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Returning Foreign Fighters: Criminalize or Reintegrate?

What is the best approach to dealing with the dozens or hundreds of citizens returning home after having travelled to Iraq and Syria, primarily to join terrorist entities such as ISIS, the Nusra Front and affiliates of Al-Qaida? Since the start of the civil conflict in Syria in 2011, this question has become a daunting one for many policy-makers and practitioners alike, across more than 100 UN Member States affected by the flows of the so-called 'foreign fighters' (henceforth FF-s), including Albania. According to David Mallet, FF-s can be defined as "non-citizens of conflict states who join insurgencies during civil conflicts"¹. Given the possibility that some of those who return from the conflict might engage in violent extremism or act as catalyst for terrorism in their home countries in the long run, affected states have primarily adopted restrictive and repressive approaches to both aspiring and returning FF-s. For instance, nationals of the Western Balkan countries found guilty of the aforementioned crimes may be imprisoned in their home countries for up to 15 years². However, repressive measures have their limits and do not suffice in countering alone a complex issue with roots in the various socio-economic, cultural and political contexts of each country. Moreover, 'quick' or excessive punitive-driven measures fail to address the outcomes of a long process of persistent manipulation, and may even result counterproductive given their potential to reinforce a sense of victimisation, injustice and alienation felt by segments of the community, and exploited in turn by FF recruiters. Besides, the commitment of democratic states to ensure the respect of fundamental rights and freedoms, including freedom of expression and association, religious and cultural diversity, as well as the right to a fair trial as enshrined in international and national legal instruments is under test in cases of allegations of preparation, attempt or commission of the offence of foreign fighting, given the difficulties in collecting evidence from the conflict zones, which make prosecution of returning FF-s a challenging task. Accordingly, this paper argues that a combination of repressive measures with disengagement and reintegration programs is the most promising approach to dealing with both aspiring and returning FF-s, in an adequate and efficient manner. Good practices from Western European countries support such claim and may serve as good examples for other countries affected by the Foreign Fighters' phenomenon. Despite the wide geographic scope of the phenomenon, its dynamics, and the various approaches and practices adopted at a regional and international level, this policy paper focuses specifically on Albania.

Albania's approach to the FF-s phenomenon

In September 2014, the UN Security Council adopted the Resolution 2178 (2014) which condemned violent extremism, and called upon Member States to prevent "*recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning of, or participation in terrorist acts*"³. By that time, Albania had already passed its Criminal Code amendments stipulating imprisonment up to ten years for foreign fighters, and as much as fifteen years in prison for their recruiters and organizers⁴. In essence, the need for these statutes is justified by two main concerns. First, it is feared that, the arrival and presence of the FF-s in a conflict zone will worsen the sectarian nature of the conflict, its barbarity and will also prolong its duration. However, the issue of FF-s becomes particularly troublesome given the fear of them engaging in violent acts or encouraging VE in their countries of origin upon return⁵. Thus, the second, but more pressing fear is grounded on the assumptions that these individuals have been trained and hardened in war, have acquired combat skills, have developed a higher tolerance for violence, and have established terrorist networks. This is why returning FF-s have been labelled by the former German Minister of Interior, Hans-Peter Friedrich, as "ticking time bombs"⁶.

While exact numbers are not available, various reports estimate that between 107 and 148 Albanian citizens have travelled to Syria and Iraq since 2012, predominantly fighting alongside the Islamic State, and to a lesser extent, the Nusra Front⁷. The majority of them are believed to have been set on the path to radicalisation by extremist propaganda of radical recruiters parading themselves as “charitable NGOs” that were established throughout the country in the 90’s. Foundations such as the International Islamic Relief Agency, Taibah International, Al-Haramain Foundation, and so forth were in fact quite active in both conducting charitable activities and supporting terrorist organizations, including the Egyptian Islamic Jihad, GIA and Al-Qaeda⁸. Poor families and communities where these organizations were present were asked to embrace their radical viewpoints in exchange of economic aid.

