



## Criminal Justice and Rule of Law Capacity Building to Counter Terrorism in Fragile Institutional Contexts: Lessons From Development Cooperation

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International efforts to combat terrorism cannot be pursued effectively through enhanced security measures alone. As West German parliamentarian Manfred Coppel noted in his remarks before the Bundestag more than three decades ago, “Doing away with basic constitutional principles does not save lives, but it does create conditions under which peaceful, democratic development in a constitutionally grounded state is imperiled and human rights are threatened . . . . The fight against terrorism is not won by emergency laws but by the resolute application of existing law coupled with . . . adherence to constitutional principles and an unflagging devotion to creating greater social justice.”<sup>1</sup> Striking a balance between responding to exceptional security threats and maintaining commitments to the global principles of human rights, civil liberties, and the rule of law has long been a dilemma for states targeted by terrorism.

With the passage of the United Nations Global Counter-Terrorism Strategy in 2006, the international community acknowledged that combating terrorism requires an integrated, whole-of-government approach grounded in the rule of law. Further, the Strategy’s first pillar resolves that all member states should adopt measures to alleviate conditions conducive to violent extremism and terrorism, including the lack of the rule of law and violations of human rights; ethnic, national, and religious discrimination; political

exclusion; socioeconomic marginalization; and a lack of good governance.<sup>2</sup> These conditions, largely characteristic of fragile developing states with weak or dysfunctional criminal justice institutions,<sup>3</sup> will not be mitigated solely by the delivery of military equipment, legal tools, technical assistance, and training to security agencies. Counterterrorism capacity building in fragile states requires an integrated approach to justice, security, governance, and development.

Members of the development and security cooperation communities increasingly view their respective work on criminal justice and the rule of law as complementary and mutually reinforcing. The alleviation of conditions conducive to violent extremism and terrorism such as those outlined in the UN Global Counter-Terrorism Strategy, are objectives that bridge the development-security divide.<sup>4</sup> At the same time, ensuring that policies and practices emanating from international counterterrorism obligations are pursued in accordance with the rule of law remains an ongoing concern for the global community. In both respects, the capacity development agenda, prominently articulated through the policy guidance of the Organisation for Economic Co-operation and Development (OECD), the UN Development Programme, and the World Bank, offers a wealth of practical guidance for the design and delivery of development- and security-related capacity-building assistance.

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States with fragile institutions face complex challenges that require multilayered responses and a holistic approach to criminal justice and the rule of law across political, economic, and social fronts. Recognizing that long-term peace and stability lie at the nexus of development and security, the international community can maximize their impact by ensuring that their combined capacity-building efforts are based on a common understanding of diverse challenges and shared principles for addressing them. A new wave of multilateral counterterrorism initiatives has the opportunity to recalibrate how criminal justice and rule of law-oriented counterterrorism capacity-building assistance is delivered to developing states with weak institutions.

This policy brief argues that aligning counterterrorism capacity-building agendas within a framework informed by the development cooperation experience could greatly enhance the effectiveness and sustainability of criminal justice and rule of law capacity assistance in general and in preventing terrorism specifically. After providing definitions of capacity and capacity building, this brief outlines the five basic principles of the OECD's Paris Declaration on Aid Effectiveness<sup>5</sup> as they relate to capacity development. The discussion then turns to how criminal justice and rule of law capacity building can contribute to countering terrorism and to mitigating conditions conducive to violent extremism by enhancing the capacity of weak state institutions to deliver equitable security and justice to all. It concludes by offering guidance based on best practices and lessons learned from past and ongoing capacity-building efforts in accordance with key themes presented over the course of the brief.

## Defining Capacity and Capacity Building

Since the early 1990s, the development community has debated notions of capacity

and how capacity can be enhanced. Reflecting on the capacity-development discourse offers a wealth of practical guidance, lessons learned, and best practices for the assessment, design, and implementation of multisectoral capacity-enhancement initiatives.

For the international policy community, the word "capacity" is often used as a popular catchall that refers broadly to an organization's ability to exercise its mandate effectively. To the development aid community, however, capacity is not only an objective in and of itself, but a means to an end, the end being positive change in performance toward the achievement of sustainable development. In the context of public sector governance, capacity refers to "the ability of people and organizations to define strategies, set priorities, solve problems, and achieve results.... It is closely linked with the governance agenda and efforts to improve institutions, laws, incentives, transparency, and leadership."<sup>6</sup>

When synthesizing the perspectives of key actors in the development community,<sup>7</sup> organizational capacity consists of four core components.

