



Implementing the Global Counterterrorism Forum's Hague Memorandum

Recommendations for the Adjudication of Terrorism Offenses in East
Africa and Southeast Asia

SEPTEMBER 2016

INTRODUCTION

The Global Center on Cooperative Security convened a series of regional consultations for judges to support the dissemination and implementation of the Global Counterterrorism Forum's (GCTF) *The Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses*.¹ The program was delivered under the auspices of the GCTF's Criminal Justice and Rule of Law Working Group and Horn of Africa Regional Capacity Building Working Group, with financial support from the United States Government.

Following an 18-month consultative process with judges and magistrates handling terrorism and related cases from East Africa and Southeast Asia, this paper offers a series of recommendations intended to inform policymakers and judicial administrators to support the implementation of the Hague Memorandum in the regions. For each region, an elaboration of the Hague Memorandum offers more detailed analysis of law and practice, highlighting areas of convergence and divergence with the good practices and identifying institutional actors for their implementation.² After a brief overview of the consultative process that informed the basis of this paper, this document presents 30

¹ GCTF, "The Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses," adopted 25 September 2015, <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/The%20Hague%20Memorandum%20-%20ENG.pdf?ver=2016-03-29-134018-493> (hereinafter Hague Memorandum).

² Global Center on Cooperative Security, "East Africa Regional Elaboration of the Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses," 22 September 2015, <http://www.globalcenter.org/wp-content/uploads/2015/07/East-Africa-Elaboration-of-the-Hague-Memo.pdf>; Global Center on Cooperative Security, "Southeast Asia Regional Elaboration of the Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses," 26 April 2016, http://www.globalcenter.org/wp-content/uploads/2016/09/16Sep16_Southeast-Asia-Elaboration-of-the-Hague-Memo_FINAL.pdf.

recommendations representing the consensus of judges who partook in intensive engagement.

PROGRAM OVERVIEW

The program included a workshop in each of the two regions and an interregional workshop bringing together participants from both regions, as well as a series of consultations with individual judges and other stakeholders from the focus regions. The regional workshop for East Africa was held in Nairobi, Kenya, in July 2015 and was attended by representatives of the judiciaries of Kenya, Uganda, and Tanzania. The workshop for Southeast Asia was held in Manila, the Philippines, in November 2015 and included participants from the judiciaries of Cambodia, Indonesia, Malaysia, and the Philippines. The interregional workshop was convened in Kuala Lumpur, Malaysia, in March 2016 and brought together former and new participants from East Africa and Southeast Asia. The three workshops were cohosted by the national judicial training academies of Kenya, Malaysia, and the Philippines and were convened with the endorsement of their respective chief justices. The participation of national judicial training institutions helped generate recommendations sensitive to the learning needs of judges. These institutions are well placed to promote the virtues extolled under many of the good practices highlighted in the Hague Memorandum. The program benefitted from the participation of judicial representatives of the focus countries who had participated in the formulation of the Hague Memorandum during the GCTF's seminars in Washington, D.C., and The Hague. It further benefitted from the experience and expertise of two U.S. federal judges and a senior rule-of-law adviser to the U.S. government.

In addition to these recommendations and the two regional elaborations of the Hague Memorandum, the program fostered an active cohort of judges and trainers familiar with and committed to promoting the adoption of the Hague Memorandum and the broader work of the GCTF. Over the course of the program, these practitioners have taken stewardship of the implementation of the good practices contained in the Hague Memorandum. Practitioners and trainers alike acknowledged the relevance and applicability of the Hague Memorandum and endorsed its implementation

in their national jurisdictions. Judge Maureen A. Odero of Kenya, a contributor to the development of the Hague Memorandum during both GCTF seminars as well as all relevant workshops in this program, observed:

The work started at the seminars of GCTF has helped foster a community of judges who are carrying the process forward, exchanging best practices at the regional level, and disseminating the Hague Memorandum for use in the national jurisdiction. Despite the differences in judicial procedures and practices in the various jurisdictions, undoubtedly all participating judges have been able to acquire invaluable information to assist in ensuring efficient and expeditious disposal of terrorism trials in their own jurisdictions. Aside from that, the best practices as highlighted in the Hague Memorandum provide the ideal each jurisdiction ought to work to achieve. From the Kenyan perspective, the seminars have provided the practical tools needed to actuate the new Prevention of Terrorism Act and have highlighted the importance of ensuring fair trials to all those charged under that act. Going forward, I do believe that the Hague Memorandum will constitute the required handbook for all legal enforcement agencies involved in the prevention of terrorism.³