A firm crackdown on these NGOs brought their closure in 2001-2005, but solved the problem only partially. The risks of religious radicalisation continued to persist up to this day owing to the functioning of a number of mosques and community centers operating outside the jurisdiction of the Albanian Muslim Community and state authorities, as well as exposure to online Jihadi propaganda. By the end of 2015, the numbers of such mosques run by self-declared imams, often professing a radical form of Islam ranged between 89 and 200⁹. Overall, the radicalisation process, especially of the youth, has very likely been influenced by a cocktail of drivers related to varied socio-economic, cultural, political and institutional backgrounds. Such drivers include but are not limited to: real or perceived societal discrimination and exclusion, deprivation, group dynamics and a sense of adventure, perceptions of an international system hostile to Islam, perceptions of broader cultural threats, endemic corruption and impunity for elites, human rights violations by public authorities, denial of political and civil rights, as well as country-specific potential shortcomings such as turning a blind eye towards the building of religious institutions without state approval and outside of the clerical leadership, as well as lack of adequate preparedness and influence of local clerics¹⁰.

Having failed to address these issues for a long time, Albanian authorities grew worried by the growing numbers of FF-s leaving the country for Syria beginning in 2012. Such concerns were voiced by the National Security Strategy adopted in June 2014, whereby the government recognized the threats posed to the country’s religious harmony and social stability by the growth of religious radicalisation and violent extremism¹¹. Hence, while 20 Albanian men were reported to have reached Syria and Iraq in 2012, the numbers quadrupled just a year later, amounting to 83 men, women and children in 2013. Seeking to put an abrupt stop to the influx of foreign fighters headed to the battlefield, Albania added, in July 2014, three provisions to the Criminal Code. These provisions criminalized the participation in military acts and groups in a foreign country, the receiving of the training provided by such groups, as well as the financing, organisation and facilitation of such acts. The deterring effect of the bill became apparent in view of media reports putting the number of FF-s leaving Albania at 4 in 2014, and only 1 a year later. Before these criminal provisions entered into force, 42 Albanian citizens returned home from the conflict areas, thus, avoiding the possibility of being charged under the soon-to-be adopted offences. Albanian officials have claimed that no citizens have travelled from Albania to Syria to join the conflict following the introduction of these measures¹². Given the clandestine nature of the phenomenon, including the illegal crossing of borders along transit countries, such claims are, however, disputable.

Having already recognized the phenomenon of radicalisation and violent extremism, including foreign fighting as a form of violent extremism, as its top priority issue, the government adopted in November 2015 a new strategic document focused specifically on the fight against violent extremism¹³. This instrument provides for a set of ten “soft” measures aimed at preventing the spread of radicalisation and VE. With a focus on empowering and engaging communities against radicalisation, countering VE narratives and drafting comprehensive long-term policies, the document seeks to prevent the problem from occurring or intervene as early as the first ‘symptoms’ occur. However, no course of action is provided for cases of already radicalised individuals or those who might have joined VE groups in the past but have later defected. In this situation, the only response that the latter might face is that coming from criminal justice actors. At present, according to intelligence sources, fifteen returned FF-s are considered to be a serious threat to the national security due to their high

level of radicalisation. The rest are not regarded as threat, however, they are kept under observation¹⁴. No FF-s have been officially reported to have returned after the enactment of the 2014 criminal provisions. Nonetheless, bearing in mind the difficulty of collecting evidence due to the lack of cooperation between the Albanian and Syrian authorities due to the period of civil unrest, the clandestine nature of the phenomenon as well as the possibility of return of other FF-s in the future, the paper's scope should not be considered limited on the authorities approach to the already returned FF-s only. The analysis and recommendations provided hereafter are applicable and sustainable irrespective of the time of return of the FF-s.

A critique of the current approach

While genuine, the potential threat posed by returning FF-s should not be overly exaggerated¹⁵. This is not to say that the enacted provisions were unnecessary; on the contrary, they showed to have a deterring effect on the number of Albanian citizens planning to join the conflict in Syria. The manners by which these provisions may be applied in practice require scrutiny to evaluate their adherence to human rights and values. None of the above mentioned fears and assumptions must be allowed to create a self-fulfilling prophecy by considering and treating all returning FF-s as one and the same.

