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## Good Practices for Parliamentarians in Developing Effective Counter Terrorism Regimes

### DRAFT

**Introduction:** Terrorism represents a direct threat to human security. States have a responsibility to protect populations from terrorism-related threats, which requires actions taken in respect of human rights and the rule of law. Legislatures bear a primary responsibility in the establishment of such a framework. An engaged and independent legislative body is a critical element in developing a legitimate and comprehensive counter terrorism regime that ensures effective counter terrorism (CT) measures with necessary oversight measures to protect human rights.

Parliamentarians are a central partner in developing domestic CT legislation. Their participation in the field of CT could also increase the effectiveness of such policies that will benefit from enhanced accountability mechanisms, good governance, civic participation, resources, and adherence to international good practices as well as promoting resilience in society. Counter terrorism policies are, therefore, an opportunity for increasing rule of law and human rights. Legislations are to be constantly reviewed and updated where necessary to ensure national CT policies meet evolving threats.

In recognition of the prominent role of parliamentarians in countering terrorism within a rule of law framework, the following good practices intend to support: 1) incorporating requirements of international instruments against terrorism into domestic law and enacting timely anti-terrorism laws respecting human rights and fundamental freedoms; examining root causes of terrorism; 2) investigating the sources of terrorism, including radicalisation of potential individuals; 3) establishing effective justice sector institutions and interagency bodies; 4) setting investigative tools within the rule of law; 5) promoting criminal procedure rules, rules of evidence, and justice system reforms to meet the challenges presented in terrorism cases; 6) fostering public acceptance and inclusiveness of the counter terrorism legal regime; 7) engaging civil society in the formation of counter terrorism policy; 8) allocating sufficient budget and government resources to support counter terrorism policy implementation; 9) overseeing law enforcement and intelligence services to secure citizens' rights; 10)

balancing the needs of state secrecy with the benefits of public disclosure; 11) promoting inter-parliamentary exchange of information and cooperation.

**Good Practice 1: CT legislation--** *Incorporating requirements of international instruments against terrorism into domestic law and enacting timely anti-terrorism law respecting human rights and fundamental freedoms.*<sup>1</sup>

Legislatures play a central role in developing and enacting legislation to address terrorism. International conventions require domestic legislation to become effective in many jurisdictions. United Nations Security Council resolutions call upon Member States to enact legislation to address particular terrorist threats, but leave latitude for national legislatures to develop specific approaches to achieve those goals. Adoption of international good practices likewise often requires legislative action.

Parliamentarians therefore are in key positions to develop and enact timely legislation to address terrorism, including translating the universal anti-terrorism instruments into national legislation. Legislation should shape a consistent national plan that addresses *inter alia* factors conducive to terrorism. Legislators' role is independent. Coordination with the executive branch of the government may contribute to sound preparation of legal framework on CT.

Unlike the executive branches that are typically deeply involved in preventing and/or investigating and prosecuting terrorism, parliamentarians are in the best position to draft laws in counter terrorism that meet international obligations and good practices while ensuring to protect human rights and fundamental freedoms. Such legislation should be non-partisan and built around consensus to garner support from society. Parliamentarians can look to existing reference laws that they can be tailored to meet the local context.

Anti-terrorism laws and policies should be targeted and not overly inclusive, amended and fine-tuned to evolving circumstances. National conciliations plans can be pursued as a concrete objective when implementing CT policies. Intra-society dialogue and human security are part of such efforts.

It is recommended that legislatures have standing committees of parliamentarians to draft, review and amend terrorism legislation to address emerging threats in compliance with international law including human rights and international humanitarian law. Such committees should include parliamentarians and legal professionals with experience in the justice system. Ensuring inclusiveness by assigning

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<sup>1</sup> The good practices contained in other GCTF instruments provide avenues for different national stakeholders to implement sustainable CT actions. Taking into due account and complementing existing GCTF good practices memoranda, such as those set forth in the *Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector*, the present good practices confer coherence to parliamentarians' role in shaping global and national responses to terrorism.

representatives from different regions, groups, and backgrounds will enhance the legitimacy of the committees.

