



## **Submission to Seanad Public Consultation Committee in response to Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights**

17 March 2014

*Shannonwatch ([www.shannonwatch.org](http://www.shannonwatch.org)) is a group of human rights and peace activists based in the mid-West of Ireland. It was formed in 2008 by activists who had previously campaigned with Amnesty International, the Peace and Neutrality Alliance and other NGOs. Its objectives are to bring an end to the support provided by Ireland, and in particular Shannon Airport, to state agents involved in human rights abuse; to obtain accountability from the relevant Irish authorities and political leaders for this support; and to end U.S. military use of Shannon Airport. It actively opposes the integration of Ireland into all non-UN military arrangements and alliances.*

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### **Shannonwatch's Submission in Response to the Initial Draft of Ireland's Fourth Periodic Report under the ICCPR**

In Shannonwatch's initial submission in response to the government's draft Fourth Periodic Report we noted that as a party to the International Covenant on Civil and Political Rights (ICCPR), Ireland has an obligation under Article 7 to ensure that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Furthermore, as a party to the UN Convention Against Torture (UNCAT) which it has ratified through the Criminal Justice (United Nations Convention against Torture) Act 2000, Ireland has an obligation to arrest and charge anyone reasonably suspected of having committed torture or cruel, inhuman or degrading treatment.

We noted that Ireland has failed to implement the recommendations of the Human Rights Committee in response to the Third Periodic Review by not investigating *all* allegations that aircraft linked to renditions have landed in Ireland or have crossed Irish airspace, and by failing to take measures to prevent such acts.

Evidence from Amnesty International indicates that six planes known to have been used for renditions by the U.S. authorities made approximately 800 flights in or out of European airspace up to 2005, including 50

landings at Shannon airport<sup>1</sup>. Council of Europe and European Parliament inquiries have identified Shannon airport as a stopover point in the U.S. renditions programme. Ireland was one of the countries named in a 2006 report by Council of Europe Parliamentary Assembly rapporteur Dick Marty as having passively colluded in U.S. renditions by allowing Shannon Airport to be used by aircraft linked with renditions without restriction or oversight.<sup>2</sup>

The Irish Human Rights Commission has repeatedly advised the Irish Government that the only effective way of ensuring that it does not become complicit in dispatching people to be tortured or ill-treated is through establishing an effective regime of monitoring and inspection.

Currently the Irish authorities put the onus on NGOs, journalists and citizens to provide evidence relating to the presence of known and suspected rendition aircraft, but they fail to act on the basis of evidence provided. Shannonwatch is concerned that the Gardai are not using their full authority to inspect, as individual members of the force have on occasions referred to “policy decisions” and “instructions” not to search suspect CIA and/or military aircraft.

The Irish government should review compliance with existing legislation that permits the inspection of any aircraft (civil or military) suspected of involvement in rendition or other human rights abuses. If deemed necessary it should further strengthen the law to ensure the civil and police authorities have the necessary powers in this regard.

The failure to do so to date should be noted in the State’s Fourth Periodic Report under the ICCPR.

## **Response to Ireland’s Fourth Periodic Report submitted to the Human Rights Committee**

Shannonwatch is extremely disappointed at the government’s failure to adequately address the issues raised in the Concluding Observation (paragraph 11) of the Human Rights Committee on Ireland’s Third Periodic Report under the ICCPR in relation to Extraordinary Rendition. Furthermore it is dismayed that points raised by Shannonwatch in relation to this matter were not taken on board. There are a number of challenges that must be faced in terms of accountability for past violations of international law, and ensuring that these or similar violations do not occur in the future.

