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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

## Terrorism and human rights

### Report of the United Nations High Commissioner for Human Rights\*

#### *Summary*

In the present report, the United Nations High Commissioner for Human Rights addresses the use of administrative measures to counter terrorism, focusing on the extent to which such measures adhere to international human rights law. In this regard, the report highlights certain measures, such as administrative detention, terrorist proscription, movement restrictions, and deprivation of nationality. The report recommends a series of legislative, institutional and policy measures to ensure that such administrative measures are fully human rights-compliant in meeting their stated objectives of countering terrorism.

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## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 51/24. In that resolution, the Council reaffirms its unequivocal condemnation of all acts, methods and practices of terrorism. It stresses the responsibility of States to protect persons in their territory and subject to their jurisdiction against acts of terrorism, in full compliance with their obligations under international law. These elements have been stressed in the United Nations Global Counter-Terrorism Strategy and numerous resolutions of the Security Council and the General Assembly.

2. In the resolution, the Council noted with concern the “measures that undermine human rights and the rule of law, such as the detention of persons suspected of acts of terrorism in the absence of a legal basis for detention and due process guarantees”, and urged States to review the grounds of detention and to respect the rights to equality and non-discrimination in the administration of justice and to a fair trial, as provided for by international law”.<sup>1</sup> The resolution also emphasized that “States should ensure that domestic laws and practices related to counter-terrorism measures respect the principle of non-discrimination, including by repealing the proscription and listing of organizations and individuals on the basis of race, ethnicity, religion or political opinion, by reviewing laws on the deprivation of nationality, including the foreseeable grounds for deprivation and adequate procedural safeguards, in accordance with international law”.<sup>2</sup>

3. Recent years have seen a significant increase in the use of administrative measures to counter terrorism. Many States have adopted practices such as administrative detention, house arrest, travel restrictions, and control orders independent of the pursuit of criminal charges, while others have resorted to far-reaching measures such as deprivation of nationality in the context of countering terrorism, in addition to placing individuals or entities on so-called watchlists, outside the criminal justice system. In this regard, the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism has recommended that States, “utilize administrative measures ... as preventive alternatives to prosecution” only “in cases in which it would not be appropriate to bring terrorism-related charges, while ensuring that such measures are employed in a manner compliant with applicable international human rights law and national legislation and are subject to effective review”.<sup>3</sup>

4. The present report is focused on the use of administrative measures in countering terrorism such as administrative detention, travel restrictions, deprivation of nationality, and terrorist listing of individuals and entities, and on their human rights impacts. It examines certain administrative measures, in legal context, and examines substantive and procedural guarantees afforded in the implementation of such measures. It does not seek to address all human rights aspects associated with all types of administrative measures in the context of countering terrorism, for example measures related to countering terrorism financing, or the impact of administrative measures on humanitarian action.<sup>4</sup> Finally, the report considers the effectiveness of administrative measures, and concludes with recommendations to States to ensure that administrative measures used in counter-terrorism are both human rights-compliant and effective.

5. In February 2024, the Office of the United Nations High Commissioner for Human Rights (OHCHR) sent notes verbales to States and to international, regional and intergovernmental bodies, and also approached national human rights institutions and non-governmental organizations, requesting information to inform the High Commissioner’s report.<sup>5</sup> The present report is informed by inputs received from stakeholders, as well as by previous OHCHR reports, the work of United Nations human rights mechanisms and the work of scholars and practitioners.

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<sup>1</sup> Human Rights Council resolution 51/24, para. 13.

<sup>2</sup> *Ibid.*, para. 14.

<sup>3</sup> [S/2015/975](#), paras. 13 and 155.

<sup>4</sup> For more on these matters, see, for example, [A/76/273](#), paras. 30–38.

<sup>5</sup> All stakeholder submissions will be posted at <https://www.ohchr.org/en/terrorism/reports>.

## II. Shifting emphasis to administrative measures in countering terrorism

### A. Introduction

6. States are obliged to take measures to protect all people within their territory and subject to their jurisdiction from acts of terrorism, including by implementing relevant Security Council resolutions.<sup>6</sup> The incorporation of international legal obligations related to counter-terrorism into national provisions and practice has been most actively pursued in the areas of criminal and administrative law.<sup>7</sup> States have implemented both stand-alone administrative measures,<sup>8</sup> and administrative measures operating jointly with criminal measures.<sup>9</sup>

7. The High Commissioner has previously set out the human rights concerns associated with criminal measures relating to terrorism suspects, especially with regard to definitions of terrorism-related offences, fair trial guarantees, and the imposition of the death penalty.<sup>10</sup> In evaluating administrative measures, it is crucial to examine whether the use of administrative measures exacerbates existing human rights concerns related to criminal measures and/or circumvents the rights to due process and fair trial and procedural safeguards that apply to criminal proceedings but not necessarily to administrative measures. In particular, concerns arise when administrative measures with potentially punitive effects are used as alternatives to criminal law responses, avoiding legal protections such as the more stringent standards for evidence and the procedural rights of those brought to court in criminal proceedings.<sup>11</sup>

8. While administrative measures are often used before a terrorist offence has occurred with a view to preventing it, criminal measures are also increasingly being used as a means of preventing terrorist acts. The preventive role of criminal law is not itself new or inherently problematic. It is well established, for example, that inchoate acts such as attempts to commit a crime, direct and public incitement, or some preparatory acts, are considered of criminal nature and therefore subject to punishment.

9. Some research suggests a shift in States' policies all around the world from responding to terrorism to preventing terrorism.<sup>12</sup> This has involved criminally sanctioning acts beyond the traditional inchoate offences such as conspiracy, attempt, and solicitation of terrorism, into the sanctioning of preparatory and material support acts, well before the commission of

<sup>6</sup> For example, many laws adopted in the wake of Security Council resolution 2178 (2014) to curb the threat posed by foreign terrorist fighters include executive travel bans and revocation of citizenship. See, for example, [https://www.icnl.org/wp-content/uploads/civil\\_society\\_report\\_-\\_final\\_april\\_2019.pdf](https://www.icnl.org/wp-content/uploads/civil_society_report_-_final_april_2019.pdf), p. 24. See also submissions by Kuwait, Mexico and Serbia.

<sup>7</sup> Vincent-Joël Proulx, "A postmortem for international criminal law: terrorism, law and politics, and the reaffirmation of State sovereignty", *Harvard National Security Journal*, vol. 11 (2020), p. 155.

<sup>8</sup> For example, travel bans on persons suspected of planning to commit an offence, such as travelling for the purpose of terrorism.

<sup>9</sup> For example, in Saudi Arabia, terrorism convicts are automatically banned from travel for a period equal to the length of their prison sentence. In France, measures – such as movement restrictions or deprivation of nationality – can be applied as a consequence of criminal convictions for offences that the European Union directive on combating terrorism requires Member States to criminalize; see [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-directive-combating-terrorism\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-directive-combating-terrorism_en.pdf), p. 91. On the other hand, in the United Arab Emirates, persons deemed to pose a terrorist threat can be placed under administrative detention without facing criminal charges. For more on States' practices in adopting administrative measures, see the submissions by Algeria, Azerbaijan, Lebanon, Morocco, Saudi Arabia, Tunisia and Türkiye.

