

# **The Table Observers: Submission for the UN UPR on Ireland 6 October 2011**

## **I. INTRODUCTION**

1. This submission argues that the Irish Government exhibits little practical commitment to human rights protection and promotion.
2. This lack of political will in relation to human rights protection is particularly remiss in relation to economic, civil and cultural rights as outlined in the Universal Declaration of Human Rights (UDHR), the International Covenant of Social, Economic and Cultural Rights (ICESCR) and the International Covenant of Civil and Political Rights (ICCPR).
3. Economic, civil and cultural rights are increasingly under threat in the Republic of Ireland through legislation often shaped by the demands of multinational business. This approach to legislation is ill advised.
4. Such is clearly illustrated in the case of the Shell-operated Corrib Gas Project which has begun to serve as a prototype in the midst of increasing oil and gas explorations within and especially along Ireland's margins. That the Project has been delayed for ten years is an indication that the required mechanisms for community consent have not yet been found.
5. *The Table Observers call on the Human Rights Council to give timely warning on the need for the Irish Government to human - rights proof its business commitments alongside related legislation in favour of the rights of its own people and in recognition of its responsibilities to the human rights system of the UN of which it is a member.*

## **II. HUMAN RIGHTS IN THE REPUBLIC OF IRELAND**

6. A human rights tradition has yet to be fully established . It seems to be dependent on external factors such as the Belfast Agreement of 1998. The Republic of Ireland agreed then to incorporate the European Convention of Human Rights (ECHR), establish an Irish Human Rights Commission (IHRC). ECHR was incorporated in 2004, six years after the Belfast Agreement with aspects still to be resolved, The IHRC was set up in 2001, three years after the Agreement. By 2011 its budget has been subjected to a 32% cut and while declared independent all 15 members are appointed by Government.
7. A Human Rights Unit was established in the Department of Foreign Affairs. It dealt with the issues of Northern Ireland as a separate political jurisdiction. The forerunner of The Table Observers, The Table Campaign, found it a useful platform upon which to bring such matters to Government as did many NGOs engaging with human rights in Africa, Asia and South America. There were no domestic issues tabled. The preparation for the Universal Periodic Review began with an initial workshop organised by the Human Rights Unit of the Department of Foreign Affairs with the responsibility for the State Report falling to the Department of Community, Rural and Gaeltacht Affairs.
8. It is hardly surprising then that in her statement (January 2011), the United Nations independent expert on human rights and poverty, Magdalena Sepulveda, concluded that Ireland needs to put in place a Human Rights Plan of Action. She draws attention to the need to “fully incorporate international standards into their domestic law...” giving a number of instances where action remains to be taken.

9. *The Republic of Ireland needs to be directed to the establishment of a human rights service within a given government department dealing with domestic matters and widely known to the public.*

### **III. ECONOMIC, CIVIL AND CULTURAL RIGHTS**

10. The goal of modern societies is the establishment of “freedom, justice and peace in the world” (Preamble: ICCPR). Society orders itself towards the achievement of this goal by putting together structures and mechanisms to protect the “inherent dignity of the human person.” These create conditions where each person equally enjoys that which assures dignity: the exercise of economic, social, civil, political and cultural rights as intended by the ratification of the ICESCR and ICCPR. This is the sentiment in the Preamble to each of these documents.

11. It is the contention of this submission that such sentiment is presently ignored in certain instances in the practice of the Irish State with regard to economic, civil and cultural rights. Such is particularly visible in the case of the Corrib Gas Project. This is the first of its kind in the State and is to be followed by many more and is therefore of significant importance for human rights in the conduct of business.

12. *It is therefore critical that all business conducted in the State be human - rights proofed and progressed in the spirit of the above Preambles which focus on the dignity of each person.*

### **IV. ECONOMIC RIGHTS**

#### **International Covenant on Economic, Social and Cultural Rights ( ICESCR )**

#### **State Management of Natural Resources: Manipulation of Legislation**

13. Modifications to the legislative framework were introduced in 1987 under the then Minister for Energy Mr Ray Burke and continued in 1992 by the then Minister for Finance, Mr Bertie Ahern. The results governing oil and gas leases now are:

- State participation in the exploitation of these resources reduced from 50% to 0%,
- All oil and gas production exempted from royalty payments,
- Corporation tax reduced from 50% to 25%.

