

GLOBAL CAMPUS  
OF HUMAN RIGHTS  
RESEARCH PROGRAMME  
2013-2014

Piero Sullo

The Universal Periodic Review  
From recommendations to implementation

EU experience in respect  
of the UPR process

## 6. EU experience in respect of the UPR process

### 6.1 Introduction

While the EU has no vote within the UN, it is party to more than 50 UN multilateral agreements and conventions as the only non-state participant and has obtained a special ‘full participant’ status in a number of important UN conferences. Furthermore, the EU and its member states collectively are the single largest financial contributor to the UN system, with the EU working with all UN bodies, agencies and programmes across almost the entire spectrum of UN activities. It is therefore not surprising that the EU has expressed robust support for the UPR, commending states which constructively engage in the process. At the same time, the EU has expressed concern that not all states engage openly and constructively with the UPR process and recommends that once states have been reviewed they should allow sufficient time to inform the wider public and civil society on the content of the reviews and involve them in the follow up to the UPR.

What follows here is an examination of the engagement of three EU member states with the UPR process. With almost five million inhabitants, Ireland is one of the smallest countries in the EU, an organisation of which it has been a member since 1973. Notwithstanding its small size, Ireland has been an important and controversial player in the process of EU integration, with the entry into force of the Nice and Lisbon treaties being called into question because of the failure of the Irish electorate to endorse them in national referenda. Particularly hard by the global economic downturn which began in 2008, Ireland was elected to the UN Human Rights Council in November 2012 for a three-year term beginning on 1 January 2013. Ireland’s election to the HRC was described as ‘recognition of Ireland's good standing in the area of international human rights advocacy’ while its membership of the Council will be guided by ‘our well-established human rights priorities. These include the rights of LGBTI persons, the rights of the child, protection of human rights defenders, freedom of religion or belief and internet freedom.’

With almost 60 million inhabitants, Italy is the fourth largest country in the EU in terms of population. It is one of the six founding members of the EU in 1952 and has drawn international attention for lengthy delays in judicial proceedings, overcrowding in prisons and the arrival on its shores of migrants traversing the Mediterranean in an attempt to reach the EU. The migration to which Italy’s geographical position makes it prone has led the country to frequently call for solidarity and support from the rest of the EU through burden-sharing and cooperation in relation to the consistent arrival of migrants. Claiming that ‘by virtue of its culture and tradition, Italy is highly active on human rights issues’, Italy was a member of the Human Rights Council from 2007 – 2010 and is currently serving a second term of membership which is due to expire this year. Italy’s human rights priority issues are abolition of the death penalty; the protection of freedom of religion or belief; the rights of the child and most especially children affected by armed conflicts; the rights of women, and particularly the fight against female genital mutilation; the fight against racism and xenophobia; the promotion of democracy and the rule of law.

Poland, one of the newer members, joined the EU in May 2004 along with nine other countries, largely from central and eastern Europe. Along with the UK it controversially secured an opt-out Protocol to application of part of the EU Charter on Fundamental Rights which entered into force in 2009. With almost 40 million inhabitants, Poland is the sixth largest country in the EU in terms of population. Following the collapse of communist rule in 1989, it engaged in a process of democratisation which involved the adoption of a Constitution in 1997 which guarantees the respect of citizens’ human rights, signing various international agreements, adopting international monitoring procedures and joining NATO, the Council of Europe and the EU. The delegation of Poland noted during Poland’s second cycle review in 2012 that ‘within Poland's human rights agenda, the rights of

members of the most vulnerable groups, including women, children and persons with disabilities, had been given the most attention.’

According to the survey response by the Polish Ministry of Foreign Affairs, Poland was actively involved in the establishment of the Human Rights Council and the setting up of its working methods, and was an active member of the Council, its most recent Council membership being from 2010 – 2013. As a mark of appreciation of Poland’s engagement during its terms in the Human Rights Council, in 2013 the Polish Ambassador was elected, for the first time in history, the President of the Council.

The three EU member states chosen for inclusion in this report thus represent a wide geographical spread of countries which, despite the differences in size, play an important role in the politics of the EU and have sometimes had widely-publicised difficulties in their relationship with the EU and the EU integration process. All three claim a deep commitment to human rights principles and obligations, as well as an enthusiastic support for and participation in the UN human rights system. Ireland and Poland recently submitted voluntary mid-term progress reports on the implementation of recommendations, while Italy has just published a draft national report ahead of its second review in October 2014. These documents go some way to allowing an analysis of implementation.

## **6.2 IRELAND**

### **6.2.1 Introduction**

Ireland was reviewed on 6 October 2011. It will next be reviewed in April 2016. To prepare Ireland’s first report, the government established an interdepartmental working group, supported by the Department of Justice and Equality. A dedicated website, [www.upr.ie](http://www.upr.ie), was launched to provide access to information about the UPR process and to facilitate the making of submissions.

The government consulted with NGOs and interested stakeholders and in February 2011, invited submissions by advertising in the national press and via NGOs and groups in the education and community and voluntary sectors. 120 submissions were received from individuals, groups and NGOs. Open public consultation meetings were held in seven community/educational venues around the country to offer members of the public and interested NGOs the opportunity to highlight human rights issues of importance. According to the government, all submissions received and issues raised at the public meetings informed the preparation of Ireland’s report.

The delegation of Ireland, consisting of 16 civil servants, was headed by Alan Shatter, Minister for Justice and Equality. Ireland ‘indicated its fullest commitment to the UPR process and intention to pay fullest attention to the recommendations of the Human Rights Council.’

### **6.2.2 Government departments or other focal persons responsible for the UPR**

The UPR Secretariat in the Department of Justice and Equality is responsible for Ireland’s engagement with the UPR process, in close cooperation with the Department of Foreign Affairs and Trade, and coordinates the Interdepartmental Working Group on the UPR, which comprises members of all relevant government departments.

### **6.2.3 Implementation of recommendations**

During the review, 46 states made 168 recommendations to Ireland. Ireland accepted 84% (141) of the recommendations. 42% (71) of recommendation received by Ireland contained a specific action (category 5). 33% (55) required a general action (category 4). 12% (20) of recommendations were ‘considering actions’ (category 3) while 13% (22) of recommendations required ‘continuing actions’ (category 2). There were no recommendations falling within action category 1 (minimal action).

