

SUBMISSION TO
UNITED NATIONS - COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
55th Session

from RTS Action Group, Co. Laois, Ireland

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1. Fundamental Rights within Ireland

Certain fundamental rights which are considered particularly relevant to this submission and which are applicable to Irish Citizens are highlighted as follows:

Treaty on the functioning of the European Union

Article 11(ex Article 6 TEC)

Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

Article 191(ex Article 174 TEC)

1. Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,*
- protecting human health,*
- prudent and rational utilisation of natural resources,*
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.*

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

Charter of Fundamental Rights of the European Union

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

Article 20 - EQUALITY -

Equality before the law. Everyone is equal before the law.

Article 37 - Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 41 - Right to good administration

1. *Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.*
2. *This right includes:*
 - (a) *the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*
 - (b) *the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*
 - (c) *the obligation of the administration to give reasons for its decisions.*
3. *Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.*

Article 47 - Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Aarhus Convention (Convention on Access to Information, Public Participation in decision making and access to Justice in Environmental matters) — Ireland is a signatory to the Aarhus Convention, as a party to the convention in its own right and as a member state of the European Union where the EU is also a party to the convention.

International Covenant on Economic, Social and Cultural Rights

Article 1

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

Article 11

1. *The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent*

Article 12

1. *The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

Article 15

1. *The States Parties to the present Covenant recognise the right of everyone:*
 - (a) *To take part in cultural life;*
 - (b) *To enjoy the benefits of scientific progress and its applications;*

2. Summary of Rights Issues Highlighted through this submission

By virtue of the acts and omissions of the Irish State Agencies, members of the community in Ratheniska consider that they have been prevented from freely pursuing their economic, social and cultural rights, as well as civil and political rights among other fundamental rights. (see - preamble to covenant and Article 1)

This submission to the UN Committee sets out to demonstrate that while these rights may appear to be set out in theory (see the many references already referred to), they are proving to be extremely difficult to access for Irish citizens on a systematic basis. The submission primarily concerns itself with a specific case to demonstrate the many issues faced by Irish Citizens i.e. the Laois-Kilkenny Grid Reinforcement Project. It also refers to Irelands Renewable electricity strategy to show how the problems are not restricted to one single project but are a nationwide issue.

In summary:

- Ireland has been very slow to adopt the Aarhus convention and has failed to fully transpose the convention into Irish Law, as such, the reality in practice is that Irish Citizens have significant difficulty and no certainty in accessing their rights under the Aarhus convention.
- When dealing with Strategic Infrastructure projects, Ireland has no preliminary review procedure before an administrative authority as set out in Article 11(4) of the EIA Directive 2011/92/EC and the Aarhus convention. As such, the only way to challenge such decisions is an expensive legal challenge. This acts as an effective barrier to justice and is prohibitively expensive. It is a particularly significant barrier for smaller communities or for those unused to technical legal procedures.
- In the European Court of Justice ruling against Ireland in case 50-09, Ireland was found to have not correctly transposed the Environmental Impact Assessment Directive i.e. the Irish legislation was found to be inadequate. As a result of the ECJ ruling, Ireland transposed new legislation in order to implement the judgement - in particular, the European Union (Environmental Impact Assessment) (Planning and Development Act 2000) Regulations 2012(S.I. 419 of 2012 amended the definition of "Environmental Impact Statement". Ireland then continued to use the old legislation (Article 94 and Schedule 6 of the 2001 Regulations) which had been found to be inadequate for the Planning Authority to carry out an EIA in accordance with Article 3 of the EIA Directive. This is an ongoing situation with the Irish Authorities continuing to fail to implement the EIA Directive. The Ratheniska project should have been subject to the new legislation but instead used the old legislation which had been found to be deficient.
- Non-compliance with SEA directive regarding GRID25 plan (from which the Ratheniska project stems).
- The Ratheniska project also failed to comply with the EIA Directive on numerous points, one aspect of this is the fact that An Bord Pleanála do not deal with the SEA when considering the EIA of projects.
- Judicial Review cases for energy projects tend to get moved to the commercial court. This further undermines our fundamental rights as it shortens the timescales and involves stricter enforcement of court rules (cannot amend statement of grounds etc.).
- Irish Citizens are not equal with state authorities before the law. i.e.
 - State authorities have access to funds, extensive expert resources and time to work on cases full time whereas,
 - Irish Citizens do not have access to funds for expensive legal cases, without those funds they do not have the access to specialists (legal or otherwise) additionally, citizens try to fit planning and fighting complex legal cases in and around full-time work commitments and family commitments. In the Ratheniska case, this has involved a community in nearly 6 years of work in a struggle to have their rights acknowledged. That struggle continues.
- The discretionary nature of the cost protection law in environmental cases means that citizens have no legal certainty about their rights to challenge administrative decisions. In the Ratheniska case, this was used to full advantage by two state funded authorities to threaten the community with costs in the order of €500,000-€750,000 as a means of getting the community to drop their legal appeal case. In fear of this threat, the community had no real choice but to drop the legal challenge without their concerns or issues being addressed.
- Neither An Bord Pleanála nor EirGrid are under the remit of the ombudsman i.e. there is nowhere to take a complaint.

