

Recommendations by Civil Society Actors for the Consideration of the Counter-Terrorism Committee in the Adoption of an Addendum to the Madrid Guiding Principles

28 November 2018

The Global Center on Cooperative Security (Global Center) presents the following recommendations to assist the UN Security Council Counter-Terrorism Committee (CTC) in the review of the Madrid Guiding Principles on foreign terrorist fighters and the likely adoption of an Addendum to these principles in December 2018.¹ This document draws from the interactive briefing “Reviewing the Madrid Guiding Principles on Foreign Terrorist Fighters,” organized by the Global Center and the Counter-Terrorism Committee Executive Directorate (CTED) with support from the government of the Netherlands on 19 November 2018 in New York. The purpose of the briefing was to create an opportunity for civil society organizations to hear directly from CTED about the review process and development of the draft Addendum to the Madrid Guiding Principles and for these organizations to provide their recommendations and comments in the presence of members of the Security Council and UN entities. This document is an attempt to reflect the topics discussed and recommendations made by these organizations during the meeting; individual civil society organizations were invited to provide further input and recommendations to the CTC via CTED.

Although the draft Addendum was not made available, participants referred to Security Council Resolution 2396, the Madrid Guiding Principles, and the key issues anticipated to be covered by the Addendum. Participants urged the CTC to include precise language deriving from obligations under international human rights and humanitarian law, including the right to privacy, the right to assembly, and freedom of expression, as they relate to the broad range of foreign fighters (FFs) and their families. Participants reiterated the importance of formally and informally engaging civil society organizations and other nongovernmental actors and experts during the formulation of the Addendum and other CTC documents to ensure effective and appropriate formulation and implementation at the national and regional levels. In the fulfillment of CTED’s mandate, the need for UN-wide cooperation in the implementation of the principles was highlighted, including with UN special procedures mechanisms.

Participants welcomed the initiative to adopt an Addendum to account for new issues surrounding the return and relocation of FFs and their families, but they reiterated the need to focus on the continued, appropriate implementation of the Madrid Guiding Principles.

1 For the Madrid Guiding Principles, see UN Security Council, “Letter Dated 15 December 2015 From the Chair of the Security Council Committee Established Pursuant to Resolution 1373 (2001) Concerning Counter-terrorism Addressed to the President of the Security Council,” S/2015/939, 23 December 2015, annex II. See also UN Security Council Counter-Terrorism Committee, *Madrid Guiding Principles: A Practical Tool for Member States to Stem the Flow of Foreign Terrorist Fighters*, October 2016, https://www.un.org/sc/ctc/wp-content/uploads/2016/10/Madrid-Guiding-Principles_EN.pdf.

Recommendations for consideration by the CTC:

1. Advance Passenger Information, Passenger Name Record, watch lists, and the collection of biometric data

- a. Right to privacy.** In reference to the report by the Office of the UN High Commissioner for Human Rights titled *The Right to Privacy in the Digital Age* and as emphasized by the UN General Assembly Third Committee in 2018, “[U]nlawful or arbitrary surveillance and/or interception of communications, as well as the unlawful or arbitrary collection of personal data, as highly intrusive acts, violate the right to privacy, can interfere with the right to freedom of expression and may contradict the tenets of a democratic society, including when undertaken on a mass scale.”² These considerations should be included in the Addendum.
- b. Oversight mechanisms.** Similarly, the Addendum should take note of the call on member states “[t]o establish or maintain existing independent, effective, adequately resourced and impartial judicial, administrative and/or parliamentary domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and the collection of personal data.”³
- c. Sunset clauses.** Laws established on the basis of Security Council Resolutions 2178 and 2396 should include a sunset clause to ensure that any lawful access to private information is limited in scope and duration. More broadly, a periodic review of the necessity, proportionality, and effectiveness of counterterrorism measures is strongly advised.

2. Sharing of information and evidence

- a. Terrorism financing.** With reference to Security Council Resolution 2322, the Addendum could put forward recommendations to improve integration and utilization of financial intelligence with other types of information available, such as that provided by the private sector to national governments, to counter terrorism financing threats more effectively. Language should underscore that efforts to combat terrorism must target the actors and financiers, suggesting that they are two separate but related crimes. Further emphasis may be placed on utilizing financial intelligence as a key tool in terrorism investigations and responses.