The 30 recommendations contained in this paper have been adopted by consensus by all participants in this process and are the result of intensive engagement with national institutions and practitioners. The participants and institutional partners of this program are natural partners in the realization of these recommendations. The directors of the judicial training academies of Kenya, the Philippines, Uganda, and Tanzania, as well as the chief justice of Malaysia, have all conveyed their commitment to adapt the good practices in future trainings. As noted by Chancellor Adolfo Azcuna of the Philippine Judicial Academy, "This unprecedented series of intensive sharing of experiences and insights on the subject of good practices for the judiciary [...] has resulted in making the Hague Memorandum doable and applicable to our diverse jurisdictions and legal systems."⁴ Judge Ferdinand Wambali, principal of

³ Email exchange on file with the authors, 27 May 2016.

⁴ Email exchange on file with the authors, 12 May 2016.

the Institute of Judicial Administration of Tanzania, endorsed the recommendations and affirmed that the Tanzanian judiciary is “seriously committed to develop a comprehensive curriculum on issues of terrorism offenses and is part and parcel of what has been developed in the Hague Memorandum and the initiative of the Global Center on Cooperative Security.”⁵

Support and interest in the implementation of the Hague Memorandum is not limited to countries burdened with large terrorism and related caseloads. Participants noted the importance of preparing their judiciaries, given the constantly evolving global security environment, the multitude of transnational criminal activity that supports terrorism, and the need for increased international and regional cooperation. In this regard, the secretary general of the Supreme Court of Cambodia, Ben Visnow, commented that “the Cambodian judiciary assigns an importance to preparing the judiciary to confront the unique challenges of these cases while also fulfilling an important role as an active regional player.”⁶

30 RECOMMENDATIONS

The Hague Memorandum encourages states to implement the good practices that are “appropriate to their circumstances and consistent with their domestic law, regulations, and national policy, while respecting applicable international law.” Participating judges in the select East African and Southeast Asian jurisdictions generally agreed with the substantive content of the good practices, and many judges had examples of implementing specific recommendations in their own practice. The Philippines, for instance, makes use of the media-pooling arrangement suggested in good practice 8. Uganda provides specialized training on terrorism and other transnational crimes to a select cadre of judges seated at the International Crimes Division of the High Court of Uganda, as envisioned under the first good practice.

The recommendations that follow should be read in conjunction with the two regional elaboration documents for East Africa and Southeast Asia, where specific references to national laws and practices are made. Intended to inform policymakers and judicial administrators, the recommendations support the

implementation of the Hague Memorandum in the regions and reflect the consensus of the participating judges and judicial training academy experts.

Two common themes cut across many of these issues: (1) the scope of judges’ power to implement rules to ensure the observation of fair-trial standards in the courtroom and (2) a desire to foster improved judicial cooperation through increased exchanges at national and regional levels.

While the focus is on the role of the judiciary, the recommendations also reference other actors and aspects of the criminal justice system whose involvement is necessary to ensure their effective implementation. First, judicial training academies are central to efforts to disseminate and inculcate the good practices; they set the curriculum for training of judges, may issue recommendations to appropriate implementing bodies, and play a leading role in advocating for their integration into judicial practice. Moreover, legislators are in the authoritative position to adopt laws, and some judges suggested revising the rules of procedure and regulations to accommodate good practices for handling terrorism cases, particularly in civil law systems where judges’ flexibility in setting rules may be more narrowly circumscribed. Cooperation among investigators and prosecutors at the early stages of an investigation was also considered imperative to ensure an effective prosecution. Across the jurisdictions, judges also considered the various modes of international cooperation outside of the limiting parameters of mutual legal assistance treaties and bilateral agreements. The need for formal multilateral cooperation, particularly under the mechanisms established under UN conventions, was stressed as a means to prevent the risk of abuse inherent to informal, extrajudicial renditions and to keep pace with the fluidity of terrorists’ actions across nations.

Good Practice 1: Specially Trained Judges

Good practice 1 advises states to concentrate efforts to identify, assign, and train a cadre of judges to adjudicate terrorism and related offenses. Participants reflected on this good practice as an important means to streamline complex criminal cases and corresponding training schemes and also to deliberate on the skills that should be developed. Of the countries surveyed, only

⁵ Email exchange on file with the authors, 6 May 2016.

