



The Expanding Use of Administrative Measures in a Counter-Terrorism Context

Part 2: In Need of a Gender and Age-Sensitive
Approach

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Counter-Terrorism

The Expanding Use of Administrative Measures in a Counter-Terrorism Context

Part 2: In Need of a Gender and Age-Sensitive Approach

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Policy Brief

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* This policy brief is the second in a two-part series. Both policy briefs are a result of a two year project, in which the authors have developed the GCTF Glion Recommendations and organised four series of online workshops for participants from different regions. The policy briefs are based on consultations and input from a broad range of practitioners, and views and opinions expressed in this policy brief are those of the authors.

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Abstract

This policy brief builds on the arguments made in the ICCT policy brief ‘The Expanding Use of Administrative Measures in a Counter-Terrorism Context Part I – In need of rule of law safeguards’. The focus points in that policy brief were related to the importance of ensuring a criminal justice approach with better protection for the suspect is not an option, the way human rights and rule of law safeguards need to be respected when making use of administrative measures in a counter-terrorism context, and the relevance of monitoring the impact and effectiveness of the measures. In this policy brief, we will zoom in on the gender and age-sensitive considerations that need to be taken into account when assessing the impact and henceforth the adequacy, proportionality and effectiveness of the measures on the targeted individual, as well as on his or her direct social circle. We will furthermore elaborate on the importance of monitoring the effectiveness of the specific measures and the evaluation of the legitimacy and effectiveness of the mechanism of administrative measures as a whole.

Keywords: administrative measures; counter-terrorism; human rights; gender-sensitive approach; age-sensitive approach; monitoring and evaluation; rule of law; national security; impact assessment; effectiveness

Introduction

Administrative measures,¹ when applied in a rule of law compliant manner, can function as a useful and legitimate tool to address a threat to national security, particularly when that threat is of a terrorist nature. In the policy brief *The Expanding Use of Administrative Measures in a Terrorism Context Part 1*,² the substantive criteria and procedural safeguards that need to be upheld to use administrative measures in accordance with the rule of law, were discussed. We also argued that the way administrative measures are used can be legitimised through the extent to which the measures are effective in addressing the identified threat to terrorism.

The focus in this policy brief is on the impact of administrative measures on the targeted individuals and their social surrounding. The impact assessment contributes to making the right choices in a tailored approach, and influences the overall effectiveness of the measure. The aspects that need to be considered to make a proper impact assessment in general terms, will therefore be elaborated upon, as well as the aspects that are specifically related to the assessment regarding special categories such as women and children. We also argue that in making an impact assessment, authorities should look beyond the impact on the targeted individual, but also take the impact on third parties, such as family members, into account. These impact assessments are of importance to particularly appraise the criteria of adequacy and proportionality, and because it informs the potential effectiveness and the legitimacy of the applied measures. Finally, the importance of a proper monitoring and evaluation system of administrative measures is addressed.

Impact Assessments

As argued in *The Expanding Use of Administrative Measures in a Counter-Terrorism Context Part 1*,³ the aim of applying administrative measures is to address a threat to national security,⁴ and in particular curbing a terrorist threat with particular focus given to the counter-terrorism context.⁵ The effectiveness of individual administrative measures in achieving their identified aim is closely related to the ability to implement (and enforce/monitor) a tailor-made measure that takes into account the personal circumstances of the individual targeted by the measure. This tailoring process necessarily involves assessing the individual impact in the short-, medium-, and long-term as argued in *The Expanding Use of Administrative Measures in a Counter-Terrorism Context Part 1*.⁶

1 For the purposes of both parts 1 and 2 of this two-part policy brief series, administrative measures refer to coercive measures that restrict the exercise of certain human rights, and are imposed by a judicial or executive authority, against a person or entity who is deemed to pose a risk to national security without laying criminal charges. General examples of administrative measures include travel bans, control orders, deprivation of nationality, expulsion or deportation orders, curfews, reporting duty to police stations, and listing mechanisms.

2 Tanya Mehra, Matthew Wentworth, and Bibi van Ginkel, 'The Expanding Use of Administrative Measures in a Counter-Terrorism Context – Part 1: In Need of Rule of Law Safeguards', ICCT Policy Brief, November 2021, available online at <https://icct.nl/publication/administrative-measures-rule-of-law-safeguards/>.

3 Ibid.

4 In order to impose an administrative measure, the authorities need to prove a particular individual poses a threat to national security. The information needed to prove this position sets a lower threshold than the one that needs to be passed when starting a criminal investigation. See Mehra, Wentworth, and van Ginkel "The Expanding Use of Administrative Measures in a Counter-Terrorism Context – Part 1: In Need of Rule of Law Safeguards" p. 5-6.

5 It should be noted that there can be overlap with administrative measures used in other fields and for different purposes than merely national security. One should therefore always be aware of the risk of so-called 'system-creep' where measures introduced in the context of counter-terrorism gradually expand to other fields. The extent of this risk, although important, does not fall within the research scope of this policy brief.

