

# Strengthening the Case

Good Criminal Justice Practices to Counter Terrorism



*Implementing the Global Counterterrorism Forum's Rabat Memorandum*

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*Implementing the Global Counterterrorism Forum's Rabat Memorandum*

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## ACRONYMS

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|                |   |
|----------------|---|
| <b>AMLC</b>    | Anti-Money Laundering Council (Philippines)   |
| <b>AML/CFT</b> | Anti-money laundering and countering the financing of terrorism                     |
| <b>CTED</b>    | Counter-Terrorism Committee Executive Directorate (UN Security Council)             |
| <b>FATF</b>    | Financial Action Task Force   |
| <b>GCTF</b>    | Global Counterterrorism Forum   |
| <b>ICJ</b>     | International Commission of Jurists   |
| <b>ICRG</b>    | International Co-operation Review Group (FATF)                                      |
| <b>IJJ</b>     | International Institute for Justice and the Rule of Law                             |
| <b>IJS</b>     | Institute of Judicial Studies (Lebanon)   |
| <b>ISM</b>     | Institut Supérieur de la Magistrature (Higher Institute of the Judiciary) (Morocco) |
| <b>JCLEC</b>   | Jakarta Centre for Law Enforcement Cooperation                                      |
| <b>MLA</b>     | Mutual legal assistance   |
| <b>MOU</b>     | Memorandum of understanding   |
| <b>OHCHR</b>   | Office of the UN High Commissioner for Human Rights                                 |
| <b>STR</b>     | Suspicious transaction report   |
| <b>UAE</b>     | United Arab Emirates  |
| <b>UN</b>      | United Nations  |

## INTRODUCTION

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Criminal justice systems operating under the rule of law are essential for responding to transnational threats while safeguarding human rights and protecting national and human security. Fair, effective, and impartial justice and security systems provide peaceful avenues of redress for victims of crime, promote public safety and security, help ensure government accountability, and encourage sustainable economic development. Over the past 15 years, as terrorism, violent extremism, and organized crime rose to the forefront of the global security agenda, states have struggled to balance national security interests with rule of law imperatives. Recognizing the limited and often counterproductive nature of overtly militarized responses, governments and intergovernmental organizations began devising new ways to effectively prevent and counter these threats in accordance with long-established and widely respected international norms. Through the development of a wide range of policies, laws, and institutional frameworks, the international community has increasingly encouraged a rule of law-based criminal justice approach to addressing terrorism and other complex transnational security challenges.

The Global Counterterrorism Forum (GCTF) was established in 2011 as an informal, multilateral platform to improve coordination and enhance civilian-led efforts to prevent and counter the threat of terrorism. Comprised of 29 member countries and the European Union, the GCTF has devoted considerable attention since its inception to supporting national efforts to counter terrorism by mobilizing resources and expertise and disseminating good practices. In 2012, following from the *Cairo Declaration on Counterterrorism and the Rule of Law*, the GCTF Criminal Justice Sector and Rule of Law Working Group compiled and adopted the Rabat Memorandum on Good Practices for Effective Counterterrorism Practice

in the Criminal Justice Sector.<sup>1</sup> The Rabat Memorandum outlines a series of 15 good practices for implementing rule of law-based criminal justice measures to counter terrorism. It draws on the experiences of GCTF members and is grounded in the existing body of international standards enshrined in relevant UN treaties, conventions, and resolutions, as well as the United Nations Global Counter-Terrorism Strategy. The GCTF actively encourages all countries to consider the Rabat Memorandum as a nonbinding source of select guidance for national criminal justice actors working to counter terrorism. GCTF member countries and their partners have been working bilaterally and multilaterally to promote the implementation of the good practices in national and regional contexts.

In October 2014, the Global Center on Cooperative Security commenced a stocktaking of national efforts to implement good criminal justice practices to counter terrorism in line with the Rabat Memorandum. Commissioned by the U.S. Department of State Bureau of Counterterrorism to support the working group, the primary objective of the stocktaking project was development of a qualitative snapshot of national rule of law-based criminal justice measures to counter terrorism from a sampling of countries in Africa, the Middle East, and South and Southeast Asia. This report presents an overview of the project findings. It highlights trends, challenges, and opportunities for leveraging the good practices of the Rabat Memorandum to strengthen the ability of national criminal justice systems to respond to terrorism while promoting and protecting human rights. Furthermore, it offers recommendations to help bring greater focus to the working group's agenda going forward.

Based on the criteria provided under the approved mandate for this project, the stocktaking focus coun-

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1 GCTF, *Cairo Declaration on Counterterrorism and the Rule of Law: Effective Counterterrorism Practice in the Criminal Justice Sector*, 22 September 2011, <https://www.thegctf.org/documents/10162/13878/Cairo+Declaration.pdf>; GCTF Criminal Justice Sector and Rule of Law Working Group, "Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector," 24 May 2012, <https://www.thegctf.org/documents/10162/38299/Rabat+Memorandum-English> (hereinafter Rabat Memorandum).

tries included nine GCTF member countries (Egypt, India, Indonesia, Morocco, Nigeria, Pakistan, Qatar, Saudi Arabia, and the United Arab Emirates) and 15 nonmembers (Bahrain, Bangladesh, Ethiopia, Kenya, Kuwait, Lebanon, Malaysia, Mali, Mauritania, Nepal, Niger, Oman, the Philippines, Tanzania, and Yemen).

The stocktaking exercise was based on a research framework derived from the Rabat Memorandum, grouping the memorandum's good practices into nine thematic areas of inquiry across three broad levels of analysis (table 1). The findings are based on an extensive desk review of legislation, laws, and policy; relevant reports; and in-country and remote consultations with experts from the United Nations and other intergovernmental and international organizations, national governments, academia, and international, regional, and national non-governmental research institutes and civil society groups.

With its expansive scope of inquiry, as well as the geographic, linguistic, and institutional diversity of the focus countries, the stocktaking was confronted with a number of challenges, limitations, and constraints. This report is not intended to offer an exhaustive assessment of criminal justice approaches to terrorism or to stand as a comprehensive cataloging of practices in general or in the selected jurisdictions. Rather, the report offers a bird's-eye view of counterterrorism-related criminal justice and rule of law capacities and practices in a select

number of jurisdictions, potential opportunities for capacity building, and areas in need of further research.

Desktop research was often constrained by the availability, extent, quality, and objectivity of current technical and analytical documentation on relevant national criminal justice issues. The most widely researched jurisdictions are not necessarily representative of the countries on which this study focused. Findings of a general nature and those applicable in a specific country context were qualified and differentiated for this study. Reflecting the limited scope and duration of the assignment, country visits were conducted in select jurisdictions only. Matters of national justice and security are invariably political in nature, rendering them subject to various forms of bias among local and international stakeholders. The willingness of national justice and security officials to engage in frank discussions on internal criminal justice practices and procedures related to counterterrorism was often constrained by local sensitivities and interests.

Further, due to the highly sensitive nature of the issues covered in the stocktaking, significant effort was made to avoid singling out specific jurisdictions for criticism. The broader analyses presented throughout this report are intended to highlight key overarching issues and trends applicable to some but not necessarily all focus countries. Specific examples of policy and practice are presented for the purposes of illustration only and do not necessarily reflect an endorsement.

**Table 1. Research Framework**

| Level of analysis  | Thematic areas of inquiry  | Rabat Memorandum good practice(s) |
|--|--|-----------------------------------|
| <b>STRUCTURAL</b> —Legal and institutional foundations of rule of law-based criminal justice responses to terrorism        | Quality of criminal justice services and systems   | Introduction                      |
|  | Extent and quality of relevant criminal laws, including the criminalization of terrorism offenses, aiding and abetting terrorism offenses, and financing of terrorism offenses | 12–15                             |
| <b>ORGANIZATIONAL</b> —Internal and external stakeholder coordination, cooperation, and competence in countering terrorism | Availability and quality of specialized training and professional development of criminal justice practitioners  | 8                                 |
|  | Extent and effectiveness of interagency cooperation to counter terrorism   | 2                                 |
|  | Extent and effectiveness of international cooperation to counter terrorism   | 9                                 |
| <b>OPERATIONAL</b> —Practices and tools employed by criminal justice actors in terrorism-related cases                     | Effectiveness of criminal investigation processes, including the legal use of undercover investigations, electronic surveillance, classified information, and forensics        | 3, 4, 6, and 10                   |
|  | Effective application of pretrial detention and of incentives to encourage cooperation in terrorism-related investigations and trials  | 5 and 7                           |
|  | Effective measures to ensure the safety of all parties to a trial  | 1                                 |
|  | Appropriate sentencing, adequate standards of incarceration of convicted offenders, and reintegration policies   | 11                                |



## A VIEW FROM THE STRUCTURAL LEVEL: FORM OVER FUNCTION?

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National criminal justice systems vary in form, composition, and character. They are not unitary actors but comprised of a range of organizations, agencies, professional bodies, and personnel. They are guided by a collection of national laws, procedures, norms, and customs that look and operate differently across local, regional, and international contexts. Although criminal justice systems may differ in form, their effectiveness depends on their ability to deliver “modern, fair, and efficient” criminal justice services to the public. As emphasized by the GCTF, “[T]he mere existence of certain legal tools is not sufficient. A comprehensive criminal justice response to terrorism requires a strong criminal justice system that functions in practice.”<sup>2</sup> It is the function of institutions, not necessarily their form, that determines the effectiveness of criminal justice in practice.

The first part of the stocktaking focused on the fundamentals and foundations of criminal justice systems, the degree to which they function in accordance with rule of law principles, the extent and quality of laws that criminalize terrorism-related offenses, and the ability of the system to protect fundamental rights. In its introduction, the Rabat Memorandum stresses that “[s]trong and effective counterterrorism policies are not incompatible with respect for human rights. On the contrary, States that have developed robust, lawful tools for investigating and prosecuting suspected terrorists, consistent with applicable international law, are more likely to observe human rights in pursuit of these suspects. Moreover, counterterrorism efforts can best succeed when they are grounded in human rights obligations and the rule of law.”<sup>3</sup>

To protect fundamental rights, criminal justice responses to terrorism require a robust legal regime that adequately defines and criminalizes terrorism, per good practice 12 of the memorandum. This legal framework should clearly denote specific terrorism-related activities that constitute criminal offenses, “including inchoate or preventive ones such as attempt, conspiracy, providing material support, training, incitement, and solicitation,” as covered in good practices 13 and 14.<sup>4</sup> A comprehensive legal regime against terrorism should also include effective legal and institutional mechanisms to combat the financing of terrorism, per good practice 15.