⁶ Email exchange on file with the authors, 11 May 2016.

Uganda provides special training on adjudicating terrorism and related offenses, for judges sitting in the International Crimes Division at its High Court, though the training is primarily delivered by international organizations and nongovernmental organizations (NGOs).⁷ In most countries, complex criminal cases are assigned to judges who have seniority and experience adjudicating criminal cases, as is the practice in Kenya and Malaysia.⁸

In discussing this good practice, one persistent point of contention centered on the security of judges and their families. A number of participants, particularly the Kenyan and Tanzanian delegations, rejected the notion of having a small cadre of specially trained judges to shoulder the burden and stresses of presiding over terrorism cases.⁹ All too frequently, judges handling these cases are subject to intimidation and threats to them and their families. Under those circumstances, the stated preference was to spread out the training uniformly among judges as part of their induction and continuing judicial education on criminal law topics alongside transnational, organized crimes such as money laundering and corruption.

The quality and availability of training was ranked among the top priorities for all participating jurisdictions. Judges perceived the main obstacles to additional specialized training to be financial- and human-resource constraints. In Uganda, participants specifically noted the judiciary's lack of resources to train judicial trainers and bring in international experts, as well as the scarcity of training materials such as bench books and manuals. In Tanzania, a comprehensive, general training program for judicial officers and supporting staff is only now being developed. Judges felt that they needed regular training on relevant laws, rules, and procedures—and not just laws governing terrorism-related offenses—to effectively handle terrorism cases. Training should also include modules on the international legal framework, extradition, and mutual legal assistance treaties, given the global nature of the threat and the difficulties judges identified navigating existing frameworks.

Several directors of judicial training academies emphasized the need for sustainability and scalability of training. National training programs were often too dependent on donors and external partners. Training should be extended to future trainers and, where possible, involve prosecutors and relevant court officers.

The following specific set of recommendations was endorsed:

1. Provide sustained and ongoing support to training academies to create training opportunities to those judges who may be assigned terrorism and related cases or whose jurisdictions handle more of these cases, and consider the involvement of relevant national investigatory and prosecutorial entities to ensure that the training addresses their complementary needs. In addition to national judiciaries and training institutes, relevant national entities may include the department of public prosecutions, defense bars, law enforcement agencies, and civil societies.
2. Take measures when selecting a cadre of specialized judges to protect against the publication of their identities and ensure the selection is large enough to reduce susceptibility or risk of targeting.
3. In delivering trainings:
 - a. Prioritize training on developing skills related to the Hague Memorandum good practices, in particular trial-management skills, managing multiple defendants, and introducing witness protection and other security measures in the courtroom. Outside of the issues contained in the Hague Memorandum, judges also discussed the need for training on substantive and procedural laws, in particular the handling of foreign or technical evidence such as forensics.
 - b. Incorporate sessions to help equip judges to manage the heavy psychological burdens of terrorism cases by expanding coping mechanisms and identifying early warning mechanisms.

⁷ See “East Africa Regional Elaboration,” p. 2.

⁸ Acts of terrorism prosecuted at the first instance magistrates' courts are heard by judges who have eight to ten years of experience in Kenya. See *ibid.*, p. 3. In Malaysia, experienced judges from each of the local jurisdictions are nominated to hear terrorism and security offenses cases. See “Southeast Asia Regional Elaboration,” p. 3.

⁹ See “East Africa Regional Elaboration,” pp. 3-4.

- c. Deliver trainings that take into account demands on judges' time. Training should employ participatory methodologies and skill-oriented learning that are responsive to actual needs and subject to evaluation. Effective training should be based on a training-needs assessment that takes into account the specific demands for the substantive law and the level of knowledge, practices, procedures, and work environment of prospective trainees.
 - d. Support national training institutions by providing "training of trainers" opportunities for representatives of partner institutions to develop their skills, including mentorship with international experts. Deliver trainings in cooperation with the academies to support a sustainable and coordinated training delivery model.
 - e. Consider organizing trainings for judges alongside prosecutors and investigators to address system-wide issues such as excessive delays and insufficient evidence to identify good practices.
 - f. Organize trainings, seminars, and workshops at the regional level to support improved cooperation across borders and strategic exchanges on shared challenges. These trainings should be delivered in cooperation with relevant regional and international networks, for example, the East Africa Magistrates' and Judges' Association.
4. Develop tools such as bench books, manuals, educational videos, and practice guides elaborating on the good practices contained in the Hague Memorandum. Such materials should be tailored to regional and national circumstances and developed and disseminated with support of respective national judiciaries and training institutions.
 5. Consider expanding the mandate of the East African Court of Justice to try terrorism acts and other international crimes. An international or regional forum for trying suspected terrorists has

the advantages of being seen as a neutral adjudicator and provides additional protection to the judges who would enjoy a relative degree of anonymity.

