

TRANSITION AND CONTINUING PROFESSIONAL DEVELOPMENT IN AFGHANISTAN AND BEYOND: TEN LESSONS FROM IDLO'S JUSTICE TRAINING TRANSITION PROGRAM EXPERIENCE



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LESSONS LEARNED PROGRAM

As part of IDLO's pledge to continuously enhance the impact of its work and be at the forefront of thinking on how change occurs and can be fostered in the rule of law field, the IDLO Lessons Learned Program analyzes select IDLO programs in combination with international theory and practice. The aim is to learn what types of interventions can lead to positive change, under what conditions, and how such change can be sustained. In order to share good practices both internally as well as with the broader rule of law community, findings are compiled in a series of Lessons Learned Briefs, to be used in program design and implementation, and as building blocks for evidence-based theories of change.

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ABBREVIATIONS

CPD	Continuing professional development
IDLO	International Development Law Organization
JTTP	Justice Training Transition Program
NGO	Non-governmental organization
OCAT	Organization Capacity Assessment Tool
USAID	United States Agency for International Development

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INTRODUCTION

“WHEN I FIRST ARRIVED IN AFGHANISTAN TEN YEARS AGO TO LEAD A COURSE ON COMMERCIAL AND CIVIL LAW, I WAS COMPLETELY TAKEN ABACK TO FIND THAT IT WAS THE FIRST TIME MOST OF THE JUDGES PRESENT HAD EVER SEEN THE CODES. AT THAT TIME, THEY WERE ISSUING RULINGS ON THE BASIS OF THEIR OWN PERSONAL JUDGMENT, RATHER THAN ANY LAW... IT WAS A SIGN OF THE STATE OF THE JUSTICE SYSTEM THEN.”¹

IDLO’s Justice Training Transition Program: Increasing confidence in justice institutions in Afghanistan

Fair and effective administration of justice is a crucial element of stabilizing, avoiding relapse into conflict, and enabling reconstruction in fragile and post-conflict contexts. Independent, well-functioning and resilient justice systems are part of the foundation of state architecture, helping to prevent governments from acting outside the law and to ensure human rights are respected, protected, and fulfilled.²

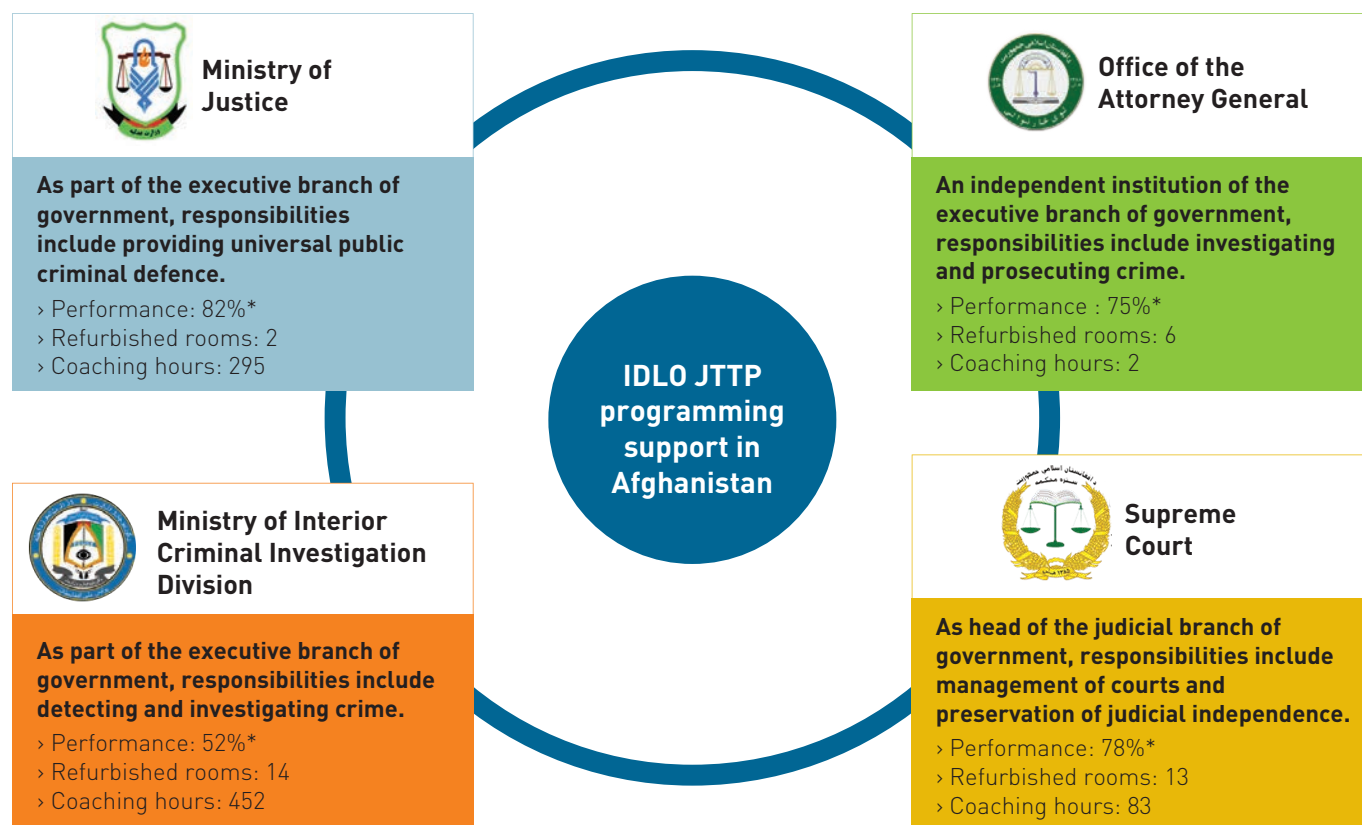
Weak or uneven administration of justice intensifies existing social non-cohesion and inequalities in already fragmented societies, undermining state legitimacy. A poorly functioning criminal justice system perpetuates unchecked violence and crime and public and private corruption, stunts economic development, and undermines the effective enjoyment of equality and other human rights.

Qualified and competent justice sector professionals acting in accordance with the rule of law are fundamental to achieving effective and efficient justice administration and, over time, to increasing public confidence in the integrity of justice institutions and their ability to administer justice. Absent or limited professional qualifications pose a major challenge to reconstruction efforts and reforms designed to restore confidence in justice institutions must directly address professional standards and ongoing performance to instill confidence. While low public confidence in the justice sector is a modern constant for even the most well-functioning states,³ this sentiment is especially acute in Afghanistan⁴ as it is in many fragile and post-conflict countries. In the Afghan experience, the justice system is widely perceived as inaccessible, slow, ineffective, and corrupt, which drives recourse to informal justice mechanisms.⁵

With a view to increasing accountability, performance and results, the Afghan government has affirmed that “[e]nsuring the rule of law and restoring confidence of the people in justice institutions will be the foremost priority of the government.”⁶ Accordingly, the government has undertaken a review of the qualifications of legal professionals, prioritizing new appointments and replacements across the justice sector. A recent indication is that more than 600 judges have been replaced within the last two years, with some prosecuted for illegal activity.⁷

IDLO has been active in Afghanistan since 2002 in a variety of programming contexts, witnessing incremental but progressive change in justice sector performance. In 2013, IDLO launched the Justice Training Transition Program (JTTP) to strengthen capacity among criminal justice sector professionals as a means of increasing public confidence in the performance of the sector.⁸ Funded by the United States Department of State and implemented by IDLO in partnership with the Government of Afghanistan, JTTP had two focal outcomes:

- » **Outcome 1** focused on building the immediate capacity of Afghan criminal justice professionals through remedial training as well as post-training coaching support to four main partner institutions shown in **Figure 1**: the Supreme Court, Office of the Attorney General, Ministry of Justice, and the Ministry of Interior.
- » **Outcome 2** focused on supporting these partner institutions to institutionalize, take ownership of and sustainably manage professional performance, by establishing mechanisms for continuing professional development (CPD).



[* Performance refers to sampled cases being handled according to due process standards and procedures regulated by Afghan law]⁹

Figure 1: IDLO JTTP partner institutions in Afghanistan and select results

The program’s achievements include:

- » providing 27,674 total training hours to Afghan criminal justice professionals to increase capacity and competencies;
- » delivering 394 courses in 31 provinces, reaching 5,200 criminal justice professionals in all 34 provinces;
- » supporting female criminal justice professionals to participate in courses by providing financial resources to enable accompaniment by a family member so that, while underrepresented in the profession, women made up 14% of all course graduates;¹⁰
- » progressively transferring responsibility for 40% of all training delivered to Afghan professionals; and
- » supporting the establishment of professional training departments and directorates to institutionalize and sustainably manage CPD.

Capturing JTTP’s lessons on transition and continuing professional development in the justice sector

With a dual aim of strengthening the capacities of Afghan justice sector officials and of developing institutional capacities to take over and manage such programs, JTTP provides an important case study from which to draw practically relevant lessons. An overarching insight emerging from the program and surrounding international literature concerns the importance of designing and implementing programs with a view to transition to local ownership from the outset.

Globally, there has been a proliferation of donor-funded programs aimed at improving performance of justice sector professionals through capacity development. These programs often fall under the ambit of broader justice reform programming aimed at supporting good governance and promoting the rule of law.¹¹ Such programming can contribute to improvements in justice system performance, building confidence in the justice sector and enhancing perceptions of state legitimacy.¹² However, many such programs have created dependencies, lacked legitimacy, or failed to demonstrate lasting results and sustainability found through transition of ownership to national institutions.¹³

In focus: transition in fragile and post-conflict contexts

Well-targeted, responsive international assistance can help facilitate the transition of security and justice institutions in post-conflict and fragile contexts to local ownership, often following decades of war and instability. The strategies adopted to achieve this are dependent on two key categories of contextual realities: the host country's *ability* to take ownership and the host country's *will* to do so.¹⁴

While the term 'transition' is often closely associated with the withdrawal of international security forces and other international actors at an end-point in time,¹⁵ it is also embedded in broader peace- and state-building efforts, with overlapping and interrelated types of transition documented: war to peace; power; security; societal; political and democratic; and economic transitions.¹⁶ Transition is also understood in different ways: as authority transfer to government institutions; as a process with indicators and goals; or as phased smaller shifts and responses to the ever-changing environment in which transition is taking place.¹⁷ Regardless of conceptualization, transition that is sustainable must be accompanied by local capacity and ownership.

In Afghanistan, well-intended and high caliber capacity development programming aimed at strengthening the justice sector and facilitating transition has frequently suffered from duplication of efforts by donors and implementing organizations, misalignment to professional needs, and poor consultation with

institutional stakeholders, leading to further misalignment with institutional priorities and plans. In JTTP, a structural response was pursued to address performance expectations, ongoing changes in law and legal practice, and maintenance of qualifications through fostering a culture of in-service CPD in partner institutions.

In focus: CPD

CPD is a way to manage learning needs and activities to address emerging changes in law, policy and practice relevant to effective professional performance, enabling the legal profession to maintain its status and sustain public confidence. Often operationalized as short continuing legal education courses or training,¹⁸ CPD activities can combine different learning methods such as workshops, conferences and events, e-learning programs, best practice techniques, coaching, exposure visits, and idea sharing.¹⁹ As described, "continuing education or professional development has assumed an urgent priority in developed and developing economies and is now a primary professional concern. It is a lifelong learning process that is indispensable to professional growth and individual competence. With the dynamic social, political and economic changes taking place in society, there is increased demand for legal services that are responsive, innovative and effective."²⁰

During a stakeholder workshop, JTTP adopted the following understanding of CPD: "... the provision of a controlled and managed mechanism that offers the opportunity for practitioners in a specified occupation to advance their individual capacity in their chosen field, and to ensure that they maintain, and update the skills necessary to perform at a high level and to a prescribed standard. For the responsible institution, CPD also supports effective institutional performance management, enabling institutions to address needs for identified professional skills and knowledge development and enhancement, usually focused on the practical application of knowledge, beyond any initial qualification or training, such as a university degree or vocational stage qualification."²¹

Focusing on CPD and transition to national authorities in Afghanistan and beyond, this Lessons Learned Brief captures lessons generated from IDLO's experience implementing JTTP. As part of the methodology, programmatic lessons have been enhanced and corroborated by the experience of main stakeholders and international literature.²²

Lessons and recommendations are presented in the form of key building blocks that practitioners can use to

design realistic theories of change for high-quality programs tailored to specific contexts.²³ The aim is to enhance practitioner capacity to explore why and how change occurs, including the conditions that need to be in place for intended results to be achieved, while recognizing that specific program design will necessarily require in-depth contextual analysis and responses to local needs and concerns.²⁴ Within this framework, the sections below will look at CPD and transition through the following three key building blocks:

1. linking transition programming to broader context dynamics;
 2. features of a good transition program: the ‘what’ and ‘how’ of effective programming for CPD; and
 3. transition program implementation and management: good practices and challenges.
- Figure 2** presents an overview of lessons learned.

