>Writes Stages 2-4 and takes appropriate action. Shares finished assessment with Post and OSJA Lead</p> <p>Reviews assessment regularly</p>	<p>Post</p> <p>Writes and maintains a country-specific Stage 1</p> <p>Files completed OSJAs</p> <p>Updates project/programme managers when situation changes</p> <p>Advises, with Geog Desk when necessary, on Stages 2-4</p>
<p>OSJA Lead</p> <p>Advises Project Lead on process</p> <p>Accountable for consistent implementation within Department</p> <p>Files completed OSJAs</p>	<p>Human Rights and Democracy Department</p> <p>Updates OSJA policy and guidance as necessary</p> <p>Coordinates Departmental OSJA Leads</p>
<p>Senior personnel, legal advisers and Ministers</p> <p>Consider assessments as appropriate</p>	<p>Legal Advisers</p> <p>Advise, when necessary, on points of law concerning FCO-led OSJAs</p>
<p>Coordinator/funding body</p> <p>When involved in activity, jointly conducts assessment and secures any necessary further approvals</p>	<p>Geographical Desk</p> <p>Advises, when necessary, on Stages 2-4</p>