<sup>10</sup> See [A/HRC/45/27](#).

<sup>11</sup> Organization for Security and Cooperation in Europe, *Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework*, available at [https://www.osce.org/files/f/documents/4/7/393503\\_2.pdf](https://www.osce.org/files/f/documents/4/7/393503_2.pdf), p. 47.

<sup>12</sup> For example, the 2020 European Union counter-terrorism agenda is based on the logic of anticipatory action in the form of pre-emptive counter-terrorism measures. See Christopher Baker-Beall and Gareth Mott, "The new EU counter-terrorism agenda: pre-emptive security through the anticipation of terrorist events", *Global Affairs*, vol. 7, No. 5 (2021).

a criminal act of terrorism.<sup>13</sup> The expansion of preparatory offences in this way risks resulting in individuals being punished for their presumed intentions rather than their actual actions.<sup>14</sup> For example, some countries have criminalized travelling or attempting to travel for the purpose of perpetrating, planning, preparing for or participating in terrorist acts, treating terrorist travel offences as independent offences, without requiring that a further act be committed or requiring proof of terrorist intent.<sup>15</sup> The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted that practices have moved from sanctioning the acts of individuals to seeking to anticipate those acts, through pre-emptive criminal sanctions.<sup>16</sup>

10. This shift from a post-crime to a pre-crime approach contributes to criminal law being increasingly asked to evaluate future possibilities rather than to evaluate likelihoods that an act has occurred.<sup>17</sup> Such pre-emptive measures generally seek to identify certain behaviours that could potentially pose a terrorist threat and to enable intervention at the earliest stage possible, well before an individual engages in specific terrorist activity.<sup>18</sup>

## B. Administrative measures to counter terrorism

11. These steps to boost criminal law to regulate conduct prior to commission of substantive terrorism offences is occurring alongside a growing resort to administrative measures seeking to prevent terrorism. While the use of administrative measures in counter-terrorism is not new,<sup>19</sup> in the last two decades, a set of international resolutions has been adopted requiring States to take action to address terrorist threats. This has resulted in increasing implementation of preventive measures outside the confines of the criminal justice process, in the form of a set of administrative measures. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stressed States' shift towards the increased use of administrative measures as an undergirding legal basis for managing and preventing terrorism, and the resort to a posteriori rather than a priori judicial review of such measures.<sup>20</sup>

12. The increasing use of administrative measures, either as alternatives to or alongside criminal law, has been criticized as lacking sufficient safeguards and guarantees, including those provided to individuals facing criminal prosecution.<sup>21</sup> For example, human rights bodies have recognized that the limited safeguards related to administrative measures,

<sup>13</sup> International Centre for Counter-Terrorism, "The expanding use of administrative measures in a counter-terrorism context – Part 1: In need of rule-of-law safeguards", policy brief, available at <https://www.icct.nl/sites/default/files/2022-12/Administrative-Measures-in-Counter-Terrorism%20part%201.pdf>, p. 3.

<sup>14</sup> Alberto Alonso Rimo, "Is prevention better than cure? The ever-increasing criminalization of acts preparatory to an offence in Spain", *International Journal for Crime, Justice and Social Democracy*, vol. 10, No. 1 (2021), pp. 4 and 9.

<sup>15</sup> See <https://journals.sagepub.com/doi/10.1177/2032284420971783?icid=int.sj-abstract.similar-articles.2>

<sup>16</sup> A/HRC/43/46, para. 25.

<sup>17</sup> See, for example, Fahad Ahmad and Jeffrey Monaghan, "From probabilities to possibilities: terrorism peace bonds, pre-emptive security, and modulations of criminal law", *Crime, Law and Social Change*, vol. 74 (July 2020), p. 343; and Tufyal Choudhury, "Campaigning on campus: student Islamic societies and counter-terrorism", *Studies in Conflict and Terrorism*, vol. 40, No. 12 (2017), p. 1009.

<sup>18</sup> Baker-Beall and Mott, "The new EU counter-terrorism agenda: pre-emptive security through the anticipation of terrorist events", p. 6.

<sup>19</sup> Administrative measures have been an important tool in fighting terrorism since Security Council resolutions 1267 (1999) and 1373 (2001) called for the listing of persons, entities or organizations that are involved in terrorism-related activities. Additionally, Security Council resolutions 2178 (2014) and 2396 (2019) have spurred the proliferation of criminal and non-criminal justice responses to the phenomenon of foreign terrorist fighters (see International Centre for Counter-Terrorism, "The expanding use of administrative measures in a counter-terrorism context – Part 1: In need of rule-of-law safeguards", p. 3).

<sup>20</sup> A/HRC/43/46, para. 25. See also the submission by Syrians for Truth and Justice, p. 5.

<sup>21</sup> See, for example, A/78/520, paras. 18–24; and A/HRC/43/46, para. 25.

including house arrest, police supervision or the withholding of travel documents, could lead to potential abuses and undue restrictions on rights.<sup>22</sup>

### III. Definition and nature of administrative measures, and corresponding safeguards

#### A. Definition

13. There is no generally accepted definition of administrative measures in the context of counter-terrorism. Sometimes termed as executive or non-criminal measures, these measures often refer to coercive measures that may restrict the exercise of certain human rights, irrespective of the laying of criminal charges, against a person or entity that is perceived to pose a risk to national security.<sup>23</sup> The expansive use of administrative measures in counter-terrorism may also undermine the principle of legal certainty. They are often deployed by national authorities to seek to control potential risks emanating from individuals and to prevent terrorism-related offences, where criminal prosecution is not yet possible. The scope of these administrative measures is broad and their use in the context of counter-terrorism has been heterogenous. They entail very different measures and objectives – ranging from preventing travel abroad or preventing an individual’s return to their State, to home arrest and administrative detention, to limitations on access to or use of financial resources or specific items or on contact with specific individuals or groups.

14. In addition, broad and ambiguous definitions of terrorism, often underpinning or embedded in administrative measures, may facilitate the overbroad application of such measures, such as airport stop-and-search powers, which often affect specific groups disproportionately.<sup>24</sup> Broad and imprecise definitions of legal powers and duties can further undermine the ability to identify and challenge the misuse of executive powers – a critical component of procedural justice. It is therefore essential to prevent misuse of administrative measures and the subsequent imposition of undue restrictions on human rights.

