

MAURA HARRINGTON

FORMAL SUBMISSION AND OBSERVATION — AN COIMISIÚN PLEARNÁLA

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7 August 2026

An Coimisiún Pleanála

64 Marlborough Street, Dublin 1, D01 V902

Case Reference: PAX16.324387

Re: Proposed Muingmore Wind Farm — RWE Renewables Ireland Limited

Observer: Maura Harrington, Doohoma, Ballina, Co. Mayo F26 A9Y4

A Chara,

1. Introduction and Standing

This submission is made in my personal capacity as a resident of Doohoma, Ballina, Co. Mayo. I identify as an indigene of Erris and have done so for the past 25 years. I am one of those acknowledged as a **Human Rights Defender** in the report of Human Rights Special Rapporteur Mrs Sekaggya to the United Nations in March 2013, following her visit to Ireland in 2012. I enclose a copy of that report with this submission and request that both it and the principle of **Free Prior Informed Consent (FPIC)** inform the consideration of this application.

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2. The Principle of Free Prior Informed Consent

The principle of FPIC — **Free Prior Informed Consent** — was established in Erris a generation ago at the beginning of this millennium. While FPIC is not enshrined in Irish law, it is my belief that it should inform the planning consideration of this application.

The OHCHR definition is as follows:

- **Free** implies that there is no coercion, intimidation or manipulation.
- **Prior** implies that consent is sought sufficiently in advance of any authorisation or commencement of activities, and that respect is shown to time requirements of indigenous consultation and consensus processes.
- **Informed** implies that information is provided covering the nature, size, pace, reversibility and scope of the proposed project; its purpose and duration; locality and areas affected; a preliminary assessment of economic, social, cultural and environmental impact including potential risks; personnel likely to be involved; and procedures the project may entail.

Source: <https://www.ohchr.org/en/indigenous-peoples/consultation-and-free-prior-and-informed-consent-fpic>

3. The Application Is Not Sufficiently Place-Specific

The pro forma documentation accompanying this application is **not sufficiently place-specific**, despite its pro forma headings. The documentation is **formulaic** and does not adequately engage with the distinctive character of the Erris landscape, its communities, or the cumulative effects of this development on an area of exceptional natural and cultural sensitivity.

I further request that the Inspector and Board keep in mind the forensic report prepared by Senior Inspector Kevin Moore in respect of part of the Corrib Gas Project, wherein he gave equal validity to local knowledge vis-à-vis CV-laden expert opinion. That precedent is directly relevant here.

4. The Photomontages Are Wholly Inadequate

The most glaring deficiency in the documentation before the Board is the photomontage assessment. These proposed structures at 180 metres tip height would not simply be seen in the

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areas of Muingmore, Doolough, Geesala, and Mount Jubilee. They would be **visible from every point in Erris** — the Mullet Peninsula, the roads from Westport and Mulranny, from Ballina, from the north coast at Ceide Fields. The applicant has provided no adequate assistance to the receiving communities in this regard.

The only vertical visual objects currently forming part of the Erris topography are telegraph and ESB poles at heights of no more than 10 metres. The proposed turbines at 180 metres tip height represent an intrusion into this landscape of approximately 18 times the height of existing vertical structures. In a landscape characterised by its low-level, wide-ranging topography, this scale of intrusion is inconceivable.

The photomontage attempts to show that structures of this scale will somehow not materially affect the receiving environment are **woefully inadequate and not fit for purpose**. Perspective manipulation is an inherent risk in photomontage exercises of this kind. In particular, focal length minification — which produces the opposite of the lunar effect in photography — can significantly understate the apparent scale of structures in the receiving landscape. The documentation before the Board, in this regard, is **totally and irremediably inadequate**.

5. The Cumulative and Precedent Risk

Any rational response to this application must recognise that **13 turbines is a starting number, not a ceiling**. The example of the Oweninny Wind Farm is instructive. Oweninny began as a single development and has since expanded through multiple phases. Phase 3 of the Oweninny Wind Farm received planning permission in January 2025 — and a community meeting in Crossmolina was convened to discuss a planning application proposing a permanent bridge and access route through community land as part of that third phase, with a turbine delivery route of 188km from Killybegs Harbour.

I bring this to the Board's attention because the turbine delivery route proposed for Oweninny Phase 3, running from Killybegs Harbour through 36km of County Mayo, raises a question about the relationship between the Muingmore application and the existing Oweninny expansion. Should there be any connection between these applications, that would constitute a material omission from PAX16.324387 and I formally request that the Board seek definitive information from the applicant in this regard.

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6. Aviation Lighting and the Dark Sky Park

The aviation safety lights on the wind turbines at Oweninny have changed the night sky in that area and are, by design, highly visible for many kilometres. This application would result in an **unavoidable intrusion into and degradation of the Mayo Dark Sky Park** in Ballycroy and the entire Erris area, which depends on its unspoilt night sky for an increasing part of its tourism economy and identity.

The Wild Atlantic Way passes through Erris and relies upon its landscape qualities — including its dark skies — for the economic sustainability of the region. The aviation warning lighting required on turbines of this height is an intrusion that is absolutely impossible to address through any mitigation measure imaginable. It is an unsupportable consequence of this application.

7. Economic Transparency and Commercial Sensitivity

The economic information necessary to make a full and informed submission on this application is not available. **Commercial sensitivity cannot form a fig leaf for opacity.**

It is difficult to believe that the financial return to the applicant over the lifetime of 13 wind turbines would break even, not to mention generate a profit. I state this as a view based on common sense, given that I do not have access to any contrary facts, which have not been provided by the applicant. An Coimisiún Pleanála should be satisfied that the financial basis for this development is sound and transparent before ^{considering} ~~granting~~ permission for a 35-year transformation of this landscape.

8. The Aarhus Convention and Public Participation

The **Aarhus Convention** on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters applies fully to this application.

The public participation strand of the Convention cannot be fulfilled in this case because the quality of information provided by the applicant is formulaic, insufficient, inadequate, and unfit for purpose. Public participation, to be meaningful, requires that the information before the public is adequate to allow genuinely informed engagement. That condition is not met by the documentation before the Board in PAX16.324387.

Source: https://environment.ec.europa.eu/law-and-governance/aarhus_en

Should the Board consider this application to have met some minimum standard or other, I **formally request that an Oral Hearing be convened in Belmullet.**

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9. The FPIC Precedent in Erris

The precedent of FPIC in Erris was hard-fought for 25 years ago. While the Corrib Gas Project was eventually completed, it is salutary to note that it was **delayed by 12.5 years** and came in at **four times its original budget**. That outcome was the direct consequence of proceeding without genuine community consent in a place whose people have a deep, multigenerational connection to their landscape. The same community, the same landscape, and the same principle are at issue in this application.

10. Formal Request

I formally request that An Coimisiún Pleanála **refuse permission** for the proposed Muingmore Wind Farm in its entirety.

I enclose the €50 submission fee.

I enclose a copy of the UN Special Rapporteur's report of March 2013.

I request that all communications from the Board be addressed to me at: Doohoma, Ballina, Co. Mayo F26 A9Y4 and by email to maurah.ias@eircom.net.

Mise le meas,



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04 August 2016

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General Assembly

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AN COIMISIÚN PLEANÁLA

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05 AUG 2026

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Time: 9:15

By: P. O'Neil

Human Rights Council

Twenty-second session

Agenda item 3

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya

Addendum

Mission to Ireland (19 – 23 November 2012)* **

Summary

The Special Rapporteur on the situation of human rights defenders conducted an official visit to Ireland from 19 to 23 November 2012, during which she met with senior officials and human rights defenders.