Good Practice 2: Continuous Trials & Good Practice 3: Effective Trial Management

The discretionary practice of noncontinuous criminal trials is addressed in good practice 2 as a significant cause of delays in some justice systems. Good practice 3 of the Hague Memorandum identifies effective judicial trial management as the key element to ensuring that trials proceed without unnecessary delays or interruptions. The unavailability of counsel (particularly for the defense), competent or qualified judges, and other court personnel such as interpreters and court reporters, and judges' large caseloads, were identified by judges from both regions as the largest contributors to delays.¹⁰ East African participants in particular lamented the lack of accountability mechanisms for judicial actors and rules for effective trial management in their jurisdictions.

Because of the nature of trials in terrorism cases, judges emphasized the need for a more robust approach to case management. Both regions prioritized the following strategies to eliminate delays: allocating technological resources to automate the processing of judicial records, legislating time limits or enacting judicial rules and establishing procedures to maintain recordkeeping systems, observing clear media guidelines, and making full use of pretrial conferences at the outset to anticipate issues and address them in consultation with attorneys. None of the participating East African countries have a legislative framework setting out time limits for the adjudication of terrorism cases, though this approach has been adopted in some of the Southeast Asian countries with success.¹¹ While recognizing that the speedy disposition of a case is an important component of the accused's right to a fair trial, judges noted that effective management standards should not be assessed solely by the number of judgments issued, as the length of proceedings depends on various factors, such as the number of witnesses testifying.

¹⁰ For a more complete list of contributors to delays in terrorism cases identified by the judges, see "East Africa Regional Elaboration," p. 5, and "Southeast Asia Regional Elaboration," p. 4.

¹¹ See "Southeast Asia Regional Elaboration," pp. 4-6. In particular, the Philippines has enacted a series of laws, administrative circulars, and rules to ensure the speedy disposition of cases that provide for continuous periods or timetables within which a court must hear and decide cases, as well as corresponding sanctions and disciplinary measures for their noncompliance.

The following specific set of recommendations was endorsed:

6. Allocate resources toward information and communication technology to further automate processing functions and eliminate case backlogs, such as by:
 - a. Introducing court recording and transcription equipment.
 - b. Developing case-management system software to automate filings and tracking, and introduce modules to handle e-filing systems.
7. Monitor judges' productivity and performance (assessed through key performance indicators) and develop a judicial and lawyers' codes of ethics that provides enforceable mechanisms to hold those actors accountable for unduly delaying proceedings.
8. Assign cases based on priority and performance of the judge, including through the use of temporary reassignments. Where feasible, judges handling a large caseload may submit a request to the appropriate authority to be relieved of some cases and administrative duties to enable them to complete a trial expeditiously, especially if it involves multiple defendants.
9. Adopt mechanisms to improve court infrastructure to support speedy trials. Low-cost initiatives include publicizing calendars that attorneys and the public can refer to and using statistical dashboards for tracking cases to promote transparency and accountability.¹²
10. Conduct trainings for judges and attorneys to adopt strategies that address chronic causes of adjournments and postponements. Filmed examples of expertly honed judicial conduct may serve as useful training aids.
11. Develop and enhance practical programs in universities, notably law schools, for students to assist judges as law clerks to conduct legal research, prepare briefs with analysis of terrorist organizations, and assist with administrative and case-management tasks.

