



Global Recommendations on the Use of Rule of Law-Based Administrative Measures in a Counterterrorism Context

Introduction

States continue to grapple with the evolving challenges and threats of terrorism. The travel of foreign terrorist fighters (FTFs) to conflict zones, their return to their countries of origin or nationality, or their travel or relocation to a third country - sometimes accompanied by family members, and the (further) radicalization of incarcerated individuals to violence in prisons and upon release, can pose a significant threat to society. The UN Security Council has adopted a number of Resolutions (UNSCR) under Chapter VII requiring States to take certain actions in the interest of international peace and security, including UNSCRs 1267, 1373, 1566, 1904, 2178, 2199, 2253, and 2396. States have also implemented a range of measures in line with other (non-binding) international and regional documents, including several GCTF documents. These include criminal law measures, preventive policies, rehabilitation and reintegration measures, and administrative measures. Although the use of administrative measures is not new, States are increasingly adopting legislation that allows for their use in a counterterrorism context.

There is no generally-accepted definition of an administrative measure. Within the context of this document, administrative measures refer to coercive measures that may lawfully restrict, in accordance with the rule of law and applicable domestic law, the exercise of certain human rights, irrespective of laying criminal charges, against a person or entity who is determined to pose a risk to national security. There are several broad categories of administrative measures. Depending on applicable law, these include, but are not limited to, measures that may affect the exercise of the right to liberty of movement, measures on the involuntary deprivation of nationality, measures that may affect the exercise of the right to liberty and security of person, measures that may affect the exercise of the right to expression, peaceful assembly or association, and measures freezing funds, financial assets or economic resources.

To minimize any potential negative side effects of specific counterterrorism measures, administrative measures must be implemented in full compliance with international human rights law, which articulates the narrow circumstances in which limits on the exercise of human rights are permissible. It is important to distinguish between different measures and their respective impacts on human rights. States should be cognizant that in the case-by-case implementation of administrative measures, they may directly or indirectly impact other rights. States should ascertain that they do not limit non-derogable human rights. This analysis is an essential part of the assessment as to whether the measure is permitted under international human rights law.

The GCTF Criminal Justice and Rule of Law Working Group (GCTF CJ-ROL Working Group) has developed Recommendations for the use of administrative measures that fully respect human rights and the rule of law. The Recommendations were identified and discussed during two expert meetings in The Hague, The

Netherlands, and Valletta, Malta, and during a review meeting held in Glion-sur-Montreux, Switzerland, and are based on extensive research, and structured interviews with GCTF members and subject-matter experts.

The Recommendations offer guidance to policy makers, law enforcement officials, and other relevant stakeholders for the design, implementation, and monitoring of administrative measures in accordance with applicable domestic law and in full respect of applicable international law. States should bear in mind that human rights and national security should not be mutually exclusive but mutually reinforcing. Efforts to design and implement administrative measures while fully respecting human rights and the rule of law should be supported through the provision of funding for capacity-building in this area. Only when administrative measures are applied in a human rights-compliant manner, can they be a legitimate tool to deal with risks to national security resulting from a terrorist threat. Furthermore, States should always be guided by the principle that restrictions on the rights of an individual should not impair the essence of the rights.

The Recommendations take as reference points:

- Good Practice 11 of the GCTF *The Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon*;
- Good Practice 7 of the *Addendum to GCTF The Hague-Marrakesh Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon with a focus on Returning FTFs*;
- Good Practice 16 of the GCTF *Rabat-Washington Good Practices on the Prevention, Detection, Intervention and Response to Homegrown Terrorism* and;
- *Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context*.

The Recommendations do not address the use of administrative measures during a public emergency. In times of public emergency that threatens the life of the nation, and the existence of which has been officially proclaimed, States may derogate from certain human rights to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations of international law. Some human rights are non-derogable and need to be upheld during a public emergency.

Additionally, nothing in these Recommendations should be read to conflict with the already-accepted international framework concerning financial sanctions and related actions, such as designations, assets freezes, and restrictions on economic transactions, including actions required under UNSCRs concerning financial sanctions, such as the ISIL/Daesh and Al-Qaida Sanctions List. The Financial Action Task Force (FATF) has developed extensive recommendations and guidance with respect to implementing effective financial sanctions, including procedural safeguard requirements. States are encouraged to consult the FATF recommendations, methodology, and relevant guidance for implementation of these measures.