## ***Ratification***

38% (64) of the recommendations related to the signing or ratification of international instruments or bringing national law and policy into line with such instruments. Of these 64 recommendations, 39 requested a specific action (category 5).

The international instrument which was the subject of the highest number of recommendations was the CRPD (15), followed by OP-CAT (9), ICRMW (8), CED (7) and OP-SCR (6). Other ratifications recommended to Ireland included the OP-CRPD (3), the UNESCO Convention against Discrimination in Education 1960 (2) and the OP-ICESCR (1). Ireland was also recommended to withdraw its reservations to the ICCPR (2) and the ICESCR (1) and ICERD (1).

Ireland immediately accepted the recommendations in relation to most of the international instruments. It rejected outright the recommendations relating to the ICRMW and it undertook to examine the recommendations relating to the OP-CRPD, the UNESCO Convention against Discrimination in Education, the OP-ICESCR and the recommended withdrawal of its reservations to the ICCPR, ICESCR and CERD. Ireland noted that it does not become party to treaties 'until it is first in a position to comply with the obligations imposed by the treaty in question, including by amending domestic law as necessary'.

In Ireland's interim report in March 2014 it is stated in relation to the recommendation to ratification of the CRPD that 'an Interdepartmental Committee on the Convention is monitoring the remaining legislative and administrative actions required to enable ratification'. Ireland also noted that the Irish parliament is currently considering legislation to enhance the autonomy of persons who have difficulties in terms of decision-making capacity. It stated that the enactment of the Decision-Making (Capacity) Bill 2013 will be a key step toward ratification of the CRPD.

In relation to the recommendations to consider accession and ratification of OP-CAT, the government stated that work is being done on a Bill concerning inspection of places of detention, enactment of which is necessary before ratification can occur.

In relation to the recommendation to ratify CED, the interim report states that legislative requirements are being examined, and that any necessary legislation will be progressed as fast as other priorities, including ratification of other international human rights conventions, allow.

In relation to the recommendation to ratify OP2-CRC, the report states that the criminal law elements of OP2-CRC have largely been implemented in existing Irish legislation on sexual offences and human trafficking. The criminal law requirements in OP2-CRC which have not yet been implemented are shortly expected to be the subject of legislative proposals by the Minister for Justice following a wide-ranging examination of the law on sexual offences conducted by his Department.

In relation to the OP-CRPD, Ireland noted that decisions regarding the OP 'will be addressed by the Government at the time of consideration of ratification of the Convention.'

In relation to OP-ICESCR, Ireland signed it on 23 March 2012 and is currently examining the question of ratification. Before ratification it must first examine obligations that would be assumed under the OP and hold comprehensive consultations with all government departments. It is also considering recognition of the competence of the UN Committee on ESCR to undertake inquiry and inter-state procedures.

Ireland withdrew its reservation under article 19(2) ICCPR following publication of General Comment 34 by the Human Rights Committee. It stated that it accepts the principles in articles 10(2) and 20(1) and made no mention of its reservation under article 14 ICCPR. Ireland stated that it does not intend to withdraw its reservations under article 2(2) and 13(2)(a) ICESCR and article 4 CERD.

### ***Other concrete policy and legislative recommendations***

*Enact legislation to make the right to collective bargaining through trade unions in line with international commitments.*

Ireland partially accepted the recommendation, replying in its interim report in 2014 that The Programme for Government contains a commitment to reform the current law on employees' right to engage in collective bargaining (the Industrial Relations (Amendment) Act), to ensure compliance by the state with recent judgments of the European Court of Human Rights. Meetings on the matter have been underway since mid-2013 between relevant stakeholders and officials of the Department of Jobs, Enterprise and Innovation. The Minister hopes to put proposals to Cabinet soon which 'will reconcile Ireland's constitutional, social and economic traditions, and international obligations, whilst at the same time ensuring continued success in building Ireland's domestic jobs- base and in attracting overseas investment into the economy'.

### ***Migration***

One of the issues on which Ireland received a significant number of concrete policy and legislative recommendations was that of migration. Efforts to enact comprehensive legislation in the field of migration and asylum have been ongoing in Ireland for over a decade. In 2001 preparations began for the drafting of the Immigration and Residence Bill. In September 2006 the Minister for Justice published the Scheme of a Bill and invited comments on the proposals contained in it. The Bill was published in 2007. The Bill proposed to repeal existing legislation dating back to 1935 and to put in place a single statutory code for the various stages of the immigration process including visas, entry to the state, protection, residence permits and the process of removal from the state. The 2007 Bill was replaced by the Immigration, Residence and Protection (IRP) Bill 2008, which itself was replaced by the IRP Bill 2010. A great number of amendments was tabled to the 2010 Bill so it was decided that it would be more efficient to publish a new and enhanced text. Publication of this revised IRP Bill is currently awaited. It is likely that many of the recommendations concerning migration and asylum made to Ireland during its UPR will be addressed by the long-awaited legislation in this field.

*Enact laws that protect adequately the rights and the well-being of separated and unaccompanied minors seeking asylum, in conformity with standards established under international laws*

Ireland accepted the recommendation and noted that Health Service Executive, in accordance with relevant legislation, is responsible for the needs of unaccompanied minor asylum seekers relating to accommodation, medical and social needs and their application for refugee status. The best interests of unaccompanied minors are further guaranteed by The Refugee Act 1996 (Asylum Procedures) Regulations 2011 which sets out certain procedures which the Refugee Applications Commissioner must ensure are followed.

*Pass legislation to combat trafficking in human beings in the form of sham marriages.*

*Amend the Civil Registration Act empowering the registers and the Garda (police) to intervene against sham marriages and to amend the criminal law to criminalize the organizers and facilitators of sham marriages*

Ireland accepted both recommendations and responded that the Department of Social Protection is developing proposals for legislation making sham marriages more difficult in Ireland and hopes to introduce legislation to amend the Civil Registration Act 2004 early in 2014. In addition, the Department of Justice and Equality is currently drafting amendments to the Immigration Residence and Protection Bill 2010 to deal with immigration related marriages of convenience and sham marriages. As no single approach will permanently eliminate this complex problem, the 'relevant authorities deploy a range of operational measures and cooperate closely in tackling this problem, in particular with a view to protecting the interests of vulnerable persons and combating abuse of the immigration system.'