6 Mehra, Wentworth, and van Ginkel "The Expanding Use of Administrative Measures in a Counter-Terrorism Context – Part 1: In Need of Rule of Law Safeguards". Key considerations in this assessment include the necessity, adequacy and proportionality of the measure, as elaborated at p. 7 of Part 1 of the policy brief, and the effectiveness considerations as elaborated at p. 8-9.

To make these assessments, one needs to have a recognition that these outcomes can differ significantly between different individuals. It is further important to consider that the impact can manifest as both direct and indirect, that the measures might impact not only the subject of the measure but also the family, that the impacts may be both intended and unintended, and that the cumulative effect of various impacts might result in an impact more significant than the sum of its parts.⁷ The stigma caused, for example, by house arrest, property searches, or non-contact requirements can negatively affect the reputation of not only the subject, but also the familial household as a whole. This reputational damage can affect employability as questions are raised in the community of capability and trustworthiness. The subsequent accumulation of debt can also lead to familial breakdown. There is also a danger when relocation of suspects and their families is conducted in an overly conspicuous manner which diminishes the family's opportunity to establish their own identity and minimises their chances of integrating into the community.⁸ These resulting scenarios can exacerbate rather than mitigate an individual's radicalised behaviour, undermining the purpose of the administrative measures.

Taking the impact of the intended administrative measure into account, also means that the administrative measure should respect the non-discrimination principle (linked with the principle of equality). The non-discrimination principle and the right to equality, including on the basis of sex, is one of the cornerstones of international human rights law, and is essential for the effective protection of human rights and the rule of law.⁹ Both the non-discrimination principle and right to equality are reflected in regional conventions,¹⁰ thus administrative measures should neither in purpose nor in effect be discriminatory. This means that when designing and imposing (new) administrative measures the relevant authorities should ensure that the administrative measures do not target women, minorities, or children unequally.

Gendered Impact Assessments

Often missing from these impact assessments is careful analysis of the specific role that different genders play in the commission of terrorist crimes, and the impact counter-terrorism laws, policies, and practices have on different genders. When it is attempted, material contributions as well as intent behind those contributions is not always understood in context or only stereotyped characteristics are used with mothers and wives being framed by counter-terrorism law and practice in highly constrained, patriarchal, and rights-denying ways.¹¹

⁷ It is furthermore important to be reminded of the fact that administrative measures in the context of counter-terrorism are mostly applied when there is not enough evidence to start a criminal procedure. In addition, and although in principle administrative measures are temporary in nature, their duration can be extended many times which ultimately might result in them being applicable for a longer period than a detention sentence after a criminal conviction. See Mehra, Wentworth, and van Ginkel "The Expanding Use of Administrative Measures in a Counter-Terrorism Context – Part 1: In Need of Rule of Law Safeguards". p 5-6.

⁸ Surinder Guru, 'Under Siege: Families of Counter-Terrorism', *British Journal of Social Work* 42 (12 September 2012), pp. 1151–1173, available online at <https://academic.oup.com/bjsw/article-abstract/42/6/1151/1631389?redirectedFrom=fulltext>.

⁹ Article 2, paragraph 1, of the International Covenant on Civil and Political Rights requires States to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognised in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 of the ICCPR recognizes that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. See: UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available online at: <https://www.refworld.org/docid/3ae6b3aa0.html>

¹⁰ See among others: Articles 2 & 3 African Charter on Human and Peoples' Rights (1981), Article 24 American Convention on Human Rights, Article 3 Arab Charter Human Rights, Article 14 European Convention on Human Rights.

¹¹ Fionnuala Ní Aoláin, 'Human Rights Impact of Counter-Terrorism and Countering (Violent) Extremism Policies and Practices on the Rights of Women, Girls and the Family' (United Nations Human Rights Council, 22 January 2021) para. 26, available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/015/08/PDF/G2101508.pdf?OpenElement>.

States need to recognise the individual and social realities of women, paying close attention to their experiences, how these interplay with counter-terrorism norms, and what particular vulnerabilities women face when interacting with administrative measures. The roles and dynamics for women within terrorist organisations as well as their pathways to radicalisation can be extremely gender-specific and so too can reasons for desistance and, if fighting or joining a terrorist organisation abroad, return.¹² If administrative measures are going to be effective, then these factors need to be carefully considered. So too should the specific gender- or age-related vulnerabilities faced by subjects of administrative measures such as the increased risk to both women and children of sexual and gender-based violence.¹³

Women and girls are often the direct and indirect victims of counter-terrorism just as they are of terrorism itself and it is imperative that their human rights are considered in both the design and implementation of policy. Despite the issue of women, peace, and security being high on the political agenda at a multitude of levels for over two decades, many counter-terrorism measures and policies are still considered gender-neutral.¹⁴ As a result, counter-terrorism measures, including administrative measures, have had impermissible gendered collateral effects that are often neither acknowledged nor compensated¹⁵ despite the measures appearing superficially gender-neutral. Broadly, this is due to the distinct vulnerabilities and risks experienced by those of different genders, the different social constructs of male and female roles, and previous underlying assumptions that terrorists were men who required a militarised or traditionally ‘masculine’ response to their violence.¹⁶

