



## Submission to the Department of Foreign Affairs and Trade's public consultation on its review of Ireland's foreign policy and external relations

February 2014

### Introduction

Amnesty International Ireland (AI) welcomes the consultation process being undertaken by the Department of Foreign Affairs and Trade (DFAT) in the course of its review of Ireland's foreign policy and external relations. AI submits the following brief observations to this process. While the matters under review, as outlined in DFAT's consultation document, span more widely, in this submission we confine our attention to some key areas in which Ireland's foreign policy should reflect and integrate international human rights standards. Conscious that the review document will likely describe Ireland's foreign policy in quite general terms, we do not delve deeply into the areas we flag for attention in this submission; nor is this submission exhaustive of our areas of current or future engagement with DFAT in respect of Ireland's foreign policy.

AI is heartened that, in his address to the 13th DFAT NGO Human Rights Forum in November 2013, the focus of which was this review, the Tánaiste said: "Human rights have been a central concern of our foreign policy since independence. [ ...] There is no finer manifesto available to us for the conduct of international affairs than the international treaties on human rights and fundamental freedoms." AI hopes that this review will embed within Ireland's foreign policy a meaningful respect for the international human rights framework. States cannot view human rights as something to which just they themselves are to have regard, but also something that they must demand other states respect. In this regard, it will be important that human rights are not confined to just one 'human rights' section of the review document, but are integrated and mainstreamed throughout many other foreign policy areas.

It will also be important that the review reflects the need for the protection and promotion of women's human rights to be mainstreamed across Ireland's foreign policy. The Women's Human Rights Alliance's submission points to some important areas for attention in this context, including regarding Ireland's commitments under UN Security Council Resolution 1325 on women, peace and security. In addition, due regard must be paid to other groups subject to discrimination and marginalisation around the world, such as children and people with disabilities. The review should also outline Ireland's commitments to human rights based, sustainable development, and, as a member, AI subscribes to the position outlined in the submission issued by Dóchas, the Association of Irish Non-Governmental Development Organisations,<sup>1</sup> in this regard.

Please also note that AI Ireland is a signatory to the submission issued by the Galway Platform on Human Rights in Irish Foreign Policy.

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<sup>1</sup> A submission to the Review by the Department of Foreign Affairs and Trade of Ireland's Foreign Policy and External Relations, available at [www.dochas.ie/Shared/Files/4/Dochas\\_submission\\_-\\_foreign\\_policy\\_review\\_-\\_final.pdf](http://www.dochas.ie/Shared/Files/4/Dochas_submission_-_foreign_policy_review_-_final.pdf)

### **Bilateral engagement: human rights v trade**

AI is conscious that DFAT's remit spans a number of what might appear to be competing foreign policy priorities, and that, particularly in these times of economic hardship at home, its role in promoting trade and investment abroad is of crucial importance. As the review's consultation document states: "Given the importance of the global economy to our economic growth and prosperity, the promotion of trade, tourism and investment are essential functions of our foreign relations." Indeed trade and investment are core to Ireland's recovery and to its fulfilling the human rights of its people here at home. However it is vital that the review makes it unambiguously clear that Ireland will not allow its economic interests to trump its responsibility to promote and protect human rights, on either bilateral or multilateral fronts.

There has been considerable concern at recent comments by Government representatives on foot of a January 2014 trade and investment mission to the Gulf States. The net effect of those statements is that not only were human right concerns about those countries not raised at all by the Irish Government representatives during the mission, but the impression has been left that trade missions are no longer considered by this Government to be an appropriate or effective place to raise human rights concerns. It is vital that the review clarify that Ireland has not in fact adopted such a blanket position vis-à-vis trade and investment missions. The review would usefully explore and illustrate how human rights based diplomacy and effective bilateral trade engagement are not mutually exclusive, but can actually serve to underpin and reinforce each other.

These Government statements also intimated that Ireland's human rights concerns about other states will be voiced only through the UN (for instance through the UN Human Rights Council) or European Union (such as through the inclusion of human rights clauses in trade deals between the EU and other countries). While these are indeed important multilateral forums for Ireland's raising concerns, Ireland cannot abdicate its own role.