*Establish a consolidated framework relating to immigration and asylum issues, including an independent Appeals body.*

The revised Immigration Residence and Protection Bill, to be published in 2014 ‘will consolidate Ireland's immigration and asylum laws, replacing several existing statutes and providing more detailed legislative measures ... The establishment of an independent appeals system will be addressed as part of that Bill.’ Furthermore, policy guidelines are being developed on an ongoing basis in respect of key migration streams.

*Enact laws setting principles on law, rights and obligations that govern family reunification.*

A new Policy Document on Non-EEA Family Reunification was published on the Department of Justice and Equality website on 31 December 2013 setting out: a comprehensive statement of Irish national immigration policy in the area of family reunification; guidelines providing greater transparency in the immigration decision making process and greater transparency in the system for decision-makers, applicants and practitioners. This issue will also be dealt with in the aforementioned Immigration, Residence and Protection Bill.

In line with the recommendations made by CERD, adopt and implement immediately legislation prohibiting any form of racial discrimination and ensure humanitarian treatment for migrants and persons of non-Irish origin, including through adequate training for judicial and police personnel

This recommendation was partially accepted as Ireland noted that ‘existing legislation already provides for prohibition of racial discrimination and for humanitarian treatment of migrants and persons of non-Irish origin’. With regard to police personnel, An Garda Síochána is committed to providing a policing service grounded in human rights principles and has ‘a comprehensive education, training and information system for the professional development of all members’.

*Adopt necessary measures to legally recognize the human rights of all minorities and ethnic groups that are residing in the country*

Ireland accepted the recommendation but noted that as stated in the Addendum to the Report of the Working Group ‘the human rights of all residents are already comprehensively protected by Ireland’s Constitution, which in effect, constitutes a Bill of Rights for the State, and by legislation.’

#### **6.2.4 Civil society**

In general, recommendations concerning international instruments echo the concerns of organisations working on the ground.

As regards action taken by NGOs / NHRIs to put pressure on the government to implement recommendations, the Irish Council for Civil Liberties (ICCL) brought together civil society for a review of the implementation of the UPR recommendations. Organisations were able to express their concern related to the implementation process with a view to producing a report in the area.

Civil society response to the survey indicates that there was no public consultation following the UPR recommendations, with the state not consulting organisations in relation to its response to recommendations or their implementation.

Civil society is of the view that none of the recommendations in the area of migration/asylum were implemented. It was suggested that the passage of the IRP bill is crucial in order to enact several of the recommendations and in order to have a clear legislative framework for the immigration system. The guidelines for family reunification introduced in January were faulted for being guidelines, with family reunification still needing to be put on a statutory basis.

## **6.2.5 Conclusion**

In relation to recommendations concerning international instruments, it is clear that Ireland takes seriously those recommendations which it accepts during the UPR. Much legislative activity is ongoing or planned to allow ratification of or compliance with international instruments.

Another conclusion which the review of Ireland yields is the urgency attached to the introduction of a legislative framework for its migration and asylum system. Indeed the asylum system, which involves the housing of asylum seekers, often for many years, in shared accommodation designated by the state, is coming under increasing media attention in recent years, with some commentators going so far as to describe the conditions in which asylum seekers are housed and prevented from working as amounting to inhuman and degrading treatment.

The introduction of long-awaited migration legislation could provide an opportunity to address this issue, as well as all other migration-related issues raised during the UPR.

## **6.3 ITALY**

### **6.3.1 Introduction**

Italy was reviewed on 9 February 2010. It will next be reviewed in October 2014.

The preparation of Italy's first report was coordinated by the Inter-ministerial Committee on Human Rights (IACHR) at the Ministry of Foreign Affairs and received input from all the relevant government departments eg the Prime Minister's Office, Ministry of Justice, Ministry of the Interior. The draft Report was presented and discussed on 21 July 2009 at a consultative session with civil society resulting 'in a fruitful interactive dialogue, involving NGOs and institutional actors'.

The delegation of Italy, composed of 25 civil servants, was headed by the Vice-Minister for Foreign Affairs, Vincenzo Scotti who emphasised that 'Italy's engagement in universal periodic review is part of its commitment to the promotion of human rights in the UN and other international fora'.

### **6.3.2 Government departments or other focal persons responsible for the UPR**

The IACHR, established in 1978 at the Ministry of Foreign Affairs, is tasked *inter alia* with coordinating with all relevant authorities in the compilation of periodic and ad hoc reports that Italy is required to submit in line with its international and regional human rights obligations. IACHR also monitors the compliance of national law with Italy's international human rights obligations.

### **6.3.3 Implementation of recommendations**

During the review 46 States made 157 recommendations to Italy. Italy accepted 86% (135) of these recommendations. 25% (39) of the recommendations received by Italy contained a specific action (category 5). 55% (86) of the recommendations requested a general action (category 4), while 8% (12) were considering actions (category 3) and 13% (20) requested continuing actions (category 2). There were no recommendations falling within action category 1 (minimal action).

### ***Ratification***

About 15% (24) of the recommendations related to the signing or ratification of international instruments or bringing national law and policy into line with such instruments. Of these 24 recommendations, 11 requested a specific action (category 5).

The international instrument which was the subject of the highest number of recommendations was the ICRMW (8), followed by the ICCPR (6), OP-CAT (5), CAT (2), CED (2) and the Council of Europe Convention on Action against Trafficking in Human Beings (1).

Unlike Ireland and Poland, Italy did not submit a mid-term progress report. In May 2014, however, it published a draft national report ahead of its second UPR in October 2014 which states that 88% of accepted first cycle recommendations have been implemented. In 2012 UPR Info published a Mid-

Term Implementation Assessment (MIA) for Italy. Italy did not participate in the assessment, but a wide range of civil society organisations submitted their views on the progress made by Italy in implementing the recommendations made during its UPR in 2010.

Italy rejected all but one of the recommendations concerning the ICRMW, namely the recommendation from Mexico to adhere to the principles in the ICRMW and to consider ratification in a favourable light. This recommendation was deemed by UPR Info's MIA to be partially implemented, with the NGO SRI noting that Italy played an active role in the drafting process conducted by the MESCA group and that 'many of the provisions of national law that are incompatible with the Convention are already the subject of challenges before the relevant Constitutional Courts.'