At the structural level, the stocktaking found some encouraging evidence of national efforts to improve foundational capacities for rule of law–based criminal justice systems. A number of countries, such as Kenya and Morocco, have implemented constitutional reforms in recent years with the potential to deepen the legal and institutional basis for rule of law–based criminal justice systems, for example, by strengthening judicial independence, providing stronger due process and civil rights protections, and clarifying the jurisdictional mandates of justice and security institutions.<sup>5</sup> In some contexts, these reforms have been accompanied by newly established frameworks of governance over the justice and security sectors and more robust institutional mandates for agencies responsible for oversight and accountability.<sup>6</sup> Box 1 features an overview of constitutional reform efforts in Morocco aimed at strengthening the independence of the judiciary and bolstering the rule of law.

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2 Rabat Memorandum, p. 3.

3 *Ibid.*, p. 2.

4 *Ibid.*, p. 1.

5 See “The Constitution of Kenya, 2010,” Kenya Law Reports, n.d., <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ConstitutionOfKenya2010.doc>; Jefri J. Ruchti, trans. and ed., “Morocco: Draft Text of the Constitution Adopted at the Referendum of 1 July 2011,” William S. Hein and Co., 2011, <http://www.constitutionnet.org/vl/item/morocco-draft-text-constitution-adopted-referendum-1-july-2011>.

6 For example, see UN Office on Drugs and Crime, *Establishing Independent Police Oversight in Kenya: Challenges and Opportunities*, 2013 (copy on file with authors); International Commission of Jurists (ICJ), “Reforming the Judiciary in Morocco,” 2013, <http://www.icj.org/morocco-judicial-reform-must-be-comprehensive-and-meaningful/>.

### Box 1. Constitutional Reform and Rule of Law–Based Criminal Justice in Morocco

The constitution of Morocco,<sup>a</sup> approved by referendum in 2011, has been heralded for introducing provisions to bolster the independence of the judiciary. Like the 1996 Moroccan constitution, the new constitution guarantees judicial independence in writing but goes further by establishing new institutions to safeguard that principle under the supervision of a new judicial council, the Superior Council of the Judicial Power (Title VII, Article 113). This council is charged with overseeing the application of guarantees relating to the independence, appointment, promotion, retirement, and discipline of judges (Article 116) and with receiving complaints from judges when they feel that their independence has been threatened (Article 109). Sitting judges are granted tenure (Article 108), and the constitution proscribes penalties for anyone who attempts to

influence judges illicitly (Article 109). The judiciary is independent of the legislative and executive authorities, although Morocco's king remains the guarantor of the independence of the judiciary (Article 107).

The 2011 constitution also creates a new constitutional court under Title VIII to replace the constitutional council, which had jurisdiction over issues relating to parliamentary elections, referenda, and the constitutionality of laws and regulations prior to their promulgation. Unlike the council, the constitutional court will have jurisdiction over constitutional challenges to the laws in the course of litigation (Article 133). Once established under new laws (by the deadline of November 2016), it will become the only court in Morocco that has jurisdiction over issues of constitutional law raised in court.<sup>b</sup>

<sup>a</sup> Jefri J. Ruchti, trans. and ed., "Morocco: Draft Text of the Constitution Adopted at the Referendum of 1 July 2011," William S. Hein and Co., 2011, <http://www.constitutionnet.org/vl/item/morocco-draft-text-constitution-adopted-referendum-1-july-2011>.

<sup>b</sup> International Commission of Jurists, "Reforming the Judiciary in Morocco," 2013, <http://icj.wpengjine.netdna-cdn.com/wp-content/uploads/2013/12/Morocco-Judiciary-final-20-11-13light.pdf>.

The development of comprehensive national counterterrorism legal frameworks with human rights and accountability safeguards remains an ongoing challenge. National laws define terrorism in very different ways across the focus countries.<sup>7</sup> The criminalization of preparatory offenses is meant to deter and prevent acts of terrorism, providing a basis for the arrest and prosecution

of suspects charged with the planning or preparation of terrorist acts prior to commission. Antiterrorism laws in a number of focus countries, such as Ethiopia, India, Nigeria, and the UAE, include provisions criminalizing preparatory offenses such as conspiracy and solicitation, per good practice 13, and attempts to commit and aid and abet terrorism, per good practice 14 (table 2).

7 For example, "terrorism," as defined under Ethiopia's Anti-Terrorism Proclamation, constitutes an act "intending to advance a ... cause by ... destabilizing ... the fundamental political, constitutional or,[sic] economic or social institutions of the country." Proclamation No. 652/2009: A Proclamation on Anti-Terrorism, *Federal Negarit Gazeta*, no. 57 (28 August 2009), p. 4829, <http://www.refworld.org/docid/4ba799d32.html>. Under Qatar's counterterrorism law, any felony contained within the Penal Code "or any other law" is to be considered a terrorist crime if it is committed for a terrorist purpose. A "terrorist purpose" is found where an individual obstructs the application of the constitution or other law, breaches the public order, exposes the public safety and security to danger, or damages national unity. Such a purpose may also be found hypothetically or where actions "could have resulted" in injury to the public, "terrifying them, exposing their life, liberty, or security in danger, harming the environment, public health, the national economy, public or private utilities, establishments, or properties, or seizure thereof or hindering their functions, or obstructing or hindering the public authorities from exercising their duties." These acts may be punishable by death. "Law No. 3 of 2004 on Combating Terrorism," 16 February 2004, art. 1, <https://www.unodc.org/tldb/showDocument.do?documentUid=6338>. Saudi Arabia's Penal Law for Crimes of Terrorism and Its Financing defines a terrorist crime as "[a]n act committed by an offender in furtherance of a criminal enterprise, whether individually or collectively, directly or indirectly" that is intended to, inter alia, "disturb public order," "undermine the security of society," or "defame the state." "Penal Law for Crimes of Terrorism and Its Financing, Royal Decree No. 44 (12/2013)," n.d., art. I(A), <http://alandaluslaw.com/documents/terrorlaw.pdf>.

**Table 2. Examples of Preparatory Offenses in Select National Counterterrorism Laws**

| Country                     | Counterterrorism law                              | Relevant provision  |
|-----------------------------|---|---|
| <b>Ethiopia</b>             | Proclamation No. 652/2009                         | Art. 4: “Planning, Preparation, Conspiracy, Incitement and Attempt of Terrorist Act”  |
| <b>India</b>                | Act No. 15, The Prevention of Terrorism Act, 2002 | Sec. 3.3: “Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of...”                        |
| <b>Nigeria</b>              | Terrorism (Prevention) (Amendment) Act, 2013      | Sec. 21: Preparation to commit terrorist acts   |
| <b>United Arab Emirates</b> | Decree by Federal Law No. 1 of 2004 <sup>a</sup>  | Art. 20: “Whoever abets commission of any of the offences...”<br>Art. 21: “Whoever participates in a criminal conspiracy...”<br>“And whoever abets conspiracy...” |

<sup>a</sup> Law was updated via Federal Law No. 7 of 2014.

Sources: Proclamation No. 652/2009: A Proclamation on Anti-Terrorism, *Federal Negarit Gazeta*, no. 57 (28 August 2009), p. 4827, <http://www.refworld.org/docid/4ba799d32.html> (Ethiopia); Act No. 15, The Prevention of Terrorism Act, 2002 (2002), [https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/70885ebca6462000c125770400454b71/\\$FILE/THE%20PREVENTION%20OF%20TERRORISM%20ACT,%202002.pdf](https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/70885ebca6462000c125770400454b71/$FILE/THE%20PREVENTION%20OF%20TERRORISM%20ACT,%202002.pdf) (India); Terrorism (Prevention) (Amendment) Act, 2013 (2013), <http://www.sec.gov.ng/files/TERRORISM%20PREVENTION%20AMENDMENT%20ACT%202013.pdf> (Nigeria); Decree by Federal Law No. 1 of 2004 on Combating Terrorism Offences (2004), [http://www.imolin.org/doc/amld/United\\_Arab\\_Emirates/Federal\\_law\\_on\\_combating\\_terrorism\\_offences\\_2004.pdf](http://www.imolin.org/doc/amld/United_Arab_Emirates/Federal_law_on_combating_terrorism_offences_2004.pdf) (UAE).

In addition, many countries have made important strides in the development of more comprehensive anti–money laundering and countering the financing of terrorism (AML/CFT) legal regimes, per good practice 15. Bangladesh, Ethiopia, Kenya, Morocco, Nepal, Nigeria, the Philippines, Qatar, and Tanzania, which were once subject to compliance monitoring by the Financial Action Task Force (FATF), have made significant progress in developing their AML/CFT regimes and have been removed from the list of countries subject to International Co-operation Review Group (ICRG) monitoring.<sup>8</sup>

Despite these and other examples of good practices, significant obstacles to consistent application of rule of law–based criminal justice measures while protecting human rights were observed in all jurisdictions. Many countries face fundamental rule of law challenges and do not extend basic justice and security services fairly

or efficiently to large segments of the general public. Although some degree of judicial independence is enshrined in many national constitutions, the central government often exerts direct or indirect control over core criminal justice functions in practice.<sup>9</sup> This is often accomplished through direct appointment, transfer, and discipline of judges; direct intervention to influence justice outcomes; complete subversion of the justice process; or the use of special or military courts. Unchecked levels of executive control preclude any serious form of independent or impartial oversight and accountability in national justice and security functions.

Terrorism-related legal frameworks in a number of jurisdictions contained insufficient due process, privacy, and property protections and other human rights guarantees. Where such provisions were sufficient, they were not always implemented. The detrimental effects on human rights of overly broad or ambiguous

<sup>8</sup> For more information on the FATF ICRG and a record of current and past public statements, see FATF, “High-Risk and Non-Cooperative Jurisdictions,” 6 March 2015, <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/more/moreabouttheinternationalco-operationreviewgroupicrg.html>.