To leave Ireland's human rights responsibility to EU foreign policy would fly in the face of the letter and spirit of the 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy, the first implementation steps of which Ireland was the first EU presidency to drive. Here the EU has committed to "promot[ing] human rights in all areas of its external action without exception" , and particular in "trade, investment, technology ..." The EU also committed here to placing human rights "at the centre of its relations with all third countries". This does not mean Member States can shirk their duty to raise human rights in bilateral engagements, including on trade, since it says: "Outside [the EU's] frontiers, promoting and speaking out on human rights and democracy is a joint responsibility of the EU and its Member States."

Neither is it acceptable to purport to outsource Ireland's human rights diplomacy to the UN. In the abovementioned address, the Tánaiste observed how Ireland's own domestic record of making human rights promotion an integral part of its own foreign policy was of critical influence in its being elected to the UN Human Rights Council: "Our commitment to the promotion and protection of human rights in our foreign policy has been recognised by our election, for the first time, to the UN Human Rights Council in November 2012. This was a major endorsement of Ireland's international standing, and in particular, of our advocacy of human rights across the globe." Ireland's place on the Human Rights Council requires it to show greater bilateral leadership on human rights – not less

AI hopes this review makes clear that no category of bilateral engagement is automatically ruled out as a possible channel for promoting human rights, but that decisions in this regard will be taken on the case-by-case basis of the human rights situation in the country at issue and the strategic opportunities presented by the bilateral forum in question.

## **Business and human rights**

AI believes that the emerging field of Business and Human Rights also merits express attention in this review. Ireland was one of the countries that cosponsored the UN resolution establishing the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises, whose aim is to effectively implement the UN Guiding Principles on Business and Human Rights. AI recognises that a large part of how Ireland engages thematically in this arena is through the EU. However, as part of its own foreign policy and external relations, Ireland should commit to ensuring that the activities of Irish-based companies investing in third countries or engaged in business there (including through their subsidiaries, supply chains and key business relationships) do not infringe, or contribute to infringing, upon human rights.

In its 2012 Strategic Framework and Action Plan on Human Rights and Democracy, the EU has committed to implementing the UN Guiding Principles on Business and Human Rights (and, relatedly, to ensure that human rights are taken into account in trade and investment policies and agreements). EU Member States have undertaken to develop national plans to implement the UN Guiding Principles. AI is conscious that the Guiding Principles cover a range of issues which span the policy responsibilities of a number of Government Departments and agencies. AI understands that consideration is currently being given by the Irish Government as to how to address the Guiding Principles and how best to go about formulating its national plan for their implementation. We understand that Government Departments will be examining how best to take this forward in the coming period. It would be helpful if the review could give some general outline of Ireland's plans to develop such a national implementation plan.

The need for clearer articulation of Ireland's domestic approach to Business and Human Rights norms is thrown into sharp focus by the increased Government attention to trade and investment, and promoting the activities of Irish companies abroad to this end. As the Minister for Jobs, Enterprise and Innovation has recently stated: "Pioneering companies such as those who travelled to the Gulf are fighting for new markets in these economies, and if we are to deliver the export-led growth that will support our jobs recovery, Government must stand behind them with the supports they need. [...] We are in the business of improving and intensifying these supports for multinationals and exporting companies, not undermining them."<sup>2</sup> It is important that this review explain how business interests and human rights can - and in fact must - go hand in hand.

## **The European Union and human rights**

Here in the European region, we see the increasing role the EU plays in its Member States' foreign policy and external action. AI therefore engages with the EU institutions pushing for the integration of human rights into its internal and external policies. Ireland's recent presidency of the Council of the EU gave a direct insight into the influence the EU can have on human rights protection by governments beyond the EU's borders.<sup>3</sup> The review could usefully outline how Ireland delivers its foreign policy and external action objectives through the EU. It might also explore how Ireland might push for better and more coherent EU external human rights policies and action in this regard.

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<sup>2</sup> "Opinion: raising human rights issues during a trade mission would represent a token gesture while achieving nothing", Irish Times, 23 January 2014, available at [www.irishtimes.com/business/economy/employment/trade-missions-are-not-the-place-to-raise-human-rights-1.1664407?page=1](http://www.irishtimes.com/business/economy/employment/trade-missions-are-not-the-place-to-raise-human-rights-1.1664407?page=1).

<sup>3</sup> AI's review of Ireland's human rights achievements during its 2013 EU Presidency is available at [http://amnesty.ie/sites/default/files/Final%20draft%20review%20of%20Ireland's%20EU%20Presidency\\_0.pdf](http://amnesty.ie/sites/default/files/Final%20draft%20review%20of%20Ireland's%20EU%20Presidency_0.pdf).