- 1) **Knowledge:** the organization's knowledge to confidently articulate and execute its evolving mission and set goals in accordance with its mandate.
- 2) **Leadership and Incentives:** the organization's ability to empower performance through leadership and incentives.
- 3) **Institutional Structures:** the organization's maintenance of appropriate resources and a framework of coherent institutional policies, practices, and procedures to manage affairs effectively and sustainably.
- 4) **Accountability:** the organization's ability to exercise effective oversight, transparency, and accountability in all of its affairs.

Capacity building or capacity development is the means through which organizations improve their performance in accordance with the components listed above. It entails a process of empowering actors to organically inspire positive change in their organizations and the manner in which they interact within broader systems of governance.<sup>8</sup> Developing capacity is a process that enables organizations to perform their core mandate in accordance with local and international norms, rules, and standards. Ultimately, capacity building is not just about filling gaps. It is also about unleashing the potential for individual and organizational performance through deliberate initiatives, such as reforms or programming, stimulating learning that leads to positive change over time.

**Summary:** The Paris Declaration: Principles for Capacity Building in the Development Community

According to the Organisation for Economic Co-operation and Development's 2005 Paris Declaration on Aid Effectiveness, "[T]he capacity to plan, manage, implement, and account for results of policies and programs is critical for achieving development objectives."<sup>a</sup> The declaration lays out five cross-cutting principles — ownership, alignment, harmonization, managing for results, and mutual accountability — to guide development partnerships toward increased effectiveness in the delivery of development assistance. Much of this guidance has been reexamined and refined over time, reflecting the changing landscape of the capacity development experience.<sup>b</sup>

**1) Ownership.** Capacity-development experts agree that just as "external partners can't 'do' capacity development for others,"<sup>c</sup> local ownership cannot be imposed by donors or a donor-driven process. Rather, ownership must be nurtured organically from within, through leadership and incentives. It implies that demand-driven interventions based on local

needs are more effective than supply-driven interventions based on technical inputs provided by a donor.<sup>d</sup> Although donors and partners stress the critical importance of local ownership in capacity-development initiatives, there are numerous challenges to achieving it. Overcoming constraints can be challenging but are essential for sustainable capacity building.

**2) Alignment.** Coordinated interventions in line with national development strategies of local partners are crucial for overall development impact. Similarly, capacity-development initiatives should make use of existing country budgetary, management, and administrative systems. Sustainable change must be nurtured through interventions that take account of local context. It is important to ensure that capacity-building processes are driven by appropriate inputs that align with desired outputs that are designed for commensurate outcomes and ultimate impacts.

**3) Harmonization.** Local partners and international assistance providers should communicate frequently and coordinate their efforts to avoid duplication and overloading potentially weak institutions with administrative or procedural burdens.<sup>e</sup> In fragile institutional settings, this requires a whole-of-system approach in which development and security actors share information and ensure the harmonization of their approach toward shared goals. In addition, stakeholders must strive for the integration of multisectoral capacity-development initiatives to improve their collective effectiveness.

**4) Managing for Results.** As suggested by the World Bank's Task Force on Capacity Development in Africa, "[T]he capacity challenge is essentially a governance challenge."<sup>f</sup> Management is just as important to capacity development as to the functioning of a particular organization and good governance in general. The Paris Declaration commits partner countries and donors to focus on

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results-based performance. It calls for higher standards of resource and program management based on informed, local decision-making in capacity-development processes. Best practice suggests the integration of monitoring and evaluation reporting mechanisms to ensure that initiatives continue to be fit for purpose in light of the evolving context.

**5) Mutual Accountability.** Oversight, accountability, and transparency in the use of public resources for the achievement of capacity-development goals are essential to achieving the objectives derived from the principles of the Paris Declaration. The drive for increased accountability is incumbent on a strengthened public demand for effective governance. Independent reviews of resource allocations and benchmarks for conducting local impact assessments should be integrated into the strategic frameworks of any capacity-building initiative. Accountability is not only vital for the maintenance of mutual trust and reciprocity between development partners, but also helps ensure a return on investment according to specific, mutually agreed indicators used for measuring success.

<sup>a</sup>OECD, “The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action 2005/2008,” para. 22, <http://www.oecd.org/dataoecd/11/41/34428351.pdf>.

<sup>b</sup>Elaboration on core themes of the Paris Declaration in relation to OECD’s capacity development agenda can be found in the 2006 Bonn Declaration, the 2007 Fragile State Principles, the 2008 Berlin Statement on International Development Training, 2008 Accra Agenda for Action, and the 2011 Busan Partnership document on Effective Development Co-operation.