The following are the main areas of concern:

### **1. Overly Narrow Interpretation of State’s Responsibilities**

The Report states that “*There is no evidence that any Irish airport has ever been used for the purpose of extraordinary rendition*” and later that “*... there is no evidence to suggest that they were carrying prisoners at any time when they transited through Irish airports.*” This implies that prisoners must be found on board an aircraft for Ireland to be in violation of Article 7 of the ICCPR. However even if there is no evidence of prisoners on board aircraft when they landed at Irish airports, this does not excuse the State from its responsibilities under human rights law. Facilitating rendition aircraft that are en route to or from the illegal abduction and transfer of a prisoner (as in the case, for example, of German citizen Khalid El-Masri (N313P)<sup>3</sup> is complicity in torture.

The Human Rights Committee have drawn attention to this by asking the State to “*provide further information on specific and concrete steps taken, beyond official assurances, to ensure that aircrafts used for the purpose of extraordinary rendition, **whether they carry prisoners on board or not**, do not pass through the territory of the State party.*”<sup>4</sup>

Furthermore a Council of Europe report into the matter remarked that Ireland “*could be held responsible for collusion – active or passive (in the sense of having tolerated or having been negligent in fulfilling the*

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<sup>1</sup> Amnesty International USA, *800 Secret CIA Flights Into And Out Of Europe*, Press Release, 5 December 2005, available at: <http://www.amnesty.ie/our-work/usa-800-secret-cia-flights-and-out-europe>

<sup>2</sup> Committee on Legal Affairs and Human Rights, *Alleged Secret Detentions And Unlawful Inter-State Transfers Involving Council Of Europe Member States*, Draft Report Part II, Rapporteur: Mr Dick Marty, AS/Jur (2006) 16 Part II, 7 June 2006

<sup>3</sup> *Breaking The Chain - Ending Ireland’s Role In Renditions*, Amnesty International Ireland, 2008

<sup>4</sup> United Nations, International Covenant on Civil and Political Rights, List of issues in relation to the fourth periodic report of Ireland, CCPR/C/IRL/Q/4, Distributed 22 November 2013

*duty to supervise)...for being 'stopovers' for flights involving the unlawful transfer of detainees.*"<sup>5</sup>

Ireland facilitated renditions through making rendition circuits possible, and this should be admitted and investigated.

## **2. Reliance on Diplomatic Assurances**

The Irish government has relied on diplomatic assurances from the U.S. Administration that prisoners had not been and would not be transported illegally through Irish territory. It has been repeatedly reminded by (among others) the Irish Human Rights Commission, Amnesty International and the European Parliament that the reliance placed on these diplomatic assurances is not sufficient to comply with Ireland's international human rights obligations under the aforementioned conventions. Specifically such assurances are insufficient to prevent torture or ill-treatment taking place in Irish territory or airspace and to ensure that its territory is not being used in any way to facilitate extraordinary rendition to another State where a person may be tortured.

The Council of Europe Report by Dick Marty notes that "*[r]elying on the principle of trust and on diplomatic assurances given by undemocratic states known not to respect human rights is simply cowardly and hypocritical.*"<sup>3</sup>

Furthermore the European Commission for Democracy through Law (Venice Commission) which was asked for a legal opinion on diplomatic assurances by the Committee on Legal Affairs and Human Rights stated that "*mere assurances by foreign States that their agents abroad comply with international and national law are not enough. Formal guarantees and enforcement mechanisms need to be set out in agreements and national law in order to protect ECHR rights.*"<sup>3</sup>

## **3. Failure to Investigate Military Aircraft Involved in Kidnapping and Torture**

The torture carried out by the US and others acting on its behalf in locations such as Abu Ghraib in Iraq and Bagram airbase in Afghanistan involved the US military. Furthermore the whole rendition and torture programme was indirectly related to the wars waged by the US military in Afghanistan and Iraq. Many of the prisoners who were transported to Guantanamo were transported on US military aircraft, particularly in 2001 and 2002, and not on CIA executive jets.

As with civilian aircraft operated by or on behalf of the CIA, there has been a failure to inspect US military aircraft at Shannon. This should be addressed immediately by implementing an inspection regime that will identify any and all breaches of international law.