In the present report, the Special Rapporteur considers the legal and institutional framework in Ireland for the promotion and protection of human rights, paying particular attention to the situation of the national human rights institution and the initiatives taken by Ireland for the protection of human rights defenders through foreign policy and development aid.

Acknowledging that the environment in Ireland is conducive to the defence and promotion of human rights, the Special Rapporteur analyses the specific challenges faced by certain groups of human rights defenders in Ireland, including environmental rights activists, defenders working on sexual and reproductive rights, those working for the right of Travellers, whistle-blowers and others reporting wrongdoing, and asylum seekers and refugees working for the rights of their communities. She also briefly highlights other challenges affecting defenders in the country.

The report concludes with recommendations for all relevant stakeholders.

* The summary of the present report is circulated in all official languages. The report itself, annexed to the summary, is circulated in the language of submission only.
** Late submission.

Annex

[English only]

Report of the Special Rapporteur on the situation of human rights defenders on her mission to Ireland (19 – 23 November 2012)

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I. Introduction

1. Pursuant to Human Rights Council resolutions 7/8 and 16/5, the Special Rapporteur on the situation of human rights defenders conducted an official visit to Ireland from 19 to 23 November 2012, at the invitation of the Government. The purpose of her visit was to assess the situation of human rights defenders in Ireland in the light of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (also known as the Declaration on Human Rights Defenders), adopted by the General Assembly in its resolution 53/144. An examination of the legal framework in the country, institutional policies and mechanisms for the promotion and protection of human rights were of particular importance to this assessment.
2. During her visit, the Special Rapporteur met with the President of Ireland, Michael D. Higgins; the Joint Parliament (*Oireachtas*) Committee on Foreign Affairs and Trade and other members of Parliament; the Chief Justice; and the Director of Public Prosecutions. She also met with the Minister for Justice and Equality, representatives of the Human Rights Unit, the Department of Foreign Affairs and Trade, including with its NGO Standing Committee, and Irish Aid. Moreover, the Special Rapporteur met with the Acting Chief Executive of the Irish Human Rights Commission and a former Commissioner, as well as with the Ombudsman Commission of the Police (*Garda Síochána*). She also met with the Head of the Office of the United Nations High Commissioner for Refugees (UNHCR). In addition, the Special Rapporteur received a written submission from Shell E&P Ireland.
3. During her visit, the Special Rapporteur also held meetings with a wide range of defenders and activists representing civil society in Ireland. She is particularly grateful to the valuable support provided by the non-governmental organizations Front Line Defenders and the Free Legal Aid Centre during the visit.
4. The Special Rapporteur thanks the Government of Ireland for its invitation and its outstanding cooperation throughout her visit. She also thanks everyone who took the time to meet with her and shared their valuable and important experiences.

II. Background

5. The visit was the first ever conducted by a mandate holder on the situation of human rights defenders to a member State of the European Union. Ireland has endured a difficult period since the economic crisis hit the country in 2008 and its subsequent severe recession. This has led to drastic cuts in public expenditure affecting all sectors of society, including civil society and defenders.
6. The environment in which defenders operate in Ireland generally facilitates the defence and promotion of human rights and fundamental freedoms. The Special Rapporteur notes, however, that Ireland has not been very active in disseminating information about the Declaration on Human Rights Defenders at the domestic level or in raising awareness about the specific profile and role of defenders in society, particularly of those working for the rights of marginalized communities, such as Travellers and asylum seekers. During the visit, the Special Rapporteur also noted that the very term "defender" was not always well understood, even among public officials. She further noted that there was no national plan of action on human rights in Ireland.

III. Legal framework for the promotion and protection of human rights

A. International level

1. Incorporation of international law

7. Article 29.5.1 of the Constitution states that every international agreement to which the Irish State becomes a party, other than technical or administrative agreements, must come before the House of Representatives (*Dáil Éireann*). The automatic incorporation of international treaties and conventions into domestic law is prevented under article 29.6 of the Constitution. The Special Rapporteur notes with concern that this absence of direct applicability may hinder the State's compliance with obligations contained in international agreements to which it is a State party. She also notes the lack of an accountability mechanism to oversee the implementation of such international agreements.

2. United Nations treaties

8. As at February 2013, Ireland was a State party to the International Covenant on Civil and Political Rights and the First and Second Optional Protocols thereto, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict, the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ireland ratified the Rome Statute in 2002.

9. The Special Rapporteur welcomes the withdrawal by Ireland in December 2011 of its reservation to article 19.2 of the International Covenant on Civil and Political Rights, which allowed the State to maintain a monopoly on broadcasting and to operate a licensing system for broadcasting enterprises. The Special Rapporteur is also pleased to note that, in November 2011, Ireland ratified the United Nations Convention against Corruption.

10. Ireland has signed but not yet ratified the International Convention for the Protection of all Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

11. Ireland is not yet a State party to the European Convention on the Legal Status of Migrant Workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the Convention on the Participation of Foreigners in Public Life at Local Level.

12. The Special Rapporteur encourages the Government to ratify the United Nations treaties that it has signed but not yet ratified, and to sign and ratify the others to which is not a party. She believes that the ratification process is particularly important in light of the State's recent election to the Human Rights Council.

3. Council of Europe and European Union

13. Ireland ratified the European Convention for the Protection of Human Rights and Fundamental freedoms in 1953. As a member State of the European Union since 1973,

Ireland is bound by the Charter of Fundamental Rights of the European Union. In December 2003, the European Convention on Human Rights Act entered into force, thereby making the European Convention part of Irish law, as stipulated by the Constitution. Ireland has ratified most of the human rights treaties of the Council of Europe, including the Revised Social Charter and its collective complaints procedure. In 2007, Ireland signed the Council of Europe Convention on Action against Trafficking in Human Beings and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

B. National level

1. Constitution

14. The Constitution of Ireland (*Bunreacht na h Éireann*) was adopted by referendum on 1 July 1937 and is the basic law of the State. It sets out the form of Government and defines the powers of the President (*Uachtarán*), the Parliament (*Oireachtas*), the Government and the Courts. The Constitution may be amended only by a referendum, and all laws passed by the Parliament must abide by it. Under article 34, the High Court and the Supreme Court have the power to assess and determine the constitutionality of any law. In the event that a court concludes that a particular law is unconstitutional, that law ceases to have any legal effect.

15. The Constitution recognizes a broad range of human rights. Articles 40 to 44 outline fundamental rights, including equality before the law (art. 40.1), the right to life (arts. 40.3.2 and 3), personal liberty (art. 40.4), freedom of expression (art. 40.6.1 (i)), freedom of assembly (art. 40.6.1 (ii)), freedom of association (art. 40.6.1 (iii)), the right to education (art. 42), freedom of conscience and the free profession and practice of religion (art. 44).

16. In interpreting the provisions of the Constitution, the courts have identified a number of rights that, although not expressly referred to in the text of the Constitution, are nonetheless provided for by it. These include the right to bodily integrity, freedom from torture and from inhuman or degrading treatment or punishment, the right to legal counsel, the right to legal representation in certain criminal cases, and the right to fair procedure.