<sup>c</sup>European Commission, “Toolkit for Capacity Development 2010,” Tools and Methods Series Reference Document, no. 6 (2011), p. 9, [http://ec.europa.eu/europeaid/how/ensure-aid-effectiveness/documents/toolkit\\_cd\\_en\\_web\\_en.pdf](http://ec.europa.eu/europeaid/how/ensure-aid-effectiveness/documents/toolkit_cd_en_web_en.pdf). See Nicola Smithers, “The Importance of Stakeholder Ownership for Capacity Development Results,” World Bank Institute, May 2011, [http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/The\\_Importance.pdf](http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/The_Importance.pdf).

<sup>d</sup>OECD, “From Good Principles to Better Practice: An OECD-DAC Perspective on Capacity Development,”

Issues Brief, no. 3 (July 2009) p. 2, <http://www.oecd.org/development/governanceanddevelopment/43868693.pdf>.

<sup>e</sup>Also termed “premature load-bearing.” World Bank, *World Development Report 2011: Conflict, Security, and Development*, 2011, pp. 100–101, [http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011\\_Full\\_Text.pdf](http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf).

<sup>f</sup>World Bank Task Force on Capacity Development in Africa, *Building Effective States, Forging Engaged Societies*, September 2005, ch. 2, [http://siteresources.worldbank.org/EXTAFRDEVOPRT/SK/Resources/acdtf\\_report.pdf](http://siteresources.worldbank.org/EXTAFRDEVOPRT/SK/Resources/acdtf_report.pdf).

## Implications for Countering Terrorism: Criminal Justice and Rule of Law Capacity Building in Fragile States

Rule of law–based criminal justice responses to terrorism are most effectively ensured when they are practiced within a criminal justice system capable of handling ordinary criminal offenses while protecting the rights of the accused and when all are equally accountable under the law.<sup>9</sup> The development principles derived from the Paris Declaration provide a useful framework for the design and implementation of criminal justice and rule of law–oriented capacity building, through which holistic criminal justice responses to terrorism can be best realized.

When viewed through the narrower lens of counterterrorism, the norms and institutions of criminal justice and the rule of law are of vital importance. Criminal justice and the rule of law are prominently discussed and featured in two distinct but equally fundamental ways in the counterterrorism discourse.

**1) Counterterrorism in practice.** Despite lingering challenges, it is widely acknowledged that state efforts to counter terrorism should be pursued in accordance with the rule of law. Since the 9/11 attacks on the United States, states have adopted widespread legal, institutional, and operational countermeasures as part of the wide-ranging “global war on

terror.” Today, these actors recognize the role of capacity building to ensure that actors engaging in counterterrorism activities do so while respecting human rights and the rule of law. Assisting criminal justice actors such as police, prosecutors, judges, and corrections officials in fragile states to develop a stronger capacity to engage in counterterrorism activities in accordance with the rule of law remains an important entry point for current and future counterterrorism capacity-building initiatives.

## 2) Conditions conducive to violent extremism.

Weak adherence to the rule of law and abusive or dysfunctional criminal justice systems negatively affect local populations’ disposition toward the state and can contribute to conditions conducive to violent extremism and terrorism. Corrupt, repressive, and unaccountable governments can perpetuate uneven economic, justice, and security development, fomenting socioeconomic and political marginalization. In large part, resulting local grievances can potentially contribute to a growing distrust in, and opposition to, the state. Under these circumstances, both marginalized and nonmarginalized segments of society can be co-opted by extremists promoting violent ideological and political agendas.<sup>10</sup> Building the capacity of weak criminal justice systems to safeguard mutual rights and responsibilities of governments and their citizens is essential for the alleviation of a number of conditions conducive to violent extremism.

In fragile institutional contexts, the inability of abusive, weak, or ineffectual criminal justice institutions to implement global counterterrorism standards in accordance with the rule of law is not just the result of poor training and insufficient legal mechanisms to counter terrorism. Indeed, a weak adherence to human rights standards and the rule of law reflect larger deficiencies in governance and the criminal justice system as a whole. Capacity-building efforts that seek to enhance

rule of law–based criminal justice practices to counter terrorism (reflected in the “Counterterrorism in Practice” point on page four) will not necessarily contribute to the sustainable mitigation and prevention of related conditions conducive to violent extremism (reflected in the “Conditions Conducive” point, left). The tools and approaches used to strengthen the knowledge of local counterterrorism officials to handle complex cross-border counterterrorism investigations and prosecutions, although certainly valuable, should not be confused or equated with a holistic approach to addressing the conditions conducive to violent extremism symptomatic of dysfunctional criminal justice systems.

