**Special Rapporteur on the promotion of human rights while countering terrorism, pursuant to resolution 40/16 of the Human Rights Council**

**“Human rights, humanitarian law and counter-terrorism”**

**July 2020**

**Response of Ireland**

Counter-terrorism activities should always be conducted with full respect for the protections afforded to all individuals by international law, including international humanitarian law and human rights. Ireland is firmly committed to the effective application and further development of international humanitarian law, as well as promoting and protecting human rights internationally.

We welcome work undertaken to maximise the intersectional application of international humanitarian law and international human rights law. In addition, we welcome the Special Rapporteur’s work on mainstreaming gender as a priority in her Office’s mandate. Although the issue of women, peace and security has been high on the political agenda for more than two decades, counter-terrorism policies have traditionally been gender-neutral.

Mainstreaming a gender perspective into counter-terrorism frameworks and architecture, and embedding it in the mandates of entities engaged in counter-terrorism oversight and enforcement, protection, assistance and capacity-building will assist in ensuring that international human rights and international humanitarian law are preserved and protected while countering terrorism and violent extremism.

*Counter-terrorism and humanitarian action*

In recent years, there has been a significant increase in the breadth and scope of counter-terrorism measures and sanctions, and a proliferation of counter-terrorism and sanctions regulations at the domestic, regional and multilateral levels.

It is important that counter-terrorism measures taken by states do not have adverse effects on humanitarian action.

*Sanctions*

Ireland implements UN and EU restrictive measures or sanctions, which may consist of asset freezes, trade restrictions or travel bans. We acknowledge, particularly in the context of our own upcoming term on the Security Council, the responsibility to facilitate discussions on all aspects of the impacts of UN sanctions regimes in various sanctions committees, with a view to ensuring that the impacts on principled humanitarian action are fully appreciated and properly addressed.

The key principles guiding EU autonomous restrictive measures are compliance, proportionality and their targeted nature. These principles are set out in the 2004 EU Basic Principles on the Use of Restrictive Measures and in the EU Guidelines on Implementation and Evaluation of Restrictive Measures.

EU restrictive measures are fully compliant with international law, including the obligations stemming from international human rights law, international humanitarian law and international refugee law. These measures are proportionate to the objectives they seek to achieve, and targeted in such a way as to ensure maximum impact on those individuals or entities listed. The targeted nature of EU sanctions regimes are intended to lesson to the maximum extent possible any adverse humanitarian effects or unforeseen consequences for non-targeted persons, in particular the civilian population.

EU sanctions applied to third countries are designed to avoid impeding the delivery of humanitarian aid. The export of food, medicines or medical equipment such as respirators and ventilators are not subject to EU sanctions. Any action not explicitly prohibited under EU sanctions is considered permitted, unless otherwise stated by the national competent authority. Over-compliance should not lead to undermining the provision of humanitarian aid.

EU sanctions contain exceptions which enable otherwise restricted actions to be carried out in order to provide humanitarian aid. Humanitarian operators may need to request a prior authorisation in order to export certain goods (e.g. potential dual-use items) to sanctioned environments or to make funds or economic resources available to designated persons. The competent authority in each EU Member State grants such authorisations. In Ireland, the Department of Foreign Affairs and Trade is the competent authority for humanitarian derogations.

In this context, Ireland calls for other jurisdictions to provide the necessary clarifications to ensure that the sanctions they have imposed do not impede humanitarian assistance, including essential medical equipment and supplies.

In the context of the COVID-19 pandemic, Ireland fully supports the calls by the UN Secretary-General and by the EU High Representative Josep Borrell for sanctions regimes to be applied in such a way as not to hinder the provision of essential equipment and supplies to fight COVID-19 and limit its spread.

It is important that humanitarian exemptions provided for under UN and EU sanctions regimes are fully availed of and applied in an appropriate and timely manner in light of the current emergency. Through the use of these exemptions, Ireland, as an EU Member State, will play its part to ensure that sanctions do not impede humanitarian efforts in the global response to COVID-19.