Recommendations

I. General principles

1. Respecting the rule of law and international human rights law

Terrorism is a threat to the full enjoyment of human rights, particularly the right to life and the right to liberty and security of person. To be effective in countering this threat, counterterrorism measures should respect the rule of law and human rights. Administrative measures are restrictive in nature but can lawfully restrict the exercise of certain human rights provided that the narrow circumstances articulated in the ICCPR are respected. These human rights include the rights to liberty, freedom of movement, freedom of expression, freedom of association, and the right to peaceful assembly. Administrative measures may also interfere with privacy, as long as such measures are neither unlawful nor arbitrary. Some of these measures can also indirectly or directly affect the exercise of other rights, including those involving the ability to work or vote, and the access to health care and education. Limitations on absolute rights – such as the prohibition of torture and other cruel, inhuman, or degrading treatment – are not permissible under any circumstances. Arbitrary detention is also prohibited.

Limitations on derogable rights, such as those referred to above, are only permitted if they strictly meet the requirements of applicable international human rights law, in particular the relevant provisions of the ICCPR. States should therefore consider using administrative measures cautiously in the pursuit of national security. States should furthermore make a thorough assessment of all applicable safeguards, both during the design phase of the administrative measures and during the case-by-case implementation of a measure against an individual or entity. In the situation that administrative measures concern children, States should consider the best interests of the child in accordance with their international legal obligations. States should ensure that the more severe the impact of the administrative measure is, stricter safeguards are applied.

2. Observing the non-discrimination principle

In line with the objective of effective counterterrorism policies, and with the ambition to avoid policies that could potentially contribute to conditions conducive to the spread of violent extremism and terrorism, such as persistent discrimination, stigmatization and marginalization, administrative measures should be applied in full respect of the principle of non-discrimination. The legitimate aim of combating terrorism should not be used as a pretext for suppressing opinions, attitudes, or convictions. Having, holding, or peacefully expressing radical views should not be sufficient grounds for imposing administrative measures, unless they are inciting to commit imminent terrorist acts or are associated with violence or criminal activity that pose a threat to national security.

The principle of non-discrimination is inherently linked with the principle of equality and is regulated in international and regional human rights instruments but also in specific treaties such as the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).

States should therefore ensure that administrative measures taken in the context of counterterrorism do not discriminate on the grounds of race, color, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status, and have the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise of human rights by all persons. This does not mean that all differences in treatment are discriminatory. Any distinction in treatment should be justified by objective and reasonable factual criteria. The prohibition of discrimination on certain bases is considered non-derogable, meaning that, even in times of emergency, states are not permitted to take measures that are discriminatory solely on the ground of race, color, sex, language, religion, or social origin.

Furthermore, if there is a difference in treatment, the State should ensure that an administrative measure is not discriminatory, and to regularly assess measures and practices for potential direct or indirect discriminatory impact.

3. Describing the scope for implementation of administrative measures

Administrative measures can be imposed against an individual or a legal entity. The purpose of the administrative measures should be clearly defined in domestic law. Administrative measures should not have a punitive purpose but a preventative purpose.

Activities or behaviors of an individual considered to constitute a threat to national security related to terrorism could be such that they do not pass the threshold of a criminal offence and do not constitute a criminal offence. Alternatively, the activities and behavior could indicate that a terrorist offence may be committed but not enough evidence is found to open a criminal investigation. Furthermore, administrative measures that go beyond the conditions upon release sometimes applied by the judge after acquittal or after serving a prison sentence can be implemented if the appropriate authority deems it necessary. Administrative measures used in this context should serve a different purpose than for which the individual is already prosecuted and should not intentionally be used to circumvent the due process protections applicable in criminal law.