The objective of rule of law and criminal justice capacity building in the context of institutional fragility should be to encourage positive change in the way the state, through its criminal justice system, interacts with its citizens. A system-wide approach to capacity building and related reform must be driven by the underlying need for greater access to security and justice among local populations. This cannot be accomplished by isolated, short-term capacity-building measures. On the contrary, a holistic approach would require sustained and highly coordinated efforts by actors across the development and security spectrum engaging in a range of activities, many of which are consistent with the security system reform agenda, such as community policing, civil society engagement, corrections and rehabilitation programming; independent civilian oversight mechanisms and anticorruption initiatives; the enhancement of legal protections in accordance with human rights and civil liberties; integrity standards, and performance incentives.<sup>11</sup> Due to local sensitivities and the highly political nature of the counterterrorism agenda, broad criminal justice and rule of law-oriented capacity building in fragile states implemented by counterterrorism actors under the “counterterrorism” label may not be well

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received in certain country contexts. Yet, if counterterrorism actors see the benefits of a more integrated, prevention-based approach to capacity building that addresses conditions conducive to violent extremism, then related programming should be consciously and practically aligned with the Paris Declaration principles and pursued in cooperation with relevant stakeholders.

### **From Principles to Practice: Practical Guidance for Criminal Justice and Rule of Law–Oriented Capacity Building to Counter Terrorism**

The coordination and implementation of an integrated criminal justice and rule of law-oriented capacity-building agenda is not without challenges. Yet, building capacity in these areas would assist in alleviating conditions conducive to violent extremism, safeguard the advance of a more sustainable and equitable basis for development, and directly contribute to more effective rule of law-based criminal justice practices to counter terrorism. The guidance offered below can help formulate such an approach.

**1) Use context-driven initiatives.** Even when capacity-building activities focus specifically on counterterrorism practitioners, accurately assessing the organizational context in which these practitioners operate is of crucial importance to ensure that newly acquired capacity can be put to effective use. At the same time, pressures from a larger enabling environment and institutional arrangements, i.e., formal and informal norms and rules of the game, present opportunities and constraints on the behavior of individual counterterrorism practitioners and their organizations.<sup>12</sup> Individuals, organizations, institutional arrangements, and the larger environment in which they exist overlap and mutually influence each other’s behaviors and attitudes.

Understanding these interactions is of crucial

importance. A capacity-building strategy for criminal justice actors in fragile institutional contexts must be based on a keen understanding of the functioning of a country’s criminal justice system as a whole, particularly the police, judiciary, and corrections and rehabilitation services; the ability of constituent organizations and agencies to perform their core mandates; their record on issues such as corruption and human rights; and levels of legitimacy and public trust among the local population. A context-sensitive approach allows stakeholders to account for existing capacities and identify opportunities, drivers of change, incentives, spoilers, and constraints in the capacity-development process and is thus essential for a holistic program design process.<sup>13</sup> A broad assessment of the local environment covering power dynamics, influential voices in the community, and potential champions of reform against institutional needs and structural challenges can assist in identifying the most appropriate local actors to lead and support a particular initiative.

The table in the Annex features a log frame of a number of key contextual questions that can be used to inform the design of a capacity-building strategy based on a broad understanding of country-specific conditions. The high degree of local knowledge and expertise required for an accurate understanding of country context makes the assessment process an excellent opportunity for early trust building, buy-in, and collaboration among local and international officials and expert practitioners.

**2) Articulate objectives and link interventions to outcomes.** Sustainable capacity building in weak criminal justice organizations is a complex and long-term effort that requires a flexible approach. To mitigate the risk of failure, it is important to remember that “doing the right things” is not necessarily the same as “doing things right.”<sup>14</sup> A common

problem in many capacity-development initiatives is that, despite developing a clear country-specific capacity-building strategy, interventions may not be designed to match or align with the overall goals. In the context of internationally driven security and development interventions, initiatives may fall into the trap of measuring progress according to the “form” institutional development takes rather than the “function” institutions perform.<sup>15</sup>

For example, weak criminal justice systems may be incapable of handling ordinary criminal offenses and unable to ensure due process and equal rights for the accused under the rule of law. Interventions that seek to strengthen the technical capacity of counterterrorism officials to engage in complex investigations will have limited impact without adequately considering the structural deficiencies that contribute to the poor performance of the entire criminal justice system. Core criminal justice capacity forms first the primary pillar of good governance and the rule of law overall and is a fundamental requirement for the more specialized purpose of counterterrorism.