2 UN General Assembly, *The Right to Privacy in the Digital Age: Report of the United Nations High Commissioner for Human Rights*, A/HRC/39/29, 3 August 2018; UN General Assembly, *The Right to Privacy in the Digital Age*, A/C.3/71/L.39/Rev.1, 16 November 2016, p. 3 (hereinafter revised draft resolution on privacy).

3 Revised draft resolution on privacy, p. 5.

- b. The role of financial intelligence units (FIUs).** When developing language for the Addendum, member states may want to further explore whether FIUs face legal constraints in exchanging information in relation to recruitment financing on an intelligence level, particularly in the suspicion phase where a concrete connection to a terrorist organization has not been made.⁴
- c. Human trafficking.** In addition to the benefits of utilizing financial intelligence and information to help competent authorities to identify terrorism networks at the recruitment and fundraising stages, linkages between FFs and human trafficking may also be exposed, revealing a person’s status as, for example, a returning FF or trafficked victim. If identified as a trafficked victim, the victim has the right to the principles of nonpunishment.⁵

3. Preventing and countering violent extremism (P/CVE) and counternarratives

- a. Placement within broader P/CVE policies and programs.** Efforts toward developing and implementing counternarratives should be embedded within broader P/CVE efforts rather than a stand-alone effort. The overall lack of evidence regarding the effectiveness of general counternarrative campaigns also should be considered. In contrast, alternative narratives and “preventive communication techniques” may show more promise, drawing on experiences in development and peace-building efforts.
- b. Sustainable Development Goals.** The Addendum should place particular emphasis on the linkage between P/CVE and counterterrorism efforts and Sustainable Development Goal (SDG) 16, as well as other relevant issues such as those covered under SDG 10.
- c. Engaging civil society.** The Addendum should further articulate the need for intensified, constructive engagements with civil society actors and networks, including human rights defenders, to ensure that on-the-ground perspectives and realities are more fully reflected in UN and domestic counterterrorism and P/CVE policies and programs. The Addendum should address the issue of shrinking spaces for civil society more broadly and in the context of counterterrorism laws and P/CVE efforts specifically.

4 A 2018 Financial Action Task Force (FATF) report, citing a confidential report by the Egmont Group of Financial Intelligence Units, noted that FIUs are often unable to share information with foreign counterparts on violent extremist networks as they are required to focus on known terrorist organizations or lists of terrorists or on conclusive information from police or intelligence agencies that relates to terrorism financing activity. Clear links to known terrorist networks are often lacking in the case of FFs, and FIUs legally are not always equipped to monitor processes of radicalization and recruitment. FATF, “Financing of Recruitment for Terrorist Purposes,” January 2018, p. 26, <http://www.fatf-gafi.org/media/fatf/documents/reports/Financing-Recruitment-for-Terrorism.pdf>.

5 The plan for joint action by the UN Office on Drugs and Crime (UNODC) and the Organization for Security and Co-operation in Europe (OSCE) for 2018–2019, which allows for sustained and streamlined technical collaboration in areas including combating transnational organized crime, P/CVE, and combatting trafficking in human beings, has more information on this topic.

4. Risk assessments

- a. **Violent extremism–related risk assessment.** The Addendum should recognize that violent extremism–related risk assessment is a relatively nascent field that requires further evaluation and learning and must be treated cautiously. There is no single violent extremist profile nor is there a single indicator or set mix of indicators that proves an individual is radicalizing or radicalized to violent extremism.
- b. **Disengagement and protective factors.** Assessment frameworks should not just capture violent extremism–related risks but also account for protective and resilience factors, as well as indicators of desistance and disengagement.
- c. **Risk of arbitrary categorization.** Risk assessments should ensure that they do not hazard arbitrary categorization or discrimination on the basis or absence of perceived ideological and religious beliefs and motivations. Not all individuals suspected or convicted of terrorism-related offenses are committed to bringing about political or social change or to fighting for a religious cause.⁶ Similarly, not all individuals that hold anti-government sentiments have violent extremist views.

5. Digital evidence

- a. **Interception of communications.** The Addendum could recall General Assembly Resolution 68/167, which expressed deep concern about the negative impact that surveillance and interception of communication may have on human rights. The General Assembly affirmed that the rights held by people offline must also be protected online, and it called on member states to respect and protect the right to privacy in digital communication.
- b. **Individual privacy rights.** The Addendum should reinforce the notion that international human rights law provides the universal framework against which any interference in individual privacy rights must be assessed. The International Covenant on Civil and Political Rights, to date ratified by 167 member states, provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, nor to unlawful attacks on his or her honor and reputation.