<sup>9</sup> Certain focus countries directly espouse judicial independence in their constitutions, with varying degrees of application and safeguards: Bahrain (art. 104), Bangladesh (art. 116A), Egypt (art. 94), Ethiopia (art. 78), India (art. 50), Indonesia (art. 24), Kenya (art. 160), Kuwait (art. 163), Lebanon (art. 20), Mali (art. 81), Mauritania (arts. 89–90), Morocco (arts. 107–112), Nepal (preamble and art. 100), Niger (art. 116), Nigeria (sec. 17 and 36), Oman (arts. 60 and 61), Pakistan (preamble, art. 175, and art. 2A of the annex), the Philippines (art. 8), Qatar (arts. 129–131), Saudi Arabia (art. 46), Tanzania (preamble and art. 107B), UAE (art. 94), and Yemen (arts. 78, 79, and 147).

legal definitions of terrorism have long been acknowledged as a serious global problem, including by the Office of the UN High Commissioner for Human Rights (OHCHR), the UN Security Council Counter-Terrorism Committee, and the Counter-Terrorism Committee Executive Directorate (CTED).<sup>10</sup> The lack of clear legal criteria for “acts of terrorism” and its constitutive elements may not only violate the principle of

legality but may be used to justify violations of human rights and civil liberties.<sup>11</sup> Several countries covered in this study made use of antiterrorism or other national security laws to restrict the freedom of assembly and expression, prohibit meetings and peaceful protests, and restrict the activities of political parties, human rights advocates, and civil society groups.

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10 CTED, *Global Survey of the Implementation of Security Council Resolution 1373 (2001) by Member States*, S/2011/463, 2011, pp. 11, 33, 43, 85–87, <http://www.un.org/en/sc/ctc/docs/2011-globalsurvey1373.pdf>; CTED, “Thematic Discussion of the CTED on the Human Rights Aspects of Counter-Terrorism in the Context of Resolution 1373 (2001),” 2010, [http://www.un.org/en/sc/ctc/docs/2010/2010\\_10\\_07\\_thematic-humanrights.pdf](http://www.un.org/en/sc/ctc/docs/2010/2010_10_07_thematic-humanrights.pdf).

11 OHCHR and numerous independent human rights monitoring groups have expressed concerns about states that use counterterrorism laws to justify abuse. For the work of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, see <http://www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx>. See also ICJ, “Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights,” 2009, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/04/Report-on-Terrorism-Counter-terrorism-and-Human-Rights-Eminent-Jurists-Panel-on-Terrorism-series-2009.pdf>; Human Rights Watch, “In the Name of Security: Counterterrorism Laws Worldwide Since September 11,” 29 June 2012, <http://www.hrw.org/reports/2012/06/29/name-security-0>.

## A View From the Organizational Level: Links and Kinks in the Chain

The Rabat Memorandum offers guidance to diverse groups of practitioners throughout the criminal justice system to assist them in responding effectively to terrorism-related threats. The memorandum emphasizes the importance of strengthening the capacity of these practitioners to, inter alia, “conduct clandestine surveillance of terrorist suspects, gather evidence of terrorist activities that can be used in court, detain suspects based on such evidence, obtain intelligence from them about terrorist plots, prosecute them fairly and effectively in legal proceedings, and afford those who are convicted appropriate punishment and correctional facilities.”<sup>12</sup>

In this context, the criminal justice process can be understood as a series, or chain, of activities undertaken by criminal justice actors in accordance with national law. The effectiveness of criminal justice processes depends on the capacities of different organizations across the system, the capabilities of their personnel, and the quality of their coordination. The chain is only as strong as its weakest link.

The Rabat Memorandum good practices encourage the development of organizational expertise for countering

terrorism and coordination and cooperation among relevant criminal justice authorities domestically and across borders. Good practice 8 focuses on the long-term development of “a specialized cadre of permanent career investigators, prosecutors, and judges” to ensure that the relevant actors are adequately equipped with the skills and expertise to develop, prosecute, and adjudicate criminal cases against those suspected of terrorism-related offenses in accordance with national and international human rights and fair trial standards. The Rabat Memorandum also recommends measures to strengthen interagency cooperation and information sharing across relevant criminal justice authorities, per good practice 2, as well as legal and procedural mechanisms for cross-border legal cooperation, per good practice 9.

At the organizational level, the stocktaking found a number of examples of good practice implementation across the focus countries. Many focus countries, such as Lebanon and Morocco, maintain national judicial training institutes intended to provide legal professionals with practical instruction and clinical experience before they assume a position in the judiciary (table 3).

**Table 3. Judicial Recruitment and Training Processes in Lebanon and Morocco**

| Country | Institution   | Recruitment and training summary   |
|---------|---|--|
| Lebanon | Institute of Judicial Studies (IJS)   | Generally, candidates seeking appointment to the Lebanese judiciary must undergo a competitive application process and exam interviews with the head of the IJS and a member of the Supreme Judicial Council. Candidates that pass the interview process sit for a written exam. Appointments are allocated on the basis of Lebanon’s main confessional communities. Appointees then enter the three-year training program at the IJS, consisting of a six-month lecture component, an exam, and two and a half years of clinical training at various courts and departments, rotating every three or four months. Upon completion, the Supreme Judicial Council determines postings based on final evaluations. |
| Morocco | Institut Supérieur de la Magistrature (Higher Institute of the Judiciary) (ISM) | Appointment to the Moroccan judiciary requires a degree in law or Islamic law, and entry is based on performance in national exams. Accepted candidates must undertake a two-year training program at the ISM: a five-month theoretical component consisting of lectures on law and legal research, a 15-month practical component in which trainees are assigned to appellate or first instance courts under the supervision of a judge, and four additional months of clinical training in the public or private sector. Upon completion, graduates are appointed as prosecutors, judges, or investigating judges.   |

Source: Hesham Nasr, Jill Crystal, and Nathan J. Brown, “Criminal Justice and Prosecution in the Arab World,” October 2004, <ftp://pogar.org/LocalUser/pogarp/judiciary/criminaljustice-brown-e.pdf>.



Although many focus countries are highly saturated with donor-funded and -delivered one-off, short-term training activities, several focus countries offer specialized training initiatives maintained and regularly delivered by national criminal justice training providers. For example, the Pakistani Federal Judicial Academy has integrated human rights, antiterrorism, and antinarcotics laws into its general curriculum for the judiciary. It frequently holds trainings of trainers, workshops, and colloquia for investigators, prosecutors, and judges focusing on modern legal and investigation techniques for countering terrorism.<sup>13</sup> The Nepali National Judicial Academy has held numerous training programs on anti-money laundering, organized crime, and related human rights protections for investigators, prosecutors, and judges.<sup>14</sup> Regional training academies, such as the Jakarta Centre for Law Enforcement Cooperation (JCLEC) and the International Institute for Justice and the Rule of Law (IIJ), also serve as important venues for specialized training that might otherwise be unavailable in home jurisdictions.<sup>15</sup>

Beyond training, a number of countries have taken steps toward developing standardized, merit-based criteria for professional advancement, career tracks, and salary and benefits scales to incentivize personnel performance, skills, and knowledge development and protect institutional memory through the cultivation and retention of experienced staff over the long term. Special directorates, such as the Indian Bureau of Police Research and Development, have been established in some jurisdictions to support national training infrastructure more sustainably and contribute research, standards, and curricula development assistance to core criminal justice agencies.<sup>16</sup>

Terrorism cases require coordinated action across national agencies at different stages of the criminal justice process. Delineating and clarifying functional and jurisdictional mandates across these actors in relevant laws or policy is a prerequisite to effective coordination. For example, many focus countries' AML/CFT laws include provisions on interagency cooperation, identifying the specific roles of each organization, their information sharing responsibilities, and investigatory powers in conducting financial investigations. To coordinate domestic and cross-border responses to terrorism more effectively, a number of countries, such as Indonesia, Mali, and Tanzania, have developed interagency cooperation platforms (table 4). Those that have established dedicated domestic cooperation platforms for counterterrorism efforts have generally done so using variations of two basic models: the fusion center model, in which colocated liaison officers or seconded personnel from relevant agencies are designated to participate in coordinating mandated multiagency activities across national, provincial, and local authorities, and the focal point model, in which an existing or newly established agency is designated as the national focal point for certain mandated counterterrorism activities.

To clarify the roles and responsibilities of agency partners and establish a basis for their collaboration in terrorism cases, some criminal justice actors have developed cross- or multiagency coordination guidelines, standard operating procedures, or memoranda of understanding (MOUs). In Kenya, for example, the Office of the Director of Public Prosecutions and the National Police Service developed a series of guidelines and joint standard operating procedures to help inform and coordinate their cooperation in terrorism-related cases.<sup>17</sup>

13 See Pakistani Federal Judicial Academy, "Federal Judicial Academy/Centre of Excellence for Law & Judicial Education of Pakistan," n.d., <http://www.fja.gov.pk/> (accessed 23 July 2015).

14 Nepali National Judicial Academy, "National Judicial Academy 2011/12 Annual Report (2068/69)," n.d., [http://njanepal.org.np/index.php?option=com\\_rokdownloads&view=file&task=download&id=74%3Aannual-report-201112-206869-english&Itemid=156](http://njanepal.org.np/index.php?option=com_rokdownloads&view=file&task=download&id=74%3Aannual-report-201112-206869-english&Itemid=156).

15 Indonesia and Australia established the JCLEC in 2004 as a center for specialized law enforcement training to combat transnational crime and terrorism. For more information, see <http://www.jclec.com/>. Certain GCTF member countries in partnership with Malta established the IIJ in 2014 to provide training to justice and security officials in North, West, and East Africa and the Middle East on responses to terrorism and related transnational criminal activities within a rule of law framework. For more information, see <http://www.theijj.org/>.

16 For more information, see Bureau of Police Research and Development, Indian Ministry of Home Affairs, <http://www.bprd.nic.in/>.