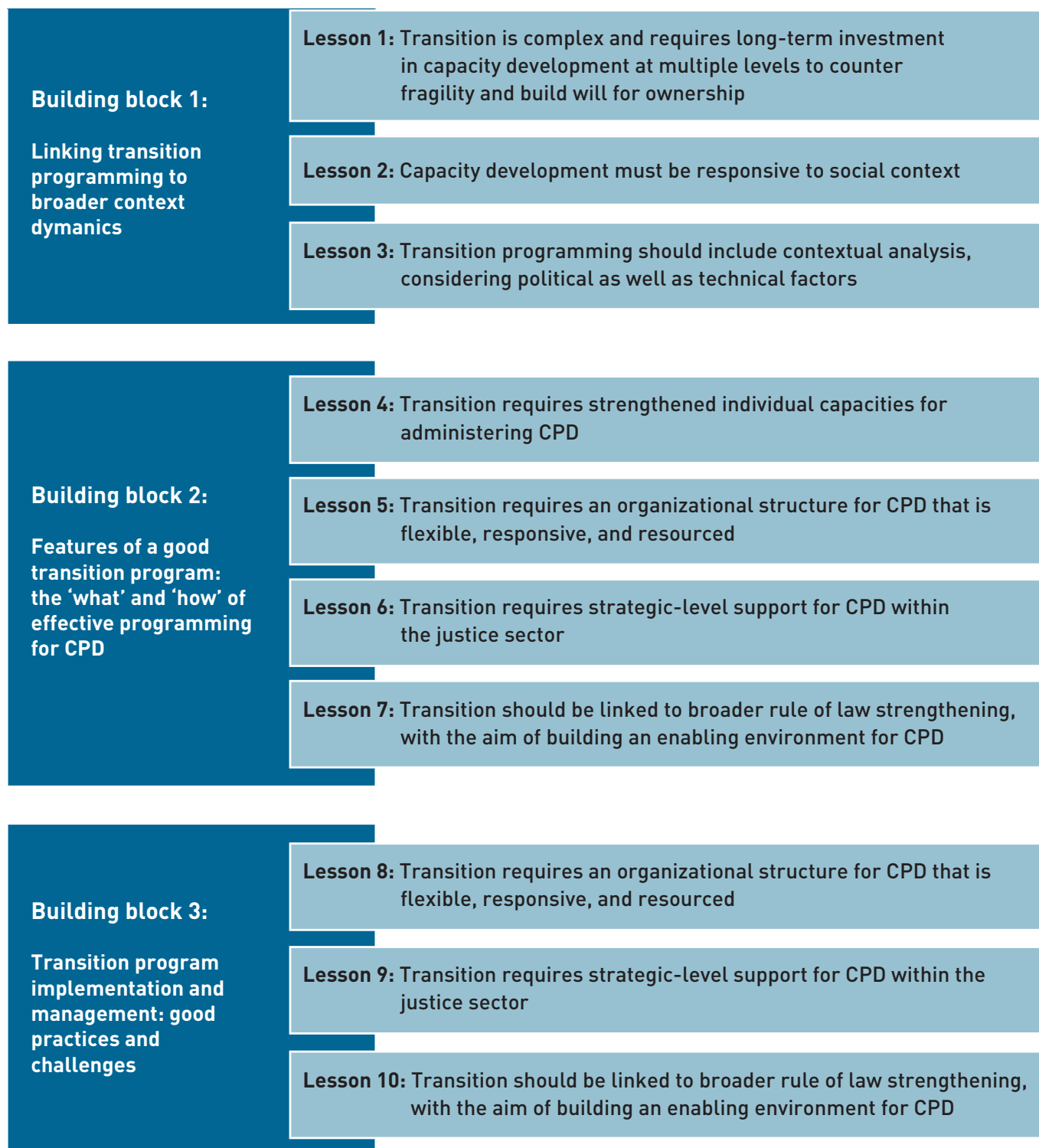


Figure 2: Summary of lessons learned on transition and continuing professional development in the justice sector

1 LINKING TRANSITION PROGRAMMING TO BROADER CONTEXT DYNAMICS

In the rule of law field, transition to local ownership is recognized as a complex progression and a long-term endeavor, with evidence showing that effective institutional change generally occurs over a period of 15–30 years.²⁵ Complexity is further exacerbated in fragile and post-conflict contexts, with institutions facing many challenges, including an insecure political situation and operating environment; weak regulatory environment; lack of appropriate infrastructure, organizational systems and processes; limited financial resources; and weak political will to own and follow through on reform.

LESSON 1: TRANSITION IS COMPLEX AND REQUIRES LONG-TERM INVESTMENT IN CAPACITY DEVELOPMENT AT MULTIPLE LEVELS TO COUNTER FRAGILITY AND BUILDWILL FOR OWNERSHIP

Countering fragility and building will

While the characteristics of state fragility vary, a lack of capacity on the part of the state to fulfill key functions of government, including ensuring rule of law, is at the heart of state fragility.²⁶ The Fragile States Index uses social indicators (demographic pressures, refugees and internally displaced persons, group grievance, human flight and brain drain), economic indicators (uneven economic development, poverty and economic decline), as well as political and military indicators (state legitimacy, public services, human rights and rule of law, security apparatus, factionalized elites, and external intervention). In the 2016 Index, Afghanistan ranked ninth in fragility and risk among the countries surveyed.²⁷ Looking at existing definitions, **Figure 3** presents commonly accepted indicators of state fragility.²⁸



Figure 3: Indicators of state fragility²⁹

Each of these indicators are interconnected and a failure in one is likely to lead to failure in others. For instance, a weakness in the rule of law will hamper the collection of tax revenue and lead to an inability to provide basic services.³⁰ A lack of internal security will prevent economic investment and opportunity. Identified precipitators for state fragility include shocks such as: environmental disasters; a history of armed conflict; militarization and oppression; and corruption, which further delegitimizes the government.³¹

Transition in fragile contexts is fraught with risk and

consequently “may include multiple, smaller-scale transitions that occur simultaneously or sequentially. These small-scale activities focus on building specific institutional capacities and creating intermediate conditions that contribute to the realization of long-term goals.”³² The success of any approach to transition relies on the willingness and ability of the responsible individuals and institutions to undertake various functions, which may have been previously neglected or assumed by external actors. Strengthening capacity at multiple levels is essential to effect sustainable change and avoid the risk of deterioration and a return to state failure and conflict.³³

Linking capacity development at multiple levels

IDLO identifies four different levels of interconnected capacity development: individual, organizational, sectoral and institutional/enabling environment, as shown in **Figure 4**.³⁴

Individual capacity development	Organizational capacity development	Sectoral capacity development	Enabling environment (sometimes referred to as institutional) capacity development
<ul style="list-style-type: none"> › Activities aimed at ensuring responsible actors in the [criminal] justice sector have the skills and knowledge to perform the tasks for which they are responsible. Activities focus on human capacity, leadership, and motivation, often with a technical or specialized nature. › JTTP examples include: training and coaching individual managers, trainers, planners, and curriculum developers so they can proficiently and independently perform duties as set out in their terms of reference. 	<ul style="list-style-type: none"> › Organizations are structures in which individuals work and activities are aimed at improving the culture and systems of formal and informal organizations. › JTTP examples include: building operational systems, processes and models in partner institutions (the Supreme Court, the Office of the Attorney General, the Criminal Investigations Department of the Ministry of Interior, and the Ministry of Justice), as well as staffing structures. 	<ul style="list-style-type: none"> › Activities aimed at strengthening relationships and cohesion within the justice sector. › JTTP examples include: fostering healthy dialogue and cooperation within the justice sector as a whole. 	<ul style="list-style-type: none"> › Activities aimed at supporting, reforming or strengthening the ‘rules of the game’ that govern how sectors and societies function. Such rules can be either tangible and to a certain extent measurable (procedures, processes, mandates, rules), or intangible (symbols, social norms and values, traditions, ideologies, etc.). The focus is on the culture, customs, and practices that enable or block accountability and transparency. › JTTP examples include: building regulations and obligations for partner institutions to support operational needs and addressing cultural and social acceptance for CPD supported by leadership and new norms.

Figure 4: Levels of capacity development

One principal criticism is that transition programs often focus on tangible, visible, and regulative aspects, with very little attention to normative and cultural–cognitive mechanisms guiding organizational behavior. In other words, programming often concentrates on what institutions look like – laws, buildings, statutes, committees–instead of looking at what institutions do, how they do it, and why they do or do not function.³⁵

This approach has also often meant capacity development efforts focused on individual training, without pursuing capacity development at multiple levels. Short-term programs that focus on outputs – such as bridging gaps in knowledge and basic skills (individual capacity development) and building specific institutes to manage such programs (organizational capacity development) – are unlikely to have long-lasting impact. Conversely, to support transition and build political will for ownership, capacity development must reflect additional levels and consider how to support higher-level and longer-term programming goals such as instilling trust and confidence in justice institutions.

JTTP’s experience confirms that capacity development needs occur at multiple levels. In JTTP, while still focused on tangible and visible aspects, attention was also devoted to positive norms and developing a conducive environment. Explored below, these efforts included governance support and strategy development for CPD, as well as more intangible aspects such as support for a cultural vision towards learning, including professionalization and performance management, generating will for change.

LESSON 2: CAPACITY DEVELOPMENT FOR TRANSITION MUST BE RESPONSIVE TO SOCIAL CONTEXT

Maintaining and improving professional competencies through capacity development is a key element of institution building. IDLO identifies capacity development as a process “through which IDLO fosters the ability of institutions and individuals, as well as the sector itself, to deliver timely, good quality justice and to do so with an efficient use of resources. It is also the process through which IDLO supports justice seekers to know their rights, to defend or claim them and use them to improve their own wellbeing.”³⁶

To achieve significant impact, capacity development must surpass basic knowledge of the law and skills development, to forge an intimate connection with the social context. As explored below, this connection is what will inspire public trust and confidence, and legitimize justice institutions and their work in the eyes of the communities they serve.

A brief look at different capacity development frameworks

One framework for classifying capacity development activities in post-conflict and fragile contexts, which has been used for judicial training in Afghanistan,³⁷ proposes a three-way timeframe-based sequence, with different sets of activities and outcomes for each:³⁸

1. **Short-term:** interventions that use current capacities and provide technical support at an individual level to increase individual capacities;
2. **Mid-term:** interventions that are devoted to the organization of continuing education and training; and
3. **Long-term:** interventions that provide continuing support, with a view to not only develop individual capacity to administer justice, but also to improve the justice sector at the institutional level.

Another classification identifies three typologies of programs based on the function of the type of intervention:³⁹

1. **Emergency:** programs that are typically set up in the urgency of 'standing up' systems. Characteristics include a short and contextual type of program, usually mass-oriented, aiming to convey simple messages and basic legal information, and commonly used to increase understanding of and generate enthusiasm about a reform.
2. **Remedial:** programs that are also mass-focused, but in addition emphasize a broader range of basic skills and knowledge transfer. Characteristics include the goal of improving average performance, usually in conjunction with wider reform efforts, which may also be useful for bridging gaps, bringing professional competencies to a minimum level.
3. **Stable or permanent:** programs that are introduced after a minimum level of average performance has been achieved and are the logical successors of remedial training. Characteristics include selectiveness in focus, both in terms of curriculum and target groups, and clearly separate entry-level, in-service, and specialized courses.

In fragile and post-conflict situations, it is not a coincidence that much of the focus of donors has gone into emergency and remedial programs, where the priority has been to provide basic legal knowledge and skills in the short to mid-term. For instance, after the fall of the Taliban regime in Afghanistan, little could be found in the way of resource or human capacity within the bodies of Afghan public service, requiring extensive investment in building and rebuilding professional capacity.⁴⁰ In such a context, moving from emergency to stable and permanent (or continuous) programming is particularly challenging.

The objectives of continuous programs are inherently more political in nature, seeking to strengthen the position of the justice sector and enhance its impact on society. Such programs are far more difficult and time-consuming to implement. Fostering systems for CPD necessarily aligns with characteristics of stable or permanent programs with mid- to long-term time horizons.

In JTTP, in combination with short-term capacity development, emphasis was placed on longer-range objectives, with a view to strengthening the capacities of partner justice institutions to maintain and foster the knowledge and skills of their legal professionals, thus keeping CPD distinctly in focus as more than the transfer of foundational legal skills and knowledge training. However, without thousands of hours of training to help legal professionals learn foundational skills and acquire the necessary knowledge, focus could not shift to CPD.

Responding to social context

In post-conflict and fragile contexts, it is important to provide training on a priority basis in areas and subject matters where demand is high and rationalize subjects where there is not a pressing demand.⁴¹

Another framework from judicial capacity development literature identifies a competency-based approach comprised of three elements: (1) mastery of legal knowledge; (2) professional skills development; and (3) acquisition of judicial disposition to improve the institutional performance of courts.⁴²

Within this framework, to achieve professional disposition and in turn, improve institutional performance, programs must address attitudinal and behavioral change. Behavioral change should be pursued by influencing the position of justice actors between the state and society. For example, in some post-conflict and fragile contexts, the dominant attitudinal change required to change behavior may relate to eliminating gender or racial bias. Other dominant attitudinal changes may focus on promoting the view that the justice system should be at the service of the community in which operates.⁴³

As one judicial reform author notes, “The question is not what judges should know in the abstract but rather what specific kinds of knowledge and skills are required to produce the desired changes in behavior. This has implications for the content of curriculum and for the way courses are taught.”⁴⁴

There is an emerging tendency to view social context training as an important part of capacity development programs. From judicial training, it has been conceptualized as “training that focuses on increasing judges’ knowledge and awareness of the social contexts in which they adjudicate”.⁴⁵ This is also an aspect that differentiates academic legal education from post-qualification training: legal professionals should be taught and trained to take contextual issues and factors into account and to critically engage with the law. As explored below, this may mean inclusive capacity development, so legal professionals draw from complementary disciplines and each other to support their decisions and exercise of discretion.

IDLO’s experience in JTTP highlights that social context matters. Shifts in attitudes and changing power structures are crucial for long-term institution building and stabilization. This is especially true in post-conflict and fragile contexts where the justice

sector plays a crucial role in conflict mitigation and countering fragility. Professional development in the justice sector is increasingly understood as an activity that promotes confidence in, and respect for, the rule of law.⁴⁶

LESSON 3: TRANSITION PROGRAMMING SHOULD INCLUDE CONTEXTUAL ANALYSIS, CONSIDERING POLITICAL AS WELL AS TECHNICAL FACTORS

The rule of law is not a collection of institutions and laws that can be built by outsiders, but rather an inherently political activity, that, as noted, must tackle the relationship between the state and society.⁴⁷ Acknowledging the political nature of rule of law reform means that programming should not be approached purely as a technical exercise. If done well, capacity development in the justice sector can be a catalyst for true reform; if done badly, it can very much entrench undesirable situations, such as unbalanced power structures.

