

Ireland and the Universal Periodic Review: A Two way Process

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1. Introduction

Following years of criticism of the Human Rights Commission, the United Nations (UN) created a new human rights institution, the Human Rights Council, in March 2006. The associated resolution mandated the new Human Rights Council to ‘undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each state of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States’.¹ The Universal Periodic Review (UPR) is designed as a type of peer review where states are provided with an opportunity to present a report on human rights laws and practices in their state, on which all other states can then refer questions and recommendations. The establishment of the review process has been widely welcomed and has been described as ‘an undertaking imbued with a shift from the former Commission’s policies and practice of shaming to a new consensual and cooperative model of human rights evaluation’.² The review process began in 2008 and 48 states are reviewed every year. Ireland was reviewed for the first time in October 2011.³ The first cycle of reviews has now finished and the second round of reviews begun in May 2012.⁴

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¹ United Nations General Assembly Resolution 60/251 (3 April 2006).

² AM Abebe, ‘Of Shaming and Bargaining: African States and the Universal Periodic Review process of the United Nations Human Rights Council’ (2009) 1 Human Rights Law Review 1.

³ The documentation in relation to Ireland’s review is available from the UN Human Rights Council, <www.ohchr.org/EN/HRBodies/UPR/Pages/IESession12.aspx> accessed 25 September 2012.

⁴ Office of the High Commissioner for Human Rights, ‘Human Rights Council Universal Periodic Review to commence second cycle with thirteenth Working Group session to be held from 21 May to 4 June 2012’, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12157&LangID=E accessed 25 September 2012.

This short note analyses and assesses the review of Ireland's human rights record through the UPR process. Firstly, the note will provide an introduction to the UPR process. Secondly, the Irish report will be examined and the top five issues arising from Ireland's review will be highlighted. Finally, the note will analyse the importance of the UPR in the Irish context and the future development of Irish human rights law as a result of this review process.

2. The UPR Process

The UPR process began in 2008 and 48 states are reviewed every year. The review is conducted by the UPR Working Group which is made up of all 47 Members of the Human Rights Council. However, all states are entitled to enter into dialogue with the individual state under review. 'Troikas' (three states) act as *rapporteurs* assisting the review process and are selected prior to the final review.

There are essentially four elements to the review process. First, a number of documents are gathered and collated comprising a short report provided by the state under review, information from independent human rights experts, human rights treaty bodies and other UN entities, in addition to information from other stakeholders including NGOs. Written questions can be forwarded to the state prior to the oral review.⁵

Next, during the UPR Working Group (which meets three times a year), the interactive phase of the review process takes place between the state under review and all other UN members. This is facilitated by the troika and results in the drafting of an outcome report. The numbers of interventions are limited by the tight time constraints of the interactive stage. Each review takes approximately three hours during which time the state under review is given 30 minutes for its presentation, followed by a question and answer session involving all states over two hours and concluding with a 30 minute slot during which time the state under review can respond to interventions that have been made. The time restrictions have manifested in 'many

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states not being able to speak at all, and diplomats lining up in the pre-dawn darkness to register to speak'.⁶

Finally, the outcome report is adopted during a plenary session of the Human Rights Council and this report includes the questions posed, comments and recommendations to the state under review. Finally, a follow-up to the review is conducted during the next review round.

3. The Irish Review

a. An Introduction to the Top Five Human Rights Themes

The review of Ireland's human rights compliance took place on the 6 October 2011.⁷ The Irish delegation was headed by Minister Shatter and Ireland's troika consisted of Bangladesh, Italy and the Republic of Moldova. The draft report of the Working Group offers a unique insight into the position of human rights in Ireland as it states that Ireland gave its 'fullest commitment to the UPR process'⁸ and to the recommendations of the Human Rights Council. More probative, however, was the Irish delegation statement on 'the question of human rights'.⁹ The delegation on behalf of the State indicated that:

[T]here was no room for moral relativism or selectivity – respect for dignity and human rights that secured that bedrock value was the incontestable baseline of decent politics everywhere. It was also crucial that states which ask human rights questions of others stand on a sound and honest foundation of protecting the human rights of their own citizens. This was crucial to ensure that credibility attaches to questions put

⁶ ER McMahon, 'Herding Cats and Sheep: Assessing State and Regional Behavior in the Universal Periodic Review Mechanism of the United Nations Human Rights Council' (2010) 12 <www.upr-info.org/IMG/pdf/McMahon_Herding_Cats_and_Sheeps_July_2010.pdf> accessed 25 September 2012.

