



SPECIFIC INSTANCE AGAINST ROYAL DUTCH SHELL, STATOIL AND MARATHON OIL CORPORATION FOR THE VIOLATION OF THE OECD GUIDELINES

The Corrib Gas project in Ireland

To: Trade Policy Department
Ministry of Economic
Affairs PO Box 20102
NL-2500 EC The Hague

From: Pobal Chill Chomain, Rossport, Ballina, Co Mayo

Contact person: Vincent McGrath

Subject: Specific Instance against Royal Dutch Shell, Statoil and Marathon Oil Corporate for the violations of the OECD Guidelines for Multinational Companies

Probal Chill Chomain comes respectfully to submit a specific instance in light of the fact that:

the company **ROYAL DUTCH SHELL**, transnational corporation with home office in the Hague/ The Netherlands, being that the Irish subsidiary is controlled in its entirety by Shell E&P Ireland.

the company **STATOIL**, transnational corporation with home office in Stavanger/ Norway, being that the Irish subsidiary is controlled in its entirety by Statoil Exploration Ireland

the company **MARATHON OIL CORPORATION**, transnational corporation with home office in Houston/ State of Texas/ United States, being that the Irish subsidiary is controlled in its entirety by Marathon International Petroleum Hibernia Limited

have formed a consortium for the Corrib gas field's exploitation in:

Ballinaboy, Glenamoy, County Mayo, Ireland

Local offices at 4, Udarás na Garltachta, Belmullet, Co Mayo

Registered Office of Shell E&P Ireland, Corrib House, 52 Lower Leeson St, Dublin 2.

This Corrib gas project comprises a gas processing plant and a pipeline to transport untreated gas from the sea to the processing plant.

Violations

In this case, the companies hereby complained against **have violated and continue to violate** Chapter V on **environmental, health and safety concerns**, for failing "*to operate in consideration of relevant international agreements, principles, objectives and standards*", failing to "*collect, evaluate and provide the public with adequate and timely information on the potential environmental, health and safety impacts of the activities of the enterprise*" and failing to "*assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes*".

The companies further breached the chapter II (General policies), regarding the local community, for **failing to comply with Human rights**, failing to "*encourage the local capacity building*" and failing to "*act in partnership with the local community*".

Context of complaint

The Corrib gas development is taking place in the context of the need to **secure indigenous European energy supplies**. This is acknowledged as an important strategic objective. The challenge facing the European Union is to develop the remaining fossil fuel reserves of the Union in a manner that is environmentally and socially sustainable.

The Corrib Development now presents as a crucial precedent for meeting the combined concerns for **energy security and environmental and social sustainability**. For this reason, great attention needs to be paid to the way in which the Corrib gas project is to be developed. At issue is whether we have a Europe compromising its core social values under the pressure of energy fears or whether we have a Europe securing its energy resources in a socially responsible manner.

The Corrib gas development raises the issue with participation along with access to justice in environmental matters and heightens the importance of OECD guidelines and the role of NCP.

Request to the National Contact Point (NCP)

We request the NCP to participate in resolving the case.

First, we request from the NCP a declaration of breach of the OECD Guidelines by the companies.

Second, we request the NCP, in so far as possible, to make sure that the defendants fully consider the alternative solutions proposed by the complainants. Two alternative solutions have been proposed by the local community: an off-shore processing option either employing shallow-water platforms, causeway-based facilities or sub-sea supersonic processing. Another recent proposal made by the local Catholic clergy has been supported by many in the local community: it's a land-based refinery in a remote, unpopulated location at Glinsk some miles from the existing proposed site. This proposal has received widespread support and offers a viable and reasonable alternative model. In this alternative, no Special Areas of Conservation need be impacted upon in any way and community consent can be secured. The Green Party in Mayo, for example, calls for relocation of the Corrib gas refinery, because it believes relocation to be the "only way to resolve the Corrib gas issue"¹. This is supported by local T.D. Michael Ring, the president of the Irish Labour Party, Michael D. Higgins and the Catholic Bishop of Killala diocese, Bishop John Fleming.

Election of the NCP

By virtue of the fact that Shell, one of the defendants and the main operator of the Corrib project, is incorporated in the Netherlands and is publicly-traded on the Amsterdam Stock Exchange, Shell is subject to the principles and standards in the OECD Guidelines for Multinational Enterprises.

The procedural guidance states that specific instances should be filed at the NCP in the country where the alleged breaches occurred.

Nonetheless we are filing the specific instance concerning Shell's Holding "Shell E&P Ireland"'s operations in Ireland at both Irish and Dutch NCP's simultaneously. We believe that strong cooperation between the Irish and Dutch NCPs will ensure the most effective handling of this issue.

In fact, considering the three other specific instances filed at the Dutch NCP against Shell, we are confident that the Dutch NCP will pursue this specific instance with the same diligence as they have shown regarding the precedent issues and that they will actively collaborate with the Irish NCP in resolving the case.

We therefore request that these submissions receive immediate attention by the Dutch NCP to ascertain whether the activities raised constitute breaches of the OECD Guidelines and we request the Dutch NCP to assist the parties in finding an alternative solution to the conflict.

¹ IrishTimes, Lorna Siggins, « Green urges Ryan to consider moving Corrib gas refinery », July 11, 2008

I. BACKGROUND INFORMATION ON THE CASE

A. Project presentation

The Corrib gas project comprises:

1. a gas processing plant
2. a pipeline to transport untreated gas from the sea to the processing plant.

The Corrib gas field is based in North West County Mayo, Ireland.

In 2008, it is controlled by a consortium including²:

Shell E&P Ireland 45% (since 2002. Before: Enterprise Oil)

Statoil Exploration Ireland: 36,5%

Marathon International Petroleum Hibernia Limited: 18,5 (since 1999. Before: Saga Petroleum)

B. Discovery³

In October 1996, Enterprise Oil (a UK-based independent producer) announced the discovery of gas in the Corrib Field in the Slyne Basin, 80 kilometres off the Mayo Coast.

Enterprise Oil established a new subsidiary, Enterprise Energy Ireland (EEI) to develop the massive find. EEI is incorporated in the Bahamas.

Enterprise Oil, with a 45% share in the project, was the operator, in a consortium with Saga Petroleum (which sold its 18,5% share to Marathon in 1999) and Statoil (36,5%)⁴.

C. Application for planning permission for a gas processing plant and a pipeline⁵

By 1999, the company identified a site in beneficial ownership of the state forestry service though not registered to it until November 1999, nine kilometres inland at Ballinaboy, County Mayo, for a gas processing plant and started to prepare plans for a pipeline to transport untreated gas from a wellhead on the seabed.

In October 2000, Bord Gais⁶ announced plans to construct a pipeline from the processing plant site in north Mayo to the national grid on behalf of the Corrib developers EEI, Statoil and Marathon.

In November 2000, EEI applied to Mayo County Council for planning permission for a gas processing plant at Ballinaboy. This permission was granted in August 2001 for the terminal. Rossport residents immediately appealed the decision to An Bord Pleanála⁷.