The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted that in the imposition of administrative measures, a series of harmful gendered stereotypes are relied upon and perpetuated, which burden women as mothers in unique and highly retrogressive ways.¹⁷ Maternalistic logic leads to mothers of those engaged in terrorist activity being viewed either as particularly blameworthy for “failing” to appropriately raise their children,¹⁸ or as tools for the security state to prevent and counter future violent extremism¹⁹ according to their expected roles as mothers,²⁰ supposed inherent aversion to violence, and promotion of peace.²¹ These measures tend to stigmatise, marginalise, and make them front-line targets within their own political context.²² House arrest requirements,

12 Organization for Security and Co-operation in Europe, ‘Understanding the Role of Gender in Preventing and Countering Violent Extremism and Radicalization That Lead to Terrorism: Good Practices for Law Enforcement’ (Organization for Security and Co-operation in Europe, May 2019), pg. 44, available online at https://www.osce.org/files/f/documents/0/b/420563_1.pdf.

13 UN Women, ‘Facts and Figures: Ending Violence against Women | What We Do’, available online at <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>.

14 Council of Europe, ‘Counter-Terrorism’, Gender Equality, available online at accessed 10 September 2021, <https://www.coe.int/en/web/genderequality/counter-terrorism>.

15 The Center for Human Rights and Global Justice, ‘A Decade Lost: Locating Gender in U.S. Counter-Terrorism’ (NYU School of Law, 2011), available online at <https://chrgj.org/wp-content/uploads/2016/09/locatinggender.pdf>.

16 Jayne Huckerby, ‘In Harm’s Way: Gender and Human Rights in National Security’, *Duke Journal of Gender Law & Policy* 27, no. 1 (6 March 2020): pp. 179–202, available online at <https://scholarship.law.duke.edu/djglp/vol27/iss1/11>.

17 Ní Aoláin, ‘Human Rights Impact of Counter-Terrorism and Countering (Violent) Extremism Policies and Practices on the Rights of Women, Girls and the Family’.

18 Ibid.

19 Katherine Brown, ‘The Promise and Perils of Women’s Participation in UK Mosques: The Impact of Securitisation Agendas on Identity, Gender and Community’, *The British Journal of Politics & International Relations* 10, no. 3 (2008): pp. 472–491, available online at <https://doi.org/10.1111/j.1467-856X.2008.00324.x>.

20 Caron E. Gentry, ‘Twisted Maternalism’, *International Feminist Journal of Politics* 11, no. 2 (1 June 2009): pp. 235–52, available online at <https://doi.org/10.1080/14616740902789609>.

21 Iris Marion Young, ‘The Logic of Masculinist Protection: Reflections on the Current Security State’, *Signs: Journal of Women in Culture and Society* 29, no. 1 (1 September 2003): pp. 1–25, available online at <https://doi.org/10.1086/375708>.

22 Ní Aoláin, ‘Human Rights Impact of Counter-Terrorism and Countering (Violent) Extremism Policies and Practices on the Rights of Women, Girls and the Family’.

non-contact requirements, and exclusions zones are examples of administrative measures which can make assumptions about the positive/de-radicalising influence of wives and mothers in the domestic environment even though it is often these environments in which the subject was radicalised in the first place.

Alternatively, a paternalistic logic can be adopted which extends the culturally-constructed and gendered justification of intervention into private lives as a necessity for security of these women, regardless of whether protection is actually provided.²³ This is based on sometimes erroneous gendered assumptions about women as passive actors and victims, rather than as agents and potential perpetrators of terrorist acts.²⁴ As a result, wives and mothers of individuals who have committed terrorist attacks are collaterally subjected to intersecting intrusions by the state through unannounced home visits, regular property searches, and the social stigma that accompanies such public interventions, violating not only the right to non-discrimination and privacy but also fundamentally disrupting the right to family life for extended periods.²⁵ It is necessary to consider contextually gender-specific aspects regarding the individual's process of radicalisation or the social environment in which the individual normally operates in order to avoid such misguided designs.

These collateral impacts of counter-terrorism policies on women are regularly present but not always visible, and may also be indirect, unintended, or hidden.²⁶ Regarding measures mentioned above which can lead to social isolation of the suspect, the impact is often not limited to the subject of the measure, but rather experienced by the family as a whole. Restrictions imposed which affect the immediate families of suspects render them guilty by association to the individual, not to any evidential link to the commission of terrorism-related activity and those restrictions are said to taint the family leading to shunning by entire neighbourhoods.²⁷

In societies where women's roles are chiefly the upbringing of children, administrative detention, house arrest, or removal of male perpetrators can cause difficulty in parenting duties such as enrolling children in school or accessing familial savings since these transactions can require the oversight of a male guardian.²⁸ These are societies in which the woman may also not have any source of independent income and no experience in sustaining herself or her family, thus the freezing of funds and/or social benefit or suddenly facing the prospect of finding employment may disproportionately affect her.

