Chapter Two

Conducting an Assessment

The aims of this chapter are to

- Discuss the importance and scope of an assessment used to develop a strategy to combat serious crimes
- Provide suggestions on how to conduct an assessment, including recommendations on personnel, timing, and methodology

What an Assessment Is and Why It Is Important

An assessment is the process of collecting information, conducting an analysis, and providing recommendations that a policymaker can then use in devising a strategy to combat serious crimes. In conducting an assessment, it is necessary to determine the specific nature of the serious crimes situation and the postconflict society's capacity and political will to address it. It is also important to determine available resources as well as gaps in capacity, obstacles to progress, and key areas for improvement. The absence of a good assessment is likely to hinder efforts at combating serious crimes. An assessment may be anything from a snapshot analysis to an in-depth survey, depending upon such factors as the depth of knowledge of those conducting the assessment, the extent to which the security situation limits access to certain regions of a country, the availability of human and material resources needed to conduct an assessment, and access to in-country actors and their level of cooperation.

A good assessment looks at the entire criminal justice system, including the legal framework, judiciary, prosecution, police, defense lawyers, prisons, legal education, and any customary or tribal justice mechanisms.

Although the latter are not expected to be an appropriate source for handling serious crimes cases, it is nonetheless important to survey the existence of all mechanisms involved in adjudicating criminal matters. In addition, a good assessment looks at the political, economic, and cultural factors that affect or are intertwined with the serious crimes situation. Consequently, an assessment provides the necessary baseline information from which realistic goals and a strategy to address serious crimes, including prioritization, timing, and sequencing of actions, can be developed. It is only after looking at this wider picture that one can begin to focus specifically on addressing serious crimes. With this baseline information, analysis and diagnoses can be undertaken to determine the appropriate measures needed to combat serious crimes problems, taking into consideration the resources and capacity (both human and institutional) of a society, as well as its legal, economic, political, and social particularities.

An assessment should conclude with precise suggestions as to what specific changes to the criminal justice system (and, if appropriate, to the political and economic systems) are required to combat serious crimes effectively and what specific international assistance is needed. The information generated from this assessment (and from follow-on assessments conducted as needed) should be incorporated into the planning process for serious crimes operations. In a postconflict environment where the international community is present, this type of information is invaluable at donor conferences, since donors usually prefer to provide targeted assistance. For example, the information might be used to develop witness protection programs, to create specialized police units or prosecution task forces, or to solicit specific international contributions to strengthen the postconflict state's capacity to investigate and adjudicate serious crimes cases.

Scope of the Assessment

The assessment should gather and analyze information in the following areas before making recommendations as to the specific resources, tools, personnel, and techniques needed to combat serious crimes:

- Nature of the serious crimes problem
- Relevant political, economic, and social factors
- Capacity (of personnel and institutions) and challenges within the criminal justice sector, including the legal framework, police, judicial system, and prison system
- Capacity (of personnel and institutions) and challenges outside the criminal justice sector, including the political will of the authorities and the attitudes and expectations of the public regarding serious crimes and the criminal justice sector

The following sections discuss these areas in more detail. Assessments are not an exact science; by their nature, they have many subjective elements. It is therefore important for those leading an assessment to set realistic goals, understand the challenges they might face, and, ideally, have experience in conducting assessments.

Assessing the Nature of the Serious Crimes Problem

An assessment of the nature of the serious crimes problem is essential to understanding how best to tackle it. The process of assessment is necessarily iterative as the nature and extent of the problem is revealed over time through intelligence gathering and analysis. The assessment should identify the specific types of crimes being committed; the motivation behind them; their characteristics and effects; the perpetrators and their linkages to political, paramilitary, intelligence, and other actors; and the related social and economic environment in which the serious crimes flourish.

Types of Serious Crimes

Assessing the specific types of serious crimes present in a society should include determining the following:

- Why, when, and where the crimes have originated and developed
- The facilities, institutions, financial resources, and public officials or personnel used to support or perpetuate criminal ventures
- In cases of trafficking in goods and persons, the specific trafficking routes and types of goods or persons trafficked
- The scope of cross-border illegal operations
- The types of money laundering operations being conducted
- The local, regional, and international impact of the serious crimes

Motivation and Catalysts for Serious Crimes

An analysis of the motivation behind the criminal activity may indicate that it is unrelated to a wider social conflict. Alternatively, an analysis may reveal that the criminal activity is part of a larger scheme that has one or more of the following aims: the funding of violent movements by extremist factions who do not agree with the terms of a peace agreement or power-sharing arrangements; the harboring of war crimes fugitives; the undermining of national or international authority by those aligned with an ousted government and who wish to topple the new authority; the

incitement of further conflict (for example, through targeted ethnic violence or attacks on sites of cultural or religious heritage); or, where organized criminal gangs are concerned, the perpetuation or extension of their reach into the political sphere and legitimate businesses. To determine motivating factors and possible catalysts, it is important to assess the following:

- Who benefits and who loses if peace prevails
- Whether revenue gained from crime funds obstructionists to peace who may be engaged in violence, terror, or paramilitary activities
- The extent to which the crime relates to the underlying or unresolved conflict and may be a function of unachieved war aims
- The existence of a party or faction that was left out of the peace agreement and might pose a threat to stability
- The existence of distrust or discord among ethnic or religious groups
- The existence of armed groups or individuals, such as unemployed former combatants, who turn to crime because they have no other way of making a living
- Whether the old regime has disintegrated, thereby leaving a power vacuum and fueling a battle for power
- Whether insecurity is likely to occur if past wrongs (including war crimes) are not addressed
- The potential for instability due to refugee-related matters (e.g., the presence of refugee camps, property disputes, or resettlement issues)

Perpetrators of Serious Crimes

To comprehend fully the nature of the threat posed by serious crimes, it is critical to understand who the perpetrators are (specific individuals, leaders, and groups); how they may be related to political actors and other power holders and the existing police force and army; and the existence of linkages between political extremists, paramilitary groups, intelligence operatives, and criminal organizations. An assessment should gather data and intelligence on the scope of the criminal activity in the country, the identities and affiliations of those involved, and the influence and control criminals have over government officials and actors.

Political, Economic, and Social Factors

Assessments often focus only on individual components of the criminal justice system (laws, infrastructure, equipment, personnel, training, and so forth). While these issues are essential to developing an effective strategy, in the serious crimes context an assessment must take a broader

view. The root causes and political, economic, and social implications of organized crime must be understood and considered. A serious crimes strategy cannot focus solely on the criminal justice sector, and the job of addressing serious crimes cannot rest solely on the shoulders of police, judges, and prosecutors. Failure to understand the political, economic, and social contexts will mean failure to develop effective solutions. For example, where entrenched interests control the judiciary and police, efforts to combat serious crimes by training or infrastructure-building programs alone will achieve little; instead, it will be necessary first to reform institutional mechanisms, such as the processes by which judges and police are vetted, selected, and held accountable. And where crime has become embedded within a society's economy, political life, or culture (for instance, in the case of poppy cultivation in much of Afghanistan and of smuggling in a number of Bosnian municipalities), traditional law enforcement methods alone will be insufficient.

The assessment should therefore examine social and economic factors, such as the extent to which criminal activity is embedded within the fabric of the society and drives its economy. In some situations, the black market dominates the economic picture. The assessment should explore existing and potential opportunities for people to make a living without participating in serious crimes. It is also important to identify who controls access to food, shelter, and utilities (electricity and water, for instance), and whether warlords or private militias, in an effort to gain patronage, might offer the public alternative access in the event of shortages.

Capacity and Challenges within the Criminal Justice Sector

An assessment must be made of the criminal justice sector, including the adequacy of the legal framework and the capacity of the police, judicial system, and prison system to effectively confront serious crimes. As detailed below, specific areas of inquiry should include resources, equipment, personnel, buildings, and infrastructure; factors affecting the effectiveness of criminal justice (e.g., corruption; security of judicial personnel, witnesses, and buildings; lack of training; political manipulation); institutional problems (e.g., interagency turf battles and lack of coordination); and systemic limitations (e.g., inadequate legal framework or ineffective structures).

Legal Framework

A state's legal framework is the backbone of a criminal justice system. It defines what criminal behavior is; prescribes the procedures by which investigations, trials, and appeals are conducted; defines the powers and authorities of police, prosecutors, and judges; and sets out

Legal Framework Checklist

The assessment of the legal framework should include the following areas of inquiry:

✓ What the applicable law is

✓ Whether parts of the law are in dispute and, if so, whether they are not accepted by the society in whole or in part because of their contents, because of the regime that enacted them, or because of how they were applied or abused in the service of a repressive regime

✓ Whether the country is a party to international or regional human rights treaties and any international or regional criminal law treaties (e.g., the International Convention on Civil and Political Rights and its two additional protocols, the United Nations Convention against Transnational Organized Crime, and other treaties listed in chapter 3, pages 47–49)

✓ If the country is party to such treaties, whether the laws of the state provide that the treaties are self-executing or whether they require domestic implementing legislation to take effect

✓ If a conflict exists between international and domestic laws, which body of law prevails and what entity, if any, would resolve such conflicts

✓ The existence of procedures to support bilateral or multilateral mutual legal assistance, international cooperation, and extradition treaties

✓ Whether the legal framework complies with international standards and norms (e.g., rights to fair trial and due process)

✓ Whether the legal framework adequately addresses contemporary criminal activity (e.g., covert and technical measures of investigation, immunity, and witness protection)

✓ Whether the laws and regulations are in writing, published, and accessible to legal actors and the public

✓ In what language or languages do the laws exist

✓ Whether the judges, prosecutors, defense lawyers, and police are well versed in the legal framework

✓ The existence of a nonstate (customary, tribal, or traditional) framework that handles criminal activities, and if such a framework exists, its scope, level of effectiveness, and level of acceptance

✓ If written laws exist but are not followed by the legal community, whether a set has ever been followed and, if so, what those laws were and when they were followed

the limits of state authority and the rights of the accused. In this context, the legal framework is not limited to the criminal code and criminal procedure code but also includes the constitution; standard operating procedures; laws on police, prosecution, and the judiciary; and civil and administrative provisions with application to criminal activities, such as asset seizure and forfeiture, weapons registration, and dangerous drugs schedules. It also includes international treaty obligations concerning mutual legal assistance and extradition, as well as international conventions and protocols regarding crime fighting and

human rights. (Chapter 3 explores the legal framework in detail.)