3. **This report sets out to make 3 main points:**

- a) Provide a specific case where multiple fundamental rights have been voided by the Irish State and where an effective remedy is now sought. i.e. The Laois-Kilkenny grid reinforcement project based near Ratheniska in county Laois, Ireland.
 - b) Provide background information showing how this aforementioned specific case is in the process of being repeated in many other rural communities throughout Ireland.
 - c) Provide a counterbalance to any argument that the Irish state are likely to make that they do not have sufficient resources to improve general rights based issues in Ireland.
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a) **Ratheniska Case - Specific Example of multiple breaches of fundamental rights**

Ratheniska & surroundings, Co. Laois, Ireland:

as can be seen, the quality of this landscape and environment would serve sustainability much better as a natural touristic and agricultural asset rather than the proposed transformation to an industrialised area covered in energy infrastructure.



Summary of events:

- In late October 2009 EirGrid, (the state owned Electrical Transmission System Operator and developer of the project) issued the first public notice that they intended to build a new electrical substation near Ratheniska, Co. Laois, Ireland. The stated intention was to join 2 existing power lines (400kV & 110kV) and add one extra powerline (110kV). This would require 5 connection points within the substation.

- It soon became apparent that the substation would be huge, far larger than necessary for the reasons we were given. It would require approx. 18 acres of land and would be capable of connecting up to 16 powerlines. Despite a full planning process, repeated questions and a court case - the community have never been given information as to what the future capacity is for.
- The community demonstrated that this was a project which clearly set the framework for significant future development – it was the first stage of a major energy hub and plans were already in progress for future phases. This information was only found through extensive research carried out within the local community and has never been confirmed or denied by the state developers.
- The community also discovered that the public consultation carried out was only for appearances as the planned routes for the power lines had already been decided before the initial newspaper advert in October 2009.
- In November 2012, An Bord Pleanála (ABP, the national planning authority) made a decision that the project should be considered Strategic Infrastructure. The effect of this decision is that it effectively removes the right to appeal the planning decision to an independent 3rd party. This decision is taken without any public consultation and following private discussions with the developer. The public are only allowed access to minutes of meetings once the decision has been made.
- A planning application was made and the public raised many significant concerns, issues and legal errors - most of which were not dealt with and planning permission was granted by ABP regardless. e.g. The planning authority does not view consideration of SEA to be part of their remit, so even if a valid SEA were ever carried out, the Planning Bord does not integrate this into it's consideration of the planning application. (see [Inspectors report](#) page 46/47. Further information can be provided regarding the issues raised if required.)
- Once the decision has been made that the project is considered Strategic Infrastructure - the Irish State then only allows planning permission to be challenged through the courts - there is no administrative appeals body. This meant that the small rural community in Ratheniska was forced into a massive fundraising exercise. €50,000 is approximately what is needed to take such a challenge to the high court. The state provides no resources to assist in this.
- EirGrid (state agency developer), moved the case to the Commercial court. This greatly shortens the time taken to go through the court process and therefore puts more pressure on communities to manage complicated legal documents in their spare time between working and taking care of families. It can also be argued that the commercial court takes a stricter interpretation of the grounds of a case - something which clearly puts inexperienced rural communities at a clear disadvantage when challenging the more experienced and well resourced state authorities.
