

Summary: Joint Policy Statement on Management of Human Rights Risks in Overseas Cooperation

Purpose

1. This policy sets out how GCSB and NZSIS (**the agencies**) manage human rights risk in cooperation with foreign parties. It implements requirements contained in the Intelligence and Security Act 2017 (**the ISA**) and the Ministerial Policy Statement on cooperating with overseas public authorities (**the MPS**)¹ for the agencies to:

- i. act in accordance with New Zealand law and all human rights obligations recognised in New Zealand law when performing their functions;²
- ii. satisfy the Minister they will be acting in accordance with New Zealand law and all human rights obligations recognised by New Zealand law when providing intelligence, analysis and threat reporting to overseas persons and classes of persons;³
- iii. ensure human rights risks are appropriately identified, mitigated and responded to when cooperating with foreign parties in accordance with the MPS risk assessment framework; and,
- iv. not use intelligence obtained through a serious breach of human rights unless the exceptional circumstances set out in the MPS apply (and provided such use would not cause or significantly contribute to a further serious breach).

Scope

2. The policy applies when the agencies cooperate with foreign parties for the performance of the agencies' functions under sections 10 – 15 of the ISA.

Definitions

3. The policy defines a number of terms for the purposes of the JPS, including that human rights risk means risk of the agencies causing or significantly contributing to human rights breaches; human rights breach means any breach of human rights obligations recognised by New Zealand law; and serious human rights breach generally means a breach of human rights that is serious in terms of the character of the particular breach and the type of right that is breached, including arbitrary deprivation of life contrary to section 8 of the New Zealand Bill of Rights Act 1990 (NZBORA), torture as defined in section 2(1) of the Crimes of Torture Act 1989, and cruel, degrading or disproportionately severe treatment or punishment contrary to section 9 of the NZBORA.

¹ MPS on cooperating with overseas public authorities.

² Section 17 of the ISA.

³ Sections 10(3) and 12(7) of the ISA.

The MPS Risk Assessment Framework

4. The MPS provides the agencies with a framework for staff to assess and respond to human rights risk when cooperating with foreign parties to ensure that the cooperation will not result in a real risk of causing, significantly contributing to, or being complicit in, a breach of human rights.⁴

5. The framework requires that a foreign party's human rights situation be considered and this policy provides guidance on how to assess and compile the human rights practice information required for the Minister's decision-making about the foreign parties with which the agencies may cooperate.

Ministerial Authorisation and Approved Party status

6. Ministerial authorisation is required to provide intelligence, analysis or threat reporting to foreign parties. Before granting authorisation, the Minister must be satisfied that GCSB and/or NZSIS will be acting in accordance with New Zealand law and all human rights obligations recognised by New Zealand law.⁵ The policy contains guidance on seeking and reviewing Ministerial authorisations. The agencies may also request the Minister grant Approved Party status to an Authorised Party whose human rights situation is broadly comparable to New Zealand's. The agencies can cooperate with Approved Parties without undertaking HRRAs in most cases.

Human rights risk assessments (HRRAs)

7. This JPS provides guidance on when a human rights risk assessment (HRA) is required to assess human rights risk in relation to Approved Parties and Authorised Parties, and how to complete and submit it before cooperating with a foreign party; or before using intelligence received from a foreign party.

8. Guidance is provided on mitigations to lower risk (such as conditions on use of intelligence, caveats requiring the recipient to seek permission for certain uses of the agencies' intelligence or to on-share it, or redaction of identifying information).

9. Guidance is provided on what the approval levels are, depending on the assessed risk level. Where a finalised assessment, after consideration of mitigations, results in a real risk that the proposed cooperation would cause or significantly contribute to a human rights breach, only the Minister can approve proceeding with the cooperation.

Responding to intelligence received related to serious human rights breaches

10. To ensure compliance with legal obligations and policy expectations, the policy contains guidance on what steps the agencies would need to take in response to receiving intelligence obtained through or related to serious human rights breaches, including whether a Ministerial Authorisation or Approved Party status needs to be reviewed.

11. Where there is a real risk that intelligence received from a foreign partner was obtained through a serious breach of human rights, its use can only be approved by the

⁴ MPS at para 20.

⁵ Section 10(3) and 12(7) of the ISA.

relevant Director General and only if the exceptional circumstances set out in the MPS apply and provided such use would not cause or significantly contribute to a further serious breach. The Minister and IGIS would need to be notified.

Responsibilities

12. The policy sets out the responsibilities of various parts of the agencies for complying with the policy, for example the responsibilities on all staff, those on senior leadership or on the legal and compliance teams.

Annexes

13. The policy has several Annexes. These include flowcharts setting out the steps in the JPS in visual form. One of the Annexes relates to Annex 1 of the MPS. It aims to assist staff with identifying when they need to collate and assess human rights information to assess human rights risks, and how to do so.