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

### DRAFT

**Introduction:** Terrorism is a global phenomenon that presents a direct and multi-faced 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 (CT) regime that ensures effective response to CT including 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. CT 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 national, regional and global threats in compliance with international requirements. Protection of rights and upholding the rule of law is not a limitation on effective CT measures, but rather is a central pillar of CT efforts by strengthening a rule of law based society that counters terrorist ideology and avoids the sense of injustice that can fuel extreme activities.

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; 2) investigating the sources of terrorism, including radicalisation of potential individuals and typologies of terrorism; 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) reducing space for violent radicalization and fostering public understanding and inclusiveness of the counter terrorism response; 7) engaging civil society in the formation, development and implementation of national counter terrorism strategy; 8) allocating and segmenting sufficient budget to maximize the use of government resources to support national counter terrorism policy implementation; 9) overseeing law enforcement and intelligence services to secure citizens' rights; 10) balancing the needs of effective oversight, state secrecy and the benefits of public disclosure; 11) promoting inter-parliamentary exchange of information and cooperation.

The issues facing parliamentarians in the CT context is necessarily cross-cutting, reflecting their overarching role in CT legislation, CT policy and its implementation, CT law enforcement and intelligence oversight, Countering Violent Extremism (CVE) and public outreach, CT budgeting and overall good governance and rule of law. These good practices are based, *inter alia*, on discussions in four workshops of parliamentarians organized by the International Institute for Justice and the Rule of Law (IIJ), as part of a parliamentary initiative funded by the European Union.<sup>1</sup> This list of GCTF good practices is not intended to be exhaustive. The GCTF may choose to expand or modify it to take into account States' experiences in these areas, subject to the approval of the GCTF's members.<sup>2</sup>

**Good Practice 1:** *CT legislation: incorporating the requirements of international and regional instruments against terrorism into domestic law and enacting timely anti-terrorism laws respecting human rights and fundamental freedoms.*

Legislatures play a central role in developing and enacting legislation to address terrorism. International and regional conventions may require domestic legislation to become effective in many jurisdictions.

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<sup>1</sup> As part of this initiative, the IIJ organized regional workshops with parliamentarians in Malta in May 2015, Morocco in October 2015, Brussels in March 2016, [and Turkey in April 2016, where the participants were joined by GCTF members]. At these workshops, national parliamentarians came from 20 countries, each facing directly terrorism concerns, to work together with the European Parliament and inter-parliamentary for a and networks, the United Nations, and other organizations to share their good practices and help refine this document.

<sup>2</sup> The good practices contained in other GCTF memoranda 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 as well as the Ankara Memorandum on Good Practices for a Multi-Sectoral Approach to Countering Violent Extremism*, these good practices memoranda focuses on parliamentarians' role in shaping global and national responses to terrorism. These are developed recognizing the provisions contained in the draft resolution 'Terrorism: The need to enhance global cooperation against the threat to democracy and individual rights' submitted to the Standing Committee on Peace and International Security of the Inter-Parliamentary Union.

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 based on the local context. Adoption of international good practices likewise often requires legislative action, which must also be harmonised with international conventions and resolutions and regional-level conventions that address terrorism matters.<sup>3</sup>

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 CT that meet international obligations and good practices while ensuring the protection of human rights and fundamental freedoms including those rights relating specifically to the criminal justice system, such as due process and a fair trial, and also those relating to society more generally. Such legislation should be non-partisan and built around consensus to garner support from society. Parliamentarians can look to existing reference laws that can be tailored to meet the local context.

Anti-terrorism laws and policies should be targeted and not overly inclusive, but they must be regularly reviewed and amended and fine-tuned to evolving circumstances. Careful gap analysis of existing laws is a useful tool.

Parliamentarians are elected officials, and therefore may serve for a limited period of time, with new members joining their ranks through elections. It is therefore recommended that legislatures have standing committees of parliamentarians to draft, review and amend terrorism legislation, including through public hearings and open debate, to address emerging threats in compliance with international law including human rights and international humanitarian law. Such committees should include parliamentarians and legal professional staff with experience on justice affairs. Ensuring inclusiveness by assigning representatives from different regions, groups, and backgrounds will enhance the legitimacy of the parliamentary committees.