II. Interplay between administrative measures and other measures

Sometimes, multiple administrative measures are implemented against an individual, and sometimes by different authorities, for instance at the central, federal, or local level. Administrative measures may be imposed simultaneously, consecutively, or partly overlapping with criminal measures, with social, educational and therapeutic measures, or with rehabilitation and reintegration measures. In these situations, it is important that information between the different authorities involved is shared, that coordination takes place, and that if applicable, an adequate assessment is made on whether all measures can be implemented at the same time, whether they strengthen each other, or maybe contradict and undermine the purpose of the other measures implemented.

4. Interplay with criminal measures

Non-custodial measures within a criminal justice framework may overlap with administrative measures. These measures can be imposed during the pre-trial stage or as part of sentencing or after release. The impact of such measures may be similar, whether imposed as administrative measures or as non-custodial measures, but the authority, the available procedural safeguards, and the legal threshold that triggers the application are different.

Administrative measures can coincide with criminal law measures when they are imposed at the same time and are achieving different legitimate aims. However, in some situations, administrative measures may defeat the purpose of criminal measures or vice versa. This requires coordination and cooperation between administrative bodies or executive authorities and relevant criminal authorities such as probation services, law enforcement and prosecutors. When these measures are overlapping, it is important to determine the purpose of each administrative and criminal measure, and assess whether these measures relate to the same terrorist threat or activity and are aiming to achieve the same legitimate aim, which should be avoided when it is not strictly necessary.

Alternatively – provided that prosecutorial discretion is applicable – the relevant authorities could consider imposing an administrative measure in lieu of prosecution. To reduce recidivism, to prevent (further) violent extremism and radicalization that leads to terrorism, and to promote disengagement and reintegration, it might be appropriate in some circumstances to impose an administrative measure. The decision of the relevant authorities regarding whether administrative and/or criminal law measures should be imposed need to be made on a case-by-case basis, taking the specific circumstances into consideration such as specific personal circumstances, including their level of culpability, the nature of the criminal offense, and the risk the individual poses to society. States should ensure that there is no inappropriate use of administrative measures to circumvent the fair trial guarantees that are provided for in a criminal law proceeding.

5. Interplay with social measures

Administrative measures can also complement social measures, which are aimed at preventing (further) violent extremism and radicalization that leads to terrorism when those measures are not sufficient to tackle a person's existing or emerging violent extremism and the threat he or she poses. Administrative measures should not replace social measures, but be subsidiary and complementary to them. For example, in some jurisdictions a communal employment scheme can go hand in hand with a mandatory duty to report to, or conduct a preventive dialogue with the police and trained psychologists. This combination of social, educational, or therapeutic measures with administrative measures has already proven effective in other areas, such as in preventing domestic violence, and could be used to address terrorism.

6. Interplay with rehabilitation and reintegration measures

Sometimes, administrative measures can be taken in combination with rehabilitation measures. According to Good Practice 19 of the GCTF Hague-Marrakech Memorandum, rehabilitation and reintegration form a vital component to mitigate the potential threat that returning foreign terrorist fighters pose to society. The use of administrative measures – in combination with rehabilitation and reintegration programs – may be more suitable and effective than prosecution for vulnerable individuals such as children returning from a conflict zone or persons with mental health problems. Careful consideration should be given to the potential negative impact that the imposition of restrictive administrative measures may have on the likelihood of success of rehabilitation and reintegration programs.

III. Threat to national security

Administrative measures can be imposed at central, federal, or local levels by different authorities, or in the setting of inter-agency cooperation. Some administrative measures can be imposed, in accordance with domestic law at central level by authorities including but not limited to the Minister in charge, law enforcement officials, judicial authorities, immigration services or at a local level by the mayor or municipal authority. Administrative measures taken in the context of counterterrorism relate to a threat to national security. This section provides guidance on how to assess whether there is a threat to national security within the context of administrative measures.

7. Determining the threat to national security

To be able to determine whether administrative measures could be imposed, the relevant authorities need to assess whether the terrorist-related activity poses a terrorist threat, and thus, a threat to national security. The threat relates to the capabilities and intent of the individual or group to commit a terrorist act and whether the evidence of risk (the accumulation of the probability and the potential consequences) is considered to pass a threshold demanding a response to curb that threat.