#### B. Nature of administrative measures

15. In the context of counter-terrorism, many administrative measures are by nature preventive, in the sense that they are applied to prevent the commission of a potential terrorist act. Some are also used alongside criminal measures against individuals suspected of having committed terrorism-related offences. According to some special procedure mandate holders of the Human Rights Council, these measures are “used to buy time until a criminal case is prepared”.<sup>25</sup> These measures can have a negative impact on the human rights of the individuals to whom they are applied or may constitute undue restrictions of certain human rights, with limited involvement of the judiciary in their application. It is also suggested that

<sup>22</sup> See, for example, <https://www.ohchr.org/en/press-releases/2018/05/france-un-expert-says-new-terrorism-laws-may-undermine-fundamental-rights?LangID=E&NewsID=23130>. See also Directive (EU) 2017/541 on combating terrorism: impact on fundamental rights and freedoms, available at [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-directive-combating-terrorism\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-directive-combating-terrorism_en.pdf), p. 90.

<sup>23</sup> A similar definition is laid out in the International Centre for Counter-Terrorism policy brief entitled “The expanding use of administrative measures in a counter-terrorism context – Part 1: In need of rule-of-law safeguards”, pp. 2 and 3. Another definition is suggested by Bérénice Boutin: “Administrative measures are restrictive measures aimed at preventing terrorism within the territory of a State, decided upon and ordered by the executive (or with its close involvement), and subject to limited judicial review” – see “Administrative measures in counter-terrorism and the protection of human rights”, *Security and Human Rights*, vol. 27 (2016), p. 131.

<sup>24</sup> Tufyal Choudhury, “Campaigning on campus: student Islamic societies and counter-terrorism”, *Studies in Conflict and Terrorism*, vol. 40, No. 12 (2017), p. 1007.

<sup>25</sup> See, for example, <https://www.ohchr.org/en/press-releases/2024/06/russia-un-experts-condemn-brazen-terrorist-attacks-dagestan>.

even when judicial review over administrative measures is exercised, courts often tend to defer to the authorities' assessment.<sup>26</sup>

16. The expanding use of administrative measures such as deprivation of nationality,<sup>27</sup> control orders, duties to report to the police or travel bans can have a chilling effect on human rights. Such measures, individually and collectively, may also be characterized as punitive – and not merely preventive – due to their nature, intention, and extensive human rights impacts, even when presented within an administrative legal framework.<sup>28</sup> The impacts can be as restrictive as those emerging from the application of criminal law. This is particularly of concern due to the fact that the application of certain administrative measures may permit the circumvention of essential legal safeguards used in criminal justice, such as the prohibitions against hearsay evidence and protections against reverse onus situations where the accused must prove their innocence.<sup>29</sup> In this regard, the Committee against Torture has expressed concern about the increased reliance on “pre-emptive justice”, which circumvents regular criminal judicial procedures to grant wide-reaching powers to the police.<sup>30</sup>

17. For example, in the United Kingdom of Great Britain and Northern Ireland, the expanded security framework increasingly employs executive powers and administrative measures to address individuals outside the traditional criminal justice system, thereby facilitating the use of secret evidence, including by withholding disclosure of documents and information on the basis of national security, through a lower standard of proof and through the use of “special advocates”.<sup>31</sup> Similar concerns about resort to punitive administrative measures to broaden the legal basis for actions against individuals, without criminal safeguards, have also been raised elsewhere.<sup>32</sup> This approach potentially carries risks of effectively establishing a parallel justice system for many who have not been formally charged with terrorism-related offences.

### C. Safeguards and oversight

18. The use of administrative measures raises questions about safeguards, including oversight, relating to their application. Research shows that most administrative measures

<sup>26</sup> Cyprien Fluzin, “Administrative measures, human rights, and democracy in turbulent times”, International Centre for Counter-Terrorism policy brief, p. 10.

<sup>27</sup> See, for example, “Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on ‘the human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to north-east Syria’”, available at <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2F2022-03%2FDeprivation-of-Citizenship.docx&wdOrigin=BROWSELINK>, p. 9.

<sup>28</sup> According to the European Court of Human Rights, a measure can be regarded punitive depending on its intent and its character. The Court distinguishes between penalties applied to the general public and those applied to specific groups, and considers the severity of the penalty – see *Engel and Others v. The Netherlands*, Application Nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, judgment of 8 June 1976, Series A, No. 22. For more on the punitive nature of administrative measures, see Tanya Mehra and Julie Coleman, “The role of the UN Security Council in countering terrorism and violent extremism: the limits of criminalization?” RESOLVE Network (2022), p. 11.

<sup>29</sup> Boutin, “Administrative measures in counter-terrorism and the protection of human rights”, p. 145; Hadassa Noorda, “Regulation as punishment”, *Criminal Justice Ethics*, vol. 40, No. 2 (2021), p. 111; and Ahmad and Monaghan, “From probabilities to possibilities: terrorism peace bonds, pre-emptive security, and modulations of criminal law”, p. 347. See also, for example, Directive (EU) 2017/541 on combating terrorism: impact on fundamental rights and freedoms, pp. 97 and 98.

<sup>30</sup> CAT/C/DEU/CO/6, para. 41.

<sup>31</sup> See <https://www.amnesty.org/ar/wp-content/uploads/2023/01/EUR4563472023ENGLISH.pdf>, p. 5. See also submission by Rights and Security International, p. 2; and Boutin, “Administrative measures in counter-terrorism and the protection of human rights”, pp. 132 and 133.

<sup>32</sup> For example, in respect of Saudi Arabia, see <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25726>, p. 17, and the submission by MENA Rights Group, pp. 7 and 11. In respect of the United States of America, see, for example, the submissions by Maat Association for Peace, Development and Human Rights, p. 4, and Committee for Justice, p. 5.

can be reviewed by a court, however the standards are much lower than in criminal procedures.<sup>33</sup> In general, administrative measures are reviewed only after they have been imposed, and at the request of the individual affected. In such procedures, evidence is considered according to a lower threshold, such as the balance of probabilities.<sup>34</sup> This, in turn, exacerbates the ever-present risk of arbitrary or discriminatory implementation of certain administrative measures in the framework of counter-terrorism.<sup>35</sup>

19. In relation to terrorism listing practices, it is observed that many national procedures related to listing an individual on a terrorist list, and consequent administrative actions such as travel bans and asset freezes, often lack sufficient procedural safeguards to prevent an abusive use, such as guarantees of transparency and access to information, as well as effective oversight.<sup>36</sup> In Türkiye, for example, many individuals were put on the grey lists of persons wanted for alleged links with terrorist organizations following the July 2016 attempted coup without judicial oversight or the possibility of challenging their inclusion on the list.<sup>37</sup>

20. In Tunisia, travel bans imposed on listed individuals have been marred by a number of procedural deficits and a lack of effective remedy.<sup>38</sup> In regard to Egypt, the Human Rights Committee has raised concerns about the listing of thousands of individuals, including human rights defenders, activists and opposition politicians, on the “terrorist list”, without court hearings or any form of due process.<sup>39</sup> Similar concerns have been raised by United Nations experts,<sup>40</sup> regarding the independence and work of the Commission for the Classification of Terrorist Persons and Entities, in Algeria.<sup>41</sup> Similar bodies have been established by the executive branch in both Qatar<sup>42</sup> and Oman<sup>43</sup> to implement terrorism listing and financial sanctions. In Myanmar, following the military coup in 2021, it was reported that military officials had designated democratically elected bodies as terrorist organizations, resulting in the effective imposition of a range of criminal and administrative measures, especially against the Rohingya, which if violated risked resulting in imprisonment. Israel has

<sup>33</sup> Catherine Hensen, “Meeting the challenge of the preventive State: due process rights and the Terrorism Suppression (Control Orders) Act 2019”, *Victoria University of Wellington Law Review*, vol. 52, No. 1 (2021), pp. 70–73; and Boutin, “Administrative measures in counter-terrorism and the protection of human rights”, p. 129. See also Xing Aifen, Yan Ge and Ilyas Khan, “Preventing terrorism with precaution: an examination of the precautionary principle to counter-terrorism measures”, *Journal of Law and Social Studies*, vol. 5, issue 2 (June 2023), p. 158; and <https://romatrepress.uniroma3.it/wp-content/uploads/2019/05/Counter-terrorism-legislation-in-Italy-the-key-role-of-administrative-measures.pdf>, p. 155.