## **4. Complaints**

Shannonwatch have grave concerns about the extent and veracity of the State's reporting on complaints in relation to suspect rendition flights at Shannon. Shannonwatch have compiled a list of 42 complaints relating to requests to search particular aircraft at Shannon Airport, which were made to the Gardai. This is not a comprehensive list, however, as the number of complaints made by activists since 2002 is estimated to be over 100.

Of particular concern is the fact that a large number of these complaints were either ignored or responded to inappropriately (for example by forcibly removing the complainant from the airport, and in some cases arrest. This has resulted in further complaints having been made to the Garda Ombudsman in relation to Garda behaviour.

All complaints made to the Gardai in relation to Shannon should be fully investigated, as a matter of course. The authorities with responsibility for upholding international and national law at Shannon (i.e. the Gardai) have consistently targeted activists instead of listening to and acting on their reasonable and informed concerns.

All in all the evidence suggests a systemic unwillingness to investigate potential breaches of international law linked to the US and CIA use of Shannon Airport. This needs to be investigated and corrected as a matter of urgency.

In relation to the few specific complaints which the State has noted in its Report under the International Covenant on Civil and Political Rights, there are several serious omissions and inaccuracies. Of the 17

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<sup>5</sup> Committee on Legal Affairs and Human Rights, *Alleged Secret Detentions And Unlawful Inter-State Transfers Involving Council Of Europe Member States*, Draft Report Part II, Rapporteur: Mr Dick Marty, AS/Jur (2006) 16 Part II, 7 June 2006

complaints that the State says it received, only 7 investigations are listed. Shannonwatch has already called on the Department of Justice to make the outcomes of the investigations of *all* the complaints known, or if no investigations took place to explain why. This needs to be done as a matter of priority if the State's reporting is to have any credibility.

In relation to the investigations that are detailed in the Report there are a number of inaccurate and misleading statements which also need to be addressed:

(a) October 2004 (N379P): Contrary to what the Report says,

- The statement that 'all four people who complained' about the rendition jets, were interviewed is untrue. None of them were. In fact the Detective who was tasked with investigating the case promised to meet one of the complainants and discuss it, but never showed up.
- The Detective's only interest in 'investigating' was to redefine the remit of the investigation, deliberately narrowing it down to 'torture must be ongoing at Shannon' or a torture victim must be at Shannon. The complainants were expected to provide proof of that before the Gardai would act.

It should not be the responsibility of citizens or concerned groups to produce proof of violations of the law by suspect rendition aircraft.

- The detective further limited his remit to what happened on a single date of a single spotting of a single aircraft at Shannon. This is despite the complaint referring to 'ongoing crimes' and further updates of more recent landings, as well as details of more than one aircraft being involved.
- It was pointed out to the detective that the act directed him to seize anyone suspected of involvement in torture (regardless of where it occurred) and that it wasn't necessary for the victim to be present, only the torturer. His response was to stonewall, and say 'if you don't like it, take it up with my boss'.
- There was clearly no will for a proper investigation of these rendition jets and their crew, and every effort in misrepresenting both the complaint and the legislation concerned.

(b) November 2005: The Report states:

*"The former [A Member of the Oireachtas] met with the Member who was unable to produce evidence in support of the complaint and appeared to be relying on reports from other jurisdictions in respect of the activities of certain aircraft, but not anywhere in Ireland."*

This is misleading, as evidence of this aircraft's involvement in rendition flights was known that year and documented in:

- 'Working Document No 8', European Parliament Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, November 16 2006.
- 'USA Below the Radar - Secret flights to torture and 'disappearance'', Amnesty International Report, April 5 2006<sup>6</sup>.
- There have been other reports since, most noticeably from Reprieve and The Renditions Project<sup>7</sup> that also identify the aircraft in question. On Friday 18<sup>th</sup> March, 2011, Shannonwatch presented printed copies of these and other reports to the Gardai.