In making such an assessment, States could take into account the following factors: the probability that a terrorist act might occur, the imminence of a terrorist act, the potential impact on society, the general threat level, the intent, and capabilities of the individual to carry out a terrorist act, direct connection with a terrorist network and – solely in combination with the previous factors – adherence to violent extremist ideology. The factors should have the following attributes: specificity, objectivity, and be individualized.

In particular, a person poses a specific and current terrorist threat if there is a reasonable suspicion based upon substantiated facts that his or her behavior indicates such a threat, and even more so if the person has the capabilities to act upon it. Any evidence should, individually or in aggregate, have a direct connection to a threat. However, the actual site of a potential crime, the time it occurs, and the possible offence may not be known at the early stage of police intervention. A threat is considered current if it exists when administrative measures are under consideration. Evidence that is too far back in the past

and is no longer relevant to a current security threat ordinarily would not in itself justify a threat. There should be evidence indicating a possible continuing, present or future danger.

In several countries, the decision as to whether someone poses a terrorist threat and a risk to national security is made through a collaborative process or through a coordination mechanism that brings together representatives of relevant government agencies, police, prosecutors' offices, intelligence agencies, local authorities, border control agencies, and financial institutions as appropriate to determine whether there is a threat to national security. The relevant authorities should, while working independently, share relevant information whilst maintaining control over the information.

To make a comprehensive assessment, States could rely on risk assessment tools, use open source information, conduct interviews, or use intelligence.

8. Using risk assessment tools

States are encouraged to develop and use individual risk assessment tools to determine whether an individual poses a risk to national security, without resorting to profiling based on any discriminatory grounds prohibited by international law. Such assessments should be fact-based and carried out by professionals in a systematic manner. These assessments can help determine which administrative measures are potentially effective and appropriate, taking specific concerns and needs into consideration.

The risk assessment tool should contain a clear set of risk indicators. These could include 1) motivational factors, 2) capabilities to carry out a terrorist attack, 3) ties to a terrorist network, 4) level of radicalization to violence, and 5) the level of receptiveness to intervention and/or treatment. The specific risk that is being addressed needs to be clearly identified and incorporated into any assessment tool. States should not overly rely on broadly-defined indicators; they should also ensure adequate protection against inappropriate use of data mining tools and consider privacy rights when using data sets.

9. Exchanging information, including intelligence

To determine whether an individual poses a terrorist threat and/or a risk to national security, States may have to rely on intelligence and exchange information. If States, in accordance with their domestic law, rely on information, including intelligence, either collected by the State's own intelligence services or received from another State, in the assessment to determine whether an administrative measure will be imposed to curb the terrorist threat, States should consider whether this information may be disclosed to the individual. If full disclosure is not possible in the interest of national security or under domestic law, States should seek to, as appropriate, disclose parts of the information, or provide a summary to properly inform the targeted individual or entity of the reasons behind the measure and the purpose the measure serves.

Respecting human rights and fundamental freedoms is of utmost importance to both the sharing of information within a State between different intelligence, law enforcement or other executive authorities,

as well as between different States. States can rely on formal judicial and law enforcement or intelligence cooperation tools for the exchange of information or share information bilaterally on the basis of reciprocity. Given the non-derogable character of the prohibition of torture and cruel, inhuman or degrading treatment or punishment, States should not share or use information that is obtained through torture or inhuman treatment, or that could otherwise contribute to a real risk that such treatment is used against individuals. In case a State has genuine concerns as to how the information will be used in another country, States are recommended to share the information conditional on strict assurances that the information provided will not result in any human rights violations.

IV. Substantive Criteria

In addition to the general recommendations that should be respected when using administrative measures, there are a number of substantive criteria of relevance to the application of administrative measures. Substantive criteria relate to the assessment of the factual situation and whether the measure is permitted under domestic law and applicable international law. These factual circumstances may include the personal and social circumstances of the individual, as well as his or her physical and mental status. Each specific administrative measure – whether imposed on an individual or a specific entity – should be prescribed by law, based on an assessment of the totality of circumstances, including, as appropriate, respecting the criteria of necessity, adequacy and proportionality, and serve a legitimate aim given the factual circumstances of the case.