17. A constitutional convention tasked with revising the Constitution over a period of 12 months was established in June 2012. The inaugural meeting was held on 1 December 2012 and the working sessions were expected to commence in January 2013. Among the issues the convention will consider include the insertion of a provision for same-sex marriage; an amendment to articles 41.1 and 41.2 on the role of women in the home, and the insertion of a clause recognizing the participation of women in public life; and the removal of the offence of blasphemy from article 40.6.1 (i). While the recommendations made by the convention will not be binding, the Government may enact proposed reforms, which, if passed by Parliament, would be put to a public referendum. The Special Rapporteur welcomes this Government initiative and encourages the inclusion and participation of civil society actors, including human rights defenders, in the process of constitutional reform.

2. Laws relating to freedom of opinion and expression

(a) Constitution

18. Article 40.6 (i) guarantees the right of citizens "to express freely their convictions and opinions". It also refers to the press, defined as "organs of public opinion, such as the radio, the press, the cinema", and recognizes "their rightful liberty of expression, including criticism of Government policy". However, it forbids their use "to undermine public order or morality or the authority of the State". Article 40.6 (i) also establishes the offence of

blasphemy, which is defined as “the publication or utterance of blasphemous, seditious, or indecent matter”. The offence of blasphemy is also present in criminal legislation by way of the Defamation Act (2009).

(b) *Defamation Act (2009)*

19. The Defamation Act was passed in 2009 and came into force in 2010, repealing the Defamation Act of 1961. Under section 36 of the Act, the “publication or utterance of blasphemous matter” is a criminal offence, which may result in a maximum fine of €25,000. On conviction, the court may issue a warrant for the material to be seized.

20. Article 36, paragraph 2 of the Defamation Act defines blasphemy material as “grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion”. According to section 4 of the same provision, “religion” excludes profit-making organizations or those organizations that engage in “oppressive psychological manipulation”. Under section 3 of article 36, defence from criminal liability is permitted in cases of work of “genuine literary, artistic, political, scientific or academic value”.

21. While noting that no prosecution has been brought to date under section 36 of the Defamation Act, the Special Rapporteur expresses concern at the vagueness of the definition of blasphemy and its possible implications on the fundamental right to freedom of opinion and expression, which could lead to self-censorship among defenders.

22. The Special Rapporteur emphasizes that any restrictions on the right to freedom of expression must be limited only to those permissible under article 19 of the International Covenant on Civil and Political Rights.¹ In this connection, she is pleased to note that the constitutional convention was tasked with considering the need for the removal of the offence of blasphemy from article 40.6.1 (i) of the Constitution, which would also facilitate its removal from the Defamation Act.

23. During her visit, the Special Rapporteur received information about the reported use of litigation and the threat of legal action to intimidate journalists. In this connection, she underlines the importance of the role of the Press Ombudsman and the Press Council, established to safeguard and promote professional and ethical standards in Irish printed media, and which can resolve complaints about the accuracy and fairness of coverage.

3. Laws relating to the freedom of assembly

(a) *Constitution*

24. Article 40.6.1 (ii) guarantees the right to peaceful assembly subject to the protection of “public order and morality”. Assemblies that are considered “to cause a breach of the peace” or are “a danger or nuisance to the general public” may be controlled and prevented. Assemblies held in the vicinity of either House of the *Oireachtas* may also be controlled and prevented.

(b) *Criminal Justice (Public Order) Act (1994)*

25. The Criminal Justice (Public Order) Act of 1994, commonly referred to as the Public Order Act, sets out offences relating to public order and provides for sanctions, including prison sentences ranging from three months to three years and fines of up to €1,200. Part II of the Act criminalizes “disorderly conduct”, “threatening, abusive or insulting behaviour in

¹ E/CN.4/2000/63/Add.2, paras. 83-85.

a public place”, the “distribution or display [...] of material which is threatening, abusive, insulting or obscene”, “failure to comply with the direction of a member of Garda Síochána (police)”, “wilful obstruction” of persons or vehicles, “entering a building [...] with intent to commit an offence”, and “affray”.

26. While permission or authorization from the police is not required to hold an assembly, part III of the Public Order Act allows the *Garda Síochána* to monitor and restrict access to large assemblies “in the interests of safety or for the purpose of preserving order”. These powers must, however, comply with privacy and data protection laws.²

4. Laws relating to freedom of association

(a) *Constitution*

27. Article 40.6.1 (iii) of the Constitution guarantees the right to form associations and unions, subject to the possible enactment of laws for the regulation and control of associations and unions “in the public interest”. Article 40.6 also specifies that such laws may not contain any political, religious or class discrimination.

(b) *Charities Act (2009)*

28. The Charities Act, providing for the regulation and supervision of the charitable sector, was passed in 2009. The Act makes it mandatory for every charity to be registered and for updated information about charities, including missions, activities, governance and finances, to be made publically available. Key provisions of the Act include a definition of charitable purposes; the creation of a new Charities Regulatory Authority; the creation of a Register of Charities, in which all operating charities must register within six months and that will be publically accessible; the submission of annual activity reports by charities to the new Authority; updating the law relating to fundraising; the creation of a Charity Appeals Tribunal; and the provision of consultative panels to assist the Authority in its work and to ensure effective consultation with stakeholders.

29. The Special Rapporteur notes with concern that section 3, paragraph 11 of the Act fails to recognize the promotion of human rights as “a purpose that is beneficial to the community”, therefore, effectively excluding organizations that work on the protection and promotion of human rights from being able to register as charities.

30. Moreover, to date, the Charities Act has not been fully implemented; it was reported that this would happen in stages. The Special Rapporteur is concerned that, as a result of the progressive implementation of the Act and the consequent absence of a comprehensive regulatory authority of the charitable sector, many organizations operating on a not-for-profit basis are forced to register as companies limited by guarantee in order to satisfy funding requirements. This has reportedly resulted in the organizations being unable to benefit from charitable status, including being eligible for tax exemption and being considered a legitimate charity for fundraising purposes.

² The Freedom of Information Act (1997) and the Data Protection Act (1988).

IV. Institutional framework for the promotion and protection of human rights

A. Legislative branch

31. Ireland is a parliamentary democracy. The President (*Uachtarán*) is Head of State and does not have executive functions. The Parliament (*Oireachtas*) comprises the President and two Houses: the directly elected House of Representatives (*Dáil Éireann*) and the Senate (*Seanad Éireann*), made up of representatives of several groups or institutions.

32. On the nomination of the House of Representatives, the President appoints the Prime Minister (*Taoiseach*) and, on the advice of the Prime Minister and with the prior approval of the House of Representatives, the President appoints members of the Government. There may be up to 15 members of Government. Government policy and administration may be examined in both houses, but under the Constitution, the Government is responsible to the President alone. Ireland also has a system of local government, based on 34 directly elected city- and county-level councils with functions relating to such matters as planning, housing and the provision of certain local services.

33. All draft legislation passed by the Parliament is examined by the Office of the Attorney General to ensure that it is compliant with the Constitution.

B. Executive branch

34. At the institutional level, the Special Rapporteur was pleased to meet the Human Rights Unit of the Department of Foreign Affairs and Trade, and to learn about its work. Moreover, she was particularly pleased to find out about the existence of the NGO Standing Committee, which provides a formal framework for a regular exchange of views between the Unit and Department and representatives from the community of non-governmental organizations, including defenders and activists. She believes that this is an excellent initiative that should be replicated.