This is particularly important for the Albanian context, due to a weak judicial system easily swayed by mass media reporting and labelling. Such may have been the case of the sentencing in May 2016 by the Tirana Serious Crimes Court with 126 years of imprisonment of nine Albanian citizens, including two self-declared imams, for facilitating and financing the recruitment of foreign fighters¹⁶. The distinctly harsh punishment of 14 years in prison on average for each of the defendants may point to the lack of experience by the judiciary in dealing with terrorism-related offences, particularly under excessive media coverage.

Statistical analyses related to FF-s and the conflict in Syria suggest that only one in 200-300 FF-s has posed a threat upon return from Syria¹⁷. Such findings point to the need to carry out assessments on a case-by-case basis and treat each returnee as a unique individual. Up to the present (October 2016), no such assessments are carried out in Albania by competent authorities. Besides, it should be born in mind that the most-ideologically driven FF-s are more prone to remain fighting in the battlefield, rather than return home¹⁸. Also, some of the returnees may have been affected by post-traumatic stress disorder or were disillusioned by the level of brutality, inter-group hostilities and the contrast between their initial expectations or beliefs and real dynamics¹⁹. As EU Counter-Terrorism Coordinator, Gilles de Kerchove adds, "some others may feel that they have fulfilled their mission as Muslims in supporting the Arab Spring and may simply need to be reintegrated into society"²⁰. After the adoption of the FF-s related criminal provisions, the last two categories of FF-s will be discouraged to return out of fear of prosecution. Given the likelihood that disaffected FF-s may reflect and speak openly about the brutal acts committed by people they supported, it can be argued that their imprisonment or non-return may be considered a missed opportunity for preventive programs. They could be among the most reliable and influential voices for individuals at risk of radicalisation or recruitment by violent extremism groups. Simultaneously, they could be invaluable to authorities owing to the information they may possess about the responsibilities of FF-s with recruiting roles, etc. Again, no strategies or programs aimed at prevention, disengagement, rehabilitation or reintegration of the FF-s exist in the country²¹. Therefore, the chances of cooperation between the authorities and FF-s and their family members are significantly low, if not inexistent in the face of self-incrimination or of relatives.

Another major weakness of these repressive policies is that they are often challenged by difficulties in collecting evidence. It may happen that returning FF-s come into contact with the Albanian criminal justice system, but it will be hard to secure sufficient evidence through channels of judicial cooperation with the Syrian government. Consequently, the charges will either be dropped or replaced by older terrorist-related ones.

A better approach: criminalization and rehabilitation

Whatever threat FF-s might pose upon their return, it should be assessed on a case-by-case basis. Authorities must assess their motives for joining the conflict, roles, responsibilities and level of risk they may present. By all means they should face justice, should there be evidence that they have engaged in violent extremism or have joined terrorist groups. However, regardless of the seriousness of the allegations against them, they should still be guaranteed their fundamental rights, including the right to a fair trial, the right to not be subject to torture and inhumane or degrading treatment, the principle of equality under the law and other democratic values as enshrined in our Constitution, the International Conventions ratified by Albania and the laws into force. Recognising that repressive measures may produce desired effects in the short-term, by the same token, Albanian policy-makers and practitioners should bear in mind that rehabilitative programs are promising in the long run. By rehabilitation programs we mean *“any purposeful, planned intervention, which aims to change characteristics of the offender (attitudes, cognitive skills and processes, personality or mental health, and social, educational or vocational skills) that are believed to be the cause of the individual’s criminal behaviour, with the intention to reduce the chance that the individual will re-offend”*²². Overall, rehabilitation programs serve two purposes: a) change beliefs and attitudes of the offender (often referred to as de-radicalisation) and, b) cease engagement in violent activities (otherwise called as ‘disengagement’). There is no need to invent the wheel, as they can explore and benefit from the best practices of countries like Denmark, Germany, Sweden, France, the UK and the Netherlands. By recognizing that the problem will not be solved merely by use of repressive measures, such practices aim at prevention, signalling and providing programs to foreign fighters (potential and former) to abandon the path of violent extremism. In order to accomplish this, exit programmes engaging families, line practitioners such as teachers, youth workers, community and religious leaders, as well as mentoring schemes have been in place at community level in the above mentioned countries for several years now.