2 Independent Analysis prepared for the Centre for Public Inquiry, p. 4

3 Independent Analysis prepared for the Centre for Public Inquiry, p. 77-79

4 Independent Analysis prepared for the Centre for Public Inquiry, p. 24

5 Independent Analysis prepared for the Centre for Public Inquiry, p. 77-79

6 The main supplier and distributor of pipeline natural gas in the Republic of Ireland

7 An Bord Pleanála is an independent statutory administrative tribunal that decides on appeals from planning decisions made by local authorities in the Republic of Ireland. As of 2007 The Planning Board directly decides major strategic infrastructural projects under the provisions of the Planning and

In April 2002, Shell bought Enterprise Oil.

At the same time, the Minister for the Marine and natural resources, having got the Gas Interim Regulations Act 2002 through the parliament, Mr Frank Fahy issued consent for the plan of development and consent for the pipeline. In May 2002, he issued compulsory Acquisition Orders (CAO) to EEI.

In April 2003, Bord Pleanála overturned Mayo County Council's decision to grant planning permission. The refusal was based on the instability of peat on site⁸.

September 2003: Other Ministers accompanied the Prime Minister, Mr. Ahern and their senior officials at a critical meeting in Government buildings with a senior delegation from Shell, Statoil and Marathon. At the time, An Bord Pleanála had refused planning permission for the refinery at Ballinaboy, and the delegation was encouraged by the state representatives present to re-apply.

On the same night, Sept. 19 2003, enormous landslides occurred along the Glengad Hills. "Bord Pleanála" refused an oral hearing and "approved the project.

In December 2003, Shell re-submitted a planning application to Mayo County Council.

In April 2004, Mayo Council approved the project. Rosspport residents appealed decision. But in October 2004, Bord Pleanála approved the project.

D. Beginning of works⁹

In January 2005, Shell workers attempted to gain access to privately owned land along the pipeline route in Rosspport.

Shell workers told the landowners that they will be digging a few holes in their gardens, using a JCB and that they will fill in the holes once finished. They didn't give more details or explication. Some landowners allowed access to the land and in the spring of 2005 letters were sent to landowners that Shell's workers were entering the land to fence in the way-leave. Some requested to see their authorisation but were refused. On some occasions the police pretended they had seen the authorisation in an effort to compel the landowners. This approach didn't change until June 2005, when Shell applied for committal of men who had broken the injunction. Five Rosspport men were jailed.

In July 2005, Shell admitted to constructing a 3-kilometres section of pipeline without consent and was requested to cease work on the project.

Development (Strategic Infrastructure) Act 2006. The Board also hears applications from local authorities for projects which would have a significant environmental impact. The Board was established by the Local Government (Planning and Development) Act 1976, provisions which have, for the most part, been carried over into the Planning and Development Act 2000.

⁸ Moore's Report

⁹ Independent Analysis prepared for the Centre for Public Inquiry, p. 77-79

E. Previous contact with the company, other relevant actors or institution

The first announcement of the project was an item in the Catholic Church Parish Newsletter in early April 2000 telling of the 'coming bonanza'. Enterprise Energy Ireland (EEI) as the project leader was then, held a few presentations in pubs. Once the community became aware of the nature of these events, the public meetings ended except for some set pieces later by Rural Environment Protection Scheme (REPS), well guarded by numbers of police: in general, especially after the oral hearings of 2002, Shell would only chance meetings with sympathisers or with one or two people at a time. Minister Fahy and officials and experts had a public get-together with the community in a hotel, which was videoed without their consent. The more they tried to advance the cause the more obvious the loopholes and dangers became.

There was minimum contact between the promoters of the project and the community other than some 'megaphone diplomacy' until representatives from Pobal Chill Chomain, who had come up with a compromise to the conflict travelled to Norway in 2008. The compromise was to relocate the refinery to an on-land site in Glinsk. The community leaders travelled to Norway with Labour Party president Michael D Higgins, Green Party councillor Niall O Brolchain and Sinn Fein councillor Noel Campbell. The group met StatoilHydro and outlined their compromise proposal. Statoil commented afterwards, however, that the chances of changing the location of the refinery were close to zero.

They received support from the federation of oil and gas workers' union SAFE, which called on Shell and Statoil to read their own ethical guidelines, while cleaning up the chaos they have created for others. SAFE expressed support for the local population in Erris, County Mayo and recommended that Shell and StatoilHydro should change direction on this issue and listen to the opinions of the representatives of Pobal Chill Chomain.

F. Issues in brief

1. Safety and Health issues

The Corrib pipeline is an onshore scheme, designed to **bring raw, untreated, volatile gas** from the bottom of the sea, far inland, past houses, through bogs and farmland, in an area prone to landslides. Concerning the instability of the field and the risk of landslides¹⁰, in September 2003 the most dramatic of which took place at Barnacuille and Dooncarton mountains, in one of the originally proposed pipeline routes¹¹. The gas doesn't smell which constitutes **a very significant risk** for the population.

In addition, the proposed pipeline routes are definitely **too close to people**, because the Corrib pipeline is not a normal pipeline, given its potential to operate under very high pressures and because of the unknown gas compositions. Considering the instability of peat on site, this can seriously increase the likelihood of pipe failure¹².

There are too many unknowns regarding the future operation of this pipeline, especially in the areas of gas pressure and gas composition that can lead to failure¹³.

The Assessments commissioned by the government were all controversial¹⁴. Several private studies denounced the threat to health and safety.

2. Environmental issues

First, the location of the refinery poses **a risk to the only source of potable water for 10,000 people** in Erris because the gas processing terminal is based in the Bellanaboy site, which is a catchment area for a major water supply.

Second, the route of the pipeline would pass through three SACs and so represents a threat to Broadhaven Bay's wildlife.

3. Human Rights issues

The Corrib Gas development has violated many of the Human rights, which are espoused by the **European Convention for the protection of Human Rights and Fundamental Freedoms**. In particular, the enterprises have failed to respect the Right to private life and the right to a clean environment (article 8), the right to private property (article 1 of Protocol 1) and the right to the disclosure of information (article 10).

10 Independent Analysis prepared for the Centre for Public Inquiry, p. 5

11 Independent Analysis prepared for the Centre for Public Inquiry, p. 16

12 Independent Analysis prepared for the Centre for Public Inquiry, p. 6

13 Independent Analysis prepared for the Centre for Public Inquiry, p. 6

14 Independent Analysis prepared for the Centre for Public Inquiry, p.5

II. BACKGROUND INFORMATION ON THE COMPLAINANTS AND THEIR INTEREST IN THE CASE

The complaint is submitted on behalf of Pobal Chill Chomain, Kilcommon Community, Ballina, Co Mayo.

Action from Ireland (Afri)¹⁵, an Irish NGO and **Sherpa**¹⁶, a French NGO, are supporting the community's efforts to find a resolution to this long running and damaging conflict.

The Community is not opposed to the Corrib Gas scheme. They are opposed to the way Shell has put together the scheme and are deeply concerned over the threat to their health and its safety¹⁷.

