

**STATEMENT BY THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE
SITUATION OF HUMAN RIGHTS DEFENDERS, MARGARET SEKAGGÝA, AT THE
END OF HER VISIT TO IRELAND (19-23 NOVEMBER 2012)**

23 November 2012

Good morning, ladies and gentlemen,

My objective during this visit has been to evaluate the situation of human rights defenders in the country. Defenders are those who promote and defend human rights in a peaceful manner. The following statement contains my preliminary findings and recommendations. I will present my final report at the 22nd Session of the Human Rights Council in Geneva, in March 2013.

I would like to commend the Government of Ireland for its excellent cooperation during my visit. I have had the opportunity to meet with the President of Ireland, Michael D. Higgins; the Joint Oireachtas (Parliament) Committee on Foreign Affairs and Trade and other members of Parliament; the Chief Justice; and the Director of Public Prosecutor. I also had the chance to meet with the Minister of Justice and Equality; the Human Rights Unit Department of Foreign Affairs and Trade, including with its NGO Committee, and Irish Aid. Moreover, I met with the Acting Chief Executive of the Irish Human Rights Commission and a former Commissioner as well as with the Garda Síochána (Police) Ombudsman Commission. I also met with the Head of the Office of the United Nations High Commissioner for Refugees.

During this visit I have also had meetings with a wide range of defenders and activists who represented an excellent portrait of the vibrant civil society in Ireland. I would like to sincerely thank everyone who took the time to meet with me and shared their valuable experiences and insights. I am particularly grateful to the valuable support provided by FrontLine Defenders and the Free Legal Aid Centre (FLAC).

This is the first visit of this mandate to an EU member State. Ireland has gone through an extremely difficult period of time since the economic crisis hit the country in 2008 and a severe recession followed. This has led to drastic cuts in public expenditure affecting all sectors of society, including civil society and defenders. As noted by the Special Rapporteur on extreme poverty and human rights during her recent mission to Ireland in 2011, in times of austerity, a human rights-based approach to policy-making and budgeting appears more necessary than ever to rebuild trust and protect those more at risk.

Legal, institutional and policy framework

The overall legal, institutional and administrative framework in which defenders operate generally meets international standards and is rather conducive to the defence and promotion of human rights. Ireland is party to most international human rights treaties and conventions and I have encouraged the Government to ratify the UN treaties that it has signed but not yet ratified¹ as well as to sign and

¹ UN Convention for the Protection of all Persons from Enforced Disappearance; UN Convention of the Rights of Persons with Disabilities; Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; Optional Protocol to the UN Convention against Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment.

ratify those to which it has not yet become a party². I believe this ratification process to be particularly important in light of Ireland's recent election to the United Nations Human Rights Council.

During my visit, I have reiterated the concerns expressed by other UN human rights bodies about the lack of direct incorporation of UN human rights conventions and treaties into Irish law since it hinders domestic accountability for compliance with the obligations contained therein.

I was pleased to learn that the Judiciary has just recently established an Interim Judicial Council as a preliminary step towards a statutory body which will officially represent the judges, allow and handle complaints against them and will decide on disciplinary actions. I also welcome the establishment of a Judicial Association in November 2011.

Freedom of association

It has been brought to my attention that section 3(11) of the Charities Act, 2009 has failed to recognise the promotion of human rights as "a purpose that is beneficial to the community", which excludes any organization that works on human rights promotion from the benefit of tax exemption as well as from being considered a legitimate charity for fundraising purposes. This appears as a difficult challenge for defenders working on the promotion and advocacy of human rights.

Freedom of expression and the Defamation Act, 2009

Freedom of expression is enshrined in the Irish Constitution and generally guaranteed in practice. Nevertheless, I am concerned at the existence of blasphemy as a criminal offence in Section 36 of the Defamation Act, 2009. The definition of the offence seems vague, unclear and no longer appropriate. Although no prosecutions have been brought under this section of the Defamation Act, its mere existence is problematic and potentially at odds with fundamental guarantees of freedom of opinion and expression. Furthermore, it could have a chilling effect and lead to self-censorship by certain defenders.

I welcome the initiative of the Government to convene a Constitutional Convention to consider the need for constitutional reform and I am pleased to note that the Convention is contemplating, among other issues, the removal of the offence of blasphemy from the current legal framework.

Protection of defenders at risk through foreign and aid policies

Through its foreign policy, Ireland has been a champion in taking initiatives under the EU Guidelines on human rights defenders to contribute to the protection of those at risk in other countries, including through the provision of temporary visas. I would like to commend these efforts and encourage the Irish Government to bring these issues forward during the first six months of 2013, when Ireland will have the EU Presidency. It could be an excellent opportunity to make an effort to assess the implementation of the EU Guidelines on defenders.