**Good Practice 2:** *Investigating the sources of terrorism, including radicalisation of individuals, and typologies of terrorism*

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

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<sup>3</sup> Good Practice 12 of GCTF Rabat memorandum on the criminalization of terrorism offenses as outlined in the applicable international conventions and protocols suggests that although States may approach codification of terrorism offenses differently depending on their legal traditions, they should criminalize the offenses outlined in the relevant international counterterrorism legal instruments. Adequate incorporation into national legislation of the international counterterrorism provisions and obligations constitutes a key element in a comprehensive and coherent counterterrorism legal framework.

in order to establish policies to prevent it. Terrorism is generated by a variety of internal and external causes. Some of these can have roots in the society, such as poverty, instability, corruption, double standards, inequality, frustration, 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, including foreign and national factors, economic causes, the abuse of religious beliefs by violent extremists. Parliamentarians have the responsibility to assess and address causes of terrorism to tackle its roots while strengthening democratic foundations.

One good practice for parliamentarians to convene public hearings 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 that can be implemented through legislation, policy and other means. The involvement of front-line civil society organisations, in particular those working with youths and the defence of children rights, contribute to the public hearings.

**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 coherent national level CT policies mandating different bodies with specific functions and roles to converge into a unique country vision and action. It is vital that such representative institutions establish responsibilities within the civilian criminal justice system. Parliamentarians therefore must play an important role in establishing effective justice sector institutions that can prevent and counter terrorism and other criminal activities.

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

In regions where the rule of law has been absent or undermined due to civil or military unrest or misguided policies to prior CT activities, 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<sup>4</sup>, access to justice, and redress mechanisms should be

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<sup>4</sup> See the *Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings*.

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 adequate resources. As representatives of society, parliamentarians must make sure that misguided efforts to counter terrorism do not undermine the very rule of law values that the terrorists wish to destroy.

When an international tribunal or a court has been established to focus on the adjudication and solution of specific countries' issues, as citizens' direct representatives, parliamentarians have to play an active role for observing proceedings as well as file inquiries. These may involve emergency conditions and rules set for certain countries.

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

The mandate of authorities vested with investigative responsibilities must be based on clear rule of law foundations and accountability. This concerns intelligence and investigative entities' legal mandates.

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

Parliaments play a key role in ensuring that CT investigations and adjudications 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 those embodied in the International Covenant on Civil and Political Rights (ICCPR). This concern especially applies to the intelligence services, the use of electronic surveillance, the protection of witnesses and their families.<sup>5</sup> 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.

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<sup>5</sup> A useful reference is set by the *GCTF are the Recommendations for Using and Protecting Intelligence Information In Rule of Law-Based, Criminal Justice Sector-Led Investigations and Prosecutions*. These are based on Good Practice 6 of the GCTF Rabat Memorandum encouraging States to enact rule of law-based measures to protect the sources and collection methods of such information in terrorism cases.

**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 <sup>6</sup>, 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 poses 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, the rules in court are developed by 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) requests 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. Ultimately, public trials without the use of secret evidence provides legitimacy to the government's efforts to counter terrorism.

**Good Practice 6:** *Fostering public understanding, and inclusiveness in the development of national counter terrorism policies and framework.*

Parliamentarians play a key role in developing public opinion-, and are therefore key for CT awareness of the whole society. Their role is twofold. First, through their dialogue with members of society and countering and delegitimizing false narratives, parliamentarians play a role in preventing an environment where terrorism can flourish. Second, as elected officials not directly involved in investigating, prosecuting, or adjudicating specific CT cases, parliamentarians stand as independent representatives of the people and, therefore, they are well positioned to credibly articulate CT 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.

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

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<sup>6</sup> The good practices identified in The Hague Memorandum are: 1) the necessity for specially-trained judges; 2) the use of continuous trials in terrorism cases; 3) developing effective trial management standards; 4) the establishment of special measures to protect victims and witnesses; 5) the right of the accused to a fair trial with counsel of his choosing; 6) the necessity for rules regarding the use and protection of intelligence information, sources, and methods in trial; 7) effective courthouse and courtroom security; and 8) developing media guidelines for the court and trial parties. This memorandum elaborates on these good practices, all of which reinforce the UN Global Counter-Terrorism Strategy.

fostering a balanced and strategic approach for the resilience of communities against terrorism ideologies and, more generally, recruitment efforts.