The recommendation by three states that Italy should ratify the ICCPR is odd considering that Italy ratified this treaty in 1978. Strangely enough the MIA found that the recommendation to ratify the ICCPR has not been implemented.

Italy accepted recommendations to ratify OP-CAT, but the MIA found that this recommendation had not been implemented. The 2014 draft national report indicates, however, that Italy ratified OP-CAT on 3 April 2013. The NGO CPPDU noted that Italy has not set up an independent body to visit and inspect places of detention, including centres for migrants and asylum seekers. The recommendation to incorporate in its national law the crime of torture corresponding to the definition of torture in article 1 of CAT was rejected and not implemented. In March 2014, however, the Senate approved a bill for the introduction of the crime of torture which is currently before the Chamber of Deputies.

On 29 November 2010 Italy ratified the Council of Europe Convention on Action against Trafficking in Human Beings and a draft bill concerning ratification of CED is currently before parliament.

#### ***Other concrete policy and legislative recommendations***

*Adopt a comprehensive anti-discrimination law to ensure that the Roma enjoy equal access to employment, education and health care*

In February 2012, the National Anti-discrimination Office (UNAR) published the National Strategy for the inclusion of Roma, Sinti and Camminanti in Italy. The Strategy, developed in response to the EC communication n. 173/2011, provides a framework for initiatives to be taken mainly at the local level. The Strategy offers a critical appraisal of previous policies and call for a coherent and holistic approach to public policy for Roma. The implementation of the Strategy is currently at a standstill due to limited resources of UNAR and lack of political commitment by the central government.

However, SRI noted that there is no comprehensive antidiscrimination law concerning the Roma at the national level, with initiatives in favour of the Roma most often being decisions taken at the municipal level.

Italy noted in its 2014 draft national report that within the framework of the aforementioned National Strategy the Ministry of Labour and Social Policy has launched a project for the inclusion and integration of Roma children, Sinti and Travellers, allocating € 582,000, focused on children with greatest difficulties in the school curriculum, and student support for the choice of schooling. Furthermore, UNAR conducts awareness-raising campaigns, educational projects in order to ensure effective integration of these communities, supporting various initiatives such as the Council of Europe's Romed2/Romact - launched in January 2014 in Milan, CominRom, the campaign DOSTA (Enough!). Events, projects, cultural and educational initiatives, training and information campaigns have taken place since 2010, including training courses for journalists, the production of school materials and advertising materials for display in subway stations or on public transport the public.



### *Adopt and implement a national plan of action for children*

SRI noted that The National Observatory on Childhood and Adolescence coordinates policy activities concerning children and has the task of drawing up official documents concerning childhood and adolescence. The National Action Plan for the protection of the rights and development of children and adolescents 'is elaborated every two years with the aim of establishing the priorities of programmes concerning minors and of strengthening cooperation for the welfare of children around the world.'

The CPPDU, however, was more critical in its response, noting that the cut in resources for children and adolescents and the lack of equalization tools at national level, such as the basic levels of social benefits, increase discrimination at the regional level and do not ensure that all children have equal access to their rights.

The National Plan for Childhood and Adolescence 2010/2011, promulgated after seven years in January 2011, does not include any funding. It should be also noted that it is difficult to understand how and where in Italy are allocated resources devoted to children and adolescents, and which are the effects of the laws and the national economic proceedings and of the actions at regional level and of local authorities. In its draft national report Italy states that the Plan provides for four main lines of action: strengthening the network of integrated services and the fight against social exclusion; strengthening the protection of rights; facilitating the construction of an Intergenerational Covenant; promoting integration of migrants.

### *Establish an independent national human rights institution in accordance with the Paris Principles*

This recommendation has not been implemented. CPPDU commented that Italy is today one of the few states without an independent national human rights institution in line with the Paris Principles. The creation of such an institution is required of Italy by UNGA Resolution 48/134 (1993), Resolution of the Council of Europe (97) 11 of 30 September 1997, UPR recommendations and the specific recommendations of UN treaty bodies. When seeking election to UN HRC for the period 2007 – 2010 and again in 2011, Italy pledged to create 'the Independent National Commission for the Promotion and Protection of human rights in accordance with the Paris Principles ...' In 2011 Draft Law no. 4534: 'Establishment of the National Commission for the promotion and protection of human rights' was prepared by the government without any involvement of civil society, thereby immediately falling short of the Paris Principles and international standards.

### *Establish an ombudsperson for children according to the Paris Principles*

In November 2011, the first National Ombudsman of the Rights of the Child was appointed. So far the regulations to be adopted by Decree of the President of the Council of Ministers have not yet been approved, this delay is affecting the work and activities of the Office of the Ombudsperson. Currently, nine regional ombudspersons are active and among them three do not have an exclusive mandate. Often the establishing laws differ in mandate, expertise and resources available, causing a further differentiation in access to rights.

### *Implement existing Law 91-1992 on Italian citizenship in a manner that preserves the rights of all children born in Italy*

According to CPPDU the recommendation is still disregarded. According to the latest ISTAT data, the foreign minor population resident in Italy on 31 December 2010 was 993,238. Out of these about 650,000 were born in Italy (the so-called second generation). These Italian-born young people have a low rate of acquisition of Italian citizenship. 'In 2010, in fact, according to the Ministry of the Interior citizenships granted as a result of residence or marriage amounted to 40,084, while those granted by the municipalities were 25,854.'

The draft national report indicates that a new law introduced in 2013 allows all those concerned to exercise fully the right referred to in Law no. 91/1992 on citizenship, whereby the foreign-born Italian

who has resided legally without interruption until the coming of age may become a citizen if he declares he wants to acquire Italian citizenship within one year from that date. In particular, the new rules introduced provide that the persons concerned satisfy the requirements (uninterrupted legal residence since birth) with all appropriate documentation (eg medical certificates or school confirming its presence in Italy since birth); state officials are required during the six months before the individual turns 18 to communicate the ability to exercise the right referred to in Law no. 91/1992 before the completion of the nineteenth year of age. Failing this, the right may also be exercised after that date. In addition, the requirement of uninterrupted legal residence has been interpreted in a flexible way with the Ministerial Circular no. K.60.1 of 2007, which provides that, in case the child, despite having resided legally in Italy since birth, has had to leave for short periods of time for study, family or health, this will not adversely impact on the citizenship application.