Highlighted below are broad elements of a capacity development needs assessment developed in JTTP to consider both technical and political aspects related to partner institutions’ readiness to establish a CPD structure:

Technical, material	Political, social, cultural
<ul style="list-style-type: none"> › Is there already a sufficiently stable group of qualified and competent personnel to implement and manage CPD, or can one be put in place? › How capable are professionals at implementing the duties set out in their terms of reference? › How reflective of their actual duties are the terms of reference? › Do different parts of the institution have special capacity needs? › What is the disposition of case inspection and case monitoring data? › What are the levels of uptake and capacity to use technology? › Can adequate financial resources be dedicated to supporting capacity development? › Are suitable training spaces available and accessible at the necessary locations? › What is the quality, currency and organization of curricula available to the institution? › What capabilities, systems and infrastructure does the institution have to manage records? › What capabilities and requirements does the institution have and what methodologies do they use to conduct monitoring and evaluation? › What internal operating procedures and guidelines exist to support capacity development? › What internal operating procedures and guidelines exist to manage day-to-day working procedures? 	<ul style="list-style-type: none"> › What are the priorities of the institutional or sub-institutional strategy? › Are these priorities realistic and changing? › What is the level of ownership and political will among leadership to support CPD? › To what degree does a culture of learning exist and is learning valued? › Are there champions across the institution who could support CPD? › Where is the greatest resistance likely to come from and why? › What is the level of responsiveness to instability? › How does management and decision-making occur? › What are capacities for negotiation, diplomacy and relationship management? › Are there productive power dynamics between justice sector institutions, donor(s), and implementing organization(s)? › What obligations do institutional laws and regulations impose on professionals and the institution to fulfill CPD or to have relevant qualifications? › Can regulated obligations be leveraged to resource CPD? › What are the primary and secondary sources of information within the institution (i.e. how do people get information about law and what they need to do)? › Who can support the institution to develop capacity and what motivates that support?

Figure 5: Needs assessment for establishing responsibility for CPD

In considering the need for greater attention to political, social, and cultural factors in developing capacity, it is important to distinguish between what is important to understand and what is necessary to change in relation to these dynamics. Good programming should integrate approaches to analyzing institutions and use tools such as political analyses, sector-wide and institutional analyses, and drivers of change analyses.⁴⁸ Such analysis should not only identify gaps, but be participatory in nature, drawing from local knowledge, and include investigation of root causes of weaknesses and barriers to performance.

In the JTTP experience, a long-term presence in country and relationship with the partner institutions helped form a strong knowledge base. National experts, subject matter experts and existing networks of professionals were involved in program design and implementation, with regular stakeholder consultations.

Finally, based on thorough contextual analysis, a clear theory of change (i.e. an understanding of how and why stakeholders think change will happen in a certain context in a certain field) should be developed and revisited throughout program implementation.⁴⁹

2 FEATURES OF A GOOD TRANSITION PROGRAM: THE 'WHAT' AND 'HOW' OF EFFECTIVE PROGRAMMING FOR CPD

To foster positive change and move beyond short-term objectives to long-term local ownership, program interventions focusing on transition and CPD should reflect the following broad logical structure at the level of intermediate outcomes:

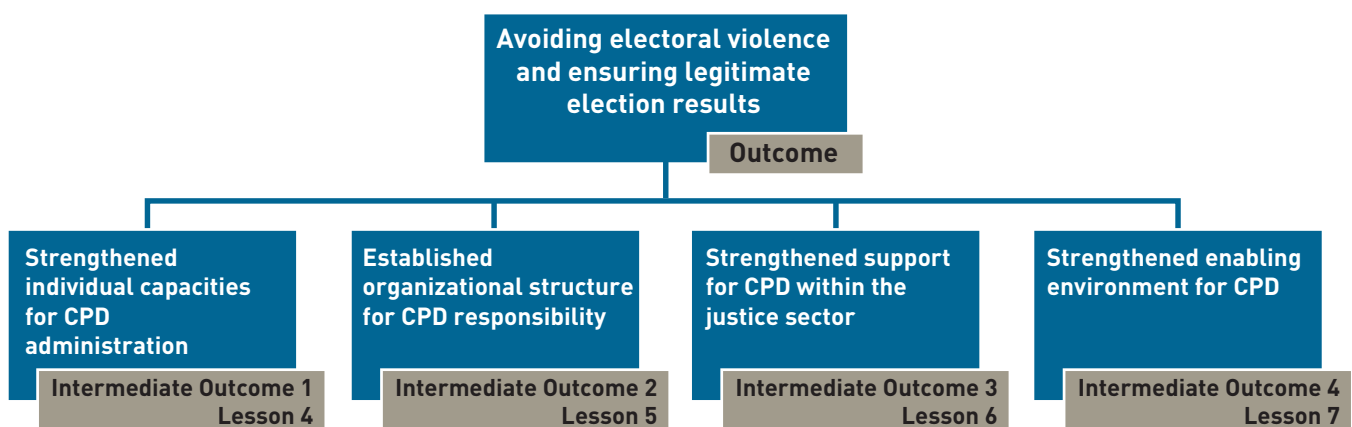


Figure 6: Intermediate outcome-level programming intervention logic

For justice institutions to be prepared and responsible for administering CPD in a sustainable manner, individual, organizational, sectoral, and enabling environment capacities need to be strengthened. In dynamic fragile and post-conflict contexts, justice institutions face a host of challenges, including high personnel turnover and capacity erosion, the need to train newly recruited personnel, and ongoing resource shortages. Further, the government and educational institutions may be focused elsewhere or weak, with mandates developing and evolving over time.

In JTTP, programming support included assistance to establish and support operational in-house professional training directorates and departments within partner institutions. Following consultations, Memoranda of Understanding to establish mutual areas of cooperation were signed with the partner institutions. JTTP's Transition Plan contained seven technical and material benchmarks, identified through assessments based on an Organizational Capacity Assessment Tool (OCAT), to indicate progress in each partner institution, as follows:

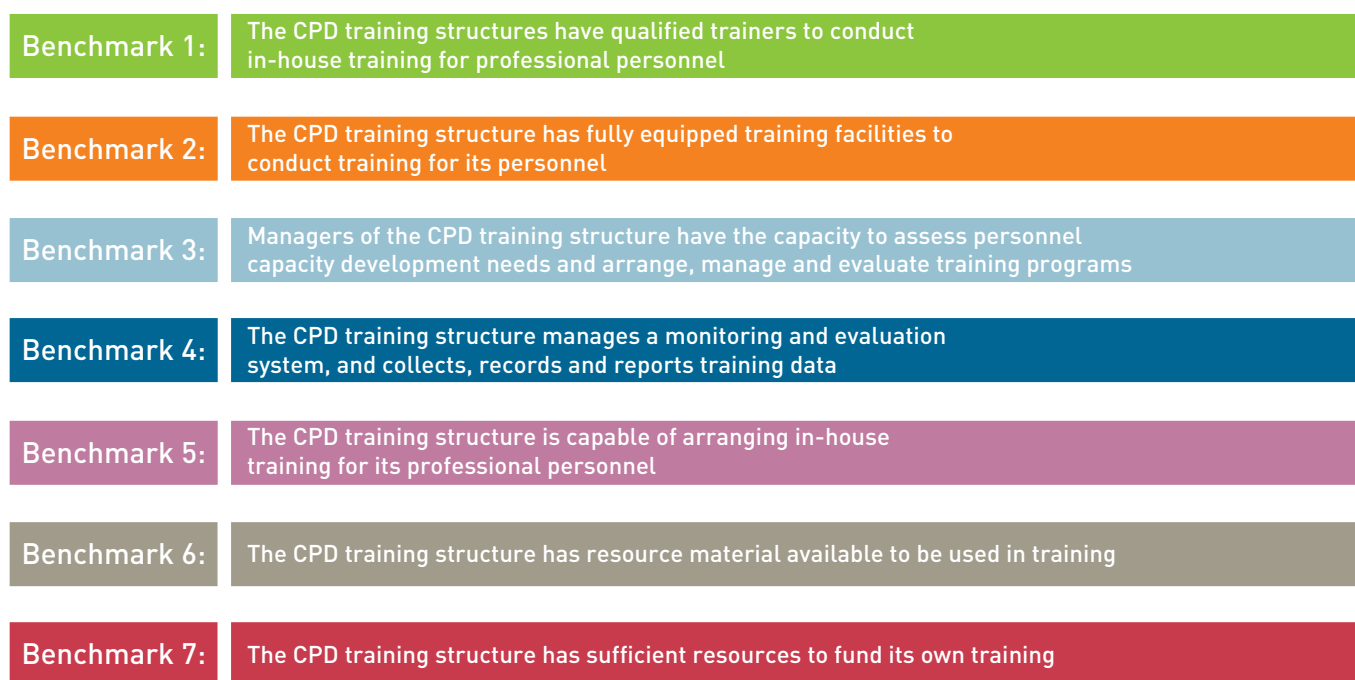


Figure 7: JTTP Transition Plan benchmarks

The OCAT assessments were conducted using group discussions, individual interviews, and document review and observation in order to assess capacity to design, conduct, manage and evaluate needs as part of transition planning. The categories of assessment focused on four main technical and material capacity areas: (1) status of training facilities; (2) training personnel and their capacity to conduct in-house trainings; (3) trainings conducted by the training department or directorate; and (4) status of resources. While the Transition Plan focused predominately on individual and organizational levels of capacity development, the JTTP team recognized that for successful transition, the sectoral level and enabling environment were also crucial to generating ownership and will. As explored below, a thorough understanding of political,

social, and cultural aspects, in addition to technical and material aspects, allowed for programming to be complementary at multiple levels to establish and sustain CPD systems.

LESSON 4: TRANSITION REQUIRES STRENGTHENED INDIVIDUAL CAPACITIES FOR ADMINISTERING CPD

JTTP’s experience shows that administering CPD requires separate individual capacity development activities, focused on enhancing the knowledge and skills of managers, trainers, and administrative personnel to assume responsibility for CPD structures and related tasks. JTTP Benchmarks 1, 3, 4, and 5 were particularly relevant:

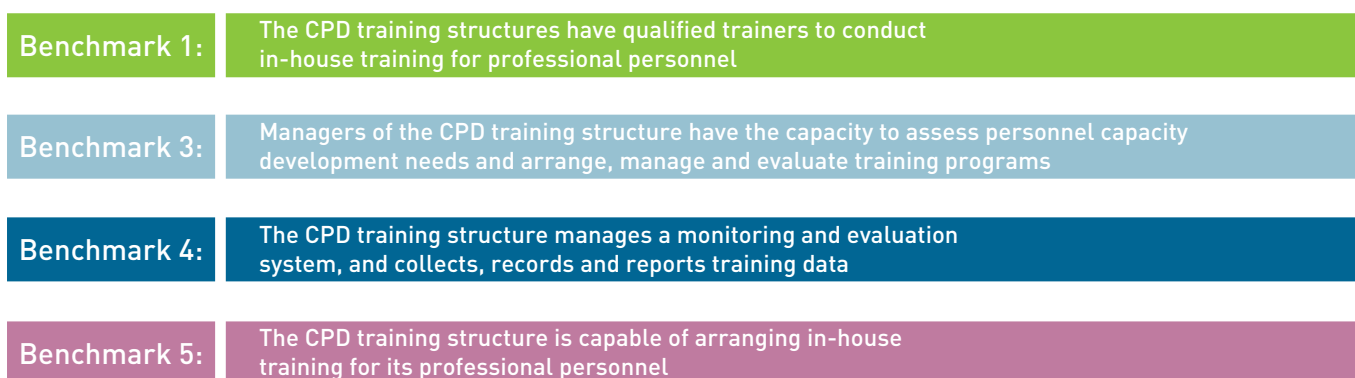


Figure 8: JTTP Transition Plan benchmarks for individual capacity development

In addition to training of trainers, JTTP delivered targeted training for managers, curriculum developers, and administrative personnel. This was both to develop management capacity for training and to develop the skills necessary for the institutional directorates and departments to assume responsibility for administering newly established CPD structures. Coaching (soft and hard capacities) and technical support by JTTP advisors reinforced training. Secondment was also utilized as an individual capacity development activity, but came to

be understood as premature without more established CPD structures and later sequencing.

To strengthen individual capacities to administer CPD and develop ownership for this function, JTTP delivered targeted courses covering a range of knowledge areas and skills for trainers, curriculum developers, planners and database and monitoring and evaluation officers. In accordance with learning outcomes, courses aimed to ensure that participants could:

Training of trainers	» apply adult learning methods and good practices when planning and delivering skills-based training.
Needs assessment	» demonstrate understanding and apply principles related to developing assessments; » conduct gap assessments and analyze data to identify learning needs for individuals and groups of learners; and » analyze data to establish findings and support planning.
Monitoring and evaluation	» understand and apply theory and tools related to monitoring and evaluation approaches.
Records management	» understand principles and strategies of records management; » identify needs and create new procedures and data structures; and » manage tasks associated with database management and generating reports.
Curriculum development	» apply subject matter expertise and competencies in managing adult learning; and » develop exercises, exams and other training materials to achieve relevant learning objectives and engage participants.

Figure 9: Learning outcomes for CPD administration

Additionally, JTTP's experience highlighted the importance of devoting attention to individual leadership and resource planning and management to strengthen managerial capacity and avoid blueprint solutions that can arise from lack of capacity or experience. Home-grown leadership strengthens the ownership required for sustainable transition.

Related to Benchmark 3, JTTP provided support to conduct institution-wide learning needs assessments ahead of budgetary planning cycles so that departments and directorates could assess individual and group needs. For Benchmark 4, capacity development was provided to conduct monitoring and evaluation and evaluate training. This work was often closely aligned with records management capacity development to track training progress through custom-built training records management databases, which also enabled trainers to analyze results. For Benchmark 5, following capacity development, the ability to deliver training was measured based on the relative degree of

independence members of the department or directorate demonstrated in conceiving, planning and executing tasks associated with training.