C. Judicial branch

35. Judges are appointed by the President on the nomination of the Government. The courts are structured on four levels: the District Court, the Circuit Court, the High Court and the Supreme Court. The latter two are referred to as the Superior Courts and may rule on constitutional matters. The Court of Criminal Appeal and the Special Criminal Court are also part of the judiciary in Ireland.

36. The Special Criminal Court was established in 1972 under the Offences against the State Act (1939) to deal with offences relating to terrorism and other offences listed as scheduled offences. Non-scheduled offences may also be forwarded to the Court's jurisdiction if the Director of Public Prosecution certifies that the ordinary courts are inadequate. The Court sits with three judges, without a jury, and the judges reach a verdict by majority vote. The Special Rapporteur reiterates the recommendation made by the Human Rights Committee that the State should monitor the need for the Special Criminal Court carefully with a view to its abolition.³

³ CCPR/C/IRL/CO/3, para. 20.

37. During her visit, the Special Rapporteur learned about the recent establishment of the Interim Judicial Council, seen as a preliminary step towards the creation of a statutory body that would be tasked with providing a complaints mechanism against judges and with deciding on disciplinary actions. The Special Rapporteur also welcomes the establishment of the Judicial (professional) Association in November 2011.

D. Police

38. The national police service of Ireland is the *Garda Síochána*. The most recent act governing the body is the Garda Síochána Act (2005), and its internal management is subject to regulations of the Ministry of Justice and Equality.

39. The Garda Síochána Ombudsman Commission is an independent statutory body that investigates complaints concerning the conduct of members of the police, and is answerable to the Parliament. An independent person within the Commission deals with matters of concern reported by individual officer (whistle-blowers).

40. While the Special Rapporteur welcomes the existence of the Ombudsman Commission to ensure the accountability and independent oversight of the police, she expresses concern at the serious constraints faced by the body, including financial and resource limitations, and the reported limited public awareness of its activities and responsibilities. While she takes note of the powers of the Commission to conduct public interest investigations into the behaviour of the police in accordance with section 102(4) of the Garda Síochána Act (2005), she remains concerned at the Commission's excessive dependence on the Ministry of Justice and Equality when it comes to opening investigations relating to the practices, policies and procedures of the police, which requires permission from the Minister, as laid out in section 106 of the mentioned Act. The Special Rapporteur recommends that this provision be removed from the Garda Síochána Act (2005) in order to grant the Commission independent investigative powers.

E. Irish Human Rights and Equality Commission

41. The Irish Human Rights Commission was established under statute in 2000 in accordance with the Good Friday Agreement (1998) as an independent national human rights institution with key public functions in accordance with the Paris Principles. Regarded internationally as a model national human rights institution, the Commission gained "A" status in 2004 and 2008 with the International Coordinating Committee. The Commission is currently administered by the Department of Justice and Equality.

42. In September 2011, the Government announced its intention to merge the Irish Human Rights Commission with the Equality Authority, an independent body to be set up under the Employment Equality Act (1998), to form the new Irish Human Rights and Equality Commission. In June 2012, the Minister for Justice and Equality published the Scheme of the Irish Human Rights and Equality Commission Bill 2012, which was examined by the Joint Committee on Justice, Defence and Equality.⁴

43. With regard to the scheme of the Irish Human Rights and Equality Commission Bill 2012, the Special Rapporteur is pleased to note that it was reviewed by Parliament, which received written submissions and held two public hearings. She also welcomes the consultation by the Government on the draft legislation with the Office of the United

⁴ See the report on hearings in relation to the Scheme of the Irish Human Rights and Equality Commission Bill, July 2012, available from www.oireachtas.ie/parliament/.

Nations High Commissioner for Human Rights and was pleased to learn that provisions in the Bill provide for enhanced powers and functions of the new Commission, including the power of inquiry.

44. Since July 2012, an Acting Chief Executive and an Advisory Committee of the future Human Rights and Equality Commission have been put in place. During the Special Rapporteur's visit, she was assured that an interim body would be appointed early in 2013 to ensure the full operation of the Commission. The Special Rapporteur stressed the need that the Commission's mandate be broad and that adequate resources be allocated to it to ensure its independence and effective functioning. She also encouraged the swift introduction of draft legislation.

45. With regard to the scope of the mandate of the new Commission, while the Special Rapporteur is pleased to note the broad definition of human rights contained in head 3, she is concerned at the somewhat narrow definition enshrined in head 30, which requires that such rights be "conferred on or guaranteed by the Constitution" or have "the force of law in the State or by a provision of any such agreement, treaty or convention which has been given such a force".

46. In connection with the above, and taking into account the fact that the automatic incorporation of international treaties into domestic law is hampered under article 29.6 of the Constitution together with the fact that Ireland is neither a signatory of nor party to all international human rights treaties, the Special Rapporteur is concerned that the narrower definition of human rights contained in head 30 could potentially reduce the scope of the Commission's mandates. She recommends that the heads of bill have only one definition of human rights, and that the one contained in head 3 be the one applicable to the new Commission.

47. With regard to the autonomy and independence of the Commission, the Special Rapporteur notes that, in 2008, during the process of re-accreditation, the Sub-Committee on Accreditation of the International Coordinating Committee highlighted a concern regarding the selection and appointment of the Commissioner and the need to provide for direct accountability to Parliament. Certain treaty bodies have also expressed their concern in this regard, referring to an administrative link to a Government department⁵ and to disproportionate budget cuts⁶ affecting the institution, and have called on the body to have direct accountability to Parliament.⁷ She took note of the establishment of a selection panel for the members of the Commission, which will be independent of the Government and will report to the Joint Committee on Justice, Defence and Equality.

48. While the Special Rapporteur acknowledges the increased links of the Human Rights and Equality Commission with Parliament established by the heads of bill (heads 12, 14, 20 and 27), she notes that heads 17, 19, 21, 26 and 27 seem to strengthen the connection of the institution to the Ministry of Justice and Equality by, inter alia, limiting what information the Director may convey to the Public Accounts Committee (head 19) and requiring ministerial consent for the appointments of the Director of the Commission and its staff (head 26). The Special Rapporteur underlines the importance for a national institution to be able to recruit its own staff, and she also recommends that no secondment from civil service be allowed.

49. The Special Rapporteur also brings to the attention of relevant authorities a concern expressed by various stakeholders during her visit relating to the cumulative budget cuts

⁵ CCPR/C/IRL/CO/3, para. 7.

⁶ CERD/C/IRL/CO/3-4, para. 11.

⁷ CAT/C/IRL/CO/1, para. 8.

suffered by the Commission since 2008. She was informed that the Commission has been subject to a reduction by 40 per cent in funding since 2007. Together with an embargo on recruitment, this has resulted in significant constraints for the institution.

50. While the Special Rapporteur notes that the heads of bill provide for the appointment of Advisory Committees (head 16), she regrets that there is no specific provision regarding the engagement of the new institution with civil society actors. She strongly recommends that the Government consider including a specific reference to the importance of the interaction between the Commission and civil society actors, including human rights defenders.

F. Support for human rights defenders through external policy

51. Through its external policy, Ireland has assumed a leading role in initiatives under the European Union Guidelines on Human Rights Defenders to contribute to the protection of defenders and activists at risk in other countries, including through the provision of temporary visas at the national level. The Special Rapporteur commends the Government of Ireland for its efforts to assist defenders at risk in third countries.