14. From 1992 “*state opportunities for any accruing benefit were minimal*” and the World Bank would indicate that Ireland had most favourable terms for business (Siggins, Lorna. *Once Upon a Time in the West , The Corrib Gas Controversy*. Transworld: 2010, pp. 14 - 18). The Table Observers have witnessed the local anger emanating from this situation which formalised into the Shell to Sea Campaign several years ago.

15. ICESCR Articles 4 and 5 point out that law may only limit rights in so far as the limitation honours the content of the right itself and is done “*solely for the purpose of promoting the general welfare in a democratic society*”. The total value of the gas resources located off the Irish coast is estimated at 500 billion Euros. As a result of highly unfavourable conditions underpinned by legislation the Irish people will see only a fraction of what they are rightly entitled to as owners of this resource.

16. Transparency in the implementation of these legislative modifications was seriously lacking with many of them occurring in an era of Irish politics infamous for questionable

financial transactions. The then Minister for Finance Ray Burke, responsible for the introduction of these legislative changes was convicted and jailed on corruption charges in 2004.

17. The public detects a bias in the administration of public order law towards Shell as operator of the Corrib Gas Project. One of several incidents recorded in the recent human rights report of Barrington, 2010 (*Breakdown in Trust: A Report on the Corrib Gas Controversy*, Frontline: Dublin) describes how Shell in 2007 attempted with the assistance of the An Garda Síochána to transport a portacabin across private land to a pier at Pollatomais. Campaigners demanded to see the authorisation. An Garda Síochána insisted that it had been seen by them. Delay for legal advice was sought by the campaigners. This was denied. The campaigners were pushed aside. Several were injured and complaints made to the Garda Ombudsman which found no issue. The campaigners were correct. The land was private and next day Shell apologised and removed the portacabin. 18. *The State must be persuaded that care be taken in making legislation as a response to singular instances and in administering law in favour of the rights of the people. In the case of natural resources the law must be applied to all stakeholders fairly.*

## V. CIVIL RIGHTS

**The Universal Declaration of Human Rights (UDHR): Article 3 : Everyone has the right to life, liberty and the security of person**

**The Right... ‘to Life’.**

19. A State contract was signed with Royal Dutch Shell for production from a gas well offshore and its transporting system onshore.

20. In 2006, protests were responded to by An Garda Síochána by means of physical force rather than arrest and prosecution. The use of physical force as a strategy of An Garda Síochána is well documented by Barrington 2010, Siggins 2010, and in *The Pipe*, 2010 an acclaimed documentary shown internationally. The Table Observers encouraged the engagement of human rights organisations with this situation. The use of physical force by trained officers as an alternative to arrest is never an option. It is a danger to life.

21. In April 2009, Willie Corduff claimed he was assaulted by Gardai who were attempting to move him from under a truck. He described the use of a sharp edged stone used by a Garda to score his leg. Barrington verified that he was removed on a stretcher from the scene in a semi conscious state. The Gardaí said that he walked up the field to the ambulance ( pp. 5,6 ). His life may indeed have been in danger with this truth obfuscated by Gardaí and private security staff in their public statements.

22. Also in April, 2009, a second protestor Pat O’Donnell claims he was overcome in the middle of the night in his fishing boat by unknown assailants at sea and having made a call to the local Garda station he and a mate took to a life raft and were rescued by a lifeboat.

23. These selected instances gave sufficient cause for Barrington a practising barrister, to call on An Garda Síochána to appoint “*a trained lawyer with relevant experience as human rights adviser*” (pp. 8, 61 ). He points out that the greater number of complaints to the Garda Síochána Ombudsman Commission ( GSOS ) since its recent inception are related to the Corrib Gas Project. Barrington recommends that the Minister of Justice reconsider his denial of a ‘policies and practices review’ and use it as an opportunity to mainstream human rights issues into policing practice.

24. **The Right ... ‘to Liberty’.** There are several incidences documented within the community resistance to the project which can be construed as an attack on liberty.

25. In court The Table Observers having being present reported on the admission of a judge that “*all nine persons were unlawfully before the Court due to the manner of their arrest and the time lapse in their access to the legal system*”. The defendants had appeared at least five times before this judgement was given, incurring huge expenses in time and money. On the same day 23 charges out of 27 in total were withdrawn without explanation (*The Table Observers Report* March 2010).