10. Providing a legal basis to impose administrative measures

According to international human rights law, any lawful limitation on the exercise of applicable rights should be provided for or prescribed by law. The use of administrative measures therefore should be prescribed by law; the authorization and implementation of these measures might be regulated in domestic by-laws, regulations and policies. States should ensure that the law that provides for the use of an administrative measure or endows an executive authority with a mandate to impose an administrative measure, is clear, predictable, and accessible to the public. The criteria of legal certainty and predictability (or foreseeability) should help prevent a State's arbitrary exercise of its powers. To promote legal certainty, in particular the aspect of predictability, all laws should be sufficiently clear to allow a person to foresee, to a degree that is reasonable in the circumstances, how the law will be applied in practice, and the consequences a given action may entail. The affected individual or entity should also have the relevant information to meet the requirements to have the administrative measure lifted or to challenge it. The law should thus contain clear grounds setting out when and what administrative measures can be imposed, and should avoid broad and vague terminology, or ambiguity in its language or the circumstances under which it can be applied. These grounds should serve a clear purpose that is communicated to all persons subject to the law.

States could consider using sunset clauses with respect to the legislation that allows for the use of administrative measures. If sunset clauses are to be properly applied, they should include a review of the

specific legislation by a different authority than the authority that implements administrative measures, such as a legislative committee or another independent body that can assess the effectiveness of the law.

11. Pursuing a legitimate aim

To determine whether the administrative measure is consistent with international human rights law, its purpose should be clearly defined. In addition, a clear rationale on how it will achieve the desired impact should be provided. The purpose of each specific measure should be necessary for the legitimate governmental purpose that warrants its imposition. A clearly defined legitimate aim is also of importance to assess the totality of circumstances warranting the measure, including, where appropriate, respecting the criteria of necessity, adequacy and proportionality of the administrative measure in relation to the effectiveness it aims to achieve. For example, public safety, which can be characterized as protection against danger to the safety of persons, to their physical integrity or serious damage to their property, is among the legitimate aims for which the exercise of certain rights may be restricted, such as peaceful assembly; but, only if the restriction is imposed in conformity with the law and is necessary in the interest of various purposes, including public safety.

12. Assessing the totality of circumstances and respecting, necessity, adequacy and proportionality

The executive authority deciding on the implementation of an administrative measure should assess the totality of circumstances, including, where appropriate, respecting the criteria of necessity, adequacy and proportionality of justifying a particular measure in relation to the legitimate aim of the measure.

Necessity relates to the expected effectiveness of the measure to serve the national security interests or public order interest of the State or community. Both the rights of the individual that might be limited as a result of the implementation of the administrative measure and the interests of the State or community should be considered. The appropriate authority should henceforth justify that the measures taken are necessary to serve the legitimate aim. Authorities should therefore assess the facts available concerning the behavior of the individual and question whether these facts contribute to a serious threat to national security, and subsequently whether the measures taken will effectively curb that threat.

Whereas all administrative measures have an impact on the free enjoyment of human rights, the effect and impact of some administrative measures are more serious than others. Accordingly, States should choose the least restrictive measures possible to serve the legitimate aim given the circumstances. Depending on the jurisdiction, this may be referred to as the principle of adequacy, subsidiarity, or appropriateness and its assessment may be part of the necessity and/or proportionality assessment.

The proportionality of the measure relates to the assessment of the seriousness of the terrorist threat the individual or entity poses, and the purpose of the measure to curb that terrorist threat as compared to the potential direct and indirect impact the measure will have on the individual or entity and third parties involved, and the limitation of the exercise on relevant human rights. In testing the proportionality of a measure, States should consider whether the means used to limit the right are rationally connected to

the objective sought; the right should be impaired as little as possible to achieve the objective; and there should be proportionality between the deleterious effect on the right and the salutary effects of the measure in furthering its objective. In this respect, it will be important that authorities avoid unacceptably broad application of the measure, an application that places an excessive or unreasonable burden on an individual or entity. Authorities therefore must not destroy the essence of the right in question, and henceforth impair the right as little as possible, as well as to avoid being arbitrary or unfair, or making decisions based on irrational considerations.