Good Practice 4: Special Measures to Protect Victims and Witnesses & Good Practice 9: Access to Justice

Good practice 4 of the Hague Memorandum recommends judges handling terrorism or other national security offenses adopt a flexible approach to addressing the unique demands or needs of victims and witnesses as they arise, as well as encourage victims' access to justice under good practice 9. The judges stressed the importance of witness testimony in terrorism cases and the need to incorporate victims into the process. Judges highlighted the benefits of having centralized victims'- and witness-support units that concentrate personnel and resources as well as the utility of having in place comprehensive legal frameworks to address the needs of victims and witnesses. While most of the focus countries had an agency for supporting and protecting victims and witnesses, the lack of funding in support of these agencies remains a challenge, and nongovernmental actors are often relied on to provide critical services in this regard.¹³ Judges also highlighted the role that the chief justice can play through court rules and regulations clearly indicating witness-protection measures that a judge may use in the courtroom. They also recognized the instrumental role that technology can play in implementing protective measures for victims and witnesses, particularly through the use of live-link testimony. Yet judges lamented their limited ability to afford protection outside of the courtroom and urged the adoption of more-comprehensive approaches that would extend support to law enforcement authorities.

The following specific set of recommendations was endorsed:

12. Support legislative efforts to protect victims and witnesses within a rule of law framework and to provide adequate funding and resources to support those efforts. Also support the drafting of judicial rules and regulations for protecting witnesses and victims in the course of a trial through those means enumerated in the Hague Memorandum.
13. Train judges to exercise vigilance and hold inquiries so they may extend protective witness

¹² See "East Africa Regional Elaboration," p. 5 (drawing on the Tanzanian experience).

¹³ For example, NGOs such as The CRADLE; The Centre for Rights, Education and Awareness; and Muslims for Human Rights provide legal and psycho-social support for victims in Kenya. See "East Africa Regional Elaboration," p. 7. See also "Southeast Asia Regional Elaboration," pp. 8, 18.

status where necessary and exercise their inherent power to set the necessary protections in motion. This may include establishing media guidelines before the start of a trial expressly prohibiting the publication of protected witnesses' names and other identifying information, with appropriate punitive measures for noncompliance.

14. Encourage measures that promote the visibility of victims' rights in the legal culture and measures to ensure their inclusion in the judicial process. This may include supporting the practice of appointing counselors or assistants for victims to guide them through the judicial proceedings and facilitating access to compensation and reparations as appropriate.
15. Develop strategies for victim-witnesses of small communities where peoples' identities are well known and consider a broader definition of "victim" that extends beyond the individual directly affected to recognize the communal nature of many societies.¹⁴ Urge investigators to conduct their duties in a manner that will not reveal the identity of would-be witnesses.
16. Deepen national and regional cooperation on protecting witnesses and victims, including through bilateral agreements, memoranda of understanding, and/or the establishment of agencies or task forces charged with improving cooperation among national agencies.
17. Coordinate witness and victim protection across different actors in the criminal justice system, including the police, investigators, and prosecutors, focusing on informal measures such as the exercise of community vigilance, and consider consultations with NGOs that may support these efforts.

Good Practice 5: Right of the Accused to a Fair Trial with Adequate Legal Representation

Good practice 5 provides recommendations for safeguarding the rights of the accused, which are particularly vulnerable to abuse in terrorism cases. Rights in this regard include the presumption of innocence, the right to an adequate legal defense, the right to a fair trial, and other fundamental rights contained in the Universal Declaration of Human

Rights, the International Covenant on Civil and Political Rights, and the United Nations Convention Against Torture.

While the right to legal representation is provided for in the main constitutive documents of the focus countries, its availability in practice is not uniform or well funded. No public-defender service established by statute and maintained as an independent agency exists in the East African focus countries. A number of participating Southeast Asian countries have state-funded legal aid services available as a matter of right and in practice, with NGOs and bar associations stepping in where the government is unwilling or unable to do so.¹⁵ However, resource constraints continue to plague those systems. In all the focus countries, the use of interpreters is widespread, given the various languages and dialects spoken. Local residents and clerks are often called on to provide interpretation, raising concerns on the quality of interpretation heard in the courts.

The following specific set of recommendations was endorsed:

18. Establish a public defender service as an equal contributor to the justice system and advise suspects of their right to obtain counsel upon arrest and to be assigned counsel in the case of indigence. The government should fund the defense bar and safeguard its independence.
19. Consider the following strategies in the absence of a public-defender service:
 - a. Provide incentives to lawyers to provide pro bono representation annually to maintain their bar status and obtain mandatory continuing legal education credits, thus assuring the availability of defense attorneys.¹⁶
 - b. Prioritize the assignment of counsel by the state to indigent defendants for serious offenses, particularly those carrying the death penalty.
20. Ensure high-caliber representation by providing skills development and improving access to resources for attorneys and implementing criteria to assess their performance.

¹⁴ See "East Africa Regional Elaboration," pp. 7, 9.