⁷ Report of the Working Group on the Universal Periodic Review: Ireland, December 2011, A/HRC/1/9/9 (21 December 2011) (Working Group report). This report was followed by an Addendum in March 2012, A/HRC/1/9/9 ADD 1 (6 March 2012) (Working Group report addendum).

⁸ Working Group report para 5.

⁹ Working Group report para 11.

to others and so that they are not simply perceived as opportunistic political positioning on the chessboard of international politics.¹⁰

The top five recommendations made by states to Ireland included, the signing and ratification of international instruments, gender and justice issues, immigration and racial discrimination.

(i) International Human Rights Instruments

The most prominent theme in the recommendations made to Ireland related to the signing and ratification of international human rights instruments. Ireland has chosen to accept the majority of these recommendations including recommendations to ratify the Convention on the Rights of Persons with Disabilities,¹¹ the Convention for the Protection of All Persons from Enforced Disappearance¹² and the Optional Protocol to the Convention Against Torture,¹³ the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.¹⁴ Ireland has agreed to examine the possibility of withdrawing its reservations to the International Covenant on Civil and Political Rights,¹⁵ International Covenant on the Elimination of All Forms of Racial Discrimination¹⁶

¹⁰Working Group report, para 11.

¹¹ Convention on the Rights of People with Disabilities 2007. See recommendations of Indonesia, Ecuador, Argentina, Chile, Peru, Austria, Canada, Greece, Iran, Iraq, Spain, Algeria, France and Hungary ,in the Working Group report para 106.1 and Costa Rica in the Working Group report para 106.5.

¹² International Convention for the Protection of All Persons from Enforced Disappearance 2006. See recommendations of Iraq, Indonesia, Ecuador, Spain, Argentina and France in the Working Group report para 106.4.

¹³ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 2002. See recommendations of Brazil, Estonia, Chile, France, Greece, Slovenia, UK, Switzerland in the Working Group report para 106.2 and Peru in the Working Group report para 106.3.

¹⁴ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2002. See recommendations of Chile, Ecuador, Portugal, Slovenia, Turkey and France in the Working Group report para 106.6.

¹⁵ International Covenant on Civil and Political Rights 1966. See recommendation of Brazil in the Working Group report para 107.3 and Iran in the Working Group report para 107.5.

and the International Covenant on Economic, Social and Cultural Rights¹⁷ and signing and ratifying the Optional Protocol to the ICESCR.¹⁸

Ireland's acceptance or, at least, consideration of these recommendations is linked to an assumption in Ireland that a rule based system is in Ireland's national interest.¹⁹ In 2004, the then Taoiseach, Mr. Brian Cowen commented that Ireland 'like most small nations has always known that a multilateral rules-based international order is in our national interest'.²⁰ However, despite Ireland's positive position generally on signing and ratifying international treaties, Ireland, like many other European Union states, rejected a recommendation (made by Turkey, Argentina, Ecuador, Peru, Algeria, Egypt, Iran and Mexico) to sign and ratify the UN Convention on the Rights of Migrant Workers and Members of their Families (CMW).²¹ This reluctance to sign or ratify the CMW and to engage in migration issues is echoed in the large amount of recommendations received by Ireland in relation to the issue of immigration more generally.

¹⁶ International Convention on the Elimination of All Forms of Racial Discrimination 1965. See recommendation of Iran *ibid*.

¹⁷ International Covenant on Economic, Social and Cultural Rights 1966. See recommendation of Iran in the Working Group report para 107.5.

¹⁸ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2008. See recommendation of Iran in the Working Group report para 107.5.

¹⁹ For more information on Ireland's human rights history in this area see N Higgins and E Dewhurst, 'Human Rights and Irish Foreign Policy' in Ben Tonra and others (eds), *Irish Foreign Policy* (Gill and Macmillan 2012) 215-216.

²⁰ B Cowen, 'Challenges to liberal internationalism' (2001) 12 *Irish Studies in International Affairs* 1.

²¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990. See Working Group report para 108.1.