<sup>34</sup> See, for example, Boutin, “Administrative measures in counter-terrorism and the protection of human rights”, p. 145. On the relaxed evidentiary standards in counter-terrorism administrative measures, see also Leah West and Craig Forcese, “Judicial supervision of anti-terrorism laws in comparative democracies”, *Research Handbook on International Law and Terrorism* (June 2014), p. 467.

<sup>35</sup> For example, in Canada, terrorist “peace bonds” have been overwhelmingly applied against Muslims – see, for example, Ahmad and Monaghan, “From probabilities to possibilities: terrorism peace bonds, pre-emptive security, and modulations of criminal law”, p. 351. See also <https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/Islamophobia-AntiMuslim/Civil%20Society%20or%20Individuals/Noor-ICLMG-ISSA.pdf>.

<sup>36</sup> A/HRC/50/49, para. 22. See also A/76/273, paras. 30–38; and CCPR/C/NZL/CO/6, para. 13.

<sup>37</sup> Submission by International Association for Human Rights Advocacy in Geneva, p. 6.

<sup>38</sup> See, for example, [https://omct-tunisie.org/wp-content/uploads/2019/12/Etre-S\\_Rapport\\_AR.pdf](https://omct-tunisie.org/wp-content/uploads/2019/12/Etre-S_Rapport_AR.pdf) (in Arabic) and <https://www.amnesty.org/en/documents/mde30/8848/2018/en/>.

<sup>39</sup> CCPR/C/EGY/CO/5, para. 13.

<sup>40</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26905>.

<sup>41</sup> See, for example, the submission by MENA Rights Group, p. 4; and the preliminary remarks by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, on his visit to Algeria from 16 to 26 September 2023, available at <https://www.ohchr.org/sites/default/files/documents/issues/association/statements/20230926-EOM-SR-FOAA-Algeria-en.pdf>, p. 9.

<sup>42</sup> Pursuant to Law No. 27 of 2019 promulgating the Law on Combating Terrorism, repealing Law No. (3) of 2004 – see [https://www.qfcra.com/en-us/AML%20Law%20and%20Legislation/Law%20No.%20\(27\)%20of%202019%20Promulgating%20the%20Law%20on%20Combating%20Terrorism.pdf](https://www.qfcra.com/en-us/AML%20Law%20and%20Legislation/Law%20No.%20(27)%20of%202019%20Promulgating%20the%20Law%20on%20Combating%20Terrorism.pdf).

<sup>43</sup> See the National Counter-Terrorism Committee website, available at <https://www.nctc.gov.om>.

designated human rights organizations as terrorist groups based on vague or unsubstantiated reasons, while its applicable law allows for the use of secret evidence in related proceedings.<sup>44</sup>

21. Procedural safeguards and oversight are particularly important in the context of administrative detention, notably given the accompanying risks to human rights, including severe risks of arbitrary detention. The burden of proof lies on States to show that the individual poses a threat and that it cannot be addressed by alternative measures; that burden increases with the length of the detention. Furthermore, States must show that the detention does not last longer than absolutely necessary, that the overall length of possible detention is limited, and that those detained are afforded all applicable judicial guarantees.<sup>45</sup>

22. Nonetheless, the use by States of administrative detention in the context of countering terrorism is on the rise and often fails to meet these prerequisites.<sup>46</sup> In Sri Lanka for example, the executive can issue and extend a detention order for a maximum of 12 months, during which the detainee is not brought before a judge.<sup>47</sup> Similarly, counter-terrorism powers, including preventive and post-sentence detention order regimes in Australia, are reportedly not in conformity with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>48</sup> With regard to the United States of America, 30 men remain detained at Guantanamo Bay Naval Base, some of whom have never been charged with crimes, even after 20 years of detention.<sup>49</sup> In Ethiopia, as at June 2021, authorities had detained thousands of Tigrayan and Oromo ethnic group members suspected of affiliation with the Tigray People's Liberation Front and the Oromo Liberation Army respectively, classified as terrorist organizations in Ethiopia, without any judicial oversight.<sup>50</sup>

23. In the United Arab Emirates, persons deemed to pose a terrorist threat or those convicted of terrorist offences can be placed in *munasaha* centres for an unlimited period of time,<sup>51</sup> which are administrative units that aim for the "enlightenment" and "reform" of persons.<sup>52</sup> Furthermore, in India, the Unlawful Activities Prevention Act allows the detention of individuals for extended periods without formal charges or trials,<sup>53</sup> based on suspicions of individuals being "likely to threaten" or "likely to strike terror in people".<sup>54</sup> In Malaysia, pursuant to the Security Offences (Special Measures) Act, of 2012, preventive detention by the police can be extended for up to 28 days, without requiring presentation before a magistrate for a remand order.<sup>55</sup> In addition, pursuant to the Prevention of Terrorism Act, of 2015, individuals can be held in preventive detention without facing any criminal charges,

<sup>44</sup> See, for example, [CCPR/C/ISR/CO/5](#), para. 18; <https://www.un.org/unispal/document/un-high-commissioner-for-human-rights-bachelet-calls-israels-terrorism-designation-an-unjustified-attack-on-palestinian-civil-society-press-release/> and <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27461>.

<sup>45</sup> Human Rights Committee, general comment No. 35 (2014), para. 15.

<sup>46</sup> See <https://www.ohchr.org/sites/default/files/DetentionCounteringTerrorism.pdf>, para. 14.

<sup>47</sup> Sect. 9 of the Prevention of Terrorism Act.

<sup>48</sup> [CAT/C/AUS/CO/6](#), para. 19.

<sup>49</sup> See <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/2023-06-26-SR-terrorism-technical-visit-US-guantanamo-detention-facility.pdf>, para. 44; see also <https://n.pr/3K6hh7z> and <https://www.amnesty.org/en/latest/news/2024/03/22-years-of-justice-denied/#:~:text=Despite%20this%2C%2030%20men%20remain,which%20never%20seem%20to%20come.>

<sup>50</sup> Submission by Maat Association for Peace, Development and Human Rights, pp. 2 and 3.