Pobal Chill Chomáin opposes the various pipeline routes that have been proposed because all of them are similar and involve a dangerous high pressure pipeline criss-crossing their area and running close to their homes. The attitude of the community to any of the suggested routes is dictated by the reality on the ground: it has nothing to do with liking or not liking, **it is just a matter of safety**.

The prior selection of the refinery site decided the general route of the pipeline: that guaranteed that the pipe would pass through residential areas at enormous pressure. The area is one of low population density - Erris has 10 people per Km. - but it is practically all concentrated in a number of arable/reclaimed islands in a sea of bog. It should have been no problem **to find a site uninhabited** that would not expose the community needlessly to danger.

Once the second site, the refinery, became fixed as it did in the pre-public phase, the route and its difficulties were inevitable. All routes that were said to be under consideration would put the community at risk in their houses or in their work. The present proposal is a route as near as possible to the original while avoiding the land that resulted in the jailing of the Rossport 5, although the commonage is still being crossed. In fact the chosen route is more oppressive for it surrounds four of the Rossport 5 and hems them in to the sea.

So the community continues to oppose the proposed route. Instead they have proposed an **alternative solution** – the location of the terminal in Glinsk, an on-land site which does not require an on-land pipeline, does not threaten the local water supply and poses a much reduced risk to the welfare of people generally, by virtue of it's location in a remote an un-populated area.

¹⁵ <http://www.afri.ie/>

¹⁶ <http://www.asso-sherpa.org/>

¹⁷ Independent Analysis prepared for the Centre for Public Inquiry, p.8

III. BACKGROUND INFORMATION ON THE DEFENDANTS

1. The defendants are multinational companies

According to the OECD Guidelines, Part I, points 3 and 4, a “multinational company” is defined in the following terms:

“These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways Ownership may be private, state or mixed. The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities) (...) multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant to both”

Until 2002, Enterprise Energy Ireland, an *Enterprise Oil* subsidiary (a UK-based independent producer) was the main operator. But in 2002, Royal Dutch/Shell Group bought Enterprise Oil and Shell E&P Ireland, a *Royal Dutch Shell* subsidiary became the main operator in the project.

Shell is a worldwide group of oil, gas and petrochemical companies with interests in bio fuels, wind and solar power and hydrogen. They are active in more than 130 countries and territories and employ 108,000 people worldwide. In 2005, the Group underwent a major structural reorganisation as the near century old partnership between Royal Dutch and Shell Transport and Trading was dissolved and one company was created, Royal Dutch Shell. The headquarters of the new company is in The Hague.¹⁸

Statoil Exploration (Ireland) Limited is a *Statoil* subsidiary.

Statoil is an integrated oil and gas company with substantial international activities. Statoil is represented in 35 countries. Its head office is in Stavanger, Norway¹⁹.

Until 1999, *Saga Petroleum* was part of the consortium. Then it sold its share to Marathon International Petroleum Hibernia Limited, a *Marathon Oil Corporation* subsidiary.

Marathon Oil Corporation (NYSE: MRO) is an integrated international energy company engaged in exploration and production; oil sands mining; integrated gas; and refining, marketing and transportation. Marathon, which is based in Houston, Texas, has principal operations in the United States, Angola, Canada, Equatorial Guinea, Gabon, Indonesia, Ireland, Libya, Norway and the United Kingdom. Marathon is the fourth largest United States-based integrated oil company and the nation's fifth largest refiner²⁰.

All the companies are subsidiaries of multinational enterprises and thus meet the OECD Guidelines’ criteria.

¹⁸ Source : <http://www.shell.com/>

¹⁹ Source : <http://www.statoil.com/>

²⁰ Source : <http://www.marathon.com/>

2. The defendants are involved with the controversial project

According to the OECD Guidelines, multinational enterprises must « *Encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines* »²¹.

Besides, the OECD Committee on International Investment and Multinational Enterprises (CIME) considers that « *The Guidelines have been developed in the specific context of international investment by multinational enterprises and their application rests on the presence of an investment nexus. When considering the application of the Guidelines, flexibility is required. This is reflected in Recommendation II.10 and its commentary that deal with relations among suppliers and other business partners. These texts link the issue of scope to the practical ability of enterprises to influence the conduct of their business partners with whom they have an investment like relationship. In considering Recommendation II.10, a case-by-case approach is warranted that takes account of all factors relevant to the nature of the relationship and the degree of influence. The fact that the OECD Declaration does not provide precise definitions of international investment and multinational enterprises allows for flexibility of interpretation and adaptation to particular circumstances* »; « *Scope of the Guidelines and the investment nexus* »²².

In other words, we **can admit the existence of an investment nexus** regarding the companies, members of the Consortium, the investment nexus results from their participating interests in the consortium.

Indeed, Shell is the main operator in the project since 2002 with 45% of participating interests. Marathon Oil Corporation and Statoil corporation have respectively substantial participating interests in the consortium (36,5% for Statoil and 18,5 % for Marathon).

21 General Policies; Chapter 2 Par. 10

22 Statement by the committee April 2003

IV. DETAILED INFORMATION ON THE ALLEGED BREACHES

1. Alleged breaches concerning environment, health and safety

V. 1: Sustainable development and environmental, health, or safety impact assessment

"Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

- 1. Establish and maintain a system of environmental management appropriate to the enterprise*
- 2. a) Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance;*
b) Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.
- 3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment".*

- **Irish and directly applicable EC laws, regulations and administrative practices**

- i. Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the community action in the field of water policy** (EU Water Framework Directive 2000/60/EC²³)

By means of this Framework Directive, the EU provides for the management of inland surface waters, groundwater, transitional waters and coastal waters in order to prevent and reduce pollution, promote sustainable water use, protect the aquatic environment, improve the status of aquatic ecosystems and mitigate the effects of floods and droughts.

Article 1: Purpose

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

- (a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;*
- (b) promotes sustainable water use based on a long-term protection of available water resources;*
- (c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for*

²³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0060:EN:HTML>

the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;
(d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution

The proposed Bellanaboy refinery is situated in close proximity to Carrowmore Lake, into which most of the site drains, which is the drinking water supply for 10,000 people. The remaining part drains into The SPA, Sruth Mhada Conn and hence into the Marine Special Area of Conservation, Broadhaven Bay.

As a result of selecting the site for the terminal near a drinking water catchment, Marathon Oil Corporation, Statoil along with Enterprise Energy Ireland have breached the Water Framework Directive 2000/60/EC.

As Shell bought Enterprise Energy Ireland EEI in 2002 it became, from then on, the main operator of the consortium. Therefore, as part of their due diligence process, Shell should have reviewed this design in accordance with the Directive when they acquired the assets of EEI within weeks of the consent being granted.

ii. Council Directive 92/43/EEC of 21 May 1992 on the conservation of the natural habitats and a wild fauna and flora (Habitats Directive 92/43 EC)²⁴

In 1992 the European Community adopted EC Habitats Directive 92/43/EEC. The provisions of the Directive require Member States to introduce a range of measures including the protection of species and to undertake surveillance of habitats and species. Once adopted, these are designated by Member States as Special Areas of Conservation (SACs), and along with Special Protection Areas (SPAs) classified under the EC Birds Directive, form a network of protected areas known as Natura 2000. The Habitats Directive introduces for the first time for protected areas, the precautionary principle:

Article 3

"1. A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to Directive 79/409/EEC.