These collateral effects should be carefully considered, as ideally the imposition of any form of administrative measure that effects an individual should be based on the link between that individual and the activities undermining national security in question, not based on the relationship or association to a perpetrator. This is not always a straightforward calculation however, for example, regarding administrative measures which result in the deprivation of nationality, removal of, or refusal of return to an individual, especially when that individual is the family's primary source of income, the result may be either a broken family or the effective deportation of the family as a whole. Such impacts that administrative measures have on the

23 Laura Sjoberg and Jessica Peet, 'A(Nother) Dark Side of the Protection Racket', *International Feminist Journal of Politics* 13, no. 2 (1 June 2011): pp. 163–82, available online at <https://doi.org/10.1080/14616742.2011.560751>.

24 OSCE Office for Democratic Institutions and Human Rights, 'Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework' (Organization for Security and Co-operation in Europe, 2018), available online at https://www.osce.org/files/f/documents/4/7/393503_2.pdf.

25 Ní Aoláin, 'Human Rights Impact of Counter-Terrorism and Countering (Violent) Extremism Policies and Practices on the Rights of Women, Girls and the Family'.

26 Center for Human Rights and Global Justice, 'A Decade Lost: Locating Gender in U.S. Counter-Terrorism'.

27 Guru, 'Under Siege: Families of Counter-Terrorism' p.1162.

28 Mike Giglio, 'Saudi's Surprise Renegades', *Newsweek*, 1 May 2011, available online at <https://www.newsweek.com/saudis-surprise-renegades-67643>

right to family life should always be taken into consideration.²⁹ If an assigned relocation order to a remote part of a country is imposed on an individual, the family that is dependent on him or her, are also often required to relocate and may not have access to work, school, or health services.³⁰ Just one notable case involved a family in the UK whose children had been absent from school for four months due to the failure of the local authority to allocate schools after re-housing the family to another area.³¹

This is not to say, however, that female family members of terrorist actors are always above suspicion in the eyes of the state. The UN has noted that, in addition to the treatment above, mothers and wives are also conflated with the violent acts of their children or husbands resulting in their homes becoming the targets of intrusive and violent state searches and they themselves becoming the objects of ongoing surveillance and harassment. When unfounded, this targeted suspicion denies recognition that these mothers and wives have too been the object of suffering and loss as a result of the terrorist acts committed and that they must manage complex and challenging familial, communal, and societal expectations.³²

Recognising these issues, the UN takes a holistic view in Security Council Resolutions 2242 (2015) and 2395 (2017) stating that the above can be avoided through a focus on:

- (i) women and girls as victims of terrorism;
- (ii) women as perpetrators, facilitators, and supporters of terrorism;
- (iii) women as agents in preventing and countering terrorism and violent extremism, and;
- (iv) the differential impact of counter-terrorism strategies on women and women's rights.

With specific reference to the issue of returning foreign terrorist fighters, UNSCR 2396 (2017) simultaneously instructs states to investigate the accompanying family members of FTFs, including spouses and children, and acknowledges the need to distinguish between those who have and have not been involved in terrorism-related activity. The resolution highlights the different roles that women and girls associated with foreign terrorist fighters might play including as supporters, facilitators, perpetrators, and victims of terrorist acts, with each requiring a distinct counter-terrorism response. Instead of reliance on gendered stereotypes of, for example, mothers' and other female family members' roles in combatting radicalisation based on a stated inherently peaceful nature and position at the centre of the family,³³ what is needed in design and implementation of administrative measures in general as well as in specific cases is for policymakers and practitioners to appropriately consider both gender and age dimensions in their assessments of, and response to, emerging security challenges and to ensure that women and girls are not unfairly instrumentalised, penalised, or discriminated against by the measures. To fail to do so creates blind spots that hamper the effectiveness of prevention and counter-terrorism policies, undermining stability and security.³⁴

29 Also keeping in mind, as stated before, that these administrative measures are applied without a criminal conviction, making the consideration of the impact on third parties even more important. See Mehra, Wentworth, and Van Ginkel "The Expanding Use of Administrative Measures in a Counter-Terrorism Context – Part 1: In Need of Rule of Law Safeguards", p 5-6.

30 Ní Aoláin, 'Human Rights Impact of Counter-Terrorism and Countering (Violent) Extremism Policies and Practices on the Rights of Women, Girls and the Family' para 25.

31 Surinder Guru, 'Reflections on Research: Families Affected by Counter-Terrorism in the UK', International Social Work 55, no. 5 (1 September 2012): 689–703, <https://doi.org/10.1177/0020872812447625>.

32 Ní Aoláin, 'Human Rights Impact of Counter-Terrorism and Countering (Violent) Extremism Policies and Practices on the Rights of Women, Girls and the Family', para 26.