**Good Practice 2:** *Investigating the sources of terrorism, including radicalisation of potential individuals.*

With their broad experiences and the role as representatives of society, parliamentarians are well positioned to investigate issues relating to terrorism, including examining the root causes of terrorism in order to establish policies to prevent it. Terrorism is generated by a variety of causes. These can have roots in the society, such as poverty, inequality and perceived injustice, providing fertile ground for citizens, especially youth, to be recruited by terrorist organisations. CT policies cannot be focused exclusively on narrow goals without addressing the complexity and variety of issues leading individuals into terrorism. Parliamentarians have the responsibility to assess and address causes of terrorism to tackle its roots while strengthening democratic foundations.

One good practice is to convene public hearing to discuss root causes of terrorism. Potential hearing witnesses can include local officials, education and other community leaders, terrorism experts, youth experts, prison officials, and, where appropriate, even former terrorists who can provide a window into the radicalisation process. Such hearings must be handled in a non-partisan manner and lead to concrete solutions that can contribute to the development of national strategy and can be implemented through legislation, policy and other means.

**Good Practice 3:** *Establishing effective justice sector institutions and interagency bodies.*

Justice sector institutions are typically based on organic laws that establish the parameters of their jurisdictions. Interagency bodies are usually established and fostered through legislation. Their conception and design aim at pursuing consistent national level CT policies mandating different bodies with specific functions and role to converge into a unique country vision and action. It is vital the well pondered and democratic attribution of responsibilities to cope with justice matters. Parliamentarians therefore must play an important role in establishing effective justice sector institutions that can counter terrorism and other criminal activities.

Conceiving and amending such institutional organic laws build a broad foundation of national counter terrorism efforts. Parliamentarians must actively play the primary role of developing and legitimizing sustainable and justice sector institutions and organic laws. Specialised prosecutors and courts can serve the purpose of effective prosecution and sentencing, as terrorism is a crime that can be combatted with expertise and experience. The development of a rapid response capacity to changing situations is often necessary.

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In regions where the rule of law has been absent due to civil unrest, parliamentarians play a critical role in ensuring that basic rights are restored. There can be no impunity for torture or other gross violations of human rights. In this context, rights of the victims of terrorism, access to justice, and redress mechanism should be guaranteed. It is a good practice for parliamentarians to play an active role in drafting and reviewing legislation related to the establishment and authority of different institutional or interagency bodies and consider centralizing as much as possible entities involved in preventing, investigating and countering terrorism under one authority where appropriate with a view to maximize information sharing. Parliamentarians should encourage justice institutions to be receptive to regular improvement of their technical capacities. Clearly defined mandates further ensure that authority is not abused. For other justice sector institutions, such as the judiciary, parliamentarians must ensure their independence and resources.

**Good Practice 4:** *Setting investigative tools within the rule of law.*

The mandate of authorities vested with investigative roles must be based on clear rule of law foundations and be held accountable. This concerns intelligence and investigative entities legal mandates.

Investigators' methodologies and practices including turning intelligence into evidence, the use of evidence derived from the Internet, conducting special investigative techniques must be based on sound legal provisions with adequate safeguards to protect the rights of citizens from abuse.

Parliaments play a key role in ensuring that counter terrorism investigation and adjudication respect due process and also guarantee the principles of legitimate use of investigative techniques, proportionality and necessity as well as respecting minimum standards for fair trials required by international human rights laws, such as the International Covenant on Civil and Political Rights (ICCPR). This concern particularly applies to the intelligence services. The code of criminal procedures or other legislation should clearly regulate and define these practices. It is a good practice to invest Parliaments with legislative responsibilities to address procedural matters pertaining the investigation of terrorism-related cases to ensure that they abide by the rule of law and protect the rights of the accused.

**Good Practice 5:** *Promoting criminal procedure rules, rules of evidence, and justice system reforms to meet the challenges presented in terrorism cases.*

In line with The Hague Memorandum on the Good Practices for the Judiciary to Adjudicate Terrorism Cases, criminal procedure rules and rules of evidence play a critical role in ensuring that the criminal justice system can address terrorism, including the protection of the rights of victims. The failure to address terrorism through the criminal justice system pose serious risks of human rights abuses. Sources of criminal procedure rules and evidence vary according to jurisdictions. In some jurisdictions, such rules are codified through legislation. In others, they are developed through judicial bodies.