Ideally, rehabilitation programs include and engage various actors at different stages, particularly at local level. Important stakeholders are considered to be central and local governmental agencies, independent bodies, civil society organisations and informal actors like religious leaders, families, former FF-s, etc.

In conclusion, in order to boost its efforts to counter radicalisation and violent extremism, Albania needs to enact the following:

- Design and put in place concrete exit and reintegration programmes, which should be available both within and outside of the criminal justice context, and easily accessible in local communities;
- Exit and rehabilitation programmes tailored to individual and group needs should be adequately funded by the state, as well as by both domestic and foreign organizations;
- Promote collaboration among families, community members, religious leaders, municipal employees and line practitioners for preventing, signalling, mentoring and reintegrating potential or former foreign fighters;
- Combine police work with community engagement, as well as involve in the agenda a multitude of actors (religious institutions and representatives, schools, local government departments, social and psychological services, enterprises and informal active groups);
- Provide adequate information and training for line practitioners tasked with the provision of social, economic, health, education and psychological services;
- Police officers, prosecutors, judges, prison and probation officers must be trained in a way that supports the opportunity of rehabilitation of the FF-s and their inclusion into society. After all, they, as part of a democratic society should not *“give terrorism the victory of restricting our freedoms of expression, freedoms of movement, and rights to a fair trial held in public... terrorism will not be defeated by security measures alone, its appeal must be understood and reduced by targeted measures that make other options more attractive”*²³.