*Increase official development assistance to the United Nations target of 0.7 per cent of GDP*

CPPDU acknowledges the enhancement of cooperation policies, and the appointment of a dedicated Minister for Integration and Development Cooperation (without portfolio), but argues that Italy is still in need of a much stronger and significant commitment on the financial side.

Italy's 2014 draft national report reaffirms Italy's commitment to contributing ODA equivalent to 0.7 of GDP to the UN. However, the cut in public spending caused by the global financial and economic crisis led to a reduction in development assistance in recent years. In 2008 it was 0.22 per cent of GDP but in later years it has fluctuated, reaching 0.14 per cent of GDP in 2012. The estimate for 2013 is for 0.16 per cent of GDP, with plans for the gradual alignment of Italy's ODA to international standards leading to ODA 0.28 / 0.31 per cent of GDP in 2017.

*Investigate all alternatives to forced evictions of Roma and Sinti people, including through thorough consultation with those directly affected*

According to OA forced evictions of Roma are common practice in the largest Italian cities. In case of informal settlements, in the best case scenario, only women and children are offered an alternative accommodation. When it is formal settlement to be targeted, residents are offered alternative solutions, most notably in another campsite in a more remote urban area. Residents are consulted but they are offered limited if no alternative options and under the duress of forced eviction. Solutions other than campsites are rarely considered, with few notable exceptions (eg Florence, Bolzano).

SRI noted that the Italian authorities, especially in Rome municipality, continue to evict residents who are not willing to relocate. The Municipality of Rome closed the 'Tor de' Cenci camp and resettled inhabitants to a new camp. It has failed to set out a clear rationale for closing Tor de' Cenci, and to comply with relevant safeguards while making its decision and choosing a resettlement site.'

The 2014 draft national report contains a somewhat unclear reference to the UN Guidelines on Forced Evictions.

*Denounce hate speech and prosecute actively in the justice system those responsible for racist and violent acts*

A respondent NGO noted that incitement to hatred, violence or discrimination on the grounds of sexual orientation and gender identity are not yet specific criminal offenses under Italian law. A bill to reform the statute was defeated in October 2009, and a new bill presented in May 2014 was strongly contested by members of the majority in Parliament, with further debate postponed pending an opinion about its conformity with the Italian constitution.

*Undertake further campaigns against homophobia*

According to LGBTIC in 2010 the Department for Equal Opportunities launched the social communication campaign 'Refuse Homophobia' (Rifiuta l'omofobia). The campaign includes several communication materials such as video and radio spots. 'Nevertheless, there is no

comprehensive strategy including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes against LGBT persons is still missing.’

In its draft national report Italy states that The National LGBT Strategy, after wide consultation with stakeholders, was formally adopted by the Ministerial Decree of 16 April 2013. On the occasion of the International Day against Homophobia on 17 May 2013, UNAR organised at the Senate a meeting with organizations and associations working in this field. The Strategy contains the following priority areas: education and training, with an emphasis on preventing and combating homophobic and transphobic bullying; work, with specific reference to the issue of discrimination against LGBT people, especially transsexuals and transgender people; security and detention, including aspects of information and awareness of the law and the penitentiary system; media and communication, focusing attention on the fight against the stereotypes and prejudices in the portrayal of LGBT people. On 1 December 2013, UNAR presented the guidelines entitled ‘Pride and Prejudice. For an information respectful about LGBT people’.

#### **6.3.4 Civil society**

One civil society respondent was of the view that while the Italian government has taken some substantial steps to take into account the main concerns of national human rights organisations, a concrete willingness to improve the general legislative and policy action concerning treaty ratification is still needed. It was suggested that the unstable national political and institutional landscape does not help to ensure a linear action and a proactive vision. Some legislative actions launched by the last government are now, for example, in a sort of legislative limbo.

As regards the question whether recommendations reflect the main concerns of national NGOs and NHRIs, the view was expressed that it varies according to the issue. It was suggested that in the case of Roma rights, there are relatively few points in common between recommendations made by states and the concerns of NGOs. In relation to LGBT rights, however, the concerns of states and NGOs coincide.

Pressure is exerted by civil society on the government to comply with recommendations through lobbying efforts and the organisation of information campaigns.

#### **6.3.5 Conclusion**

Italy’s 2014 claim to have implemented 88% of accepted first cycle recommendations and the 2012 opinions of civil society which point toward a contrary pattern demands further scrutiny. It is of course possible that much has been done by Italy in the two years since UPR Info’s MIA. Indeed, in March 2014 Italy seemed set to implement a rejected implementation when the Senate approved a bill for the introduction of the crime of torture which is currently before the Chamber of Deputies.

Italy’s draft national report, published in May 2014 ahead of the country’s second cycle UPR in October 2014, is a lengthy and information-packed document. It provides long lists of state initiatives related to issues highlighted in UPR recommendations, but whether such initiatives and activities can be definitively accepted as implementation of recommendations requires further parsing and study.

### **6.4 POLAND**

#### **6.4.1 Introduction**

Poland was reviewed during both the first and second cycles of the UPR. In total, 45 states made 157 recommendations to Poland. Poland accepted 116 recommendations out of 157. 36% (56) of the recommendations received by Poland contained a specific action (category 5).

The first cycle review took place on 14 April 2008. The delegation of Poland was composed of 28 members led by the Under-Secretary of State at the Ministry of Foreign Affairs of Poland. Other members were the Vice Speaker of the Senate of Poland, civil servants, experts at various government

departments, two NGO representatives and one interpreter. Poland's second review was in May 2012, with a 25 member-delegation led by the Under Secretary of State at the Ministry of Foreign Affairs and with civil servants, experts at various government departments and two interpreters as members.

### **6.3.2 Government departments or other focal persons responsible for the UPR**

The Polish Ministry of Foreign Affairs coordinates the process but the recommendations are reviewed by all relevant ministries and their units in terms of recommendations' validity and legitimacy. The process is similar to the processes followed in relation to recommendations of other human rights bodies.

### **6.4.3 Implementation of recommendations**

During the first cycle review, 33 recommendations were made to Poland. 13 contained a specific action (category 5), 12 required a general action (category 4), two were 'considering actions' (category 3), six required continuing actions (category 2). None of the recommendations made fell within the minimal action category (category 1).