I am also 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

² UN Convention on the Protection of the Rights of all Migrant Workers and Member of their Families; Optional Protocol to the UN International Covenant on Economic, Social and Cultural Rights; Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.

society action and supporting the protection of human rights defenders. I sincerely hope that the review of the White Paper on Irish Aid will continue to keep a strong focus on human rights and on the protection of defenders.

At the institutional level, I was pleased to meet and learn about the work of the Department of Foreign Affairs and Trade, NGO Standing Committee, which provides a formal framework for a regular exchange of views between the Department and representatives from the NGO community, including defenders and activists. I think this is an excellent initiative which should be replicated elsewhere.

Garda Síochána (Police) Ombudsman Commission (GSOC)

The Garda Síochána (Police) Ombudsman Commission is a key institution in ensuring accountability of the police and an independent oversight of policing. I was pleased to learn about the existence and functioning of such a body but noted with concern some constraints faced by the Commission, including financial and resource limitations and the still limited civic awareness about their work. Furthermore, I have noted the excessive dependence of the GSOC on the Ministry of Justice and Equality when it comes to opening examinations on practice, policy and procedure of the police, as laid out in section 106, Part 4, of the Garda Síochána Act, 2005.

Irish Human Rights Institution

The Irish Human Rights Commission (IHRC) is a model institution with key public functions in line with the Paris Principles and as such was accredited "A" status in 2004 and retained in 2008. However, I was shocked to learn that the budget of the IHRC has been slashed by about 40% since 2007.

In September 2011, the Government announced its plan to merge the IHRC with the Equality Authority to form the Human Rights and Equality Commission, a process which has been somehow delayed. Since July 2012, there is an Acting Chief Executive and an Advisory Committee and I have received assurances from the highest political level that an interim body will be appointed to run both the IHRC and the Equality Authority in early 2013.

To give statutory dimension to the merger, the Irish Human Rights and Equality Commission (IHREC) Heads of Bill was published in June this year and is being currently examined by the Oireachtas (Parliament) Committee on Justice, Defence and Equality. I understand that the Government consulted the Office of the High Commissioner for Human Rights (OHCHR) on the draft legislation, which I commend.

The mandate of the new institution needs to be broad and resources solid enough to allow it to function independently and effectively. I was pleased to learn that the Bill provides for enhanced powers and functions of the IHREC, including the power of inquiry. I encourage the Government to expedite the introduction of draft legislation regarding the IHREC.

Defending and claiming human rights in Ireland

As I have already indicated, the environment in which defenders operate in Ireland is generally conducive to the defence and promotion of human rights and fundamental freedoms. However, Ireland has not been very active in disseminating information about the UN Declaration on human

rights defenders³ at the domestic level and 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. It has come to my attention during the visit that the very term "defender" is not always well understood, even among public officials. I have also noted that there is no National Action Plan on Human Rights in Ireland.

During my visit, I have also learnt about the situation of particular groups of defenders and activists, some of them at a rural and community level, which are facing important challenges when carrying out their work or exercising certain basic rights. The following are the defenders affected:

Environmental defenders and the right to protest

I am concerned about the situation 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.

There are various actors involved in a long-standing dispute which can be traced back to the year 2000, including community groups and residents, private business (Shell E&P Ireland) and a private security firm (IRMS). There is tangible frustration amongst local residents who are standing up for their rights and feel powerless, isolated and have lost trust in public institutions.

I have received very serious allegations and some evidence of acts of intimidation, harassment and surveillance of those who oppose the Corrib Gas project, both by the part of the Garda Síochána (police) and the private security firm. I have also received credible reports indicating the existence of a pattern of criminalization of what has mostly been a peaceful protest movement, including acts of non-compliance and passive resistance. As far as I am aware, the dispute has generated the largest number of complaints received by the GSOC since its establishment.

Defenders and activists working on sexual and reproductive health

The situation and challenges faced by those defenders working on sexual and reproductive rights, particularly those providing information to women about abortion has come to my attention during the visit. Ireland has one of the most restrictive laws in Europe regarding the termination of pregnancies whereby abortion is considered a crime in constitutional and criminal law, and where women could be punished with life-term prison sentences. To date, no convictions have been made under the Offences Against the Person Act, 1861.