- The decision to move to the commercial court cannot be effectively challenged because, if you resist going to the commercial court and then lose your case later - you are likely to be liable for the costs the extra delay caused to the business.
- This case was brought to the court on environmental grounds and as such, should have been subject to cost protection i.e. the community should have been protected from the costs arising from An Bord Pleanála's and EirGrid's legal teams.
- Cost protection in environmental cases is very weakly legislated for in Irish law - the discretionary nature of the legislation means that it affords communities little or no protection.
- When we indicated that we would ask the judge to decide on cost protection in advance of the full hearing, ABP threatened to take the costs of this action against us if the judge considered it to have been an unnecessary step, and so we had no cost protection in advance of the case.
- Unfortunately, the case was lost in the commercial court. A narrow view of the grounds for the case was taken with the result that many arguments were not allowed to be dealt with.
- The local community believe firmly that the planning permission in this case is fundamentally flawed on many different levels and so, we drafted grounds to appeal. (If you want to appeal a court judgement in a planning case in Ireland, you must be given permission to do so by the judge who gave the original judgement. i.e. you have no recourse to a person independent of the judgement).
- ABP and EirGrid were issued with a copy of our intended appeal grounds on Tuesday 27th Jan. 2015. They were fully aware that the community intended to seek leave to appeal the judgement.

- On Wednesday 28th January, just prior to the judge arriving in the court – ABP approached our solicitor and indicated that they would now pursue us for costs back to the beginning of the case if we did not withdraw our request for permission to appeal. We were advised that EirGrid indicated the same approach.
- Our group was not present in the court on that day as we had not anticipated such an ambush. Our group contact was called by phone while at work and literally given 3 minutes to consider whether we should proceed and risk exposure to estimated costs of €500,000-€750,000 or withdraw our intention to seek leave to appeal.
- We withdrew the request for permission to appeal for this cost reason alone. Basically, these state agencies used their access to state resources to bully citizens out of court.
- Clearly this type of behaviour is totally contrary to the fundamental principles of democracy, access to information, effective participation in decision-making, access to justice in environmental matters and is well beyond 'not-prohibitively expensive'. This action appears designed to ensure that the public do not even consider trying to participate in or challenge any decision making, thus effectively disabling the public's ability to access justice.
- Additionally, both EirGrid and An Bord Pleanála are exempt from the Ombudsman's remit i.e. there is no-where to bring a complaint.

The local community has worked tirelessly over a period of nearly 6 years now to assert our fundamental rights to access the information necessary for participation, to protect the environment and to participate in decisions that will affect our health, livelihoods and environment for decades into the future.

The toll on this small rural community has already been great in terms of constant stress, loss of resources as people spend time on this rather than other more productive activities, the economic costs of taking a court case and other associated expenditure is money lost to our small local economy.

The more significant impacts are yet to come, the threat to our vulnerable clean water (phase 1 of this massive infrastructure project is due to be built on top of a regionally important aquifer which is already classified as vulnerable. Digging into the ground for foundations will only create a greater risk for this important resource.) An Annex I priority habitat (as per the habitats directive) that will almost certainly be damaged or destroyed by the project, the lost opportunity to attract tourism to our beautiful area, the devaluation of our homes and farms, the health impacts associated with the powerlines, substation and the associated turbines, the list goes on.

