



SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL'S UNIVERSAL PERIODIC REVIEW MECHANISM CONCERNING IRELAND

1. Introduction

The following submission has been prepared by Afri, a non-governmental organisation which seeks to promote debate and influence policy and practice in Ireland and internationally on human rights, peace and justice issues. Afri exists to promote the vision of, and strive to bring into being, a more just, more equal and more peaceful world through research, debate, awareness raising and action in partnership with marginalised people affected by, or engaged with, issues of equity and security, especially in the global 'South'. Afri welcomes this opportunity to contribute to the Universal Periodic Review. All our comments stem directly from our work and experience. This submission is concerned with the policing of the Corrib Gas Project, and in particular, the role of the Garda Síochána Ombudsman Commission ("GSOC").

2. Corrib Gas Project: Background

2.1 The Corrib Gas Project is a joint endeavour between Shell (45%), Statoil (36.5%), a Norwegian semi-state company, and Vermilion (18.5%), a Canadian company. It aims to bring raw gas from the Corrib Gas field, 80km off the west coast of Ireland, onshore. The value of the gas was estimated at approximately €10 billion in 2007.

2.2 There has been local opposition to the project on a number of grounds, but primarily on safety concerns. The original plan was to extract the gas, pipe it through Broadhaven Bay to a landfall site in Glengad, North Mayo, and then onwards in a raw and unrefined state to a refinery 9 kilometres inland. The dangers of such a pipeline to the local residents were noted in a government-sponsored safety review (the Advantica report), which pointed out that should there be an explosion in the pipeline everyone within a 200 metre radius would be killed. Shell's own experts also conceded that this is a unique pipeline found nowhere else in the world, stating that in the event of a gas leak "houses within 230 metres of the pipeline could burn spontaneously from heat radiation". An Bord Pleanála (Ireland's planning board) found



that up to half the proposed pipeline posed an unacceptable risk to the community in November 2009, and suggested that the companies investigate alternative routes, in particular a route that will now intersect a Special Area of Conservation, Sruwaddacon estuary. In January 2011 An Bord Pleanála granted planning permission for the pipeline. This decision is now subject to a application for judicial review.

2.3 Most locals, and their supporters, are not opposed to the project but are opposed to the manner of the extraction and the lack of consultation and compromise. For example, the gas could be refined at sea and pumped ashore in a safer, processed state. In 2007 an alternative refinery site in a remote area, away from the community, was proposed by three local priests, a site many people in the community would find acceptable. However, Shell and its partners have remained intransigent. In 2003 an Inspector for An Bord Pleanála had stated that the refinery was in the wrong place on a number of grounds: strategic planning, government policy for the region, and sustainable development.

2.4 There are also significant environmental concerns. The refinery is situated close to Carrowmore Lake, which supplies drinking water for 10,000 people. In 2007, due to run-off from the refinery site, aluminum levels in the lake were up to 200 times higher than WHO recommended levels. Furthermore, there have been a number of breaches of environmental law in the course of the project – such as the unauthorized digging of test bore holes at the landfall site in a Special Area of Conservation without Ministerial consent in 2007. Furthermore, Ireland has no share in the Corrib gas field and will not receive any royalty payments from the exploration companies. A very low tax rate of 25% applies – but only after the company’s costs have been recovered.

3. Policing of the Corrib Gas Project

In 2005 five local men (“the Rossport 5”) went to jail for 94 days for refusing to allow Shell *et al* access to their lands. The companies dropped their claim against the men after widespread public disapproval. Since then there has been a high police presence in the community,

operating a “no arrest” policy¹, along with a private security force (IRMS) hired on behalf of Shell. Global Community Monitor, a US-based NGO, noted in a visit in February 2007 that the Gardai were often involved in personally beating up protesters. On 23rd April 2009 a local farmer, Willie Corduff, was beaten by masked men during a peaceful protest. Later that year, on the night of the 11th June 2009, Pat O’Donnell, a local fisherman outspoken about his opposition to the project, had his boat sunk by unidentified armed men. Pat O’Donnell was jailed in February 2010 for 7 months for his participation in protests against the Corrib Gas Project.