(ii) Immigration

Ireland has a very unique migration history which has fluctuated between periods marked by emigration and immigration.²² Therefore it is unsurprising that the second major theme raised by other states in the review of Ireland was the issue of immigration. Ireland received almost 30 recommendations from states relating to immigration law, practices and policies in Ireland. This focus on immigration was anticipated considering that over 15% of the Irish population are now non-nationals and Ireland has continuously failed, despite criticism from national and international bodies, to implement immigration reform.²³ The Immigration, Residence and Protection Bill 2010, the predecessor of similar failed immigration bills in 2002 and 2008, which would attempt to modernise and codify existing immigration law practice in Ireland, has effectively been stalled.²⁴

However, this focus on immigration concerns in the Irish review is in stark contrast to the Ireland's participation on the issue of immigration during the UPR of other states as Ireland has never made any recommendations on the issue of immigration. Ireland has agreed to accept certain rather vague recommendations relating to immigration including improving protections for separated children,²⁵ migrant workers, victims of trafficking, asylum seekers and refugees²⁶ through improved legislation. However, more specific recommendations were either merely considered for examination (e.g. the recommendation to adopt immediate measures to assign an ad litem tutor or advisor to separated children and the recommendation

²² For more information on the impact of this migration and economic fluctuation on human rights see E Dewhurst and N Higgins, 'Human Rights Law and Economic Transitions' in Briggs and others (eds), *Human Rights in Times of Transition: An Interdisciplinary Perspective* (Université de Genève and the University of Michigan 2012) (forthcoming).

²³ See, for example, Commissioner for Human Rights, 'Report by the Commissioner for Human Rights MA Thomas Hammarberg on his Visit to Ireland 26 - 30 November 2007' (Council of Europe 2008) <<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1283555>> accessed 25 September 2012.

²⁴ The Immigration, Residence and Protection Bill 2010 was moved to Report Stage on the 23 March 2011 but has not been addressed since that point.

²⁵ Recommendation of Uruguay in the Working Group report para 106.17.

²⁶ Recommendation of Sri-Lanka in the Working Group report para 106.34.

to enact laws on the issue of family reunification,²⁷ the recommendation to avoid the detention of asylum seekers with convicted prisoners²⁸ and the recommendation to introduce legislation relating to sham marriages,²⁹ or were rejected outright (e.g. the recommendation to legislate against racial profiling,³⁰ the recommendation to protect through legislation the rights of domestic migrant workers³¹ and the recommendation to introduce a law granting asylum seekers the right to work in Ireland.³² This treatment of immigration issues again highlights the very low priority attributed to immigration law in Ireland and the impact of such a policy on the development of human rights.

(iii) Gender

Gender issues also featured very strongly in the recommendations made to Ireland mirroring the recommendations that Ireland regularly makes to other states about their commitment to gender issues. Of particular concern to many states were the issues of gender discrimination in employment,³³ education,³⁴ politics,³⁵ and domestic violence³⁶ and the substantially delayed report from Ireland to UN Convention on the Elimination of All Forms of

²⁷ Recommendation of Uruguay in the Working Group report para 107.20.

²⁸ Recommendation of Brazil in the Working Group report para 107.35.

²⁹ Recommendation of Latvia in the Working Group report para 107.43.

³⁰ Recommendation of Iran in the Working Group report, para 108.10; recommendation of Brazil in the Working Group report, para 108.11; recommendation of Azerbaijan in the Working Group report, para 108.12; and the recommendation of Honduras in the Working Group report, para 108.13.

³¹ Recommendation of Uzbekistan in the Working Group report para 108.14.

³² Recommendation of Czech Republic in the Working Group report para 108.15.

³³ Recommendation of Sri-Lanka in the Working Group report para 106.20.

³⁴ Recommendation of Argentina in the Working Group report para 106.51; recommendation of Moldova in the Working Group report para 106.14; recommendation of Mexico in the Working Group report para 106.58.

³⁵ Recommendation of Ghana in the Working Group report para 106.59.

³⁶ Recommendation of Malaysia in the Working Group report para 106.53.