2. Each Member State shall contribute to the creation of Natura 2000 in proportion to the representation within its territory of the natural habitat types and the habitats of species referred to in paragraph 1. To that effect each Member State shall designate, in accordance with Article 4, sites as special areas of conservation taking account of the objectives set out in paragraph 1.

3. Where they consider it necessary, Member States shall endeavour to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora".

The proposed Bellanaboy refinery site is situated in the midst of a number of SACs. These are:

²⁴ http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=392L0043&model=quichett&lg=en

- Broadhaven Bay,
- Glenamoy Bog Complex
- Sruhwaddacon estuary

Broadhaven Bay is a known breeding ground for cetaceans; Sruhwaddoccon contains a highly vulnerable machair sand-dune system, bird habitat and rapidly shifting sand systems; and Glenamoy Bog complex is highly vulnerable to any excavation which would alter its drainage and stability patterns.

In 2001, EEI commissioned a report from The Costal Resources centres. This report highlighted the great wildlife biodiversity prosperity. It stated: "*Broadhaven Bay SAC and its neighbouring coastal waters undoubtedly represent an important area for marine mammals and other species*". Nevertheless, according to the EIS of 2001, submitted to Mayo County Council in support of the EEI planning application, there was "*no evidence that the bay is of particular importance*" to whales and dolphins²⁵. This supposes an inadequate evaluation regarding environmental impacts.

According to the European Court of Justice, a very high standard must be met in order to permit derogation to the Directive. There must be no alternative, and the derogation should only be in the interests of public health and safety.

The proposed pipeline route, if approved, by Minister Ryan of the Green Party, would pass Broadhaven Bay SAC, come ashore in the middle of a severely damaged sand martin colony, pass through the Glenamoy SAC within feet of the dunes, a high priority site. No derogation has been sought. This area near the dunes has not been designated a machair by the state authorities although it forms a natural part of the designated machair just across the narrow channel of the mouth of Sruth Mhada Conn.

iii. Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (Public Participation Directive 2003/35EC)²⁶

The Directive 2003/35/EC intends to align the provisions on public participation in accordance with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.

Article 1: Objective

"The objective of this Directive is to contribute to the implementation of the obligations arising under the Århus Convention, in particular by providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment"

Article 2 : Public participation concerning plans and programmes

²⁵ Independent Analysis prepared for the Centre for Public Inquiry, p. 27

²⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:156:0017:0024:EN:PDF>

"(b) the public is entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made;

(c) in making those decisions, due account shall be taken of the results of the public participation;

(d) having examined the comments and opinions expressed by the public, the competent authority makes reasonable efforts to inform the public about the decisions taken and the reasons and considerations upon which those decisions are based, including information about the public participation

Process".

Because of the truncated and 'project-split' nature of the Corrib Development, meaningful public participation as envisaged under this OECD principle has not been possible. The local receiving community has not been in a position to examine, understand and comment on the cumulative and interactive nature of the environmental impacts of the development because these have been unknown. Only components of the project have been presented at any one time – first, planning permission for the refinery which was granted in 2004, followed by the Pollution Control Licence for the operation of the refinery which was granted in 2007 and, more recently, applications for consents for the construction of a high-pressure production pipeline through a marine and peat environment. This latter process has, as yet, an indeterminate conclusion point. The full, integrated Development, with all of its cumulative and interactive impact, has never been presented for public consultation and participation.

As well, the enterprises have refused, many times, to provide the community with information on the potential health and safety impacts of their activities. In 2000, Enterprise Energy Ireland didn't inform the community about the route and the characteristics of the pipeline: *"We had no notice at all from them that here was the pipeline route"²⁷; "There were no word of pressure in the pipe"²⁸. Concerning the pipeline, according to people's testimonies: *"You got information at your own cost from the Internet and contacting people in other countries. You got no information from Enterprise. At their 'presentation days' if you asked one of them a question they'd say, 'oh I can't answer that, I'll put you on to the next guy'. And then the next guy mightn't be there that day. You constantly do this. They never give a straightforward answer. 'We'll take it away and have your answer the next day'. And the next 'presentation day', the same thing. Nothing went in. It was just a one-way sound. We talked but they didn't listen "²⁹.**

The project publicity machine consistently states that it is open to dialogue and consultation. The reality is the opposite. When the Rosport 5 were released from jail, Shell engaged in talks through Peter Cassels as mediator, appointed by the Minister, Noel Dempsey. While the mediation was on-going and at a time when Shell publicly apologised for jailing the Rosport 5, Andy Pyle, the SEPIL M.D. in an article in the local newspaper, the Western People, declared that mediation with the Rosport 5 would not result in a change to the project³⁰.

As a result of failing to appropriately consult community, the corporation has contravened Public

27 Testimony of Mary Corduff, "Our story The Rossport Five", p. 23

28 Testimony of Willy Corduff, "Our story The Rossport Five", p. 25

29 Testimony of Willy Corduff, "Our story The Rossport Five", p. 28

30 Western People May 6 2006

Participation directive 2003/35EC. In this respect, it should be noted that the European Commission referred Ireland to the European Court of Justice in early 2007 for failures regarding public participation.

(iv) Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (the EIA Directive)³¹

The EIA Directive on Environmental Impact Assessment of the effects of projects on the environment was introduced in 1985 and was amended in 1997 by Directive 97/11/EC.

The EIA procedure ensures that environmental consequences of projects are identified and assessed before authorization is given. The public can give its opinion and all results are taken into account in the authorization procedure of the project. The public is informed of the decision afterwards. The EIA Directive outlines which project categories shall be made subject to an EIA, which procedure shall be followed and the content of the assessment.

Article 1

"1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment".

Article

"The environmental impact assessment will identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with the Articles 4 to 11, the direct and indirect effects of a project on the following factors:

- human beings, fauna and flora,*
- soil, water, air, climate and the landscape,*
- the inter-action between the factors mentioned in the first and second indents,*
- material assets and the cultural heritage".*

Article 5

"2. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

- a description of the project comprising information on the site, design and size of the project,*
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,*
- the data required to identify and assess the main effects which the project is likely to have on the environment,*
- a non-technical summary of the information mentioned in indents 1 to 3".*

ANNEX III INFORMATION REFERRED TO IN ARTICLE 5 (1)

"1. Description of the project, including in particular:

- a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases,*
- a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used,*
- an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project".*

³¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31985L0337:EN:HTML>

The Directives 85/337 and 97/11 state that it is not adequate to quantify components of environmental impacts within a truncated development to examine the cumulative and interactive nature of those impacts.

Shell, Marathon Oil Corporation and Statoil have processed one component of the project, the refinery, prior to identifying the production pipeline route to service it. In this context, it has clearly not been objectively possible for the Irish authorities, as well as for the community affected by the project, to form an adequate assessment of the cumulative and interactive impacts of the development and of its environmental and social impacts. It has simply not been possible to determine whether there is potential adverse interaction between the various component impacts.

