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Handling ethical problems in counterterrorism

An inventory of methods to support ethical
decisionmaking

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The research described in this document was prepared for the Research and Documentation Centre (Wetenschappelijk Onderzoek- en Documentatiecentrum, WODC) on behalf of the National Coordinator for Counterterrorism and Security at the Netherlands Ministry of Security and Justice (Ministerie van Veiligheid en Justitie).

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Executive summary

Context of the study

Counterterrorism professionals routinely face decisions that appear to require trade-offs between moral values such as privacy, liberty and security, and broader human rights considerations. Given that ethics are integral to this field, it is essential that counterterrorism professionals are proficient at making these types of decision. However, there is no existing overview of the methods that may support ethical decision-making specifically aimed at counterterrorism practitioners.

To address this gap, the Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum*, WODC) of the Dutch Ministry of Security and Justice (*Ministerie van Veiligheid en Justitie*), on behalf of the National Coordinator for Counterterrorism and Security (*Nationaal Coördinator Terrorismebestrijding en Veiligheid*, NCTV), commissioned RAND Europe to develop an inventory of methods to support ethical decision-making for the counterterrorism field. The objective of this study is not to recommend which methods should be developed, strengthened or implemented in the Netherlands. Rather, the aim is to outline the methods that counterterrorism professionals could draw on to support their ethical decision-making process.

In order to address this objective, we explored the methods available in different sectors – the military, intelligence, police, counterterrorism, healthcare and social work³ – and across countries, namely the Netherlands, the United Kingdom and, to a lesser extent, France. The research team aimed to identify the most common ethical problems in counterterrorism in order to contextualise the practical application of these methods. The evidence base was built from a structured literature review and an extensive phase of expert interviews. Given that the volume of literature sources was significantly larger for healthcare than other sectors, the insights from expert interviews allowed the team to develop an overview of the sectors within a limited amount of time. They also allowed the research team access to evidence that is not published.

³ These sectors overlap to a certain extent; for example, counterterrorism draws on intelligence and police activity, and it may involve the military, health and social work sectors. For the purposes of our research however we treated them as separate.

An inventory of methods to support ethical decision-making

Our review suggests that we may distinguish six main types of methods⁴ that can support ethical decision-making:

1. **Mitigation methods** to reduce the likelihood of certain ethical problems arising and/or of certain situations leading to unethical decision-making.
2. **Professional development methods** to cultivate individuals' capacity to identify, reflect on and respond to ethical problems.
3. **Guidance methods** to provide professionals with an easily accessible reminder of the laws, policies and norms of their institution.
4. **Leadership methods** to reinforce ethical practice in the organisation, including leadership by example and direction from superiors.
5. **Advice methods** to provide direction on ethical decision-making.
6. **Oversight methods** to ensure that there is an independent check on the ethicality of decisions in place.

Each category may be applied by using a range of tools. For example, advice methods may include instruments or methods such as *ethics consultants*, *legal advisors*, *peer support* and *ethics committees*.

The tools used by professionals to address ethical problems vary greatly by sector and by country. While some methods are formal and institutionalised in certain settings, they may be more implicit in others. For instance, *moral case deliberation* is a well-established method in the Netherlands that remains relatively unknown in the United Kingdom. Yet, British professionals routinely engage in a process comparable to moral case deliberation. Similarly, the degree to which *ethics training* is formal, practical or at the heart of the curriculum will vary depending on the institution concerned. This report aims to provide an overview of the types of method that could be used by counterterrorism professionals, supported by illustrative examples of how these methods are applied.

Tailoring methods to support ethical decision-making to counterterrorism

Our analysis suggests that the context of ethical decision-making in the field of counterterrorism tends to have four common features:

1. **Secrecy**, which results from the sensitivity of counterterrorism material and may constrain the individuals who are involved in deciding how to respond to a particular problem.
2. **Low-frequency and high-impact nature** of terrorist attacks, which has sometimes translated into preference for the elimination of risk and may lead to disproportionately constraining civil liberties to protect the safety of citizens.
3. **Extensive collaboration**, driven by the fact that counterterrorism operations may be international or involve sectors ranging from the police to social workers.
4. **Time sensitivity** of some counterterrorism problems, under which professionals are required to make decisions on the basis of imperfect information, quickly and often

⁴ In this report we use the term 'methods' in reference to a broad array of tools, practical approaches, strategies and techniques aimed at preventing and addressing certain types of ethical problem.

independently, despite potential implications for core civil liberties, including life and death.

Although these features are not unique to counterterrorism, collectively they create particular challenges for practitioners in the field. The table below summarises implications for tailoring methods to support ethical decision-making to counterterrorism.

Table 1 Tailoring methods to support ethical decision-making to counterterrorism

Characteristics of decision-making context in counterterrorism	Implications for tailoring methods	Examples of relevant methods
Secrecy: limited availability of individuals who may be involved in the ethical decision-making process	– Consequence: emphasis on strengthening methods for internal use	– Mentoring, ethics consultants and legal advisors
	– Need for: availability of methods involving externals	– Partnerships with select academics and privileged access to oversight committees
Preference for the elimination of risk: possibility of disproportionately constraining civil liberties to protect the safety of citizens	– Consequence: emphasis on methods to cross-check practice with guidance	– Leadership
	– Need for: availability of methods to review guidance	– Oversight committees
Extensive collaboration: joint working with organisations and countries that have different practices and policies	– Consequence: emphasis on consistent policies	– Training, guidance and advice
	– Need for: availability of guidance for resolving differences in collaborators' practices	– Checklists
Time sensitivity: requirement to make decisions independently, quickly and on the basis of imperfect information	– Consequence: emphasis on building individuals' competence to make ethical decisions independently	– Ethics-focused recruitment, mentoring and training
	– Need for: availability of instant access methods	– Checklists

While there has not been much empirical research on the effectiveness of particular methods, the research that has been done – primarily in business, health and social work literature – suggests that leadership is an essential component of any strategy to encourage ethical behaviour in an organisation. This includes both leadership through direction from superiors to those under their supervision; and leadership by example, whereby senior staff 'practice what they preach'. Moreover, we conclude from both literature and interviews that the methods specified in this inventory are more likely to be effective if used in certain combinations, ideally producing a coherent organisational approach to supporting ethical decision-making. In this sense, any effort to implement methods to support ethical decision-making should take into account the existing ethical climate of an organisation – the degree to which extant organisational processes and members of staff take seriously, understand and can respond to ethical problems.

This report provides an overview of the methods that can support ethical decision-making in counterterrorism, and the ways in which they may be tailored to the field. In order for

this inventory to contribute to consolidating ethical decision-making in counterterrorism in the Netherlands, follow-on work may wish to examine those methods that should be developed, strengthened or implemented in this specific context.