V. Procedural safeguards

In order to ensure that the use of administrative measures is conducted in compliance with international human rights obligations and within a rule of law framework, appropriate procedural safeguards – also referred to as procedural fairness – should be adopted in accordance with applicable domestic law. Furthermore, in the determination of an individual’s rights and obligations in a suit at law, the individual is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. To guarantee the rule of law and prevent arbitrary procedures, authorities should ensure that there are judicial or other forms of independent oversight or review available for all administrative counterterrorism measures.

Procedural safeguards relate to the process and the authority applying an administrative measure in a specific case and the ability of the individual to challenge the decision or request a review of a decision. This could include issues such as notice within a reasonable time, prior authorization, a right to be heard, the right to challenge the decision, and the right to an effective remedy in case of violation.

In this section, different types of procedural safeguards that could be applied prior, during or after the decision of imposing administrative measures are mentioned. The nature of administrative measures and the practicalities should be taken into consideration to determine which kind of procedural safeguards should be applied consistently with domestic law and applicable international law. The greater the impact of an administrative measure, the more stringent the procedural safeguards should be applied.

13. Providing notification and reasons

When possible under applicable domestic law and when appropriate, States should notify the individual of the decision prior to imposing the administrative measure(s). If, in the interest of national security prior notification is not possible or appropriate, States should provide the notification as soon as this is feasible. The notification should be done in a timely manner, explain the measure(s) taken and include the reasons why the administrative measure(s) has/have been taken. To the extent possible without causing injury to important national interests such as national security, intelligence equities, or to the safety of any person, States should provide the factual grounds which led to imposing the administrative measure(s). Furthermore, the individual should be informed about how the administrative measure(s) can be challenged in a language that the individual understands.

14. Respecting the right to be heard

States should seek to ensure an individual's right to be heard to the extent possible and appropriate. Depending on the type of administrative measure, the individual may be entitled to be heard before the decision is taken. An individual can be heard orally or through written submissions. Furthermore, States should – in accordance with domestic law - allow access to legal counsel.

15. Providing prior authorization

To avoid a broad use of certain administrative measures that have an important impact on an individual, States are encouraged to consider requiring prior authorization on both the formal criteria as well as on the merits of the case for certain particularly burdensome types of administrative measures. The prior authorization could be provided by a judicial court or administrative body. The authorization, when applicable, should be provided by an impartial and independent body or court that is not involved in the decision-making of imposing an administrative measure. The purpose of having a prior authorization is to ensure that application of the administrative measure has been appropriately considered.

16. Ensuring independent review

States should ensure that an individual can challenge the administrative measure or request a review of the decision in a meaningful manner. The review should also consider the facts underpinning the decision that an administrative measure is warranted against the individual. As consistent with domestic law, an individual should be able to challenge the administrative measure itself at the moment that the decision is taken, as well as any changes made to it at a later stage, or the renewal of the administrative measure. States should allow an individual to challenge the administrative measure before a court of law or an administrative body, which should be competent, independent and impartial. All administrative mechanisms should be exhausted before an administrative measure is challenged in a court of law. The individual has a right to seek redress through fair procedures, this should apply to all forms of review. The individual should be entitled to a decision within a reasonable time. States should ensure that the individual can effectively challenge the administrative measure and be given sufficient time to prepare his or her case. States should consider allowing individuals to challenge the administrative measures in person and only restrict this when absolutely necessary. When an individual is unable to challenge the application of the administrative measure, a legal counsel or appropriate representative should be able to challenge it.

17. Ensuring the right to an effective remedy

In accordance with international human rights law, States should ensure that if an individual claims that his or her human rights have been violated, the individual has a right to seek an effective remedy from a competent judicial, administrative or legislative authority. Furthermore, the remedy should be enforceable.

States should, where appropriate and in accordance with their domestic laws and international obligations, provide for redress, which could, depending on the specific case, take the form of financial compensation, satisfaction, restitution, lifting of the measures and/or guarantees of non-repetition.