No single methodology ensures coherent design logic in a capacity-building initiative. Demand-driven approaches that focus on outcomes, rather than supply-driven approaches based on inputs, will be the most effective.<sup>16</sup> A “results-focused design process” that begins by envisioning the desired impacts or results of enhanced capacity, rather than a process derived from envisioning technical inputs offered by a given donor, is highly recommended.<sup>17</sup> When considering possible capacity-building results or objectives, stakeholders should clearly define the specific benefits for individuals, organizations, and the broader community; the learning outcomes that will contribute to achieving the desired results; how local actors will drive the change necessary for success; how the results contribute to broader development and security

goals; and how and according to which indicators success will be measured.<sup>18</sup>

**3) Maximize local buy-in, participation, and leadership.** Sustainability and long-term success in capacity development must be propelled by domestic leadership, strong political will, and a firm commitment to the process of change. Engagement by local stakeholders in the implementation of a donor-assisted capacity-building process is a fundamental requirement for success. Locally designed, culturally appropriate, demand-based capacity-development processes are frequently more sustainable and may be better suited for being adopted and carried forward internally. Collaboration between local and international stakeholders should begin at inception, carrying on through the assessment process and into the design, implementation, and evaluation of programming.

Successful capacity development, particularly in security and justice systems, could undermine vested interests in the status quo. Depending on the balance of power within the institutions being targeted for capacity development, different forms of local ownership will need to be nurtured in order to outmaneuver or marginalize potential spoilers.<sup>19</sup> It is therefore necessary to establish coalitions of support that are inclusive enough by ensuring the involvement of strategically selected actors from civil society, cultural and religious institutions, academia, and government to lend legitimacy, insight, and local leadership according to the objectives of the capacity-building initiative.<sup>20</sup>

When faced with problematic leadership in the criminal justice sector or other forms of weak political will for institutional change, negative signals from the international community can potentially influence the behavior of certain spoilers. Examples of this may include travel restrictions on national leadership or limits on national participation in international cultural or political events.<sup>21</sup> Where there is a legacy of

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endemic corruption and impunity among elements of the political elite, judicious local prosecutions of high-profile wrongdoers can have the dual effects of removing some of the strongest political barriers to change and helping to restore public confidence and support for enhancing criminal justice capacity.<sup>22</sup> Establishing independent and transparent civilian complaint review boards with the power to investigate; initiate disciplinary action; and, if necessary, prosecute criminal justice officers that engage in negligent or illicit activities while protecting the identity of whistle-blowers may also build momentum for broader capacity-building efforts.

**4) Recognize the limits of technical assistance.** When faced with a lack of political will and a lack of capacity, guidance from the UK Department for International Development suggests that interventions be crafted to address the underlying causes of fragility. Faced with fragile state institutions, “[d]onors have tried to promote change through technical solutions supported by individual champions for reform, believing the problem is technical, not political.”<sup>23</sup> International capacity-development experience has shown that resources are often wasted “on inappropriate initiatives because complex contextual factors negate the potential effectiveness of training and other learning-based interventions.”<sup>24</sup> Training and institutional learning are primary components of capacity development, but they alone cannot address all capacity problems.<sup>25</sup>

Modern training programs combine a vast range of tools and methodologies, but there is no single training design template for use in all circumstances. Skills imparted by training programs will mean little without the organizational capacity and institutional basis for deploying them in practice and without adequate incentives for resulting changes in behaviors and attitudes. Although a well-designed and contextually sensitive training regimen can play an extremely important role

in the emergence of a self-sustaining process of organizational learning, most circumstances will require a multipronged approach focused on other, nontechnical factors in capacity development.<sup>26</sup>

**5.) Align and coordinate related programming.** Counterterrorism actors engaging in criminal justice and rule of law-oriented work such as legislative drafting, legal training and judicial development, civil society engagement and community policing, and financial management and reform related to anti-money laundering and countering the financing of terrorism should communicate and coordinate with other stakeholders working on programming initiatives across the criminal justice sector.<sup>27</sup> Diverse capacity-building initiatives working in unison under a broad sector-wide strategy can create conditions for a more collectively effective criminal justice system interlinking mutually interdependent agencies and facilitating dialogue and trust between staff. A high degree of sector-wide coordination can potentially increase the efficiency and sustainability while lowering costs of otherwise isolated capacity-building initiatives.

