**ANNEX A**

**Checklist for Capacity Building Overseas**

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| **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.[[1]](#footnote-1) |

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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. 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](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, HMG Conflict Assessments, DFID Country Governance Analyses 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. |

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| **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.   **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 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) 13. Support to terrorism or undermine the principles of conflict prevention as defined in HMG’s Building Stability Overseas Strategy (BSOS).   **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 delivery of the project or programme.** 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 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 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 phased deployment, 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 of more of the following elements:   * 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:**   * 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 | **Controlled Equipment:**   * 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 | **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 | **Communications strategy** to manage reputational risk. *Please note that a media strategy does not mitigate human rights risks but can mitigate the reputational risk.* |
| 17 | **Any other mitigation measure** not identified above. |

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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 for HMG or agencies. | There is **some** reputational or political risk for HMG or agencies but this can be mitigated effectively. | There is a **serious** reputational or political risk for HMG or agencies; |
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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 institution and nothing material 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 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. [↑](#footnote-ref-1)