4. Complaints to the Garda Síochána Ombudsman Commission (“GSOC”)

A number of complaints were made to the GSOC about the policing of the protests around the project. Of these cases 75% were deemed by the GSOC to be worthy of further investigation (*Irish Times*, 7 January 2010: appendix C). Under Article 14.1 of the International Convention on Political and Civil Rights everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Two cases have been selected here to highlight the failure to investigate. Firstly, in 2007 a complaint was made about an incident where a number of people were injured when Gardaí forced a mechanical digger through an enclosed area where people were peacefully protesting against the pipeline (case A – see appendix A). In the second case a man who attended the protests in Belmullet in 2009 as a human rights observer was man-handled by Gardaí who were not identifiable by number, who refused to allow him to observe the protests despite his having sought permission from the local Superintendent to do so (case B – see appendix B). Both complainants submitted complaints to the GSOC, an independent statutory body established by law under the Garda Síochána Act 2005, which is required to independently investigate complaints made against members of the Garda Síochána. In relation to these complaints the following issues arose:

4.1 Lack of transparency and consistency:

In terms of B’s case there was a clear failure to explain the basis on which a decision that no member was guilty of a breach of discipline was arrived at. As can be seen from B’s letter of

¹ *Breakdown in Trust: A Report on the Corrib Gas Dispute* (Frontline: Dublin, 2010), p. 35



the 17th July 2010 (appendix B6) he was never provided with any evidence of the investigation conducted. B also complained about the lack of consistency in the personnel investigating his complaint. A number of times in the course of the investigation, the personnel changed without his being made aware of this, or the reasons for it.

4.2 Delay:

In terms of A's complaint (which she made on the 5th September 2007) it took almost two years before the investigation was concluded (14th July 2009), and it was several months later after contacting the GSOC on a number of occasions before she received a letter informing her of this decision. This letter recommended that disciplinary action be taken against a member of the Gardaí for a "less serious breach of discipline". However, in February 2010 she was informed that the member appointed by An Garda Síochána to investigate had found there was no breach of discipline and no further action was taken.

4.3 Lack of Independence

Following from the dismissal of A's complaint after investigation by a member of the An Garda Síochána, A requested clarification whether the GSOC had the authority to adjudicate on the issue of breach of discipline, or whether it was merely an advisory body to An Garda Síochána, she was informed that the Act establishing the GSOC "does not ascribe to the Commission a role whereby it can make a finding against a member of the Garda Síochána" (appendix A3). This is indirect conflict with the mission statement outlined on their website which states "The Garda Síochána Ombudsman Commission will provide an independent and effective civilian oversight of policing. It will deal with the public's complaints concerning Gardaí fairly and efficiently so that everyone can have confidence in the complaints system." (www.gardaombudsman.ie).

4.4 Pre-determination of the issue

In a letter of 11th January 2010, from An Garda Síochána to B, it was stated that the complaint was going to be investigated under section 94 of the Garda Síochána Act 2005, and that a "deciding officer" would be appointed. Section 94(11) of the Garda Síochána Act 2005 confers



the power to require the Garda Commissioner or designated officer under section 98 to investigate. Usually a deciding officer is appointed in less serious cases, therefore there already was a predetermination as to the seriousness of the matter, even though this complaint involved an assault. This case could have been investigated under Art 22 of the Garda Síochána (Discipline) Regulations 2007 which deals with more serious breaches of discipline, and would have resulted in a different manner of investigation.

4.5 Lack of Impartiality:

B raised his concerns about the fact that a local superintendent had been appointed to investigate his complaint and that he felt this would lead to bias. Furthermore, although B's complaint was deemed admissible, it was held to be not substantiated due to lack of independent corroborating evidence. The approach of the GSOC to accept what the Gardaí say in such incidents without conducting a more thorough investigation is overly deferential to the Gardai and could be deemed to be a derogation of their duty. This is compounded by the fact that B was never privy to the documents upon which the decision was based.

5. Recommendations:

Afri recommends that measures are enacted to ensure that the GSOC's office is independent from the Garda Síochána so that it functions properly and effectively as an oversight mechanism.

The Front Line report (2010) also pointed out that in 2007 the GSOC requested the consent of the then Minister for Justice (Brian Lenihan TD) to carry out a “policies and practices” investigation into the public order aspects of the Corrib Gas Dispute. However, consent was refused without any reasons being given for such refusal. This has given the impression that the government is unwilling to reflect on the quality of the policing, even though the Corrib Gas Dispute has been the greatest single cause of complaints to the GSOC. Afri recommends that a “practices and policies” review is instigated in order to ensure no further human rights abuses occur in the course of policing this complex dispute.