¹⁵ See "Southeast Asia Regional Elaboration," p. 7.

¹⁶ See "East Africa Regional Elaboration," p. 12.

- a. Establish a special fund to provide continuing legal education to enhance the caliber of legal representation in terrorism and other complex criminal cases.
 - b. Standardize a procedure whereby attorneys assigned to cases carrying sentences of capital punishment or life imprisonment must have a minimum number of years of relevant experience and a strong record of performance.
21. Develop and enhance practical programs in language or interpretation schools to provide high-caliber services to the judiciary. Equip, train, and retain individuals who provide interpretation to the courts, prioritizing those serving in sensitive or complex criminal cases. Every jurisdiction should ensure that language experts are drawn and enabled from training institutions.
 22. Promote the role of the judge in safeguarding the rights of the defendant, which can extend to monitoring individuals in pretrial detention and observing detention standards¹⁷ to uphold the principles enshrined in international conventions, including the United Nations Convention Against Torture. Standards include assessing mechanisms of investigation and procedures for the dismissal of cases based on evidence obtained through torture or cruel, inhuman, and degrading treatment.

Good Practice 6: Legal Framework or Guidelines for the Use and Protection of Evidence from Intelligence Sources/Methods

Good practice 6 of the Hague Memorandum discusses the development of a legal framework for the handling of evidence derived from intelligence sources or methods, as well as for the rights and responsibilities of the parties involved concerning their disclosure. None of the jurisdictions represented had a formally established relationship or practice of cooperation between their national intelligence agencies and law enforcement or prosecution services. Neither had any of the judges present ever dealt with issues related to the admissibility of information derived from national intelligence agencies. Some of the Southeast Asian countries, including the Philippines and Indonesia,

have an existing legal basis to address such issues, however, none of the participating judges had dealt with the legislation in their courts.¹⁸

All of the judges felt strongly about the need for effective cooperation between intelligence and law enforcement agencies in terrorism cases at the national level and regional levels. Some observed unhealthy competition between intelligence and police agencies as well as discrepancies in the allocation of resources possibly contributing to poor cooperation. They noted that an underfunded police force cannot carry out proper investigations. As a precondition to this good practice, judges prioritized the development of core skills in the handling of evidence more generally, especially in terrorism cases that are heavily reliant on eyewitness testimony, technical evidence concerning explosives or the Internet, and evidence that may not be easily collected or preserved given the limited availability of forensic laboratories.

The following specific set of recommendations was endorsed:

23. Promote, as a first step, the same protective measures for intelligence sources as would be required of the police for lead purposes, including supporting applications for judicial approval for seizures of evidence or use of special investigative techniques.
24. Advance understanding among the judiciary of the use and protection of evidence from intelligence sources within a rule of law framework. Judicial officers need to be educated about intelligence-gathering methods and sources, and the need and methods for their protection.

Good Practice 7: Enhanced Courthouse and Judicial Security Protocols and Effective Courtroom Security

Good practice 7 emphasizes the security of judges and their workplace. Judges in both regions expressed the need to be equipped to take immediate action in case of an emergency. As a good practice, they strongly supported coordinating with the media to abide by safety guidelines and pushed for a bright-line rule that

¹⁷ For example, by administrative circular, executive judges in the Philippines are directed to make periodic visitations at detention centers. See “Southeast Asia Regional Elaboration,” p. 12.

¹⁸ See “Southeast Asia Regional Elaboration,” pp. 13-15, and “East Africa Regional Elaboration,” p. 13.

would prohibit the publication of judges' photos and other identifying information. In addition to personal security, care should also be made to take into account the wellbeing of judges, such as providing stress-management techniques and psychological support.

All of the participating judges agreed that more resources should be allocated to the security of judges and their families; this concern was particularly acute among the East African judges. Malaysian and Kenyan participants ranked this issue at the top of their concerns and highlighted the importance of coordinating with other agencies such as the office of the chief justice, the judicial service commission, the inspector general of the police, and medical, military, fire, and prison authorities.