6 UNODC, “Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons,” *Criminal Justice Handbook Series*, October 2016, p. 38, https://www.unodc.org/pdf/criminal_justice/Handbook_on_VEPs.pdf (hereinafter UNODC handbook).

6. Battlefield evidence

- a. **Military collection.** The Addendum must reiterate that a scenario in which the military is facilitating the collection of information and evidence should be considered to constitute an exceptional situation.⁷
- b. **Law enforcement officials and prosecutors.** To facilitate the appropriate use of evidence collected on the battlefield in investigating and prosecuting terrorism cases, law enforcement officials and prosecutors will need to do everything in their power to establish working relationships with the criminal justice authorities of the state in which the evidence is collected to enable effective mutual legal assistance.⁸

7. Prosecution, rehabilitation, and reintegration (PRR)

- a. **Statelessness.** States should refrain from resorting to deprivation of citizenship as a generally applied policy to prevent and counter terrorism, including for FF-related offenses, and ensure that if stripping of citizenship is used, it is in the most exceptional circumstances, is not applied arbitrarily, and does not lead to statelessness and that any subsequent measures that lead to restrictions on rights, such as denial of entry or deportation, are strictly justified as necessary and proportionate.⁹ The general recognition of the need to avoid statelessness is also set out in General Assembly Resolution 50/152, which calls on states to adopt nationality laws with a view to reducing statelessness.
- b. **PRR strategies.** A balance must be sought between repressive and rehabilitative measures. Developing legal leniency tools may assist in prioritizing prosecutions; addressing prison conditions, including overcrowding; and ensuring risks- and needs-based approaches. Where amnesty provisions are created, strict conditions for receiving and retaining amnesty must be clearly articulated and implemented, and rehabilitation and reintegration needs should be carefully considered.
- c. **Characteristics of FFs.** Security Council Resolution 2396 recognizes the diversity of returning and relocating FFs in terms of age, gender, familial ties, and experiences in conflict zones, including as victims. The Addendum should consider the impact of this diversity throughout its guidelines and include specific guidance for each group to adequately address their needs.

7 Global Counterterrorism Forum, “Abuja Recommendations on the Collection, Use and Sharing of Evidence for Purposes of Criminal Prosecution of Terrorist Suspects,” n.d., https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/C/GCTF-Abuja-Recommendations_ENG.pdf?ver=2018-09-21-122246-523.

8 Ibid.

9 OSCE, *Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” Within a Human Rights Framework*, 2018, p. 46, <https://www.osce.org/odihr/393503?download=true>.

- d. **Gender considerations.** Strategies should take into account evidence-based research on the drivers of violent extremist radicalization for women, men, girls, and boys. A gender perspective also involves considering if and how men and women follow different pathways to engaging with violent extremism and supporting and joining violent extremist groups and understanding how gendered narratives and dynamics inform recruitment and mobilization efforts, as well as how this affects the development and delivery of PRR strategies and programs.
- e. **Tailoring rehabilitation and reintegration efforts.** Taking into consideration the above-mentioned individual characteristics of FFs, rehabilitation and reintegration efforts must be evidence based, dynamic in nature, and account for individual risks, needs, and responsiveness.
- f. **The rights of the child.** The rights of children are clearly defined in international law. Underlying these principles is the premise that, as an offender class, children have not reached higher levels of mental, physical, or social maturity and have a greater capacity for change. The Addendum must uphold the principle that noncustodial measures are favored for children. Important considerations should also be made to prevent criminalizing children for association to their parents.
- g. **Family separation.** The Addendum should reinforce that a family has the right not to be separated from one another unless identified as being in the best interest of the child. As stated in the Convention on the Rights of the Child, “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures that such separation is necessary for the best interests of the child.”¹⁰

8. Management, rehabilitation, and reintegration of terrorism offenders

- a. **Humane treatment.** A fundamental principle of international law is that the treatment of all prisoners should be humane and respect the inherent dignity of every human.¹¹

10 UN General Assembly, “Convention on the Rights of the Child,” 20 November 1989, 1577 U.N.T.S. 3, art. 9(1). The convention further specifies that “all interested parties shall be given an opportunity to participate in the proceedings and make their views known” and notes the importance of maintaining personal relations and direct contact with parents and of information being provided to parents, the child or, if appropriate, another member of the family. *Ibid.*, arts. 9(2)–(4).