52. On the initiative of Ireland, the above-mentioned Guidelines were adopted in 2004 and updated in 2008 in order to streamline the actions of member States of the European Union in favour of human rights defenders. They provide concrete proposals, especially to European Union diplomatic missions, on monitoring the situation of defenders. Support for United Nations human rights mechanisms and coordination with other regional instruments is another important aspect of the Guidelines, as is the need to use development policy and aid programmes to protect defenders.

53. While the Guidelines are an important tool and represent a significant commitment by the European Union, both internal evaluations⁸ and external assessments have shown gaps, particularly at the implementation and coordination levels. For a number of years, efforts have made to develop local strategies for the implementation of the Guidelines and to set up local human rights groups in order to assure greater coordination. The Special Rapporteur stresses the importance of integrating the implementation of the Guidelines into the broader framework of European Union human rights policy, which includes other important human rights guidelines and policy instruments.

54. Ireland has been particularly proactive in promoting the Guidelines on Human Rights Defenders and has taken a number of initiatives worth underlining, including, those described below.

1. Humanitarian visa scheme

55. Since 2006, Ireland has managed a dedicated humanitarian visa scheme for human rights defenders. The aim of the scheme is to provide a fast-track approach to processing visa applications, thereby allowing defenders facing temporary security issues to travel to Ireland for short periods of time for respite. Given the specific profile of such cases, a high degree of confidentiality is maintained around the scheme and individual cases.

56. An application must be submitted through the Embassy or consular representation of Ireland in the applicant's country of usual residence. If there is no representation in the

⁸ Draft report on EU policies in favour of human rights defenders (2009/2199(INI)), Committee on Foreign Affairs, European Parliament. Available from [www.europarl.europa.eu/RegData/commissions/afet/projet_rapport/2010/439063/AFET_PR\(2010\)439063_EN.pdf](http://www.europarl.europa.eu/RegData/commissions/afet/projet_rapport/2010/439063/AFET_PR(2010)439063_EN.pdf).

country concerned, the application is made to the appropriate representation in a neighbouring country. The programme is administered in conjunction with the non-governmental organization Front Line Defenders, and has provided relief to various defenders in recent years. The Special Rapporteur commends the Government of Ireland for the effort put into the scheme, and encourages its replication by those member States of the European Union that have not yet already done so.

57. Moreover, the Special Rapporteur is pleased to note that, in 2010, Ireland developed complementary guidelines for its embassies and diplomatic missions on human rights defenders. The guidelines describe practical steps that diplomatic missions can take to support human rights defenders and to seek to ensure that embassies properly monitor the situation of defenders abroad.

2. Implementation of the European Union Guidelines on Human Rights Defenders

58. The Special Rapporteur commends the efforts made by the Government of Ireland to continue to contribute to the protection of defenders abroad, and encourages the Irish authorities to bring these issues forward, in particular in the first six months of 2013, when Ireland will hold the Presidency of the European Union. She sees this as an excellent opportunity to make additional efforts to enhance the implementation of the European Union Guidelines on Human Rights Defenders.

59. In the above connection, the Special Rapporteur suggests that a system of benchmarks and simple indicators be developed, jointly with human rights defenders, to assess the implementation of the Guidelines. The assessment system should be gender-sensitive and allow for the sharing of good practices among European Union delegations.

60. Structural indicators could include, inter alia, the number of local strategies developed, the number of diplomatic missions that have volunteered for a post as European Union liaison officer for human rights defenders, or the number of diplomatic missions who make the Guidelines easily available on their websites.

61. Outcome indicators could include the number of individual cases raised bilaterally. The number of fast-track visas provided under a humanitarian visa scheme could also be included. With regard to public support and visibility for the work of defenders, indicators could include the number of public statements on defenders at risk, the number of initiatives taken in individual cases in regional and international forums (such as the Human Rights Council and the General Assembly), the number of visits to the place of work of defenders, and the number of events (such as conferences and seminars) to which defenders are invited. The number of visits to defenders in detention and the number of trials observed by diplomats could also be included.

3. Development policy and the protection of human rights defenders

62. The Special Rapporteur was pleased to note that Irish development policy has a long-standing history of mainstreaming human rights through its development cooperation and aid programmes, including by fostering civil society action and supporting the protection of human rights defenders.

63. During her visit, the Special Rapporteur became acquainted with the ongoing review of the White Paper on Irish Aid. Irish Aid is the Government programme of development assistance that delivered €639 million for poverty reduction in 2012, and has traditionally provided important support for human rights defenders. The overall reductions in public expenditure resulting from the difficult economic situation in Ireland, however, led to a cut of 30 per cent in the State's aid budget between 2008 and 2011.

64. The review of the White Paper on Irish Aid was announced in June 2011 and is being led by the Minister of State for Trade and Development. The Special Rapporteur commends the broad consultations held in connection with the review of the White Paper with key stakeholders, including the general public, civil society, partner countries, the private sector and the Parliament. The Special Rapporteur hopes that the review of the White Paper will continue to maintain a clear focus on human rights and on the protection of defenders.

65. The role of donors in protecting and fostering civil society in recipient countries has become essential, while development aid has shown proved to be an effective tool in fostering an enabling environment for defenders. In this regard, the Special Rapporteur would like to add her voice to those who underline the importance of ensuring coherence between international human rights principles and frameworks for development aid.⁹ In particular, she highlights the need to consider the recommendations made by United Nations human rights mechanisms, including the universal periodic review, the special procedures and the treaty bodies, when assessing aid performance at the country level. She also underlines the importance of the coherence and sustainability of donors' reactions to human rights violations, as well as of that of funding being made available to support the capacity and safety of human rights defenders as part of development aid.

V. Situation of human rights defenders

66. During her visit, the Special Rapporteur observed that, because of their legitimate work upholding human rights, certain categories of human rights defenders face specific challenges in Ireland. These categories include environmental rights defenders, defenders and activists working on sexual and reproductive rights, defenders working on the rights of Travellers, asylum seekers and refugees claiming the rights of their community, and whistle-blowers and others reporting acts of wrongdoing.

67. The Special Rapporteur also became aware of other challenges affecting human rights defenders that relate, inter alia, to the lack of an independent complaints mechanism in prisons, the high costs associated with public interest litigation, the drastic reduction in public funding available for advocacy work, and accessibility to public policy-related information.

A. Environmental rights activists

68. During her visit, the Special Rapporteur expressed her concern at the situation of and challenges faced by defenders and activists defending the right to the enjoyment of a safe, clean, healthy and sustainable environment, particularly those peacefully protesting against the Corrib Gas project in County Mayo.

69. Natural gas was found in North Mayo in 1996, and Shell E&P Ireland, in partnership with Statoil Exploration (Ireland) Limited and Vermilion Energy, took over the development of the Corrib Gas project in 2002. The project has been controversial for various reasons, including safety concerns relating to the type of pipeline (an onshore, high-pressure pipeline) and the route chosen, as well as environmental concerns for the ecological impact of the project on a sensitive area that includes special areas of conservation. Since 2002, a number of risk assessments and reviews of the impact of the

⁹ Trocaire, *Democracy in Action: Protecting Civil Society Space*, Trocaire Policy Report, 2012. Available from www.trocaire.org/sites/trocaire/files/pdfs/policy/Democracy_in_Action.pdf.