For instance, in its external affairs, the EU formally attaches the same importance to economic, social and cultural (ESC) rights as it does to civil and political rights. More could be done however and, the EU Strategic Framework and Action Plan on Human Rights and Democracy promises that the EU will “intensify its efforts to promote economic, social and cultural rights”. A commitment by Ireland to help driving this agenda forward would be welcome.

While operationally outside the departmental remit of DFAT, the review should reference the importance of the EU’s looking at human right promotion and protection within its borders. There is an acknowledged need for better coherence between internal and external EU policies on human rights, as envisaged by Heading 8 of the EU Strategic Framework and Action Plan on Human Rights and Democracy. One of the actions set out in Heading 8 for the Council of the EU is to “[i]ntensify cooperation between the Council working parties on fundamental rights (FREMP) and human rights (COHOM) to address issues of coherence and consistency between the EU’s external and internal human rights policy”.

AI notes the push by Ireland during and since its EU presidency for a stronger and more comprehensive internal EU policy on fundamental rights, equality and the rule of law; and optimally the review would briefly outline Ireland’s continuing ambitions and plans in this regard.

### **The Council of Europe**

The review should reference the regional importance of a strong Council of Europe, so that it and its member states take tangible action to promote and protect human rights nationally and regionally. A commitment should be made to Ireland’s ensuring the strengthening of the European Court of Human Rights system. Ireland also should advocate that the Council of Europe Convention on Violence Against Women and Domestic Violence be signed and ratified by the Member States, including by Ireland itself.

### **The UN**

Ireland has been a strong supporter, including financially, of the UN’s human rights institutions, frameworks and related processes. Ireland has lent logistical and financial support to the ‘Dublin process’ on treaty body strengthening and reform, and, as the current intergovernmental process on treaty body strengthening enters final negotiations, continues to push for an enhanced and effective system. It would be helpful if the review set out Ireland’s continuing commitment to supporting treaty body strengthening on an ongoing basis.

Ireland is known for punching above its weight in the UN. For instance it has made statements and recommendations at the UPR of the majority of countries. Its priority themes at the UN include human rights defenders, gender equality (including violence against women), freedom of religion and belief, and issues relating to sexual orientation and gender identity (SOGI). Ireland was one of the cross-regional group of states working on Human Rights, Sexual Orientation and Gender Identity that successfully landed a ground-breaking Human Rights Council Resolution on Human Rights, Sexual Orientation and Gender Identity in June 2011, where for the first time a UN resolution explicitly acknowledged human rights protection as covering sexual orientation. In international and bilateral forums, Ireland’s opposition to the death penalty in all cases without exception has been welcome. The review would usefully not only outline what Ireland’s current priorities at the UN are but also explore what other human rights themes Ireland might use its influence, experience and expertise to progress.

For instance there is emerging awareness of the global importance of ESC rights. Across the world today, many people are still unable to access even minimum levels of food, water, education, health care and housing. This is not only the result of a lack of resources, but also

unwillingness, negligence and discrimination by governments and others. Many groups are specifically targeted because of who they are; those on the margins of society are often overlooked altogether. Part of the problem today is that despite their longstanding recognition in international law, regional treaties and countless constitutions and laws at the national level, some governments still deny the legitimacy of ESC rights. At the UN Human Rights Council, despite much rhetoric on the indivisibility of human rights, unfortunately much remains to be done to fully deliver on this vital principle. The politicisation of the distinction between civil and political rights on one hand and ESC rights on the other continues. There is an inclination to articulate this distinction in terms of North/South divide, which in fact is a false reflection – implementation of ESC rights remains a problem for all states. Anything that can be done to chip away at such politicisation would be a positive step towards ensuring a truly holistic approach to human rights. European countries have been strong in terms of running ESC rights resolutions. For example Portugal has a strong record in running the general ESC rights resolution. Germany and Finland have led the way on the resolution on the right to housing, and Germany and Spain have taken forward the rights to water and sanitation. What could be useful would be to build on getting more ‘buy in’ from a broader range of countries on these resolutions in order to combat such politicisation. AI therefore welcomes Heading 9 in the EU Strategic Framework and Action Plan on Human Rights and Democracy, which proposes external action on ESC rights at the UN Human Rights Council in cooperation with UN Special Rapporteurs. It would be useful if the review could point to at least the need for further shape being put on these commitments.