<sup>51</sup> Pursuant to Federal Law No. 7 of 2014 on combating terrorism crimes.

<sup>52</sup> Submission by MENA Rights Group, pp. 3 and 4; and see <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25663>, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28708> and <https://www.hrw.org/news/2023/04/12/uae-detainees-held-beyond-sentences>.

<sup>53</sup> See, for example, the submission by Asian Forum for Human Rights and Development, p. 2.

<sup>54</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28286>.

<sup>55</sup> Pursuant to the Security Offences (Special Measures) Act 2012. See the submission by Asian Forum for Human Rights and Development, p. 6.

indefinitely, and without being brought before a court for trial.<sup>56</sup> In Saudi Arabia, the public prosecutor can order the detention of any suspect under the terrorism law for a period of up to 12 months, without any reference to a court order.<sup>57</sup> Preventive detention by Israel<sup>58</sup> has also been the subject of criticism by OHCHR<sup>59</sup> and United Nations experts, also due to limited judicial safeguards and the use of secret evidence.<sup>60</sup> The Human Rights Committee and the Committee against Torture have also expressed concern about the wide-reaching police powers in counter-terrorism in Germany – especially expanding the use of post-conviction preventive detention to “extremist criminals” and extending administrative detention for “potential attackers” to three months.<sup>61</sup> Both Committees recommended that persons suspected of and/or charged with terrorist acts or related crimes be provided, in law and in practice, with appropriate procedural safeguards.

24. Surveillance as an administrative measure in the context of counter-terrorism, especially mass surveillance, has also sparked concerns regarding legality and the lack of adequate procedural safeguards.<sup>62</sup> Many States have significantly expanded the powers of law enforcement and security agencies to conduct surveillance,<sup>63</sup> which has contributed to a blurring of lines between surveillance conducted for law enforcement purposes and surveillance conducted for intelligence-gathering.<sup>64</sup> In addition, mass surveillance raises particular concerns under international human rights law,<sup>65</sup> notably with respect to the rights to privacy and non-discrimination, as surveillance operations tend to disproportionately target minorities and marginalized communities.<sup>66</sup> This could increase risks of unlawful profiling by law enforcement and security agencies based on prohibited grounds of discrimination, which, according to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, is incompatible with human rights principles and ineffective in identifying potential terrorists.<sup>67</sup>

25. The European Court of Human Rights has found that States may not, in the context of countering terrorism, adopt whatever surveillance measures they deem appropriate. The Court has pointed out that it must be satisfied that, whatever system of surveillance may be adopted, there exist adequate and effective guarantees against abuse.<sup>68</sup> In many national jurisdictions, however, limited safeguards and ineffective judicial oversight continue to be reported in regard to the imposition of executive surveillance orders.<sup>69</sup>

<sup>56</sup> Sect. 17 of the Prevention of Terrorism Act does not contain provisions that allow for a trial before a court, and judicial review of any order by the Prevention of Terrorism Board is not allowed, except in regard to questions of procedural compliance.

<sup>57</sup> Art. 19 of the Saudi Arabian counter-terrorism law. See also the submission by the European Saudi Organization for Human Rights, p. 2.

<sup>58</sup> See <https://www.ohchr.org/sites/default/files/documents/countries/opt/20240731-Thematic-report-Detention-context-Gaza-hostilities.pdf>, paras. 58–65.

<sup>59</sup> See, for example, the OHCHR flash report available at <https://www.ohchr.org/sites/default/files/documents/countries/palestine/2023-12-27-Flash-Report.pdf>.

<sup>60</sup> See, for example, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27461>; and [CCPR/C/ISR/CO/5](#), paras. 34 and 35.

<sup>61</sup> [CAT/C/DEU/CO/6](#), para. 41 (b); and [CCPR/C/DEU/CO/7](#), para. 14 (c).

<sup>62</sup> See, for example, <https://www.aclu.org/news/national-security/five-things-to-know-about-nsa-mass-surveillance-and-the-coming-fight-in-congress>.

<sup>63</sup> [A/HRC/39/29](#), para. 17.

<sup>64</sup> Simon Chesterman, “Terrorism, surveillance and privacy”, in Ben Saul (ed.), *Research Handbook on International Law and Terrorism* (Edward Elgar Publishing, 2020).

<sup>65</sup> These concerns apply with respect to the surveillance both of content and of so-called metadata.

<sup>66</sup> [A/78/269](#), para. 35; [A/HRC/50/49](#), para. 23; [A/HRC/51/17](#), para. 46; and see <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27725>.

<sup>67</sup> [A/HRC/4/26](#), paras. 34 and 83. See also Committee on the Elimination of Racial Discrimination, general recommendation No. 36 (2020), para. 8; and [CCPR/C/SWE/CO/7](#), para. 23.

<sup>68</sup> *Klass and Others v. Germany*, application No. 5029/71, judgment of 6 September 1978, paras. 42, 49 and 50. See also OSCE Office for Democratic Institutions and Human Rights, *Countering Terrorism, Protecting Human Rights: A Manual*, available at <https://www.osce.org/files/f/documents/d/6/29103.pdf>, p. 205.

<sup>69</sup> For example, the European Court of Human Rights found in May 2024 that a Polish surveillance law violated the Convention for the Protection of Human Rights and Fundamental Freedoms (European

26. Administrative decisions to deprive someone of their nationality in the context of countering terrorism also raise concerns regarding, inter alia, procedural safeguards and oversight. The lack of sufficient safeguards could render the deprivation of nationality arbitrary and hence prohibited under international law.<sup>70</sup> In particular, there is often a lack of sufficient transparency with regard to administrative decisions on deprivation of nationality, placing the individual in a significantly disadvantaged position.<sup>71</sup> In practice, many States continue to justify depriving their citizens of nationality based on national security grounds,<sup>72</sup> including as a result of procedures carried out in absentia, with an individual's right to a fair trial outweighed by perceived competing requirements of national security.<sup>73</sup> Moreover, the use of secret evidence is also not unusual in such proceedings.<sup>74</sup> The context of deprivation of nationality illustrates the blurred line between administrative and criminal measures in the context of countering terrorism. The character and degree of severity of the restrictions flowing from nationality deprivation also can be seen as pointing to the in substance punitive nature of the measure, even when formally considered as an administrative legal measure.<sup>75</sup>

27. Given the potentially severe practical impacts of certain administrative measures on individual rights, procedural guarantees similar to those applicable to criminal measures

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Convention on Human Rights), inter alia due to a lack of procedural safeguards and because the imposition of surveillance was not subject to any review by an independent body; see *Pietrzak and Bychawska-Siniarska and Others v. Poland*, applications No. 72038/17 and No. 25237/18). See also Directive (EU) 2017/541 on combating terrorism: impact on fundamental rights and freedoms, pp. 99 and 100. In Saudi Arabia, art. 6 of the Anti-Terrorism Law grants the Head of the Presidency of State Security the power to monitor individuals' communications without judicial oversight – see [A/HRC/WGAD/2023/27](#), para. 37. Similar issues were also observed in the Republic of Korea and the Philippines – see [CCPR/C/KOR/CO/5](#), para. 21; and [CCPR/C/PHL/CO/5](#), para. 13. In respect of Uganda, the Human Rights Committee expressed concern at the extremely broad discretionary powers for the interception and surveillance of communications under part VII of the Anti-Terrorism Act – see [CCPR/C/UGA/CO/2](#), para. 16.