A primary goal of the legal framework assessment is to identify legal instruments and provisions that could support serious crimes investigations and prosecutions, to identify gaps where serious crimes provisions could appropriately be added, and to identify provisions relating to serious criminal activity that are not consistent with internationally recognized human rights norms and that will need to be amended or omitted.

Police Capacity

The assessment should evaluate the capacity of the police to address the serious crimes threat. More particularly, it should gauge

Failure to Adequately Assess Kosovo's Legal Framework

As NATO's campaign in Kosovo drew to a close, enormous reconstruction work confronted the small province. International donors, NGOs, and the United Nations undertook numerous assessments, many of which focused on Kosovo's judicial system. Frequently overlooked, however, was the need to understand the disputed nature of Kosovo's legal framework. These oversights often led to wasted resources and delayed reforms. For example, the failure to understand the political ramifications of accepting the legal framework as of 1999 (tied to the oppressive Slobodan Milosevic regime in Belgrade and therefore unacceptable to the Kosovo Albanians) over the legal framework as of 1989 (which was in place before Milosevic abolished Kosovo's criminal code and ousted Kosovo Albanians from the judiciary) resulted in months of debates and stalemates. The matter was not resolved until the United Nation's transitional government reversed its original determination and decreed that the 1989 legal framework was the applicable law. International actors also failed to determine the existence of certain laws. In one case, traffic regulations were drafted and promulgated, despite the fact that such laws already existed and could have been readily amended to meet the current need.

the capacity of the police to conduct complex investigations, identify gaps in the police's capacity to handle such investigations, and determine police resource needs that are specific to serious crimes. Ideally, an assessment occurs prior to mandating an international police presence so that the mandate and resource allocation take into consideration serious crimes needs. To the extent that international police are already deployed, an assessment should evaluate their capacity to handle serious crimes, including whether the peace operation's mandate provides the police with adequate authority and resources to address serious crimes and whether the resource allocation and organizational structures are sufficient for tackling serious crimes.

Where international military forces are present in a mission, the assessment should address the willingness and ability of these forces to help control serious crimes activities. The assessment team should evaluate military investigations and operations, the extent of military-civilian cooperation and sharing of intelligence information with respect to serious crimes, and whether military operations treat evidence in a manner that renders it

useful for subsequent prosecution by civilian authorities. The assessment should also explore the possible roles the military could play and its willingness to do so in areas such as providing security for witnesses, judges, prosecutors, and defense lawyers or providing perimeter security for civilian police during the execution of high-risk arrests or search warrants. (Chapter 5 offers a more detailed discussion of the role of international military forces in addressing serious crimes activities.) If the military is likely to play some part, the assessment should evaluate the capacity of the national police and of any international police or international "stability police" units (constabulary units) to eventually take over the military's roles. The assessment team will thus be able to make accurate recommendations about policing needs and to develop a more integrated and effective anti-crime program using civilian police and legal resources to pick up where the military leaves off.

The assessment should always examine policing needs regarding equipment and facilities. Resource needs could range from vehicles, communications equipment, and forensic equipment to copy machines, telephones, and pens and paper. It may even be necessary to construct or refurbish police buildings used in the investigation of serious crimes.

Police Capacity Checklist

The assessment of the capacity of the police should include the following areas of inquiry:

✓ The structure, size, and personnel of the Ministry of Interior or police force, and the social composition (in terms of ethnic group, religion, and so forth) of the police force
✓ Whether the social composition adversely affects the ability and willingness of some groups to seek redress from the existing police force and, if so, whether those groups have sought protection from shadow mechanisms that operate beyond the control of the state
✓ Who appoints or selects the minister of interior or chief of police
✓ The level of training and experience of the police force
✓ Whether the police force is sufficient in size and has an appropriate ratio of patrol officers to investigative officers, possesses organizational structures adequate to address the serious crimes problems, and has the funding and equipment it needs
✓ Whether and to what extent police personnel are under the influence of or in partnership with criminal or obstructionist elements
✓ Whether the police were responsible for any brutality or oppression during the conflict or the period leading up to it
✓ The type of policing structures and entities that exist and the level of cooperation and coordination among them
✓ Whether police institutions make a systematic assessment of serious crimes threats and of weaknesses in police capacity, including intelligence gathering, criminal database maintenance, and collection of crime statistics