No single actor or approach can sufficiently address the complex range of factors that contribute to institutional weaknesses in state criminal justice systems. Working together, local and international stakeholders can have greater leverage in overcoming obstacles of political will, benefit from collaboration in the conduct of joint assessments and evaluations, and enjoy greater flexibility by capitalizing on the comparative advantages of diverse service providers. The establishment of country-level coordination mechanisms for local criminal justice and rule of law capacity-building and reform initiatives would greatly enhance program integration and coordination.<sup>28</sup> Designed on a state-by-state basis, such a mechanism would serve as a venue to share assessment results and pool resources and local expertise, as a platform for the dissemination

of best practices and lessons learned, and as a forum for the common articulation of long-term objectives aligned with local development, governance, and security needs.

## Conclusion

Although technical solutions to capacity gaps are essential for effective rule of law-based counterterrorism practices in fragile institutional contexts, country-specific initiatives that support local actors in enhancing core criminal justice system capacity may be a necessary first step. Bilateral and multilateral technical assistance has been and will continue to be an important part of the international counterterrorism community's efforts to ensure a rule of law-based approach to countering terrorism. However, broad criminal justice capacity is essential for both the implementation of rule of law-based criminal justice responses to terrorism and for addressing conditions conducive to violent extremism. Aligning counterterrorism capacity-building programming with the broader criminal justice and rule of law agendas of the development and security cooperation communities would greatly enhance their collective effectiveness.

The principles of the Paris Declaration and related guidance from the international development discourse offer a conceptual and practical basis for cooperation between security and development actors in strengthening criminal justice and the rule of law in fragile state contexts. A context-sensitive approach, driven by local stakeholders, in harmony with a broad coalition of development and security actors on the ground could greatly enhance the impact and sustainability of capacity-building efforts. As stated by noted international policy scholar Adrian Leftwich, “[S]ustainable economic growth, human security, political stability, evenhanded justice, and inclusive social development all depend fundamentally on a secure institutional environment, and the institutions of law and justice are at the core of this.”<sup>29</sup> Enhancing core criminal justice capacity is not only essential for countering terrorism in accordance with the rule of law, but also for underpinning peace, stability, and economic growth, especially in developing states. If the international community is committed to sustainable counterterrorism capacity building in states with weak or dysfunctional criminal justice systems, multilateral interventions should be consciously aligned within an integrated approach to justice, security, governance, and development.

The views expressed in this policy brief are those of the author and do not necessarily reflect those of the Center on Global Counterterrorism Cooperation, its staff, or advisory council.

## Notes

<sup>1</sup> Jeremy Varon, *Bringing the War Home* (Berkeley: University of California Press, 2004), 286–287 (quoting “Kontaktssperre,” in *Die Anti-Terror-Debatten im Parlament: Protokolle 1974–1978*, ed. Hermann Vinke and Gabriele Witt [Reinbek bei Hamburg: Rowohlt, 1978]).

<sup>2</sup> UN General Assembly, “United Nations Global Counter-Terrorism Strategy,” A/RES/60/288, 20 September 2006.

<sup>3</sup> In this policy brief, “fragile states” refers broadly to developing states exhibiting fundamental weaknesses in the delivery of rule of law-based security and justice due to a combination of weak capacity, a lack of political will, corruption, or a dysfunctional criminal justice system.

<sup>4</sup> This is best exemplified by the security system reform agenda. With regard to the role of development in countering terrorism, see Organisation for Economic Co-operation and Development (OECD), *A Development Co-operation Lens on Terrorism Prevention: Key Entry Points for Action*, 2003, <http://www.oecd.org/development/conflictandfragility/16085708.pdf>.

<sup>5</sup> OECD, “The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action 2005/2008,” <http://www.oecd.org/dataoecd/11/41/34428351.pdf>.

<sup>6</sup> OECD, *OECD DAC Handbook on Security System Reform: Supporting Security and Justice*, 2007, p. 86, <http://www.oecd.org/development/conflictandfragility/38406485.pdf>.

<sup>7</sup> See UN Development Programme (UNDP), *Capacity Development: A UNDP Primer*, 2009, <http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/capacity-development-a->