The 1992 Supreme Court judgment in the case known as "X" case provided guidance on how to interpret the existing constitutional right to abortion under article 40.3.3 of the Constitution. The European Court of Human Rights in 2010 ("ABC" case) has stated that Ireland violated the right to privacy of a woman when not allowing a lawful abortion and requested a more effective procedure regarding requirements to be met to qualify for legal termination of pregnancy. Both decisions are still to be implemented which means that currently no legislation or regulatory framework exists which defines whether or not a woman is entitled to have access to legal abortion. I was assured by high ranking Government officials that the outcome of the Expert Group set up to advise the Government on how to tackle this issue would be made public very shortly. This is particularly

³ United Nations Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, 1998.

pressing given the tragic death of Ms. Savita Halappanavar after doctors allegedly refused a termination of her pregnancy last month.

Moreover, I am concerned at reports and evidence received indicating the existence of a smear campaign and stigmatisation of those advocating for the reproductive rights of women by the part of vested interest groups using printed media.

Defenders working for the rights of the Travellers' community

The challenges faced by those defenders working for the rights of the Traveller community, including Roma Travellers, has also been brought to my attention during the visit. The overall situation of social exclusion and disadvantage of the community makes the work of these defenders extremely difficult, particularly in a general context of economic austerity where their core (public) funding is being considerably reduced.

These defenders advocate for basic rights of their 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, amongst others. It is reported that organizations representing Travellers have been excluded from relevant integration policies and institutions, and that implementation of programmes and strategies concerning the community has been excessively slow.

There is a reported hostile and distant attitude towards the community, including by the part of civil servants, which stigmatizes those advocating for their rights and limits their ability to effectively conduct their work. This seems to be accentuated in the case of women Travellers who are also human rights defenders.

Asylum-seekers and refugees

Ireland has traditionally been an open and welcoming country for those at risk in other corners of the world, and began receiving refugees in the mid-1990s. Although the numbers have declined in recent years, asylum-seekers in Ireland face significant challenges. This affects a number of asylum-seekers who could be considered as human rights defenders.

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

However, I have learnt that asylum seekers under the direct provision services fear retaliation if they present complaints and try to claim their rights and the rights of their fellow asylum-seekers, to privacy, adequate standard of living, and adequate standards of physical and mental health.

Whistle-blowers

I have received information about the challenges faced by those who disclose information about wrongdoing or illegal activities (whistle-blowers), both in the public and private sectors, and the persistent lack of an overarching legal protection framework, including the absence of witness protection legislation. This is an important gap which should be addressed.

Since 1999 there have been various attempts to enact legislation to protect whistle-blowers, the last of which was the Whistle-blower Protection Act (2006), but they have been unsuccessful so far. The result of this is the existence of a patchwork of safeguards to protect persons reporting abuses in certain professional sectors which is, in my opinion, inadequate. To my knowledge, there are no legislative or policy provisions protecting additional disclosure to the media, elected representatives and civil society organizations. Moreover, the existing confidentiality provisions seem insufficient.

There is a high risk of retaliation against this type of defenders who are disclosing public interest information, particularly concerning issues of corruption of public officials, and the current regulatory framework does not establish an offence for such actions. The Prevention of Corruption Amendment Bill (2008) reportedly contains a provision of immunity from liability for anyone reporting an offence in good faith and also makes acts of retaliation a criminal offence. However, the Bill is yet to be enacted.

Complaints procedure in prisons in a context of overcrowding

Ireland has a serious problem of overcrowding in prisons which has been highlighted by various national and international organizations and intergovernmental bodies, including the European Committee on the Prevention of Torture, the UN Human Rights Committee, the UN Committee against Torture and the UN Human Rights Council through its Universal Periodic Review mechanism.

Cell conditions, sanitation and the practice of "slopping out" have received international condemnation and have been qualified as amounting to cruel, inhuman and degrading treatment or punishment. I am aware that the situation in certain detention centres has improved considerably in the last two years and I welcome the Government's commitment to end "slopping out" by 2014.

Nevertheless, in this context, I have received reports of a lack of an independent and effective complaints mechanism for those in detention centres and that there is widespread intimidation of those prisoners who wish to make a complaint. This is very serious, particularly for those claiming basic human rights for prisoners, such as the right to be free from inhuman and degrading treatment. I also learnt about the difficulties that those defenders who work in assisting children held at St. Patrick's institution face in accessing the children due to the use of certain special detention regimes.

Other challenges affecting defenders

It has been brought to my attention that class or public interest litigation cannot not easily be undertaken due to high costs associated with it in the current framework which makes it very challenging for defenders to work on such cases.