(c) September 2007 (N259SK): Here once again the focus has been placed on a single landing rather than a pattern of landings by an aircraft linked to renditions. The N259SK Gulfstream III was involved in the rendition of Syrian-Canadian national, Mahar-Arar, from Rome, Oct 8<sup>th</sup> 2002. It was known to have landed at Derry and Knock airports in May 2005 so it wasn't just Shannon that was involved. Other destinations include the Azores, Amman (Jordan), Dubai, and many European airports. Amnesty International said it had made over 100 trips to Guantanamo bay up to 2006.

In summary, the State's reporting on complaints made in relation to suspect rendition aircraft gives no indication of serious intent to address the matter in accordance with Ireland's human rights obligations.

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<sup>6</sup> See <http://www.amnesty.org/en/library/info/AMR51/051/2006>

<sup>7</sup> See <http://www.therenditionsproject.org.uk/>

## 5. Parliamentary Oversight

Finally we would draw the Seanad Public Consultation Committee's attention to a 2007 report from the European Parliament Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners report which said:

*"The European Parliament*

- *Expresses serious concern about the 147 stopovers made by CIA-operated aircraft at Irish airports that on many occasions came from or were bound for countries linked with extraordinary rendition circuits and the transfer of detainees; deplores the stopovers in Ireland of aircraft which have been shown to have been used by the CIA,*
- *Notes the absence of Irish parliamentary scrutiny of either Irish or foreign intelligence services and the potential that this creates for abuse;*
- *Considers, that, in the absence of a system of random searches, a ban should be imposed on all CIA-operated aircraft landing in Ireland"*<sup>8</sup>

The action outlined by the European Parliament and others must be implemented even at this late stage. Furthermore there must be accountability for the failure to act in the past, in order to avoid the potential for similar human rights abuses in the future. And given the failure of the authorities to act despite repeated warnings and requests to do so, the Oireachtas must now take a proactive role in ensuring that human rights law is not ignored or flouted.

## Conclusion

Shannonwatch refute the statement in the State's Fourth Periodic Report that there is no evidence that any Irish airport has ever been used for the purpose of extraordinary rendition. We also question how the Government can be satisfied that the State may rely on assurances it has received with respect to extraordinary rendition, given the concerns known to have been expressed by a former Minister for Foreign Affairs<sup>9</sup>, as well as a range of national and international bodies.

As a first step towards meeting its obligations, the State should provide comprehensive information on **all** complaints received by An Garda Síochána in relation to flights suspected of being involved in renditions and other violations of international law to/from Shannon Airport. Incomplete or selective reporting of investigations means that Ireland is not fully and properly reporting on progress made in the enjoyment of the rights recognised by the Covenant, in accordance with Article 40 thereof.

The State must also implement measures to ensure proper oversight and inspection of civilian and military aircraft landing at Irish airports to ensure they are not involved in violations of international law. A system of inspections is essential if and when there are reasonable grounds to suspect acts of torture are being committed.

The State's failure to implement a system of inspections was summed up succinctly by the current Tánaiste and Minister for Foreign Affairs in 2006 when he said "Not knowing is not good enough"<sup>10</sup>. His reference at the time to "the total inaction of authorities in demanding the inspection of US aircraft using Shannon" is one that needs to be addressed in order for Ireland to meet its obligations in respect the civil and political rights of individuals.

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*Details of over 40 complaints made in relation to suspected rendition and/or military flights, as well as data relating to suspected rendition aircraft transiting through Shannon, are available from Shannonwatch on request.*

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<sup>8</sup> European Parliament Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners report, Rapporteur: Giovanni Claudio Fava, FINAL, A6-9999/2007, 26/1/2007

<sup>9</sup> See Wikileaks cable at <http://www.wikileaks.ch/cable/2007/12/07DUBLIN916.html>

<sup>10</sup> See <http://www.labour.ie/press/2006/03/01/not-knowing-is-not-good-enough-gilmore-welcomes-ex/>.