Ireland has failed to adequately transpose the EIA Directive in its domestic legislation. This being so, the corporation should not be permitted to exploit the lacuna of domestic legislation but should respect relevant international agreements such as these directives.

The Case C 215/06 Ireland v. Commission unreported judgment 3 July 2008 concerned construction of wind-farms and condemned practice in Ireland of EIAs being carried out subsequent to starting construction. In this case, it has condemned the project-splitting practice which facilitates the commencement of construction before a full comprehensive and interactive impact assessment is carried out.

v. Code of Practice:

The Code of Practice is a document that is explicit on certain items and allows scope for engineering judgment on other points. In exercising engineering judgment the engineer should apply the precautionary principle to protect the environment.

According to the distinguished Engineer, Mr Leo Corcoran's (An Taisce) report, locating the terminal in a drinking water catchment was a breach of the codes of practice PD 8010.

The scope of this code is to give "*recommendations for and guidance on the design, selection, specification and use of materials, routing, land acquisition, construction, installation, testing, operation, maintenance and abandonment of land pipeline systems constructed from steel*". This being so, this code of practice concerns the pipeline construction.

PD 8010 Clause 7, regarding the selection of location, states;

"In selecting the locations for stations and terminals on land, consideration should be given to factors including, but not limited to (...) public safety and the environment".

Clause F2.2, regarding environment impact, states: "

"Detailed assessments should be undertaken to ascertain the impact of the pipeline on environmentally sensitive areas. When selecting the route and station locations, care should be taken to identify and minimize any possible effects on: (...) natural resources, such as catchment areas".

The detrimental effect of this project on the drinking water of the entire area is already showing itself.

There is no intensive farming in this area, just low-level subsistence farming. Since activity has begun on the site, the lake has had to be closed for fishing at least every second year although it was in 2000 given a clean bill of health by the Environmental Protection Agency. The change since the project began operating - apart from the aluminium - is the release of orthophosphate which has encouraged the intense growth of algae. This is - or used to be - an important tourist angling lake and spawning entrance for trout and salmon (a hatchery has traditionally been active in one of the inlet streams).

The replacement standard for PD 8010 is EN 14161, which states too that the designer is required to consider the location of drinking water catchments when selecting the site for a terminal.

By selecting the site for the terminal near a drinking water catchment, Marathon Oil Corporation, Statoil along with Enterprise Energy Ireland have violated this code of Practice.

As mentioned before, Shell, as the main operator of the consortium should have reviewed this design in accordance with the Code of Practice. The absence of a code of practice within the letter of consent should have alerted Shell to the unique nature of this project: namely that there was no mandated code of practice and that the design was in breach of the code as described above. Since acquiring EEI, Shell has not sought to apply the code of practice by considering locations outside water catchments. The enterprise has admitted itself they didn't apply this requirement, considering that *"this statement is unsubstantiated. There is no code of practice relating to the siting of gas processing terminals."*³².

● International laws, instruments and principles

i. Aarhus Convention on access to information, public participation and access to justice in environmental matters (Aarhus Convention)³³

The Convention, in force since 30 October 2001, is based on the premise that greater public awareness of and involvement in environmental matters will improve environmental protection. It is designed to help protect the right of every person of present and future generations to live in an environment adequate to his or her health and well-being. To this end, the Convention provides for action in three areas:

- * ensuring public access to environmental information held by the public authorities;
- * fostering public participation in decision-making which affects the environment;
- * extending the conditions of access to justice in environmental matters.

Article 1 OBJECTIVE

"In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention".

³² <http://www.epa.ie/terminalfour/ipccApril/ipcc-view.jsp?regno=P0738-01>

applicants documents Submission on Objection No. 1 by Applicant_Part 1 page 38

³³ <http://www.unece.org/env/pp/documents/cep43e.pdf>

More specifically, the second part of the Convention concerns public participation in decision-making. This must be ensured through the authorisation procedure for certain specific activities (mainly of an industrial nature). The final decision to authorise the activity must take due account of the outcome of the public participation.

Article 6: Public participation in decisions on specific activities

"2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, *inter alia*, of:

(a) The proposed activity and the application on which a decision will be taken;

(b) The nature of possible decisions or the draft decision;

(c) The public authority responsible for making the decision;

(d) The envisaged procedure

(e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making".

The procedural time-frames must allow for genuine public participation. A streamlined procedure has been set up for the formulation of environmental plans and programmes.

The Convention also invites the parties to promote public participation in the preparation of environmental policies as well as standards and legislation that may have a significant effect on the environment.

As detailed before, the local receiving community has not been in a position to examine, understand and comment on the cumulative and interactive nature of the environmental impacts of the development. In the decision-making procedure, the companies have not provided the community with accessing and appropriate information and haven't afforded a proper consultation. As a result, the corporations have breached the Aarhus Convention.

ii. The convention on Biological Diversity (Rio Declaration) concluded at Rio de Janeiro on June 5 1992³⁴

The Convention on Biological Diversity (CBD) was signed by the Community and all the Member States at the United Nations Conference on Environment and Development in Rio de Janeiro from 3 to 14 June 1992. This Decision approves the Convention on behalf of the European Community.

The CBD is designed to conserve biological diversity, ensure the sustainable use of this diversity and share the benefits generated by the use of genetic resources, in particular through appropriate access to genetic resources and appropriate transfer of relevant technologies, taking into account all rights over

³⁴ <http://www.cbd.int/convention/>

those resources and technologies, and through adequate funding.

Article 1. Objectives

"The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding".

The Convention emphasises the role of indigenous and local communities in conserving biodiversity.

Article 13. Public Education and Awareness

"The Contracting Parties shall:

(a) Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes; and

(b) Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity".

These populations heavily and traditionally depend on the biological resources on which their traditions are based.

Advantica in its report to the Government has noted that the exact route originally chosen on land was selected to take advantage of the improved land, mainly reclaimed bog, which the developer expected to be more solid and stable, i.e. to take advantage of the work of generations while destroying it. This land was reclaimed by hand, over generations, using hand-tools and installing sod-drains which are still operating. This drainage system can never be repeated - the agricultural world has changed. Once these drains are broken, they cannot be restored and an agricultural system will end - they are organic to the place and dynamism of the farming system.

Considering the last developments, the companies have not complied with the principles enunciated in Rio Declaration.

This being so, the enterprises have patently breached important EU environmental protection standards.

- **Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes and prepare an appropriate environmental impact assessment**

Established in a wrong site, the project is not only a threat to the community's safety and health, but the refining activities endanger the environment and the biodiversity as well.