One of the most pressing issues for many people around the world today is the lack of basic sanitation. The majority of the illness in the world is caused by fecal matter, for example. In September 2010, the UN Human Rights Council affirmed by consensus that the right to water and sanitation is derived from the right to an adequate standard of living. However national and international programmes to promote ‘water and sanitation’ often tend to ignore sanitation. Sanitation needs to get the attention it requires. Essential to this is that the right to sanitation is accepted by the international community as a stand-alone right. Some states consider the right to sanitation too vague to be a real right, or just a component of the right to water and not a separate right. AI would welcome Ireland’s clear and unequivocal support for the position that people have the rights to water and sanitation.

Regarding Ireland’s remaining tenure on the Human Rights Council, the review should restate Ireland’s commitment to contributing to prompt and effective action by the UN to address situations of human rights violations; and participating fully in the Universal Periodic Review process, both as the State under review and as reviewing State. The Government should also announce the steps it will take to fulfil its electoral pledges when seeking election to the Council,<sup>4</sup> and to regularly inform the General Assembly and the Council of progress in implementing these commitments.

### **International Financial Institutions**

The influence that International Financial Institutions such as the World Bank wield in bilateral and international relations is increasingly evident. While the impacts of these institutions can be positive - for example, contributing to economic growth and poverty reduction - too often the impact is negative. Yet many such institutions regard human rights as a political issue for states themselves to resolve, and refuse to accept that they have, at a minimum, a responsibility to ensure respect for human rights in the activities they support. This is despite the fact that many of these institutions are established and controlled by

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<sup>4</sup> AI’s open letter to Ireland as a candidate country commenting on its election pledges and noting additional opportunities for it to promote and protect human rights is at [www.amnesty.org/en/library/info/EUR29/002/2012/en](http://www.amnesty.org/en/library/info/EUR29/002/2012/en).

states. AI urges that the review make reference to International Financial Institutions, and Ireland's role therein and position thereon.

### **Arms Trade**

Ireland played a formidable role in the UN negotiations that ultimately yielded the Arms Trade Treaty to regulate the global trade in conventional weapons, which was adopted by overwhelming majority at the UN General Assembly in April 2013. Ireland was one of the treaty's strongest supporters and its representatives in New York and in the EU Council's working group worked extremely hard over a number of years to ensure a strong treaty was agreed. This treaty has many strong rules and can be amended, thus providing a firm foundation on which to build an international system to stop arms getting into the hands of those who would use them to commit serious violations of international human rights law or international humanitarian law. Ireland was one of the first states to sign the treaty, in June 2013, and has committed to ratifying shortly. The review should identify Ireland's continuing support for this treaty's widespread ratification and implementation worldwide.

### **International Justice**

The review should reference Ireland's commitment to, and work towards, an effective system of international justice to ensure justice, truth and full reparations for crimes under international law: genocide, crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances. It should note Ireland's continuing commitment to supporting - including financially - the work of the International Criminal Court. Ireland should also promptly accede to the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, without making prohibited reservations, and to implement it in national law.

### **Northern Ireland**

In relation to Northern Ireland, the review consultation document asks: "How can [Ireland] continue to contribute to the promotion of further reconciliation and the maintenance of peace on the island of Ireland?"

In September 2013, AI published a report entitled *Northern Ireland: Time to Deal with the Past*,<sup>5</sup> which assesses the work of mechanisms currently in place in Northern Ireland to investigate past human rights abuses by armed groups, and human rights violations by state actors committed during the three decades of political violence. The report concludes that the existing mechanisms were inherently deficient and too often failed to deliver truth and justice to victims and their families. AI has called for a new comprehensive approach to the past that would be capable of fully and effectively investigating the violations and abuses committed by all sides, and would contribute to securing truth and justice for victims. Drawing on AI's past experience and research across the globe, the report outlines central principles to help guide the establishment of such an approach and mechanism. AI believes that the lack of political will to address the past remains the greatest obstacle to establishing a single comprehensive approach in Northern Ireland. In this report, AI recommends that the Irish Government support the establishment of a single comprehensive approach and mechanism to address the past in Northern Ireland and, if it is established, to provide full cooperation with its investigations.