✓ What data are available on the extent and scope of serious crimes arrests and investigations

✓ The effectiveness of recruitment and applicant-screening mechanisms

✓ The existence and effectiveness of training programs for professional development and growth

✓ The extent of training needed to develop the capacity to combat serious crimes

✓ Whether the level of administrative and logistical support is sufficient

✓ The capacity of the policing institutions to investigate, coordinate, and collect evidence, including forensic evidence, as well as to apprehend, detain, and arrest suspects

✓ Depending upon the applicable procedural law, the relationship and level of cooperation and communication between the police and prosecution, the willingness of the police to report crimes and investigations to the prosecution and to carry out acts requested by the prosecution, and the willingness of the prosecution to advise and work with the police

✓ The existence and effectiveness of any task forces or special units responsible for handling serious crimes investigations

✓ Whether crowd- and riot-control capacity exists

✓ Whether there exists a sustainable, effective police accountability system designed to minimize human rights violations and corruption, including mechanisms for receiving and adjudicating complaints about abuse of office or human rights violations

✓ Whether a systematic assessment of border threats and vulnerabilities has been conducted

✓ Whether an effective border security service—including units at airports, ports of entry, and border crossings—exists

✓ Attitudes of the public and various civil society groups to the performance of the police, and people's willingness to turn to the police for redress

Judicial System Capacity

The assessment of the judicial system should examine the capacity of the courts (including judges and court administration), the prosecution, and the defense to handle serious crimes cases and should identify gaps in that capacity. In relation to the courts, the assessment should pay special attention to the issue of judicial independence. It should determine the level of freedom that judges have to adjudicate cases according

Formal and Informal Systems of Justice in Afghanistan

The scope of postwar reconstruction in Afghanistan requires a comprehensive assessment of the country's judicial system. Yet, while Article II of the Bonn Agreement calls for the rebuilding of Afghanistan's "domestic justice system in accordance with Islamic principles, international standards, the rule of law, and Afghan legal traditions," the international donor community initially focused its attention and resources on the country's formal legal system and overlooked the long-standing use in Afghanistan's rural areas of an informal system of justice rooted in traditional tribal customs and Islamic law (sharia). As a result, in the early stages of the peace operation, many donors failed to adequately incorporate the important relationship between Afghanistan's formal and informal legal systems into their calculations of strategy and funding.

Justice-Sector Security in Kosovo

The condition and security of courts must always be examined in a postconflict assessment. Those who serve the justice system should not be exposed to the threat of physical violence or injury, and trials will fail in their mission to uncover the truth if witnesses and personnel cannot properly perform their roles, especially during sensitive or high-profile proceedings. In Mitrovica, Kosovo, in 2000, the international military force (KFOR) had to evacuate the building housing national and international judges and prosecutors more than five times until appropriate security and barriers were put in place. During the course of a hotly disputed war crimes trial in Prizren, the administration run by the United Nations Mission in Kosovo (UNMIK) failed to provide adequate personal security and housing for witnesses and defense counsel and did not properly secure the courthouse itself. Indeed, the Prizren court was broken into and equipment was stolen after the appointment of several UNMIK judges to the bench. Likewise, in Gjilan/Gnjilane, the president of the court had to transfer prisoners in his own vehicle, without police presence and at great risk to himself, to detention at nearby, U.S.-run Camp Bondsteel.

to the law and without fear of political or other repercussions. It should evaluate threats to the judicial system's ability to handle serious crimes, including intimidation, interference, or violence toward justice-sector actors and witnesses by criminal elements or political actors.

Another area for assessment is the quality and amount of equipment available to the courts, prosecution, and defense in handling serious crimes cases. In many situations, courts and offices will need basic materials such as paper and pens in addition to more sophisticated equipment such as telephones and copy machines. The assessment should also examine the extent to which buildings and offices used by the judicial system need refurbishment or construction.

Judicial System Capacity Checklist

In addition to determining the basic structure of the courts, prosecution, and defense, the assessment of the judicial system's capacity should include the following areas of inquiry:

✓ The structure of the Ministry of Justice, courts, and prosecution; the number of people who work for them; whether personnel work full-time or hold other, non-criminal-justice-related, jobs; the number of criminal defense attorneys, whether they work full-time, and how they are retained and/or appointed to handle specific cases; and whether there is any mechanism to provide legal aid

✓ The number of functioning courts with jurisdiction over serious crimes matters, including, if possible, the names of court personnel

✓ The roles, relationships, and degree of communication between the Ministry of Justice, the courts, the prosecution, and defense counsel

✓ The level of literacy, education, training, and experience among judges, prosecutors, and defense attorneys

✓ The degree to which the courts and prosecution are independent and free of intimidation, threats, or undue influence or control

✓ Who or what body controls the budget and assets of the courts and prosecution

✓ Who or what body controls the training of judges and prosecutors before they are appointed and during their subsequent careers