Corrib Gas project have been undertaken by Shell, the public authorities, local residents and non-governmental organizations.¹⁰

70. Since its inception, the Corrib Gas project has faced opposition from various groups of local community residents, who claim that their rights to life and the enjoyment of a safe, clean, healthy and sustainable environment are being seriously compromised by the project. During her visit, the Special Rapporteur met with various groups of local residents and was able to confirm the frustration that exists among those who are standing up for their rights, who feel powerless, isolated and have lost their confidence in public institutions. These community residents are loosely organized, without a clear leadership structure, and have adopted different non-violent ways to express their opposition to the project.

71. While opposition to the project has been mostly peaceful, the Special Rapporteur noted with concern that there have also been reports of violent criminal acts committed in the context of the protests, including damage against Shell property. The Special Rapporteur would like to emphasize that those responsible for committing such acts cannot be considered human rights defenders, and that perpetrators should be held accountable for their actions and brought to justice.

72. During her visit, the Special Rapporteur received credible reports and evidence, including video footage, indicating the existence of a pattern of intimidation, harassment, surveillance and criminalization of those peacefully opposing the Corrib Gas project. Protests have ranged from lawful demonstrations to non-violent non-compliance and passive resistance on both public and private grounds. The information received seemed to indicate that the policing of the protests had been, in some instances, disproportionate. Moreover, there have also been serious concerns about the lawfulness of certain actions by the private security firm employed by Shell.

73. In 2006 and 2007, incidents reported include protesters being thrown off roads and into ditches by police officers when they were trying to block roads. In 2008 and 2009, various incidents reportedly included the unlawful detention by the police of a boat belonging to a local fisherman, who was allegedly trying to protect his crab pots from the pipe laying vessels, and the physical assault by the police and private security staff of a protestor staging a sit-in under a truck. While the Special Rapporteur takes note that the explicit no-arrest policy by the police has been used as a way to reduce tension, she received information indicating that this may have led to the excessive and disproportionate use of force against protestors.

74. More recent reports include serious allegations of police misconduct and verbal abuse against protestors, such as an incident on 31 March 2011, when several police officers were inadvertently recorded (by a video camera confiscated from two female protestors) while threatening to rape one of the women protestors in their custody. The Garda Síochána Ombudsman Commission conducted an investigation into the allegations and, in July 2011, issued a report thereon. As a result of the investigation, disciplinary action was taken and one of the police officers was found to be in breach of discipline and was admonished for his behaviour and on future conduct.

75. In the above connection, the Special Rapporteur expresses her concern at allegations received pointing to shortcomings in official investigations, particularly those relating to the use of excessive force and abusive behaviour by the police. The Corrib Gas dispute has

¹⁰ Brian Barrington, "Breakdown in trust: a report on the Corrib gas dispute", Front Line, 2010. Available from www.frontlinedefenders.org/files/Corrib%20Gas%20Dispute%20Breakdown%20of%20Trust%20Web%20version.pdf.

been the single largest source of complaints to the Garda Síochána Ombudsman Commission. In 2007, in accordance with section 106, part 4 of the Garda Síochána Act (2005), the Commission sought to conduct a “practice, policy and procedure” investigation into public order aspects of the dispute, and requested the consent of the Minister for Justice. Regrettably, consent was denied on the grounds that the Commission did not have enough experience at the time with complaints in terms of volume and seriousness to allow for patterns to be identified. As stated above, the Special Rapporteur considers that this section of the Garda Síochána Act should be repealed and the Commission should seek again to conduct a “practice, policy and procedure” investigation into the public order aspects of the dispute in the light of its proven experience with complaints in recent years.

76. The Special Rapporteur acknowledges that the Corrib Gas dispute has created a challenging environment for the police and local authorities, given the length of the dispute and the fact that those involved come from the same community. She is also mindful of the fact that the rights to freedom of expression and to peaceful assembly may be subject to certain legal and necessary restrictions. She takes note of the establishment of the Strategic Human Rights Advisory Committee by the police in 2005 and of the information received regarding the specific training of the police on handling protests and on the use of force. The Special Rapporteur trusts that the efforts will continue, thus providing adequate training and guidance to the police and other relevant personnel, especially with regard to the policing of protests and crowd control.

77. The Special Rapporteur also took note of the reported consistent use of charges against protestors under articles 8 (failure to comply with directions of the police) and 9 (wilful obstruction) of the Public Order Act. This, together with the reported practice of withdrawal or dismissal of cases and the regular sanction of suspended sentences after court appearances could, in her opinion, undermine the right to protest and deprive defendants of the opportunity to respond to the legal charges made against them.

78. In addition, the Special Rapporteur received reports of acts of surveillance of public roads, private houses and private movements of local residents by private security agents employed by Shell. The Special Rapporteur is concerned at the possible impact of such practices on the right to privacy of local residents, and recommends that surveillance methods be employed only in a lawful and proportionate manner, and that their purpose be communicated to local residents.

B. Defenders and activists working on sexual and reproductive rights

79. During her visit, the Special Rapporteur received information about the situation of and challenges faced by defenders working on sexual and reproductive rights, particularly those providing women with information on legal abortion. Ireland has one of the most restrictive laws in Europe regarding the termination of pregnancy whereby abortion is a criminal offence, except when the pregnant woman’s life is at risk, including because of the risk of suicide, and where women may be punished with life-term prison sentences.

80. In 1983, article 40.3.3 of the Constitution was amended to acknowledge “the right to life of the unborn”, regarding it as equal to the right to life of the pregnant woman. The term “unborn” was not defined. Procuring or assisting in an abortion is a criminal offence under the Offences against the State Act (1861), and is punishable by up to life imprisonment. There have been no prosecutions under the Act in recent times, at least since 1975 and the establishment of the Office of the Director of Public Prosecutions.

81. In 1995, the Regulation of Information (Services outside the State for the Termination of Pregnancies) Act¹¹ was enacted. The Information Act allows for the provision of information on abortion services abroad, subject to strict restrictions that pose a number of important challenges to the work of defenders, practitioners and advocates working on sexual and reproductive health rights, which are described below.

82. In 1992, with the judgement in *Attorney General v X*, the Supreme Court provided guidance on the interpretation of the existing right to abortion under article 40.3.3 of the Constitution, and determined that abortion in Ireland was legal when a real and substantial risk to life – as opposed to the health – of the pregnant women, including the risk of suicide, had been established.

83. In 2010, the European Court of Human Rights, in the case of *A, B and C v Ireland*, found that Ireland had failed to respect the applicant's private life, contrary to article 8 of the European Convention on Human Rights, given that no accessible or effective procedure had been available to enable her to establish whether she qualified for a lawful termination of pregnancy in accordance with Irish law, and requested a more effective procedure regarding requirements to be met to qualify for the legal termination of a pregnancy.

84. The decisions described in paragraphs 82 and 83 above are still to be implemented, which explains why currently no legislation or regulatory framework exists to define whether a woman is entitled to have access to legal abortion. In June 2011, the Government submitted a plan of action to the Committee of Ministers of the Council of Europe with measures on how to implement the judgement, including the establishment of an Expert Group to recommend the options available. In November 2012, the report of the Expert Group on the Judgement in *A, B and C v. Ireland* was made public.

85. According to the Information Act, information on abortion services should only be given in the context of one-to-one counselling (sect. 3.1 (a)). The Act also stipulates that any information on abortion provided by advisory agencies, doctors and counsellors must be "truthful and objective", must "not advocate or promote" abortion and should be provided together with information on all courses of action open to a women in relation to her particular circumstances (sect. 5(b, iii)). Agencies, doctors and counsellors are also prohibited from making arrangements on behalf of their clients for an abortion abroad (sect. 8, 1).