During the second cycle review, 124 recommendations were made to Poland. 43 contained a specific action (category 5), 54 required a general action (category 4), 15 were 'considering actions' (category 3) and 12 required continuing actions (category 2). None of the recommendations made fell within the minimal action category (category 1).

### ***Ratification***

24% (37) of the recommendations related to the signing or ratification of international instruments or bringing national law and policy into line with such instruments. Of these 37 recommendations, 20 requested a specific action (category 5).

The international instrument which was the subject of the highest number of recommendations was ICRMW (8), followed by the CED (7), the CRPD (6), OP2-ICCPR (5), the OP-CRPD (4) and the CRC (3). Other ratifications recommended to Poland included the OP-ICESCR (1), the OP3-CRC (1) and the ILO Domestic Workers Convention (1).

During the first cycle, Mexico recommended Poland to ratify the ICRMW and invited Poland to ensure that practical policies in the area of immigration be geared to the standards set forth by the principles enshrined in the Convention. In its mid-term progress report (compiled in February 2011), Poland noted that careful analysis showed that Polish law guarantees migrants and their family members most of the rights afforded by the Convention and that ratification would require amendment of legislation concerning legally employed migrants and 'far-reaching changes with respect to the situation of illegal workers'. Given the limited scale of emigration and immigration, there is no need to expand migrant workers assistance services or adopt actions in cooperation with other states, as required by ICRMW. During the second cycle review there were further recommendations made by migrant-sending states to ratify the Convention. In its mid-term progress report (2014) Poland reiterated its earlier position, adding that in 2013 updates were made to the 2004 study of compatibility of Polish legislation with the Convention. While amendments had been introduced to address the situation of foreigners, these amendments were not sufficient to allow ratification of the Convention.

The recommendation during the first cycle to set a date for ratification of CED was addressed by Poland during its mid-term progress report to the 16th session of the HRC. Poland noted that the Polish legal system provides for appropriate punishment of enforced disappearances as defined in the Convention, and establishes adequate standards for their prevention, with the issue also being addressed by other conventions to which Poland is a party. While ratification would thus not extend the scope of protection against enforced disappearances in Poland, the state is nonetheless happy to consider ratification 'if it were to contribute to the enhancement of the international standards in this area'. During the second cycle ratification of the CED was also recommended. Poland's response in

its mid-term progress report noted that Poland signed the Convention on 25 June 2013. Legislative work is currently underway to amend national family law (on adoption) to allow for ratification.<sup>1</sup>

In relation to the recommendation to consider ratification of the CRPD during the first cycle, Poland replied that it was conducting an examination of whether it was capable of fully implementing the rights provided under the Convention. Recommendations to the same effect were made during the second cycle review. In its mid-term progress report in January 2014, Poland stated that it had ratified the Convention on 25 September 2012. An interpretive declaration and a reservation were made, with work underway to amend national legislation to ensure full compatibility with the Convention. A report on implementation of the Convention will be submitted to the Committee on the Rights of Persons with Disabilities in September 2014.

All recommendations to ratify the OP2-ICCPR were made during the second cycle review. In its mid-term progress report Poland noted that ratification gained the approval of the Parliament and was now awaiting its final ratification by the President of the Republic of Poland.

The recommendation made during the first cycle concerning the OP-CRPD was not specifically addressed by Poland. The recommendations to ratify during the second cycle review were addressed in Poland's mid-term progress report in January 2014. Poland stated that it will analyse the possibility and desirability of ratification 'after the practice of applying the Protocol becomes well-established'.

In response to the recommendation during the second cycle review to ratify the Protocol to the ICESCR, Poland noted that it will conduct an analysis of the possibility and desirability of ratification of the Protocol 'after the practice of applying the protocol becomes well-established, in particular, when the different possible interpretations of the Covenant are formulated as a result of handling of complaints by the Committee on Economic, Social and Cultural Rights'.

In response to the recommendation during the second cycle review to ratify the OP3-CRC, Poland noted in its mid-term progress report that it had signed the Protocol on 30 September 2013.

In response to the recommendation to ratify the ILO Domestic Workers Convention made during the second cycle review, Poland noted that an analysis of the possibility and desirability of ratification was being carried out.

### ***Response to other concrete legislative and policy proposals***

#### *Pre-Trial detention*

During the first cycle Algeria recommended that limits be set for pre-trial detention, according to minimum international standards. Poland gave a 'general response' in its mid-term progress report that it had adopted a number of measures to shorten pre-trial detention, with the result that the number of motions for pre-trial detention had dropped from 38,519 in 2005 to 27,918 in 2009. Similarly, court-ordered pre-trial detention fell from 35,142 in 2005 to 24,967 in 2009. The most important legislative amendments, which came into effect in 2009, limited the catalogue of evidence authorising courts to extend pre-trial detention to premises specifically set out in the Code of Criminal Procedure. Poland further noted that pre-trial detention is subject to continuous administrative oversight by the Ministry of Justice which requires presidents of courts to monitor court proceedings where an accused is held in pre-trial detention for more than two years.

During the second cycle review Austria recommended that Poland adopt additional legal and other measures to reduce pre-trial detention and overcrowding in detention facilities through increased resort to alternative forms of punishment with Spain similarly recommending reform of the criminal procedure in order to avoid frequent delays of preventive detention. In its mid-term progress report Poland submitted that it had prepared an amendment to the Code of Criminal Procedure which 'structures the catalogue of legal bases for applying pre-trial detention' and prohibits the use of pre-

---

<sup>1</sup> <http://www.genewa.msz.gov.pl/resource/428cdaf1-aa94-425f-ac11-f19f7da349bd:JCR> p. 2

trial detention in the case of offences punishable by deprivation of liberty for up to two years. This will all ‘definitely result in a smaller number of persons in detention’.

One of the respondent NGOs stated in relation to these recommendations that while there was a general improvement in practice, there is still a readiness on the part of judges to prolong the pre-trial detention.

### *Overcrowding in prisons*

During the first cycle, the Russian Federation recommended that a national programme to combat overcrowding in prisons be developed in order to bring Polish places of detention into line with international standards. Poland responded that it had ‘followed up on the recommendation concerning overcrowding of prisons and adopted a number of measures, including nation-wide programs, to solve this problem and to improve the existing conditions in correctional facilities’.