✓ Who or what body appoints (and proposes or confirms) judges and prosecutors and what the relationship is between the appointing authority and judges and prosecutors

✓ The system for appointing, disciplining, and removing judges and prosecutors and the mechanism, if any, within the bar association or Ministry of Justice to license or discipline private defense attorneys

✓ Whether there are codes of conduct for judges and prosecutors and whether there are procedures, departments, and personnel in place to investigate allegations of misconduct by judges and prosecutors and hold them accountable

✓ The existence of any professional associations for judges, prosecutors, and attorneys; and their capacity to teach and encourage ethical conduct

✓ Whether the courts function fairly and effectively and are able to process and adjudicate cases in a reasonable amount of time

✓ Whether the prosecution functions fairly and effectively and is able to prosecute cases in a reasonable amount of time

✓ Whether there is bias or unfair treatment toward a specific group or groups within the society and whether all groups have access to and are willing to seek justice through the criminal justice system

✓ The existence of or capacity to field vetted, specialized prosecutorial/investigative units

✓ The existence of or capacity to establish a specialized judicial chamber to deal with serious crimes

✓ The existence of security measures to adequately protect judges, prosecutors, and defense lawyers engaged in serious crimes cases

✓ The condition and security of the courts, including evaluations of a court's overall structural condition and building security and of the ability of court personnel to handle serious crimes–related court proceedings

Prison System Capacity

The adequacy of the prison system to handle the processing, housing, and security of prisoners should be assessed and then reevaluated periodically throughout the mission. A number of serious crimes–related issues require careful attention. In particular, prisoners who have cooperated with police and testified against their criminal associates may have to be housed separately to prevent retaliatory attacks. Additionally, in light of the security risks involved in transporting prisoners from prisons to

courthouses, it may be necessary to have secure detention facilities colocated with courts that handle serious crimes cases. Given the long lead time for construction projects, an early and accurate assessment of any construction needs will be essential to ensuring that the facilities will be ready to house prisoners and will be consistent with international human rights standards.

As with an assessment of the police and judicial system, an assessment of the prison system should include examining the existing equipment and facilities to determine basic resource needs.

Prison System Capacity Checklist

The assessment of the prison system's capacity should include the following areas of inquiry:

✓ The number and quality of available prison officers and administrators
✓ Whether prisons are adequately staffed with a professional cadre that is properly vetted and trained and has oversight and accountability mechanisms in place
✓ Whether prison conditions meet basic human rights standards
✓ Whether adequate security measures, including facilities, exist for the detention or incarceration of persons arrested for or convicted of serious criminal activity

Capacity and Challenges Outside the Criminal Justice Sector

Personnel and institutions *outside* the criminal justice sector can both assist and impede the effort to combat serious crimes. Consequently, their capacity and any challenges they present should also be a subject of the assessment.

The assessment should certainly examine the country's regulatory framework, including its audit system, tax collection and enforcement system, banking regulations, and weapons registration system. The assessment of the nature of the serious crimes problem may well point to systematic exploitation of gaps and loopholes in the regulatory framework. For example, money laundering may be facilitated by loose banking regulations; smuggling may be made easy because of a weak or corrupt customs service; tax evasion may be routine due to unenforceable tax regulations. A lack of controls on the use and investment of public funds may result in the country's wealth lining the pockets of corrupt leaders and/or financing criminal networks. Similarly, absent an effective weapons registration system, the proliferation of weapons will be difficult to assess and control.

Many other examples could be cited of these kinds of challenges. The "Further Reading and Resources" section at the end of this book offers references that will help identify areas of inquiry, including references to the Council of Europe (CoE), the Organization for Economic Cooperation and Development (OECD), Transparency International, the United Nations Office on Drugs and Crime (UNODC), and the World Bank. All these organizations maintain websites that offer a rich fund of material, including handbooks, tool kits, and resource guides on topics relevant to these challenges, including combating corruption.

> ## Sierra Leone's Anti-Corruption Commission
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> In recent years, one of the most common approaches to combating corruption has been to create or reinvigorate anticorruption agencies. In Sierra Leone, for example, one donor country put enormous pressure on the government to establish the Anti-Corruption Commission as a precondition for foreign aid. In reality, however, the commission was very limited in its performance; it had few trained investigators, lacked the capacity to prosecute, and often relied on officers from the old and ill-equipped police system to assist in investigations. The commission's performance and accountability improved only after donors insisted on a public expenditure reform program that tracked department performances and subjected them to scrutiny by budget oversight committees.

Political Will of the Authorities

An assessment should evaluate the extent of official corruption and the willingness of governing authorities to investigate and prosecute illegal activity committed at the direction of corrupt political forces. It should explore the extent to which authorities are actively engaged in serious criminal activity or are beneficiaries of it through bribes or other incentives. It should also look at the degree to which host country authorities are receptive to international assistance. Past experience has shown that the success of programs aimed at combating serious crimes may hinge upon the extent to which the host country welcomes foreign assistance and works closely with foreign assistance providers in devising and implementing programs. The assessment is likely to be particularly important in determining appropriate levels of international assistance (see chapter 6).