In its report, the senior planning inspector of Bord Pleanála, Mr. Moore states that the location chosen is the wrong site: « *"From a strategic planning perspective, this is the wrong site; from the perspective of Government policy which seeks to foster balanced regional development, this is the wrong site; from the perspective of minimising environmental impact, this is the wrong site; and consequently, from the perspective of sustainable development, this is the wrong site. At a time when the Board is now required, in accordance with the Local Government (Planning and Development) Act, 2000, to have regard to the proper planning and sustainable development of an area in which a development is proposed to be constructed, it is my submission that the proposed development of a large gas processing terminal at this rural, scenic, and un-serviced area on a bog land hill some 8 kilometres inland from the Mayo coastland landfall location, with all its site development works difficulties, public safety concerns, adverse visual, ecological, and traffic impacts, and a range of other significant environmental impacts, defies any rational understanding of the term "sustainability". It is an irony that this large industrial proposal is linked with a natural gas resource, the exploitation of which adheres to the concept of sustainability.*"³⁵

Likewise, according to an independent analysis by the Centre for Public Inquiry, the route of the pipeline is unacceptable because of its proximity to people and dwellings³⁶. According to the author, "the risks of the pipeline have been considerably understated"³⁷.

The Advantica report in 2005 consents the pipeline construction and the gas processing plant. Nevertheless it wasn't authorized to propose another location for the refinery nor other routes for the pipeline. Thereby, once more, the community contested this report.

In particular, the route of the pipeline and the refining activities generate several threats to the community's safety and health, and to the environment.

First, the pipeline represents a great danger to safety and health, because of its location in an unstable bog landscape, in a populated area and because of its extreme pressure.

This pipeline would operate at very high pressures, at 145 bar according to the Advantica report but possibly much higher. It would carry raw, odourless gas and would be laid in an unstable landscape. Most of the pipelines to transport gas in Ireland are pressurised to 15 bars, up to 70 bars for the biggest ones, which carry clean gas which has had an odour added to it. Consequently, the thick-walled pipe is not invincible to leak or rupture from the expected high pressure and the destructive potential of reactive gases.

³⁵ Independent Analysis prepared for the Centre for Public Inquiry, p. 14 et 34

³⁶ Independent Analysis prepared for the Centre for Public Inquiry, p.1

³⁷ Independent Analysis prepared for the Centre for Public Inquiry, p. 40

This is in an area of known bog slides and Moore, in his report, fears a major accident owing to the instability of the field and the risk of landslides³⁸, the most dramatic of which took place in September 2003 at Barnacuille and Dooncarton mountains, in one of the originally proposed pipeline routes³⁹. .

This being so, the route of the pipeline is too close to people, running within 70 metres of people's homes⁴⁰. The QRA says that there is practically no risk of the pipe exploding and igniting etc However, what it does not say is: "but if the pipe explodes then these people will be safe" No. It says "As long as the gas stays in the pipe everyone is safe." The community agrees with this. The same is true of every pipeline in the world - every one is designed to do exactly what it says, which is to conduct gas from A to B. Most of them do; some don't; and when they don't the result is disaster. And when or where this disaster will take place is not known in advance. There is ample evidence that smaller, lower-pressure pipelines have exploded, killing people a lot further than 70 metres away. In June 2004, a gas pipeline explosion in Belgium killed 21 people within a 400-metre radius of the explosion. In New Mexico, USA, in 2000, a family of 12 was killed when a gas pipeline exploded almost 200 metres from where they were camped⁴¹.

Moreover the QRA is controversial because this pipeline operates under extremely high pressures and transports unknown gas composition associated with gas field production. For this reason, it is not considered as an appropriate instrument to evaluate this unique system⁴².

Second, refining activities would cause several environmental and health impacts.

The location of the refinery poses a risk to the local drinking water supply and will be discharging chemicals to air and water.

As demonstrated before, the enterprises have violated the code of practice establishing the refinery in a local drinking water supply.

There is a pipe to take waste impurities to sea. The waste water storage sump is designed to withstand only a few hours of continuous rainfall, though nearby Crossmolina had 106 days of consecutive rainfall during the autumn of 2004. Overflow from the sump will flow into Carrowmore Lake, the drinking water supply of 10,000 Erris residents. This untreated waste water would contain many toxic substances, including lead, nickel, magnesium, phosphorus, chromium, arsenic, mercury and the radioactive gas radon. This information has been certified by the EEI's Environmental impact statement which indicated that gas would contain metals and radioactive gas⁴³. Already aluminium levels in the lake (due to runoff from the construction) are far in excess of World Health Organisation limits. While usually a popular destination for fishing, for the first time ever Carrowmore Lake has been declared unsafe, in early summer of 2007.

38 Independent Analysis prepared for the Centre for Public Inquiry, p. 5

39 Independent Analysis prepared for the Centre for Public Inquiry, p. 16

40 Independent Analysis prepared for the Centre for Public Inquiry, p.1

41 Independent Analysis prepared for the Centre for Public Inquiry, p. 43-44

42 Independent Analysis prepared for the Centre for Public Inquiry, p. 6

43 Independent Analysis prepared for the Centre for Public Inquiry, p. 29

Moreover, the refinery would be constructed partly in blanket bog. Shell's plan to stabilise this involves mixing in cement to form a hard surface. This process has only ever had small field trials and lab tests and creates a reaction which produces the very toxic hexavalent chromium.

This being so, the Environmental Protection Agency awarded a licence to operate the refinery in November 2007, more than two years after construction began⁴⁴.

The enterprises were well aware of the dangers of locating the development within a drinking water catchment. During the oral hearing the expert witness for Shell, Dr Nigel Peters, agreed that it was possible for contaminated waste to enter Carrowmore Lake. These scenarios include failure of the pump between the intercept tank and the used firewater pond and failure of the methanol bund and the methanol tank. Dr Peters also refused to answer the key question relating to the best location for the terminal considering the three available catchments on the Bellanaboy site.

As mentioned above, the proposed Bellanaboy refinery site is situated in the midst of a number of SACs, which constitutes a violation to the Habitat Directive 92/43.

The community asserts that "Enterprise Oil have in no way shown that they understand the area with its intricate and ancient bogland terrain. For example, 600,000 cubic feet of peat has been removed and relocated in the Shramore Deposition site. The community are deeply offended that the work of generations has been desecrated and destroyed. . This land was reclaimed by hand over generations using hand-tools and installing sod-drains which are still operating. This drainage system can never be repeated - the agricultural world has changed. Once these drains are broken, they cannot be restored and an agricultural system will end - they are organic to the place and dynamism of the farming system.

Among the more unworkable proposals for planning was one to scatter the excavated peat among the trees. The existence of dóib was a total mystery to the promoters of the project. They fail to understand that bog has a dynamic of its own and that once disturbed it remains disturbed: it seemingly has not occurred to any of the experts that if one melts butter one cannot reclaim the butter again. Another example of their failure to understand was demonstrated at the oral hearing, when it was stated by a senior planner for Shell that locals who may be employed in the project would learn enough to move on - but community is about staying not moving.

Finally, Mr Moore rejected the project given the threat to a scenic and sensitive landscape⁴⁵.

It has been demonstrated that the companies never considered alternatives to the preferred option of an onshore terminal, nine kilometres inland at Ballinaboy, and this for economic reasons. Consequently, the companies didn't assess, with good faith, the foreseeable environmental, health, and safety-related impacts associated with the process.