33 Huckerby, 'In Harm's Way: Gender and Human Rights in National Security'

34 Catherine Powell, 'Gender, Masculinities, and Counterterrorism', Council on Foreign Relations, 23 January 2019, <https://www.cfr.org/blog/gender-masculinities-and-counterterrorism>.

Each aspect of the execution of the administrative measures therefore needs to be considered from a gendered perspective, not just the overall imposition itself. For example, those carrying out surprise property searches or unannounced home visits for the purposes of questioning need to be sensitive to the fact that the household may include women who routinely wear the abaya, the hijab, the niqab, or the burqa in public.³⁵ Disregard for the sacrosanct nature of the modesty of these women may leave them humiliated, vulnerable, and angry.³⁶ The violation of the private spaces of innocent women victimises them, breaches their human rights, and undermines the social cohesion agenda attached to many preventive counter-terrorism policies. Further, experiences of demeaning practices which ignore these sensitivities are likely to result in feelings of injustice, a sense of low morale, low self-esteem, and a lack of confidence to fully exercise rights or form relationships within and across communities.³⁷

Age-Sensitive Impact Assessments

As with the gendered implications of imposing administrative measures, children are similarly affected both directly and indirectly when their parents or other family members are made subject to measures but rarely has there been a focus on children and the special safeguards and care to which they are entitled according to the UN Convention on the Rights of the Child (UNCRC).³⁸ According to international law, states bear a special responsibility to protect the rights of children. This is not to say that children cannot be the subject of, or impacted by, administrative measures, but the UNCRC, in particular requires that State Parties to the Convention consider the best interests of the child as a primary concern. Though complicated in its implementation, this is a reasonably clear aim to pursue when children are solely considered victims.

This status of children as victims under international law has to be taken into account³⁹ to assess whether they can and should be held accountable for the commission of offences. Recognition of their victim status thus does not, however, necessarily exclude criminal liability and other forms of accountability where children are alleged to have committed terrorist offences. Articles 37 and 40 of the UNCRC⁴⁰ include a number of obligations which protect children alleged to have committed offences including obligating states to establish a minimum age of criminal liability but does not specify what that minimum age should be. Further, the international legal framework on terrorism does not specifically address the question of children recruited and exploited by terrorist or violent extremist groups as alleged perpetrators. This leaves states with a reasonably broad discretion in the legal avenues available to them when dealing with children accused of committing terrorist offences, including the use of administrative measures as an alternative to criminal prosecution.⁴¹

35 Guru, 'Under Siege: Families of Counter-Terrorism' p. 1161. It is furthermore important to realise that the potentially long duration of the applicability of these administrative measures contributes to a continual threat of invasion of private space of those that are not necessarily the target audience of the measure. In that sense, the private home might become a prison.

36 The fact that tensions might be rising within the household furthermore increases the risk of domestic violence.

37 Guru, 'Under Siege: Families of Counter-Terrorism'

38 United Nations Office of the High Commissioner for Human Rights, 'The United Nations Convention on the Rights of the Child', United Nations Office of the High Commissioner for Human Rights, 2 September 1990, available online at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

39 United Nations Office on Drugs and Crime, 'Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System' (Vienna: United Nations, 2017), available online at https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf.

40 United Nations Office of the High Commissioner for Human Rights, 'The United Nations Convention on the Rights of the Child'.

41 Child Rights International Network, 'Caught in the Crossfire? An International Survey of Anti-Terrorism Legislation and Its Impact on Children', Child Rights International Network, November 2018, available online at <https://archive.crin.org/sites/default/files/caughtinthecrossfire.pwdf>.

In spite of the responsibility enshrined in the UNCRC, measures such as relocation, property searches, and social isolation put specific pressures on family units and children directly which may result in trauma and anxiety experienced by children. For instance, if a relocation order is imposed resulting in the child's move with his or her parents to a small village without a school, it may affect a child's ability to exercise his or her right to education. Similarly, restrictions on internet facilities in the home can have a drastic impact on a child's educational attainment. Whilst restricting the communicative capabilities of an adult in the household might be considered a pertinent and proportionate measure for reasons of national security, the same measure used in relation to a child may negatively affect the child's ability to access online learning materials and maintain social ties and therefore requires more careful consideration.

As with gender-specific influences, children's pathways to radicalisation can be specific to their age group and relative role in the social or family unit.⁴² When administrative measures are to be utilised against child perpetrators, identification of what factors have caused the radicalisation and an understanding of the unique ways in which they have had an impact due to the age of the subject is imperative to not only protect the interests and welfare of the child, but also ensure the effectiveness of the administrative measure(s).⁴³ Monitoring, surveillance, or restrictions imposed on children, for example, can prove to be counter-productive when carried out incorrectly as when children are aware that they are being watched, they are likely to adapt their behaviour and self-censor their communications.⁴⁴ As a result, their trust in their parents, school, or state authorities may be damaged. Similarly, the freedom to seek, receive and impart information and ideas of all kinds⁴⁵ is of particular importance to a child's freedom of expression during their developmental years. Surveillance of children online and at school, and the prohibition of access to certain kinds of online content, can lead to children becoming reluctant to show interest in some topics, cause confusion around what can be expressed in public, and lead to children becoming afraid of exploring specific issues.⁴⁶ When considering the implementation of administrative measures targeting a child directly, authorities should assess whether the welfare and rights of the child can be safeguarded at all times and, where possible, give priority to these rights when weighing up the various interests at stake.