Public Attitudes and Expectations

The assessment should explore public attitudes toward and expectations of the criminal justice system, its actors, and the serious crimes problems that prevail in the postconflict society. Members of the public are important sources of information about those problems and of possible solutions to them; however, sections of the public can also impede efforts to combat serious crimes.

Given that an effective serious crimes program relies on public support, it is important to assess how members of the public view the crime problem, how high a priority they place on addressing it, their willingness to assist police, and their allegiances to or acceptance of criminal activity (via ethnic, tribal, or familial connections). Valuable information can be learned by asking questions such as "What does the law mean to you?" and "To whom do you turn to when you are the victim of a crime or need to protect yourself and your family?" The public can often identify cultural or societal factors that either have fostered serious crimes problems or may create challenges to effective implementation of a serious crimes strategy. All or some sections of the postconflict society may harbor deep-seated suspicion or mistrust of the police, and possibly of the entire judicial system, because those in power may have used these institutions as tools of oppression.

The assessment should also evaluate whether there is a need to establish some type of public information bureau or office within each of the various criminal justice sectors, including the police, courts, prosecution, and prisons. The assessment should determine if standards exist that govern dissemination of information to the public and, if so, whether these standards are adequate to keep the public informed of justice-sector activities but at the same time protect privacy concerns and the confidentiality of criminal investigations. (Chapter 5 discusses public awareness matters in more detail.)

Conducting an Assessment

Who Should Conduct the Assessment?

The makeup of an assessment team often depends upon or is dictated by the organization conducting the assessment and the purpose of the assessment. Generally speaking, it is best to have a diverse team of people, each of whom brings a different perspective to the task at hand. Every team member should be objective and come to the process with an open mind, free of fixed ideas about how to tackle serious crimes in the postconflict society. It is not productive for any team members to believe that his or her methods, or those of his or her organization or country, are always the best.

Ideally, a team should be composed of members who collectively have the following skills or areas of expertise or experience:

- Significant experience living in a postconflict environment and working on serious crimes programs
- Expertise in anthropology, history, or sociology and familiarity with the postconflict society
- Familiarity with the postconflict society's legal system

- Familiarity with comparative legal systems

- Familiarity with international standards and norms

The team should ideally include practitioners from each of the disciplines involved in the legal system (a judge, a prosecutor, a police officer, defense counsel, a prison system officer, and so forth) with experience in addressing serious crimes cases.

The size of the team will typically depend upon factors such as resources, availability of personnel, and the situation at hand. There is no golden rule regarding the size of the team, but good coordination among all team members is vital.

If international actors conduct the assessment, the team should include personnel from the postconflict society. Outsiders are rarely able to fully absorb and comprehend the nuances of the situation on the ground. Furthermore, foreign actors need to establish their credibility in order to obtain detailed and useful information, a process that may require repeated visits to the postconflict environment. Having someone on the team who is already trusted in the society can help open doors. Deciding whom to enlist is not, however, a straightforward matter. Teams will have to determine how to select the local personnel and how to ensure that they are not influenced by or linked to serious crimes. Identifying someone who can provide an unbiased view from a society riven by ethnic, political, or other divisions may also prove particularly challenging.

In a postconflict society, in-country officials are sometimes inundated by international actors arriving to conduct assessment missions or research. The officials' offices become revolving doors for people asking questions. International actors should respect the time of every local official and do their homework before arriving. To the extent possible, they should also work together and coordinate their assessments, conduct joint assessments, and share nonsensitive information.

Poor Local Consultation Impedes Effective Implementation

Failure to consult with local personnel in a postconflict society can often hamper the effective implementation of systems designed to combat serious crimes. In Iraq, for example, the Advanced First Responder Network (AFRN), installed in January 2006, is a national public safety communications and dispatch system designed to enable Iraqi police, civil defense, and emergency medical personnel to communicate effectively through radio, secure voice, and data communications. Administrators on the ground have argued that AFRN has a number of critical vulnerabilities, compounded by the insurgency that continues to grip the country. In particular, they argue that the system assumes a Western model incompatible with Iraqi society. That problem has been compounded by the fact that Iraqis were not included in the process of planning and preparing for the introduction of the system; when Iraqis were finally brought in, they had to digest an enormous amount of technical, training, and operational material in a short period.

Sending the Wrong People Undermines Credibility

One Afghan justice-sector official complained that university researchers sent by a regional organization to conduct an assessment in Afghanistan arrived without a basic understanding of the country's justice system and wasted the time of officials, who ended up trying to educate the visitors. Needless to say, this assessment team lost the credibility that is essential to obtaining reliable and useful information.

Assessment teams have found that some officials are likely to be more forthcoming if interviewed by a professional counterpart (a fellow police officer, for instance) from among the team. If an assessment is conducted with a group of officials from a postconflict country's ministry, not everyone in the group may feel comfortable contributing to the discussion. In those situations, it may be useful to have more one-on-one meetings with individuals.