JTTP-embedded advisors offered coaching and advice based on individual capacity development plans to build independence in work-related practices and training skills. This helped CPD managers and directors with day-to-day implementation, development, refinement and documentation of procedures to administer CPD. A maturity model for setting objectives as well as a staged capacity development model were adopted, taking a "systematic approach to assess the capacity of work groups and individuals, identify needs, develop strategies to build capacity and assess the results."⁵⁰ Intended to lead to sustained and self-generating performance improvements, the model helped identify stakeholders at different stages: dependent, assisted, guided, and independent; the ultimate aim being that of mastering 'independence' in a (set of) skill, knowledge or behavior area(s).

LESSON 5: TRANSITION REQUIRES AN ORGANIZATIONAL STRUCTURE FOR CPD THAT IS FLEXIBLE, RESPONSIVE AND RESOURCED

Individual capacity development for CPD responsibility must be accompanied by effective structures organized to lead, deliver, and manage CPD. Structures and systems can help or hinder learning and various structural models for operationalizing CPD exist, both formal and informal.⁵¹ In many jurisdictions, CPD falls under the control of either a national council of legal education or within the remit of the local law society or bar association.⁵² However, many jurisdictions also lack competent and functioning authorities of this nature, and alternate structures may develop, as in the case of JTTP, where CPD is linked closely to performance management and strengthening of partner institutions.

Types of structures

Judicial training literature offers a typology of training structures. An overarching classification may include: lightly structured centers; centers connected with external educational structures; and well-structured and self-sufficient centers.⁵³

1. Lightly structured centers: these generally consist of administrative units for training delivery

and are given little investment in physical infrastructure. The focus is primarily on the content of the program and the curriculum. Due to their limited structure, these centers are particularly flexible and cost-efficient. The disadvantage of choosing this type of center relates to their long-term sustainability, institutional credibility and their ability to attract qualified trainers.

2. Centers connected with external educational structures: these are typically created through collaborations and partnerships with law faculties at the university level. This type of center benefits from the existing facilities and the high-level educational environment provided by the partnering institution. Nevertheless, strong ties with academic institutions can affect autonomy and judges, for instance, may also be less likely to be motivated to learn in an environment that they consider unsuitable for their status.

3. Heavily structured, self-sufficient centers: these often employ permanent staff and operate autonomously from partnering institutions or structures. A permanent physical location assures their continuity and institutionalization; however, this also results in higher management costs. Such institutions are also less flexible and may be less capable of evolving over time.

Organizational choices to preserve independence

A fundamental principle when considering organizational structures and their management and governance is that choices should be made with a view to preserving and enhancing independence and, as a consequence, autonomy. Specifically, CPD structures should be placed outside of the control of political influence. Illustrated below are a number of distinctive organizational issues and choices based on good practices from judicial training literature that are similarly important to legal professionals.

Academic freedom: To be completely independent from political influence, structures should be able to operate independently and autonomously.

Leadership: The sustainability, effectiveness and efficiency of a structure largely depends on the ability of its senior management to exercise leadership, with leaders committed and acting as champions.⁵⁴

Representativeness: Even though independence is a basic principle, structures should avoid becoming isolated from society, meaning governing representatives should include government, educational experts and civil society.⁵⁵

Structures set up with a view to managing emergency and remedial programs are more difficult to adapt to stable and permanent training programs. As highlighted in the previous section, at the managerial level, staff initially recruited to manage and deliver emergency and remedial programs do not always have the necessary skills to move to continuous training. Furthermore, reluctance or resistance to change may undermine efforts. From a structural

perspective, resistance may also arise from donors and political stakeholders who are motivated to focus on interventions that have more quantifiable and immediately visible results.

Notably, too much emphasis on structure may undermine core programming objectives. Priority may be given to strengthening the structure, staff, governance and physical infrastructure rather than

the ultimate objectives of learning and professional development. When improvement of the structure alone becomes the very objective of intervention, the risk of preference for one-size-fits-all solutions increases. Rather, structures should be set up in a flexible manner. This is particularly true in contexts where the nature of a program evolves over time from emergency to remedial to continuous training.

This was borne out in the JTTP experience. The four partner institutions were and remain at different stages of maturity and the noted OCAT was used to assess needs, including the need for training systems to support partner institutions in developing internal structures capable of administering CPD. JTTP Benchmarks 2, 6, and 7 were particularly relevant:

Benchmark 2:	The CPD training structure has fully equipped training facilities to conduct training for its personnel
Benchmark 6:	The CPD training structure has resource material available to be used in training
Benchmark 7:	The CPD training structure has sufficient resources to fund its own training

Figure 10: JTTP Transition Plan benchmarks for organizational capacity development

Training facilities and resource materials

In JTTP, the OCAT assessments revealed that training rooms were below acceptable standards. Benchmark 2 supported refurbishing training rooms to ensure environments conducive to learning and accessible for both female and male participants. Refurbishment also provided partner institutions

with control over their own training facilities, addressing cost and location as common barriers to accessibility and reducing planning risks for the partner institutions. For example, suitable training rooms were situated at central points across the country that most institutional members could reach without undue difficulty, security risk, or recourse to overnight travel.

Geographical choices for effectiveness and sustainability

The geographical location of training structures can impact the effectiveness and sustainability of transition. While there is no consensus in international literature, various options may be considered, depending on contextual factors. Judicial training literature highlights that professional training can be conducted on both a centralized basis (to maximize resource efficiency and to provide opportunities for collegial networking and exchanging professional experience nationally) and on a regional basis (to promote accessibility and convenience for participants).

A common approach is to adopt a centralized model, and to place the training structure in the capital. Nevertheless, in countries where the judicial system is not centralized, alternative approaches have been adopted. For example, in Pakistan, judicial academies were created in the provinces, although documented challenges included coherence and uniform training quality.⁵⁶ In countries that are large and where traveling is difficult (or even dangerous), regional models may create more opportunities for accessing training programs.⁵⁷

An alternative to regional centers is at-a-distance models which supply, for instance, publications, bench books and manuals or a newsletter on important and current issues on law and new methods of practice. At-a-distance learning is potentially less time-consuming and can create opportunities for direct application and follow-up,⁵⁸ also broadening educational scope.⁵⁹ However, when exploring viability, attention should be directed to technological capacity and the costs that may be required as well as participant motivation to work independently.

An additional option is to carry out training activities at universities in a partnership model. Finally, training can be extended to an on-site model where on-site advisors or mentors combine ad hoc courses with day-to-day advisory services.⁶⁰ This becomes more feasible when the use of mass courses (i.e. emergency and remedial programs) have outlived their purpose and more specialized and individualized courses of a more continuous nature begin to take place.

Another important aspect of transition and making CPD systems sustainable is ensuring adequate resources and instructional materials for CPD. In support of Benchmark 6, JTTP curriculum teams produced training resources for training directorates and departments from the partner institutions. When producing materials for CPD, consideration must also be given to the needs of CPD participants and cross-sector learning, which will be discussed further below.

Financial resources

Many fragile and post-conflict contexts remain reliant on international donors for financial support, particularly related to training and professional development, which may not be considered a financial priority, given competing critical public services and transitional priorities. Nevertheless, moving towards financial stability is a vital element of sustainable CPD systems.⁶¹ As explored below, sustainability is also linked to budget management without the direct control of judicial bodies or political powers.⁶² Efforts to carve out resources,

regardless of the structure or model adopted, provides a positive indication towards local ownership and normalizing and integrating CPD.

Within JTTP, under Benchmark 7, enhancing financial sustainability entailed assisting each partner institution to independently establish training plans based on assessed needs and resources, then to forecast and identify corresponding budgetary requirements. JTTP carved out a small niche to work on budget sustainability by emphasizing the need to plan within available financial resources, and to show successful execution with a view to demonstrating capacity to efficiently and accountably utilize budgets for intended training outcomes, which established a tested case for enlarging future budget requests.

This approach did not preclude partner institutions from cooperating or coordinating their efforts. Harmonizing costs across CPD activities can assist in meeting learning needs not achievable without combined resources, and can help augment plans with in-kind support.

Financial resource allocation: independence and autonomy

Resource allocation is a primary source of tension between the need for support from the government and independence. In many circumstances, achieving budget autonomy is linked to institutional autonomy and freedom from undue control. As one judicial commentator notes, “developing more effective partnerships with the Executive, to preserve judicial independence, but securing adequate and sustainable resourcing”⁶³ is needed. An assessment of the available resources weighted against resource needs should include fixed (physical) infrastructure, human resources and recurrent budget requirements.⁶⁴

Resources vis-à-vis donors

Sufficient allocation of public resources reduces the risk of donor dependency.⁶⁵ Not all donors prioritize the transition or independence of programs, but the issue of long-term commitment and slow-paced change in the rule of law and institutional reform fields should also not be overlooked.⁶⁶

Income generation

The potential negative impact that third-party funding has on independence and autonomy has prompted debate on self-funding options. As a rule, income generation schemes can be considered to fill resource gaps⁶⁷ and thus increase the sustainability of CPD programs and structures, yet they should not be used as substitutes for government resource allocation.⁶⁸ The most common income generation mechanism is the collection of training fees. However, additional measures may be needed to guarantee equal access and motivation for participants. Factors to consider include:

- » **Access to CPD opportunities:** demanding fees may create a barrier and consideration will have to be given to additional costs for participants who, for instance, have to travel considerable distances.
- » **Meaningful for career path:** where CPD activities are not compulsory and not free of charge, they are not likely to be well-attended unless they open concrete career opportunities.
- » **Corruption:** in countries where corruption is rife, a fee structure may simply serve as an additional perverse incentive for corruption.

Income can also be generated by tendering for external donor funds, though in such instances there is a risk that curricula are donor-driven rather than demand-oriented, and lack legitimacy.⁶⁹ It could also lead to an incoherent short-term program/curriculum that takes attention and resources from long-term CPD. It may also create unwanted competition over donor resources, for instance with government institutions and non-governmental organizations (NGOs) also vying for tenders.

Finally, if CPD structures opt for autonomous income generation, they should possess legal personality,⁷⁰ which is often only possible where the legal framework is sufficiently developed to so allow.⁷¹

LESSON 6: TRANSITION REQUIRES STRATEGIC-LEVEL SUPPORT FOR CPD WITHIN THE JUSTICE SECTOR

Fostering a culture of learning that values CPD involves strengthening relationships and cohesion within the justice sector to support cross-sector learning and cooperation. For CPD to succeed, leadership in institutions need to champion professionalization and performance management goals and link these goals to the need for continuing learning. Articulating these goals in the form of institutional strategies can be a helpful way to clarify the purpose of learning. Consultation and coordination with senior justice sector leadership and opinion leaders is essential to ensuring there is top-down support.

Programming experiences in post-conflict contexts suggest that justice institutions tend to operate in isolation: they are often concerned with their own day-to-day work, scope of responsibilities, and internal issues, rather than partnering with others to achieve common goals. At times, this tendency is reinforced by the way donors and practitioners set up programs. Without an adequate link to context, programs will inevitably be disconnected from overall institutional reform efforts. In the case of capacity development in the justice sector, partnering with other stakeholders can create opportunities for learning and harmonization and alignment with broader rule of law aims.

Inclusive cross-sectoral learning

Opting for a more or less inclusive program, meaning more or fewer justice sector actors targeted for participation in training or CPD activities, depends on several factors, both intrinsic and extrinsic to programming. For example, in post-conflict situations, in which emergency and remedial interventions are necessary, literature highlights the importance of inclusive programs that involve a cross-sector of participants – the judiciary, prosecutors, lawyers, and clerks– as well as ‘outsiders’, such as NGOs, the police and the prison administration.⁷²

In part, the inclusion of various cross-sector participants can depend on legal tradition. In civil law traditions, the careers of judges and lawyers are separate, whereas in common law traditions, lawyers can be appointed as judges. Just as there are different legal traditions, there are competing positions on the value of widening the learning circle.

Those in support of inclusive cross-sector participation highlight that specific courses provided by CPD may be relevant for different audiences, and, therefore, should be open to individuals and groups

beyond one category of legal professional. In subject areas where the inclusion of other stakeholders is not obvious, extending participation to different groups can improve the overall learning experience, cross-fertilization, and discussions on broader reforms. Conducted this way, CPD activities potentially become a starting point for broader institutional reform.⁷³

On the other hand, critics of the more inclusive approach highlight the practical obstacles, noting that many judges, for instance, prefer to be taught by their peers, attend training with professionals of the same level, and are reluctant to share know-how outside of the judiciary.⁷⁴ In some countries, higher court judges bluntly refuse to be trained at all.⁷⁵ In other countries, only specific types of judges receive continuing training.⁷⁶ Many judges believe their experience is sufficient to do their job well and are unlikely to be motivated to learn by outsiders. Generating will to embrace a culture of learning may only happen with a combination of judge-led trainings, without diversification of participants, and strong leadership emphasizing learning.⁷⁷

Creating a culture of learning that values CPD involves senior officials accepting that they can also increase their knowledge and improve their skills and demonstrate this tangibly to staff through participation. Often, the leadership of the Chief Justice or similar official is essential for such a culture to emerge. Approaches can include identifying contributions that enhance the culture of learning in an institution or sector, for instance through greater levels of oversight for CPD activities by senior officials and institutional leaders.

Strategic interaction and support

Additionally, judicial training experience signals the need for strategic, not just cross-sectoral, support and interaction. On the one hand, as discussed above, the justice sector should operate independently and autonomously from political powers and exogenous bureaucratic structures. On the other, the justice sector’s ultimate purpose is to serve society and be relevant to community and social contexts. To make capacity development part of overall rule of law strengthening that benefits society, programs should not operate in isolation, and partnerships should be established, provided independence and autonomy are not affected.

Long-term reform requires that political powers (usually the executive, parliament and key ministries) support capacity development programs without exerting any type of influence or control over them. While achieving this kind of long-term political support can be challenging in fragile and post-

conflict contexts, such support is essential for long-term impact.

Frequently, the line between political support and the intrusion of political power to serve political interests is very thin. For instance, there are examples of judicial capacity development programs that were used to enhance the power of political elites, rather than provide support for the development of a strong and independent system of justice.⁷⁸ In each of these examples, the program itself enjoyed political support from the government, however there was no such commitment to independence.