I have also received reports that certain groups working on issues such as to the enjoyment of sexual and reproductive rights or Travellers rights have been excessively targeted by cuts in public expenditure, which will undermine the ability of defenders and activists to raise their voice on human rights issues. Furthermore, public funds for those doing advocacy work have reportedly been substantially affected by the cuts.

It has also come to my attention that policy-related information is not easily available, websites of public institutions are not easy to navigate and there are important gaps in the provision of public documents.

Preliminary Recommendations

I would like to put forth the following preliminary recommendations.

To the Government

- It should expedite the ratification of those UN international treaties that are still waiting to be ratified;
- It should set up an accountability mechanism for compliance with obligation under international and UN treaties, such as a parliamentary committee or extend the competencies of the IHRC to this area;
- It should amend section 3(11) of the Charities Act, 2009 in order to include the promotion of human rights as "a purpose that is beneficial to the community";
- The blasphemy offence should be removed from the constitutional and legal framework;
- It should enact legislation to allow the statutory establishment of the Judicial Council, providing it with adequate financial and human resources;
- It should make an effort to disseminate the UN Declaration on human rights defenders at the domestic level, including raising awareness about the term and role of "defenders" amongst public officials;
- It should consider the adoption of a National Action Plan on Human Rights, which should include a section on human rights defenders;
- The implementation of the EU Guidelines on human rights defenders should be assessed using simple structural and outcome indicators;
- It should appoint a dedicated focal point for human rights within Irish Aid;
- It should ensure full independence of the Garda Síochána (Police) Ombudsman Commission, in particular when conducting examinations on practice, policy and procedure of the police, by repealing section 106, Part 4, of the Garda Síochána Act, 2005;
- Government should expedite the introduction of draft legislation on the establishment of the Irish Human Rights and Equality Commission and, in the meantime, appoint as soon as possible an interim body to oversee the functioning of the IHRC and the Equality Authority;
- It should seriously look into allegations and reports of intimidation, harassment and surveillance in the context of the Corrib Gas dispute; conduct the necessary investigations regarding the actions of the police and take the required measures to instruct and equip the police in the area to discharge their functions in an impartial manner;
- It should provide consent for the GSOC to conduct an examination on practice, policy and procedure of the police in the context of the Corrib Gas dispute;
- It should, as a matter of priority, implement by way of a legislative or regulatory framework the judgments by the Supreme Court of 1992 and the European Court of Human Rights of 2010 regarding access to legal abortion, and in doing so, clarifying the criteria to be met for women who seek legal terminations and providing necessary guidelines for medical professionals;
- It should do its utmost to effectively recognise and protect those who work in ensuring the enjoyment of the right to health of women (including sexual and reproductive rights) from harassment or intimidation of any sort, including smear campaigns;
- It should publically acknowledge the importance of the role of defenders, particularly when they belong to marginalized groups such as Travellers;

- Recommendations made by the UN Treaty Bodies⁴ regarding the recognition of Travellers as an ethnic minority should be implemented;
- It should engage with Travellers community through their representatives in order to meaningfully integrate their views in public policy planning;
- Overarching legislation to protect whistle-blowers should be enacted and retaliation against them should be made a specific offence;
- It should promptly establish an independent and effective mechanisms to receive complaints from those in prison, such as an Ombudsperson, and in the meantime promptly address allegations of intimidation of those trying to submit complaints of human rights violations in the current system;

To the Garda Síochána (Police) Ombudsman Commission (GSOC)

- It should make efforts in raising awareness about their mandate, including the complaints procedure;
- It should request an examination on practice, policy and procedure of the police in the context of the Corrib Gas dispute.

To the Irish Human Rights and Equality Commission

- It should keep up the efforts to ensure that the "A" status of the institution is maintained by contributing to a smooth transition until the new institution is established;
- It should have a focal point for human rights defenders within its structure;
- It should try to reach out to defenders outside urban areas and raise awareness about its role and services.

To human rights defenders

- More should be done to disseminate information about the UN Declaration on human rights defenders at the domestic level, particularly amongst civil servants;
- More efforts should be made to lobby the Government to implement recommendations from regional and international human rights mechanisms;
- Should intensify efforts to diversify sources of funding given current context of austerity.

As mentioned, these preliminary observations and recommendations will form the basis for the reports I will present to the next session of the UN Human Rights Council which will take place in Geneva in March 2013.

Thank you for your attention.

⁴ UN Committee on the Elimination of Racial Discrimination (2011); UN Human Rights Committee (2008).