An effective remedy is now sought for this specific case i.e. we are seeking that this flawed planning permission be revoked or as an alternative, we are seeking a full and independent review of the planning decision for the Laois-Kilkenny reinforcement project including the information it was based on measured against the requirements of democracy, human rights and EU / International environmental law.

b) The National Case

- Ireland has embarked on and has been investing heavily for a number of years in a plan to generate 40% of its electricity primarily from wind power. An integral part of this project is the upgrading and expansion of both the electrical distribution and transmission systems. This plan has not been subject to a cost benefit analysis or the legally required Strategic Environmental Assessment including public participation.
- By the very nature of this project it is concentrated in the more rural areas of the countryside on a national scale. i.e. there is hardly any part of the rural countryside that will not be affected by this wind & grid project.
- A very high percentage of the Irish population live in rural areas i.e. approx. 38% equivalent to approx. 1,750,000 people. These are the people who will be most directly affected by the current wind energy plan. The primary culture and livelihoods in these areas are focussed on farming and tourism. About 64% of the total land area is used for farming with about 139,000 family farms with farming accounting for almost 10% of employment in the country.

- Tourism is another of Ireland's most important economic sectors. Employment in the tourism sector is estimated to be in the region of 200,000. Tourism also shapes Ireland's image and attractiveness as a place to live, work and invest.
- It is estimated that there are currently approximately 200 groups throughout the country that are seeking to have their voices heard and rights upheld with regard to the pylon and wind turbine projects that are being advanced by the state and others against the wishes of the communities that will have to live with the impacts. More community groups are forming each week. It is probably fair to say that these groups have little trust in the state to protect their interests and rights.
- Given the experiences of the Ratheniska community as described in point a) above, it is to be expected that a large number of these communities are now facing into similar situations.
- In the absence of a proper cost-benefit analysis and Strategic Environmental Assessment there is absolutely no evidence to show that there is any benefit to these projects or that they are in any way sustainable, however communities are already suffering negative impacts before projects are even granted permission.
- The point being made here is that many of the issues encountered in the Ratheniska case are systemic in nature and are in the process of being repeated across the country time and again causing huge negative impacts on people and the environment. Huge financial and time resources are being diverted away from productive community endeavours in order to try and assert our fundamental rights.

c) Ireland has the economic resources to improve rights (despite the economic situation)

- The state will no doubt make the case that due to the economic crisis - it simply does not have the resources to invest in rights based issues at the moment,

However,

- Ireland has embarked on and been investing heavily for a number of years in a plan to generate 40% of its electricity primarily from wind power. No cost benefit analysis was ever carried out for this decision or to establish the most cost effective and environmentally sustainable way for Ireland to move to renewable electricity. This has only recently been admitted by the Irish Government (see Irish Independent 12.04.2015).
- Associated with this massive increase in wind power is a doubling of the capacity of the Irish transmission system at an estimated cost of approx. €4 billion between 2008 - 2025 (GRID25). This does not include the investment into the electrical distribution system of approx. €2.7 billion or the very significant cost of additional interconnection with other countries.
- Despite the legal requirement for a Strategic Environmental Assessment (SEA) involving public participation, this was never carried out for either
 - the development of nearly 6000MW of wind turbine capacity i.e. roughly 2500 turbines or
 - the full expansion requirements of the GRID25 plan associated with such a massive increase in wind power.
- The aforementioned Ratheniska project is one of the projects arising from GRID25 and so is not based on any valid SEA. The project itself also does not appear to have a valid cost benefit analysis for an associated expenditure of approx. €100million.
- The Irish State authorities themselves are also actively building windfarms (e.g. see links - Bord na Mona approx. 500MW, ESB approx. 800MW, Coillte - the forestry company approx. 550MW). Assuming an investment cost of approx. €1.5million per MW of wind energy this amounts to a further state investment of almost another €3billion by 2020.
- In terms of quality of life - Ireland has the highest cost for electricity in Europe (see Fig. 22 here.)

- According to the ESB (State Authority for the Distribution system), the Irish electricity distribution system is already four times the European average of length of network per capita.....and now they want to build more. (see page 1a [here](#))
- In conclusion on this point - it appears that the Irish State has an investment availability of nearly €1billion per year up up 2025 assigned to schemes for which it has carried out no cost benefit analysis and no strategic environmental assessment involving public participation despite the fact that these projects will clearly have major impacts on people and the environment.