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- undp-primer/CDG\_PrimerReport\_final\_web.pdf; Samuel Otoo, Natalia Agapitova, and Joy Behrens, *Capacity Development Results Framework*, World Bank, June 2009, [http://siteresources.worldbank.org/EXTCDRC/Resources/CDRF\\_Paper.pdf](http://siteresources.worldbank.org/EXTCDRC/Resources/CDRF_Paper.pdf); OECD, *The Challenge of Capacity Development: Working Toward Good Practice*, 2006, <http://www.oecd.org/dac/governanceanddevelopment/36326495.pdf>.
- <sup>8</sup> Nils Boesen and Ole Therkildsen, “Between Naivety and Cynicism: A Pragmatic Approach to Donor Support for Public Sector Capacity Development,” Danish Ministry of Foreign Affairs, August 2004, p. 5, [http://www.jica.go.jp/cdstudy/library/pdf/20071101\\_06.pdf](http://www.jica.go.jp/cdstudy/library/pdf/20071101_06.pdf).
- <sup>9</sup> Global Counterterrorism Forum Criminal Justice Sector/Rule of Law Working Group, “The Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector,” 24 May 2012, <http://www.thegctf.org/documents/10162/19594/Rabat+Memorandum+on+Good+Practices+for+Effective+Counterterrorism+Practice+in+the+Criminal+Justice+Sector>.
- <sup>10</sup> World Bank, *World Development Report 2011: Conflict, Security, and Development*, 2011, p. 222, [http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011\\_Full\\_Text.pdf](http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf).
- <sup>11</sup> OECD, *OECD DAC Handbook on Security System Reform*.
- <sup>12</sup> OECD, *The Challenge of Capacity Development*, pp. 21–23, <http://www.oecd.org/dac/governanceanddevelopment/36326495.pdf>.
- <sup>13</sup> Jenny Pearson, “Training and Beyond: Seeking Better Practices for Capacity Development,” *OECD Development Co-operation Working Papers*, no. 1 (4 April 2011), p. 22, [http://www.oecd-ilibrary.org/development/training-and-beyond-seeking-better-practices-for-capacity-development\\_5kgf1nsnj8tf-en](http://www.oecd-ilibrary.org/development/training-and-beyond-seeking-better-practices-for-capacity-development_5kgf1nsnj8tf-en).
- <sup>14</sup> OECD, “Note Resulting From the OECD Informal Group on Capacity Development Event: ‘Capacity Building in Fragile Situations,’” 28 April 2009, pp. 3–4, <http://www.oecd.org/development/governanceanddevelopment/43332509.pdf>.
- <sup>15</sup> World Bank, *World Development Report 2011*, p. 8.
- <sup>16</sup> OECD, “From Good Principles to Better Practice: An OECD-DAC Perspective on Capacity Development,” *Issues Brief*, no. 3 (July 2009), p. 2, <http://www.oecd.org/development/governanceanddevelopment/43868693.pdf>.
- <sup>17</sup> European Commission, “Toolkit for Capacity Development 2010,” *Tools and Methods Series Reference Document*, no. 6 (2011), pp. 13–14, [http://ec.europa.eu/europeaid/how/ensure-aid-effectiveness/documents/toolkit\\_cd\\_en\\_web\\_en.pdf](http://ec.europa.eu/europeaid/how/ensure-aid-effectiveness/documents/toolkit_cd_en_web_en.pdf).
- <sup>18</sup> Otoo, Agapitova, and Behrens, *Capacity Development Results Framework*, p. 29. See UNDP, *Capacity Development*, p. 49.
- <sup>19</sup> Nicola Smithers, “The Importance of Stakeholder Ownership for Capacity Development Results,” World Bank Institute, May 2011, p. 8, [http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/The\\_Importance.pdf](http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/The_Importance.pdf).
- <sup>20</sup> World Bank, *World Development Report 2011*, pp. 185–188.
- <sup>21</sup> UK Department for International Development (DFID), “Why We Need to Work More Effectively in Fragile States,” January 2005, p. 12, [http://www.jica.go.jp/cdstudy/library/pdf/20071101\\_11.pdf](http://www.jica.go.jp/cdstudy/library/pdf/20071101_11.pdf).
- <sup>22</sup> World Bank, *World Development Report 2011*, pp. 126–127.
- <sup>23</sup> *Ibid.*, p. 14.
- <sup>24</sup> Pearson, “Training and Beyond,” p. 9.
- <sup>25</sup> OECD, *Challenge of Capacity Development*, p. 30.
- <sup>26</sup> *Ibid.*
- <sup>27</sup> For a discussion on rule of law, criminal justice, and governance activities that contribute to “terrorism prevention,” see OECD, *Development Co-operation Lens on Terrorism Prevention*.
- <sup>28</sup> OECD, *OECD DAC Handbook on Security System Reform*, p. 246; DFID, “Why We Need to Work More Effectively in Fragile States,” p. 17.
- <sup>29</sup> Adrian Leftwich, “The Political Approach to the Law and Justice Sector,” AusAID, 16 August 2011, p. 1, <http://www.ode.usaid.gov.au/publications/documents/leftwich-thinkpiece.pdf>.