For example, given the international dimension of terrorism cases, evidence from different jurisdictions (such as international evidence and digital evidence) should be admissible in courts consistent with the rights of the accused. Existing legal instruments such as the Convention on Cybercrime, provide model legislation for mutual legal assistance (MLA) in the area of digital evidence. It is recommended to have a MLA in place to help cross border legal cooperation. Parliamentarians need to ensure the required legal ground for MLA and cooperation to be implemented within a robust and rule of law-based framework.

**Good Practice 6:** *Fostering public acceptance and inclusiveness of the national counter terrorism legal strategy.*

Citizens' understanding of national and international counter terrorism policies contributes to the development of consensus to support such policies. As elected officials not directly involved in investigating, prosecuting, or adjudicating specific counter terrorism cases, parliamentarians stand as representatives of the people and, therefore, they are well positioned to credibly articulate counter terrorism policy on behalf of the citizens. Parliamentarians have to ensure non-discriminatory and equality before the law practices, and lead by example. They must foster inclusiveness and good governance mechanisms. These would increase community-level ownership of national CT policies. Citizens' resilience is a goal to counter the terrorists' narrative and communication. The participation of civil society in the formation of CT policies ensures the variety of opinions of the population.

Parliamentarians must be sure to temper the immediate emotional reactions of the public in response to specific terrorist incidents, and focus on the long term interests of society and thereby contribute to foster a balanced and strategic approach. It is therefore a good practice for parliamentarians to discuss and debate policies in a non-partisan, rational, accurate and non-demagogic style to encourage an informed and open national debate where different opinions are respected, and build, where possible, consensus.

**Good Practices 7:** *Engaging civil society in the formation of national counter terrorism strategy.*

Local level civil society is at the frontline of communities and, therefore, constitutes a basin of knowledge for authorities to draw on. The consultation of civil society organisations (CSOs) helps to inform more effective counter terrorism strategies. CSOs reflect a cross section of society, and can provide valuable inputs and should be consulted by legislators in the formation of terrorism-related laws and policies. Community leaders' engagement should be part of civil society consultation practices, in particular for preventing youth recruitment by terrorist organizations.

Risk of abuse of CSOs by violent extremists needs to be taken into account when outreaching to communities for CT goals. Government must prevent the misuse of CSOs, such as charities, by terrorist organizations (e.g., terrorism financing, terrorist movement) is a preliminary step to engage with it in the pursuit of any CT goal.

Civil society organizations also offer tools for monitoring the implementation of laws and policies designed to counter terrorism. The involvement of civil society contributes to people at the margins of society engagement. Developing community outreach channels is a further role that parliamentarians' can play, which helps to ensure an inclusive and sustainable support for national counter terrorism policies. Family of victims can play a role for developing informed CT policy drawing on direct experiences. CT policies formation needs to integrate community-level feedback. Civil society plays a proactive role in preventing terrorism through de-radicalisation and counter-narrative actions, especially at a community level. Some CSOs are directly supportive the victims of terrorism and can assist legislators for safeguarding related rights. Abuse of civil society for terrorism purposes should be prevented and individuals involved in breaches of the law should be investigated and prosecuted,

It is a good practice for parliamentarians to ensure civic groups and individuals can express their views, whether they be positive or negative, regarding CT measures through hearings open to the public. A robust and open debate regarding the need and efficacy of existing and planned CT measures can lead to greater consensus within society.

**Good Practices 8:** *Allocating sufficient budget and government resources to support national counter terrorism strategy implementation.*

Parliamentarians play a central role in approving public expenditures and use of public resources. Effective CT measures require adequate funding and justice sector officials should receive adequate salaries. Since an increased budget does not necessarily reflect a better CT policy, CT efforts funding must be considered in light of other government programs designed to meet the needs of its citizens. As representatives of the citizens, parliamentarians are well positioned to make rational assessments of public expenditure to support executive institutions' accountability and ensure good governance.

A sound rule of law compliant CT policy would result in direct strengthening of the representative institutions and governance of countries. Societal core sectors such as welfare, education, health, religious services are to be considered as active elements of a more comprehensive CT action where citizens' security is built through correct pursuance of rule of law and human rights across the society. Anti-corruption efforts are complementary to these goals. CT provides for an opportunity for strengthening democratic basis and society resilience to violence and intolerance. Security and justice are part of broader development goals. Investing in the pursuance of human rights compliant CT policies means sustaining societal democracy foundations.