As with other innocent family members, children are also liable to be the indirect subjects of administrative measures. The carrying out of surveillance and collection of information in a household for example is likely to bring with it invasive interferences with children's privacy rights.⁴⁷ Further, from a social perspective, the restriction on use of mobile phones and other communication devices are often not restricted to the subject of the measure, but rather the restriction dictates how many and what type of communication devices are permitted to be in the household as a whole. This again may limit the ability of the child to maintain social ties, or even ensure their safety by keeping in touch with their parents whilst away from the house.

42 Suzie Langdon-Shreeve, Hannah Nickson, and Cordis Bright, 'Safeguarding and Radicalisation: Learning from Children's Social Care' (Department for Education, June 2021), available online at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994789/DfE_Safeguarding_in_CSC.pdf.

43 Basia Spalek, 'Radicalisation, de-Radicalisation and Counter-Radicalisation in Relation to Families: Key Challenges for Research, Policy and Practice', *Security Journal* 29, no. 1 (1 February 2016): 39–52, available online, <https://doi.org/10.1057/sj.2015.43>.

44 Child Rights International Network, 'Caught in the Crossfire? An International Survey of Anti-Terrorism Legislation and Its Impact on Children' p. 19.

45 United Nations Office of the High Commissioner for Human Rights, 'The United Nations Convention on the Rights of the Child', Article 13.

46 Rights Watch (UK), 'Preventing Education? Human Rights and UK Counter-Terrorism Policy In Schools' (Rights Watch UK, July 2016), available online at https://www.rightsandsecurity.org/assets/downloads/preventing-education-final-to-print-3.compressed-1_.pdf.

47 Child Rights International Network, 'Caught in the Crossfire? An International Survey of Anti-Terrorism Legislation and Its Impact on Children' p. 19.

Restrictions imposed on seeing friends and family is also said to be transferred to the children of subjects as parents have been seen to choose to act in solidarity with one another, taking on the isolation as a unit rather than allowing the individual to endure it alone.⁴⁸

Alternatively, a heavy psychological burden may lie on children, especially boys, who, as a consequence of the administrative measures imposed on older family members, must far too early take on responsibilities they are not mentally or emotionally equipped for in order to ensure the continued running of the household.⁴⁹ These psychological effects have also been seen to be caused by bullying endured at school once word of the measures imposed is spread, or by expressions of rage by subjects within the household caused by frustrations at long curfew hours and overbearing conditions, expressions which can be acutely frightening and damaging to children.⁵⁰

Even if measures do not inhibit the freedoms of all family members, any humiliation, isolation, or depression suffered by direct subjects as a result of administrative measures, and insufficiently addressed by support services, may be perceived as injustices by children by dint of their presence in the environment and witnessing of the turmoil. This in turn may fester anger and resentment towards imposing officers or the state, potentially being a contributing factor in radicalisation to violent extremism in the future.⁵¹ This anger from children is often also directed at mothers within the household, with mother and child relationships being detrimentally affected because children blame their mothers for “allowing” the state treatment to continue.⁵²

Perhaps most importantly, deprivation of nationality of the parent(s) can affect a child’s right to a nationality. If a parent’s nationality is revoked, children may be impacted through derivative loss of nationality or, if born after nationality has been withdrawn, children may be unable to acquire their parent’s former nationality, increasing the risk of statelessness, which is prohibited under international law.⁵³ According to a report of the UN Secretary-General on human rights and arbitrary deprivation of nationality ‘States must not only comply with international norms and standards when depriving a person of his or her nationality, but the conditions and procedures under which States confer nationality are also subject to the scrutiny of international law.’⁵⁴ According to Article 15 of the Universal Declaration of Human Rights (UDHR) everybody has the right to a nationality and children also have the right to acquire nationality under article 7 of the UNCRC. The right to nationality is in many ways considered a prerequisite to exercise other rights.

Monitoring and Evaluation

In order to avoid the negative impacts laid out above, and ensure the continued and overall effectiveness of implemented measures, it is crucial to be able to consider all relevant and up to date factors. This is achieved through the routine process of collecting data and information to track progress towards the intended results of the measure (monitoring), and the systematic and impartial assessment of the overall policy or measures, analysing both expected and unexpected

48 Guru, ‘Under Siege: Families of Counter-Terrorism’ p. 1162.

49 Victoria Brittain, ‘Besieged in Britain’, *Race & Class* 50, no. 3 (1 January 2009): pp. 1–29, available online at <https://doi.org/10.1177/0306396808100151>.