In JTTP, a transition workshop was convened to engage partner institutions at management and operational levels. Attended by senior staff within the training, human resources, and planning structures of the four institutions as well as by international donors, the workshop reviewed transition plans and allowed for agreement on key deliverables and milestones. Similar targeted workshops were also facilitated for both the Ministry of Justice and the Supreme Court to present CPD work plans and budgets.

Finally, strategic interaction between law schools and CPD structures are essential for bringing about transition: educational continuity is a key factor for the development of the necessary professional capacities and skills.⁷⁹

In Afghanistan, legal education remains uneven within and between universities, leaving graduates unprepared for subsequent professional roles. While efforts are made through obligatory pre-service education programs to bridge educational gaps and equip legal professionals with the skills and knowledge they require to adequately perform their professional tasks, a broad lacuna persists between what graduates should know and be able to do and the reality.

Further, fulfillment of pre-service obligations often amounts to a procedural requirement, instead of a meaningful opportunity to demonstrate acquisition of a set of common legal competencies prior to entering the legal vocation. This problem is further compounded by entrenched and powerful patronage networks that overlay institutional hierarchies, meaning appointments and advancement are not contingent on demonstrated skills and merit. At various stages of a legal career, Afghan legal professionals commonly struggle as a result of deficiencies in education and professional development. Addressing these challenges means strategic engagement and interaction, exploring root causes, both formal and informal, that undermine institutions and transition ownership and sustainability.

LESSON 7: TRANSITION SHOULD BE LINKED TO BROADER RULE OF LAW STRENGTHENING, WITH THE AIM OF BUILDING AN ENABLING ENVIRONMENT FOR CPD

An enabling environment for the rule of law encompasses aspects that impact the justice sector and transitional context more broadly, for example, corruption, self-enriching elites, government authority and legitimacy, education, and security. As one assessment notes, “The overriding lesson of the last ten years is that too many actors and projects chasing too many short-term stabilization – rather than development – goals leads to poor service delivery and an institutional environment that supports quick fixes over longer-term capacity development.”⁸⁰

When programs operate in isolation, they usually produce very limited and short-term results. Perhaps more concerning, such programs risk enhancing rather than challenging existing power structures, therefore nullifying their potential to contribute to change. For example, enhancing the capacities of prosecutors in an environment where they are still required to prosecute as the political elite demands may lead to the condoning of corrupt practices or discriminatory norms.

Addressing discriminatory norms and power structures

Even where CPD is assured by capable and committed partner institutions, its effectiveness may be influenced by broader dynamics and the existence of both discriminatory cultural and customary practices, reducing accountability and transparency. It is of little use to have knowledgeable and skilled legal professionals if ‘doing good’ does not lead to promotion, but rather risks demotion, due to an inherently corrupt system. There is also little point in trying to address individual and organizational capacity development if other actors in the justice system are neither similarly exposed nor aligned. Finally, if capacity development efforts seek to enhance the independence of justice sector actors from political influence, then media and civil society should also play a role. In turn, involving media and civil society requires an investment in their capacities and their ability to operate independently and freely from political powers.⁸¹

To support the justice sector in becoming a catalyst for reform, CPD programs should be closely linked to broader rule of law reforms. Particularly important are efforts to limit the power of the executive, strengthen civil society, increase access to justice, and develop robust and non-discriminatory legal frameworks. The development of supportive laws and

regulations can be another constructive route to sustainability, reinforcing professional obligations to maintain competence.

In JTTP, partner institutions grew to understand, socialize and appreciate CPD and its importance, with tangible benefits. Effective conceptualization, processes, and procedures for CPD, including regulations within partner institutions, supported operational needs while addressing CPD's cultural and social acceptance, with the help of leadership. Through inclusivity, it is possible to shape programs in a way that sets the stage for broader reform discussions, linking CPD transition to rule of law strengthening. However, there are pitfalls and shortcomings that must also be addressed.

Adopting positive incentives and avoiding the substitution trap

Understood as a trade-off between 'services now' and 'institutional strengthening', the substitution trap is the risk of substituting development capacity deficits of recipient countries, rather than overcoming deficits in a concerted manner – a risk faced by many programs in fragile and post-conflict contexts.⁸² Often with outcomes focused on transition, the risk is that immediate service provision dominates longer-term institutional capacity development and can lead to a culture of dependency⁸³ or a 'second civil service' status quo that precludes institutional capacity development.

Externally funded local personnel working in institutions in countries such as Afghanistan will often earn considerably more than government-funded positions. For instance, the Afghan Ministry of Finance estimated that, as of 2010, around 7,000 externally funded local Afghan personnel worked in non-security government institutions.⁸⁴

Transitioning full responsibility for the organization and funding of the tasks performed to national institutions is very challenging.

Often referred to as 'motivational crowding out', external financial incentives or funding can undermine the intrinsic motivation or capacity to perform the tasks or functions in question, or to make local funds available.⁸⁵ When responsibility is increasingly or fully transitioned back to host country institutions, this can pose a problem.

JTTP adopted measures to manage some of the known risks with substitution, however these are entrenched problems across many sectors in Afghanistan and other fragile and post-conflict contexts. While per diems associated with outside

courses are aimed at incentivizing participation, such incentives can create expectations that institutions cannot reasonably sustain as they assume greater responsibility for CPD.

Rather than providing per diems, IDLO adopted the policy of providing participation expenses for local and distant travel, accommodation (standard rate locally), and meals for full-day courses either on an in-kind basis or at JTTP standardized rates, calculated on average costs that participants would not otherwise incur.⁸⁶

Efforts to convene organizations delivering training and similarly standardize rates and eliminate training expenses unaffordable by Afghan institutions proved unsuccessful, due to anxieties that a failure to materially incentivize participation would reduce attendance or disrupt quantitative targets. Notably, information exchanged in these discussions suggested an inverse relationship between the level of per diem and expenses paid and actual lowered attendance. Organizations paying more had greater difficulty ensuring attendance, suggesting material incentives for participation may be a false planning assumption.

In JTTP's experience, on assuming greater responsibility for CPD, partner institutions quickly understood the expectation risk that an incentivizing model poses to budget sustainability, and introduced expense ceilings for incurred costs, which proved to be more successful. This type of local ownership and problem-solving is necessary for transition and the next section discusses programmatic approaches needed to facilitate transition effectively.

Importantly, distinguishing different levels of integrated capacity development has implications for transition. As a process through which national actors progressively take responsibility and become autonomous, transition can also be understood as a path through which capabilities are progressively developed at the levels of the individual, organization, sector, and enabling environment. More concretely, transition or change is sustainable in the long term when it alters the behavior of key decision makers and affects power relations that may act as a barrier to reform. This means developing will and ownership for transition. As the features and options for CPD programming presented in this section highlight, capacity enhancement approaches that are over-planned at the beginning of a project may not provide appropriate responses during implementation. This signals a need for structured but fluid support that identifies objectives and milestones, and rather than treating them as fixed targets, allows for greater adaptability to local priorities.

3 TRANSITION PROGRAM IMPLEMENTATION AND MANAGEMENT: GOOD PRACTICES AND CHALLENGES

This section explores program management approaches and tools to support effective programming for transition. Key lessons highlight the need to develop *ownership* and *will* throughout the program from partner institutions, design and implement programs flexibly, and build implementing teams that work and learn together to solve problems and enhance capacity.

LESSON 8: AT ALL STAGES TRANSITION PROGRAMMING SHOULD ENHANCE OWNERSHIP OF REFORMS AND LEADERSHIP BY PARTNER INSTITUTIONS

Sustainability critically depends on whether capacity development is embraced within partner institutions or viewed as something externally imposed. This is an important general principle for effective reform, as highlighted in the 2005 Paris Declaration on Aid Effectiveness, the 2008 Accra Agenda for Action, and the 2011 Busan Partnership for Effective Development Co-operation.⁸⁷

Ownership, in this sense, means that maximum authority should lie with local stakeholders at any given time, in line with local capacity, context and levels of accountability. At least a minimum level of popular and political acceptance is indispensable at all stages of transition, for it to gain a foothold and be consolidated.⁸⁸

Involvement from key decision makers in program conception and the progressive involvement of senior management in the partner institutions in program implementation are key to effectiveness. An overall approach must recognize capacity development as an endogenous or internal process, motivated and designed within the institution or sector rather than imposed from outside.⁸⁹

Meaningful ownership and participation

Embracing local ownership means that different groups participate in and are an integral part of programming, including minorities and other marginalized groups. Participation needs to be active and meaningful and not merely formal. While relying solely on the ownership of a specific political elite or institutional leadership is a risk to be avoided, practice also shows that it is important to steer political will among individuals who influence policymaking.⁹⁰ This is essential to ensure program effectiveness and sustainability.⁹¹

Keeping a sense of ownership among institutional leadership remains important throughout the program. In fact, the “larger problem is maintaining active involvement of leadership once the program has been established and securing host country support, not only for the training program but also for complementary actions required to enhance its impact”. Lack of political commitment induces donors to focus on more short-term programming options, which require less political support.⁹³

Another crucial issue in transition programming is that such programs, by nature, constitute a way for donors to exert control over an important sector. For instance, donors and implementing organizations may export their own capacity development models and force specific capacity development avenues on a recipient country. Programs with a strong emphasis on local ownership necessarily limit the level of control on the national justice system.⁹⁴

Embracing meaningful ownership and participation means working closely with local actors from within the institution or sector which is to benefit from the intervention throughout all three key phases of programming: conception, design, and implementation.

Program conception: agreeing on problems and priorities

At the program conception stage, donors and implementing organizations have an important role to play. When planning to fund transition or capacity development support for government institutions, it is important to consult partner institutions prior to finalizing development of a program. In this phase, the partner institution and implementing organization should arrive at a common understanding of the problem to be addressed and related priorities. Institutional endorsement of a program aiming to generate internal change is essential for success.

Program design: agreeing on goals and outcomes

At the program design stage, it is important that program goals and outcomes are endorsed by the concerned institutions and other relevant government bodies. Understanding institutional capacity development and transition as an endogenous process also means that local actors should be substantially involved in program design. The benefits of this type of collaboration are many:

- » building strong relationships between partner institutions and the implementing organization;
- » eliciting ideas and suggestions from all parties and at different levels;
- » understanding if there is reluctance or different ideas about problems and priorities;
- » ensuring alignment with relevant government budget cycles, planning procedures and chains of command; and
- » generating commitment and political will across different levels of partner institutions.

However, in reality, in fragile and post-conflict contexts, numerous barriers to this type of collaboration arise. In the dynamism of fragile and post-conflict environments, identifying appropriate collaborators can be challenging and these counterparts will often change, as will circumstances and priorities, sometimes quite drastically, between program phases.

Program implementation: agreeing on priorities and adaptations

During program implementation, collaboration remains essential to reinforce commitment and priority for long-term goals. However, fragile and post-conflict contexts face many day-to-day challenges and competing priorities. For example, in JTTP, the 2014 Afghan Presidential elections created a great deal of instability within the partner institutions.

One consideration is whether it is possible to locate the management of programs aiming to develop institutional capacity within the institutions concerned, rather than externally. Working alongside external capacity developers, institution personnel begin to design, administer, manage, monitor and evaluate, with growing responsibility and ownership for the program.

In JTTP, a team was created and embedded in each institution, ensuring day-to-day cooperation over transition arrangements. At all programming stages, working closely with partner institutions improves ownership and commitment to the goals and outcomes of the program. However, the challenges identified in this type of partnership are real and not always easily addressed. Effective CPD and transition programming embraces three core ideas:

1. **Flexible sequencing:** the ideal collaborative scenario often does exist or would require delay in anticipating conditions that might not materialize. Flexible sequencing means continually moving

forward in a collaborative and partner institution-focused manner, but allowing for this collaboration to be non-linear and responsive to when conditions change or opportunities occur.

2. **Preparation for moments of opportunity:** when collaborative opportunities do arise, there can be a limited window for action. Preparation is needed to act quickly and capitalize on opportunity, underlining the importance of long-term relationships, rather than 'checklist' approaches to collaboration.
3. **Expecting and countering roadblocks:** as program design and implementation meet the realities of fragile and post-conflict contexts, roadblocks will occur and therefore advance preparation and regular risk assessments are needed.

LESSON 9: TRANSITION PROGRAMMING SHOULD BE DESIGNED AND IMPLEMENTED FLEXIBLY TO ALLOW FOR ADAPTATION TO EVOLVING NEEDS AND CIRCUMSTANCES

Iterative and adaptive approaches in institutional reform are largely encouraged, in contrast to linear and top-down strategies traditionally adopted by donors.⁹⁵ Working iteratively allows practitioners to capture and address institutional complexity and secure sustainable change. An iterative approach permits the intervention to be more strongly connected and adapted to the context by which it is constantly informed. Moreover, it achieves more involvement of different national stakeholders, and allows the program to adapt to contextual (political) changes.

From a donor perspective, adopting a more iterative and adaptive approach means that programs should be tailored to the context, both in terms of results (what works best in a certain context) and processes (how long does change take, what steps need to be taken and with whom). A donor can facilitate change, yet for this to happen, the program structure needs to be flexible and capable of adapting appropriately to new opportunities in the programming environment. This approach has an impact on the way projects are structured, their length, and the funding allocation and accountability structures. It also requires that donors take a backseat and that ownership lies with stakeholders in the recipient country.

Donors and their implementing partners should not promote pre-established institutional templates.⁹⁶ The risks of applying blueprint solutions is high: training institutes that are structured exactly like a counterpart in the donor country; capacity development programs set up in

the same way as in the donor country (content, training methodology, target group, etc.); and the replication of solutions to specific justice problems without a previous assessment of feasibility, among others. Such approaches, removed from the local context, rarely have an impact beyond the duration of the donor’s funding.

Institutions, sectors and governments are not only unique, but frequently in a state of flux, particularly in fragile and post-conflict stages where there are high levels of instability. During the life of most programs, internal and external relationships and political and power dynamics are highly likely to change. Hence, there is a need to consider change across the different levels of capacity development and their related interactions.