Discrimination Against Women.³⁷ Ireland is considering recommendations relating to the introduction of gender parity laws,³⁸ signing the Council of Europe Convention on Violence against Women and Domestic Violence,³⁹ researching domestic violence with a view to legislative reform⁴⁰ and instituting a comprehensive ‘statutory inquiry and compensation scheme in order to guarantee accountability and assist the victims of violence’.⁴¹ One gender issue which received significant prominence was the issue of reproductive health and abortion. However, Ireland rejected outright all five recommendations relating to abortion. Many of these recommendations were uncontroversial (e.g. to implement the European Court of Human Rights’ judgment in *A, B and C v Ireland*)⁴² and considering the fact that Ireland will have to implement the decision at some stage, the outright rejection of this recommendation is puzzling. However, during the review process, Ireland did promise to establish an expert group on the matter. This Expert Group was established in January 2012 and is due to make recommendations on the Irish abortion framework to the Government this year. A Private Members’ Bill, proposed by Socialist Party TD Clare Daly, which sought to regulate limited access to abortion services, was rejected by the Oireachtas in April 2012. Unsurprisingly, the State rejected more specific recommendations which insisted on the development of legislative enactments decriminalising abortion or permitting abortion in certain defined circumstances.⁴³

³⁷ Recommendation of Switzerland in the Working Group report para 106.52.

³⁸ Recommendation of France in the Working Group report para 107.54.

³⁹ Recommendation of Austria in the Working Group report para 107.23.

⁴⁰ Recommendation of Pakistan in the Working Group report para 107.38.

⁴¹ Recommendation of Thailand in the Working Group report para 107.40.

⁴² *A, B and C v Ireland* App no. 25579/05 (ECtHR, 16 December 2010). See recommendation of the United Kingdom in the Working Group report para 108.5.

⁴³ Recommendation of Denmark in the Working Group report para 108.6; recommendation of Slovenia in the Working Group report para 108. 7; recommendation of Spain in the Working Group report para 108.8.

(iv) Racial Discrimination

Closely linked with immigration law concerns, is the concept of racial discrimination and Ireland received multiple recommendations⁴⁴ on this issue, yet only accepted a few of these recommendations completely. The accepted recommendations related to effective investigations and enforcement of incidents of xenophobia and discriminatory acts.⁴⁵ However, Ireland only agreed to examine the recommendation to ratify the UNESCO Convention to counter discrimination in education 1960,⁴⁶ the protection of immigrants,⁴⁷ and the development of laws and national strategies in the area of racial discrimination⁴⁸ and rejected entirely a recommendation to enact laws and design plans and strategies to combat racism, racial discrimination, and racial profiling and to investigate and compensate victims.⁴⁹ The rationale for the rejection of this recommendation is unclear; however, it may be linked to the fact that the State feels that this legislation and compensation structure already exists. During the review process, Ireland reiterated that the practice of racial profiling was not commonplace and that sufficient laws were in place to deal with racial discrimination and incitement to hatred. However, the situation on the ground would appear to suggest that the existing legal regime is not effective at tackling the complex issues that have arisen in Ireland in recent years.⁵⁰

⁴⁴ There were 16 recommendations made on this issue.

⁴⁵ Recommendation of Iran in the Working Group report para 106.23; recommendation by Malaysia in the Working Group report para 106.26; recommendation by Azerbaijan in the Working Group report para 106.28.

⁴⁶ Recommendation by Uzbekistan in the Working Group report para 107.7.

⁴⁷ Recommendation by Mexico in the Working Group report para 107.24.

⁴⁸ Recommendation of Malaysia in the Working Group report para 107.26; recommendation of Pakistan in the Working Group report para 107.28; recommendation of Azerbaijan in the Working Group report para 107.29; recommendation of the Czech Republic in the Working group report para 107.31.

⁴⁹ Recommendation of Egypt in the Working Group report para 108.2.

⁵⁰ See NGO Alliance Against Racism, 'Shadow Report: In response to the Third and Fourth Periodic Reports of Ireland under the UN International Convention on the Elimination of All Forms of Racial Discrimination' (January 2011) <www.immigrantcouncil.ie/images/stories/NAAR_Shadow_Report_to_CERD_final.pdf> accessed 25 September 2012.