50 Brittain, ‘Besieged in Britain’ p. 7.

51 Sandra Bloom, *Creating Sanctuary. Toward The Evolution of Sane Societies*, 2013, available online at <https://doi.org/10.4324/9780203724224>.

52 Guru, ‘Under Siege: Families of Counter-Terrorism’ p. 1166.

53 United Nations High Commissioner for Human Rights, ‘Human Rights and Arbitrary Deprivation of Nationality’ (United Nations Human Rights Council, 19 December 2013), UN Docs A/HRC/25/28, available at <https://www.refworld.org/docid/52f8d19a4.html>.

54 Ibid.

results, the chain of actions, the contextual factors and causality in its impact (evaluation). The key objective of monitoring and evaluation is to assess whether the measures taken contribute in a legitimate manner to the desired result and effectively curb the threat to national security. The distinction between the two can be more simply explained as monitoring working as a ‘real time’ lens through which one continually assesses the impact and effect of an implemented measure, whereas evaluation ordinarily looks back over a certain amount of time to assess how the broader use of the instrument has worked over numerous cases.

When monitoring the use of an administrative measure, the same authority that implemented the measure holds the responsibility of ensuring that the anticipated aim of the measure actually materialises. This means that the authorities need to ensure that the identified risk is contained, or possibly diminishes as a result of the measure, without impacting the targeted individual or third parties in a disproportionate manner. If this is not the case, then it might be necessary to adjust or replace the measure. It could also be possible that the identified threat disappears completely which would require lifting the measure.

When evaluating the effectiveness of administrative measures as a policy, however, one needs to take a broader scope, both in terms of time and of the aspects under scrutiny. One might, for instance, also evaluate the cooperation and information-sharing arrangements between the various actors and agencies involved, whether the use of the instrument has led to unethical practices, whether gender and age perspectives are sufficiently taken into account, and what the general impact has been in terms of the proportionality and necessity of the measures. In short, the question becomes whether the measures have fulfilled their role in effectively curbing the threat to national security, without disproportionately limiting the freedom rights of the individual. In contrast, evaluation is typically conducted by another authority or agency than the one that originally implemented the measure. This can take the form of an independent reviewer, and ombudsperson, a human rights institution, or an ad hoc appointed evaluation commission or research institute. Regardless of the function and organisation of the body, it should be operating completely independently from the government.

Justification for establishment of a body for independent review and oversight can be found in the succinct argumentation of the UK Supreme Court. In reference to the role of the UK Independent Reviewer of Terrorism Legislation, who had already assessed the disputed legal instruments in question as legitimate, the Court stated:

The continuous supervision of the Independent Reviewer is of the first importance; it very clearly amounts to an informed, realistic and effective monitoring of the exercise of the powers and results in highly influential recommendations for both practice and rule change where it is needed.⁵⁵

This illustrates that ultimately the function of independent review does not only contribute to enhancing the legitimacy of the measures, but also the effectiveness of the instruments. A key aspect of both monitoring and evaluating administrative measures is the impact assessment process laid out above. The factors which inform the impact assessments, e.g., the direct and indirect impacts of a measure and the short-, medium-, and long-term effects is what directly informs the monitoring and evaluation process. Governments and official authorities need to take responsibility for long term effectiveness and the legitimacy of these policies and monitoring and evaluation is the most effective way of doing so.

⁵⁵ R (on application of Miranda) v. Secretary of State for the Home Department ([2016] EWCA Civ 6), <https://cyrilla.org/pt/entity/shml0abt1nn?page=34>.

Recommendations

The key question when considering the option of applying administrative measures in a rule of law compliant manner, is whether these measures can effectively contribute to curbing the threat to national security, taking into account the specific circumstances of the targeted individual and his/her direct social circle, the impact the measure might have on this individual and third parties, and whether the measures can subsequently be applied respecting the principles of proportionality and adequacy. To this point we argue that proper risk assessment, impact assessment, monitoring and evaluation of these measures needs to be conducted. We would therefore like to specifically make seven recommendations, which can guide authorities when considering the use of administrative measures.

Accompanying the following recommendations, and as a guide on how to properly implement them in practice, the International Centre for Counter Terrorism (ICCT) has developed a *Training Manual for the GCTF Glion Recommendations on a Rule of Law-Based Use of Administrative Measures in a Counter-Terrorism Context* which is available upon request. Its purpose is to assist practitioners in understanding the provisions contained in the GCTF Glion Recommendations, it can also serve as an educational tool to be used in the training of legal practitioners in the fight against terrorism.

Authorities are recommended to **conduct proper risk assessments** to determine whether an individual in question poses a risk to national security and whether the envisaged administrative measure actually can lead to a reduction of the risk to national security. A full understanding of the distinct experiences of different genders, and ages, as well as their different pathways to radicalisation, and, if applicable, varying reintegration needs is vital to effectively implementing these measures.