Programming approaches must be iterative and flexible in order to effectively respond to:⁹⁷

- » new learning from the program and beyond;
- » changing circumstances internal to an institution or sector; and
- » changing dynamics in the environment in which institutions are situated, whether within government or the wider country context.

It is important to stress that iteration and flexibility do not suggest a lack of accountability, but rather foster a greater level of rigor in monitoring and evaluation and ongoing contextual analyses. This includes assessing the role of an implementing organization and the program and their combined impact on context.⁹⁸ **Figure 8** outlines one suggested monitoring framework:⁹⁹

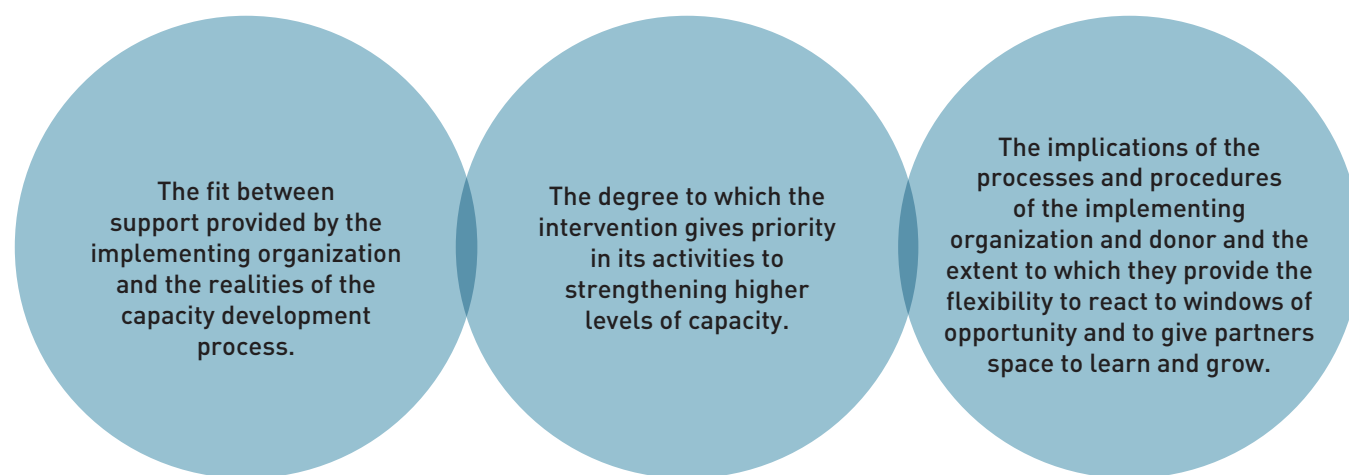


Figure 11: Flexible and iterative monitoring framework

This type of monitoring approach signals the need for strong program management as activities and planning, monitoring, evaluation, and reporting evolve and change in consonance with the context and in response to the emergence of new opportunities and risks.

Related management tools must also be supportive of reflective and iterative approaches. This means that logical frameworks, planning tools, and monitoring and evaluation strategies need both to clearly express results at goal and outcome level and to support, encourage and provide accountability mechanisms for programs to adapt, particularly at the level of outputs

and intermediate outcomes, to changing contexts and program reflection and learning.

Throughout the program, for example at the end of the inception phase and at mid-term, opportunities are needed to adjust and make changes, with sufficient time and funds allocated. In JTTP, a number of amendments were discussed and agreed throughout program implementation to better adhere to evolving needs. As examples, a dedicated institutional development department was created following the mid-term report and activities shifted from mentoring to coaching as needs became more apparent.

Monitoring and evaluating training programs

Monitoring and evaluation systems for training are multifaceted and need to be adapted to country context. The overall focus of existing monitoring and evaluation in this area is on trainees' satisfaction with the program and the quality of training and trainers (output-oriented information). This information is used to improve the quality of training with training structures conducting assessments of programs, methods and trainers.¹⁰⁰ Carrying out such output-oriented monitoring and evaluation also helps training structures set priorities.¹⁰¹

In JTTP, significant efforts were devoted to delivering remedial training to raise the median level of knowledge and create the foundation for CPD. Without foundational skills, it would not have been possible to develop an environment conducive to structuring professional training departments that could begin to assume responsibility for CPD and sustain a culture of learning.

In line with all IDLO training programs, evaluating the effectiveness of training activities has been a significant focus area. Beyond pre-testing to tailor delivery, post-testing to assess change in knowledge, and participant satisfaction feedback to refine future course delivery, IDLO also implemented an innovative approach to evaluating changes produced by training and coaching, through monitoring the application of knowledge and skills acquired in the workplace.¹⁰² The resulting data identified gaps in capacity and was used primarily to inform future training and to determine coaching needs for training graduates.¹⁰³

In JTTP, an approach was also developed to assess the effect of the program on the performance of the partner institutions. Cases were sampled across the partner institutions, checking for alignment with listed procedures and articles and revealing performance rates from a low of 52% to a high of 82%, with an average of 71%.

Monitoring and evaluation should also assess the change in behavior as a result of the training (result/outcome-oriented information) and the overall contribution of the program to justice sector reform and the rule of law in the country (impact-oriented information).¹⁰⁴ While the importance of this is recognized, there is limited knowledge and challenges such as time and cost to monitoring and evaluating the outcomes and impact of individual training programs. Often, the focus remains on measurable, mostly quantifiable outputs, such as short-term acquisition of skills and knowledge.

Output-oriented information can be complemented with outcome- and impact-oriented data. A general rule is that monitoring and evaluation should be conducted by the training structures delivering the training to support the planning, establishment, management and evaluation of training programs.¹⁰⁵ Through dedicated support and effort, more results/outcome-oriented and impact-oriented monitoring and evaluation can develop to help shape broader reform initiatives.

LESSON 10: TRANSITION PROGRAMMING SHOULD CONSIDER NEEDED EXPERTISE AT VARIOUS STAGES AND BUILD TEAMS THAT PROBLEM-SOLVE, WORK AND LEARN TOGETHER

When looking at enhancing the capacity of justice sector professionals, expertise may come from a variety of disciplines, as featured in the graphic below (Figure 9):¹⁰⁶

» **intra-disciplinary:** working within a single discipline;

» **cross-disciplinary:** viewing one discipline from the perspective of another;

» **multidisciplinary:** people from different disciplines working together, each drawing on their disciplinary knowledge;

» **interdisciplinary:** integrating knowledge and methods from different disciplines, using a real synthesis of approaches; and

» **trans-disciplinary:** creating a unity of intellectual frameworks beyond the disciplinary perspectives.

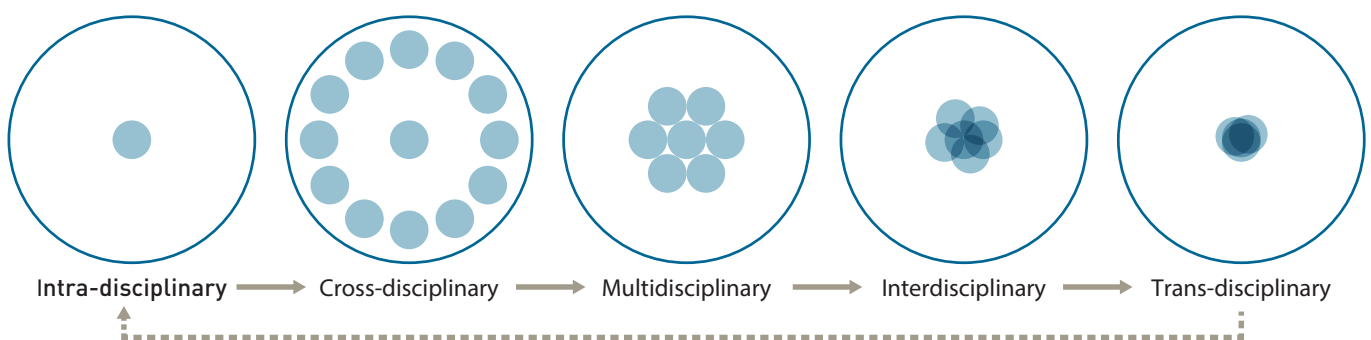


Figure 12: Interaction of disciplines

Program implementation teams will often be faced with a host of learning and capacity development needs, which involve a variety of justice sector officials and are both legal and non-legal in nature. For instance, in JTTP, at various stages, learning needs included criminal law subject matter, specific laws and practice related to gender and children, management practice (work flow, reporting streams, human resource and financial management), and capacity development practice (learning to teach).

Successful implementation teams should include members with behavioral competencies that embrace learning and who can employ specific knowledge, skills and competencies in necessary fields of expertise in a mixed-disciplinary manner. Connecting people and fostering cooperation are important elements to consider, as is emphasis on ensuring that asking for help should not be construed as a weakness.¹⁰⁷

Research shows that establishing effective multidisciplinary working relationships depends on four key areas:¹⁰⁸

1. **Clarifying roles and responsibilities:** by ensuring parity among partners, valuing diversity.
2. **Securing commitments at all levels:** by having commitment at a senior level, highlighting the benefits of collaboration.
3. **Engendering trust and mutual respect:** through sharing skills and expertise, equal resource distribution.
4. **Fostering understanding between units:** through joint training and recognition of individual expertise.

Additionally, there are three main areas that are important in developing effective multidisciplinary learning processes:¹⁰⁹

1. **Ensuring effective communication and information sharing:** by having transparent lines of communication, creating opportunities for discussion.
2. **Developing a shared purpose:** by agreeing on joint aims, conducting a needs analysis.
3. **Effective planning and organization:** by developing shared protocols, having a clearly defined structure.

Effective management and governance of multidisciplinary working processes are particularly dependent on:¹¹⁰

1. **Ensuring effective leadership:** by identifying a key staff member, appointing leaders with special attributes.
2. **Effective governance and management arrangements:** by developing appropriate accountability systems and having a transparent decision-making process.
3. **Effective performance management system:** through joint review and evaluation protocols and joint performance indicators.

Implementation also requires the creation of specific capabilities to work iteratively at every step of the program cycle.¹¹¹ The team make-up and way they work together will be situational, but program implementing teams will be called on to enhance capacity at various levels, all synchronized to a sound understanding of the fragile and post-conflict country context where weak rule of law and high levels of corruption often pervade.¹¹² At various stages, it may be necessary to assess implementing team capacities and provide on-the-job strengthening and expanded knowledge in relation to key developments in areas of direct relevance to programming work.

CONCLUSION

Transition and Continuing Professional Development in Afghanistan and Beyond: Ten Lessons from IDLO's Justice Training Transition Program Experience considers CPD and institutional transition and ownership in fragile and post-conflict contexts. By exploring three building blocks of a theory of change for future CPD programming, guidance is offered on how to design and implement transition programs, with a focus on working effectively with partner institutions and developing capacity at multiple levels: individual, organizational, sectoral, and enabling environment.

CPD plays an important role in addressing professional performance and institutional legitimacy. Approaches to transition to local ownership are dependent on two key categories of contextual realities – the *ability* to do so and the *will* to take ownership. This Lessons Learned Brief explores the challenges and dilemmas that practitioners face in endeavoring to foster ownership and strengthen capacity for CPD and transition. It highlights that equal attention to political, social, and cultural realities and dynamics as well as to technical and material needs are required. Further, it stresses that program design and implementation must, from the start, consider transition to national institutions. Lessons detail these implications in a forward-looking manner:

- » adopt integrated approaches to capacity development at multiple levels;
- » drive ownership through engagement and supportive partner-identified priorities;
- » constantly analyze context and understand needs;

- » implement flexibly for required adaptation; and
- » match implementing teams to evolving needs.

Lessons also reveal the long-term nature of this work and several key knowledge gaps, for further in-depth exploration:

- » use and testing of programming tools for planning, monitoring, evaluation, and reporting that support a reflective and iterative transition approach;
- » links between CPD and needed legal reforms for aligned strengthening of the justice sector and enabling environment; and
- » outreach between institutions responsible for justice transition and monitoring of the justice sector, including public outreach to understand and respond to confidence levels.

Turning to implications for Afghanistan, promising signs are visible. IDLO's programming in Afghanistan continues to evolve, now focusing on reinforcing the sustainability of nascent CPD structures through ongoing programming. CPD activities are pursued at strategic, operational, and tactical levels, or as described above, through interlinked capacity development at multiple levels. In follow-on programming, the IDLO team in Afghanistan, with their partner institutions, have already begun exploring how they can continue to create enabling conditions for CPD, including developing visions and increased visibility for CPD, while continuing to enhance capacity and systems, including inter-agency learning. These efforts continue to be critical on the path towards Afghan citizens' restored confidence in their justice sector.

ACKNOWLEDGEMENTS

This Lessons Learned Brief is the work of a team of IDLO staff and consultants led by IDLO's Department of Research and Learning. IDLO is especially grateful to the IDLO Afghanistan Office for its support in undertaking the research.

