Opening Statement from Communicants of ACCC/C/2014/112
Friday 24th June 2016

Ireland is internationally renowned for its unique and beautiful scenery and cheerful hospitality. What is less well known, is that, compared with other European countries of similar size, Ireland has a widespread and scattered rural population.

This scattered population is primarily a legacy from the potato famine, with its huge death toll and resultant forced emigration. More recently, both in the 80s and currently, Ireland has experienced large-scale emigration, primarily as a result of the collapsed economy.

This widespread scattering of the rural population has been exacerbated by the lack of any coherent planning strategy for the rural areas, which has enabled people to pretty much build where they liked, subject to minimum restrictions.

The unique rural heritage and once stunning landscapes are being destroyed by a plan to install at least three thousand wind turbines and six thousand kilometres of new high and medium voltage lines. This is ostensibly to meet the proclaimed target of 40% renewable electricity. Curiously, given the diverse resources available to Ireland, the State has chosen to rely predominately on huge wind turbines to deliver this target.

The communicants represent rural communities across the length and breadth of Ireland who have already suffered greatly as a result of the energy policy imposed upon them. Ill health, property loss and devaluation, increased unemployment (because of the impact on the food, tourism and the horse industry) and fuel poverty, can all be linked to the adverse consequences of the Irish State's renewable energy policy.

The historical legacy of widely scattered rural communities and many isolated single family dwellings means that in the Irish countryside there are no empty spaces to install those turbines, as people live there already. Despite this, the Irish State has failed to properly regulate setback distances between wind farms and rural communities. The giant turbines, and the proposed 'super pylons' to carry the generated electricity, have profound consequences on rural communities and their environment, and yet these communities have never be given the opportunity to discuss the impact of these proposals before their implementation, either at a national policy level, or at a local community development plan level. When the people make their wishes known in their local development plan, these are immediately vetoed by the central government as being in conflict with the national policy, on which they – the people – were never consulted in the first place.

The principle of proportionality requires that measures adopted do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question. When there is a choice between several appropriate measures, recourse must be had to the least onerous (on the public and the fiscus), and the disadvantages caused must not be disproportionate to the aims pursued.

So, what is the justification for this renewable plan and its enormous impact, both environmental and financial? Were other less expensive or less onerous options considered and offered to the public? Why was a renewable-energy mix not offered to the public, as opposed to a wind-dominated programme? Why were the public not offered a chance to reduce their consumption through energy-saving initiatives before huge wind farms were built next to their homes and children's schools, and massively increased electricity bills posted in their mailboxes?

Why do the communicants raise this before the ACCC? This is not an effort to debate the merits and demerits of wind energy, as the Irish State's representative has suggested. It is raised simply because this plan was foisted on the Irish public, without consultation, or suggested alternatives, or indeed a zero option. It was a 'done deal', and even if there had been proper consultations at this stage (which is denied), these would have been pro forma, as options were already closed.

In theory, Ireland has ratified the Aarhus Convention. In practice, it has made little or, in many cases, no effort to give effect to the rights and obligations enshrined in this International Treaty. These systematic deficiencies in legislative and administrative measures become self-evident when one takes the subject matter of the Communication, the implementation of the Irish renewable programme at all levels of government, and compares it with the three pillars of the Convention on: access to information; public participation in decision-making; and access to justice in environmental matters.

For pillar one on information, i.e. Article 4 and Article 5 paragraph 7(a), the Communication and supporting documentation describes how there have been repeated failures to provide requested environmental information, in particular when it is directly connected to public participation on environmental policy proposals. The examples cited include a refusal to provide a cost benefit study connected to a massive export renewable policy, plus a refusal to provide the scientific basis to support claims that an 80-95% reduction in greenhouse gas emissions is required as part of proposed climate change policies. There is a recurring theme of a stubborn refusal to provide information relating to the substance behind decision-making, where it is vital that there is public awareness and public debate on these fundamental issues. If people understand why something is being done, they are more likely to support it.

With regard to pillar two on public participation in decision-making, the primary focus of the Communication is on Article 6 paragraph (4), 'when all options are open' and Article 6 paragraph (8) 'taking due account of the outcome of the public participation'. These paragraphs are engaged both by Article 6 on decisions on specific activities and Article 7 on plans and programmes related to the environment. Indeed clarity on these issues, in particular public participation in multi-stage decision-making, has been provided by the UNECE Maastricht Recommendations, which reference extensively the previously endorsed findings and recommendations of the Compliance Committee. Posting a link on a government department website advertising a two-week 'consultation' is wholly inadequate.

It is also necessary to refer to Communication C-17 (ACCC/C/2006/17), where in November 2007 in response to the Committee's request the EU made a number of clarifications, including:

- "Although it is not a party to the Convention, Ireland will be obliged to respect the commitments arising from the Convention, where they concern provisions falling within the competence of the Community".