17 Office of the Director of Public Prosecution, Kenyan National Police Service; Australian High Commission; and British High Commission, "Quick Reference Guide to the Investigation and Prosecution of Terrorist Related Offences—Points to Prove," June 2014, annex A ("Establishment of a Standard Operating Procedures (S.O.P) for Terrorism Cases for the Office of the Director of Public Prosecutions (ODPP) and the National Police Service (Anti-Terrorism Police Unit)") (copy on file with authors).

**Table 4. Interagency Cooperation Platforms in Select Focus Countries**

| Interagency platform                              | Model         | Structure  | Summary of mandate   |
|---|---------------|--|--|
| <b>INDONESIA—National Counterterrorism Agency</b> | Focal point   | Dedicated budget and secretariat; cabinet-level agency reporting directly to the executive level but oversight by the Coordinating Ministry for Political, Legal, and Security Affairs | <ul style="list-style-type: none"> <li>Formulate policy, particularly related to counterradicalization, reeducation, and resocialization of violent extremists</li> <li>Evaluate organizational capacity and preparedness of national agencies in countering terrorism</li> <li>Assess overseas terrorist threats</li> <li>Coordinate international responses to terrorism</li> </ul>                        |
| <b>TANZANIA—National Counterterrorism Center</b>  | Fusion center | Seconded personnel from intelligence, police, defense, immigration, and prison organizations; operating under the auspices of the Ministry of Home Affairs                             | <ul style="list-style-type: none"> <li>Identify regions of concern and radicalized areas, among other aspects, to pinpoint vulnerabilities</li> <li>Work with police to engage community leaders to encourage dialogue</li> <li>Analyze areas of vulnerability in law enforcement capabilities, such as border control</li> <li>Maintain contact with other law enforcement bodies in the region</li> </ul>  |
| <b>MALI—Counterterrorism Squad</b>                | Hybrid        | Seconded personnel from various disciplines working by request in a task force-style hub under the prosecutor in the Ministry of Justice and within the court system                   | <ul style="list-style-type: none"> <li>Provide expertise on relevant topics to combat organized criminal activity</li> <li>Facilitate specialized prosecution services under the direction of the state prosecutor</li> <li>Maintain specialized investigation offices</li> <li>Coordinate specialized investigative squad composed of police and gendarmes working under the Ministry of Justice</li> </ul> |

Sources: Noorhaidi Hasan et al., "Counter-Terrorism Strategies in Indonesia, Algeria and Saudi Arabia," Netherlands Institute of International Relations "Clingendael," 2012, [https://english.wodc.nl/images/1806-volledige-tekst\\_tcm45-435986.pdf](https://english.wodc.nl/images/1806-volledige-tekst_tcm45-435986.pdf); Bureau of Counterterrorism, U.S. Department of State, "Chapter 2. Country Reports: East Asia and Pacific Overview," 18 August 2011, <http://www.state.gov/j/ct/rls/crt/2010/170255.htm> (Indonesia); Eastern and Southern Africa Anti-Money Laundering Group, *Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism; United Republic of Tanzania*, December 2009, [http://www.esaamlg.org/userfiles/Tanzania\\_Mutual\\_Evaluation\\_Detail\\_Report.pdf](http://www.esaamlg.org/userfiles/Tanzania_Mutual_Evaluation_Detail_Report.pdf); Bureau of Counterterrorism, U.S. Department of State, "Country Report on Terrorism 2013," April 2014, pp. 50–52, <http://www.state.gov/documents/organization/225886.pdf> (Tanzania); Law No. 16/2013, 21 May 2013 (Mali).

Many jurisdictions designate a national financial intelligence agency or financial crimes unit under law enforcement or a justice agency as focal points or coordinators of interagency information sharing and investigations into money laundering or terrorism financing offenses. Effective information sharing with the banking sector and other financial and designated

nonfinancial businesses and professionals is essential for preventing and countering terrorism-related offenses. An example from the Philippines demonstrates how information sharing and cooperation under a comprehensive AML/CFT legal framework can support more effective counterterrorism activities (box 2).

## Box 2. Anti-Money Laundering Cooperation in the Philippines

On 12 July 2011, two foreign nationals (a mother and son) and their Filipino relative were abducted from Zamboanga City by the Abu Sayyaf Group. The group demanded a \$10 million ransom to be paid to three separate Filipino bank accounts. The kidnapping was reported to the Philippine National Police—Anti-Kidnapping Group, who formed a joint task force with the foreign nationals’ home country authorities and the Filipino Anti-Money Laundering Council (AMLC), the Filipino financial intelligence unit. Working with the compliance officers of the three banks mentioned in the ransom demand, the AMLC closely monitored the tagged bank accounts, reviewed suspicious transaction reports (STRs), and gathered pertinent information connected to those

accounts. The banks also made security camera footage available to the AMLC.

With monitoring measures in place, potential leads quickly emerged, connecting several STRs to footage of suspects accessing tagged bank accounts at regional branches. The task force analyzed information collected from its sources, which provided insight into the location of the suspected kidnapers and, ultimately, their hostages. After the exact whereabouts were confirmed in September, the task force, in coordination with Filipino security forces, launched a series of raids to successfully rescue the hostages, who would help identify the primary suspects for eventual prosecution.<sup>9</sup>

<sup>9</sup> The Egmont Group of Financial Intelligence Units, “2011–2012 Annual Report,” 2012, pp. 38–42, <http://www.egmontgroup.org/library/download/233>.

In light of the transnational nature of many terrorism-related offenses, Rabat Memorandum good practice 9 emphasizes cross-border cooperation in criminal matters as a crucial element of rule of law–based criminal justice responses to terrorism. Such methods can include formal mechanisms of cross-border legal cooperation, such as extradition and mutual legal assistance (MLA) treaties and letters rogatory, and informal measures, such as professional networks of contact points and MOUs. Many focus countries are party to multilateral conventions on terrorism and organized crime that contain MLA provisions for criminal matters.<sup>18</sup> Regional intergovernmental organizations also have served as venues for the development of formal cross-border legal cooperation frameworks. For example, regional MLA conventions have been developed by

the Intergovernmental Authority on Development and the South Asian Association for Regional Cooperation, although neither has entered into force. Many focus countries are party to bilateral agreements containing cross-border legal cooperation provisions and frequently engage in other forms of law enforcement coordination, cooperation, and information sharing through Interpol. Such platforms have been used effectively in complex cross-border transnational criminal cases. For example, the anti-wildlife poaching initiative Operation Cobra II was a multinational, multiagency undercover sting that resulted in nearly 400 arrests in Africa and Asia in 2013–2014. It was conducted by law enforcement officers from 28 countries, including Ethiopia, India, Indonesia, Kenya, Malaysia, Nepal, the Philippines, and Tanzania (box 3).<sup>19</sup>

18 See “United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,” “United Nations Convention Against Transnational Organized Crime,” “United Nations Convention Against Corruption,” “International Convention for the Suppression of the Financing of Terrorism,” “International Convention for the Suppression of Terrorist Bombings,” “Commonwealth Scheme for Mutual Assistance in Criminal Matters,” “European Convention on Mutual Assistance in Criminal Matters,” “Convention on Mutual Assistance in Criminal Matters Between the Member States of the European Union,” and “Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds From Crime.”

19 U.S. Agency for International Development, “Conservationists Applaud Global Wildlife Protection Operation,” 11 February 2014, <http://www.usaid.gov/asia-regional/press-releases/feb-11-2014-conservationists-applaud-global-wildlife-protection>.

### Box 3. Undercover Investigation and Intelligence Sharing: Operation Cobra II

In January 2014, participating countries working in partnership with the World Customs Organization, UN Convention on International Trade in Endangered Species of Wild Fauna and Flora, Interpol, the Lusaka Agreement Task Force, the Association of Southeast Asian Nations Wildlife Enforcement Network, and the South Asia Wildlife Enforcement Network completed an international law enforcement operation against wildlife poaching and trafficking named Operation Cobra II.<sup>a</sup> Cross-border intelligence sharing on poaching and trafficking syndicates, supported by undercover operations in multiple countries, was a key fac-

tor in the operation's success.<sup>b</sup> The multijurisdictional effort was facilitated by undercover teams feeding intelligence to their respective national coordinators. Intelligence was then directed to an International Coordination Team with hubs in Bangkok and Nairobi. The team compiled, analyzed, and exchanged criminal intelligence concerning each point along the trade chain to simultaneously target poachers and traffickers.<sup>c</sup> Also, it followed up with respective participating countries to provide support and guidance as needed on issues, including arrests and seizures, that were pertinent to the operation.

<sup>a</sup> Shannon Tiezzi, "Interviews: Kerri-Ann Jones," *Diplomat*, 12 March 2014, <http://thediplomat.com/2014/03/kerri-ann-jones/>.

<sup>b</sup> U.S. Agency for International Development, "Conservationists Applaud Global Wildlife Protection Operation," 11 February 2014, <http://www.usaid.gov/asia-regional/press-releases/feb-11-2014-conservationists-applaud-global-wildlife-protection>.

<sup>c</sup> *Ibid.*

Despite the many examples of activities aligned with the organizational good practices of the Rabat Memorandum, weak professionalization of police, prosecution, and corrections services; lack of coordination among national security and criminal justice system actors; weak national training systems; and limited usage of legal cross-border cooperation mechanisms regardless of formal adoption remain persistent challenges. Poorly paid, deeply politicized, and highly corrupt criminal justice organizations are not only a detriment to the legitimacy and effectiveness of the criminal justice system as a whole, but they also can frequently deter or prevent motivated, highly qualified candidates from entering or remaining in public service. The development potential of criminal justice systems and constituent actors is difficult to achieve in the context of severe resource constraints and political interference, particularly in fragile, low income, and postconflict settings.

Although many laudable efforts to improve interagency and cross-border cooperation to counter terrorism were observed, their effectiveness in practice often appeared constrained or limited. In some cases, legacies of highly centralized, authoritarian governance, compounded by organizational cultures of mistrust and competition, have served to entrench highly compartmentalized and opaque justice and security sectors. These challenges are further complicated by unclear and overlapping functional and jurisdictional mandates, as well as the preference or perceived necessity of military- and paramilitary-driven responses to terrorism. These and other underlying problems had a similar effect in the domain of cross-border cooperation. Many focus countries played an active role in the proliferation of formal multilateral and bilateral cross-border legal cooperation mechanisms, but their engagement in cross-border cooperation was frequently ad hoc, externally led, informal, or extralegal.