List of References

1. Malet, D. (2013). *Foreign fighters*. Oxford: Oxford University Press, p.9
2. Library of Congress, *Treatment of Foreign Fighters in Selected Jurisdictions: Country Surveys*, Accessed online on 29.08.2016, at: <https://www.loc.gov/law/help/foreign-fighters/country-surveys.php#Kosovo>
3. United Nations, *Security Council Unanimously Adopts Resolution Condemning Violent Extremism, Underscoring Need to Prevent Travel, Support for Foreign Terrorist Fighters*, September 2014, Available online at: <http://www.un.org/press/en/2014/sc11580.doc.htm>
4. Law No. 98/2014, dated 31.07.2014, amending the Law No. 7895, dated 27.01.1995, "Criminal Code of the Republic of Albania" (as amended). Source: http://www.parlament.al/web/pub/ligj_nr_98_dt_31_7_2014_18584_1.pdf
5. Center for Security Studies (2014), *Foreign Fighters: An Overview of Responses in Eleven Countries*, ETH Zurich, p. 4, Available online at: http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/Foreign_Fighters_2014.pdf
6. Busse, N (2013) *Diese Leute sind tickende Zeitbomben in Europa*, Frankfurter Allgemeine Zeitung, [online] Available at: <http://www.faz.net/aktuell/politik/inland/im-gespraech-hans-peter-friedrich-csu-diese-leute-sind-tickende-zeitbomben-in-europa-12213789.html>
7. Bogdani, A (2016). *Albania Faces 'Jihadi Fighters in the Shadows' Threat: Balkan Insight*. [online] Available at: <http://www.balkaninsight.com/en/article/albania-faces-jihadi-fighters-in-the-shadows-threat-03-21-2016> [Accessed 04 Jun. 2016]; Shtuni, A (2015). *Ethnic Albanian Foreign Fighters in Iraq and Syria*, *Combating Terrorism Center – West Point*, 8(4), p.11.
8. Zoto, E., & Naval Postgraduate School (U.S.). (2013) 'Failure and Success of jihadi Information Operations on the Internet' Monterey, California: Naval Postgraduate School. Available online at: http://calhoun.nps.edu/bitstream/handle/10945/39042/13Dec_Zoto_Edval.pdf?sequence=1
9. Spahiu, E (2016). *Jihadist Threat Persists in Kosovo and Albania Despite Government Efforts*. *Terrorism Monitor*, The JamesTown Foundation, p.9 Available online at: <https://jamestown.org/program/jihadist-threat-persists-in-kosovo-and-albania-despite-government-efforts/>
10. Vurmo, Gj. and Lamallari, B. (2015) *Religious Radicalism and Violent Extremism in Albania*, Tirana: Institute for Democracy and Mediation. Available online at <http://idmalbania.org/wp-content/uploads/2015/07/Religious-Radicalism-Albania-web-final.pdf>
11. Council of Ministers of Albania, *National Security Strategy*, June 2014, Available online at: http://www.mod.gov.al/images/PDF/strategjia_sigurise_kombetare_republikes_se_shqiperise.pdf
12. Koha Jonë (2015), *Ekstremizmi fetar, Tahiri me Ambasadorin e SHBA: Aksion i përbashkët për ta luftuar*, Available online at: <http://www.kohajone.com/2015/05/27/ekstremizmi-fetar-tahiri-me-ambasadorin-e-shba-aksioni-i-perbashket-per-ta-luftuar/>
13. Council of Ministers of Albania, *National Strategy on the Fight Against Violent Extremism, and its supplementing Action Plan*, Decision Nr. 930, date 18.11.2015. Available online at: http://www.mod.gov.al/images/PDF/strategjia_sigurise_kombetare_republikes_se_shqiperise.pdf
14. Bogdani, A (2016). *Shqipëria përballet me rrezikun e "luftëtarëve xhihadistë në hije": BIRN*. [online] Available at: <http://www.reporter.al/shqiperia-perballet-me-rrezikun-e-luftetareve-xhihadiste-ne-hije/> [Accessed 04 Jun. 2016].
15. Lister, Ch (2015), *Returning Foreign Fighters: Criminalization or Rehabilitation*, Washington, D.C. Brookings Institution, p.2.
16. Shqip, (2016) *'Xhihadistët', jepet vendimi për 9 të arrestuarit; 126 vite burg në total*, Available online at: <http://www.gazeta-shqip.com/lajme/2016/05/03/xhihadistet-jepet-vendimi-per-9-te-arrestuarit-126-vite-burg-ne-total/>
17. Lister, Ch (2015), *Returning Foreign Fighters: Criminalization or Rehabilitation*, Washington, D.C. Brookings Institution.
18. Lister, Ch (2015), *Returning Foreign Fighters: Criminalization or Rehabilitation*, Washington, D.C. Brookings Institution, quoting Richard Barret, p.3
19. Briggs R, Silverman T (2014) *Western Foreign Fighters: Innovations in Responding to the Threat*, Institute for Strategic Dialogue, Available online at: http://www.strategicdialogue.org/wp-content/uploads/2016/02/ISDJ2784_Western_foreign_fighters_V7_WEB.pdf, pp. 37-39.
20. The Washington Institute (2015), *Rehabilitation and Reintegration of Returning Foreign Terrorist Fighters*, [online] Available at: <http://www.washingtoninstitute.org/policy-analysis/view/rehabilitation-and-reintegration-of-returning-foreign-terrorist-fighters>, [Accessed 05 Jun. 2016]
21. Bogdani, A (2016). *Shqipëria përballet me rrezikun e "luftëtarëve xhihadistë në hije": BIRN*. [online] Available at: <http://www.reporter.al/shqiperia-perballet-me-rrezikun-e-luftetareve-xhihadiste-ne-hije/> [Accessed 04 Jun. 2016].
22. Entenmann, E., van der Heide, L., Weggemans, D. and Dorsey, J. (2016). *Rehabilitation for Foreign Fighters? Relevance, Challenges and Opportunities for the Criminal Justice Sector*. ICCT Policy Briefs.
23. Lister, Ch (2015), *Returning Foreign Fighters: Criminalization or Rehabilitation*, Washington, D.C. Brookings Institution, quoting Richard Barret, p.7.

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