Overcrowding was addressed through a number of measures: increasing the number of prisoners’ quarters; increasing the number of people who can do social work as an alternative to imprisonment; increasing the number of sentenced persons allowed to apply for doing prison terms in the electronic surveillance system; increasing the number of convicted persons doing prison terms who can apply for parole.

Furthermore, a Constitutional Court decision resulted in an amendment in 2009 which ‘significantly restricted cases of inmates placed in cells with less than 3 m<sup>2</sup> of living space... Decisions to place a convicted person in conditions described above are subject to court oversight.’

During the second cycle the Russian Federation reiterated its recommendation concerning overcrowding, with Austria, Cuba and Ireland making similar recommendations. Poland’s reply repeated much of the content of its first mid-term progress report. It also stated that numerous activities (both legislative and organisational) have been undertaken to improve the efficiency of the Polish prison system and ensure its full compatibility with international standards. ‘Great importance is attached to regular cooperation with the UN Committee against Torture (CAT), with the Polish National Preventive Mechanism and with the CPT’.

Poland also stated that it is endeavouring ‘to substantially change the penal policy by increasingly replacing imprisonment with non-custodial measures... Changes have been introduced to further limit the use of pre-trial detention, which will definitely result in a smaller number of persons in detention’.

One of the NGO respondents observed that the living quarters have often been created at the expense of common spaces for prisoners such as dining rooms and libraries.

### *Rights of the child / child protection*

During the first cycle Angola recommended that Poland endorse the recommendations made by the Committee on the Rights of the Child and the Human Rights Committee on the adoption of legislative measures to ensure compliance of national legislation with the principles and provisions of the CRC. Poland’s reply was a detailed 9-point explanation as to how Polish national legislation on protection of the rights of children does comply with the provisions of the CRC.

Of particular relevance are legislative amendments made since the review in 2008. Since 2008, the Polish *Criminal Code* has been amended several times to bring Polish law into line with international standards on protection of children against sexual violence

The 2005 Act on Counteracting Domestic Violence was amended in 2010 to enhance the protection of victims of domestic violence by banning corporal punishment of minors by persons who exercise parental or guardianship authority over them.

Contacts with a child were the subject of an amendment of the Family and Guardianship Code in 2008 with the result that: maintaining contacts with a child is both a right of a child and an obligation of the parents, in accordance with article 9(3) CRC; a child whose parents reside in different countries shall have the right to maintain regular (save for exceptional cases) personal relations and direct contacts with both parents, in accordance with article 10 CRC and the Council of Europe Convention on Contact concerning Children.

During the second cycle, recommendations were made to Poland by Thailand, Belarus and Egypt to bring its domestic legislation relating to the protection of the rights of children, especially in cases of child prostitution, child pornography, and child victims of trafficking, in line with its obligations under the CRC. Poland responded with a detailed description of legislative and policy initiatives in existence in Poland concerning the protection of the rights of children, including the amended 2010 Act on Prevention of Violence in the Family.

The most recent initiatives mentioned by Poland include the National Programme for Prevention of Violence in the Family 2014 – 2020, work on the draft of which has entered its final stage. In the school year 2012/2013, the Coalition for Safe School was established which is composed of NGOs promoting safety for children and young people. ‘The [www.bezpiecznaszkola.men.gov.pl](http://www.bezpiecznaszkola.men.gov.pl) website contains materials which are continually supplemented with new information concerning the safe environment for students and safe behaviour of students, i.e. the areas in which the Ministry provides support to schools.’

To strengthen the position of human trafficking victims and minors who are victims of sexual crimes, Poland has prepared an amendment to the provisions of the criminal procedure law. The changes will include: Introduction of the principle whereby a victim of human trafficking or sexual crime who is under 15 years old may only be subjected to a one-time hearing and only if this is necessary for the case. The hearing takes place in a session in the presence of a psychologist, and is tape-recorded. The same rules apply to the questioning of a witness of such crime who is under 15 years of age. This procedure may also be used to question a victim aged 15-18 years if in the victim’s best interest.

#### *Sexual orientation / gender*

During the first cycle Slovenia, Sweden and the UK recommended that Poland adopt an anti-discrimination law that would ensure equal treatment and non-discrimination on any grounds, including sexual orientation and gender identity. Poland replied that on 1 January 2011, the Act of 3 December 2010 on the Implementation of Certain European Union Legal Provisions on Equal Treatment entered into force. The Act prohibits any unequal treatment on account of race, ethnic origin, nationality, religion, faith, beliefs, disability, age, or sexual orientation. ‘The Act regulates the legal situation and identifies areas where unequal treatment is prohibited and in so doing, fully transposes the legal provisions of EU anti-discriminatory directives into domestic law. It also identifies legal measures that protect the principle of equal treatment.’

During the second cycle, Slovenia recommended that Poland include sexual orientation and gender identity in the hate speech provisions of the national Criminal Code, and adopt appropriate legal measures making sexual orientation and gender identity as possible discrimination grounds in any context.

Poland replied that in April 2012 it joined a project on combatting discrimination based on sexual orientation or gender identity whose goal is to implement the Recommendation of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity. A conference launching the project in Poland in 2012 discussed the results of a survey carried out by the EU Agency for Fundamental Rights and the standards adopted by European international organisations for counteracting discrimination against LGBT persons.

Poland's National Programme of Measures for the Advancement of Equal Treatment 'includes the monitoring of hate crimes committed on the grounds of sexual orientation and gender identity and subsequent analysis of the information in order to draw up a description of the phenomenon'. The Programme also proposes measures to support groups facing discrimination in the labour market, including discrimination on the grounds of sexual orientation, 'and to change the biased media portrayal of persons from groups vulnerable to unequal treatment'.

One of the respondent NGOs noted that draft laws introducing hate speech based on sexual orientation have been presented to the Parliament by various political parties but none of these draft laws have progressed very far through the parliamentary process and seem now to have stalled.

Also during the second cycle review France recommended Poland pass legislation giving same-sex couples the possibility to enter into a civil union contract and Australia recommended that Poland adopt regulations recognising the rights of same-sex couples and of self-defined gender or transgender persons. Poland replied that the Polish Parliament has been working on several projects concerning the registration of same-sex couples. None of the projects has yet been accepted by the majority of the Parliament.