## A View From the Operational Level: Tools of the Trade

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To effectively respond to terrorism-related threats within a rule of law framework, criminal justice actors must lawfully use all the operational tools and measures at their disposal to prevent acts of terrorism and bring perpetrators to justice fairly and impartially in the event the acts occur. The application of the Rabat Memorandum good practices requires authorities to carefully balance national security interests and human rights imperatives. In the memorandum's introduction, the GCTF stresses that the good practices "and their application should fully respect human rights obligations and the rule of law, while protecting the safety of those participating in the process and the government's sensitive sources and methods."<sup>20</sup>

The memorandum highlights the importance of a number of practices in the day-to-day conduct of criminal justice authorities and offers guidance on the development and use of specialized operational measures to investigate and prosecute terrorism-related offenses and appropriately punish convicted offenders. Good practices 3, 4, 6, and 10 focus on the legal basis for and oversight and use of special investigations techniques. Good practice 5 offers guidance on measures to incentivize cooperation in terrorism-related investigations and prosecutions. Good practice 11 focuses on the appropriate sentencing, incarceration, and reintegration of those convicted of terrorism-related offenses. Good practice 1 focuses on measures to improve the safety and security and to protect the rights of all parties in terrorism-related trials, and good practice 7 is devoted to the appropriate pretrial detention of suspects.

At the operational level, the stocktaking found a number of examples of good practice implementation

across the focus countries. Criminal justice responses to terrorism-related crimes, like any other, depend on the pursuit, collection, and presentation of evidence of criminal conduct. Many jurisdictions had an overreliance on testimonial evidence to the detriment of physical evidence derived from scientific investigation methods. To overcome this challenge, some jurisdictions have enacted measures to strengthen the capacity to gather and the reliability of physical or indirect evidence in criminal investigations, prosecution, and adjudication. For example, Pakistan is working to strengthen its evidence admissibility standards by amending its Penal Code and Code of Criminal Procedure to enhance its national criminal investigation services. Furthermore, the Investigation for Fair Trial Act and Criminal Law (Amendment) Act of 2014 will help prevent coercive interrogation by, *inter alia*, giving greater evidentiary weight to physical evidence developed through scientific methods of investigation (box 4).

Conducting research on the use of covert investigation techniques in most jurisdictions is problematic because their deployment is secretive by necessity. There was, however, evidence of focus countries adopting measures to strengthen national legal frameworks for undercover investigations in line with Rabat Memorandum good practice 3. The past decade has seen a worldwide proliferation of measures that expand the powers and capabilities of national authorities to engage in electronic surveillance and other covert investigation methods for the purpose of countering terrorism and serious crime.<sup>21</sup> General provisions for the use of electronic surveillance and other covert investigation techniques can be found in the criminal procedure codes of several focus countries.<sup>22</sup> In many cases, such measures were strengthened or given added

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20 Rabat Memorandum, p. 2.

21 See UN General Assembly, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, Martin Scheinin, A/HRC/13/37, 28 December 2009; Craig Timberg, "U.S., Israeli Companies Supply Spy Gear to Repressive Regimes, Report Says," *Washington Post*, 19 November 2014, [http://www.washingtonpost.com/business/technology/us-israeli-companies-supply-spy-gear-to-repressive-regimes-report-says/2014/11/19/49da9b48-700b-11e4-893f-86bd390a3340\\_story.html](http://www.washingtonpost.com/business/technology/us-israeli-companies-supply-spy-gear-to-repressive-regimes-report-says/2014/11/19/49da9b48-700b-11e4-893f-86bd390a3340_story.html); Gus Hosein and Carly Nyst, "Aiding Surveillance: An Exploration of How Development and Humanitarian Aid Initiatives Are Enabling Surveillance in Developing Countries," Privacy International, October 2013, <https://www.privacyinternational.org/sites/default/files/Aiding%20Surveillance.pdf>.

22 Criminal Procedure Code of the Niger, art. 605.4, para. I.

#### Box 4. Pakistan's Evidence and Investigation Standards

Since enactment of the Anti-Terrorism Act in 1997, Pakistan has introduced new legislation to bolster the act's provisions and reflect the growing need to regulate the use of modern surveillance techniques and technology in the collection of evidence. The Investigation for Fair Trial Act was signed into law on 20 February 2013, and recognizes the importance of obtaining evidence in time to prevent the threat or commission of terrorist acts and other scheduled offenses,<sup>a</sup> while seeking to provide adequate executive and judicial oversight for the evidence collected by law enforcement and intelligence agencies pursuant to modern investigative techniques.<sup>b</sup> Such techniques include covert surveillance and human intelligence, property interference, wiretapping, and communication interception mechanisms;<sup>c</sup> more specifically, they refer to the interception and recording of telephone communication, e-mail, text messages, and Internet protocol detail records, among other applications.<sup>d</sup> The Investigation for Fair Trial Act is primarily procedural in nature and provides well-defined measures for obtaining and executing surveillance or interception warrants. In making the determination to issue a warrant, the judge must consider whether the issuance of a warrant will unduly interfere with the privacy of any person or property.<sup>e</sup> The law thus attempts to balance the rights

of privacy with the effective administration of justice. Pending legislation in Pakistan seeks to strengthen the use of modern investigative techniques in the collection and assessment of evidence. The proposed Criminal Law (Amendment) Act (2014) would amend the Penal Code and the Code of Criminal Procedure of Pakistan to incorporate scientific bases for investigation in accordance with fundamental rights guaranteed under the Pakistani constitution and the Universal Declaration of Human Rights.<sup>f</sup> The amendment proposes the creation of an independent investigatory unit within the police comprised of individuals trained in the fields of psychology and other specialized sciences with the knowledge and skills to conduct an investigation using modern techniques in the fields of information technology and forensic sciences. An important purpose of the proposed amendment is to curb the use of coercive interrogation techniques that may amount to “inhuman, tortuous and cruel methods” by relying instead on scientific methods of investigation in line with human rights principles.<sup>g</sup> Several provisions are included to protect the rights of the accused, including his or her right to be informed of the investigation, the purpose of the investigation, and the legal implication of the outcome of such an investigation.<sup>h</sup>

<sup>a</sup> The law also incorporates offenses under the Private Military Organisations Abolition and Prohibition Act 1974, Prevention of Anti-National Activities Act 1974, Pakistan Nuclear Regulatory Authority Ordinance 2001, and the National Command Authority Act 2010 (to the extent of the 1997 Anti-Terrorism Act only).

<sup>b</sup> Investigation for Fair Trial Act, 2013, *Gazette of Pakistan*, 22 February 2013, p. 20, [http://www.na.gov.pk/uploads/documents/1361943916\\_947.pdf](http://www.na.gov.pk/uploads/documents/1361943916_947.pdf).

<sup>c</sup> *Ibid.*

<sup>d</sup> *Ibid.*, sec. 3 (g)(ii).

<sup>e</sup> *Ibid.*, sec. 10(2)(b).

<sup>f</sup> Criminal Law (Amendment) Act, 2014, p. 1, [http://www.na.gov.pk/uploads/documents/1390904876\\_726.pdf](http://www.na.gov.pk/uploads/documents/1390904876_726.pdf).

<sup>g</sup> *Ibid.*, p. 1 and sec. 176C.

<sup>h</sup> *Ibid.*, sec. 176F.

specificity in new or revised terrorism-, organized crime-, and corruption-related laws.<sup>23</sup> The existence or absence of these laws, however, does not necessarily translate into well-regulated and human rights-compliant frameworks for the use of electronic surveillance.

In line with good practice 1, a number of jurisdictions have recognized the need to enhance courtroom safety, standardize sentencing guidelines, and improve witness protection schemes. There have been advances in the development of legal protections for witnesses, victims,

23 See Draft Law on Combating Terrorism, art. 32 (Bahrain); Law No. 3 of 2004 on Combating Terrorism, art. 19 (Qatar); The Prevention of Terrorism Act, 2002, art. 30 (Tanzania); Law on the Commission for the Eradication of Criminal Acts of Corruption, Law No. 30 of 2002, art. 12 (Indonesia).

and justice collaborators in a number of countries. Protection-relevant provisions are commonly found in the context of organized crime, corruption, and human trafficking laws, as in Nepal and Tanzania.<sup>24</sup> Jurisdictions such as Egypt and Kenya have promulgated standalone witness protection laws.<sup>25</sup> Although there has been movement and, in some cases, significant progress in the development of related laws across a number of jurisdictions, protection measures in many countries were inconsistently applied, not fully operationalized, and limited in scope.<sup>26</sup>

Good practice 11 emphasizes the importance of an effective system for incarcerating convicted terrorists as part of the broader criminal justice response to terrorism. Prison conditions are generally harsh and below international standards in most focus countries, precluding the full realization of good practice 11.<sup>27</sup> In 2013 the U.S. Department of State Bureau of Democracy, Human Rights and Labor found that prison conditions in almost half of the focus countries were “harsh and

sometimes life-threatening.”<sup>28</sup> Several countries, such as Kuwait and Qatar, were among the exceptions, generally allowing independent monitoring of prisons by human rights groups and the media, generally providing for inmates’ health care and subsistence, maintaining adequate recordkeeping standards, and permitting prisoners to seek legal recourse for allegations of abuse.<sup>29</sup>

Several focus countries have been successfully developing and refining national rehabilitation and reintegration programs specifically for terrorism and violent extremist offenders, including Indonesia, Malaysia, Mauritania, Pakistan, and Saudi Arabia (box 5).<sup>30</sup> Complex in nature and challenging in their coordination, some of these initiatives demonstrate that basic disengagement and rehabilitation programs need not be hugely resource intensive to be successful. Although such programs necessarily share certain elements, each is tailored to unique socioeconomic, cultural, and political contexts and utilizes interventions designed for impact on certain groups of inmates or individual inmates.