18. Reviewing and extending administrative measures

Generally, administrative measures are temporary measures imposed upon an individual. Duration of measures should be necessary to achieve the purpose of the measure. However, it should be taken into account that measures imposed on persons who pose a terrorist threat may only begin to have an effect after a certain time, or the person who is subject to such a measure may not change his or her behavior so as to mitigate the identified risk. Some measures restrict an individual attending a specific meeting or impose a travel ban for a certain period of time. The renewal or extension of an administrative measure should take into consideration new facts or information. Considering the temporary nature of most administrative measures, States should refrain from automatically extending administrative measures. States should consider conducting periodic reviews where appropriate, with respect to the totality of circumstances, including, where appropriate, in relation to the assessment of the necessity, adequacy, and proportionality of administrative measures, to ensure that up-to-date and relevant information is still available to justify the implementation of the measures. States should also consider whether the person still poses a terrorist threat and include any new facts, information, or current assessments. The GCTF's New York Memorandum on Good Practices for Interdicting Terrorist Travel outlines specific good practices and recommendations that are relevant in the context of listing.

VI. Enforcement and penalties

To ensure impact and effectiveness of the administrative measures, States need to ensure that the implemented measures can actually be enforced. Furthermore, in the situation that the conditions of the administrative measures are violated by the targeted individual a penalty can be imposed to ensure the proper adherence to the conditions of the administrative measures.

19. Enforcing administrative measures

When imposing administrative measures, States should ensure that these measures can be properly and effectively enforced. Some administrative measures are resource-intensive and costly, whereas other administrative measures require specific knowledge and expertise, such as the proper management of assets that have been frozen.

20. Imposing penalties for violating administrative measures

When an individual violates the conditions of an administrative measure, penalties or punishment should be assessed by using appropriate principles according to domestic law. A person who violates an administrative measure could therefore be punished, following due processes of law. There could be an

administrative consequence, for example with a custodial sentence or with a monetary fine. Any person who facilitates, endorses or assists another person in non-compliance could also be liable to punishment. States should take the severity and nature of the violation into account in determining the appropriate penalty, but also ensure that the penalty does not interfere with any criminal investigation. When imposing a penalty for a violation of the conditions of an administrative measure, procedural safeguards need to be respected. If the person acts negligently, the penalty should be lower than when the act is intentional.

VII. Impact and effectiveness of administrative measures

This section will focus on the assessment of the impact that administrative measures have on the individual or an entity, as well as on third parties. In some circumstances, administrative measures can complement, coincide or interfere with other administrative or criminal measures. This would thus require coordination and cooperation among the relevant authorities to avoid undesired cumulative or punitive effects of administrative measures.

A monitoring and evaluation mechanism should focus on the effectiveness of the framework of administrative measures as established by law, as well as the case-by-case implementation of administrative measures against an individual. The set of criteria that should be in place to monitor and evaluate the effectiveness partly overlaps, when it comes to assessing whether the purpose of the measures is being met.

Monitoring the effectiveness of measures can be defined as the routine process of collecting data and information to track progress towards expected results – clearly defined and sufficiently narrow – of the measure. The expected results of the measure should be linked to the purpose that the measure serves in each individual case.

Evaluation of the effectiveness of the administrative measures is an assessment conducted in a systematic and impartial manner of the overall policy or measures. It analyzes the level of achievement of both expected and unexpected results, the chain of actions, the processes, the contextual factors and causality using appropriate criteria such as relevance, appropriateness, effectiveness, efficiency, impact and sustainability, measuring both short-term and long-term effects. An evaluation, therefore, also offers an opportunity for a more in-depth study of the interplay of circumstances with purpose.