<sup>70</sup> See, for example, <https://www.ohchr.org/sites/default/files/2022-03/Deprivation-of-Citizenship.docx>, pp. 2, 13 and 14.

<sup>71</sup> See, for example, [CCPR/C/NLD/CO/5](#), para. 50; and Amnesty International, *Dangerously Disproportionate: The Ever-Expanding National Security State in Europe* (2017), p. 59.

<sup>72</sup> See, for example, “Instrumentalising citizenship”, available at [https://files.institutesi.org/Instrumentalising\\_Citizenship\\_Global\\_Trends\\_Report.pdf](https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf); and [A/HRC/50/49](#), paras. 37 and 38.

<sup>73</sup> See, for example, the case of Shamima Begum, whose British citizenship was revoked by the Home Secretary on national security grounds in February 2019. Ms. Begum challenged both the decision to deprive her of citizenship and the decision to refuse her leave to enter the United Kingdom of Great Britain and Northern Ireland. The Supreme Court held in February 2021 that Ms. Begum could not return to the United Kingdom to pursue her appeal against deprivation of her citizenship. It considered that the national security concerns raised by the Secretary of State outweighed her right to a fair and effective hearing, stressing that when an individual's right to a fair hearing came into conflict with the requirements of national security, the former would not necessarily prevail. See the full judgment at <https://www.supremecourt.uk/cases/docs/uksc-2020-0156-judgment.pdf>. On the substantive appeal against the revocation of Ms. Begum's citizenship, the Special Immigration Appeals Commission ruled in February 2023 that the revocation was lawful, ultimately affirming the Secretary of State's judgment that the risk to national security outweighed Ms. Begum's personal interests – see the decision at <https://www.judiciary.uk/wp-content/uploads/2023/02/Shamima-Begum-OPEN-Judgment.pdf>. This decision was upheld by the Court of Appeal in February 2024, which concluded that the deprivation decision under sect. 40 was not unlawful. See the summary of the decision at <https://www.judiciary.uk/wp-content/uploads/2024/02/Begum-Press-Summary-Final-2024-EWCA-Civ-152.pdf>.

<sup>74</sup> See, for example, the British Nationality Act 1981, sect. 40A. See also Ayesha Riaz, “Increasing the powers of the Secretary of State for the Home Department to strip individuals of their British citizenship: *R (on the application of Begum) v. Secretary of State for the Home Department*”, *Modern Law Review* (June 2023); and [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCPPR%2FCSS%2FGBR%2F57468&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCPPR%2FCSS%2FGBR%2F57468&Lang=en).

<sup>75</sup> Ivó Coca Vila, “Our ‘barbarians’ at the gate: on the undercriminalized citizenship deprivation as a counter-terrorism tool”, *Criminal Law and Philosophy*, vol. 14, No. 2 (July 2020), pp. 153 and 154. See also John Ip, Straddling the civil/criminal divide: the Terrorism Suppression (Control Orders) Act 2019, *New Zealand Law Review* (May 2023).

should be considered for administrative measures resulting in sanctions of a similar nature and with a similar degree of severity, so as to ensure predictability, transparency and fairness.<sup>76</sup> Some scholars suggest developing an appropriate set of minimum procedural standards that can apply to all administrative measures of a preventive nature.<sup>77</sup> Others argue that the type of procedural safeguards that should be applied should depend on the kind of administrative measure imposed.<sup>78</sup> Regardless of the type of administrative measure, in all circumstances an individual should have the right to effectively challenge the lawfulness and proportionality of a restrictive measure before an independent and impartial entity, and the right to an effective remedy in case his or her rights are violated.<sup>79</sup>

28. In a welcome development, Norway adopted amendments to its law on administrative procedure in 2016,<sup>80</sup> providing a legal definition of administrative sanctions which incorporates international human rights law. The law defines certain measures as administrative sanctions, including administrative decisions imposing fines or the loss of rights, and defines the conditions for their application. It incorporates the principle against self-incrimination in the administrative process and grants domestic courts the right to review all aspects of the case, in addition to procedural rights, such as access to information and case documents, to a written and justified decision, and to administrative appeal.

#### IV. Other human rights impacts

29. Beyond affecting human rights related to due process and oversight, administrative measures can affect a range of other human rights. For example, deprivation of nationality as a counter-terrorism measure affects not only the right to stay in and enter the country of nationality, but may also have negative impacts on the right to life with dignity and on the enjoyment of certain economic and social rights. In some cases, it has rendered people stateless, resulting in exile or even indefinite detention in a third country.<sup>81</sup> Furthermore, while deprivation of nationality in the context of counter-terrorism is typically imposed on dual nationals, in certain country contexts the authorities do not need to prove that the individual affected has another nationality before issuing a deprivation order, but rather must simply be satisfied that the individual could obtain another nationality – a policy that, in practice, has the power to leave people stateless if they are unable to secure such a nationality.<sup>82</sup>

30. Given its far-reaching impact on human rights, deprivation of nationality must strictly adhere to international human rights law. Under international law, it must not be arbitrary or discriminatory.<sup>83</sup> In a report by the Secretary-General on arbitrary deprivation of nationality, it was observed that “in order not to be arbitrary, deprivation of nationality must be in conformity with domestic law and in addition comply with specific procedural and

<sup>76</sup> Ivó Coca Vila, “Our ‘barbarians’ at the gate: on the undercriminalized citizenship deprivation as a counter-terrorism tool”, p. 162. See also Vincent Chiao, *Criminal Law in the Age of the Administrative State* (Oxford University Press, November 2018), pp. 182–210. Other scholars argue that control orders (another counter-terrorism administrative measure) should be dealt with in a hybrid manner and should trigger enhanced procedural protection similar to procedural protections afforded in the criminal justice system – see, for example, Hensen, “Meeting the challenge of the preventive State: due process rights and the Terrorism Suppression (Control Orders) Act 2019”, p. 61.

<sup>77</sup> Hensen, “Meeting the challenge of the preventive State: due process rights and the Terrorism Suppression (Control Orders) Act 2019”, p. 86.

<sup>78</sup> International Centre for Counter-Terrorism, “The expanding use of administrative measures in a counter-terrorism context – Part 1: In need of rule-of-law safeguards”, p. 7.

<sup>79</sup> See, for example, Directive (EU) 2017/541 on combating terrorism: impact on fundamental rights and freedoms, p. 99.

<sup>80</sup> LOV-1967-02-10, as amended by Law No. 15 of 27 May 2016, sect. 43.