11 International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, 999 U.N.T.S. 14668, art. 10; UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)*, A/RES/70/175, 8 January 2016, rule 1 (hereinafter Nelson Mandela Rules); UN General Assembly, *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*, A/RES/43/173, 9 December 1988, principles 1 and 6; Council of Europe, “European Prison Rules,” June 2006, rules 1 and 72.1, <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

The prohibition on torture and inhuman and degrading treatment extends to all individuals, including terrorism offenders.¹²

- b. Prison-based rehabilitation and reintegration.** Although there are some concerns about the potential for prisons to be places for radicalization and recruitment to violent extremism, prisons can be appropriate environments for rehabilitation and reintegration efforts, in line with relevant international law and principles such as the *United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)*. The Addendum should emphasize that investing in good prison infrastructure, services, and practices with a focus on developing positive relationships between prison staff and prisoners and the final objective of rehabilitation will have benefits to the general prison population and terrorism offenders, avoid singling out or stigmatizing this latter group, and ensure that investments benefit all.
- c. Indoctrination.** The Addendum should carefully consider that so-called deradicalization programs may (be perceived to) constitute an attempt at correcting “wrong” religious or ideological beliefs and brainwashing in the interests of the state, especially when they are carried out in a confined setting as part of a prisoner’s sentence.¹³
- d. Prisons staff training.** Rule 75 of the Nelson Mandela Rules states that all prison staff must be provided with training tailored to their general and specific duties. Continuing training must also be provided with a view to maintaining and improving the knowledge and professional capacity of the prison personnel. At a minimum, training for all prison staff should consist of guidance on (1) relevant laws, regulations, and policies; (2) the rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners; (3) security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders; and (4) first aid, the psychosocial needs of prisoners, and the corresponding dynamics in prison settings. The Addendum should emphasize the importance of such training for prison officers with an eye to their role in identifying and preventing violent extremist radicalization and recruitment and managing terrorist offenders in prisons.
- e. Mental health service provision.** Increased capacities in the delivery of psychosocial health care in prison settings should be realized and, where appropriate, tailored to the specific risks and needs of terrorism offenders. Rule 22(1) of the Nelson Mandela Rules states that “at every institution there shall be available the services of at least one

12 UN General Assembly, “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” A/RES/39/46, 10 December 1984, arts. 2 and 16; ICCPR, art. 7; UN General Assembly, A/RES/217(III), 10 December 1948, art. 5 (Universal Declaration of Human Rights); Nelson Mandela Rules, rule 1.

13 International Committee of the Red Cross, “Radicalization in Detention—The ICRC’s Perspective,” 10 June 2016, https://www.icrc.org/en/download/file/27662/radicalization_in_detention_-_the_icrcs_perspective.pdf.

qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.” Rule 62 further adds that “[t]he medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner’s rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.”

- f. **Restrictions on access to families, education, and vocational programs.** Contact with the outside world must be considered an entitlement rather than a privilege as part of detainees’ right to family life and privacy. Therefore, visitations should not be used as rewards or punishments. Deprivation of family visits as a disciplinary sanction is generally not acceptable, and neither is the coercive practice of restricting visitations as a tool to put pressure on high-risk detainees to dissociate themselves from violent extremist organizations. Similar considerations must be made in relation to access to basic education and appropriate vocational training programs. Some temporary limitations to the right to private and family life may apply, for instance where there is proof of previous attempts to smuggle goods during a visit.¹⁴

9. Local actors

- a. **Engaging municipal and local actors.** Municipalities and local governmental and nongovernmental practitioners play a critical role in P/CVE policies and programs in general and in FF rehabilitation and reintegration efforts in particular. As SDG 11 clearly outlines, cities are hubs for ideas, commerce, culture, science, productivity, and social development and can further people’s social and economic advancement. The Addendum should reflect their critical importance.
- b. **Avoiding instrumentalization of local actors.** P/CVE interventions and rehabilitation and reintegration programs for returning and relocating FFs may result in some cases in pressure or even obligations on local professionals, including educators, counselors, social workers, and others, to act essentially as agents for law enforcement, with a requirement to notify them regarding individuals that may be radicalizing or radicalized to violent extremism. The Addendum should emphasize the importance of respecting the professional obligations and autonomy of local actors, ensuring that they are constructively engaged in delivering individualized responses to possible cases of radicalization to violent extremism.

For more information about this document, please contact info@globalcenter.org.

14 UNODC handbook, pp. 135–137.