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 to build public understanding, resilience, and consensus.

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

Local 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 and resonant counter terrorism (CT) strategies. The participation of civil society in the formation of CT policies ensures the variety of opinions of the population. 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. CSOs play an essential role for communication and awareness raising efforts against terrorism, including countering narrative for delegitimizing violent extremists' views. CSOs' action has to be in a result-oriented synergy with national authorities with proportionate accountability levels even while they remain separate from formal government structures. CSOs also offer tools for monitoring the implementation of laws and policies designed to counter terrorism. The involvement of civil society in CT contributes to the engagement of people at the margins of society. Developing community outreach channels is a further role that parliamentarians can play, which helps to ensure an inclusive and sustainable support for national CT policies. Families 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 of the victims of terrorism and can assist legislators to safeguard related rights. The potential abuse of civil society organizations, such as charities, by terrorist and related organizations (e.g. to provide terrorism financing, movement and support) should be prevented and individuals involved in breaches of the law should be investigated and prosecuted, but without interfering with the healthy role played by legitimate CSOs.

Civil society must have space to succeed. 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.<sup>7</sup>

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<sup>7</sup> See *GCTF Abu Dhabi Memorandum on Good Practices for Education and Countering Violent Extremism* as well as Good Practice 11 of *GCTF Ankara Memorandum on States helping civil society in CVE activities*.

**Good Practices 8:** *Allocating and segmenting sufficient budget to maximize the use of 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 compensation. 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 both to prevent terrorism and to meet the other needs of its citizens. This includes also transparency of procurement and recruitment components of resource allocation. 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 good 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 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 pursuit 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 insist on budget detail and develop mechanisms for allocation of funds and effective auditing processes and end use monitoring of CT policies and expenditures, through use of a select committee where appropriate. On site visits helps ensure direct information to relevant committees.

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

Independent justice and security sector bodies' oversight requires a parliamentary committee to carry out its mandate consistently and neutrally. Effective oversight requires direct access to information. 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 law enforcement and intelligence agencies. This includes:

- setting up mechanisms to establish fully equipped and professional law enforcement and intelligence agencies (i.e. exercise control over selection, appointment and promotion systems) and define 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.

Selection and clearance of parliamentary members is instrumental for their access information that are not open to the general public while preserving operational information confidentiality. Parliamentary committees in charge of overseeing need selection mechanisms to bear the responsibility of this unique role.

Different parliamentary committees can be relevant for overseeing law enforcement and intelligence agencies' work. Therefore, merging various committees' members in a specific overseeing CT action-oversight task can increase effectiveness.

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 fail to respect human rights must be independently investigated by relevant 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. The media and civil society can contribute to oversight efforts by having open channels to bring information to the attention of oversight committees without fear of reprisal.

Parliamentarians should similarly monitor prisons management and conduct assessments of any specific CT and countering violent extremism (CVE) practice aimed at the reintegration and rehabilitation of those convicted for terrorism offences that is carried out within the detentions settings.<sup>8</sup>

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 effective oversight, operational security, and 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 withholding information, sources, and methods, particularly those relevant to ongoing CT operations.

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<sup>8</sup> See the *GCTF Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders* for a useful reference on this matter.

Parliamentarians should work toward an agreement with the government to have sufficient levels of information disclosed while maintaining the needed level of secrecy for the government to lawfully exercise its functions with regard to CT objectives. Legislators need to define the overall legal framework for state information classification.

It is a good practice to form a committee of parliamentarians, which is 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.*

Terrorism is a global challenge with a strong transnational dimension. Parliamentarians play a role in developing and supporting foreign policy. They should seek opportunities to encourage policies that lead to resolution of conflicts that, if left unresolved, can create conflict zones where terrorism can grow.

Inter-parliamentary efforts can also be helpful. Therefore, 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 establish points of contact and exchange existing good practices with other countries and ways to maintain a balance with legal safeguards protecting human rights.<sup>9</sup> Existing regional and international parliamentary assemblies and networks can contribute greatly to these efforts.

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

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<sup>9</sup> Rabat Memorandum Good Practice 9 also encourages the development of practices and procedures to encourage international cooperation in CT matters.