<sup>81</sup> See, for example, [https://www.rightsandsecurity.org/assets/downloads/RSI\\_submission\\_to\\_HRC.pdf](https://www.rightsandsecurity.org/assets/downloads/RSI_submission_to_HRC.pdf); and *Begum v. Secretary of State for the Home Department*, United Kingdom Supreme Court.

<sup>82</sup> See <https://www.rightsandsecurity.org/impact/entry/court-of-appeals-decision-on-shamima-begums-appeal-sets-troubling-precedent-on-uks-citizenship-stripping>. See also [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCP%20R%2FCSS%2FGBR%2F57468&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCP%20R%2FCSS%2FGBR%2F57468&Lang=en), p. 16 (February 2024).

<sup>83</sup> See, for example, [A/HRC/31/29](https://www.ohchr.org/en/hrbodies/hrc/docs/A_HRC_31_29.pdf).

substantive standards, in particular the principle of proportionality. Measures leading to deprivation of nationality must serve a legitimate purpose that is consistent with international law and in particular the objectives of international human rights law. Such measures must be the least intrusive instrument amongst those which might achieve the desired result and they must be proportional to the interest to be protected.”<sup>84</sup>

31. Some administrative measures have threatened fundamental freedoms and contributed to shrinking civic space, including, for example, listing and sanctions practices. Successive Security Council resolutions have also established targeted sanctions, addressing individuals and entities suspected of supporting or training terrorist groups,<sup>85</sup> and have required States to develop watch lists or databases of known and suspected terrorists, including foreign terrorist fighters. Resolutions have required that such measures comply with domestic and international human rights law.<sup>86</sup> Nonetheless, in practice, the way in which such administrative measures have been implemented has raised concerns of fairness and transparency, as already addressed in previous United Nations reports.<sup>87</sup> For example, in their implementation in some contexts, human rights defenders,<sup>88</sup> dissidents<sup>89</sup> and people belonging to minority groups have been targeted.<sup>90</sup> In other contexts, counter-terrorism justifications have been used by executive branch authorities to unduly restrict freedoms of peaceful assembly and expression.<sup>91</sup> Other administrative measures, such as deprivation of nationality,<sup>92</sup> travel restrictions<sup>93</sup> and detention,<sup>94</sup> have sparked criticism for being used against political dissidents and human rights defenders.

32. Finally, certain administrative measures, including criminal penalties imposed as a result of violating such measures, create stigma that brands individuals as societal threats, effectively discrediting them and reflecting societal condemnation.<sup>95</sup> For example, counter-terrorism-justified house searches may damage the reputation of targeted individuals, leading to negative social repercussions. Under certain circumstances, the individuals concerned can be significantly stigmatized. Administrative measures may further contribute to the stigmatization and marginalization of specific groups, such as racial, ethnic or religious minorities, by fostering suspicion and broadening the concept of “suspect communities”.<sup>96</sup> In addition, measures such as deportation, control orders and financial sanctions can inflict

<sup>84</sup> [A/HRC/10/34](#), para. 49.

<sup>85</sup> For the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities, see, inter alia, Security Council resolutions 1267 (1999), 1333 (2000), 1730 (2006), 1904 (2009), 1989 (2011), 2161 (2014) and 2253 (2015).

<sup>86</sup> See, for example, Security Council resolution 2396 (2017).

<sup>87</sup> On procedural concerns, see [A/HRC/50/49](#), paras. 14–17; and [A/76/273](#), paras. 30 ff.

<sup>88</sup> [A/HRC/44/22](#), paras. 51 and 52.

<sup>89</sup> See, for example, the submissions by Rights and Security International, p. 3; and the Journalists and Writers Foundation, p. 6. See also <https://www.ohchr.org/en/press-releases/2021/12/un-experts-urge-release-rights-defenders-egypt-condemn-misuse-counter>.

<sup>90</sup> In Rakhine State, the people listed as terrorists have been targeted due to their belonging to the Rakhine minority, rather than for alleged criminal acts as individuals. See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24862>.

<sup>91</sup> For example, with regard to France, see <https://www.amnesty.org/en/latest/news/2023/10/ban-on-protests-supporting-palestinians-is-disproportionate-attack-on-the-right-to-protest-in-france/>; <https://www.conseil-etat.fr/actualites/manifestations-de-soutien-a-la-cause-palestinienne-il-revient-aux-prefets-d-apprecier-au-cas-par-cas-si-le-risque-de-troubles-a-l-ordre-public>; and <https://civicforum.eu/wp-content/uploads/2024/04/ECF-Rule-of-Law-Submission-Repeated-repressions-of-Palestine-solidarity.pdf>, pp. 9 and 10. Misuse of counter-terrorism administrative measures to restrict freedom of peaceful assembly were also reported in May 2023 – see Fluzin, “Administrative measures, human rights, and democracy in turbulent times”, pp. 7–11.

<sup>92</sup> See, for example, [A/HRC/WG.6/41/BHR/2](#), para. 31; and the submission by Committee for Justice, p. 2.

<sup>93</sup> See [CCPR/C/TKM/CO/3](#).

<sup>94</sup> Such practices were reported, for example, in Belarus (see [A/78/327](#), paras. 12–14) and in Israel (see [A/HRC/46/63](#), para. 52).

<sup>95</sup> Noorda, “Regulation as punishment”, p. 115.

<sup>96</sup> Fluzin, “Administrative measures, human rights, and democracy in turbulent times”, p. 11.

profound harm beyond their immediate effects, impacting individuals and their families by labelling them as terrorism supporters, with far-reaching consequences.<sup>97</sup>

## V. Effectiveness of administrative measures

33. While States have over the last two decades adopted a wide variety of counter-terrorism measures, including administrative measures,<sup>98</sup> there is a dearth of evaluation of the effectiveness of such measures.<sup>99</sup> The challenges in evaluating counter-terrorism measures are multifaceted, and include definitional uncertainties, methodological issues, and conceptual ambiguities within the domains of counter-terrorism and preventing violent extremism.<sup>100</sup> Demonstrating a direct causal link between the implementation of an administrative measure and the prevention of a terrorist attack is also challenging. The justification for using intrusive counter-terrorism powers often relies on security grounds, framing the situation as exceptional and warranting extraordinary powers, rather than on empirical justifications.<sup>101</sup> Yet, ensuring proper evaluation is crucial, given the asymmetry between the certainty of the measure's impact on rights and the uncertainty of the security gains such measures produce.

