

# Summary: Policy on Management of Human Rights Risk in Overseas Cooperation

*Summary prepared under section 16(1)(e) of the Official Information Act to protect interests under section 6(a).*

## Purpose

1. This policy sets out how NZSIS manages 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) for NZSIS to:

- i. act in accordance with New Zealand law and all human rights obligations recognised in New Zealand law when performing their functions;<sup>1</sup>
- 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 or analysis to overseas persons and classes of persons;<sup>2</sup>
- 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 NZSIS employees cooperate with foreign parties for the performance of NZSIS's statutory functions.

## Definitions

3. A number of terms used in the policy are defined, including that human rights breach means any breach of human rights 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, and mistreatment such as torture as defined in section 2(1) of the Crimes of Torture Act 1989. The policy also sets out risk terminology.

---

<sup>1</sup> Section 17 of the ISA.

<sup>2</sup> Sections 10(3) and 12(7) of the ISA.

## **The MPS Risk Assessment Framework**

4. The MPS provides 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.

5. The framework requires that a foreign party's human rights situation be considered and the Management of Human Rights Risk 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 NZSIS may cooperate.

## **Authorisations to share intelligence and "Authorised and Approved Party" status**

6. Per s10 ISA, the Minister's authorisation is required for NZSIS to provide intelligence or analysis foreign parties. Before granting authorisation, the Minister must be satisfied that NZSIS will be acting in accordance with New Zealand law and all human rights obligations recognised by New Zealand law.<sup>3</sup> The policy contains guidance on seeking and reviewing authorisations pursuant to s 10 ISA. NZSIS may also request the Minister grant "Authorised and Approved Party" status to an Authorised Party whose human rights situation is broadly comparable to New Zealand's. NZSIS can cooperate with "Authorised and Approved Parties" without undertaking human rights risk assessments (HRRAs) in most cases. A process for periodic review of authorisations and "Authorised and Approved Party" status is outlined.

## **Human rights risk assessments**

7. The policy provides guidance on when an HRRAs is required to assess human rights risk in relation to Authorised Parties and Authorised and Approved Parties, and how to complete and submit it before cooperating with a foreign party or before using intelligence received from a foreign party. An HRRAs can cover one-off or ongoing cooperation.

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 NZSIS's intelligence, or redaction of identifying information).

9. Guidance is provided on minimum approval levels, 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 NZSIS would need to take in response to receiving intelligence obtained through or related to serious human rights breaches, including whether a s 10 Authorisation or Authorised and Approved Party status needs to be reviewed.

---

<sup>3</sup> Section 10(3) and 12(7) of the ISA.

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 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 NZSIS for complying with the policy, including the responsibilities on all staff, those on senior leadership and on the legal and compliance teams.

## **Annexes**

13. The policy has Annexes with flowcharts setting out the steps in the policy in visual form.