- With regard to International Agreements: "Such agreements take precedence over legal acts adopted under the EC Treaty (secondary Community law). So if there was a conflict between a Directive and a Convention, such as the Aarhus Convention, all Community or Member State administrative or judicial bodies would have to apply the provision of the Convention and derogate from the secondary law provision. This precedence also has the effect of requiring Community law texts to be interpreted in accordance with such agreements".

As Communicants, we have demonstrated that not only is public participation ***pro forma***, in which there is a refusal to address the substance and justification behind the decision-making, with decisions being made before, or despite, public consultations - if indeed they can be called consultations - there is also a systematic failure to have any form of administrative system to demonstrate how public input has been incorporated into the decision-making. Indeed, the Party has already made it very clear to the Committee that any issues related to renewable policy and its merits are excluded from the resulting decision.

The Irish State had since February 2005 a defined legal obligation under Community law, which is also its own legal structure, and prior to its 2012 ratification of the Convention, to complete such public participation in decision-making at the successive tiers of policy, plan / programme, and individual project approval stage. That it chose to by-pass this obligation, in particular with respect to the 2010 National Renewable Energy Action Plan, is not part of the compliance issues being raised by

this Communication, as that has already been addressed by the compliance proceedings on Decision V/9g of the Meeting of the Parties.

However, a blatant failure to complete these legally binding steps of public participation on the renewable programme prior to ratification does not provide the Party with the 'carte blanche', as it claims it does, to continue to proceed with the implementation of this renewable programme after the date of ratification, in particular denying the public their rights under Article 6 paragraphs (4) and (8). There are a multitude of substantive issues which should still be open for proper consultation, as they have not been closed at the previous tier.

Furthermore, as previously documented, the Party, as a Member State, also has a specific obligation to derogate from a Directive, where it is in conflict with the Convention, which is in essence the substance of Decision V/9g and Directive 2009/28/EC on renewable energy.

Despite it being a general obligation of the Convention for "public authorities to be in possession of accurate, comprehensive and up-to-date environmental information", in order to fully integrate environmental considerations in governmental decision-making, the implementation of this programme has proceeded without sufficient safeguards to protect those living in rural Ireland. For example, a two-week public participation with respect to new Wind Energy Guidelines was initiated on January 2013. The main concern (and supporting argument) presented by the nearly 1,000 submissions, was the adverse health impacts associated with wind turbine noise and blade flicker. These concerns and arguments were completely ignored when the resulting draft guidelines were published nearly a year later. Despite the enormous amount of peer-reviewed research on the adverse health effects of wind turbines, the government chose to rely on a discredited Australian study undertaken by wind industry-sponsored research. A further public participation was then completed, which resulted in some 7,500 submissions. More than two and a half years after that, the new Guidelines have not yet been finalised.

As regards the final access to justice pillar, the enormous cost barriers of the Irish Courts are well known, a matter which is being dealt with under Communication C-113. Considering Article 9(1) on access to justice when information requests have been refused, the Communication documents how the Office of the Commissioner for Environmental Information took not just months, but years to process appeals. Furthermore, resulting decisions were not in line with the Convention's goal of facilitating access to information; namely, that a request was deemed manifestly unreasonable as there were indications that it was related to challenging the policy concerned. A second request for a cost benefit study was deemed not to be environmental information. The reason for refusal was that even though it was framing a policy decision, that policy had not been adopted and hence did not yet have environmental effects. So in essence, the public is to be kept in the dark about

matters of substance related to decision-making around them until the policies are implemented – when options are closed.

In theory, one could appeal to the High Court. In practice, this is best illustrated by the National Asset Management Agency (NAMA), a public authority, which appealed a decision of the Commissioner against them. The High Court case took nearly a year and a half, and a subsequent Parliamentary question demonstrated that NAMA's legal fees were €71,350 and that of the Commissioner for Environmental Information €50,000. These amounts are clearly beyond the means of the average citizen and therefore justice is inaccessible.

The legal case of *Swords v. Minister of Communications, Energy and Natural Resources* demonstrates how a case that was given leave in November 2012, and despite appearances in front of two High Court judges, still has no written decision. The Irish Court Services have failed to provide access to justice. It is noteworthy that in their concluding remarks on the case, the State's senior counsel, an ex Attorney-General, stated:

- 'If the State so chooses to breach its international treaty obligations, then the citizen can complain about it but that is all the citizen can do.'

- 'Neither Article 7 nor Article 9 para 3 of the Convention have any direct effect on Irish law as a consequence of the EU's ratification.'

The communicants would ask the ACCC to find that the Irish State has repeatedly failed to consult with its citizens before environmental policy decisions were made. We would also ask the ACCC to find that when consultations are held, they are wholly inadequate and ***pro forma***, in that there is no evidence which indicates that the responses are heeded or allowed to shape subsequent policy.