26. At one planning hearing citizens in fear for their health and safety were advised by the chairperson to exclude emotional content from their submissions and stay with the facts only. This translates into an attack on Article 19 of the UNDHR: Everyone has the right to freedom of opinion and expression.

27. Surveillance cameras, private security, compulsory acquisition of family land has placed an unimaginable toll on the mental health of those directly affected by the Shell-operated Corrib Gas Project placing in their midst. “*The local community has been forced into an intimate, long term relationship with the companies involved in this project. If you added up all the ailments and treated it as a single illness a doctor would immediately order the patient to leave the abusive home and find refuge.*” This view is supported by a local medical opinion: “*half the people I’m seeing now from Gengad are suffering from stress and worry*” (McCaughan, Michael. “Now You are Talking My Language.” 2010). The Table Observers agree from their frequent and prolonged conversations in the community.

## **VI. CULTURAL RIGHTS**

### **International Covenant of Civil and Political Rights : Article 27**

28. *Cultural Minorities:* The Republic of Ireland recognises and supports a language minority occupying identifiable areas, each known as a *Gaeltacht*. They are renowned for their natural beauty as well as their sense of place, language, heritage and culturally sustainable livelihoods.

29. The Mayo *Gaeltacht* lies in the north west of Ireland in the Barony of Erris with a population of 2000 and many families engaged in traditional occupations. This is the ‘place’, the landscape which has evolved rich skeins of poetry and prose, story and legend – the material of soul and spirit (MacGraith, U. and Ní Ghearraith, T. *Logainmneacha agus Oidhreacht Dún Chaocháin / The Placenames and Heritage of Dún Chaocháin in the Barony of Erris, County Mayo*. Comhar Dún Chaocháin Teo, 2004) From this ‘place’ the culture takes its nourishment, a unique human habitat worthy of protection. The Corrib Gas Project has been placed in this Mayo *Gaeltacht* even as the State has a 20 year plan to revive the Irish language. The significant potential of the Corrib Gas Project is to initiate an erosion of the social and cultural fabric of this *Gaeltacht* community.

30. The landscape of bog and of sea combines unique and significant ecosystems which have sustained fishing and farming communities in ways adapted to their isolation. The people believe that their traditional way of life such as exercising communal property rights, fishing, farming, turf cutting, language schools, cultural and enviro-centric tourism and the enjoyment of traditional recreational activities are under serious threat because of the current Corrib Gas Project.

31. *The Irish Government under Article 27 of the ICCPR must ensure that persons belonging to a linguistic minority not be 'denied the right, in community with the other members of their group, to enjoy their own culture...or to use their own language'.*

### **United Nations Declaration of the Rights of Indigenous People (UNDRIP ): FPIC**

32. Free, Prior and Informed Consent (FPIC) is becoming a universal legal norm and a reference factor for international and regional treaties and declarations; for Special Rapporteurs within the UN and its related systems, for financial institutions, for donors and in general for governments, multinationals and the private sector. Consultation is not consent ( Doyle, C, 'Free Prior Informed Consent ( FPIC) – a universal norm and framework for consultation and benefit sharing in relation to indigenous peoples and the extractive sector'. Available at [www2.ohchr.org](http://www2.ohchr.org)).

33. **Consent:** The *Gaeltacht* minority community of Erris signified its response the Corrib Gas Project with public signs of NO CONSENT placed high on the 'wind strained poles' of their landscape. They have remained there since 2002. The local people came to hear about the Corrib Gas Project through a Parish Newsletter. The community has called for the ratification by the State of the Aarhus Convention which gives rights to information and environmental justice. The Republic of Ireland remains the only EU State not to ratify this Convention.

34. *This FPIC norm is important to a country where the issuance of petroleum leases and exploration licences has increased rapidly since 2002. The State must be persuaded to negotiate with multinational business in the extractive sector inclusive of the FPIC paradigm.*

35. In conclusion the Table Observers asks that the Republic of Ireland in the Universal Review Process of October 2011 be persuaded on the urgent necessity to set up a training programme in human rights with particular reference to the making of legislation for its government deputies, to create an human rights office within the government that is easily recognised and is accessible to the public, to intensify education in human rights and the law among the adult civil population through use of public service media, to demand the streaming of human rights into the Ministry of Justice with special attention to policing and the judiciary, to demand that Ministers engaged in signing business contracts only do so after all the necessary consents have been secured as part of environmental assessments where these take place.

***Submission acknowledged by the Office of the Human Rights Commission in March 2011***

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