Prior to imposing administrative measures, **the relevant authorities should conduct impact assessments of the envisaged measures**. The following aspects need to be taken into account when making an impact assessment:

- the short-term and long-term impact,
- direct and indirect impact,
- intended and unintended impact of the measures on the individual, and
- the gender- and age-sensitive impacts.

Authorities should ensure that the gender-specific roles of the targeted individual and third parties who are also indirectly affected by the measure are clear in the context and relevant factors are well addressed. For instance, authorities could fill out an impact assessment questionnaire when it concerns, but not limited to, women as the targeted individual or as the individual who is indirectly affected by an administrative measure, mapping out the collateral impact. To ensure that the questionnaire addresses the right issues, it would be important that authorities engage with relevant stakeholders to identify the relevant concerns and receive proper training in adequately making a gender-sensitive impact assessment. Questions could, for instance, focus on:

- The role in the household:
 - o Is the individual the care provider or the income provider in the family?
 - o Does the measure disproportionately impact the role in the household?
 - o Are alternative measures available with less impact on the household, but with similar effect in curbing the threat against national security?

- Traditional/religious virtues/reputation/stigma:
 - o Does the measure disproportionately impact traditional/religious virtues, reputation, or place a stigma?
 - o Do the influence on the reputation, or the stigma undermine the possibility to socially interact, hold on or get employment or housing?
 - o Are alternative measures available with less impact on the traditional/religious virtues, reputation, or stigma, but with similar effect in curbing the threat against national security?
- Employment and education:
 - o Does the administrative measure (for instance a relocation or exclusion zone) impact the possibility to maintain employment or continue education, keeping in mind availability and accessibility of work sites and education facilities?

When considering directly applying administrative measures against children, **authorities are recommended to consider to take notice of the relevant international guidance documents**, such as the GCTF Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context,⁵⁶ the UNODC Cross-cutting Issues Juvenile Justice Assessment Toolkit,⁵⁷ and the UNODC Model Law on Justice Matters Involving Children in Conflict with the Law.⁵⁸ Authorities are furthermore recommended to make use of the ICCT *Training Manual for the GCTF Glion Recommendations on a Rule of Law-Based Use of Administrative Measures in a Counter-Terrorism Context* to inform on specific considerations in cases involving children as perpetrators. These will aid practitioners in developing age-sensitive check-lists (comparable to the gendered-sensitive impact assessment tools) which pay due regard to the impact of restrictions on children and in applying all administrative measures in a way that is consistent with the best interest of the child. Furthermore, to ensure the right issues are identified to develop the questionnaire, authorities should engage with various stakeholders to identify the relevant concerns. Proper training should also be provided to ensure authorities know how to use the questionnaire in a way to ensure an age-sensitive approach is used to make an impact assessment.

Negative effects on children as a result of the applied administrative measures should be mitigated wherever possible with individuals being treated primarily as victims with specific vulnerabilities instead of being characterised as security threats.⁵⁹ For example, the prevention of a minor from travelling abroad could be framed as a protective factor for the child as opposed to a national security measure.

Authorities should ensure that once the administrative measures have been imposed, the effectiveness of the measure in relation to the purpose of the measure (in this case the legitimate aim is to address a threat to national security), is being monitored. The authorities who imposed the measure, should therefore ensure resources and expertise are available to conduct this monitoring of the measure. It might be necessary to provide training to properly conduct this monitoring. The relevant authority should moreover engage with all relevant

56 GCTF, 'Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context', available at <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/2016%20and%20before/Neuchâtel%20Memorandum%20on%20Juvenile%20Justice%20ENG.pdf?ver=2020-01-13-153528-460>.

57 UNODC, 'Cross-cutting issues Juvenile Justice Assessment Toolkit', 2006, available at https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/2_Juvenile_Justice.pdf.

58 UNODC, 'Model Law on Justice Matters Involving Children in Conflict with the Law', 2013, available at https://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf.

59 OSCE, 'Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework', 2018, available at https://www.osce.org/files/f/documents/4/7/393503_2.pdf.

stakeholders to constantly monitor the impact, also taking gender- and age considerations into account. Part of the monitoring should include considering whether amendments are necessary to remain effective.

Finally, from the moment a State decides to use the instrument of administrative measures to curb threats to national security, it should **make sure a mechanism is in place to evaluate and reflect on the use of administrative measures in general**. There are various modalities possible to conduct an evaluation. States could mandate a parliamentary committee, mandate an ombudsperson, or appoint an independent entity to conduct the evaluation. Aspects that play a role in evaluating the use include the non-discriminatory way of making use of administrative measures, the effectiveness of the measures applied in the past, the gendered- and age-sensitive impact of measures, the possibility to control compliance, and whether human rights have not disproportionality been restricted. Since in many states the legal basis for applying administrative measures is a temporary law, the expiring date of the temporary law is a good moment to conduct an evaluation. When conducting the evaluation of the instrument, the organ making the evaluation could also advise on the need to extend the mandate to apply administrative measures.

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