24 See ICJ, “Witness Protection in Nepal: Recommendations From International Best Practices,” August 2011, pp. 9–13, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/05/Nepal-witness-protection-analysis-brief-2011.pdf>; Prevention and Combating of Corruption Act, 2007, [http://www.tanzania.go.tz/egov\\_uploads/documents/PREVENTION\\_AND\\_COMBATING\\_OF\\_CORRUPTION\\_ACT\\_sw.pdf](http://www.tanzania.go.tz/egov_uploads/documents/PREVENTION_AND_COMBATING_OF_CORRUPTION_ACT_sw.pdf) (Tanzania).

25 See Egypt State Information Service, “Cabinet Approves Witness Protection Bill, Amends Investment Guarantees, Incentives Law,” 22 February 2014, <http://allafrica.com/stories/201402242102.html>; Witness Protection (Amendment) Act, 2010, [http://www.issafrica.org/anicj/uploads/Kenya\\_Witness\\_Protection\\_AmendAct\\_2010.pdf](http://www.issafrica.org/anicj/uploads/Kenya_Witness_Protection_AmendAct_2010.pdf) (Kenya).

26 For examples, see Jemima Njeri Kariri, “Witness Protection: The Missing Cornerstone in Africa’s Criminal Justice Systems,” Institute for Security Studies (ISS), 1 September 2014, <http://www.issafrica.org/iss-today/witness-protection-the-missing-cornerstone-in-africas-criminal-justice-systems>; Chris Mahony, *The Justice Sector Afterthought: Witness Protection in Africa* (Pretoria: ISS, 2010), <https://www.issafrica.org/uploads/Book2010WitnessProt.pdf>.

27 For examples, see Bureau of Democracy, Human Rights and Labor, U.S. Department of State, “Country Reports on Human Rights Practices for 2013,” n.d., <http://www.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm>; Bureau of Democracy, Human Rights and Labor, U.S. Department of State, “Country Reports on Human Rights Practices for 2014,” n.d., [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm).

28 Bureau of Democracy, Human Rights and Labor, U.S. Department of State, “Country Reports on Human Rights Practices for 2013.”

29 Ibid. See “Kuwait Leading Light in Medical Services Extended to Detainees,” *Arab Times*, 20 April 2015, <http://www.menafn.com/1094175301/Kuwait-leading-light-in-medical-services-extended-to-detainees>.

30 For Indonesia, see Search for Common Ground, “Mid-Term Evaluation; Reducing Recidivism: A Process for Effective Disengagement of High-Risk Prisoners in Indonesia,” New Zealand International Aid and Development Agency, December 2013, [https://www.sfcg.org/wp-content/uploads/2014/07/INA\\_MT\\_Dec13\\_SCGF\\_NZL\\_MTR\\_Report\\_Revisi.pdf](https://www.sfcg.org/wp-content/uploads/2014/07/INA_MT_Dec13_SCGF_NZL_MTR_Report_Revisi.pdf).

## Box 5. Select Examples of Violent Extremism Rehabilitation and Reintegration Initiatives

### MALAYSIA

Malaysia's experience with rehabilitating militants dates to the country's Communist insurgency in the 1950s. Former Malayan Communist Party militants were persuaded to surrender and undergo a rehabilitation program to be reintegrated into society, with the government providing job opportunities and citizenship rights to those that successfully completed the program.<sup>a</sup>

In its efforts to combat contemporary violent extremism, most prominently stemming from members of Jemaah Islamiya and Kumpulan Mujahidin Malaysia, the Malaysian Department of Islamic Development is working with the prisons department, university

lecturers, and religious experts to promote civic and Islamic teachings and instill the roles and responsibilities of a Malaysian citizen among violent extremist offenders.<sup>b</sup> As part of the program, the government provides financial support to families of offenders, partly as a means to reduce the financial incentive for family members to maintain ties with extremist networks. It encourages the involvement of family members in the program through regular visits.<sup>c</sup> There is not much public information available about the Malaysian rehabilitation program and its success rate, but concerns have been raised regarding the treatment of participating offenders.<sup>d</sup>

### MAURITANIA

Mauritania has been experimenting with a more concerted approach toward prisoner deradicalization and reintegration since 2010. Following a presidential directive, the Mauritanian Ministry of Religious Affairs convened a workshop of intellectuals and religious scholars to outline an approach for addressing growing radicalization in the country's prisons. One of the outcomes of the workshop was the establishment of a panel of the nation's 30 most prominent religious scholars, the Committee of Ulama, to devise and implement an effective dialogue process with the most radical violent extremist offenders in the prison system.<sup>e</sup> The aim of the dialogue was to break down the ideological rationale espoused by the offenders and develop point-by-point counterarguments to their narratives, supplemented by physical and religious evidence.

The dialogue took place in three phases. Inmates were divided into two groups: one deemed more open to dialogue and one considered more hard-line in its views and dispositions.<sup>f</sup> During the initial phase of the dialogue, the scholars would allow offenders to present their cases, primarily listening to their arguments to better understand their

mode of thinking. Based on what they learned, the scholars returned to the prison after preparing an "arsenal of scientific and religious evidence, both empirical and theoretical, to counter" the offenders' arguments. These sessions took the form of "a well-prepared-for lecture by each scholar," some of which were recorded and broadcast on national television.<sup>g</sup> Following the lectures, scholars held multiple sessions with inmates individually and in small groups.

Eight months after the process began, the government issued amnesties to 35 "repented" dialogue participants, releasing them to their families and communities. Although job placement and training were not among the inducements offered to amnestied offenders, those that successfully completed the program received a lump sum for the purpose of starting their own businesses.<sup>h</sup> Mauritania's relatively limited resources prevent extensive postrelease monitoring and follow-up of reintegrated offenders. Yet, its strong, traditional tribal and community institutions may help ease the integration process and provide a source of support, early warning, and intervention should problems arise.

## PAKISTAN

The Pakistani military has set up several centers throughout the country based around the three main constituencies of its rehabilitation program: adults, juveniles, and family members. Project Sabaoon focuses on juvenile offenders.<sup>i</sup> The Sabaoon Rehabilitation Centre in the Swat valley was established in 2009 with the help of the Hum Pakistan Foundation and the UN Children’s Fund. Focused on Tehreek-e-Taliban militants between the ages of 12 and 17, the center employs psychologists, teachers, and religious instructors to inspire critical thinking and decision making and uses counseling to address social and psychological problems ranging from low self-esteem and anger management to post-traumatic stress disorder. Following individual risk and intake assessments, the center provides participat-

ing youths with tailored primary and secondary education, civics courses, and psychological and religious counseling, as well as technical and vocational training. Family therapy is provided through Project Sparlay in collaboration with local communities.<sup>j</sup>

By February 2013, Project Sabaoon had accepted more than 200 participants and reintegrated 143. Following reentry, there is a two-year monitoring process during which military officers regularly check with the reintegrated youth to assess their progress. There are no known cases of recidivism related to the project, but no independent assessment of the program has been conducted, and it is difficult to isolate the variables that contribute to successful long-term outcomes.<sup>k</sup>

## SAUDI ARABIA

Saudi Arabia hosts one of the most expansive violent extremism rehabilitation programs in the world, the Prince Mohammad bin Naif Counseling and Care Center, which started as an initiative focused on religious dialogue in Saudi prisons in 2006. It has developed into a comprehensive program that starts in prison with religious education and psychological counseling, followed by a period of enrollment in one of several centers throughout the country. While assigned to these “halfway houses,” participants engage in a range of activities, including educational programs, psychological and religious counseling, vocational training, and sports and cultural events. They also receive health care and financial support.<sup>l</sup> From the outset, the families of participants are heavily engaged, providing support and positive reinforcement during the participants’ time in the center and throughout the reintegration process. Following reentry, participants receive financial help, assistance with finding a job and housing, and in some cases even support in getting married. Reintegrated

participants are closely monitored by Saudi authorities to detect and prevent relapse.<sup>m</sup>

Since 2006, more than 3,000 individuals have “graduated” from the center, including 120 former Guantanamo Bay detainees. In 2013 the program was further expanded to accommodate the growing number of Saudi citizens who were suspected of planning to go to Syria or Iraq to join terrorist groups such as the Islamic State of Iraq and the Levant and engage in terrorist activities, as well as those returning from these conflict zones. As with similar programs, the level of success is difficult to establish objectively. Initially, official figures boasted an almost 0 percent recidivism rate, but this was adjusted after several high-profile attacks and arrests involving Saudi citizens who had gone through the program. Currently, officials state that 12 percent of the beneficiaries have relapsed and returned to activities related to terrorism.<sup>n</sup>

<sup>a</sup> James Dorsey, “Responding to the Islamic State’s Foreign Fighters: Retribution or Rehabilitation?” World Post, 9 September 2014, [http://www.huffingtonpost.com/james-dorsey/responding-to-the-islamic\\_b\\_5790564.html](http://www.huffingtonpost.com/james-dorsey/responding-to-the-islamic_b_5790564.html).