Draft guidelines are being prepared for legislative amendments to regulate the procedures 'for the broadly understood sex reassignment process. This includes in particular such issues as: the diagnosis and treatment of transsexualism, court proceedings concerning the application for sex reassignment and legal consequences of sex reassignment in the child –parent relationships'.

#### **6.4.4 Civil society**

Recommendations made to Poland on treaty ratification and legislative and policy action generally reflect the main concerns of national human rights organisations, though one respondent NGO noted that an NGO concern absent from the recommendations is the issue of ratification of the convention on biomedicine. The same NGO noted that Poland is one of the countries in which the level of implementation of international treaties is very low, a matter of concern for both NGOs and the Office of the Ombudsman. Indeed the Ombudsman prepared in November 2013 a full list of international instruments awaiting the ratification by Poland,<sup>2</sup> with some of the treaties listed in his publication also among the recommendations made to Poland. The report gave rise to a meeting organised on 23 April 2014 by the Polish Institute of International Affairs (PISM), aiming to start a common dialogue on the need for ratification of the signed conventions. Representatives of NGOs, academia and government officials (from the Government Legislative Center, Ministry of Foreign Affairs and Ministry of Justice) were present at the meeting. One of the respondent NGOs reported that following the meeting the future action of the government is unclear. The same NGO stated that the ratification of a treaty depends on the political will of a Minister and the degree to which ratification would not involve controversy.

Disappointment was expressed by one of the respondents that recommendations regarding reproductive rights were not given serious consideration, with Poland taking the position that the level of realisation of reproductive rights is satisfactory, despite the views expressed by other countries during the UPR.

As regards action taken by NGOs / NHRIs to put pressure on the government to implement recommendations, apart from submitting shadow reports to the Human Rights Council as part of the UPR, NGOs in their individual practice when addressing certain issues to the government or other state authorities refer to the UPR recommendations to push for certain changes. Furthermore, the Helsinki Foundation for Human Rights, for example, refers to the UPR recommendations in its reports to other human rights institutions, including UN or EU institutions. Respondents to the survey

---

<sup>2</sup> [http://www.brpo.gov.pl/sites/default/files/Polska\\_mapa\\_miedzynarodowych\\_konwencji\\_praw\\_czlowieka.pdf](http://www.brpo.gov.pl/sites/default/files/Polska_mapa_miedzynarodowych_konwencji_praw_czlowieka.pdf)



did not, however, identify any specific action aiming solely at implementation of UPR recommendations.

#### **6.4.5 Conclusion**

An analysis of Poland's two UPRs and the state's voluntary interim reports reveal the progress made over time on various human rights issues. First cycle recommendations to ratify CED, for example, were met with the statement that Polish law already provides for the punishment of enforced disappearances. The recommendations were repeated during the second cycle review, with Poland reporting in its interim report in 2014 that it signed the CED in 2013 and was amending national legislation so as to allow ratification.

The consistent recommendations across the two cycles concerning pre-trial detention and overcrowding in prisons also point to a narrative of progress. It is worth sounding two notes of caution here, however, the first of which applies equally to all states. Firstly, it is almost impossible to establish a direct relationship of cause and effect between recommendations and their implementation. Secondly, in the context of Poland, it is worth bearing in mind the concern expressed by one respondent NGO that Poland is a country in which the level of implementation of international treaties is very low.

#### **6.5 CONCLUSION: EUROPEAN UNION**

A number of features common to all three states under review emerge from the foregoing country reports. One such feature is the ostensible receptiveness of all three states to the recommendations made to them. Italy accepted 86% of all recommendations made to it, while Ireland accepted 84% and Poland 75%. Another common feature is the high number of recommendations made concerning international instruments. 38% of recommendations made to Ireland related to the signing or ratification of international instruments or bringing national law and policy into line with such instruments. The figure was 15% for Italy and 24% for Poland.

This is broadly representative of the EU28 as a whole. Almost 22% of all recommendations made to the 28 EU member states during the UPR so far related to the signing or ratification of international instruments or bringing national law and policy into line with such instruments.

A striking feature of recommendations concerning international instruments is the percentage relating to the ICRMW, the only one of the ten core international human rights instruments which has not been signed or ratified by any of the EU28. 230 recommendations, over 5% of all recommendations made to the EU28, concern the Convention. Poland, Italy and Ireland received eight recommendations each concerning the Convention, making it the most frequently recommended international instrument for Poland and Italy, and the third most frequently recommended international instrument for Ireland, following CRPD and OP-CAT. The vast majority of recommendations concerning the Convention were rejected by EU member states. Poland's reply during both cycles is typical of the replies of a number of EU member states. It stated that Polish law guarantees migrant workers and members of their families the majority of rights accorded under the ICRMW, that ratification would involve amendment of legislative provisions on migrant workers employed legally and far-reaching changes with respect to situation of illegal workers. Furthermore, given limited scale of current emigration and immigration experienced by Poland, there is no need to expand migrant workers assistance services or adopt actions in cooperation with other states, as required by the ICRMW.

The large number of rejected recommendations concerning the ICRMW might be viewed as an illustration of the limits of the UPR mechanism. On the other hand, one might view the sheer volume of Convention-related recommendations and the fact that each of the EU28 have been recipients in a more positive light. The recommendations force states to engage with the issue, justifying rejection and thereby gaining increased awareness of the issue and the importance it holds for so many recommending states. At the same time, the growing volume of these Convention-related

recommendations may serve to re-energise civil society in the EU28 to engage anew with the issue of ratification and begin or renew advocacy efforts in that direction.

Apart from the ICRMW, the topic of migration and migrants more generally features prominently amongst recommendations made to EU member states. One of the most striking features of migration-related recommendations is that they come overwhelmingly from non-EU member states. EU member states make very few migration-related recommendations to each other.

A number of issues arise from an attempt at assessing the implementation of recommendations. Firstly, states claim implementation of most recommendations which they had accepted. Civil society, however, tends to be slower to deem recommendations implemented. Given this divergence of opinion, we might conclude that one of the greatest values of the UPR is that it facilitates the highlighting of important human rights issues and provides an additional weapon to the armory of civil society when it seeks to put pressure on states to achieve progress on specific human rights issues.

It would appear from replies received from respondent civil society organisations, however, that civil society has yet to realise the potential of UPR recommendations as advocacy and awareness-raising tools.