The following specific set of recommendations was endorsed:

25. Improve the security of judges and the infrastructure of courtrooms and courthouses by prioritizing the allocation of resources and training on the following measures:
 - a. Equipping judges handling high-profile cases and their families with personal security details.
 - b. Posting security staff at the courthouses and courtrooms who are trained in emergency response and establishing a security command center at the entrance of all courthouses. Command centers should be equipped with a telephone and control panel that allows the court security officer to monitor all cameras, duress alarms, fire alarms, intrusion-detection systems, and communication from all court security officers via radio.
 - c. Upgrading courtrooms with security-oriented arrangements such as having holdup cells at or near the courthouse for transporting prisoners and having special entrances and exits for the judge.
 - d. Developing emergency-response plans tailored to each courthouse in cooperation with court, local, and national emergency-response providers. Training all court personnel in the activation and

implementation of the emergency plan with input from security and emergency-response providers.

26. Consider establishing a courtroom in or near prisons to reduce the increased security risks and costs of transporting defendants to courthouses, in particular for cases involving multiple defendants.¹⁹
27. Establish standard operating procedures for security for all court personnel, and encourage chief justices and court leaders to coordinate with the directors of public prosecution, heads of police, and other criminal justice actors to identify and address specific security concerns, including those related to the media and witness protection.

Good Practice 8: Media Guidelines for the Court and Parties

Good practice 8 encourages the judiciary to develop rules and procedures for media coverage of public judicial proceedings in terrorism cases. This good practice was featured at the top of many of the jurisdictions' concerns because it closely intersected with security concerns expressed by the jurisdictions (see good practice 7) and because terrorism cases are often high profile by their nature.

Of the participating jurisdictions, only Kenya has an established Media Code of Practice that has legal force. None of the Southeast Asian judiciaries represented have formal media rules with corresponding sanctions. In the absence of formal rules, judges were encouraged to exercise their inherent judicial powers to manage the media presence inside the courtroom, though they felt at times restricted to act outside of a circumscribed set of rules.²⁰

The following specific set of recommendations was endorsed:

28. Establish a media center or public information office within the judiciary that gives media briefings at the outset of a trial and is empowered to funnel and filter information released to the public.
29. Develop clear guidelines for the media through court rules, practice directions, and regulations;

¹⁹ For instance, the Shanzu court has been specially set up at the Shimo la Tewa prison in Kenya as a cost-effective and security-enhancing measure. See "East Africa Regional Elaboration," p. 15.

²⁰ This concern was more acutely expressed in civil law jurisdictions.

include legislation in those legal systems where formal laws are necessary for the exercise of judicial action. In the interim, support the creation of a forum for judges and relevant judicial actors to formulate common policies for dealing with the media to set clear expectations. A unified or rule-based response further helps distribute the weight of decision-making away from the judges, giving them a point of reference and legitimacy for their rulings.

30. Create forums for media personnel and judges to discuss the security implications of reporting high-profile criminal cases. Such forums give all parties the opportunity to understand each

other's roles and unique responsibilities. Judges might benefit from understanding the role of the media, the job of a reporter, their motivations, and expectations in terms of access to information. Media personnel would in turn benefit from understanding the judges' perspective on the integrity of the case, the dangers associated with disclosure of certain details, and the factors that determine what level of access may be granted or denied to the media. Information on media guidelines should be incorporated during the induction and ongoing training of all judges, as the topic is not limited to judges handling terrorism cases.

Acknowledgments

The authors gratefully acknowledge the support for this project provided by the government of the United States. The authors wish to thank the participating judges and directors of training academies for their contributions throughout this project.

About the Authors

Melissa Lefas is director of Criminal Justice and Rule of Law Programs for the Global Center, where she oversees programming and strategic direction for that portfolio. She has spent several years managing Global Center programs throughout East Africa, the Middle East, North Africa, the Sahel, and South Asia, with a primary focus on human rights, capacity development, and the judiciary in handling terrorism and related offenses. She holds a bachelor's degree in civil and environmental engineering from McGill University and a JD from the Cardozo School of Law.

Junko Nozawa is a legal analyst for the Global Center, where she supports programming for its criminal justice and rule of law work. In the field of international law, she has contributed to the work of the International Criminal Court, regional human rights courts, and nongovernmental organizations. She holds a BA in international relations from the University of Washington and a JD and an LLM through Washington University's Transnational Law Program.

About the Global Center

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.

Suggested citation: Global Center on Cooperative Security, "Implementing the Global Counterterrorism Forum's Hague Memorandum: Recommendations for the Adjudication of Terrorism Offenses in East Africa and Southeast Asia," September 2016.

The views expressed here represent the consensus of the participating justices. The authors take full responsibility for the analysis and any errors of fact or interpretation that may exist.