- <sup>b</sup> International Centre for Political Violence and Terrorism Research, "International Conference on Terrorist Rehabilitation," 2009, p. 35, <http://www.rsis.edu.sg/wp-content/uploads/2015/04/Report-International-Conference-On-Terrorist-Rehabilitation.pdf>.
- <sup>c</sup> Santha Oorjitham, "Opinion: Persuading Terrorists to 'Disengage,'" *New Sunday Times*, 5 October 2008, [http://www.malaysianbar.org.my/general\\_opinions/comments/opinion\\_persuading\\_terrorists\\_to\\_disengage.html](http://www.malaysianbar.org.my/general_opinions/comments/opinion_persuading_terrorists_to_disengage.html).
- <sup>d</sup> Zachary Abuza, "The Rehabilitation of Jemaah Islamiyah Detainees in South East Asia," in *Leaving Terrorism Behind: Individual and Collective Disengagement*, ed. Tore Bjørgo and John Horgan (New York: Routledge, 2009), p. 207.
- <sup>e</sup> Hamed El-Said, *New Approaches to Countering Terrorism: Designing and Evaluating Counter Radicalization and De-Radicalization Programs* (New York: Palgrave Macmillan, 2015), pp. 124–125.
- <sup>f</sup> Alex Thurston, "Rehabilitating Al Qaeda: Saudi Arabia, Mauritania, and Yemen," *Huffington Post*, 10 April 2010, [http://www.huffingtonpost.com/alex-thurston/rehabilitating-al-qaeda-s\\_b\\_449484.html](http://www.huffingtonpost.com/alex-thurston/rehabilitating-al-qaeda-s_b_449484.html).
- <sup>g</sup> El-Said, *New Approaches to Countering Terrorism*, p. 124.
- <sup>h</sup> *Ibid.*, pp. 127–128.
- <sup>i</sup> Muhammad Amir Rana, "Swat De-Radicalization Model: Prospects for Rehabilitating Militants," *Conflict and Peace Studies* 4, no. 2 (2011): 4, <http://san-pips.com/download.php?f=129.pdf>.
- <sup>j</sup> John G. Horgan, "De-Radicalization Programs Offer Hope in Countering Terrorism," *Los Angeles Times*, 13 February 2015, <http://www.latimes.com/opinion/op-ed/la-oe-0215-horgan-terrorist-deradicalization-20150215-story.html>.
- <sup>k</sup> Shehzad H. Qazi, "A War Without Bombs: Civil Society Initiatives Against Radicalization in Pakistan," *ISPU Policy Brief*, no. 60 (February 2013), [http://www.ispu.org/pdfs/ISPU\\_Brief\\_CounterDeradicalization\\_2\\_14.pdf](http://www.ispu.org/pdfs/ISPU_Brief_CounterDeradicalization_2_14.pdf).
- <sup>l</sup> Benjamin Barthe, "Saudi Correctional Centre Claims Success With Former Jihadists," *Guardian*, 27 September 2014, <http://www.theguardian.com/world/2014/sep/27/mohammed-bin-nayef-centre-rehabilitation-jihadists>.
- <sup>m</sup> *Ibid.*
- <sup>n</sup> Lori Plotkin Boghardt, "Saudi Arabia's Old al-Qaeda Terrorists Form New Threat," *Policywatch*, no. 2370 (11 February 2015), <http://www.washingtoninstitute.org/policy-analysis/view/saudi-arabias-old-al-qaeda-terrorists-form-new-threat>.

Despite many examples of good practices implementation, a number of underlying challenges restrict the full realization of the operational tools and measures covered in the Rabat Memorandum. Significant constraints undermine the effective and regular implementation of specialized investigative practices in nearly all focus countries. Case backlogs, personnel shortages, and resource limitations can contribute to long pretrial waiting times. Intent on bringing swift resolution to potentially drawn-out and inconclusive proceedings, these factors can contribute to a higher demand for confession-based evidence in the courts. Responding to this demand and under pressure to close cases as quickly as possible, apprehending suspects and securing their confession is often the primary basis on which cases are brought to prosecution. Such an overreliance on confessions can undermine the right to a fair trial and increase the risk of torture. Lastly, although nearly all focus countries maintain or have access to at least one national forensics lab, investigators in many jurisdictions may be further hindered by limited investigative training, resources, and evidence and information management systems (e.g., storage and chain of custody) and ultimately have little experience applying

basic physical, forensic, electronic, or financial investigative methods.

Weak or overly politicized justice and security sector governance, systemic corruption, and disempowered institutions of independent oversight and accountability can severely constrain the ability of criminal justice actors to operate in a manner that safeguards human rights in accordance with the rule of law. For example, Rabat Memorandum good practice 7 stresses that the ability to lawfully detain potentially dangerous suspects, prevent the risk of flight, and halt the potential continuation of criminal activity is critical for the successful prosecution of terrorism-related cases. Yet, most countries lack effective judicial supervision and fair administration of pretrial detention. In many jurisdictions, suspects are detained without charge or trial well beyond a reasonable period as extensions on detention are easily granted. Questions regarding lawful and appropriate detention procedures in terrorism-related cases become more complex in jurisdictions where terrorism laws have been used to justify arbitrary or discriminatory arrest and prosecution.

## Overarching Lessons for Capacity Building

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Given the overarching trends highlighted throughout this report, strengthening rule of law–based criminal justice responses to terrorism in many jurisdictions requires a focus on the fundamentals. Enhancing technical skills, laws, and operational tools is important; but their consistent and effective use can be achieved only through effective management, accountability, and professionalism and a human rights– and public service–oriented organizational culture among core criminal justice actors. Although less tangible than hard skills and technical expertise, these foundational capacities play just as important if not a more critical role in enabling structural, organizational, and operational effectiveness in countering terrorism.

Training and technical assistance programs are frequently justified on some variation of a need “to improve the knowledge and expertise” of a particular actor, with the assumption that knowledge transfer, generally through short seminars or workshops, will necessarily serve to improve capacity. Although training is a crucial tool for strengthening technical areas of competence, knowledge and technical assets alone will not result in more effective institutions and organizational practices. Sustainable changes in professional practice require an enabling operating environment conducive to those practices. In most cases, broader and deeper shifts in the politics and institutional culture of national criminal justice systems are essential for encouraging such an environment.

The stocktaking conclusions suggest that successfully implementing rule of law–based criminal justice responses to terrorism often requires efforts to address underlying challenges in national criminal justice systems and their governance. Politics is the lynchpin of all functions of governance, including justice and security,

and is a crucial factor in all capacity-building efforts. Furthermore, terrorism and counterterrorism are among the more politically complex issues on justice and security agendas worldwide. It is critical to acknowledge the role of competing domestic, regional, and international political interests in enabling and restraining the practice of rule of law–based criminal justice. The organization and operation of criminal justice agencies, as well as the formal and informal laws and rules that guide their practice, are the result of the complex interplay among these political interests. To be successful, capacity-building efforts should thus be carefully aligned to navigate and adapt to the local political, legal, and organizational context of a specific jurisdiction.

Specific legal provisions, procedures, organizational capacities, expertise, and skill sets are essential for an effective criminal justice response to terrorism, but many of the core issues covered in the Rabat Memorandum are derived from fundamental criminal justice practices. For example, affording due process and fair trial rights to the accused, as referenced in good practices 6 and 7; protection from arbitrary arrest and detention, as discussed in good practice 7; ensuring the right to privacy, as discussed in good practice 4; and protecting freedom of speech and association, as discussed in good practice 13, are no less essential to effective rule of law–based criminal justice than they are to effective rule of law–based criminal justice responses to terrorism. Many criminal justice systems, however, do not consistently operate in accordance with these principles in general nor by extension in terrorism-related matters. In working to address core criminal justice challenges, the provision of technical support to strengthen counterterrorism expertise is not a substitute for focusing on the fundamentals.



# RECOMMENDATIONS

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## Recommendations for Improving Implementation of the Rabat Memorandum Good Practices

### *Legal and Institutional Foundations*

- 1 | Address fundamental prerequisites of rule of law–based criminal justice as necessary.** The Rabat Memorandum stresses that “[t]hese good practices for addressing terrorism must be built on a functional criminal justice system that is capable of handling ordinary criminal offenses while protecting the human rights of the accused.” If law enforcement, the judiciary, and corrections are unable to implement basic operational, administrative, and management systems and have limited professionalization and weak accountability, targeted counterterrorism assistance may not only be unsustainable but also counterproductive. Effective, professional, and accountable justice and security institutions should be considered absolute prerequisites to the successful implementation of rule of law–based criminal justice practices to counter terrorism. The governance of security and justice institutions is inherently political in nature, and long-term capacity development and reform can succeed only when driven internally by local actors and coalitions. Support for such efforts must include short- and long-term political, institutional, and technical engagement in equal measure.
- 2 | Seek the most feasible entry points to mitigate constraints on direct engagement for capacity building.** The political and organizational dynamics of some national criminal justice actors, particularly internal security services, can place constraints on the types of assistance that donors can offer or that national criminal justice actors are willing to accept. For example, in one

country a number of constraints prevented donors from engaging with national law enforcement on terrorism investigation practices. Yet, there was domestic and donor government interest in improving law enforcement capacities to prevent, investigate, and respond to sexual and gender-based violence. Casting the net wider to find more feasible entry points can open the doors for more direct engagement on counterterrorism issues and directly promote “modern, fair, and efficient” criminal justice systems.

- 3 | Encourage greater parliamentary oversight and critical debate on misuse of counterterrorism laws and on the promotion of legal safeguards.** Rabat Memorandum good practice 12 stresses that terrorism-related crimes should be criminalized in a “comprehensive and coherent” legal framework “that is sufficiently precise to give fair notice of conduct that is prohibited and guards against potential misuse of criminal laws.” Further, good practice 13 on the criminalization of preparatory offenses states, “In the criminalization and prosecution of these acts, countries should pay full respect to the rights of individuals to freedom of expression, freedom of religion or belief, and freedom of association.” Yet, this study and many others have found that, in GCTF and non-GCTF countries alike, counterterrorism laws are routinely misused and individual rights are routinely violated in the name of terrorism-related laws. The GCTF should encourage dialogue and engagement among parliamentarians on ways to improve critical oversight of counterterrorism law and practice. In addition, the GCTF should develop more detailed guidance on effective legal, institutional, and operational safeguards and support national efforts to implement them.



*Coordination, Cooperation, and Organizational Expertise*

- 4 | Deepen support for criminal justice sector professionalization through institutional development as the first step toward specialization.** Good practice 8 stresses that “[c]areer prosecution and investigative services should be equipped with the infrastructure, remuneration, and specialized training they need to perform critical counterterrorism functions within the criminal justice system.” The memorandum’s conclusion further acknowledges that the implementation of effective criminal justice practices to prevent and respond to terrorism “will often require reform and increased professionalization.” Indeed, whether from a lack of resources or political will, many countries’ national criminal justice functions are underprofessionalized and lack adequate infrastructure, remuneration, and training to perform core criminal justice functions. Consistent with the working group recommendations in the memorandum’s conclusion, deeper commitments to institutional development, including the professionalization of criminal justice organizations, are essential for further specialization.
- 5 | Strengthen and expand efforts to develop national criminal justice training systems.** The memorandum’s conclusion calls on states to provide “specialized counterterrorism training” as part of a “long-term commitment to developing and building a specialized cadre” of criminal justice professionals to handle terrorism-related cases. Yet, many countries lack effective national systems for sustainably delivering criminal justice training. Remedying the continued absence or state of disrepair of national criminal justice training systems must become a priority if long-term professionalization and specialization of criminal justice practitioners is going to be achieved. Such support should be preceded by a thorough review of national training systems; their management and organization, personnel, and facilities; and core and specialized curricula.