Should an assessment be conducted by an independent body that holds no stake in the outcome? Some experts argue that by sending in someone who may benefit from an assessment outcome (e.g., someone who may receive funding for recommended programs), the assessment may be skewed. Others argue that often the only people capable of conducting an assessment are part of organizations that by their very nature would benefit from the assessment and that, therefore, it is unrealistic and counterproductive to exclude them. Furthermore, some organizations require that their own staff conduct assessments so that the information remains in-house.

Whatever the stance taken on this question, it remains crucial to ensure that the team members are objective and able to put aside any biases or preconceived notions when conducting an assessment.

Assessment Methodology

The methodology for conducting an assessment will vary with the situation. In all cases, however, the assessment will require conducting a series of in-person interviews in the postconflict society and undertaking substantial research. It is vital to do as much research as possible before arriving in country to conduct an assessment. This work may include researching on the Internet; obtaining country reports and assessments of the local serious crimes problem prepared by governments, international organizations, and nongovernmental organizations (NGOs); and meeting with, telephoning, or e-mailing knowledgeable actors. Important insights can be obtained by talking to staff from NGOs and others who worked in the country before the conflict erupted.

Postconflict societies often lack reliable country-level data, which makes it difficult to secure accurate information on criminal groups. Access to the information that does exist is often far from easy, espe-

cially when material is classified for security purposes. Additionally, continuing violence may pose obstacles, and an assessment team may not have access to the entire country or may require security when traveling. Another challenge might be individuals' reluctance to talk about serious crimes problems due to fear of reprisals. In such cases, an assessment team might obtain information by preparing questionnaires or surveys to be completed and submitted anonymously. Of course, this information would need to be verified by other sources. To the extent possible, it is important for teams to leave the country's main capital and travel to provincial capitals and explore different regions and ethnic areas. Most postconflict societies contain culturally, religously, and ethnically diverse regions and therefore require a comprehensive statewide assessment. One task of the assessment team is to collect as much material as possible, including copies of codes and laws, while in country.

Verifying Data Submitted by Officials

In one postconflict environment, an assessment team member was told by an official in one ministry that there were no fewer than 350 judges in the country. The official, looking to win a bigger budget from an international donor, even produced a list of names. The assessment team member knew that it was impractical to travel to each and every court in the country to confirm this number. So, instead, the team member went to another ministry and asked how many ration cards had been issued to judges (without a ration card, a judge would not get paid, so ration cards were a fairly reliable indicator of the real number of judges). The number of cards turned out to be significantly lower than 350.

Organization of Assessment Reports

Assessment reports can be organized and presented in a number of ways, depending upon the situation. A report on Nepal included the following headings:

- Survey of the Investigative System
- Survey of the Right to Be Defended by Legal Practitioners
- Survey of the Prosecution System
- Survey of the Adjudication System
- Survey of the Prison System
- General Country Background
- Brief Historical Overview of the Criminal Justice System and Legal Framework
- Brief Overview of Criminal Proceedings

- Survey of the Legal Framework
- Gaps and Weaknesses in the Criminal Justice System
- Political Commitment of Government to Reform the Criminal Justice System
- Recommendations to Improve the Criminal Justice System
- Competency of the Legal Profession System, Prosecutorial System, Adjudication System, and Prison System to Address the Existing Problems or Needs

Accessing Assessments Done by International Military Forces

Whether part of a UN, NATO, or coalition operation, international military forces may make it a priority to assess the postconflict society's criminal justice system and serious crimes problem, both of which are typically highly relevant to the task of maintaining peace and security. In Bosnia, for example, a military legal adviser to NATO's Implementation Force instructed all legal advisers within his command to conduct a sectorwide assessment of the judicial system in the first few months of the mission. The assessment team can thus learn a great deal by meeting with members of the military and studying the assessments they may have already prepared.

In Afghanistan, a military police officer working as a civil affairs officer with the International Security Assistance Force (ISAF) conducted a survey of the judicial system in her sector in the early months of the peace operation. She shared the survey results with personnel from international civilian NGOs and from a government agency that were conducting an assessment to help determine programming needs in the justice sector. A military legal adviser had also conducted an assessment of the criminal justice system and had learned that judges, prosecutors, and lawyers had no copies of the applicable legal codes and therefore suggested that the international donors help the Afghan authorities collect the few copies of the legal codes that had not been destroyed during the conflict. This suggestion led to the collection, compilation, and copying of legal codes, which were then distributed to the various sectors of the Afghan justice system.

Individuals or groups with agendas that are not necessarily consistent with the goal of effectively addressing serious crimes must not be allowed to influence the assessment. It will therefore be important to sort through information to find legitimate and verifiable sources. Cross-checking information is always vital.

Practice has shown that it is helpful to entrust the writing of an assessment report to just one or two people. These people gather information and data from other team members and write a draft report. Other members provide input and revisions until the report is finalized and all team members have approved it.