86. The Special Rapporteur is concerned about the important challenges that certain provisions contained in the Information Act pose for reproductive health providers and defenders working on these issues. When a woman seeks information on abortion, it may only be provided in the context of a face-to-face counselling session; information cannot be given online or over the telephone. This provision can pose significant barriers for counsellors and potentially restrict women's access to information on sexual and reproductive rights, particularly on access to the health services available abroad. Moreover, the provision can restrict the ability of defenders to make contact with some women who may not be able to attend a face-to-face counselling session, including women who live in isolated or rural areas, young women, women in State care and/or migrant women. The inability of counsellors to make appointments on behalf of their clients further restricts the support they can offer to women seeking this type of service abroad.

87. Moreover, the Special Rapporteur is concerned at reports and evidence received during her visit indicating the existence of a smear campaign and stigmatization of defenders and activists working on abortion issues. More specifically, she received information about a smear campaign in printed media, reportedly in October and November

¹¹ See www.irishstatutebook.ie/1995/en/act/pub/0005/print.html.

2012, when a well-known reproductive health provider in the country was targeted in various newspaper articles and accused of putting the lives of women at risk and contravening the law. The Health Service Executive has reportedly launched an investigation into the accusations made against a number of reproductive health providers. As the Special Rapporteur stressed in a previous report,¹² the stigmatization of defenders may lead to the selective enforcement of existing laws and regulations, reinforce existing stigma and culminate in the criminalization of their legitimate activities.

C. Defenders working for the rights of Travellers

88. The challenges faced by those defenders working on the rights of the Traveller community, including Roma Travellers, were brought to the attention of the Special Rapporteur during her visit. These defenders are generally members of the Traveller community who advocate for the basic rights of the community, including the right to adequate housing that is culturally acceptable; the right to education and health, particularly of their children; and the right to effective participation in public and political life.

89. While Travellers are explicitly named as a group protected from discrimination under the Equal Status Acts 2000 to 2012, and the Employment Equality Acts 1998 to 2011, they are not recognized as a distinct ethnic minority. This, combined with the overall situation of social exclusion and disadvantage of the community, makes the work of the defenders extremely challenging. The Special Rapporteur recalls the recommendations of the Human Rights Committee,¹³ the Committee on the Elimination of Racial Discrimination¹⁴ and the Council of Europe regarding the recognition of Travellers as an ethnic minority.

90. During her visit, the Special Rapporteur received information that organizations representing Travellers had been excluded from relevant integration policies and institutions. According to the information received, the community was not involved in the preparation of the National Traveller Roma Integration Strategy. The Special Rapporteur also learned that the implementation of programmes and strategies concerning the community had been excessively slow. She also received information about a context of overall budget cuts and uncertainty around funding affecting both organizations working for the rights of Travellers as well as relevant public institutions, such as the Equality Authority.

91. The Special Rapporteur also noted with concern the reported hostile and distant attitude towards Travellers in Irish society, including sometimes among civil servants, which can lead to the stigmatization of those advocating for their rights and limits their ability to conduct their work effectively. The situation is particularly severe for women Travellers who are also human rights defenders.

D. Whistle-blowers and others reporting wrongdoing

92. Those who disclose information of public interest about wrongdoing or illegal activities (whistle-blowers), particularly concerning issues of corruption of public officials, face a high risk of retaliation. During her visit, the Special Rapporteur received information about the challenges faced by this type of defenders in Ireland in both the public and the

¹² See A/HRC/16/44.

¹³ CCPR/C/IRL/CO/3, para. 23.

¹⁴ CERD/C/IRL/CO/3-4, para. 12.

private sectors. Articles 32 and 33 of the United Nations Convention against Corruption underscore the need to protect the rights of whistle-blowers and witnesses of corruption.

93. Since 1999, there have been various attempts by the State to enact comprehensive legislation to protect whistle-blowers. To date, such initiatives have been unsuccessful, resulting in a largely inadequate patchwork of safeguards to protect persons reporting abuses in certain professional sectors. According to the information received, no legislative or policy provisions currently protect disclosure to the media, elected representatives and civil society organizations. Moreover, the existing confidentiality provisions seem insufficient.

94. The Special Rapporteur is pleased to note that the Prevention of Corruption (Amendment) Act (2010) makes acts of retaliation against anyone reporting an offence in good faith a criminal offence, and contains legal safeguards in the form of civil law remedies for employees who report corruption offences. The Act does not, however, cover workers in the banking or business sectors.

95. The Special Rapporteur is encouraged by the General Scheme of Protected Disclosure in the Public Interest Bill of 2012, which was introduced by the Government precisely to address the lack of an overarching legal protection framework. Nevertheless, the Special Rapporteur notes with concern that the bill does not cover self-employed professionals or volunteer workers and that the definitions provided for in the text do not include the term "good faith". In addition, several provisions seem problematic, particularly regarding the fact that protection is not afforded to those who wish to make an anonymous disclosure (head 11) and that the confidentiality of those who choose to make a disclosure does not seem fully ensured (head 16).

E. Asylum seekers and refugees working for the rights of their community

96. Ireland has traditionally been an open and welcoming country for those at risk in other parts of the world, and began receiving refugees in the mid-1990s. Asylum seekers in Ireland face significant challenges, some of which affect a number of them who might be regarded as human rights defenders.

97. The absence of a single determination procedure causes excessive delays in granting effective protection for those who need it most. In addition, the rate of recognition is one of the lowest in Europe, and there is room for improving the quality of decision-making in the status determination process. In this connection, the Special Rapporteur was pleased to learn that the Government is working closely with UNCHR through the Quality Initiative to enhance various aspects of the determination process.

98. The Special Rapporteur was, however, concerned to receive reliable information indicating that asylum seekers using direct public provision services, which include reception and accommodation, sometimes fear retaliation, for instance in the form of unannounced transfers, if they attempt to claim their rights, or those of their fellow asylum seekers, to privacy, an adequate standard of living and adequate standards of physical and mental health. She encourages the authorities to take all the measures necessary to ensure that refugees working for the rights of their community in Ireland are able to claim their rights without facing obstacles of any sort.

F. Other challenges for human rights defenders

99. Overcrowding in prisons is a serious problem that has been highlighted by various national and international organizations, as well as by intergovernmental bodies, including

the Human Rights Committee, the Committee against Torture, the Human Rights Council and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

100. Cell conditions, sanitation and the practice of “slopping out”¹⁵ have received international condemnation and been qualified as amounting to cruel, inhuman and degrading treatment or punishment. In this connection, the Special Rapporteur takes note of the efforts made by the Government to improve considerably the situation in certain detention centres in the past two years, and welcomes the Government’s commitment to end “slopping out” by 2014.

101. The Special Rapporteur nonetheless noted with concern during her visit the lack of an independent and effective complaints mechanism for those in detention centres. She received information about instances of intimidation of prisoners who wish to make a complaint, particularly at the St. Patrick’s Institution for Young Offenders. While she takes note that, as of 1 November 2012, serious complaints by prisoners are subject to independent investigation beyond the internal complaints procedure under the Inspector of Prisons, the Special Rapporteur is of the view that a fully independent complaints mechanism would be more effective and help to ensure that complainants are protected against acts of retaliation.