## Annex. Sample Questions for Consideration: Preparing a Context-Assessment for a Criminal Justice and Rule of Law-Oriented Capacity-Building Strategy to Counter Terrorism\*

	Understanding local context	Identifying entry points for local ownership	Providing comprehensive and coordinated support	Ensuring accountability and incentivizing change
Environmental	<p>What is the cultural and historical background of the country?</p> <p>What are the current regional and global contexts?</p> <p>What are the local policy trends?</p> <p>Who are the power holders?</p> <p>How are criminal justice actors perceived by the public?</p> <p>How do locals perceive the legitimacy of the state?</p>	<p>Who are the intended beneficiaries of enhanced criminal justice capacity?</p> <p>Who stands to benefit most from enhanced capacity of the criminal justice sector?</p> <p>Who stands to lose?</p> <p>Are there influential community or religious leaders?</p>	<p>Which local and international actors are currently engaged in counterterrorism, criminal justice, and rule of law-oriented capacity building?</p> <p>What are they doing?</p> <p>Has it been effective?</p> <p>What opportunities for cooperation exist?</p>	<p>To what extent are counterterrorism, criminal justice, and rule of law public policy issues?</p> <p>How active is local civil society in weighing in and lobbying for criminal justice policy?</p> <p>Are there relevant regional or international legal standards?</p>
Institutional	<p>Which actors fall within the criminal justice system?</p> <p>What are their capacities and mandates?</p> <p>Which have a direct or indirect role in counterterrorism issues?</p> <p>How do these actors interact formally and informally?</p> <p>Are there nonstatutory or informal actors that play key roles in the criminal justice system?</p>	<p>Are there local champions for change in the criminal justice system?</p> <p>Is there access to trusted interlocutors to bring them to the table?</p> <p>Are there local administrative and budgetary systems that can be integrated into capacity-building process management?</p> <p>Are there effective public-private partnerships?</p>	<p>Which institutional entry points offer the broadest potential impact for enhanced capacity across the larger criminal justice system?</p> <p>Are there other informal and formal actors promoting enhanced capacity in the criminal justice system?</p> <p>What is their disposition toward counterterrorism?</p>	<p>What tools are used to measure performance?</p> <p>Are there independent oversight and civilian complaint response mechanisms?</p> <p>Who controls national and local criminal justice budgets?</p> <p>How is the budget allocated?</p> <p>Can capacity-building activities be sustained by the national budget?</p>
Organizational	<p>How is the organization governed and managed?</p> <p>How representative is the organization of the population (gender, ethnicity, etc.)?</p> <p>What is the organization's mandate and core responsibilities?</p>	<p>Does the organization have a clearly defined internal capacity-building or reform strategy?</p> <p>Do the needs and goals of this strategy reflect country context?</p> <p>What is the extent of follow-through toward implementation?</p>	<p>How and why does the organization cooperate with others, the private sector, and the public?</p> <p>Does the criminal justice organization meet the needs of the public?</p> <p>What is the volume of criminal cases handled by specific courts?</p>	<p>How does professional advancement work?</p> <p>Are hiring and vetting processes equitable and transparent?</p> <p>What influence does politics have on the organization?</p> <p>How does it engage in public outreach?</p>
Individual	<p>Do individual criminal justice actors clearly understand their role within the organization and its legal mandate?</p> <p>Do individuals have the requisite skills, resources, and executive power to perform their core tasks?</p> <p>How do individual criminal justice actors view their role vis-à-vis the public?</p>	<p>What type of education and training is offered for individual criminal justice practitioners?</p> <p>Are general needs comparable to the needs of those with counterterrorism-related responsibilities?</p> <p>Does the training offered reflect training needs?</p> <p>Are there individual practitioners that can play a more direct role in the capacity-building process?</p>	<p>Are there overlapping individual capacity needs between individuals in different criminal justice bodies?</p> <p>Are there interagency liaison roles, coordinating bodies, or fusion task forces that would benefit from joint capacity-building activities?</p>	<p>Do criminal justice practitioners receive sufficient salary and benefits?</p> <p>Are individual performance, integrity, and accountability gauged internally?</p> <p>Are promotions based on merit?</p> <p>Is misconduct met with appropriate disciplinary measures?</p>

\* See generally: Jenny Pearson, "Training and Beyond: Seeking Better Practices for Capacity Development," OECD Development Co-operation Working Papers, no. 1 (4 April 2011); OECD, *OECD DAC Handbook on Security System Reform: Supporting Security and Justice*, 2007; OECD, *The Challenge of Capacity Development: Working Toward Good Practice*, 2006.