Therefore it is a good practice to ensure that public resources are available for sustainable CT policies. Parliamentarians must consider developing mechanisms for allocation of funds and effective auditing processes of CT policies and expenditures, through use of a select committee where appropriate.

**Good Practice 9:** *Overseeing law enforcement and intelligence services to secure citizens' rights.*

Independent justice and security sector bodies' oversight needs a parliamentary committee to carry out its mandate consistently and neutrally. Capacity building on oversight requirements with an element of comparative approach between jurisdictions is to be promoted. Parliaments should establish the legal framework that sets the powers and defines the limits of intelligence and law enforcement agencies. This includes:

- setting up mechanisms to establish fully fledged and professional agencies (i.e. exercise control over selection, appointment and promotion systems) and defining operating procedures;
- preventing torture and other gross violations of human rights;
- providing means to raise and maintain the required quality of institutions' standards and technical capacities (i.e. providing financial resources, investing in human resource capacities, and, providing a functioning administrative structure);
- defining and implementing evaluation mechanism of law enforcement and intelligence services agencies;
- linking the provision of financial resources to law enforcement and intelligence services agencies with accountability obligations and, for this purpose, robust conduct auditing.

Oversight of intelligence, enforcement and prosecutorial authorities must ensure that human rights abuses are promptly addressed. Judicial independence must be preserved throughout. The distinction between investigation entities and intelligence services should be preserved. Policies and actions that result in failure of human rights respect must be independently investigated by concerned parliamentary committees. Parliamentarians should further proactively ensure that the oversight mechanisms are timely and adapted to evolving circumstances. Citizens' awareness of their rights, including right to security, helps to better comprehension of the responsibilities and builds increased trust in CT policies.

Operational information (investigation) and review of its management after conclusion are to be separated. The former may require full classification, the latter a chance for greater transparency and trust. The limitation of rights can be legitimated by security objectives as long as it is exercised in compliance with the rule of law and criminal justice international standards.

**Good Practice 10:** *Balancing the needs of state secrecy with the benefits of public disclosure.*

Disclosure of information to the public is beneficial for transparency as it builds the public's trust over the long term. Executive branch officials' claims of state secrecy should be closely scrutinized to prevent efforts to conceal misconduct or ineffective policies. Nevertheless, there can be justifications for the withholding of information, sources, and methods, particularly those relevant to ongoing counter terrorism operations.

Parliamentarians should work toward an agreement with the government to have sufficient level of information disclosed while maintaining the needed level of secrecy for the government to lawfully exercise its functions with regard to CT objectives. It is a good practice the formation of a committee of parliamentarians to be provided with sufficient security clearance to evaluate directly classified materials. The right to information can be limited when the need of security requires the classification

of information. A specialized parliamentary committee is crucial in this context to assess the level of details to be disclosed to the public. Information should remain classified only so long as it serves a legitimate need of State security; classified materials should be reviewed regularly to determine whether classification is still required, and materials no longer requiring classification should be promptly declassified.

**Good Practice 11:** *Promoting inter-parliamentary exchange of information and cooperation.*

Since terrorism has a strong transnational dimension, sharing information among national authorities is essential, yet it remains frequently challenged by existing cooperation mechanisms. Parliamentarians stand in a position to open dialogues to develop the necessary levels of trust with their international counterparts often with more flexibility than executive structures. As part of such parallel diplomacy, it is recommended for inter-parliamentary (IP) fora to convene regularly and discuss CT policies and their commitments. It is a good practice for parliamentarians to exchange existing good practices with other countries and ways to maintain a balance with legal safeguards protecting human rights.

Parliamentarians also have a special role to play in developing the architecture of regional bodies that can further support operational and good practices information sharing to foster regional and inter-regional CT responses. Parliamentarians likewise have a role to contribute to the development of the wider CT global response of the international community. IP cooperation may focus on action, such as following up on legislation implementation, to make concrete steps for the enhancement of CT legislation and its rule of law compliance. International mutual review mechanisms are beneficial when adopting new legislations or amending existing provisions.

**Recommendation:** *Parliamentary agenda on counter terrorism*

In light of the Good Practices above, the establishment of a CT rule of law-based agenda for legislators is recommended. This may contribute to a coherent CT legislation in support of the national CT policy in line with the Good Practices for parliamentarians and plan legislative activity accordingly.