NOTES

INTRODUCTION

- ¹ Quote from Hossam Helalin IDLO, *Reflections on 10 Years in Afghanistan* (2016). Available from <http://www.idlo.int/news/highlights/reflections-10-years-afghanistan>.
- ² See Suki Goodman and Joha Louw-Potgieter, "A best practice model for the design, implementation and evaluation of social context training for judicial officers", *African Journal of Legal Studies*, vol. 5, No. 2 (2012), p. 182. See also Daniela Piana, "In search of a new judicial professionalism: intertwining legal and extra-legal values in post-authoritarian training programs", *Web Journal of Current Legal Issues*, vol. 2 (April 2011).
- ³ Julian Roberts, "Public confidence in criminal justice", *Canadian Journal of Criminology and Criminal Justice*, vol. 49, No. 2 (April 2007).
- ⁴ International Crisis Group, *Reforming Afghanistan's Broken Judiciary*, Report No. 195 (November 2010). Available from <https://d2071andvip0wj.cloudfront.net/195-reforming-afghanistan-s-broken-judiciary.pdf>.
- ⁵ United States Institute of Peace, *Informal Dispute Resolution in Afghanistan*, Special Report No. 247 (August 2010). Available from http://www.usip.org/sites/default/files/resources/sr247_0.pdf.
- ⁶ Islamic Republic of Afghanistan, *Realizing Self-Reliance: Commitments to Reforms and Renewed Partnership* (December 2014), p. 11. Available from <http://afghanistan-un.org/wp-content/uploads/2014/12/REALIZING-FINAL-SELF-RELIANCE-25-November-2014.pdf>. See also Islamic Republic of Afghanistan, *Towards Self-Reliance: Strategic Vision for the Transformation Decade* (July 2012). Available from <http://mof.gov.af/Content/Media/Documents/Towards-Self-Reliance-27-6-2012167201210282583553325325.pdf>.
- ⁷ Statement by H.E. Mahmoud Saikal, Ambassador, Permanent Representative of the Islamic Republic of Afghanistan to the United Nations, at the Sixth Committee under agenda item 84: The Rule of Law at the National and International Levels, 6 October 2016.
- ⁸ The program ran from 2 January 2013 to 31 March 2016. JTTP originally planned to end on 1 July 2015 but included an optional six-month extension, which materialized with a further no-cost extension to 31 March 2016. This allowed for alignment to the Afghan government budget cycle, allowing support to the target institutions directly related to transitional budget planning.
- ⁹ Performance data is current to March 2016. The analysis used follows Level-4 assessment under the Kirkpatrick Model which evaluates training at four levels: Level 1 – Reaction; Level 2 – Learning; Level 3 – Behavior; and Level 4 – Results. See: Donald Kirkpatrick and James Kirkpatrick, *Evaluating Training Programs*, 3rd ed. (San Francisco, Berrett-Koehler, 2006).
- ¹⁰ See IDLO, *Women's Professional Participation in Afghanistan's Justice Sector: Challenges and Opportunities* (2014). This IDLO research showed that women often do not have equal access to legal education curricula and professional development opportunities compared to their male counterparts, with direct consequences in terms of entry into the profession and opportunities for career advancement. IDLO's analysis also pointed to a gap between the number of women graduating from law and Shari'a faculties and the number of women employed in the justice sector. Although there is no reliable data on staffing ratios, anecdotally, women make up a notably lower percentage of legal professionals operating in the criminal justice sector.
- ¹¹ Livingston Armytage, "Judicial education on equality", *The Modern Law Review*, vol. 59, No. 2 (March 1995), p. 160; Livingston Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (The Hague, Kluwer Law International, 1996); Richard E. Messick, "Judicial reform and economic development", *World Bank Research Observer*, vol. 14, No. 1 (February 1999), p. 117. This proliferation is evidenced in the World Bank's reporting that it is currently financing approximately 600 projects in legal and judicial reform in countries such as Albania, Argentina, Armenia, China, Bangladesh, Croatia, Colombia, El Salvador, Guatemala, Peru, Mexico, Mongolia, Morocco, Russian Federation, Sri Lanka, Zambia, Cambodia, Togo and the Philippines. See Goodman and Louw-Potgieter, "A best practice model".
- ¹² Ann Stewart, "Judicial attitudes to gender justice in India: the contribution of judicial training", *ICFAI Journal of Employment Law*, vol. 1, No. 2 (October 2003); Beverley McLachlin and T. Brett Dawson, "Engaging Canadian judges in international cooperation activities", paper given at Harvard University Symposium on Judicial Dialogue, Cambridge, Massachusetts, 2006; and Livingston Armytage, "Judicial education as an agent of leadership and change: lessons from common and civil law experience", *PHILJA Judicial Journal*, vol. 5, No. 15 (January 2003), pp. 8–10.
- ¹³ Frank Upham, "Mythmaking in the rule of law orthodoxy", *Carnegie Endowment for International Peace, Working Paper No. 30* (2002); Thomas Carothers, "Promoting the rule of law abroad: the problem of knowledge", *Carnegie Endowment for International Peace, Working Paper No. 34* (2003). Further elaboration in Thomas Carothers, ed., *Promoting the rule of law abroad: In search of knowledge* (Washington, Carnegie Endowment for International Peace, 2006) and summarized in Leanne McKay, *Towards a Rule of Law Culture: Exploring Effective Responses to Justice and Security Challenges* (USIP, 2015). This was also echoed in the work of others who looked at broader institutional reform, most notably Douglass North's 1990 book on the role of institutions (including legal) and how change happens – see *Institutions, Institutional Change and Economic Performance* (Cambridge, Cambridge University Press, 1990). For current debate on this issue, also see Matt Andrews, *The Limits of Institutional Reform in Development: Changing the Rules for Realistic Solutions* (Cambridge University Press, 2013). Similar to the lack of change in donor approach in rule of law reform, the publications show little has changed in broader institutional reform as well.
- ¹⁴ Annika S. Hansen and Sharon Wiharta, "The transition to a just order: establishing local ownership after conflict", *Folke Bernadotte Academy Research Report Series, No. 4* (Sweden, Printgraf, 2007).
- ¹⁵ For instance, Afghanistan entered into a planned and timetabled process of security transition from International Security Assistance Force to the Afghan National Security Forces (ANSF) 11 years after the overthrow of the Taliban government. See Louisa Brooke-Holland and Claire Taylor, *Afghanistan: The Timetable for Security*, International Affairs and Defence Section, Standard Note SN/IA/5851 (House of Commons Library, 9 July 2012). Available from <http://researchbriefings.files.parliament.uk/documents/SN05851/SN05851.pdf>.
- ¹⁶ Nicholas J. Armstrong and Jacqueline Chura-Beaver, "Harnessing post-conflict transitions: a conceptual primer", *Peacekeeping & Stability Operations Institute Research Paper* (Strategic Studies Institute, 2010), p. 56. Available from <https://ssi.armywarcollege.edu/pdf/PUB1025.pdf>. Within the context of stability operations and joint civilian and military initiatives for peace- and state-building, Armstrong and Chura-Beaver explore transition characteristics, types, and tools with the following definition: "Transition is a multi-faceted concept involving the application of tactical, operational, strategic, and international level resources (means) over time in a sovereign territory to influence institutional and environmental conditions for achieving and sustaining clear societal goals (ends), guided by local rights to self-determination and international norms".
- ¹⁷ Armstrong and Chura-Beaver, "Harnessing post-conflict transitions".
- ¹⁸ Continuing legal education is a form of CPD, and normally refers to discrete, structured training activities. But CPD also includes the ongoing learning which occurs in a professional's life in other ways, such as reading, reflection and discussion, or informal learning. CPD includes both continuing legal education and these other forms of on-the-job learning. See Christopher Roper, "The need for a conceptual framework for continuing professional development for lawyers", *Journal of Professional Legal Education*, vol. 15, No. 2 (1997), p. 169.
- ¹⁹ See Nusrat Chagtai, *Benchmarking Bar Associations* (London, International Bar Association, 2016), p. 79.

- 20 Elizabeth Muli and Venkant Iyer, "Continuing legal professional education policy", in *Benchmarking Bar Associations*, Chagtai, ed., p. 78.
- 21 IDLO, "Completing the transition in Afghanistan: Justice Training Transition Program", internal (final) report prepared on the Afghanistan Justice Institutions' Continuing Professional Development Workshop, Kabul, May 2015.
- 22 Semi-structured interviews were conducted around key themes and revealed the substantial learning that took place within the program during implementation. In total, 33 personnel from partner institutions were interviewed, five of whom were at various times seconded to JTTP. Incorporating both national and international and current and previous personnel, 39 IDLO JTTP personnel were interviewed and 8 respondents who currently or previously worked at the United States Department of State on JTTP were also interviewed.
- 23 A final theory-based evaluation of JTTP is also available.
- 24 Unlike conventional program design, which usually begins with activities and describes their likely impact, the theory of change process begins with the long-term outcome or broader problem to be resolved, and works backwards to determine what types of outcomes are necessary for the long-term change to occur. ActKnowledge and the Aspen Institute, *Making Sense: Reviewing Program Design with Theory of Change* (2003), pp. 2–3. Available from http://www.theoryofchange.org/wp-content/uploads/toco_library/pdf/making_sense.pdf. For further details on theories of change, see Dana H. Taplin and others, "Theory of change technical papers: a series of papers to support development of theories of change based on practice in the field", paper prepared for ActKnowledge, New York, April 2013; and Isabel Vogel, *Review of the Use of 'Theory of Change' in International Development*, Review Report (United Kingdom Department of International Development, April 2012). Available from https://assets.publishing.service.gov.uk/media/57a08a5ded915d3cfd00071a/DFID_ToC_Review_VogelV7.pdf.

CHAPTER 1: LINKING TRANSITION PROGRAMMING TO BROADER CONTEXT DYNAMICS

- 25 World Bank, *World Development Report* (2011), p. 10.
- 26 See Derick W. Brinkerhoff, "Capacity development in fragile states", European Center of Development Policy and Management Discussion paper, No. 58D (Washington, D.C., RTI International, 2007); Pilar Domingo and others, "An approach paper on WBI's capacity development activities in fragile states", paper prepared for the Overseas Development Institute, July 2009; Organisation for Economic Co-operation and Development, "Concepts and dilemmas of state building in fragile situations: from fragility to resilience", OECD/DAC Discussion Paper, *Journal on Development*, vol. 9, No. 3 (2008). Available from http://dx.doi.org/10.1787/journal_dev-v9-art27-en.
- 27 The Fund for Peace, *Fragile States Index* (2016). Available from <http://library.fundforpeace.org/library/fragilestatesindex-2016.pdf>
- 28 This draws from definitions provided by: Brinkerhoff, "Capacity development in fragile states"; Derick W. Brinkerhoff, "Developing capacity in fragile states", *Public Administration and Development*, vol. 30, No. 1 (2010); Pilar Domingo and others, "An approach paper"; Organisation for Economic Co-operation and Development, *The Challenge of Capacity Development: Working towards Good Practice*, DAC Guidelines and Reference Series (Paris, OECD Publications, 2006); and Organisation for Economic Co-operation and Development, *Preventing Violence, War and State Collapse: The Future of Conflict Early Warning and Response*, Conflict and Fragility Series (Paris, OECD Publishing, 2009).
- 29 Notably, the term 'citizen' is frequently used, however, "in many contexts the idea of the citizen is contested and how communities relate to the state may be understood very differently than classical notions of citizenship". See Organization for Economic Co-operation and Development, "Concepts and dilemmas". Further, states may owe duties to populations that are not citizens, under international human rights law or other obligations.
- 30 Brinkerhoff, "Capacity development in fragile states".
- 31 Brinkerhoff, "Developing capacity in fragile states"; and Organisation for Economic Co-operation and Development, *Preventing Violence, War and State Collapse*.
- 32 Armstrong and Chura-Beaver, "Harnessing post-conflict transitions", p.56. In the article, key agencies identified that focus on transition include: the US Agency for International Development's (USAID) Office for Transition Initiatives and the UN Working Group on Transitions.
- 33 Ibid.
- 34 Definitions drawn from IDLO, *IDLO Glossary of Capacity Development Focus Areas and Activities* (March 2016); Andrews, *The Limits of Institutional Reform in Development*; and North, *Institutions, Institutional Change and Economic Performance*, p. 3.
- 35 Andrews, *The Limits of Institutional Reform in Development*.
- 36 IDLO, *IDLO Glossary*. The term 'capacity building' is, at times, also used and will often be equated to capacity development in practical terms. While subtle, the distinction relates to acknowledging that any type of capacity enhancement begins with existing levels of capacity that can be strengthened (developed) rather than created (built). For many practitioners, this is a welcome acknowledgment that values contextual programming aligned to local needs and signals that capacity development is often a mutual learning exercise for all involved.
- 37 Livingston Armytage, "Justice in Afghanistan: rebuilding judicial competence after the generation of war", *ZaöRV*, No. 67(2007), pp. 185–210.
- 38 Livingston Armytage, "Pakistan's law and justice sector reform experience: some lessons", *Law, Social Justice and Global Development* (2003).
- 39 L. Hammergren, *Judicial Training and Justice Reform* (USAID, 1998).
- 40 Consider, for example, the following quote on capacity within Afghan institutions: "Even at the central level in Kabul, ministries or departments are war damaged shells, without even the most basic materials or equipment, and with few experienced staff. Before the Taliban, 43 percent of government employees were women, of whom most were dismissed. Government staff was paid intermittently, if at all, and many of the senior personnel have either left the country or sought alternative part-time employment", in United Nations Development Programme, Asian Development Bank and The World Bank, *Afghanistan: Preliminary Needs Assessment for Recovery and Reconstruction* (January 2002). Available from <http://reliefweb.int/sites/reliefweb.int/files/resources/748E9C42622856FBC1256B430045B74C-undp-afg-15jan.pdf>. Also cited in Richard Hogg and others, *Afghanistan in Transition: Looking beyond 2014*, Directions in Development Series (Washington, D.C., World Bank, 2013).
- 41 Anand Bhattacharai and Kishor Uprety, "Institutional framework for legal and judicial training in South Asia (with particular reference to Nepal and Bangladesh)", *Law and Development Working Paper Series*, No.2 (2006).
- 42 Livingston Armytage, "Institutionalizing judicial training in a developing country context", *The International Organisation for Judicial Training*, 4th International Conference on the Training of the Judiciary, 2009, p. 9.
- 43 Judge S. Oxner, "Judicial education and justice reform", *PHILJA Judicial Journal*, vol.5, No. 15 (2003), p. 54.
- 44 Hammergren, *Judicial Training*, p. 20. Also see, with the same conclusion for Nepal and Bangladesh, Kumar Sinha, *Judicial Education in Promoting the Rule of Law* (International Organisation for Judicial Training, 2015).
- 45 Goodman and Lauw-Potgieter, "A best practice model", p.184.
- 46 Roberto Maclean, "The culture of service in the administration of justice", *Transnational Law & Contemporary Problems*, vol. 6 (1996), p. 139; Luu Tien Dung, "Judicial independence in transitional countries", United Nations Development Programme Research Paper (Oslo Governance Centre, 2003). Available from <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018253.pdf>; Livingston Armytage, "Judicial education as an agent of leadership and change"; and Goodman and Louw-Potgieter, "A best practice model", p. 182.
- 47 Point first clearly made by Upham in "Mythmaking" and made repeatedly by others since then. A recent publication highlighting this is McKay, *Towards a Rule of Law Culture*, p. 47

⁴⁸ Department for International Development, *Building Peaceful States and Societies* (United Kingdom, 2010), p. 39; World Bank, *Tools for Institutional, Political, and Social Analysis of Policy Reform: A Sourcebook for Development Practitioners* (Washington, D.C., 2007).