The Consortium squarely refused the offshore option, insisting that it's not as safe, more environmentally

44 Source : http://en.wikipedia.org/wiki/Corrib_Gas_Field

45 Independent Analysis prepared for the Centre for Public Inquiry.

damaging than an onshore scheme. The companies highlight that an offshore option is really more expensive. The extra cost will not only be generated by the cost of the facility but the cost to the company of income it risks losing in the case of extreme weather conditions that can halt production. In its original application, EEI estimated the extra cost at €360 million plus an annual extra cost of €25 million in operating costs, compared with €15 million for the sub sea tieback option it preferred⁴⁶.

In his report, Moore states that « *the choice of the preferred option is primarily based upon the cost differences between it and other offshore options such as the shallow water fixed steel jacket option rather than the environmental or technical restraints. (...) there is virtually no information verifying the applicant's claims on cost differences between development concepts* »⁴⁷.

Moore believes that the company's engineers never even considered alternatives to the preferred option of an onshore terminal: « *It is my contention that the review of alternative landfall locations by utilizing alternative development concepts, such as shallow Water Fixed Steel Jacket, would have been likely to have resulted in rigorous assessment of alternative landfall locations closer to the tie-in to the ring main and not, what appears to be, a wholly limited, inadequate consideration of realistic landfall options along the west coast of Ireland* »⁴⁸.

According to the senior planning inspector, no serious research into alternative processing options has been presented to the Bord. The applicant has only presented documentation that supported the onshore processing method it preferred⁴⁹.

- **Provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise and engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.**

As mentioned above, because of the truncated and 'project-split' nature of the Corrib Development, meaningful public participation as envisaged under this OECD principle has not been possible. The planned and on-going project splitting has prevented the community from accessing the reality of the project. It would pose difficulties even had the developers wished to co-operate with the public. What in effect is and has been the case, is that the developer came with the project fully fledged and no change has been made that would lessen the impact of it on the community. Since the Rosport 5 came out of jail, the mantra has been, from the Government and from Shell "Community consent essential if this project is to go ahead." Recently, in a newspaper interview, Terry Nolan the new M.D. of SEPIL put it rather differently: he said we want the consent of a majority of landowners and the acceptance of the project by the community - in other words we keep pushing until the community tires of fighting us.

46 Moore's report, p. 162, The price of our souls, p.29

47 Moore's report, p. 54, The price of our souls, p. 30

48 The price of our souls, p. 30

49 Moore's report, p. 167.

2. 1. Alleged breaches concerning Human rights and the local community

Chapter II: General Policies

II. 2. Compliance with Human Rights

« Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments».

Ireland has ratified the **European Convention for protection of human Rights and Fundamental Freedoms**.

1. Right to privacy

Article 8 of the European convention for protection of human Rights and fundamental freedoms– Right to respect for private and family life

"1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

So the right to privacy concerns two aspects: right to private life and right to a clean environment.

• Right to private Life

This principle has been violated in its essence.

In effect neither interest of national security, nor public safety nor economic well-being can justify the measures taken by the enterprises.

This being so, the project has caused a serious trauma and division locally by selective use of financial grants, deployment of security and the imprisonment of five local men in 2005.

Concerning the deployment of security, the enterprises are partly responsible for the violations occurred at the hand of the Gardai.

The Gardai have deliberately wounded the dignity of the community by using excessive physical force, which has resulted in serious injury to peaceful protestors; attempting to criminalise protestors – surveillance of protestors locally and countrywide-; verbally threatening people without cause; intimidating people and provoking protestors. One of the residents have said that "he and his grandchildren have been filmed by security staff with video cameras every time they walk across family land to a local beach"⁵⁰. the legality of this measure has been questioned, on the grounds of an invasion

⁵⁰ IrishTimes, Lorna Siggins and Tom Shiel, « Mayo family complains over Shell surveillance », july 14, 2008.

of the right of privacy.

But the police response has been that it is a civil matter and that the police have no function in it, in spite of the world-wide awareness, for example of the use of such filming in the child porn industry and in denial of the statutory duty of the police to ensure public safety. When members of the community asked for a meeting with Superintendent Gilligan, who has operational responsibility for the Erris region, to discuss their concerns his answer in writing was that most people are satisfied with the way the police do their job and so he has no reason to discuss anything with those who are dissatisfied.

The presence of up to 200 Gardai in the midst of a small rural population has caused an extremely oppressive atmosphere, which has threatened the culture and values of the region, has attempted to criminalise people and has traumatised the population.

Forceful entry on to private land to assist Shell - police have cut the locks on a gate and used a mechanical digger to push back protesters.

- Allowing Shell to carry out illegal work on Special Area of Conservation despite being made aware of situation.

- Ignoring law breaking by Shell contractors – contractors' trucks not taxed or insured, no number plates, no identifying stickers on trucks, speeding.

The attack on community integrity was launched at the behest of the government who proposed, through Mr. Peter Cassells, that the people be bribed to accept the project, when it became obvious even to them that the community would not compromise on its welfare, health and safety. Although the State is indeed responsible for the protection of people and the environment the developers also have responsibilities and they are in breach of their international obligations freely entered into.

● **Right to a clean environment**

In the case *Taskin and other/ Turkey* (judgment 10.11.2004)⁵¹, the applicants alleged that both the national authorities' decision to issue a permit to use a cyanidation operating process in a gold mine and the related decision-making process had given rise to a violation of their rights guaranteed by Article 8 of the Convention.

The Court points out that Article 8 applies to severe environmental pollution which may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health (see *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, pp. 54 55, § 51).

In this case, the European Court of Human Right asserts that: "*The same is true where the dangerous effects of an activity to which the individuals concerned are likely to be exposed have been determined as part of an environmental impact assessment procedure in such a way as to establish a sufficiently close*

⁵¹ <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=12327721&skin=hudoc-en&action=request>

link with private and family life for the purposes of Article 8 of the Convention. If this were not the case, the positive obligation on the State to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 8 would be set at naught".

The Court has concluded that " *the respondent State did not fulfil its obligation to secure the applicants' right to respect for their private and family life, in breach of Article 8 of the Convention. There has consequently been a violation of that provision".*

In the Corrib Gas Project, considering the last developments, the enterprises have violated the community's right to a clean environment, as interpreted by the European Court of Human Rights.

2. Right to private property

Article 1 Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms: Protection of property

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

As mentioned above, in January 2005, Shell workers attempted to gain access to privately owned land along the pipeline route in Rossport and were granted an injunction against landowners opposing entrance of Shell.

Article 1 of Protocol 1 admits only a derogation in the public interest. This condition is definitely not met in the case of the proposed Corrib gas pipeline: the breaches to private property have been justified by the strict enterprises' private interest.

3. Freedom of expression

Article 10 of the European convention for protection of human Rights and fundamental freedoms – Freedom of expression

1 *"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2 *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".*

The corollary of the freedom of expression is access to information and no derogation can be met in this case.

Nevertheless, for the reasons outlined before, the local community has not got access to appropriate information and has not been able to participate in decision-making for the Corrib Gas Project.

As a result, the local community has been denied its right to access information in relation to environmental matters.

II.3 Encourage local capacity building

« Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice»

The Developer has negatively impacted on local culture, local economic activity such as tourism and fishing.