34. Effectiveness of administrative measures depends on a number of factors, including the nature, scope and duration of the measures, the grounds required for ordering the measures, the authorities competent to permit, carry out and supervise such measures, and the kind of remedy provided by the national law.<sup>102</sup> Administrative measures, when employed within strict parameters, can be useful especially during a crisis as they allow law enforcement agencies to take decisive action without waiting on court approvals.<sup>103</sup> However, where such efficiencies unduly restrict human rights, the long-term impacts – such as distrust in government and security agencies as well as an increased feeling of socioeconomic injustice and marginalization – outweigh the temporarily decreased security risks.<sup>104</sup>

35. Furthermore, some administrative measures appear to be more punitive than preventive. For example, revocation of social benefits<sup>105</sup> for individuals associated with terrorism is unlikely to prevent terrorism and instead appears to be a punitive measure against relatives. Even more problematic is the increased resort to deprivation of nationality as an administrative measure. This development has taken place despite limited evidence that it is an effective means of protecting national security or public safety.<sup>106</sup> Especially with regard to suspected foreign fighters and their families present outside their country of nationality,

<sup>97</sup> See <https://www.cpl.law.cam.ac.uk/sites/www.law.cam.ac.uk/files/images/www.cpl.law.cam.ac.uk/legacy/File/The%20Widening%20Gyre.pdf>, p. 18.

<sup>98</sup> See, for example, the submission by Honduras.

<sup>99</sup> Matthew Wentworth, “The UK’s executive counter-terrorism measures: a critical analysis of strategy and implementation”, July 2020, p. 31. On the rarity of evaluating administrative measures, see Geneva Academy working papers on exploring counter-terrorism effectiveness and human rights law, pp. 6, 7 and 10. See also Baker-Beall and Mott, “The new EU counter-terrorism agenda: pre-emptive security through the anticipation of terrorist events”, p. 14; as well as the submissions by Maat Association for Peace, Development and Human Rights, p. 6; Ambika Satkunanathan, p. 8; the European Saudi Organization for Human Rights, p. 2; and Journalists and Writers Foundation, p. 10.

<sup>100</sup> Geneva Academy working papers on exploring counter-terrorism effectiveness and human rights law, p. 2.

<sup>101</sup> International Centre for Counter-Terrorism, “The expanding use of administrative measures in a counter-terrorism context – Part 1: In need of rule-of-law safeguards”, p. 8.

<sup>102</sup> OSCE Office for Democratic Institutions and Human Rights, *Countering Terrorism, Protecting Human Rights: A Manual*, p. 202.

<sup>103</sup> Fluzin, “Administrative measures, human rights, and democracy in turbulent times”, p. 2.

<sup>104</sup> For more on how grievances, if not addressed, could be instrumentalized by violent extremist and terrorist groups, see the United Nations Development Programme report entitled *Journey to Extremism in Africa: Pathways to Recruitment and Disengagement* (2023).

<sup>105</sup> See, for example, Boutin, “Administrative measures in counter-terrorism and the protection of human rights”, p. 141; and submission by International Association for Human Rights Advocacy in Geneva, pp. 3 and 4.

<sup>106</sup> Principles on deprivation of nationality as a national security measure, available at <https://files.institutetsi.org/PRINCIPLES.pdf>, p. 2.

research has shown that there is limited evidence of the risk they bring if returned home,<sup>107</sup> and that in some instances deprivation of nationality could be counterproductive, as it may cause further radicalization and redound to the advantage of terrorist groups.<sup>108</sup>

## VI. Conclusions and recommendations

### A. Recommendations for States

36. Terrorism remains a substantial threat to international peace and security, and States must take effective measures to address the threat of terrorism. While acknowledging the complexity of addressing such threat and associated challenges successfully, all measures taken to that end must be fully compatible with international law, including international human rights law. This is not only a matter of binding legal obligations, but is essential also in terms of an effective and sustainable response to terrorism. Evidence shows that responses that do not comply with international human rights law are counterproductive and risk creating new or exacerbating pre-existing grievances that could be conducive to the spread of terrorism.

37. Administrative measures provide a tool for States to address aspects of the threat of terrorism. However, the expansive use of some of these measures raises concerns regarding their impact on human rights and adherence to the rule of law. It is imperative to ensure that their use in each case is lawful, justified, necessary and proportionate, and is accompanied by robust safeguards and oversight to prevent overreach and protect human rights. In particular, judicial independence serves as a crucial check on the exercise by the executive branch of such powers, ensuring that administrative measures are in accordance with the law and respect human rights.

38. It is recommended to States:

(a) To ensure that the legal basis for imposing administrative measures is accessible, transparent and clear, and that the relevant definition of terrorism and associated acts complies with international standards, including the principles of legality and legal certainty. Any administrative measures imposed must be necessary, proportionate, based on individualized risk assessments, and non-discriminatory. Legislation should ensure transparency, fairness and accountability in the implementation of administrative measures;

(b) That adequate procedural safeguards, including fair trial guarantees, must accompany administrative measures, especially those that are tantamount, in substance, to the determination of a criminal charge under international human rights law, irrespective of their categorization in domestic law;

(c) To ensure that prior assessments are undertaken on the human rights impact of administrative measures on different groups, particularly those at risk of discrimination. States should also take measures to address wider negative impacts, including stigmatization;

(d) To ensure that administrative measures do not result in undue restrictions of human rights. They should not be used as a tool to bypass the constraints of criminal law. To that end, States should establish rigorous, regular and independent monitoring and evaluation mechanisms to measure the effectiveness of administrative measures, including their impact on human rights. In doing so, States should involve diverse civil society and affected communities and individuals;

(e) To ensure that terrorist listing legislation and regulatory frameworks are not used to unlawfully suppress the legitimate exercise of human rights or to shrink civic space. States should also take urgent measures to remove individuals and entities

<sup>107</sup> Hensen, "Meeting the challenge of the preventive State: due process rights and the Terrorism Suppression (Control Orders) Act 2019", pp. 64 and 65.

<sup>108</sup> A/HRC/50/49, para. 38.

that are erroneously or unlawfully designated as terrorist, and to ensure they have access to an effective remedy;

(f) To ensure that deprivation of nationality is not employed as a general policy to prevent or to counter terrorism. If used, it should be reserved for the most exceptional circumstances, not be applied arbitrarily, and be subject to stringent safeguards, and should never lead to statelessness. Any subsequent measures resulting in restrictions on rights must also be rigorously justified as necessary, proportionate and non-discriminatory.

## **B. Recommendations for the United Nations**

39. In support of the implementation of the Global Counter-Terrorism Strategy, the United Nations Global Counter-Terrorism Coordination Compact entities are encouraged to intensify efforts to promote respect for human rights and the rule of law as the fundamental basis of measures to counter and prevent terrorism. This should include the promotion of compliance with human rights as an integral part of assistance to States in the development and implementation of counter-terrorism administrative measures. OHCHR stands ready to assist Member States in the development and implementation of human rights-compliant legislation, regulations, and implementation measures.

40. United Nations entities could also intensify technical guidance to Member States on ensuring independent oversight of administrative measures to prevent misuse of counter-terrorism powers, to address human rights violations and to safeguard civic space.

41. United Nations entities may provide support to Member States to identify and assess the effects and impacts on human rights of administrative measures, including recommending ways to address negative human rights impacts. They should also extend the necessary technical assistance to Member States to evaluate the effectiveness of such administrative measures.

42. United Nations human rights mechanisms may consider continuing to raise concerns with States, as appropriate, about negative impacts of counter-terrorism administrative measures on human rights, and put forward recommendations for rectifying such impacts.

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