⁴⁹ For more information, the website www.theoryofchange.org is a useful resource.

CHAPTER 2: FEATURES OF A GOOD TRANSITION PROGRAM: THE 'WHAT' AND 'HOW' OF EFFECTIVE PROGRAMMING FOR CPD

⁵⁰ AusAid, *A Staged Approach to Assess, Plan and Monitor Capacity Building* (Australia, May 2006).

⁵¹ Councils of Bars and Law Societies of Europe and European Centre for Judges and Lawyers, *Training Lawyers in EU Law* (2014).

⁵² Chagtai, *Benchmarking Bar Associations*, p.81.

⁵³ The overall classification is taken from Hammergren, *Judicial Training*.

⁵⁴ Armytage, "Judicial education as an agent of leadership and change"; and Venice Commission, "Challenges in the establishment of judicial training institutions", online source (2005).

⁵⁵ Sinha, *Judicial Education in Promoting the Rule of Law*.

⁵⁶ Dr. Faqir Hussain, "Continuing judicial education in Pakistan", *IOJT*, vol.4 (2015), pp.43–55.

⁵⁷ See, for example, Armytage, "Justice in Afghanistan", p.195, which highlights challenges for women judges wanting to travel to the capital for training.

⁵⁸ See Venice Commission, "Challenges in the establishment of judicial training institutions"; and Armytage, "Institutionalizing judicial training in a developing country context".

⁵⁹ See Bhattarai and Uprety, "Institutional framework for legal and judicial training in South Asia".

⁶⁰ Hammergren, *Judicial Training*, p.24.

⁶¹ See, for example, the experience in Pakistan, first in Livingston Armytage, "Pakistan's law and justice sector reform experience: some lessons", *Law, Social Justice and Global Development*, vol. 2(2003) and compare to Hussain, "Continuing judicial education in Pakistan", pp.43–55. A crucial problem identified in 2003 remains a problem in 2015. Gaps either lead to poor performance or filling in by donors.

⁶² Many authors note this, but see Bhattarai and Uprety, "Institutional framework for legal and judicial training in South Asia". Also see the conclusions of the OSI study of Eastern European countries in 2002: OSI, *Judicial Capacity in Eastern Europe*, EU monitoring accession project (2002).

⁶³ Armytage, "Institutionalizing judicial training in a developing country context", p. 18.

⁶⁴ Armytage, "Institutionalizing judicial training in a developing country context". See, for example, Dr. Heike Gramckow and Frances Allen, "Justice sector reform in Mongolia: looking back, moving forward", *Justice and Development Working Papers Series* (2011). The amount of resources available also depends on whether the program follows a civil or common law tradition: civil law programs require a bigger amount of resources, because they cater for both pre-entry candidates and continuous and specialized training. Common-law approaches instead focus on on-the-job training activities alone, requiring fewer resources. See Daniela Piana, "Unpacking the policy transfer, discovering actors: the French model of judicial education between enlargement and cooperation in the EU", *French Politics* (2007), pp.42–43.

⁶⁵ See, for example, EC Directorate General of Human Rights and Rule of Law, Eastern Partnership. *Enhancing Judicial Reform in the Eastern Partnership Countries: Project Report* (2013). Yet Piana notes that much of the work of the EC in judicial reform and setting up of judicial schools has been based on best practice for developed countries, mainly France, through twinning projects. See Piana, "Unpacking the policy transfer, discovering actors".

⁶⁶ Gramckow and Allen, "Justice sector reform in Mongolia". Also see the considerations in Khurshid Iqbal, "The rule of law reform and judicial education in Pakistan: search for a model", *European Journal of Law Reform*, vol. 17, No. 1 (2015), from p. 85.

⁶⁷ See, for example, Hussain, "Continuing judicial education in Pakistan", pp.43–55; and discussions in World Bank, "The impact of judicial education and direction for change", *PHILJA Judicial Journal*, vol. 5, No. 15 (2003).

⁶⁸ EC Directorate General of Human Rights and Rule of Law, Eastern Partnership.

⁶⁹ *Ibid.*

⁷⁰ See, for example, Uganda in Venice Commission, "Challenges in the establishment of judicial training institutions".

⁷¹ See, for example, World Bank, "The impact of judicial education and direction for change".

⁷² The Office of the High Commissioner for Human Rights considers it a high priority in peacekeeping operations. It notes: "Joint training among the judiciary, penal administration, the police and human rights specialists should be encouraged so that each sees more clearly the various roles all have to play and a sense of teamwork may develop", *OHCHR, Rule-of-law Tools for Post-conflict States: Mapping the Justice Sector* (2006), p.40. Also see OECD, *Enhancing the Delivery of Justice and Security* (2006).

⁷³ Oxner, "Judicial education and justice reform", pp. 36–37

⁷⁴ See, for example, Iqbal, "The rule of law reform and judicial education in Pakistan".

⁷⁵ World Bank, "The impact of judicial education and direction for change", p.85.

⁷⁶ Oxner highlights differences between Sri Lanka, Canada, the United Kingdom, the United States and Malawi (p.37).

⁷⁷ Many judges simply believe experience is crucial to fulfil their role. See, for example, in Pakistan, Hussain, "Continuing judicial education in Pakistan", pp.43–55.

⁷⁸ See, for example, S. Benvenuti, "Judicial training in Turkey in light of constitutional traditions and Europeanization", *Journal of Civil Law Studies*, vol.4(2011); and H. Gabisa, "Justice sector reform, judicial independence and a diminished judicial power in Ethiopia: lesson from South Africa", *New York Law School*, 2014.

⁷⁹ S. L. Buhaia and others, "The role of law schools in educating judges to increase access to justice", *Global Business & Development Law Journal*, vol. 24(2011); and A. Erickson and L. Krasniqi, "The challenge of capacity-building in judicial training institutions: the Kosovo experience", *IOJT*, vol. 4 (2015).

⁸⁰ Hogg and others, *Afghanistan in Transition*, pp. 110–111.

⁸¹ See, for example, Piana, "Unpacking the policy transfer, discovering actors", p.50.

⁸² Brinkerhoff, "Developing capacity in fragile states".

⁸³ *Ibid.*, p. 3; Hogg and others, *Afghanistan in Transition*, p. 41; Tony Land and others, "Aid effectiveness and the provision of TA personnel: improving practice", *Policy Management Brief prepared for the European Centre for Development Policy Management*, November 2007, p. 14; Organisation for Economic Co-operation and Development, *The Challenge of Capacity Development*, p. 6; Organisation for Economic Co-operation and Development, *Preventing Violence, War and State Collapse*, p. 57.

- ⁸⁴ Hogg and others, *Afghanistan in Transition*, p. 41. Other forms of capacity substitution adopted in Afghanistan are listed by Hogg and include civil servants receiving higher salaries or top-ups; international externally funded staff working in the Afghan government; national staff from NGOs, the UN, and other international agencies on secondment to the Afghan government, and contractors either employed directly or through donors. A further form of external technical assistance are donor-instigated program implementation units, also called program support units. These have been used by the World Bank in its justice programming in Afghanistan, for instance.
- ⁸⁵ Marianne Promberger and Theresa M. Marteau, "When do financial incentives reduce intrinsic motivation? Comparing behaviours, studies in psychological and economic literatures", *Health Psychology*, vol. 32, No. 9 (2013).
- ⁸⁶ Trainers who deliver courses as part of their official duties do not receive payment for additional expenses, but may receive meals as part of the course. For trainers who deliver courses outside of their official duties, IDLO provides a maximum daily rate of \$50 USD for a full day of instruction to cover the cost of course preparation, local and distant travel, accommodation, and meals. This rate is considerably lower than other implementing agencies which provide higher financial incentives.

CHAPTER 3: TRANSITION PROGRAM IMPLEMENTATION AND MANAGEMENT: GOOD PRACTICES AND CHALLENGES

- ⁸⁷ Paris Declaration on Aid Effectiveness, Second High-Level Forum on Aid Effectiveness, Paris, France, 28 February – 2 March 2005; Accra Agenda for Action, Third High-Level Forum on Aid Effectiveness, Accra, Ghana, 2–4 September 2008; and Busan Partnership for Effective Development Co-operation, Fourth High-Level Forum on Aid Effectiveness, Busan, Republic of Korea, 29 November – 1 December 2011.
- ⁸⁸ Hansen and Wiharta, "The transition to a just order". This publication provides a set of recommendations that might assist policymakers and planners to decide how, where and when local ownership should be promoted, where it may not be an option, whether different circumstances call for different types of strategies for transition, and which factors should be taken into consideration in decision-making and planning.
- ⁸⁹ Heather Baser and Peter Morgan, "Capacity, change and performance", Discussion Paper, No. 59B (European Centre for Development Policy Management, 2008), p. 9. Available from <http://ecdpm.org/publications/capacity-change-performance-study-report/>. Brinkerhoff, "Capacity development in fragile states", p. 10; Organisation for Economic Co-operation and Development, *The Challenge of Capacity Development*, p. 7.
- ⁹⁰ For example, Booth underscores that country ownership is the right way to go, but that a preliminary assessment should be made of the will of a government to change. If not, country ownership will only serve to increase the status quo and change would be purely cosmetic. See D. Booth, *Aid Effectiveness: Bringing Country Ownership (and Politics) back in* (ODI, 2011); and V. O'Connor, *Understanding the International Rule of Law Community, its History and its Practice* (INPROL, 2015).
- ⁹¹ Bhattarai and Uprety, "Institutional framework for legal and judicial training in South Asia".
- ⁹² Hammergren, *Judicial Training*, p.16.
- ⁹³ Hammergren, *Judicial Training*, p.11.
- ⁹⁴ Upham, "Mythmaking".
- ⁹⁵ Matt Andrews, Lant Pritchett and Michael Woolcock, "Escaping capability traps through problem-driven iterative adaptation (PDIA)", Center for Global Development, Working Paper No. 299 (June 2012).
- ⁹⁶ M. Cox, E. Duituturaga and E. Scheye, *Building on Local Strengths* (AUSAid, 2012), p. 48.
- ⁹⁷ Andrews and others, "Escaping capability traps".
- ⁹⁸ Baser and Morgan, "Capacity, change and performance", p. 103.
- ⁹⁹ *Ibid.*
- ¹⁰⁰ Directorate General of Human Rights and Rule of Law, Eastern Partnership.
- ¹⁰¹ Bhattarai and Uprety, "Institutional framework for legal and judicial training in South Asia".
- ¹⁰² The approach was based on objectively verified standards established for different categories of justice professionals related to specific functions identified as necessary in the administration of criminal proceedings. For each of the professional roles attending JTTP training – judges, defense lawyers, trial and investigative prosecutors, and police officers – checklists were prepared, outlining expected behaviors that would ensure fair trial and justice for the accused in line with the Afghan Criminal Procedure Code, and then verified through interviews, file records, and observation.
- ¹⁰³ Data for 619 justice sector professionals was collected and evaluated at a level where 80% or more of the practices listed in the checklists were met. JTTP has produced a Training Report Card, showing that, on average, 54% of the participants reached by training and coaching meet 80% or more of required standard practices compared to 16% achieved by professionals who did not attend training. The most prominent change was observed among trial prosecutors, where 69% were found to be practicing at the top level of performance, as compared to 11% for those who did not attend training. Similarly, 48% of CID officers met the 80% threshold compared to 11% who did not participate in training. Other professionals also demonstrated a positive difference: 63% of investigative prosecutors, 31% of defense lawyers, and 29% of judges reached the threshold improvement in behavior following JTTP training and coaching sessions.
- ¹⁰⁴ Armytage, "Institutionalizing judicial training in a developing country context", pp. 18–19. Also see Sinha, *Judicial Education in Promoting the Rule of Law*, pp. 119–130.
- ¹⁰⁵ Armytage, "Institutionalizing judicial training in a developing country context", pp. 18–19.
- ¹⁰⁶ Originally based on Marilyn Sember, "Advancing the social sciences through the interdisciplinary enterprise", *The Social Science Journal*, vol. 28, No. 1 (1991); amended by Alexander Refsum Jensenius, "Disciplinarity: intra, cross, multi, inter, trans", 12 March 2012. Available from <http://www.arj.no/2012/03/12/disciplinarity-2/>. See also United States Institute of Peace, *Guiding Principles for Stabilization and Reconstruction* (Washington, D.C., 2009), pp.7-15.
- ¹⁰⁷ Chris Collison and Geoff Parcell, *Learning to Fly: Practical Lessons from one of the World's Leading Knowledge Companies* (Oxford, Capstone, 2001).
- ¹⁰⁸ Mary Atkinson and others, "Multi-agency working and its implications for practice: a review of the literature", literature review prepared for the CfBT Education Trust, July 2007.
- ¹⁰⁹ *Ibid.*, pp. 3–4.
- ¹¹⁰ *Ibid.*, p. 5.
- ¹¹¹ Van de Goor and van Veen, "The heart of developmental change: rule of law engagements in situations of fragility", in *Innovations in Rule of Law: A Compilation of Concise Essays*, Botero and others, eds. (Hiil and World Justice Project, 2012).
- ¹¹² Brinkerhoff, "Capacity development in fragile states", p. 2; Land and others, "Aid effectiveness and the provision of TA personnel", p. 14.

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Published by: International Development Law Organization (IDLO)

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Layout: Emily Sadler: www.emilysadler.com

Publication date: November 2017. Copyright © 2017, International Development Law Organization (IDLO).

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