Despite the lack of a final Agreement, AI believes that the recent Haass draft proposals on dealing with the past represent an important step forward.<sup>6</sup> Indeed, the introduction to the

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<sup>5</sup> At [www.amnesty.ie/sites/default/files/IS%20northern%20ireland%20report\\_complete%20web\\_0.pdf](http://www.amnesty.ie/sites/default/files/IS%20northern%20ireland%20report_complete%20web_0.pdf).

<sup>6</sup> Proposed Agreement 31 December 2013, An Agreement among the Parties of the Northern Ireland Executive on parades, select commemorations, and related protests; flags and emblems; and contending with the past.

draft Agreement itself emphasises that the time to rise to the challenge of the past is now, as “Northern Ireland does not have the luxury of putting off this difficult, but potentially transformative, task any longer”.

AI’s 2013 report also points out that one crucial building block for peace identified in the 1998 Multi-Party (Belfast/Good Friday) Agreement that has not been delivered is the creation of a Bill of Rights. In the words of the 1998 Agreement, the Bill should “reflect the particular circumstances of Northern Ireland” and provide “additional rights to reflect the principles of mutual respect for the identity and ethos of both communities”. A Bill of Rights for Northern Ireland that builds on the already existing human rights safeguards could set out a broad range of protections and guarantees required to ensure equal opportunity and respect for all persons in Northern Ireland or subject to its jurisdiction. Such principles, enshrined in a Bill of Rights for Northern Ireland, would have been useful to draw on recently when there were several instances of serious public disorder in Northern Ireland regarding the display of flags and disputes around contentious community parades.

AI would welcome reference to these issues in the review.

### **Domestic human rights compliance**

While not operationally within the remit of DFAT, the review would usefully highlight the need for Ireland’s foreign policy stance and action on human rights to be matched on the domestic front. That this has not been the case to date is reflected in the various concluding observations of UN treaty bodies, and other bodies such as the UN special representative on extreme poverty and human rights in her report of January 2011.

AI notes Ireland’s support of the large majority of recommendations made to it during its 2011 Universal Periodic Review by the Human Rights Council. Under UN General Assembly Resolution 60/251, members of the Council are required to “uphold the highest standards in the promotion and protection of human rights”. Therefore it is important that Ireland, as a member of the Council, ensures that those commitments are fully implemented, by setting specific timeframes and establishing a monitoring mechanism for the implementation of the recommendations arising from its Universal Periodic Review.

These bodies’ recommendations serve as an important ‘to do’ list for Ireland to show leadership on human rights. Optimally the review would contain a commitment to implementing such recommendations, and establishing effective and transparent monitoring of such implementation - ideally through the elaboration and adoption of a National Action Plan on Human Rights (to which states committed in the Vienna Declaration and Programme of Action in 1993, but upon which few states have actually delivered). In addition, Ireland must ensure that its new National Human Rights Institution, the merged Human Rights and Equality Commission, meets the requirements for “A Status” compliance with the Paris Principles.

The review should also contain a commitment to Ireland's ratifying the core human rights conventions, and reviewing and withdrawing reservations to the conventions it has ratified; and to set out a timetable for such. Priority attention should be given to ratifying the Optional Protocol to the UN Convention Against Torture, the International Convention for the Protection of All Persons from Enforced Disappearances, the UN Convention on the Rights of Persons with Disabilities and the Second Optional Protocol to the UN Convention on the Rights of the Child (CRC). The delay in ratifying these conventions is inordinate. Ireland should also commit to ratifying at the earliest opportunity the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Third Optional Protocol to the CRC. It should revisit and review its position not to sign or ratify the UN Migrant Workers Convention.

**Conclusion**

Ireland has long been a champion of human rights and equality in its foreign policy, both bilaterally and multilaterally, including at the United Nations. The review should consolidate and solidify Ireland's positions in this regard, and point to new opportunities for it to use its influence in the furtherance of human rights in new thematic areas, such as the field of Business and Human Rights. The review should also note that it is incompatible with Ireland's global positioning on human rights for it not to have ratified the major UN and other human rights treaties.

Ireland has the responsibility to address the plight of people in other states whose human rights are denied and violated, including on a bilateral basis with those states. Ireland must not allow its economic and trade interests to trump its human rights duty in this regard. It is important that the review makes clear that this responsibility cannot and will not be left to EU foreign policy or to Ireland's participation in UN bodies as the sole vehicles for raising such concerns.

**ENDS//**

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