The project will not create many permanent jobs. Several hundred temporary jobs would be necessary for the construction but only 50 permanent jobs will be created, according to Shell. Moreover, the negative environmental impacts can threaten local tourism, in particular the contamination risk of the Carrowmore Lake can destroy the tourist industry. Since Shell began operating - apart from the aluminium -, it has released orthophosphate which has encouraged the intense growth of algae. This is - or used to be - an important tourist angling lake and spawning entrance for trout and salmon (a hatchery has traditionally been active in one of the inlet streams). No new forestry has been authorised since the early 1990ies on an issue of lack of commerciality.

Minister Dempsey appointed Peter Cassells an ex-trade union official and pr. company owner to mediate between Shell and the Rosport 5, mainly. Mr. Cassells eventually came to the conclusion that there was no common ground between the parties and he made this known. He then produced a report for the Minister which basically said: 1) accept Advantica report (which the Minister already had done) and 2) get Shell to spend some money to bribe the locals into abandoning their fight for the health and safety of the community. (this was very similar to a comment made by the President of the High Court Justice Finnegan as he announced the granting of an injunction to SEPIL (which later put the Rosport 5 in jail) to prevent named members of the community and others from obstructing SEPIL from entering private land in Rosport and Gort a' Chreachaire. He said "I don't know whether or not I am right in granting this injunction but if I am wrong you can be compensated: that is how things are done.") This is what got SEPIL to spend money on scholarships, etc. (Law of Reciprocation).

Tourist potential- walks which have been developed over 15 years, sea-trips, marine mammal watch and photo shoots, are effectively being destroyed. Who would be a tourist in such a place as is being

prepared by SEPIL, when real alternatives abound. The dumping of waste at sea, and very near shore will effectively down-grade the fishing industry - crabs, lobster - for who wants to buy shell-fish out of such potentially polluted water?. (Shell say that the waste pipe is to be taken back out to sea 12 Km. This gives the impression that the waste pipe is going out into the deep far away from land. A look at the map makes clear the deception: the 12 Km relates to the landfall which is at the head of a long bay, Broadhaven Bay. The outlet from the proposed pipeline is actually just 2Km outside the actual line of the coast.) On part of the site where the refinery is being built is a long-established laboratory facility that employs up to 25 people on site. As soon as the refinery begins production this facility must cease.

II.3 To foster a relationship of confidence and mutual truth between enterprises and the society in which they operates

« Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual truth between enterprises and the society in which they operate »

The Developer has failed to act in **partnership with the local community**. There has been no meaningful communication because the full project has only become known in the last two months. It has not been possible for the community to fully respond to the project until now, yet components of the project are being built.

There is absolutely no relationship of confidence nor mutual trust between the community and the enterprises.

Helge Hatlestad, StatoilHydro's vice-president (exploration and production) for Western Europe said he believed it was "very unfortunate" that the concerns voiced by the north Mayo community had not been listened to during the planning stages of the project in 2000/2001. "We've learned in Norway that there is a need for these sorts of discussions, for consultation and communication, before a project is sanctioned... It becomes commercially unviable to do something different once a project has started".

V. ALTERNATIVE SOLUTION

The development of the Corrib gas reserve must be separated from the development location selected by the Corrib gas developers. Analytically, these are two separate issues. **The local community has proposed an off-shore processing option** either employing shallow-water platforms, causeway-based facilities or sub-sea supersonic processing. More recently, many in **the local community have supported a proposal by the local Catholic clergy for a land-based refinery in a remote, unpopulated location** at Glinsk some miles from the existing proposed site. This proposal has received widespread support and offers a viable and reasonable alternative model. In this alternative, no SACs need be impacted upon in any way and community consent can be secured.

What the developer has proposed is more of the same. The local community have asked them, since early 2001, at public meetings, in the presence of the Minister of the day and of his Civil Servants, to go back to the drawing board and do the project properly and promised that were that done, that they would help bring the project to fruition, (even though they knew it would be of no material benefit to them.) The response has always been to push ahead, being guaranteed the force of the state.

The companies have always refused to negotiate with the community.

What is to be proposed by the developer will be an effort to mitigate impacts but no evidence of an effort to genuinely examine alternative development options which would avoid any impact on the SACs. As noted above, **alternatives do exist**, such as with the Glinsk proposal. Some points to note regarding the Glinsk alternative:

1. The Glengad landfall is within an SAC, the Glinsk landfall is not.
2. The current option requires the construction of a secure Beach Valve Station at the landfall within the SAC. The Glinsk option will not require the construction of a beach valve station with an emergency shut down valve.
3. The Glinsk option does not require a land-based production pipeline.
4. The Glinsk option does not require routing a discharge pipe through the Broadhaven Bay SAC with the discharge occurring within the influence of the bay thereby impacting on local fisheries.
5. The Glinsk option is not located within a drinking water catchment. Because of the present proposed site's location, within the Carrowmore drinking water catchments, the Bellanaboy option is in breach of the relevant engineering Code of Practice, a point ignored by the Irish EPA and the substantial point of an objection to the European Commission to be submitted by An Taisce (see also Corcoran Report attached).
6. The Glinsk option is remote from housing and consequently is more acceptable to the local community.

VI. DEMANDS TO THE NCP

1. Recommendations to the NCP:

With regard to the Dutch NCP's handling of this case, we would like to respectfully make the following recommendations:

- The NCP should set and adhere to concrete timelines for its handling of the case. For example, the NCP should acknowledge receipt of the complaint seven (7) days after receiving it and conduct an initial assessment within thirty (30) days. The procedures the NCP will undertake to make this assessment should be clearly stated. The NCP should strive to complete the process within three (3) months, and should ensure that the process takes no longer than nine (9) months.
- The NCP should seek to facilitate communication and exchange of information between the parties in a manner that is transparent and functionally equivalent for all parties.
- The NCP should allow both parties to nominate outside experts to consult and provide input on the issue.

2. Request to the National Contact Point

- That the present complaint be accepted and processed in all of its terms so that it can be judged, and thus strengthen and promote respect to the OECD Guidelines for Multinational companies in Ireland
- That compliance to the OECD Guidelines will be strongly recommended to the companies involved, in their present and future endeavours
- That a negotiation channel be opened between the companies hereby complained against and the local community of Rosspport under supervision of the National Contact Point in order to find an alternative solution to **put a stop to this conflict.**

ANNEXES

1. Independant Analysis prepared for the Centre for Public Inquiry
2. The senior planning inspector of Bord Pleanála Moore's report
3. Our story, The rooport five
4. applicants documents Submission on Objection No. 1 by Applicant_Part 1 page 38
<http://www.epa.ie/terminalfour/ippcApril/ippc-view.jsp?regno=P0738-01>
5. The Price of our Souls: Gas Shell and Ireland by Michael McCaughan
6. Irishtimes, Lorna Siggins, « Green urges Ryan to consider moving Corrib gas rafinery », July 11, 2008
7. IrishTimes, Lorna Siggins and Tom Shiel, « Mayo family complains over Shell surveillance », july 14, 2008.