21. Assessing the impact of administrative measures on the individual

When imposing administrative measures, States should be cognizant of both the direct and indirect impact an administrative measure has on the individual, his/her family, the community and society, and the gender-specific implications an administrative measure can have. States should also consider the difference between the short-term and the long-term impact of the measure, and assess whether both serve the purpose of the measure while keeping the substantive safeguards in mind. Furthermore, the impact of the measure might go beyond the intended impact. For example, sometimes an administrative measure might directly impact the right of freedom of movement, the right to a fair and public hearing,

and the right to be free from unlawful or arbitrary interference with privacy and family, but might also have a secondary impact on social benefits that are cancelled as a result of the implementation of the measure and the restriction of the rights mentioned above. Some administrative measures can thus also have an impact on the exercise of economic, social or cultural rights, such as entitlement to social security benefits, ability to work, access to health or education. And, sometimes, an administrative measure may be impermissible if it would violate a state's non-refoulement obligation. The risk of a domino-effect should be avoided, as the accumulated impact could also become counter-productive. The unintended effect of certain measures which violates non-derogable rights can never be allowed.

Sometimes, more than one administrative measure is implemented against an individual or entity at the same time, and sometimes this is even done by different authorities. The cumulative impact of the sum of administrative measures applied can go beyond what is justified given the impact assessment of the totality of the circumstances, including, where appropriate, based on the criteria of necessity, adequacy and proportionality.

Furthermore, the interplay with criminal law measures, with social, educational and therapeutic measures, or with rehabilitation and reintegration measures should also be taken into consideration when determining the impact of administrative measures.

Considering that administrative measures can have a stigmatizing effect, States should carefully consider which national authorities need to be informed of the administrative measure. States should also carefully consider when it would be strictly necessary to inform other States that administrative measures have been imposed on an individual.

Administrative measures may also affect the rights of the child. The approach to assess the impact on the rights of a child is unique since the Convention on the Rights of the Child requires that States Parties to the Convention consider the best interests of the child as a primary consideration. When considering such measures, the welfare and rights of the child should be safeguarded at all times and take priority when weighing up interests. States are also recommended to consider the GCTF Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context, given the guidance it provides to other GCTF memoranda on specific considerations in cases involving children.

22. Strengthening monitoring

States should establish robust mechanisms to monitor the effectiveness of administrative measures and ensure that they are in line with the purpose of curbing the terrorist threat.

Monitoring of the effectiveness of the case-by-case implementation of administrative measures needs to be done by the authorities implementing the measures, as this allows adjustment of the measures where necessary, or cancellation of the measure if it no longer serves its purpose.

Furthermore, it is also important to monitor the interaction of administrative measures with each other, as well as with measures in the criminal law context if applicable.

23. Strengthening evaluation

States should regularly evaluate the effectiveness of the policy framework of administrative measures with regard to the policy purpose they serve, and the compliance with the rule of law and applicable human rights law. This also applies to temporary policy frameworks. This evaluation should also focus on the overall interaction of administrative measures with the comprehensive strategy to counter terrorism. The evaluation of the effectiveness of the policy framework of administrative measures can best be done by an independent actor.

Criteria that could be included to allow for an objective assessment should ideally be formulated in a SMART manner, i.e., it should be specific, measurable, attainable, relevant, and time-bound. Whilst conducting monitoring and evaluation, States should be cognizant of the right to privacy.

24. Establishing parliamentary and other oversight mechanisms

Considering the fact that administrative measures are complementary to a broad range of policies available to States to curb the threat of terrorism and radicalization to violence, States are advised to conduct a meaningful review of the usefulness of administrative measures and their added value to the holistic approach. In addition to the review described above, States should consider establishing parliamentary oversight in accordance with national laws that will review all counterterrorism and national security powers, laws, and policies including the use of administrative measures. In establishing such a parliamentary oversight, States are encouraged to take into consideration the independence of an oversight body, the appointment of its members and the need for sufficient resources. Furthermore, the oversight body should have enough inquiry powers to conduct a proper assessment of the effectiveness of the measures and compliance with national laws and international obligations.

States could also consider establishing other forms of robust oversight to review the effectiveness and usefulness of administrative measures. In some jurisdictions, national human rights institutions can also play an important role in carrying out human rights assessments of draft counterterrorism laws and policies and could, in addition to providing advice, also have oversight functions. Other forms of oversight include specialized committees, independent mandate holders, an ombudsperson or oversight bodies. The scope, independence, democratic legitimacy, effectiveness and transparency of these kinds of oversight mechanisms need to be clearly defined.