On the basis of national needs assessments, short- and long-term goals and commensurate assistance programs should be developed in collaboration with local training providers, including police academies, judicial training institutes, and other governmental and nongovernmental entities that provide criminal justice skill development. Regional and international training institutes may be important partners in this regard.

- 6 | Deepen programmatic focus on national jurisdictions and interagency cooperation.** Good practice 2 stresses the importance of effective interagency cooperation for preventing, investigating, and prosecuting terrorism-related crimes. Regional programming is an appropriate focus for strengthening platforms for dialogue, trust, and cooperation among neighboring countries, but effective rule of law–based and rights-respecting criminal justice responses to terrorism depend above all on the effectiveness of national criminal justice systems and their constituent actors. Yet, many countries lack an “effective and integrated” criminal justice system. To complement the many laudable international and regional programming initiatives related to the dissemination of the Rabat Memorandum good practices, a more rigorous menu of focused national programming is necessary to support effective, sustainable, and comprehensive coordination among national criminal justice authorities.

*Operational Tools and Practices*

- 7 | Compile more comprehensive operational guidance on the development and use of evidence in criminal investigations.** Good practices 2, 4, and 6 highlight the importance of intelligence information in preventing, investigating, and prosecuting terrorism-related crimes. Yet, the effective interfacing of intelligence-derived information in criminal investigations and prosecutions is commonly diminished by many countries’ overreliance on confessions in



all types of criminal cases. Our research found that national criminal justice processes frequently undervalued cases built around investigative inquiry and physical evidence. The development of guidance tools on core criminal investigation and prosecution issues such as the intelligence-evidence interface, scientific investigation, investigative interviewing and interrogations, and the adjudication of evidence-based criminal cases should be considered a priority.

- 8 | Expand support and guidance on measures to incentivize suspects and others to cooperate in criminal justice investigations and prosecutions.** Good practice 5 highlights the efficacy of having adequate incentives to encourage cooperation in investigations and prosecutions. It stresses the utility of legal systems having “the flexibility to take into account cooperation with authorities, including testimony in other criminal proceedings, and early admissions of guilt to mitigate punishment.” Many countries would benefit from greater awareness of the effective use and benefits of different incentive options, technical considerations for implementation, and ways to safeguard against abuse. The successful use of such mechanisms may not only facilitate more effective antiterrorism investigations and prosecutions, but also support more efficient criminal justice systems, potentially lightening the burden on courts and corrections. In a number of countries, for example, more effective incentive programs can help address huge backlogs of cases awaiting adjudication and widespread deficiencies in pretrial detention, remand, and prison overcrowding and expand the use of appropriate noncustodial penalties.

## Recommendations for the Criminal Justice Sector and Rule of Law Working Group

- 9 | Identify a limited number of context-based, realistically achievable capacity-building results and focus on achieving them strategically.** Instead of investing in broad-based capacity-building efforts focusing on the whole panoply of Rabat Memorandum good practices, donors and implementers should focus on supporting the achievement of contextually specific, concrete results mutually set and agreed on with host country partners on the basis of a comprehensive assessment of existing capacities, needs, and entry points for effective assistance. To encourage the adoption and sustainable institutionalization of effective criminal justice practices, program activities should be aligned with complementary short- and long-term policy and organizational development benchmarks tailored to the national context. This approach will allow for more targeted interventions focusing on the fundamentals and practices most readily achievable in a particular jurisdiction and benefit from a strategic framework that includes short-term gains and a longer-term, nationally owned capacity development agenda led by national partners. Even modest improvements can initiate cascading impacts toward developing rule of law–based systems as a whole. For example, donors could support national efforts to adopt and implement rules making confessions inadmissible in court unless supported by independent evidence. Effective implementation might include short-term training, combined with policy and legislative development, formulation of internal guidelines and standard operating procedures to enhance investigative interviews, evidence collection, and management standards, as well as longer-term investments in human resources, independent oversight, and training and curricula improvements. Relatively small successes could have an immediate impact on improving due process rights in the adjudication of criminal cases and, over the long term, foster sustainable capacity development in case management and human rights–compliant investigation and interrogation practices.

- 10 | Design a voluntary, periodic self-assessment methodology for GCTF members based on the Rabat Memorandum.** To demonstrate the efficacy of the good practices, the GCTF should develop a common self-assessment methodology for members to periodically report their progress on the implementation of the good practices. These assessments, which can be shared internally, can serve as important tools for identifying global trends and areas for potential technical assistance. Practical and appropriately anonymized examples from periodic self-assessments can be shared among members and nonmembers as practical lessons learned.
- 11 | Develop good practices for counterterrorism-related criminal justice training.** Although not necessarily the most effective tool for promoting more effective criminal justice practices in all contexts, donor-facilitated workshops and trainings can play an important role in promoting dialogue and strengthening the skills of practitioners. Yet, one-off, one-size-fits-all panel discussion–based trainings and workshops are commonplace, frequently focused around hot-button issues and hot-spot locations. This has long been recognized as an ineffective basis for supporting stronger criminal justice institutions and practices in lower-capacity countries. To help overcome this tendency, the GCTF should promote a common approach to sustainable and impactful training design based on effective experiential, adult education, and peer-to-peer learning methodologies. A series of basic guidelines and good practices to promote more effective donor-supported trainings can be compiled through a stakeholder consultation process that solicits good practices from justice and security sector development and training experts.
- 12 | Leverage international and regional criminal justice training institutes as strategic partners to strengthen national training capacities.** International and regional training programs will continue to serve as important platforms in their own right, but they also can serve as conduits for developing sustainable national training system capacities. For example, the IIJ could help constituent countries develop a stronger national training infrastructure by convening and mentoring national criminal justice training instructors. Such partnerships can support the design of tailored, national-level curricula; the development of sustainable national training systems; and professional qualification criteria as well as internal evaluation and periodic review processes.
- 13 | Elaborate detailed practitioner guidance notes to supplement the memorandum’s good practices.** To further elaborate practitioner-relevant guidance on the implementation of good practice 6, the GCTF facilitated the development of the detailed guidance note, *Recommendations for Using and Protecting Intelligence Information in Rule of Law–Based, Criminal Justice Sector–Led Investigations and Prosecutions*. Additional guidance documents on other good practices, particularly good practices 1, 5, and 10, may help demonstrate the utility of these practices at the operational level. Special consideration should be given to ensure relevance to lower-capacity countries that may lack some of the political, structural, and technical resources of higher-capacity countries. Further, these guidance notes should clearly highlight institutional and legal safeguards to help balance human rights imperatives with national security interests.

**14 | Commit to a more consultative process in developing future good practice documents.**

When promulgating or revising future good practice documents, deriving outcomes from a longer process of national-level practitioner consultations can enhance exposure to the broader GCTF good practices among a wider constituency, improve the sense of ownership over future good practice documents across national jurisdictions, and ensure that good practice guidance is based on the needs of national practitioners in constituent countries and better tailored for their use.

**15 | Support the development and institutionalization of national policy and practice guidance tools at the national level.**

Supporting the development of tailored national guidance tools can be an effective entry point for strengthening engagement with national criminal justice actors. Manuals, standard operating procedures, practitioner guidance notes, training curricula, and bench books are excellent tools for reinforcing a deeper understanding of good criminal justice practices. Their utility, however, depends on the extent to which they are tailored to local context and institutionalized at the national level. To ensure outputs contribute to outcomes, the development of national guidance tools should be combined with strategic plans to support the institutionalization of those practices, as well as mechanisms for gauging the continued effectiveness of national guidance.

**16 | Expand partnerships with the broader community of justice and security stakeholders.** The working group should consider expanding its role in promoting cooperation across a larger community of national and regional justice and security development stakeholders, including by facilitating fora for sharing experiences and knowledge among judicial training and human rights networks, police academies, bar associations, law commissions, and penitentiary reform organizations. Programs

have the potential for greater sustainability and impact when building on and aligning with the needs and preexisting efforts of statutory and nonstatutory criminal justice stakeholders. Where circumstances permit, soliciting views from a more diverse range of justice and security stakeholders can enhance the dynamism and positive impact of assistance programs.

**17 | Identify opportunities to promote capacity building in the areas of detention, adjudication, sentencing, and corrections.**

A majority of international attention and funding assistance for criminal justice responses to terrorism is directed toward enforcement and prosecution capacities. Such an emphasis is not necessarily unwarranted in all contexts, but improvements in one part of the criminal justice system can result in unintended consequences along the criminal justice chain. Detention, adjudication, and corrections commonly receive less attention from assistance providers, despite being areas of particularly weak performance in a number of jurisdictions. Where penitentiary systems struggle to meet basic housing, health, and management standards in national prisons, they also tend to face challenges in effectively monitoring and rehabilitating high-security offenders, such as those convicted of terrorism-related crimes. The capacity to ensure that prisons do not provide opportunities for violent extremists to recruit or be recruited into terrorist groups or for participating in terrorist activities while behind bars is a crucial component of a national criminal justice response to terrorism. Taking a whole-of-system approach, the working group should endeavor to identify more opportunities to support programming in the areas of detention; adjudication, including legal counsel; sentencing; and corrections. A more systematic involvement of actors from these domains would further strengthen the efficacy of the work of the working group, including through enhanced cooperation with the GCTF Detention and Reintegration Working Group.



The Global Center works with governments, international organizations, and civil society to develop and implement comprehensive and sustainable responses to complex international security challenges through collaborative policy research, context-sensitive programming, and capacity development. In collaboration with a global network of expert practitioners and partner organizations, the Global Center fosters stronger multilateral partnerships and convenes key stakeholders to support integrated and inclusive security policies across national, regional, and global levels.

The Global Center focuses on four thematic areas of programming and engagement:

- multilateral security policy
- countering violent extremism
- criminal justice and the rule of law
- financial integrity and inclusion

Across these areas, the Global Center prioritizes partnerships with national and regional stakeholders and works to ensure respect for human rights and empower those affected by transnational violence and criminality to inform international action.