102. The Special Rapporteur was also informed about challenges faced by those defenders who work assisting children held at St. Patrick’s, in particular in their access to children owing to special detention regimes.

103. During her visit, the Special Rapporteur also received information about the challenges faced by defenders and legal advocates working in class or public interest litigation, often relating to human rights issues, which cannot easily be undertaken owing to the high costs associated. In the current framework, plaintiffs pursuing such cases risk having to pay the costs of the case if they lose at trial (which could easily amount to a sum of six figures). This could have a chilling effect on those who might wish to challenge the Government.

104. The Legal Services Bill of 2011, introduced to increase competition in the legal sector, includes a provision stating that whoever wins the suit will have their costs covered by the opposing side. This provision could be amended to include a protective cost order in cases of public interest so that either side could apply to the court at the beginning of a case to have the costs either capped or waived.

105. The Special Rapporteur also received information about the difficulties of those defenders doing human rights advocacy work in order to procure public funding, which seems more focused on service delivery activities than advocacy.

106. The attention of the Special Rapporteur was also drawn to the fact that policy-related information is not readily available, given that the websites of public institutions are not easy to navigate and there are important gaps in access to public documents.

¹⁵ The use of buckets as toilets, which are emptied (“slopped out”) when cells are unlocked in the morning.

VI. Conclusions and recommendations

A. Conclusions

107. The Special Rapporteur considers that human rights defenders in Ireland work in a conducive and enabling environment that, in general, meets international standards. Although a greater effort could be made to raise awareness about the Declaration on Human Rights Defenders at the national level, the Government and other authorities have shown an open and supportive attitude towards the defence and promotion of human rights. The Special Rapporteur nevertheless notes that the term “defender” is not always well understood among public officials.

108. The Special Rapporteur notes with concern the situation of the national human rights institution as a result of the planned merger with the Equality Authority. She hopes that the draft legislation will be enacted shortly in order to establish a strong, independent and adequately resourced institution capable of a credible and impartial scrutiny of the State’s human rights activities.

109. The Special Rapporteur is particularly pleased to have learned more about the proactive role played by Ireland in the promotion of the European Union Guidelines on Human Rights Defenders and the important initiatives taken to protect human rights defenders in foreign policy and development aid. Ireland has a number of good practices in this regard that could serve as an inspiration for other countries.

110. In general, the Special Rapporteur considers that, in Ireland, human rights defenders do not face risks in doing their work. Nevertheless, she believes that special attention should be paid to the specific challenges faced by certain categories of human rights defenders and activists. In this connection, she makes the recommendations below in a spirit of constructive dialogue with the authorities and the other stakeholders involved.

B. Recommendations

111. The Special Rapporteur recommends that the Government of Ireland:

(a) Expedite the ratification of United Nations treaties to which Ireland is not a State party and consider establishing an accountability mechanism for compliance with obligation under international and United Nations treaties, such as a parliamentary committee, or extend the competencies of the Irish Human Rights and Equality Commission to this area;

(b) Remove the offence of blasphemy from the constitutional and legal framework, and promote the use of the Press Council and the Press Ombudsman to mediate and resolve complaints involving printed media;

(c) Expedite the enactment of legislation to allow for the statutory establishment of the Judicial Council, providing it with adequate financial and human resources;

(d) Amend section 3, paragraph 11 of the Charities Act (2009) to include the promotion of human rights as “a purpose that is beneficial to the community”, and enable the full implementation of the Act;

(e) Make a greater effort to disseminate the United Nations Declaration on Human Rights Defenders at the national level, including by raising awareness among public officials about the meaning of the term and the role of “defenders”;

- (f) Consider adopting a national plan of action on human rights, which should include a section on human rights defenders;
- (g) Develop simple structural and outcome indicators to foster the implementation and evaluation of the European Union Guidelines on Human Rights Defenders, and consider appointing a dedicated focal point for human rights in Irish Aid;
- (h) Repeal section 106, part 4, of the Garda Síochána Act (2005) to ensure full independence of the Garda Síochána Ombudsman Commission when conducting examinations on practice, policy and procedure of the police;
- (i) Expedite the introduction of legislation on the establishment of the Irish Human Rights and Equality Commission to provide for an autonomous and independent institution; and, in the meantime, appoint, as soon as possible, an interim body to oversee the functioning of the Irish Human Rights Commission and the Equality Authority;
- (j) Investigate all allegations and reports of intimidation, harassment and surveillance in the context of the Corrib Gas dispute in a prompt and impartial manner, conduct investigations regarding the actions of the police and adopt the measures necessary to instruct and equip the police in the area to discharge their functions adequately, particularly with regard to the policing of protests and crowd control;
- (k) Until section 106, part 4 of the Garda Síochána Act (2005) is repealed, give consent for the Garda Síochána Ombudsman Commission to conduct an examination of the practices, policies and procedures of the police in the context of the Corrib Gas dispute;
- (l) Implement the judgements passed by the Supreme Court in 1992 and the European Court of Human Rights in 2010 by introducing the necessary legislation regarding access to legal abortion, clarify the criteria to be met for the legal termination of pregnancies, and provide the necessary guidelines for medical professionals and other practitioners;
- (m) Consider reviewing certain provisions of the Access to Information Act (1995) to remove obstacles faced by reproductive health providers;
- (n) Recognize publically the work of defenders and practitioners who work for the enjoyment of the right to health of women, including sexual and reproductive rights, and protect them effectively from harassment or intimidation of all kinds, including smear campaigns;
- (o) Acknowledge publicly the importance of the role and work of defenders working for the rights of Travellers, and consider implementing the recommendations made thereon by the United Nations treaty bodies regarding the recognition of Travellers as an ethnic minority;
- (p) Engage with Travellers, particularly women Travellers, through their representatives in order to integrate their views into public policy planning meaningfully;
- (q) Enact adequate overarching legislation to protect whistle-blowers in all sectors of activity, ensuring that it complies fully with the United Nations Convention against Corruption;
- (r) Establish promptly an independent and effective mechanism to receive complaints from those in prison, such as an ombudsperson, and, in the meantime,

address allegations of intimidation of those attempting to submit complaints of human rights violations in the current system.

112. The Special Rapporteur recommends that the Garda Síochána Ombudsman Commission:

- (a) Strengthen its efforts to raise awareness about its mandate, including the complaints procedure;
- (b) Consider requesting an examination of the practices, policies and procedures of the police in the context of the Corrib Gas dispute.

113. The Special Rapporteur recommends that the Irish Human Rights Commission:

- (a) Continue its efforts to ensure that the “A” status of the institution is maintained until the new institution has been established;
- (b) Establish a focal point for human rights defenders within its structure;
- (c) Establish contact with defenders outside urban areas and raise awareness about its role and services.

114. The Special Rapporteur recommends that human rights defenders increase their efforts:

- (a) To disseminate information about the United Nations Declaration on Human Rights Defenders at the domestic level, particularly among civil servants;
- (b) To lobby the Government to implement recommendations made by regional and international human rights mechanisms;
- (c) To diversify sources of funding given in current context of austerity.

115. The Special Rapporteur recommends that all stakeholders, including private companies:

- (a) Respect the work of human rights defenders, familiarize themselves with the provisions of the Declaration on Human Rights Defenders and acknowledge the important role played by human rights defenders;
 - (b) Ensure that all protests and assemblies are peaceful; the expression of dissent is legitimate but it should not be violent and should be exercised according to international standards.
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