(v) Justice

The fifth most popular recommendations made to Ireland were in the area of justice and, in particular, prison conditions. In light of Ireland failure to implement international standards in the context of prisons and the criticism from the UN Committee Against Torture, it is not unusual to see a variety of recommendations in this area. The majority of recommendations were accepted by Ireland, including recommendations on improving prison standards⁵¹ and eliminating in-cell sanitation⁵² and over-crowding⁵³ which have been a source of grave human rights concerns in Ireland in recent years.⁵⁴ Ireland, during the review recognised the concerns of the Committee Against Torture on a proposed large-scale prison building project and stated that it had appointed an expert group, which had reported that smaller units of accommodation would be sufficient for needs and would meet the objective of ensuring that the prisoners had hygienic, in-cell sanitation facilities.⁵⁵ Ireland, during the review, also reiterated that all new prison cells would have in-cell sanitation, highlighting their commitment to these recommendations.⁵⁶

⁵¹ Recommendation of Indonesia in the Working group report para 106.48; recommendation of Peru in the Working Group report para 106.47; recommendation of Algeria in the Working Group report para 106.36; recommendation of Norway in the Working Group report para 106.37; recommendation of Australia in the Working group report para 106.38; recommendation of Austria in the Working group report para 106.41; recommendation of Denmark in the Working Group report para 106.44; recommendation of Sweden in the Working group report para 106.45; recommendation of Spain in the Working Group report para 106.46 and the recommendation of the USA in the Working Group report para 106.39.

⁵² Recommendations of USA in the Working Group report para 106.39 and recommendation of Denmark in the Working Group report para 106.44.

⁵³ Recommendations of Austria in the Working Group report para 106.38; recommendation of Denmark in the Working Group report para 106.44 and recommendation of Spain in the Working Group report para 106.46.

⁵⁴ See Irish Penal Reform Trust, 'Position Paper 6: Planning the Future of Irish Prisons' (August 2009) <www.iprt.ie/files/IPRT_Position_Paper_6_-_Planning_the_Future_of_Irish_Prisons.pdf> accessed 25 September 2012.

⁵⁵ Working Group report para 40.

⁵⁶ Working Group report para 70.

4. Conclusion

The UPR process has been a remarkably adept tool in highlighting the major gaps in Irish human rights protection (namely, ratification of international human rights instruments, justice, gender, immigration and racial discrimination). The review process emphasises areas of mutual concern between states which require further development and attention including justice issues, gender issues and the ratification of international human rights instruments. In this respect, the review process acts as a method by which states can essentially reach a standard ground with regard to certain issues, essentially raising the overall protection of certain rights.⁵⁷ However, the review process also highlights areas of specific concern in a particular state even though that state may not be aware of the significance of the issue internationally. In the case of Ireland, the issues of immigration and race discrimination, while not high priority on the Irish human rights agenda generally, featured prominently in their own review.

With regard to the top five issues highlighted in the Irish UPR report, Ireland, prior to the follow-up review in 2016, should take proactive measures to deal with specific issues including the ratification of certain international human rights instruments, the development of specific immigration and protection legislation, the implementation of the decision in *A, B, C v. Ireland*,⁵⁸ the effective enforcement of its race discrimination legislation and the improvement of prison conditions. Overall, the UPR process is a unique method of holding states to account for its human rights record. In the case of Ireland, it has and will have two specific outcomes. Firstly, and on a more theoretical level, it has encouraged the State to actively engage in human rights issues and to listen and respond to the human rights concerns

⁵⁷ For a discussion of the UPR process, see T Rathgeber, 'The HRC Universal Periodic Review: A Preliminary Assessment' (Briefing Paper, Dialogue on Globalization 2008) <www.upr-info.org/IMG/pdf/A_preliminary_assesment_Theodor_Rathgeber.pdf> accessed 25 September 2012 and UN Watch, 'A Mutual Praise Society: Country scorecard and evaluation of the Universal Periodic Review system of the U.N. Human Rights Council' (2009) <www.unwatch.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/Mutual%20Praise%20Society.pdf> accessed 25 September 2012. With regard to the issue of regionalism in the UPR process, see McMahon (n 6).

⁵⁸ *A, B and C v Ireland* (n 42).

most affecting its population. The proactive stance of the Irish government to the UPR process should, in general, be commended. Secondly, and on a practical level, the UPR process has committed Ireland to the implementation of certain human rights standards in a wide variety of areas. However, only the follow-up review of Ireland in 2016 will reveal whether this theoretical proactivity will, in fact, be practically realised at a national level.