Exactly who the team meets will depend upon who is conducting the assessment, their status, and the level of their knowledge of the postconflict society. In most cases, however, the assessment team will want to contact some or all of the following individuals and institutions during the initial research effort and/or during the in-country assessment:

- Police/Ministry of Interior
- Police training schools
- Customs and border officials
- Interpol point of contact
- Ministry of Justice

- Judges and court personnel
- Prosecutors/attorneys general
- Defense attorneys
- Associations for lawyers, judges, and prosecutors
- Law schools
- Judicial training centers
- Prison officials
- Legislative bodies
- Ministry of Finance officials
- Civilian and military intelligence units
- Human rights commissions
- Police ombudsmen or oversight bodies
- Key figures within the civil society
- Citizens, refugees, and exiles who have fled and are living in another country (the diaspora)
- Military peace operations personnel, both current and former
- Humanitarian organizations, human rights groups (both national and international), and other NGOs
- Experts working in diplomatic missions (different countries may have different interpretations of the postconflict state's serious crimes situation)
- Agencies and organizations in neighboring countries that have crime data related to the postconflict situation

The timing of the assessment, like the methodology adopted, will depend upon the situation. Ideally, an assessment should be conducted as soon as it becomes clear that a state may become the venue for a postconflict peace operation or other international assistance. The assessment should take place before a peace agreement is reached or a mandate for a peace operation is issued. It could begin while peace negotiations or mandate discussions are ongoing. Further assessments should then be conducted periodically to enable adjustments to be made. It is sometimes helpful to first conduct a general assessment of the overall situation and then to follow up with an in-depth assessment. In any event, one should not underestimate the time needed to conduct an adequate assessment. Teams sometimes spend no more than a week in country, which is too short a time in which to assess an entire judicial system. It takes time to conduct research and interviews and to develop an assessment report complete with analysis and recommendations. For example, one team—headed by an expert who had four years of experience in the country—took three weeks to conduct an assessment of the serious crimes situation in Bosnia. ⚖

Moving from Assessment to Strategy

Once an assessment has been conducted, a strategy for combating serious crimes must be developed, together with mechanisms for measuring progress during the implementation of that strategy. Each strategy, of course, must be designed to address the unique characteristics of the situation at hand. Even so, many of the same concerns will figure in the calculations of strategists involved in any operation.

The following list of questions was prepared by an international military force as it designed a strategy to work with civilian personnel to combat serious crimes in part of the former Yugoslavia.

❖   ❖   ❖

Eight Fundamental Questions to Be Considered in Developing a Serious Crimes Strategy and a Method to Measure Progress

1. What criminal-justice-sector institutions exist and what is their capacity?

2. What will be the mandate of the peace operation and what will be my authority?
In answering these questions, the following should be considered:

- The nature of the mandate
- The existence of a multinational presence
- Whether civilians or the military has primacy
- Whether international personnel have executive powers
- The existence of applicable rules of engagement
- The existence of host nation support

3. What effects do I want to have, and what do I need to do to achieve them?
Examples of answers might include

- Organizing, training, equipping, and mentoring personnel across the criminal justice sector
- Creating capability, enduring sustainability, and institutional capacity across the justice sector
- Countering whichever criminal group or activity is the priority in terms of its impact on security and stability in the postconflict environment

4. Where can I best accomplish each action, and what will be the effect for the rule of law continuum?
To answer, it may be necessary to evaluate

- Governmental, civil, and military coordination mechanisms
- Intelligence coordination and strategy for turning intelligence into evidence admissible in court

- Gaps in the criminal code and procedures
- Organized crime and militia connections
- Border security
- Transnational criminal activity

5. What resources do I need to accomplish each action or effect?
This determination would include looking at

- Whether the international military presence has a serious crimes mandate
- The existence of funding mechanisms and budget allocations for serious crimes
- Whether donor nation support is present
- The actual costs and personnel needs for the plan (e.g., the organizing, training, equipping, and mentoring scale and costs)

6. When and where do the actions take place in relation to each other?
Making this determination includes

- Establishing clear priorities
- Considering the timeline and actions by other actors engaged in justice-sector reform
- Considering the timeline for serious crimes–related actions in relation to other operational actions, such as those that are part of a strategy for economic development and governance

7. What measures of effectiveness do I need?
The process of measuring effectiveness would include

- Conducting operational analyses (e.g., an analysis of the project on organizing, equipping, and training police)
- Collecting data related to the project and determining what is relevant in measuring effectiveness
- Establishing criteria that measure quality over quantity
- Establishing a measurement timeline (e.g., showing immediate, short-, mid-, and long-term goals and periods of performance)

8. What is the most appropriate organizational structure needed to implement and execute the plan?
Addressing this question would include

- Designing an appropriate structure to effectively implement the plan
- Determining who is responsible for which functions
- Establishing clear lines of authority and responsibility and appropriate spans of control
- Assigning responsibilities to appropriate experienced and capable personnel