*Counter-terrorism and human rights*

Current approaches to preventing and countering violent extremism are framed by counter-terrorism architecture that has traditionally focused on criminal justice responses to terrorist and violent extremist activities. While we acknowledge the importance of a criminal justice approach to terrorism, there is a clear need to strengthen human rights compliance in criminal justice responses globally.

We understand that, through our own national experience, that effective counter-terrorism strategy is one that respects human rights, fundamental freedoms, and the rule of law; however, we acknowledge that the protection of human rights in the context of countering terrorism continues to be a challenging endeavour.

Ireland fully recognises the need to promote policy approaches that create the conditions to prevent, rather than perpetuate violent extremist ideologies and activities in certain contexts.

Ireland understands the importance of robust and effective sanctions regimes in the fight against terrorism, and we firmly believe that respect for human rights and due process guarantees are essential for the credibility and effectiveness of restrictive measures.

Through recently adopted Council Conclusions, the EU has committed to continue to proactively support and promote human rights and the principles of international law, in all aspects of the global counter-terrorism efforts and in all its strategic partnerships, including in the regular reviews of the UN Global Counter-Terrorism Strategy.

*Foreign fighters*

The return of foreign fighters presents complex challenges, including questions of public protection, prosecution of offences, protection of citizens’ rights, and de-radicalisation, none of which lend themselves to easy resolution.

We are cognisant of the need to address the issue of foreign fighters and their families – including facilitating their return and repatriation – in line with UN Security Council Resolutions 2178 (2014) and 2396 (2017).

In spite of the practical and security challenges posed by returning foreign terrorist fighters, we believe that innovative approaches can be successfully applied, with accountability a key component of any effective returns process. The prosecution of such individuals in the absence of fair and thorough procedures does not amount to effective justice, especially for victims of terrorism.

*Counter-terrorism measures in Ireland*

In Ireland, human rights are guaranteed by Bunreacht na hÉireann, the Constitution of Ireland. The State is also party to international human rights conventions, such as the International Covenant on Civil and Political Rights, the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights.

Ireland fully recognises that measures to counter the threat to individuals and the State from terrorism must be proportionate and respect human rights. To protect human rights, in the first instance, Bunreacht na hÉireann guarantees an independent judiciary, which has the power to declare a law unconstitutional.

The main body of counter-terrorism legislation in Ireland is the Offences against the State Acts 1939-1998. The Criminal Justice (Terrorist Offences) Act 2005 was introduced to further enhance the State’s response to international terrorism, and gave effect to a number of international instruments directed to terrorism and meets commitments which the State has undertaken as part of the broader international community. It has subsequently been amended by the Criminal Justice (Terrorist Offences) (Amendment) Act 2015.

For laws that are in effect and provide An Garda Síochána (Ireland’s national police force), or other State bodies with intrusive national security powers that encroach upon the right to privacy, the use of such powers are subject to independent judicial oversight. Respect for the rule of law and human rights is strengthened with additional oversight bodies such as an independent police ombudsman and Ireland’s A-status NHRI.

The Irish domestic experience is that through a separation of powers, respect for the rule of law, and a proportionate response a state can respect human rights and counter terrorism successfully.

In September 2018 the Report of the Commission on the Future of Policing was published.[[1]](#footnote-1)  In presenting its recommendations, the Commission was clear that its vision was for a well-managed, effective, efficient, fair, transparent and accountable, human rights compliant and equality proofed police service. The Commission produced 10 guiding principles which made up the framework for policing, security and community safety – the first of which was ‘Human rights are the foundation and purpose of policing’. The Commission viewed the structures for governance and oversight as directly influencing the delivery of effective policing including in the area of counter terrorism.  The most notable recommendations in this regard were:

1. for the establishment of an Independent Examiner of terrorist and serious crime legislation; and
2. for a comprehensive and robust review of the legislative framework within which police and other agencies operate in the area of national security.

These recommendations are consistent with the thrust and substance of recommendations made by the Commission in respect of the human rights-based approach to policing and are currently being progressed.

1. <http://www.policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland(web).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland(web).pdf> [↑](#footnote-ref-1)